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Waste Management Act

115A.01 CITATION.

CITATION, PURPOSE, AND DEFINITIONS

Chapter 115A shall be known as the Waste Management Act.

History: *1980 c 564 art 1 s 1; 1989 c 325 s 1*

115A.02 LEGISLATIVE DECLARATION OF POLICY; PURPOSES.

(a) It is the goal of this chapter to protect the state's land, air, water, and other natural resources and the public health by improving waste management in the state to serve the following purposes:

(1) reduction in the amount and toxicity of waste generated;

(2) separation and recovery of materials and energy from waste; (3) reduction in indiscriminate dependence on disposal of waste;

(4) coordination of solid waste management among political subdivisions; and

(5) orderly and deliberate development and financial security of waste facilities including disposal facilities.

(b) The waste management goal of the state is to foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby protect the state's land, air, water, and other natural resources and the public health. The following waste management practices are in order of preference:

(1) waste reduction and reuse;

(2) waste recycling;

(3) composting of source-separated compostable materials, including but not limited to, yard waste and food waste;

(4) resource recovery through mixed municipal solid waste composting or incineration;

(5) land disposal which produces no measurable methane gas or which involves the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale; and

(6) land disposal which produces measurable methane and which does not involve the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale.

History: *1980 c 564 art 1 s 2; 1989 c 325 s 2; 1991 c 337 s 5; 1992 c 593 art 1 s 4; 1994 c 585 s 2; 1999 c 231 s 131; 2010 c 272 s 1*

115A.03 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of this chapter, the terms defined in this section have the meanings given them, unless the context requires otherwise.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency. Subd. 3. [Repealed, 1989 c 335 art 1 s 270]

Subd. 3a. **Arrange for management.** "Arrange for management" means an activity undertaken by a person that determines the ultimate disposition of solid waste that is under the control of the person, including delivery of the waste to a transfer station for transport to another solid waste management facility. Knowledge of the destination of waste by a generator is by itself insufficient for arranging for management unless the generator knows that the destination is an environmentally inferior facility as defined in this section, has the ability to redirect the waste
to an environmentally superior facility and ensure its delivery to that facility, and chooses not to redirect the waste.

Subd. 4. **Cities.** "Cities" means statutory and home rule charter cities and towns authorized to plan under sections 462.351 to 462.364.

Subd. 5. **Collection.** "Collection" means the aggregation of waste from the place at which it is generated and includes all activities up to the time the waste is delivered to a waste facility.

Subd. 6. **Commercial waste facility.** "Commercial waste facility" means a waste facility established and permitted to sell waste processing or disposal services to generators other than the owner and operator of the facility. Subd. 6a. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 7. **Construction debris.** "Construction debris" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition of buildings and roads.

Subd. 7a. **Containment.** "Containment" means isolating, controlling, and monitoring waste in a waste facility in order to prevent a release of waste from the facility that would have an adverse impact upon human health and the environment.

Subd. 8. **Development region.** "Development region" means a region designated pursuant to sections 462.381 to 462.397.

Subd. 8a. [Repealed, 1Sp2005 c 1 art 2 s 162]

Subd. 9. **Disposal or dispose.** "Disposal" or "dispose" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

Subd. 10. **Disposal facility.** "Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.

Subd. 10a. **Environmentally inferior.** "Environmentally inferior" means a solid waste management method that is lower on the list of preferred waste management methods in section 115A.02 than a solid waste management method chosen by a county or, as applied to a facility, means a waste management facility that utilizes a waste management method that is lower on the list of preferred waste management methods than the waste management method chosen by a county. In addition, as applied to disposal facilities, a facility that does not meet the standards for new facilities in Code of Federal Regulations, title 40, chapters 257 and 258, is environmentally inferior to a facility that does meet these standards.

Subd. 11. **Generation.** "Generation" means the act or process of producing waste. Subd. 12. **Generator.**

"Generator" means any person who generates waste.

Subd. 13. **Hazardous waste.** "Hazardous waste" has the meaning given it in section 116.06, subdivision 11.

Subd. 13a. **Industrial waste.** "Industrial waste" means solid waste resulting from an industrial, manufacturing, service, or commercial activity that is managed as a separate waste stream.

Subd. 14. **Intrinsic hazard.** "Intrinsic hazard" of a waste means the propensity of the waste to migrate in the environment, and thereby to become exposed to the public, and the significance of the harm or damage likely to result from exposure of natural resources or the public to the waste, as a result of such inherent or induced attributes of the waste as its chemical and physical stability, solubility, bioconcentratability, toxicity, flammability, and corrosivity.

Subd. 15. **Intrinsic suitability.** "Intrinsic suitability" of a land area or site means that, based on existing data on the inherent and natural attributes, physical features, and location of the land area or site, there is no known reason why the waste facility proposed to be located in the area or site cannot reasonably be expected to qualify for permits in accordance with agency rules. Agency certification of intrinsic suitability shall be based on data submitted to the agency by the proposing entity and data included by the administrative law judge in the record of any public hearing on recommended certification, and applied against criteria in agency rules and any additional criteria developed by the agency in effect at the time the proposing entity submits the site for certification.

In the event that all candidate sites selected by the board before May 3, 1984, are eliminated from further consideration and a new search for candidate sites is commenced, "intrinsic suitability" of a land area or site shall mean that, because of the inherent and natural attributes, physical features, and location of the land area or site, the

waste facility proposed to be located in the area or site would not be likely to result in material harm to the public health and safety and natural resources and that therefore the proposed facility can reasonably be expected to qualify for permits in accordance with agency rules.

Subd. 16. [Repealed, 1997 c 7 art 1 s 26]

Subd. 17. **Local government unit.** "Local government unit" means cities, towns, and counties.

Subd. 17a. **Major appliances.** "Major appliances" means clothes washers and dryers, dishwashers, hot water heaters, heat pumps, furnaces, garbage disposals, trash compactors, conventional and microwave ovens, ranges and stoves, air conditioners, dehumidifiers, refrigerators, and freezers.

Subd. 18. **Metropolitan area.** "Metropolitan area" has the meaning given it in section 473.121.

Subd. 19. **Metropolitan Council.** "Metropolitan Council" means the council established in chapter 473.

Subd. 20. [Repealed, 1994 c 628 art 3 s 209]

Subd. 21. **Mixed municipal solid waste.** (a) "Mixed municipal solid waste" means garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection, except as provided in paragraph (b).

(b) Mixed municipal solid waste does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, lead acid batteries, motor and vehicle fluids and filters, and other materials collected, processed, and disposed of as separate waste streams.

Subd. 22. **Natural resources.** "Natural resources" has the meaning given it in chapter 116B. Subd. 22a.

[Repealed, 1Sp2005 c 1 art 2 s 162]

Subd. 22b. **Packaging.** "Packaging" means a container and any appurtenant material that provide a means of transporting, marketing, protecting, or handling a product. "Packaging" includes pallets and packing such as blocking, bracing, cushioning, weatherproofing, strapping, coatings, closures, inks, dyes, pigments, and labels.

Subd. 23. **Person.** "Person" has the meaning given it in section 116.06, but does not include the Pollution Control Agency.

Subd. 24. **Political subdivision.** "Political subdivision" means any municipal corporation, governmental subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

Subd. 24a. **Problem material.** "Problem material" means a material that, when it is processed or disposed of with mixed municipal solid waste, contributes to one or more of the following results:

(1) the release of a hazardous substance, or pollutant or contaminant, as defined in section 115B.02, subdivisions 8, 13, and 15;

(2) pollution of water as defined in section 115.01, subdivision 13;

(3) air pollution as defined in section 116.06, subdivision 4; or

(4) a significant threat to the safe or efficient operation of a solid waste facility.

Subd. 24b. **Postconsumer material.** "Postconsumer material" means a finished material that would normally be discarded as a solid waste having completed its life cycle as a consumer item.

Subd. 25. **Processing.** "Processing" means the treatment of waste after collection and before disposal. Processing includes but is not limited to reduction, storage, separation, exchange, resource recovery, physical, chemical, or biological modification, and transfer from one waste facility to another.

Subd. 25a. **Recyclable materials.** "Recyclable materials" means materials that are separated from mixed municipal solid waste for the purpose of recycling or composting, including paper, glass, plastics, metals,

automobile oil, batteries, and source-separated compostable materials. Refuse-derived fuel or other material that is destroyed by incineration is not a recyclable material.

Subd. 25b. **Recycling.** "Recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

Subd. 25c. **Recycling facility.** "Recycling facility" means a facility at which materials are prepared for reuse in their original form or for use in manufacturing processes that do not cause the destruction of the materials in a manner that precludes further use.

Subd. 26. **Regional development commission.** "Regional development commission" means a commission established pursuant to sections 462.381 to 462.397.

Subd. 26a. **Resource conservation.** "Resource conservation" means the reduction in the use of water, energy, and raw materials.

Subd. 27. **Resource recovery.** "Resource recovery" means the reclamation for sale, use, or reuse of materials, substances, energy, or other products contained within or derived from waste.

Subd. 28. **Resource recovery facility.** "Resource recovery facility" means a waste facility established and used primarily for resource recovery, including related and appurtenant facilities such as transmission facilities and transfer stations primarily serving the resource recovery facility.

Subd. 28a. **Retrievable storage.** "Retrievable storage" means a method of disposal whereby wastes are placed in a facility established pursuant to sections 115A.18 to 115A.30 for an indeterminate period in a manner designed to allow the removal of the waste at a later time.

Subd. 28b. **Sanitary district.** "Sanitary district" means a sanitary district with the authority to regulate solid waste.

Subd. 29. **Sewage sludge.** "Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. It includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. Sewage sludge that is acceptable and beneficial for recycling on land as a soil conditioner and nutrient source is also known as biosolids.

Subd. 30. **Sewage sludge disposal facility.** "Sewage sludge disposal facility" means property owned or leased by a political subdivision and used for interim or final disposal or land spreading of sewage sludge.

Subd. 31. **Solid waste.** "Solid waste" has the meaning given it in section 116.06, subdivision 22.

Subd. 32. **Solid waste management district or waste district.** "Solid waste management district" or "waste district" means a geographic area extending into two or more counties in which the management of solid waste is vested in a special district established pursuant to sections 115A.62 to 115A.72.

Subd. 32a. MS 1994 [Renumbered subd 32c]

Subd. 32a. **Source-separated compostable materials.** "Source-separated compostable materials" means materials that:

(1) are separated at the source by waste generators for the purpose of preparing them for use as compost;

(2) are collected separately from mixed municipal solid waste, and are governed by the licensing provisions of section 115A.93;

(3) are comprised of food wastes, fish and animal waste, plant materials, diapers, sanitary products, and paper that is not recyclable because the commissioner has determined that no other person is willing to accept the paper for recycling;

(4) are delivered to a facility to undergo controlled microbial degradation to yield a humus-like product meeting the agency's class I or class II, or equivalent, compost standards and where process residues do not exceed 15 percent by weight of the total material delivered to the facility; and

(5) may be delivered to a transfer station, mixed municipal solid waste processing facility, or recycling facility only for the purposes of composting or transfer to a composting facility, unless the commissioner determines that no other person is willing to accept the materials.

Subd. 32b. MS 1994 [Renumbered subd 32d]

Subd. 32b. **Source-separated recyclable materials.** "Source-separated recyclable materials" means recyclable materials, including commingled recyclable materials, that are separated by the generator.

Subd. 32c. **Stabilization.** "Stabilization" means a chemical or thermal process in which materials or energy are added to waste in order to reduce the possibility of migration of any hazardous constituents of the resulting stabilized waste in preparation for placement of the waste in a stabilization and containment facility.

Subd. 32d. **Stabilization and containment facility.** "Stabilization and containment facility" means a waste facility that is designed for stabilization and containment of waste, together with other appurtenant facilities needed to process waste for stabilization, containment, or transfer to another facility.

Subd. 33. **Transfer station.** "Transfer station" means an intermediate waste facility in which waste collected from any source is temporarily deposited to await transportation to another waste facility.

Subd. 34. **Waste.** "Waste" means solid waste, sewage sludge, and hazardous waste.

Subd. 35. **Waste facility.** "Waste facility" means all property, real or personal, including negative and positive easements and water and air rights, which is or may be needed or useful for the processing or disposal of waste, except property for the collection of the waste and property used primarily for the manufacture of scrap metal or paper. Waste facility includes but is not limited to transfer stations, processing facilities, and disposal sites and facilities.

Subd. 36. **Waste management.** "Waste management" means activities which are intended to affect or control the generation of waste and activities which provide for or control the collection, processing and disposal of waste.

Subd. 36a. **Waste management method chosen by a county.** "Waste management method chosen by a county" means:

(1) a waste management method that is mandated for waste generated in the county by section 115A.415, 473.848, 473.849, or other state law, or by county ordinance based on the county solid waste management plan developed, adopted, and approved under section 115A.46 or 458D.05 or the county solid waste management master plan developed, adopted, and approved under section 473.803; or

(2) a waste management facility or facilities, developed under the county solid waste management plan or master plan, to which solid waste generated in a county is directed by an ordinance developed, adopted, and approved under sections 115A.80 to 115A.893.

Subd. 36b. **Waste reduction or source reduction.** "Waste reduction" or "source reduction" means an activity that prevents generation of waste or the inclusion of toxic materials in waste, including:

(1) reusing a product in its original form;

(2) increasing the life span of a product;

(3) reducing material or the toxicity of material used in production or packaging; or

(4) changing procurement, consumption, or waste generation habits to result in smaller quantities or lower toxicity of waste generated.

Subd. 37. **Waste rendered nonhazardous.** "Waste rendered nonhazardous" means (1) waste excluded from regulation as a hazardous waste under the delisting requirements of United States Code, title 42, section 6921 and any federal and state delisting rules, and (2) other nonhazardous residual waste from the processing of hazardous waste.

Subd. 38. **Yard waste.** "Yard waste" means garden wastes, leaves, lawn cuttings, weeds, shrub and tree waste, and prunings.

History: *1980 c 564 art 1 s 3; 1981 c 352 s 1,2; 1983 c 373 s 5,6; 1984 c 640 s 32; 1984 c 644 s 1,2; 1985 c 274 s 1-3; 1986 c 425 s 12-17; 1987 c 348 s 1,2; 1988 c 524 s 1; 1988 c 685 s 3,4,21; 1989 c 325 s 3; 1989 c 335 art 1 s 128,129,269; 1Sp1989 c 1 art 18 s 3; art 20 s 1,2; 1991 c 303 s 1; 1991 c 337 s 6,7,44; 1992 c 593 art 1 s 5-7,28; 1993 c 249 s 7,8,61; 1994 c 548 s 1; 1994 c 585 s 3; 1994 c 639 art 5 s 3; 1995 c 220 s 96; 1995 c 247 art 1 s 66; 1996 c 470 s 2-5; 1Sp2005 c 1 art 2 s 161; 2008 c 357 s 32,33; 2011 c 107 s 81*

115A.034 ENFORCEMENT.

ENFORCEMENT

This chapter may be enforced under sections 115.071 and 116.072.

History: *1992 c 593 art 1 s 8; 1993 c 249 s 9*

115A.04 [Repealed, 1989 c 335 art 1 s 270]

115A.05 [Repealed, 1989 c 335 art 1 s 270]

115A.055 Subdivision 1. [Repealed, 1Sp2005 c 1 art 2 s 162] Subd. 2. [Repealed, 2007 c 13 art 2 s 5]

POLLUTION CONTROL AGENCY / ENVIRONMENTAL ASSISTANCE AUTHORITY

115A.06 POWERS

Subdivision 1. [Repealed, 1989 c 335 art 1 s 270]

Subd. 2. **Rules.** Unless otherwise provided, the commissioner shall promulgate rules in accordance with chapter 14 to govern the agency's activities and implement this chapter.

Subd. 3. [Repealed, 1989 c 335 art 1 s 270] Subd. 4. [Repealed, 1996 c 310 s 1]

Subd. 5. **Right of access.** Whenever the agency or the commissioner acting on behalf of the agency deems it necessary to the accomplishment of its purposes, the agency or any member, employee, or agent thereof, when authorized by it or the commissioner, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damages to the property caused by the entrance and activity. The agency may pay a reasonable estimate of the damages it believes will be caused by the entrance and activity before entering any property.

Subd. 5a. **Acquisition of easements.** If the agency determines that any activity deemed necessary to accomplish its purposes under subdivision 5 constitutes a substantial interference with the possession, enjoyment, or value of the property where the activity will take place, the agency may acquire a temporary easement interest in the property that permits the agency to carry out the activity and other activities incidental to the accomplishment of the same purposes. The agency may acquire temporary easement interests under this subdivision by purchase, gift, or condemnation. The right of the agency to acquire a temporary easement is subject to the same requirements and may be exercised with the same authority as provided for acquisition of property interests by the commissioner of administration under Minnesota Statutes 1994, section 115A.06, subdivision 4.

Subd. 6. **Gifts and grants.** The agency, or the commissioner of the Pollution Control Agency or commissioner of administration on behalf of the agency, may apply for and accept gifts, loans, or other property from the United States, the state, or any person for any of the purposes of the agency, may enter into any agreement required in connection therewith, and may hold, use, and dispose of the money or property in accordance with the terms of the gift, grant, loan or agreement.

Subd. 7. **Property exempt from taxation.** Any real or personal property owned, used, or occupied by the agency or the commissioner of administration for any purpose referred to in sections 115A.01 to 115A.72 is declared to be acquired, owned, used, and occupied for public and governmental purposes, and shall be exempt from taxation by the state or any political subdivision of or other governmental unit of or within the state, provided that those properties shall be subject to special assessments levied for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from the improvement. No possible use of the properties in any manner different from their use for hazardous waste management at the time shall be considered in determining the special benefit received by the properties.

Subd. 8. **Contracts.** The commissioner may enter into any contract necessary or proper for the exercise of the commissioner's powers or the accomplishment of the agency's purposes.

Subd. 9. **Joint powers.** The commissioner may act under the provisions of section 471.59, or any other law providing for joint or cooperative action.

Subd. 10. **Research.** The commissioner may conduct research studies and programs, collect and analyze data, prepare reports, maps, charts, and tables, and order all necessary hearings and investigations in connection with the commissioner's work and may advise and assist other government units on planning matters within the scope of the commissioner's powers, duties,
and objectives.

Subd. 11. **Employees; contracts for services.** The commissioner may employ persons and contract for services to perform research, engineering, legal, or other services necessary to carry out the commissioner's functions.

Subd. 12. **Insurance.** The commissioner may procure insurance in amounts the commissioner deems necessary to insure against liability of the agency and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of the agency's property as the commissioner deems necessary.

Subd. 13. **Private and nonpublic data.** Any data held by the commissioner which consists of trade secret information as defined by section 13.37, subdivision 1, clause (b), or sales information, shall be classified as private or nonpublic data as defined in section 13.02, subdivisions 9 and 12. When data is classified private or nonpublic pursuant to this subdivision the commissioner may:

(a) use the data to compile and publish analyses or summaries and to carry out the commissioner's statutory responsibilities in a manner which does not identify the subject of the data; or

(b) disclose the data when the commissioner is obligated to disclose it to comply with federal law or regulation but only to the extent required by the federal law or regulation.

The subject of data classified as private or nonpublic pursuant to this subdivision may authorize the disclosure of some or all of that data by the commissioner.

Subd. 14. **Waste rendered nonhazardous and industrial waste.** The commissioner shall encourage improved management of waste rendered nonhazardous and industrial waste that should be managed separately from mixed municipal solid waste, and may provide technical and planning assistance to political subdivisions, waste generators, and others for the purpose of identifying, developing, and implementing alternative management methods for those wastes.

History: *1980 c 564 art 2 s 3; 1981 c 311 s 39; 1981 c 352 s 4-6; 1982 c 545 s 24; 1982 c 569 s 1,2; 1983 c 373 s 9; 1984 c 644 s 3; 1986 c 425 s 19; 1986 c 444; 1987 c 348 s 3; 1989 c 335 art 1 s 269; 1991 c 199 art 2 s 7; 1991 c 326 s 5; 1991 c 337 s 8; 1994 c 639 art 5 s 3; 2002 c 379 art 1 s 29; 1Sp2005 c 1 art 2 s 161*

115A.07 DUTIES; GENERAL.

Subdivision 1. **Interagency coordination.** The commissioner of the Pollution Control Agency shall inform the commissioner of employment and economic development of the agency's activities.

Subd. 2. [Repealed, 2012 c 272 s 98]

Subd. 3. **Uniform waste statistics; rules.** The commissioner, after consulting with local government units and other interested persons, may adopt rules to establish uniform methods for collecting and reporting waste reduction, generation, collection, transportation, storage, recycling, processing, and disposal statistics necessary for proper waste management and for reporting required by law. Prior to publishing proposed rules, the commissioner shall submit draft rules to the senate and house committees having jurisdiction over environment and natural resources and environment and natural resources finance for review and comment. Rules adopted under this subdivision apply to all persons and units of government in the state for the purpose of collecting and reporting waste-related statistics requested under or required by law.

History: *1980 c 564 art 2 s 4; 1981 c 356 s 119,248; 1983 c 289 s 115 subd 1; 1986 c 444; 1987 c 312 art 1 s 26 subd 2; 1987 c 384 art 2 s 18; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 9; 1995 c 247 art 2 s 2; 1996 c 470 s 27; 1Sp2003 c 4 s 1; 1Sp2005 c 1 art 2 s 161*

115A.071 [Repealed, 1984 c 644 s 82]

115A.0715 [Repealed, 1996 c 470 s 29]

115A.0716 ENVIRONMENTAL ASSISTANCE GRANT AND LOAN PROGRAM.

Subdivision 1. **Grants.** (a) The commissioner may make grants to any person for the purpose of researching, developing, and implementing projects or practices related to collection, processing, recycling, reuse, resource recovery, source reduction, and prevention of waste, hazardous substances, toxic pollutants, and problem materials; the development or
implementation of pollution prevention projects or practices; the collection, recovery, processing, purchasing, or market development of recyclable materials or compost; resource conservation; and for environmental education.

(b) In making grants, the agency may give priority to projects or practices that have broad application in the state and are consistent with the policies established under sections 115A.02 and 115D.02.

(c) The commissioner shall adopt rules to administer the grant program. (d) For the purposes of this section:

(1) "pollution prevention" has the meaning given it in section 115D.03; (2) "toxic pollutant" has the meaning given it in section 115D.03; and (3) "hazardous substance" has the meaning given it in section 115D.03.

Subd. 2. **Loans.** (a) The commissioner may make loans, or participate in loans, for capital costs or improvements related to any of the activities listed in subdivision 1.

(b) The commissioner may work with financial institutions or other financial assistance providers in participating in loans under this section. The commissioner may contract with financial institutions or other financial assistance providers for loan processing and/or administration.

(c) The commissioner may also make grants, as authorized in subdivision 1, to enable persons to receive loans from financial institutions or to reduce interest payments for those loans.

(d) In making loans, the agency may give priority to projects or practices that have broad application in the state and are consistent with the policies established under sections 115A.02 and 115D.02.

(e) The commissioner shall adopt rules to administer the loan program.

Subd. 3. **Revolving account.** All repayments of loans awarded under this section, including principal and interest, must be credited to the environmental fund. Money deposited in the fund under this section is annually appropriated to the commissioner for loans for purposes identified in subdivisions 1 and 2.

History: *1996 c 470 s 6; 1Sp2001 c 2 s 122; 2003 c 128 art 2 s 5; 1Sp2005 c 1 art 2 s 161; 2006 c 212 art 3 s 8*

115A.072 PUBLIC EDUCATION.

Subdivision 1. **Environmental education programs.** The commissioner shall provide for the development and implementation of environmental education programs that are designed to meet the goals listed in section 115A.073.

Subd. 2. **Waste management education.** In addition to the commissioner's general duties established in subdivision 1, the commissioner shall:

(1) develop a statewide waste management public education campaign with materials that may be easily adapted by political subdivisions to meet their program needs; and

(2) develop and make available to schools educational curricula on waste education for grades kindergarten to 12 to address at least waste reduction, recycling, litter, and proper management and disposal of problem materials.

Subd. 3. [Repealed, 1996 c 470 s 29]

Subd. 4. **Waste reduction and reuse program; procurement.** The commissioner shall include: (1) waste reduction and reuse, including packaging reduction and reuse; and (2) the hazards of open burning, as defined in section 88.01, of mixed municipal solid waste, especially the hazards of dioxin emissions to children, as elements of the commissioner's program of public education on waste management required under this section. The waste reduction and reuse education program must include dissemination of information and may include an award program for model waste reduction and reuse efforts. Waste reduction and reuse educational efforts must also include provision of information about and promotion of the model procurement program developed by the commissioner of administration under section 115A.15, subdivision 7, or any other model procurement program that results in significant waste reduction and reuse.

History: *1987 c 348 s 4; 1Sp1989 c 1 art 21 s 1; 1991 c 345 art 2 s 19; 1994 c 480 s 7; 1994 c 585 s 4; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 4,5; art 2 s 3; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 9 s 1; 1998 c 397 art 11 s 3; 2003 c 130 s 12; 1Sp2005 c 1 art 2 s 128,161; 2011 c 76 art 1 s 6*

115A.073 ENVIRONMENTAL EDUCATION GOALS AND PLAN.

The environmental education program described in this section and section 115A.074 has these goals for the pupils and other citizens of this state:

(a) Pupils and citizens should be able to apply informed decision-making processes to maintain a sustainable lifestyle. In order to do so, citizens should:

(1) understand ecological systems;

(2) understand the cause and effect relationship between human attitudes and behavior and the environment;

(3) be able to evaluate alternative responses to environmental issues before deciding on alternative courses of action; and

(4) understand the effects of multiple uses of the environment.

(b) Pupils and citizens shall have access to information and experiences needed to make informed decisions about actions to take on environmental issues.

(c) For the purposes of this section and section 115A.074, "state plan" means "Greenprint for Minnesota: A State Plan for Environmental Education."

History: *1990 c 595 s 1; 1993 c 224 art 12 s 32; 1993 c 374 s 22; 1Sp1995 c 3 art 11 s 3,20; 1998 c 397 art 3 s 98,103; art 11 s 3*

115A.074 ENVIRONMENTAL EDUCATION RESOURCE CENTERS.

Subdivision 1. **Establishment.** The commissioner may establish environmental education resource centers throughout the state as needed. The environmental education resource centers shall serve as a source of information and programs for citizens, provide ongoing contact with the public for feedback to the commissioner on regional environmental education issues and priorities, and serve as distribution centers for environmental education programs.

Subd. 2. **Duties.** The resource centers shall:

(1) implement the programs and priorities of the agency as defined in the plan; (2) convey regional program priorities to the commissioner;

(3) evaluate regional implementation of environmental education programs and report to the commissioner on the evaluations;

(4) provide regional liaison and coordination for organizations, agencies, and individuals providing environmental education programs on particular issues;

(5) be a distribution and publicity center for agencies, environmental organizations, environmental learning center publications, programs, and services;

(6) be a central source of information for citizens interested in issues that are the responsibility of many agencies, boards, task forces, and organizations;

(7) provide technical assistance to local and state organizations and agencies on program design, promotion, and publicity to reach the chosen target audiences; and

(8) assist the service cooperatives by collecting and distributing environmental education teaching materials, displays, computer programs, resource person lists, and audio-visual aids, and provide assistance with teacher training workshops and programs on request.

History: *1990 c 595 s 6; 1996 c 305 art 1 s 138; 1998 c 397 art 3 s 103; 1Sp2005 c 1 art 2 s 161*

115A.075 LEGISLATIVE POLICY AGAINST DISPOSAL OF HAZARDOUS WASTE.

The legislature finds that hazardous waste must be managed in a manner that protects the health, safety, and welfare of the citizens of the state and protects and conserves the state's natural resources and environment; that reduction of the amount of waste generated and processing, treatment, separation, and resource recovery are the preferred methods to manage hazardous waste; and that disposal of hazardous waste should be used only as a last resort when all other management methods are ineffective, and then only if an environmentally suitable site can be identified in the state.

The agency, in its planning, facility approval, and other activities related to hazardous waste shall give first priority to eliminating the generation of hazardous waste and eliminating or reducing the hazardous character of the waste generated in the state through processing, treatment, separation, and resource recovery.

History: *1984 c 644 s 4; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.08 [Repealed, 1996 c 310 s 1]

115A.09 [Repealed, 1996 c 310 s 1]

115A.10 DUTIES OF THE POLLUTION CONTROL AGENCY; HAZARDOUS WASTE FACILITIES; ENCOURAGEMENT OF PRIVATE ENTERPRISE.

The agency and the commissioner on behalf of the agency shall encourage the development and operation of hazardous waste facilities by private enterprise to the extent practicable and consistent with the purposes of sections 115A.01 to 115A.72 and the agency's hazardous waste management plan adopted pursuant to section 115A.11. In adopting the management plan, and
in its actions and decisions under sections 115A.18 to 115A.30 and 115A.32 to 115A.39, the agency and the commissioner on behalf of the agency shall solicit the active participation of private waste management firms and shall so conduct its activities as to encourage private permit applications for facilities needed in the state.

History: *1980 c 564 art 2 s 7; 1983 c 373 s 14; 1986 c 444; 1989 c 335 art 1 s 269; 1997 c 7 art 1 s 27; 1Sp2005 c 1 art 2 s 161*

115A.11 HAZARDOUS WASTE MANAGEMENT PLAN.

Subdivision 1. **Requirement.** The agency shall adopt, amend as appropriate, and implement a hazardous waste management plan.

Subd. 1a. **Policy.** In developing and implementing the plan, the highest priority of the agency must be placed upon alternatives to land disposal of hazardous wastes including: technologies to modify industrial processes or introduce new processes that will reduce or eliminate hazardous waste generation; recycling, reuse, and recovery methods to reduce or eliminate hazardous waste disposal; and conversion and treatment technologies to reduce the degree of environmental risk from hazardous waste. The agency shall also consider technologies for retrievable storage of hazardous wastes for later recycling, reuse, recovery, conversion, or treatment.

Subd. 1b. **Contents.** The plan must include at least the elements prescribed in this subdivision.

(a) The plan must estimate the types and quantities of hazardous waste that will be generated in the state through the year 2000.

(b) The plan must set out specific and quantifiable objectives for reducing to the greatest feasible and prudent extent the need for and use of disposal facilities located within the state, through waste reduction, pretreatment, retrievable storage, processing, and resource recovery.

(c) The plan must estimate the minimum disposal capacity and capability required by generators in the state for use through the year 2000. The estimate must be based on the achievement of the objectives under paragraph (b).

(d) The plan must describe and recommend the implementation strategies required to assure availability of disposal capacity for the types and quantities of waste estimated under paragraph (c) and to achieve the objectives required by paragraph (b). The recommendations must address

at least the following: the necessary private and government actions; the types of facilities and programs required; the availability and use of specific facilities outside of the state; development schedules for facilities, services, and rules that should be established in the state; revenue-raising and financing measures; levels of public and private effort and expenditure; legal and institutional changes; and other similar matters.

(e) The plan must provide for the orderly development of hazardous waste management sites and facilities to protect the health and safety of rural and urban communities. In preparing the plan the agency shall consider its impact upon agriculture and natural resources.

(f) The plan must include methods and procedures that will encourage the establishment of programs, services, and facilities that the agency recommends for development in the state for the recycling, reuse, recovery, conversion, treatment, destruction, transfer, storage, or disposal, including retrievable storage, of hazardous waste.

The plan must be consistent with the estimate of need and feasibility analysis prepared under section 115A.24 and the decisions made by the agency under section 115A.28.

The agency may make the implementation of elements of the plan contingent on actions of the legislature that have been recommended in the draft plan.

Subd. 2. **Procedure.** The plan and the procedures for hearings on the plan are not subject to the contested case provisions of chapter 14. Before revising the draft plan or amending its adopted plan, the agency shall provide notice and hold a public meeting.

Subd. 3. [Repealed, 1989 c 335 art 1 s 270]

History: *1980 c 564 art 2 s 8; 1980 c 615 s 60; 1981 c 352 s 11; 1982 c 424 s 130; 1982 c 569 s 5; 1983 c 373 s 15,16; 1984 c 644 s 8; 1986 c 444; 1987 c 348 s 5; 1989 c 335 art 1 s 269; 1997 c 7 art 1 s 28; 1997 c 187 art 1 s 9; 1Sp2005 c 1 art 2 s 161*

115A.12 MS 2008 [Expired, 1Sp2005 c 1 art 2 s 129]

115A.121 TOXICS AND POLLUTION PREVENTION EVALUATION; CONSOLIDATED REPORT.

The commissioner shall prepare and adopt a report on pollution prevention activities required in chapters 115A, 115D, and 325E. The report must include activities required under section 115A.1320. The commissioner must submit the report to the senate and house of representatives committees having jurisdiction over environment and natural resources by December 31, 2013, and every four years thereafter.

History: *2012 c 272 s 63*

115A.13 [Repealed, 1987 c 348 s 52]

VIDEO DISPLAY AND ELECTRONIC DEVICE COLLECTION AND RECYCLING

115A.1310 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 115A.1310 to 115A.1330, the following terms have the meanings given.

Subd. 2. **Cathode-ray tube or CRT.** "Cathode-ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

Subd. 3. **Collection.** "Collection" means the aggregation of covered electronic devices from households and includes all the activities up to the time the covered electronic devices are delivered to a recycler.

Subd. 4. **Collector.** "Collector" means a public or private entity that receives covered electronic devices from households and arranges for the delivery of the devices to a recycler.

Subd. 5. **Computer.** "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, but does not include an automated typewriter or typesetter, a portable handheld calculator or device, or other similar device.

Subd. 6. **Computer monitor.** "Computer monitor" means an electronic device that is a cathode-ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. Computer monitor includes a laptop computer.

Subd. 7. **Covered electronic device.** "Covered electronic device" means computers, peripherals, facsimile machines, DVD players, video cassette recorders, and video display devices that are sold to a household by means of retail, wholesale, or electronic commerce.

Subd. 8. **Department.** "Department" means the Department of Revenue.

Subd. 9. **Dwelling unit.** "Dwelling unit" has the meaning given in section 238.02, subdivision 21a.

Subd. 10. **Household.** "Household" means an occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit located in this state who has used a video display device at a dwelling unit primarily for personal use.

Subd. 11. **Manufacturer.** "Manufacturer" means a person who:

(1) manufactures video display devices to be sold under its own brand as identified by its own brand label; or

(2) sells video display devices manufactured by others under its own brand as identified by its own brand label.

Subd. 12. **Peripheral.** "Peripheral" means a keyboard, printer, or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

Subd. 13. **Program year.** "Program year" means the period from July 1 through June 30. Subd. 14. **Recycler.**

"Recycler" means a public or private individual or entity who accepts covered electronic devices from households and collectors for the purpose of recycling. A manufacturer who takes products for refurbishment or repair is not a recycler.

Subd. 15. **Recycling.** "Recycling" means the process of collecting and preparing video display devices or covered electronic devices for use in manufacturing processes or for recovery of usable materials followed by delivery of such materials for use. Recycling does not include the destruction by incineration or other process or land disposal of recyclable materials nor reuse, repair, or any other process through which video display devices or covered electronic devices are returned to use for households in their original form.

Subd. 16. **Recycling credits.** "Recycling credits" means the number of pounds of covered electronic devices recycled by a manufacturer from households during a program year, less the product of the number of pounds of video display devices sold to households during the same program year, multiplied by the proportion of sales a manufacturer is required to recycle. The calculation and uses of recycling credits are as specified in section 115A.1314, subdivision 1.

Subd. 17. **Retailer.** "Retailer" means a person who sells, rents, or leases, through sales outlets, catalogs, or the Internet, a video display device to a household and not for resale in any form.

Subd. 18. **Sell or sale.** "Sell" or "sale" means any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means either inside or outside of the state, by a person who conducts the transaction and controls the delivery of
a video display device to a consumer in the state, but does not include a manufacturer's or distributor's wholesale transaction with a distributor or a retailer.

Subd. 19. **Television.** "Television" means an electronic device that is a cathode-ray tube or flat panel display primarily intended to receive video programming via broadcast, cable, or satellite transmission or video from surveillance or other similar cameras.

Subd. 20. **Video display device.** "Video display device" means a television or computer monitor, including a laptop computer, that contains a cathode-ray tube or a flat panel screen with a screen size that is greater than nine inches measured diagonally and that is marketed by
manufacturers for use by households. Video display device does not include any of the following:

(1) a video display device that is part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(2) a video display device, including a touch-screen display, that is functionally or physically part of a larger piece of equipment or is designed and intended for use in an industrial; commercial, including retail; library checkout; traffic control; kiosk; security, other than household security; border control; or medical setting, including diagnostic, monitoring, or control equipment;

(3) a video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or

(4) a telephone of any type unless it contains a video display area greater than nine inches measured diagonally.

History: *2007 c 48 s 1*

115A.1312 REGISTRATION PROGRAM.

Subdivision 1. **Requirements for sale.** (a) On or after September 1, 2007, a manufacturer must not sell or offer for sale or deliver to retailers for subsequent sale a new video display device unless:

(1) the video display device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration with the agency, as specified in subdivision 2. (b) On or after February 1, 2008, a retailer who sells or offers for sale a new video display device to a household must, before the initial offer for sale, review the agency Web site specified in subdivision 2, paragraph (g), to determine that all new video display devices that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the agency.

(c) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked and the retailer took possession of the video display device prior to the expiration or revocation of the manufacturer's registration and the unlawful sale occurred within six months after the expiration or revocation.

Subd. 2. **Manufacturer's registration.** (a) A manufacturer of video display devices sold or offered for sale to households after September 1, 2007, must submit a registration to the agency that includes:

(1) a list of the manufacturer's brands of video display devices offered for sale in this state; (2) the name, address, and contact information of a person responsible for ensuring compliance with this chapter; and

(3) a certification that the manufacturer has complied and will continue to comply with the requirements of sections 115A.1312 to 115A.1318.

(b) By September 1, 2008, and each year thereafter, a manufacturer of video display devices sold or offered for sale to a household must include in the registration submitted under paragraph (a), a statement disclosing whether:

(1) any video display devices sold to households exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB's), and polybrominated diphenyl ethers (PBDE's) under the RoHS (restricting the use of certain hazardous substances in electrical and electronic equipment) Directive 2002/95/EC of the European Parliament and Council and any amendments thereto; or

(2) the manufacturer has received an exemption from one or more of those maximum concentration values under the RoHS Directive that has been approved and published by the European Commission.

(c) A manufacturer who begins to sell or offer for sale video display devices to households after September 1, 2007, and has not filed a registration under this subdivision must submit a registration to the agency within ten days of beginning to sell or offer for sale video display devices to households.

(d) A registration must be updated within ten days after a change in the manufacturer's brands of video display devices sold or offered for sale to households.

(e) A registration is effective upon receipt by the agency and is valid until September 1 of each year.

(f) The agency must review each registration and notify the manufacturer of any information required by this section that is omitted from the registration. Within 30 days of receipt of a notification from the agency, the manufacturer must submit a revised registration providing the information noted by the agency.

(g) The agency must maintain on its Web site the names of manufacturers and the manufacturers' brands listed in registrations filed with the agency. The agency must update the Web site information promptly upon receipt of a new or updated registration. The Web site must contain prominent language stating, in effect, that sections 115A.1310 to 115A.1330 are directed at household equipment and the manufacturers' brands list is, therefore, not a list of manufacturers qualified to sell to industrial, commercial, or other markets identified as exempt from the requirements of sections 115A.1310 to 115A.1330.

Subd. 3. **Collector's registration.** After August 1, 2007, no person may operate as a collector of covered electronic devices from households unless that person has submitted a registration with the agency on a form prescribed by the commissioner. Registration information must include the name, address, telephone number, and location of the business and a certification that the collector has complied and will continue to comply with the requirements of sections 115A.1312 to 115A.1318. A registration is effective upon receipt by the agency and is valid until July 1 of each year.

Subd. 4. **Recycler's registration.** After August 1, 2007, no person may recycle video display devices generated by households unless that person has submitted a registration with the agency on a form prescribed by the commissioner. Registration information must include the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive video display devices from households and a certification that the recycler has complied and will continue to comply with the requirements of sections 115A.1312 to 115A.1318. A registered recycler may conduct recycling activities that are consistent with this chapter. A registration is effective upon receipt by the agency and is valid until July 1 of each year.

History: *2007 c 48 s 2*

115A.1314 MANUFACTURER'S REGISTRATION FEE.

Subdivision 1. **Registration fee.** (a) Each manufacturer who registers under section 115A.1312 must, by September 1, 2007, and each year thereafter, pay to the commissioner of revenue an annual registration fee. The commissioner of revenue must deposit the fee in the state treasury and credit the fee to the environmental fund.

(b) The registration fee is equal to a base fee of $2,500, plus a variable recycling fee calculated according to the formula:

((A x B) - (C + D)) x E, where:

(1) A = the number of pounds of a manufacturer's video display devices sold to households during the previous program year, as reported to the department under section 115A.1316, subdivision 1;

(2) B = the proportion of sales of video display devices required to be recycled, set at 0.6 for the first program year and 0.8 for the second program year and every year thereafter;

(3) C = the number of pounds of covered electronic devices recycled by a manufacturer from households during the previous program year, as reported to the department under section 115A.1316, subdivision 1;

(4) D = the number of recycling credits a manufacturer elects to use to calculate the variable recycling fee, as reported to the department under section 115A.1316, subdivision 1; and

(5) E = the estimated per-pound cost of recycling, initially set at $0.50 per pound for manufacturers who recycle less than 50 percent of the product (A x B); $0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent of the product (A x B); and $0.30 per pound for manufacturers who recycle at least 90 percent but less than 100 percent of the product (A x B).

(c) If, as specified in paragraph (b), the term C - (A x B) equals a positive number of pounds, that amount is defined as the manufacturer's recycling credits. A manufacturer may retain recycling credits to be added, in whole or in part, to the actual value of C, as reported under section 115A.1316, subdivision 2, during any succeeding program year, provided that no more than 25 percent of a manufacturer's obligation (A x B) for any program year may be met with recycling credits generated in a prior program year. A manufacturer may sell any portion or all of its recycling credits to another manufacturer, at a price negotiated by the parties, who may use the credits in the same manner.

(d) For the purpose of calculating a manufacturer's variable recycling fee under paragraph (b), the weight of covered electronic devices collected from households located outside the 11-county metropolitan area, as defined in subdivision 2, paragraph (c), is calculated at 1.5 times their actual weight.

(e) The registration fee for the initial program year and the base registration fee thereafter for a manufacturer who produces fewer than 100 video display devices for sale annually to households is $1,250.

Subd. 2. **Use of registration fees.** (a) Registration fees may be used by the commissioner for:
(1) implementing sections 115A.1312 to 115A.1330, including transfer to the commissioner of revenue to carry out the department's duties under section 115A.1320, subdivision 2, and transfer to the commissioner of administration for responsibilities under section 115A.1324; and

(2) grants to counties outside the 11-county metropolitan area, as defined in paragraph (b), and to private entities that collect for recycling covered electronic devices in counties outside the 11-county metropolitan area, where the collection and recycling is consistent with the respective county's solid waste plan, for the purpose of carrying out the activities under sections 115A.1312 to 115A.1330. In awarding competitive grants under this clause, the commissioner must give preference to counties and private entities that are working cooperatively with manufacturers to help them meet their recycling obligations under section 115A.1318, subdivision 1.

(b) The 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

History: *2007 c 48 s 3; 2008 c 366 art 14 s 1; 2009 c 37 art 1 s 41; 2009 c 42 s 1; 1Sp2011 c 2 art 4 s 17*

115A.1316 REPORTING REQUIREMENTS.

Subdivision 1. **Manufacturer's reporting requirements.** (a) By September 1 of each year, beginning in 2008, each manufacturer must report to the department:

(1) the total weight of each specific model of its video display devices sold to households during the previous program year;

(2) the total weight of its video display devices sold to households during the previous year; or

(3) an estimate of the total weight of its video display devices sold to households during the previous program year, calculated by multiplying the weight of its video display devices sold nationally times the quotient of Minnesota's population divided by the national population.

A manufacturer must submit with the report required under this paragraph a description of how the information or estimate was calculated.

(b) By September 1 of each year, beginning in 2008, each manufacturer must report to the department the total weight of covered electronic devices the manufacturer collected from households and recycled or arranged to have collected and recycled during the preceding program year. If a manufacturer wishes to receive the variable recycling rate of 1.5 for covered electronic devices it recycles, the manufacturer must report separately the total weight of covered electronic devices collected from households located in counties specified in section 115A.1314, subdivision 1, paragraph (d), and those collected from households located outside those counties.

(c) By September 1 of each year, beginning in 2008, each manufacturer must report to the department:

(1) the number of recycling credits the manufacturer has purchased and sold during the preceding program year;

(2) the number of recycling credits possessed by the manufacturer that the manufacturer elects to use in the calculation of its variable recycling fee under section 115A.1314, subdivision 1; and

(3) the number of recycling credits the manufacturer retains at the beginning of the current program year.

Subd. 2. **Recycler's reporting requirements.** By August 1 of each year, beginning in 2008, a recycler of covered electronic devices must report to the agency and the department the total weight of covered electronic devices recycled during the preceding program year and must certify that the recycler has complied with section 115A.1318, subdivision 2.

Subd. 3. **Collector's reporting requirements.** By August 1 of each year, beginning in 2008, a collector must report separately to the agency the total pounds of covered electronic devices collected in the counties specified in section 115A.1314, subdivision 1, paragraph (d), and all other Minnesota counties, and a list of all recyclers to whom collectors delivered covered electronic devices.

History: *2007 c 48 s 4; 2009 c 42 s 2*

115A.1318 RESPONSIBILITIES.

Subdivision 1. **Manufacturer's responsibilities.** (a) In addition to fulfilling the requirements of sections 115A.1310 to 115A.1330, a manufacturer must comply with paragraphs (b) to (e).

(b) A manufacturer must annually recycle or arrange for the collection and recycling of an amount of covered electronic devices equal to the total weight of its video display devices sold to households during the preceding program year, multiplied by the proportion of sales of video display devices required to be recycled, as established by the agency under section 115A.1320, subdivision 1, paragraph (c).

(c) The obligations of a manufacturer apply only to video display devices received from households and do not apply to video display devices received from sources other than households.

(d) A manufacturer must conduct and document due diligence assessments of collectors and recyclers it contracts with, including an assessment of items specified under subdivision 2. A manufacturer is responsible for maintaining, for a period of three years, documentation that all video display devices recycled, partially recycled, or sent to downstream recycling operations comply with the requirements of subdivision 2.

(e) A manufacturer must provide the agency with contact information for a person who can be contacted regarding the manufacturer's activities under sections 115A.1310 to 115A.1320.

Subd. 2. **Recycler's responsibilities.** (a) As part of the report submitted under section 115A.1316, subdivision 2, a recycler must certify, except as provided in paragraph (b), that facilities that recycle video display devices, including all downstream recycling operations:

(1) comply with all applicable health, environmental, safety, and financial responsibility regulations;

(2) are licensed by all applicable governmental authorities;

(3) use no prison labor to recycle video display devices; and

(4) possess liability insurance of not less than $1,000,000 for environmental releases, accidents, and other emergencies.

(b) A nonprofit corporation that contracts with a correctional institution to refurbish and reuse donated computers in schools is exempt from paragraph (a), clauses (3) and (4).

(c) Except to the extent otherwise required by law, a recycler has no responsibility for any data that may be contained in a covered electronic device if an information storage device is included in the covered electronic device.

Subd. 3. **Retailer's responsibilities.** A retailer who sells new video display devices shall provide information to households describing where and how they may recycle video display devices and advising them of opportunities and locations for the convenient collection of video display devices for the purpose of recycling. This requirement may be met by providing to households the agency's toll-free number and Web site address. Retailers selling through catalogs or the Internet may meet this requirement by including the information in a prominent location on the retailer's Web site.

History: *2007 c 48 s 5; 2009 c 42 s 3*

115A.1320 AGENCY AND DEPARTMENT DUTIES.

Subdivision 1. **Duties of the agency.** (a) The agency shall administer sections 115A.1310 to 115A.1330.

(b) The agency shall establish procedures for:

(1) receipt and maintenance of the registration statements and certifications filed with the agency under section 115A.1312; and

(2) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(c) The agency shall annually review the value of the following variables that are part of the formula used to calculate a manufacturer's annual registration fee under section 115A.1314, subdivision 1:

(1) the proportion of sales of video display devices sold to households that manufacturers are required to recycle;

(2) the estimated per-pound price of recycling covered electronic devices sold to households;

(3) the base registration fee; and

(4) the multiplier established for the weight of covered electronic devices collected in section 115A.1314, subdivision 1, paragraph (d). If the agency determines that any of these values must be changed in order to improve the efficiency or effectiveness of the activities regulated under sections 115A.1312 to 115A.1330, the agency shall submit recommended changes and
the reasons for them to the chairs of the senate and house of representatives committees with jurisdiction over solid waste policy.

(d) By January 15 each year, beginning in 2008, the agency shall calculate estimated sales of video display devices sold to households by each manufacturer during the preceding program year, based on national sales data, and forward the estimates to the department.

(e) The agency shall provide a report to the governor and the legislature on the implementation of sections 115A.1310 to 115A.1330. For each program year, the report must discuss the total weight of covered electronic devices recycled and a summary of information in the reports submitted by manufacturers and recyclers under section 115A.1316. The report must also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report must include a description of enforcement actions under sections 115A.1310 to 115A.1330. The agency may include in its report other information received by the agency regarding the implementation
of sections 115A.1312 to 115A.1330. The report must be done in conjunction with the report required under section 115A.121.

(f) The agency shall promote public participation in the activities regulated under sections 115A.1312 to 115A.1330 through public education and outreach efforts.

(g) The agency shall enforce sections 115A.1310 to 115A.1330 in the manner provided by sections 115.071, subdivisions 1, 3, 4, 5, and 6; and 116.072, except for those provisions enforced by the department, as provided in subdivision 2. The agency may revoke a registration of a collector or recycler found to have violated sections 115A.1310 to 115A.1330.

(h) The agency shall facilitate communication between counties, collection and recycling centers, and manufacturers to ensure that manufacturers are aware of video display devices available for recycling.

(i) The agency shall develop a form retailers must use to report information to manufacturers under section 115A.1318 and post it on the agency's Web site.

(j) The agency shall post on its Web site the contact information provided by each manufacturer under section 115A.1318, paragraph (e).

Subd. 2. **Duties of the department.** (a) The department must collect the data submitted to it annually by each manufacturer on the total weight of each specific model of video display device sold to households, if provided; the total weight of video display devices sold to households; the total weight of covered electronic devices collected from households that are recycled; and data on recycling credits, as required under section 115A.1316. The department must use this data to review each manufacturer's annual registration fee submitted to the department to ensure that the fee was calculated accurately according to the formula in section 115A.1314, subdivision 1.

(b) The department must estimate, for each registered manufacturer, the sales of video display devices to households during the previous program year, based on:

(1) data provided by a manufacturer on sales of video display devices to households, including documentation describing how that amount was calculated and certification that the amount is accurate; or

(2) if a manufacturer does not provide the data specified in clause (1), national data on sales of video display devices.

The department must use the data specified in this subdivision to review each manufacturer's annual registration fee submitted to the department to ensure that the fee was calculated accurately according to the formula in section 115A.1314, subdivision 1.

(c) The department must enforce section 115A.1314, subdivision 1. The audit, assessment, appeal, collection, enforcement, disclosure, and other administrative provisions of chapters 270B,
270C, and 289A that apply to the taxes imposed under chapter 297A apply to the fee imposed under section 115A.1314, subdivision 1. To enforce this subdivision, the commissioner of revenue may grant extensions to pay, and impose and abate penalties and interest on, the fee due under section 115A.1314, subdivision 1, in the manner provided in chapters 270C and 289A as if the
fee were a tax imposed under chapter 297A.

(d) The department may disclose nonpublic data to the agency only when necessary for the efficient and effective administration of the activities regulated under sections 115A.1310 to 115A.1330. Any data disclosed by the department to the agency retains the classification it had when in the possession of the department.

History: *2007 c 48 s 6; 1Sp2011 c 2 art 4 s 18; 2012 c 272 s 64; 2013 c 114 art 4 s 77*

115A.1322 OTHER RECYCLING PROGRAMS.

A city, county, or other public agency may not require households to use public facilities to recycle their covered electronic devices to the exclusion of other lawful programs available. Cities, counties, and other public agencies, including those awarded contracts by the agency under section 115A.1314, subdivision 2, are encouraged to work with manufacturers to assist them in meeting their recycling obligations under section 115A.1318, subdivision 1. Nothing in sections
115A.1310 to 115A.1330 prohibits or restricts the operation of any program recycling covered electronic devices in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling covered electronic devices, provided that those persons are registered under section 115A.1312.

History: *2007 c 48 s 7*

115A.1323 ANTICOMPETITIVE CONDUCT.

(a) A manufacturer that organizes collection or recycling under this section is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized collection or recycling system and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

(b) An organization of manufacturers, an individual manufacturer, and its officers, members, employees, and agents who cooperate with a political subdivision that organizes collection or recycling under this section are authorized to engage in anticompetitive conduct to the extent necessary to plan and implement the organized collection or recycling system, provided that the political subdivision actively supervises the participation of each entity. An organization, entity, or person covered by this paragraph is immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

History: *2007 c 48 s 8*

115A.1324 REQUIREMENTS FOR PURCHASES BY STATE AGENCIES.

(a) The Department of Administration must ensure that acquisitions of video display devices under chapter 16C are in compliance with or not subject to sections 115A.1310 to 115A.1318.

(b) The solicitation documents must specify that the prospective responder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with paragraph (a) and sections 115A.1310 to 115A.1318.

(c) Any person awarded a contract under chapter 16C for purchase or lease of video display devices that is found to be in violation of paragraph (a) or sections 115A.1310 to 115A.1318 is subject to the following sanctions:

(1) the contract must be voided if the commissioner of administration determines that the potential adverse impact to the state is exceeded by the benefit obtained from voiding the contract;

(2) the contractor is subject to suspension and disbarment under Minnesota Rules, part 1230.1150; and

(3) if the attorney general establishes that any money, property, or benefit was obtained by a contractor as a result of violating paragraph (a) or sections 115A.1310 to 115A.1318, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit.

History: *2007 c 48 s 9*

115A.1326 REGULATION OF VIDEO DISPLAY DEVICES.

If the United States Environmental Protection Agency adopts regulations under the Resource Conservation and Recovery Act regarding the handling, storage, or treatment of any type of video display device being recycled, those regulations are automatically effective in this state on the same date and supersede any rules previously adopted by the agency regarding the handling, storage, or treatment of all video display devices being recycled.

History: *2007 c 48 s 10*

115A.1328 MULTISTATE IMPLEMENTATION.

The agency and department are authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

History: *2007 c 48 s 11*

115A.1330 LIMITATIONS.

Sections 115A.1310 to 115A.1330 expire if a federal law, or combination of federal laws, take effect that is applicable to all video display devices sold in the United States and establish a program for the collection and recycling or reuse of video display devices that is applicable to all video display devices discarded by households.

History: *2007 c 48 s 12*

115A.14 [Repealed, 1996 c 310 s 1]

PAINT STEWARDSHIP PROGRAM

115A.1415 ARCHITECTURAL PAINT; PRODUCT STEWARDSHIP PROGRAM; STEWARDSHIP PLAN.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given:

(1) "architectural paint" means interior and exterior architectural coatings sold in containers of five gallons or less. Architectural paint does not include industrial coatings, original equipment coatings, or specialty coatings;

(2) "brand" means a name, symbol, word, or mark that identifies architectural paint, rather than its components, and attributes the paint to the owner or licensee of the brand as the producer;

(3) "discarded paint" means architectural paint that is no longer used for its manufactured purpose;

(4) "producer" means a person that:

(i) has legal ownership of the brand, brand name, or cobrand of architectural paint sold in the state;

(ii) imports architectural paint branded by a producer that meets item (i) when the producer has no physical presence in the United States;

(iii) if items (i) and (ii) do not apply, makes unbranded architectural paint that is sold in the state; or

(iv) sells architectural paint at wholesale or retail, does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for the architectural paint by certifying that election in writing to the commissioner;

(5) "recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use;

(6) "retailer" means any person who offers architectural paint for sale at retail in the state; (7) "reuse" means donating or selling collected architectural paint back into the market for its original intended use, when the architectural paint retains its original purpose and performance characteristics;

(8) "sale" or "sell" means transfer of title of architectural paint for consideration, including a remote sale conducted through a sales outlet, catalog, Web site, or similar electronic means. Sale or sell includes a lease through which architectural paint is provided to a consumer by a producer, wholesaler, or retailer;

(9) "stewardship assessment" means the amount added to the purchase price of architectural paint sold in the state that is necessary to cover the cost of collecting, transporting, and processing postconsumer architectural paint by the producer or stewardship organization pursuant to a product stewardship program;

(10) "stewardship organization" means an organization appointed by one or more producers to act as an agent on behalf of the producer to design, submit, and administer a product stewardship program under this section; and

(11) "stewardship plan" means a detailed plan describing the manner in which a product stewardship program under subdivision 2 will be implemented.

Subd. 2. **Product stewardship program.** For architectural paint sold in the state, producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program that manages the architectural paint by reducing the paint's waste generation, promoting its reuse and recycling, and

providing for negotiation and execution of agreements to collect, transport, and process the architectural paint for end-of-life recycling
and reuse.

Subd. 3. **Requirement for sale.** (a) On and after July 1, 2014, or three months after program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell or offer for sale in the state architectural paint unless the paint's producer participates in an approved stewardship plan, either individually or through a stewardship organization.

(b) Each producer must operate a product stewardship program approved by the agency or enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the agency.

Subd. 4. **Requirement to submit plan.** (a) On or before March 1, 2014, and before offering architectural paint for sale in the state, a producer must submit a stewardship plan to the agency and receive approval of the plan or must submit documentation to the agency that
demonstrates the producer has entered into an agreement with a stewardship organization to be an active participant in an approved product stewardship program as described in subdivision 2. A stewardship plan must include all elements required under subdivision 5.

(b) An amendment to the plan, if determined necessary by the commissioner, must be submitted every five years.

(c) It is the responsibility of the entities responsible for each stewardship plan to notify the agency within 30 days of any significant changes or modifications to the plan or its implementation. Within 30 days of the notification, a written plan revision must be submitted to the agency for review and approval.

Subd. 5. **Stewardship plan content.** A stewardship plan must contain:

(1) certification that the product stewardship program will accept all discarded paint regardless of which producer produced the architectural paint and its individual components;

(2) contact information for the individual and the entity submitting the plan, a list of all producers participating in the product stewardship program, and the brands covered by the product stewardship program;

(3) a description of the methods by which the discarded paint will be collected in all areas in the state without relying on end-of-life fees, including an explanation of how the collection system will be convenient and adequate to serve the needs of small businesses and residents in both urban and rural areas on an ongoing basis and a discussion of how the existing household hazardous waste infrastructure will be considered when selecting collection sites;

(4) a description of how the adequacy of the collection program will be monitored and maintained;

(5) the names and locations of collectors, transporters, and recyclers that will manage discarded paint;

(6) a description of how the discarded paint and the paint's components will be safely and securely transported, tracked, and handled from collection through final recycling and processing;

(7) a description of the method that will be used to reuse, deconstruct, or recycle the discarded paint to ensure that the paint's components, to the extent feasible, are transformed or remanufactured into finished products for use;

(8) a description of the promotion and outreach activities that will be used to encourage participation in the collection and recycling programs and how the activities' effectiveness will be evaluated and the program modified, if necessary;

(9) the proposed stewardship assessment. The producer or stewardship organization shall propose a uniform stewardship assessment for any architectural paint sold in the state. The proposed stewardship assessment shall be reviewed by an independent auditor to ensure that the assessment does not exceed the costs of the product stewardship program and the independent auditor shall recommend an amount for the stewardship assessment. The agency must approve the stewardship assessment;

(10) evidence of adequate insurance and financial assurance that may be required for collection, handling, and disposal operations;

(11) five-year performance goals, including an estimate of the percentage of discarded paint that will be collected, reused, and recycled during each of the first five years of the stewardship plan. The performance goals must include a specific goal for the amount of discarded paint that will be collected and recycled and reused during each year of the plan. The performance goals must be based on:

(i) the most recent collection data available for the state;

(ii) the estimated amount of architectural paint disposed of annually;

(iii) the weight of the architectural paint that is expected to be available for collection annually; and

(iv) actual collection data from other existing stewardship programs.

The stewardship plan must state the methodology used to determine these goals; and

(12) a discussion of the status of end markets for collected architectural paint and what, if any, additional end markets are needed to improve the functioning of the program.

Subd. 6. **Consultation required.** Each stewardship organization or individual producer submitting a stewardship plan must consult with stakeholders including retailers, contractors, collectors, recyclers, local government, and customers during the development of the plan.

Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed stewardship plan, the agency shall determine whether the plan complies with subdivision 4. If the agency approves a plan, the agency shall notify the applicant of the plan approval in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must submit a revised plan to the agency within 60 days after receiving notice of rejection.

(b) Any proposed changes to a stewardship plan must be approved by the agency in writing. Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be placed on the agency's Web site for at least 30 days and made available at the agency's headquarters for public review and comment.

Subd. 9. **Conduct authorized.** A producer or stewardship organization that organizes collection, transport, and processing of architectural paint under this section is immune from liability for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce only to the extent that the conduct is necessary to plan and implement the producer's or organization's chosen organized collection or recycling system.

Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation of a product stewardship program according to this section, a producer of architectural paint must add the stewardship assessment, as established under subdivision 5, clause (9), to the cost of architectural paint sold to retailers and distributors in the state by the producer.

(b) Producers of architectural paint or the stewardship organization shall provide consumers with educational materials regarding the stewardship assessment and product stewardship program. The materials must include, but are not limited to, information regarding available
end-of-life management options for architectural paint offered through the product stewardship program and information that notifies consumers that a charge for the operation of the product stewardship program is included in the purchase price of architectural paint sold in the state.

Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2014, or three months after program plan approval, whichever is sooner, no architectural paint may be sold in the state unless the paint's producer is participating in an approved stewardship plan.

(b) On and after the implementation date of a product stewardship program according to this section, each retailer or distributor, as applicable, must ensure that the full amount of the stewardship assessment added to the cost of architectural paint by producers under subdivision 10 is included in the purchase price of all architectural paint sold in the state.

(c) Any retailer may participate, on a voluntary basis, as a designated collection point pursuant to a product stewardship program under this section and in accordance with applicable law.

(d) No retailer or distributor shall be found to be in violation of this subdivision if, on the date the architectural paint was ordered from the producer or its agent, the producer was listed as compliant on the agency's Web site according to subdivision 14.

Subd. 12. **Stewardship reports.** Beginning October 1, 2015, producers of architectural paint sold in the state must individually or through a stewardship organization submit an annual report to the agency describing the product stewardship program. At a minimum, the report must contain:

(1) a description of the methods used to collect, transport, and process architectural paint in all regions of the state;

(2) the weight of all architectural paint collected in all regions of the state and a comparison to the performance goals and recycling rates established in the stewardship plan;

(3) the amount of unwanted architectural paint collected in the state by method of disposition, including reuse, recycling, and other methods of processing;

(4) samples of educational materials provided to consumers and an evaluation of the effectiveness of the materials and the methods used to disseminate the materials; and

(5) an independent financial audit.

Subd. 13. **Data classification.** Trade secret and sales information, as defined under section 13.37, submitted to the agency under this section are private or nonpublic data under section 13.37.

Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a list of all compliant producers and brands participating in stewardship plans that the agency has approved and a list of all producers and brands the agency has identified as noncompliant with this section.

Subd. 15. **Local government responsibilities.** (a) A city, county, or other public agency may choose to participate voluntarily in a product stewardship program.

(b) Cities, counties, and other public agencies are encouraged to work with producers and stewardship organizations to assist in meeting product stewardship program reuse and recycling obligations, by providing education and outreach or using other strategies.

(c) A city, county, or other public agency that participates in a product stewardship program must report for the first year of the program to the agency using the reporting form provided by the agency on the cost savings as a result of participation and describe how the savings were used.

Subd. 16. **Administrative fee.** (a) The stewardship organization or individual producer submitting a stewardship plan shall pay an annual administrative fee to the commissioner. The agency may establish a variable fee based on relevant factors, including, but not limited to, the portion of architectural paint sold in the state by members of the organization compared to the total amount of architectural paint sold in the state by all organizations submitting a stewardship plan.

(b) Prior to July 1, 2014, and before July 1 annually thereafter, the agency shall identify the costs it incurs under this section. The agency shall set the fee at an amount that, when paid by every stewardship organization or individual producer that submits a stewardship plan, is adequate to reimburse the agency's full costs of administering this section. The total amount of annual fees collected under this subdivision must not exceed the amount necessary to reimburse costs incurred by the agency to administer this section.

(c) A stewardship organization or individual producer subject to this subdivision must pay the agency's administrative fee under paragraph (a) on or before July 1, 2014, and annually thereafter. Each year after the initial payment, the annual administrative fee may not exceed five percent of the aggregate stewardship assessment added to the cost of all architectural paint sold by producers in the state for the preceding calendar year.

(d) All fees received under this section shall be deposited in the state treasury and credited to a product stewardship account in the special revenue fund. For fiscal years 2014 and 2015,
the amount collected under this section is annually appropriated to the agency to implement and enforce this section.

History: *2013 c 114 art 4 s 78*

115A.142 REPORT TO LEGISLATURE AND GOVERNOR.

As part of the report required under section 115A.121, the commissioner of the Pollution Control Agency shall provide a report to the governor and the legislature on the implementation of section 115A.1415.

History: *2013 c 114 art 4 s 79*

STATE RESOURCE RECOVERY PROGRAM

115A.15 STATE GOVERNMENT RESOURCE RECOVERY.

Subdivision 1. **Establishment of program.** There is established within state government a resource recovery program to promote the reduction of waste generated by state agencies, the separation and recovery of recyclable and reusable commodities, the procurement of recyclable commodities and commodities containing recycled materials, and the uniform disposition of recovered materials and surplus property. The program shall be administered by the commissioner of administration.

Subd. 1a. **Definitions.** For the purposes of this section, the following terms have the meanings given them.

(a) "Recyclable commodities" means materials, pieces of equipment, and parts which are not reusable but which contain recoverable resources.

(b) "Reusable commodities" means materials, pieces of equipment, parts, and used supplies which can be reused for their original purpose in their existing condition.

Subd. 2. **Duties of commissioner of administration.** The commissioner of administration shall develop policies to require state agencies and the state legislature to separate all recyclable and reusable commodities wherever feasible. The commissioner shall develop and institute procedures for the separation, collection, and storage of used commodities wherever feasible in state agencies and shall establish policies for the reuse, sale, or disposition of recovered materials and surplus property. The commissioner shall promote and publicize the waste reduction and waste separation and recovery procedures on an ongoing basis to all state employees. The commissioner shall issue guidelines for the procurement of recyclable commodities and commodities containing

recycled materials that include definitions of recycled materials, the percentage of recycled materials to be contained in each commodity and performance specifications. To the extent practicable, the guidelines shall be written so as to give preference to recyclable commodities and commodities containing recycled materials. The commissioner shall inform state agencies whenever recycled commodities are available for purchase. The commissioner shall investigate opportunities for the inclusion of and may include local governments and regional agencies in administrative state programs to reduce waste, and to separate and recover recyclable and reusable commodities.

Subd. 3. **Powers of commissioner of administration.** The commissioner of administration shall have such powers as are necessary to implement and operate the program. All state agencies shall comply with the policies, guidelines, and procedures established by the commissioner pursuant to this section. The commissioner shall have the power to issue orders to compel compliance.

Subd. 4. **Staff.** The commissioner of administration shall employ an administrator to manage the resource recovery program and other staff and consultants as are necessary to carry out the program.

Subd. 5. **Reports.** By January 1 of each odd-numbered year, the commissioner of administration shall submit a report to the governor and to the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance summarizing past activities and proposed goals of the program for the following biennium. The report shall include at least:

(1) a summary list of product and commodity purchases that contain recycled materials;

(2) the results of any performance tests conducted on recycled products and agencies' experience with recycled products used;

(3) a list of all organizations participating in and using the cooperative purchasing program; and

(4) a list of products and commodities purchased for their recyclability and of recycled products reviewed for purchase.

Subd. 6. **Use of funds.** All revenues resulting from the sale of recyclable and reusable commodities made available for sale as a result of the resource recovery program will be used by the service provider to offset the cost of the recycling.

Subd. 7. **Waste reduction procurement model.** To reduce the amount of solid waste generated by the state and to provide a model for other public and private procurement systems, the commissioner, in cooperation with the commissioner of the Pollution Control Agency, shall develop waste reduction procurement programs, including an expanded life-cycle costing system for procurement of durable and repairable items by November 1, 1991. On implementation of the model procurement system, the commissioner, in cooperation with the commissioner of the Pollution Control Agency, shall develop and distribute informational materials for the purpose of promoting the procurement model to other public and private entities under section 115A.072, subdivision 4.

Subd. 8. **Recycled materials purchasing.** The commissioner of administration shall develop and implement a cooperative purchasing program under section 471.59 to include state agencies, local governmental units, and, where feasible, other state governments and the federal government, for the purpose of purchasing materials made from recycled materials. By July 1,1991, the commissioner shall develop a program to promote the cooperative purchasing program to those units of government and other persons.

Subd. 9. **Recycling goal.** By December 31, 1996, the commissioner shall recycle at least 60 percent by weight of the solid waste generated by state offices and other state operations located in the metropolitan area. By March 1 of each year, the commissioner shall report to the Pollution Control Agency the estimated recycling rates by county for state offices and other state operations in the metropolitan area for the previous calendar year. The Pollution Control Agency shall incorporate these figures into the reports submitted by the counties under section 115A.557, subdivision 3, to determine each county's progress toward the goal in section 115A.551, subdivision 2.

Each state agency in the metropolitan area shall work to meet the recycling goal individually. If the goal is not met by an agency, the commissioner shall notify that agency that the goal has not been met and the reasons the goal has not been met and shall provide information to the employees in the agency regarding recycling opportunities and expectations.

Subd. 10. **Materials recovery facility; materials collection; waste audits.** (a) The commissioner of the Department of Administration shall establish a central materials recovery facility to manage recyclable materials collected from state offices and other state operations in the metropolitan area. The facility must be located as close as practicable to the State Capitol complex and must be large enough to accommodate temporary storage of recyclable materials collected from state offices and other state operations in the metropolitan area and the processing of those materials for market.

(b) The commissioner shall establish a recyclable materials collection and transportation system for state offices and other state operations in the metropolitan area that will maximize the types and amount of materials collected and the number of state offices and other state operations served, and will minimize barriers to effective and efficient collection, transportation, and marketing of recyclable materials.

(c) The commissioner shall perform regular audits on the solid waste and recyclable materials collected to identify materials upon which to focus waste reduction, reuse, and recycling activities and to measure:

(1) progress made toward the recycling goal in subdivision 9;

(2) progress made to reduce waste generation; and

(3) potential for additional waste reduction, reuse, and recycling.

(d) The commissioner may contract with private entities for the activities required in this subdivision if the commissioner determines that it would be cost-effective to do so.

History: *1980 c 564 art 2 s 12; 1981 c 356 s 121; 1982 c 569 s 6-8; 1983 c 289 s 115 subd 1; 1985 c 274 s 4; 1986 c 425 s 22; 1986 c 444; 1987 c 186 s 15; 1987 c 312 art 1 s 10 subd 2; 1987 c 348 s 6; 1988 c 613 s 20; 1Sp1989 c 1 art 18 s 5-8; 1990 c 594 art 3 s 5; 1991 c 304 s 1,2; 1991 c 337 s 10,11; 1992 c 514 s 15; 1992 c 593 art 1 s 10; 1995 c 247 art 2 s 6; 1996 c 457 s 9; 1996 c 470 s 27; 1999 c 73 s 1; 1Sp2001 c 4 art 6 s 17; 1Sp2005 c 1 art 2 s 161; 2010 c 215 art 12 s 27; 2012 c 272 s 65*

115A.151 RECYCLABLE MATERIAL CONTAINER REQUIREMENTS; PUBLIC ENTITIES.

(a) A public entity shall:

(1) ensure that facilities under its control, from which mixed municipal solid waste is collected, have containers for at least three recyclable materials, such as, but not limited to, paper, glass, plastic, and metal; and

(2) transfer all recyclable materials collected to a recycler. (b) For the purposes of this section:

(1) "public entity" means the state, an office, agency, or institution of the state, the Metropolitan Council, a metropolitan agency, the Metropolitan Mosquito Control Commission, the legislature, the courts, a county, a statutory or home rule charter city, a town, a school district, a special taxing district, or any entity that receives an appropriation from the state for a capital improvement project after August 1, 2002;

(2) "metropolitan agency" and "Metropolitan Council," have the meanings given them in section 473.121; and

(3) "Metropolitan Mosquito Control Commission" means the commission created in section 473.702.

History: *1Sp1989 c 1 art 18 s 9; 1991 c 337 s 12; 1996 c 457 s 10; 2002 c 312 s 2*

HAZARDOUS AND INDUSTRIAL WASTE

115A.152 TECHNICAL AND RESEARCH ASSISTANCE TO GENERATORS.

Subdivision 1. **Purposes.** The commissioner shall provide for the establishment of a technical and research assistance program for generators of hazardous and industrial waste in the state. The program must be designed to assist generators in the state to obtain information
about management of hazardous and industrial wastes, to identify and apply methods of reducing the generation of hazardous and industrial wastes, to facilitate improved management of hazardous and industrial waste and compliance with hazardous and industrial waste rules, and
for other similar purposes. The program must emphasize assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing waste management methods, and developing and applying waste reduction techniques. Information and techniques developed under this program must be made available through the program to all generators in the state.

Subd. 2. **Assistance.** The assistance program must include at least the following elements:

(1) outreach programs including on-site consultation at locations where hazardous and industrial waste is generated, seminars, workshops, training programs, and other similar activities designed to assist generators to evaluate their hazardous and industrial waste generation and management practices, identify opportunities for waste reduction and improved management, and identify subjects that require additional information and research;

(2) a program to assemble, catalog, and disseminate information about hazardous and industrial waste reduction and management methods, available commercial waste management facilities and consultant services, and regulatory programs (provided that specific questions by generators about interpretation or application of waste management rules should be referred
to appropriate regulatory agencies);

(3) evaluation and interpretation of information needed by generators to improve their management of hazardous and industrial waste; and

(4) informational and technical research to identify alternative technical solutions that can be applied by specific generators to reduce the generation of hazardous and industrial waste.

Subd. 3. **Administration; evaluation.** The assistance program must be coordinated with other public and private programs that provide management and technical assistance to smaller businesses and generators of small quantities of hazardous and industrial waste, including programs operated by public and private educational institutions. The commissioner may make grants to a public or private person or association that will establish and operate the elements of the program, but the grants must require that the assistance be provided at no cost to the generators and that the grantees provide periodic reports on the improvements in waste management, waste reduction, and regulatory compliance achieved by generators through the assistance provided.

History: *1984 c 644 s 9; 1985 c 248 s 70; 1987 c 348 s 7; 1989 c 335 art 1 s 269; 1994 c*

639 art 5 s 3; 1Sp2005 c 1 art 2 s 161

115A.154 [Repealed, 1996 c 470 s 29]

115A.156 [Repealed, 1996 c 470 s 29]

115A.158 DEVELOPMENT OF PROCESSING AND COLLECTION FACILITIES AND SERVICES; REQUESTS FOR PROPOSALS.

Subdivision 1. **Request for and contents of proposal.** The commissioner shall request proposals for the development and operation of specific types of commercial hazardous waste processing and collection facilities and services, and improved management of waste rendered nonhazardous and industrial waste, that offer the greatest possibility of achieving the policies and objectives of the waste management plan including the goal of reducing to the greatest extent feasible and prudent the need for and practice of disposal. The proposals must contain at least the following information:

(1) the technical, managerial, and financial qualifications and experience of the proposer in developing and operating facilities and services of the type proposed;

(2) the technical specifications of the proposed facility or service including the process that will be used, the amount and types of hazardous or industrial waste that can be handled, the types, volume, and proposed disposition of any residuals, and a description of anticipated adverse environmental effects;

(3) the requirements of the site or sites needed to develop and operate the facility or service and the likelihood that a suitable site or sites will be available for the facility or service;

(4) projections of the costs and revenues of the facility or service, the types and numbers of generators who will use it, and the fee structure and estimated user charges necessary to make
the facility or services economically viable;

(5) the schedule for developing and commencing operation of the facility or service; and

(6) the financial, technical, institutional, legal, regulatory, and other constraints that may hinder or prevent the development or operation of the facility or service and the actions that could be taken by state and local governments or by the private sector to overcome those constraints.

The information provided in the proposal must be based on current and projected market conditions, hazardous or industrial waste streams, legal and institutional arrangements, and other circumstances specific to the state.

Subd. 2. **Procedure; evaluation; report.** In requesting proposals, the agency shall inform potential developers of the assistance available to them in siting and establishing hazardous waste processing and collection facilities and services in the state and improved industrial waste management in the state, including the availability of sites listed on the agency's inventory of preferred areas for hazardous waste processing facilities, the authority of the agency to acquire sites and order the establishment of facilities in those areas, the policies and objectives of the hazardous waste management plan, and the availability of information developed by the agency on hazardous or industrial waste generation and management in the state.

The agency shall evaluate the proposals received in response to its request and determine the extent to which the proposals demonstrate the qualifications of the developers, the technical and economic feasibility of the proposed facility or service, and the extent to which the proposed facility or service will contribute in a significant way to the achievement of the policies and objectives of the hazardous waste management plan.

The agency shall report to the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance on the proposals that it has received and evaluated, and on the legislative, regulatory, and other actions needed to develop and operate the proposed facilities or services.

Subd. 3. **Time for proposals.** The agency shall issue the first round of requests under this section by June 1, 1984. The first round proposals must be returned to the agency by November 1, 1984. The agency shall submit its report on these proposals to the legislative commission by January 1, 1985. The agency may issue additional requests in 1985 and in future years.

History: *1984 c 644 s 12; 1986 c 444; 1987 c 348 s 12,13; 1989 c 335 art 1 s 269; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161*

115A.159 [Repealed, 1999 c 86 art 1 s 83]

115A.162 [Repealed, 1989 c 335 art 1 s 270]

115A.165 [Repealed, 1995 c 247 art 1 s 67]

115A.17 [Repealed, 1986 c 425 s 46]

115A.175 SITING AND FACILITY DEVELOPMENT AUTHORITY; LIMITATIONS.

Subdivision 1. **Siting activity.** The agency shall terminate all activity under sections 115A.18 to 115A.30 relating to the selection and evaluation of sites for hazardous waste facilities, except as provided in this section.

Subd. 2. **Dismissal of candidate sites.** All candidate sites remaining under Minnesota Statutes 1996, section 115A.21, subdivision 1, are dismissed from further consideration as candidate sites for hazardous waste facilities.

Subd. 3. **Alternative siting procedure.** The agency shall proceed with site evaluation and selection in accordance with sections 115A.191 to 115A.194. In evaluating and selecting sites under sections 115A.191 to 115A.194, the agency shall act in accordance with sections 115A.18 to 115A.20, except as otherwise provided in sections 115A.191 to 115A.194.

Subd. 4. **Stabilization and containment facility; restrictions; containment standards to protect human health and environment.** No facility may be sited under sections 115A.18 to 115A.30 except a stabilization and containment facility. The facility must be above grade unless the agency determines, after environmental review under section 115A.194, subdivision 2, that an alternative design would provide greater protection for human health and the environment. No waste may be accepted for containment at the facility except the following:

(a) waste rendered nonhazardous; (b) industrial waste; and

(c) waste that is not eligible for acceptance under clause (a) or (b), if the agency determines that all of the following requirements are met:

(1) there is no feasible and prudent alternative to containment of the waste that would minimize adverse impact upon human health and the environment;

(2) the waste has been treated using feasible and prudent technology that minimizes the possibility of migration of any hazardous constituents of the waste; and

(3) the waste meets the standards adopted to protect human health and the environment under the authority of United States Code, title 42, section 6924(m), and any additional protective standards adopted by the agency under section 116.07, subdivision 4.

If no federal or state standards have been adopted for a waste as provided in clause (3), the waste may not be accepted for containment.

A person proposing a waste for containment at the facility has the burden of demonstrating that the waste may be accepted under the requirements of this subdivision. The demonstration under clause (c) must document in a form satisfactory to the agency the manner in which the person has attempted to meet the standard for acceptance of the waste under clause (a) and the characteristics of the waste that prevent compliance with that standard.

Subd. 5. **Agency adoption of rules.** The agency shall adopt rules under chapter 14 establishing procedures by which a person must demonstrate that a hazardous waste can be accepted by the facility as provided in subdivision 4. The agency shall adopt all rules necessary to implement the provisions of subdivision 4 and this subdivision before granting any permit for operation of the facility.

History: *1986 c 425 s 23; 1989 c 335 art 1 s 269; 1999 c 86 art 1 s 20; 1Sp2005 c 1 art 2 s 161*

115A.18 LEGISLATIVE FINDINGS; PURPOSE.

The legislature finds that proper management of hazardous waste generated in the state is needed to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens, that the establishment of safe commercial disposal facilities in the state may be necessary and practicable to properly manage the waste, that this cannot be accomplished
solely by the activities of private persons and political subdivisions acting alone or jointly, and that therefore it is necessary to provide a procedure for making final determinations on whether commercial stabilization and containment facilities should be established in the state and on the locations, sizes, types, and functions of any such facilities.

History: *1980 c 564 art 3 s 1; 1984 c 644 s 17; 1986 c 425 s 47*

115A.19 PROCEDURE NOT EXCLUSIVE.

Except as provided in Minnesota Statutes 1980, section 115A.21, subdivision 1, the procedure established by sections 115A.18 to 115A.30 for the permitting of hazardous waste stabilization and containment facilities shall not preclude the issuance of permits by the agency pursuant to section 116.07 for stabilization and containment facilities at sites not reviewed under sections 115A.18 to 115A.30.

History: *1980 c 564 art 3 s 2; 1981 c 352 s 12; 1986 c 425 s 47*

115A.191 VOLUNTARY CONTRACTS WITH COUNTIES.

Subdivision 1. **Agency to seek contracts.** The agency and any eligible county board may enter a contract as provided in this section expressing their voluntary and mutually satisfactory agreement concerning the location and development of a stabilization and containment facility. The commissioner shall negotiate contracts with eligible counties and shall present drafts
of the negotiated contracts to the agency for its approval. The commissioner shall actively solicit, encourage, and assist counties, together with developers, landowners, the local business community, and other interested parties, in developing resolutions of interest. The county shall provide affected political subdivisions and other interested persons with an opportunity to suggest contract terms.

Subd. 2. **Resolution of interest in negotiating; eligibility.** A county is eligible to negotiate a contract under this section if the county board files with the agency and the agency accepts a resolution adopted by the county board that expresses the county board's interest in negotiations and its willingness to accept the preliminary evaluation of one or more study areas in the
county for consideration as a location of a stabilization and containment facility. The county board resolution expressing interest in negotiations must provide for county cooperation with the agency, as necessary to facilitate the evaluation of study areas in the county, and for the appointment of a member of the county board or an officer or employee of the county as official liaison with the agency with respect to the matters provided in the resolution and future
negotiations with the agency. A county board by resolution may withdraw a resolution of interest, and the agency may withdraw its acceptance of such a resolution, at any time before the parties execute a contract under this section.

Subd. 3. **Evaluation of study areas.** The commissioner, in cooperation with the county board, may engage in activities necessary for the evaluation of study areas in any county that is eligible to negotiate a contract under this

section. The determination of whether any study area may be considered or excluded from consideration under sections 115A.18 to 115A.20 and sections 115A.191 to 115A.194 is exclusively the authority of the agency. Before entering a contract under this section, the agency shall determine whether the study area identified in the contract is appropriate for preparation of an environmental impact statement.

Subd. 4. **Requirements of contract.** A contract between the agency and a county must include provisions by which:

(a) the state, acting through the agency, agrees to implement the terms of the contract and provide the benefits and implement the procedures and practices agreed upon pursuant to subdivision 5; and

(b) the county agrees that the study area or areas in the county that have been determined by the agency to be appropriate for preparation of an environmental impact statement are subject to evaluation and selection by the agency as provided in section 115A.194.

After executing the contract, the study areas identified in the contract remain subject to the provisions of section 115A.194 until the study areas are dismissed from further consideration
by the agency.

Subd. 5. **Negotiated terms.** A contract executed under subdivision 4 may contain any terms agreed upon by the state and the county, including:

(a) procedures relating to the evaluation and selection of a site and the construction, operation, and maintenance of a proposed facility, including procedures for cooperation, consultation, and coordination between the agency and the county or political subdivisions in the county on those matters;

(b) practices and procedures necessary to assure and demonstrate safe operation of a proposed facility;

(c) services, compensation, or benefits to be provided by the state to the county or political subdivisions in the county, including (i) payments in lieu of taxes on a publicly owned site;
(ii) compensation for property owners adjoining or in close proximity to the facility through property tax relief or assurance of property value; (iii) compensation for local public expenditures necessitated by the facility; (iv) compensation for demonstrable private and community impacts from the facility; (v) monetary compensation to the county and other parties affected by the facility, in addition to compensation for necessary expenditures and demonstrable impacts;
(vi) provision of services or benefits to promote the health, safety, comfort, and economic development and well-being of the county and its citizens;

(d) provision for amendment of the contract; and

(e) provisions for resolutions of disputes under the contract.

Terms of the contract requiring enactment of additional state law, including an appropriation law, are contingent on that enactment. The contract may provide for implementation of its terms during evaluation of a study area in the county under section 115A.194 and in the event that a study area in the county is selected as the site for a facility under that section.

Subd. 6. **Referendum contract.** (a) **Requirement.** If a county board enters into negotiations for a contract, makes a binding offer to enter a contract, or enters a contract under this section, the county board shall submit the question of whether to proceed with the contract to a vote of the eligible voters of the county at the general election to be held on November 6, 1990. The election may be held before a final determination has been made on the acceptability of a site in the county.

(b) **Election procedure.** The election shall be held in the manner provided for a state general election under Minnesota election law as far as practicable. The question on the ballot shall be "Shall the county proceed with the terms and conditions of its contract with the state of Minnesota for siting and operating a hazardous waste stabilization and containment facility in the county?" The question is approved if a majority of those voting on the

question vote "Yes." The result of the election shall be certified to the county board of commissioners and is binding upon the county and the state as set forth in paragraph (c).

(c) **Effect of referendum.** If the question is approved, the county and the state may proceed to implement the terms and conditions of the binding offer or of the contract. If the question is not approved, the stabilization and containment facility authorized under sections 115A.175 to 115A.194, shall not be located in the county.

History: *1986 c 425 s 24; 1989 c 335 art 1 s 269; 1990 c 359 s 1; 1995 c 247 art 2 s 7,8; 1998 c 254 art 1 s 24,25; 1Sp2005 c 1 art 2 s 161*

115A.192 SELECTION OF DEVELOPER OF STABILIZATION AND CONTAINMENT FACILITY; REQUEST FOR PROPOSALS.

Subdivision 1. **Request for proposals.** The commissioner shall issue requests for proposals for the development and operation of a stabilization and containment facility. The request must be designed to obtain detailed information about the qualifications of a respondent to develop and operate the facility; the capital and operating costs of the facility and the sources and methods by which the respondent plans to finance the facility; the technical specifications of the proposed facility and the technologies to be employed for processing, stabilization, containment, and monitoring; the requirements of the site for the proposed facility; the schedule for developing and commencing operation of the facility; and other matters which the commissioner deems necessary for the agency to evaluate and select a developer and operator for the facility. Before issuing the requests, the commissioner shall prepare a draft of clauses (a) to (e) of the report required by section 115A.193. The draft must accompany the requests for proposals.

Subd. 2. **Selection of developer; procedure.** After evaluating responses to the request for proposals and before selecting a site as provided in section 115A.194, the agency shall decide whether to select a developer for a stabilization and containment facility. If the agency selects a developer it shall proceed as provided in section 115A.194 to select a site for the development of a facility. If the agency decides not to select a developer, the agency shall proceed as provided in section 115A.194 to select and acquire a site for potential future development of a facility.

History: *1986 c 425 s 25; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.193 REPORT ON FACILITY DEVELOPMENT.

The commissioner shall prepare a report concerning the development of a stabilization and containment facility. The report must include:

(a) a conceptual plan that describes and evaluates the proposed design and operation of the facility, including an evaluation of technical feasibility, a description and evaluation of the types and quantities of hazardous waste and nonhazardous residual waste from hazardous waste processing that the facility would be designed to accept, and a description and evaluation of technologies needed or desired at the facility for processing, stabilization, and containment, including above grade containment;

(b) procedures and standards for the operation of the facility that require the use of reduction, recycling, and recovery of any hazardous waste before the waste is accepted for stabilization when the alternative or additional management method is feasible and prudent and would materially reduce adverse impact on human health and the environment;

(c) evaluation of the design and use of the facility for processing, stabilization, or containment of industrial waste, including technical and regulatory issues and alternative management methods;

(d) evaluation of feasible and prudent technologies that may substantially reduce the possibility of migration of any hazardous constituents of wastes that the facility would be designed to accept;

(e) a general analysis of the necessary and desirable physical, locational, and other characteristics of a site for the facility;

(f) an evaluation of the prospects of and conditions required for the regulatory delisting of residual waste from hazardous waste processing;

(g) an evaluation of the feasibility of an interstate, regional approach to the management of hazardous waste; and

(h) an economic feasibility analysis of the development and operation of the facility, including the anticipated use of the facility by Minnesota generators from within and outside the state, and sources of private and public financing that may be available or necessary for development or operation.

The commissioner shall submit a draft of the report to the agency before executing contracts under section 115A.191.

History: *1986 c 425 s 26; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161; 2007 c 13 art 1 s 7*

115A.194 EVALUATION AND SELECTION OF SITES; PERMITS.

Subdivision 1. **Determination of siting procedure.** The agency shall proceed to take the actions provided in subdivisions 2 and 4 pursuant to any contracts executed under section 115A.191.

Subd. 2. **Requirements before decisions.** Before the agency makes decisions under subdivision 4:

(a) the agency shall complete environmental impact statements on the environmental effects of the decisions, in the manner provided in chapter 116D and the rules issued under that chapter; and

(b) the commissioner shall present to the agency the report on facility development prepared as provided in section 115A.193.

Subd. 3. **Agencies; report on permit conditions and application requirements.** Within 30 days following the determination of the adequacy of the environmental impact statements and the presentation of the report on facility development, after consulting with the agency, facility developers, and affected local government units, the chief executive officer of each permitting state agency shall issue to the agency reports on permit conditions and permit application requirements at each location. The reports must indicate, to the extent possible based on existing information, the probable terms, conditions, and requirements of permits, and the probable supplementary documentation that will be required for the environmental impact statement and permit applications under subdivision 5. If the agency has selected a developer, the report of the agency must include a description of the rules necessary to implement the provisions of section 115A.175, subdivision 4.

Subd. 4. **Decisions.** Within 90 days after the agency has determined the adequacy of the environmental impact statement, the agency shall: (1) specify the type, capacity, and function of the stabilization and containment facility, including operating and design standards for the facility; and (2) select one of the study areas evaluated under this section as the site for the facility, unless

the agency determines, based upon potential significant adverse effects on the environment, that none of the study areas should be selected as the site consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment, or destruction. The provisions of sections 115A.28, subdivisions 2 and 3, and 115A.30 apply to any agency decision to select a study area as a site under this subdivision.

If the agency selects a study area as a site under this subdivision, the agency shall dismiss all other study areas from further consideration. If the agency does not select a study area as a site under this subdivision, the agency shall dismiss all study areas from further consideration.

Subd. 5. **Permits; environmental review.** Before the agency issues permits for the facility, the agency shall complete an environmental impact statement specifically on the environmental effects of permitting decisions required to be made by permitting agencies. The statement must be completed in the manner provided in chapter 116D and the rules issued under that chapter.

History: *1986 c 425 s 27; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.195 PUBLIC PARTICIPATION IN OWNERSHIP AND MANAGEMENT OF FACILITY.

The stabilization and containment facility developed under sections 115A.18 to 115A.30 may be wholly owned by the state or jointly owned by the state and a developer selected by the agency under section 115A.192. The commissioner may negotiate and the agency may enter agreements with a selected developer providing terms and conditions for the development and operation of the facility. If the agreements provide for capital improvements or equipment, or for payment of state money, the agreements may be implemented only if funds are appropriated and available to the agency for those purposes.

History: *1988 c 683 s 1; 1989 c 209 art 1 s 9; 1989 c 339 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.20 EVALUATION OF SITES.

The agency shall not be required to promulgate rules pursuant to chapter 14 to govern its evaluation and selection of sites for commercial stabilization and containment facilities under sections 115A.18 to 115A.30, nor shall the agency be required to promulgate rules pursuant to chapter 14 on criteria and standards to govern its certification of intrinsic suitability of sites for commercial stabilization and containment facilities under sections 115A.18 to 115A.30. In evaluating and selecting sites for stabilization and containment facilities, the agency shall consider at least the following factors:

(a) economic feasibility, including proximity to concentrations of generators of the types of hazardous wastes likely to be proposed and permitted for stabilization and containment;

(b) intrinsic suitability of the sites;

(c) federal and state pollution control and environmental protection rules;

(d) the risk and effect for local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to a facility or at a facility, water, air, and land pollution, and fire or explosion;

(e) the consistency of a facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(f) the adverse effects of a facility at the site on agriculture and natural resources and opportunities to mitigate or eliminate such adverse effects by stipulations, conditions, and requirements respecting the design and operation of a disposal facility at the proposed site.

No land shall be excluded from consideration except land determined by the agency to be intrinsically unsuitable for the use intended.

Nothing in this section shall be construed as granting the agency an exemption from the rulemaking requirements of chapter 14 if the agency adopts statements of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by the agency or to govern the organization and procedure.

History: *1980 c 564 art 3 s 3; 1981 c 352 s 13; 1982 c 424 s 130; 1986 c 425 s 47; 1989 c 335 art 1 s 269; 1997 c 187 art 1 s 10; 1Sp2005 c 1 art 2 s 161*

115A.201 [Repealed, 1996 c 310 s 1]

115A.21 [Repealed, 1996 c 310 s 1]

115A.22 [Repealed, 1996 c 310 s 1]

115A.23 [Repealed, 1983 c 373 s 72]

115A.24 STABILIZATION AND CONTAINMENT FACILITIES; ESTIMATE OF NEED; ANALYSIS OF ECONOMIC FEASIBILITY.

Subdivision 1. **Estimate of need for stabilization and containment facilities.** The agency shall develop an estimate of the number, types, capacity, and function or use of any hazardous waste stabilization and containment facilities needed in the state.

In developing its estimate the agency shall:

(1) prepare a preliminary estimate of the types and quantities of waste generated in the state for which stabilization and containment will be needed through the year 2000 based to the extent practical on data obtained from generators who are likely to use the facility;

(2) estimate the disposal capacity located outside of the state, taking into account the status of facility permits, current and planned capacity, and prospective restrictions on expansion of capacity;

(3) estimate the prospects for the continued availability of capacity outside of the state for disposal of waste generated in the state;

(4) estimate the types and quantities of waste likely to be generated as residuals of the commercial hazardous waste processing facilities recommended by the agency for development in the state and for which stabilization and containment will be needed, taking into account
the likely users of the facilities; and

(5) compare the indirect costs and benefits of developing stabilization and containment facilities in the state or relying on facilities outside the state to dispose of hazardous waste generated in the state, taking into account the effects on business, employment, economic development, public health and safety, the environment, and the development of collection and processing facilities and services in the state.

In preparing the estimate, the agency may identify need for stabilization and containment only to the extent that the agency has determined that there are no feasible and prudent

alternatives, including waste reduction, separation, pretreatment, processing, and resource recovery, which would minimize adverse impact upon air, water, land and all other natural resources. Economic considerations alone may not justify an estimate of need for stabilization and containment nor the rejection of alternatives. Alternatives that are speculative and conjectural are not feasible and prudent. The agency shall consider all technologies being developed in other countries as well as in the United States when it considers the alternatives to hazardous waste stabilization and containment.

Subd. 2. [Repealed, 1983 c 121 s 33]

Subd. 3. **Radioactive waste.** The agency's estimate of need shall not allow the use of a facility for stabilization and containment of radioactive waste, as defined by section 116C.71, subdivision 6.

Subd. 4. **Economic feasibility analysis.** The agency shall prepare an economic feasibility analysis for stabilization and containment facilities of the type, capacity, and function or use estimated by the agency to be needed in the state under subdivision 1. The analysis must be specific to the sites where the facilities are proposed to be located. The analysis must include at least the following elements:

(1) an estimate of the capital, operating, and other direct costs of the facilities and the fee schedules and user charges necessary to make the facilities economically viable;

(2) an assessment of the other costs of using the stabilization and containment facilities, such as transportation costs and stabilization and containment surcharges;

(3) an assessment of the market for the facility for waste generated in the state, that identifies the generators that would use the facility under existing and likely future market conditions, describes the methods otherwise available to those generators to manage their wastes and the costs of using those methods, and establishes the level at which the cost of using the proposed facilities would be competitive with the cost of using other available methods of waste management;

(4) an estimate of the subsidy, if any, needed to make the facility competitive for Minnesota generators under existing market conditions and the changes in market conditions that would increase or lower any subsidy.

History: *1980 c 564 art 3 s 7; 1981 c 352 s 20; 1982 c 424 s 130; 1982 c 569 s 10,11; 1983 c 121 s 26; 1983 c 373 s 24; 1984 c 644 s 22; 1986 c 425 s 47; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.241 [Repealed, 1996 c 310 s 1]

115A.25 [Repealed, 1996 c 310 s 1]

115A.26 [Repealed, 1996 c 310 s 1]

115A.27 [Repealed, 1996 c 310 s 1]

115A.28 FINAL DECISION.

Subdivision 1. [Repealed, 1996 c 310 s 1]

Subd. 2. **Decision paramount.** The agency's decision shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that a facility established pursuant to the decision shall be subject to terms, conditions, and requirements in permits of state or federal permitting agencies,

the terms of lease determined by the agency under section 115A.06, subdivision 4, and any requirements imposed pursuant to subdivision 3. Except as otherwise provided in this section, no charter provision, ordinance, rule, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of a facility in accordance with the final decision and leases of the agency and permits issued by state or federal permitting agencies.

Subd. 3. **Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision and lease of the agency and to determine their reasonableness and consistency with permits of state and federal permitting agencies. The agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the agency shall be final.

History: *1980 c 564 art 3 s 11; 1981 c 352 s 22; 1983 c 373 s 33-35; 1984 c 644 s 29; 1985 c 248 s 70; 1986 c 425 s 47; 1986 c 444; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161; 2007 c 13 art 3 s 9*

115A.29 [Repealed, 1996 c 310 s 1]

115A.291 [Repealed, 1996 c 310 s 1]

115A.30 JUDICIAL REVIEW.

Any civil action maintained by or against the Pollution Control Agency under sections 115A.18 to 115A.30 shall be brought in the county where the Pollution Control Agency is located and shall take precedence over all other matters of a civil nature and be expedited to the maximum extent possible. Any person aggrieved by a decision of the Pollution Control Agency or an agency under sections 115A.18 to 115A.30 may appeal therefrom within 30 days following all final decisions on the issuance of permits. Any appeal shall be conducted as a review of the administrative record as provided in sections 14.63 to 14.69. No civil action shall be maintained pursuant to section 116B.03 with respect to conduct taken by a person pursuant to any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit issued by the Pollution Control Agency under sections 115A.18 to 115A.30. Notwithstanding any provision of chapter 116B to the contrary, in any action brought under that chapter with respect to any decision or conduct undertaken by any person or the Pollution Control Agency pursuant to sections 115A.18 to 115A.30 after the period for appeal under this section has lapsed, the plaintiff shall have the burden of proving that the evidence required under section 116B.10 was not reasonably available within the time provided for appeal. The trial court shall, upon motion of any prevailing nongovernmental party, award costs, disbursements, reasonable attorney's fees, and reasonable expert witness fees, if the court finds the action hereunder was commenced or defended in bad faith or was frivolous.

History: *1980 c 564 art 3 s 13; 1982 c 424 s 130; 1983 c 373 s 37; 1985 c 248 s 70; 1987 c 384 art 2 s 1; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.301 INDEMNIFICATION FOR CERTAIN DAMAGES ARISING FROM STABILIZATION AND CONTAINMENT FACILITY.

Subdivision 1. **Indemnification by operator; exceptions.** (a) As a condition of obtaining an agency permit and except as provided in paragraph (b), the operator of a hazardous waste

stabilization and containment facility established under sections 115A.18 to 115A.30, upon the acceptance of any hazardous waste for stabilization and containment, shall agree to indemnify any other person for any liability the person may have under chapter 115B as a result of a release or threatened release of hazardous waste from the stabilization and containment facility to the extent of the financial responsibility requirement established in subdivision 2.

(b) The operator is not required to indemnify any person for liability to the extent that:

(1) the liability is the result of a violation by that person of state or federal law that governs the handling, transportation, or disposal of hazardous substances;

(2) the liability is the result of a negligent act or omission of that person with respect to the handling, transportation, or disposal of hazardous substances; or

(3) the liability is one for which a claim has been or may be paid by the Federal Postclosure Liability Fund under United States Code, title 42, section 9607(k).

The operator is not required to indemnify any person for any claim filed more than 30 years after closure of the stabilization and containment facility in accordance with agency rules.

(c) The operator may intervene as of right in any action that may result in a claim for indemnification under this subdivision.

Subd. 2. **Financial responsibility.** (a) As a condition of obtaining a permit to operate a hazardous waste stabilization and containment facility established under sections 115A.18 to 115A.30, the operator shall demonstrate financial responsibility to pay claims of liability for personal injury, economic loss, response costs, and natural resources damage that the operator may incur as a result of a release or threatened release of a hazardous waste from the facility, including liability for which the operator is required to indemnify other persons under subdivision 1. The amount of the operator's financial responsibility must be at least $40,000,000.

(b) The agency may require a higher level of financial responsibility as a condition of a permit for a stabilization and containment facility depending upon the size of the facility, the location of the facility, the types of waste that will be accepted at the facility, and other factors affecting the risk of a release and potential liability. The operator may demonstrate financial responsibility by any mechanism approved by the agency's hazardous waste rules. The operator shall maintain financial responsibility as provided in this subdivision during operation of the facility and until 30 years after facility closure in accordance with agency rules, provided that the operator shall maintain financial responsibility after 30 years in the amount and for the time necessary to satisfy any outstanding claims filed within 30 years after facility closure.

Subd. 3. **Liability trust fund.** (a) A state facility liability trust fund is established as an account in the state treasury. Money in the fund shall be held in trust by the state to pay claims of liability resulting from the release or threatened release of hazardous waste from a disposal facility established under sections 115A.18 to 115A.30, and to purchase insurance to pay the claims. Subject to the limitations provided in paragraph (b), the fund and insurance purchased by the fund shall pay claims to the extent that the claims are not satisfied by the operator of the facility under subdivision 1, by the Federal Postclosure Liability Fund under United States Code, title 42, section 9607(k), or by any person, including the operator, who is liable for the claim as a result of violation of a state or federal law or a negligent act or omission.

(b) The state is not obligated to pay any claims in excess of the amount of money in the fund and the limits of any insurance purchased by the fund.

(c) Interest earned by the money in the fund must be credited to the fund.

Subd. 4. **Determination of amounts in fund.** The agency shall determine the amount of money that will be needed in the state facility liability trust fund to maintain insurance coverage for each facility of at least $10,000,000 during the operating life of the facility and to accumulate a balance of at least $10,000,000 within 20 years after the facility begins operation. The agency may require insurance coverage and accumulation of a fund balance in amounts greater than those provided in this subdivision based upon the factors that the agency must consider in establishing the level of financial responsibility under subdivision 2 and the amount of claims for which the fund is likely to be liable under subdivision 3. Based on the amounts required to purchase insurance and accumulate the fund balance, the agency shall establish a surcharge amount to be collected under subdivision 5. The agency may adjust the amount of the surcharge based on the actual quantities of waste received at the facility. Determinations by the agency under this subdivision are subject to the rulemaking provisions of chapter 14.

Subd. 5. **Stabilization and containment surcharge.** A surcharge must be paid for every ton or part of a ton of hazardous waste accepted for stabilization and containment at a facility. The operator shall collect and hold the surcharge in a separate account. By the first day of each month, the operator shall pay any money in this account to the commissioner of management and budget for credit to the state facility liability trust fund.

Subd. 6. **Administration.** (a) The commissioner of management and budget shall administer the state facility liability trust fund. Money in the fund is appropriated to the commissioner of management and budget for expenditure as provided in subdivision 3. The commissioner shall establish separate accounts in the fund for purchase of insurance and for accumulation of a fund balance as required by the Pollution Control Agency under subdivision 4. After closure of the facility in accordance with agency rules, the commissioner shall consolidate the two accounts and may use any interest income from the fund to purchase insurance to pay claims for which the fund may be liable.

(b) The commissioner, in consultation with the attorney general, may settle any claims that the fund may be required to pay. If two or more claims are made against the fund, the amount of which would exceed the amount in the fund, the commissioner shall pay any valid claims on a pro rata basis. The commissioner, on behalf of the fund, may intervene as of right in an action that may result in a claim against the fund.

Subd. 7. **Rights preserved.** Nothing in this section affects the right of any person to bring an action under any law to recover costs or damages arising out of the release or threatened release of a hazardous substance from a disposal facility established under sections 115A.18 to 115A.30. Any costs or damages recoverable in such an action shall be reduced to the extent that the costs or damages have been paid under subdivisions 1 to 3.

History: *1984 c 644 s 31; 1986 c 425 s 47; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161; 2009 c 101 art 2 s 109*

115A.31 LOCAL GOVERNMENT DECISIONS; TIMELINES.

If a county applies for or requests approval of establishment of a solid waste facility within the boundaries of a local government unit, the local government unit shall approve or disapprove the application or request within 120 days following the delivery by the county to the local government unit of the application or request completed in accordance with the requirements of applicable local ordinances.

If the proposed facility is one for which an environmental impact statement or environmental assessment worksheet is required under section 116D.04, the local government unit shall approve or disapprove the application or request within 90 days after the final determination of adequacy of the environmental impact statement or environmental assessment worksheet.

History: *1991 c 337 s 13*

SUPPLEMENTARY REVIEW OF CERTAIN WASTE FACILITIES

115A.32 RULES.

The board shall promulgate rules pursuant to chapter 14 to govern its activities under sections 115A.32 to 115A.39. For the purposes of sections 115A.32 to 115A.39, "board" means the Environmental Quality Board established in section 116C.03. In all of its activities and deliberations under sections 115A.32 to 115A.39, the board shall consult with the commissioner of the Pollution Control Agency.

History: *1980 c 564 art 4 s 1; 1982 c 424 s 130; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 11; 1995 c 247 art 2 s 9; 1Sp2005 c 1 art 2 s 161*

115A.33 MS 1992 [Repealed, 1994 c 628 art 3 s 209]

115A.33 ELIGIBILITY; REQUEST FOR REVIEW.

The following persons shall be eligible to request supplementary review by the board pursuant to sections 115A.32 to 115A.39: (a) a generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment; (b) a political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is no larger than 250 acres, not including any proposed buffer area, and located outside the metropolitan area; (c) a generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only; (d) a person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included in the board's inventory of preferred sites for such facilities adopted pursuant to Minnesota Statutes 1996, section 115A.09; (e) a person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person. The board may require completion of a plan conforming to the requirements of section 115A.46, before granting review under clause (b). A request for supplementary review shall show that the required permits for the facility have been issued by the agency and that a political subdivision has refused to approve the establishment or operation of the facility.

History: *1980 c 564 art 4 s 2; 1981 c 352 s 23; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54; 1994 c 628 art 3 s 209; 1995 c 247 art 1 s 6,60,64; 1999 c 86 art 1 s 21*

115A.34 APPOINTMENT OF TEMPORARY BOARD MEMBERS.

Within 45 days of the submission of a request determined by the board to satisfy the requirements for review under sections 115A.32 to 115A.39, temporary members shall be added to the board for the purpose of the supplementary review. Three members shall be selected by the governing body of the city or town in which the chair of the board determines the facility would be principally located, and three members shall be selected by the governing body of the county in which the chair of the board determines the proposed facility would be principally located. If the proposed facility is located in unorganized territory, all six members shall be selected by the governing board of the county. Temporary members shall be residents of the county in which the proposed facility would be located and shall be selected to represent broadly the local interests that would be directly affected by the

proposed facility. At least one member appointed by the city or town shall live within one mile of the proposed facility, and at least one member appointed by the county shall be a resident of a city or town in which the proposed facility would be located. If the appointing authority fails to appoint temporary members in the period allowed, the governor shall appoint the temporary members to represent the local interests in accordance with this section. Temporary members shall serve for terms lasting until the board has taken final action on the facility.

History: *1980 c 564 art 4 s 3; 1981 c 352 s 24; 1986 c 444; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54*

115A.35 REVIEW PROCEDURE.

The board shall meet to commence the supplementary review within 90 days of the submission of a request determined by the board to satisfy the requirements for review under this section. At the meeting commencing the review, the chair shall recommend and the board establish a scope and procedure, in accordance with the rules of the board, for review and final decision on the proposed facility. The procedure shall require the board to make a final decision on the proposed facility within 90 days following the commencement of review. The procedure shall require the board to hold, at the call of the chair, at least one public hearing in the county within which the proposed facility would be located. A majority of permanent members of the board shall be present at the hearing. The hearing shall be conducted for the board by the state Office of Administrative Hearings in a manner determined by the administrative law judge to be consistent with the expeditious completion of the proceedings as required by sections 115A.32 to 115A.39. The hearing shall not be deemed a contested case under chapter 14. Notice of the hearing shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the meeting. The notice shall describe the proposed facility, its location, the permits, and the board's scope and procedure for review. The notice shall identify a location or locations within the city or town and county where the permit applications, the agency permits, and the board's scope and procedure for review are available for review and where copies may be obtained.

History: *1980 c 564 art 4 s 4; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54*

115A.36 SCOPE AND CONTENT OF REVIEW.

In its review and final decision on the proposed facility, the board shall consider at least the following matters:

(a) the risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility, water, air, and land pollution, and fire or explosion where appropriate, and the degree to which the risk or effect may be alleviated;

(b) the consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(c) the adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;

(d) the need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

(e) whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.

History: *1980 c 564 art 4 s 5; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54*

115A.37 FINAL DECISION OF BOARD.

Subdivision 1. **Approval or disapproval.** In its final decision on the proposed facility, the board may either approve or disapprove the proposed facility at the proposed site. The board's approval shall embody all terms, conditions, and requirements of the permitting agencies, provided that the board may: (a) finally resolve any conflicts between state agencies regarding permit terms, conditions, and requirements, and (b) require more stringent permit terms, conditions,
and requirements respecting the design, construction, operation, inspection, monitoring, and maintenance of the proposed facility at the proposed site. The board's resolution of conflicts under clause (a) shall be in favor of the more stringent terms, conditions, and requirements.

Subd. 2. **Decision paramount.** The decision of the board to approve a facility shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that the facility shall be subject to those terms, conditions, and requirements of permitting agencies embodied in the board's approval and any requirements imposed pursuant to subdivision 3. The permitting agencies shall issue or amend the permits for the facility within 60 days following and in accordance with the final decision of the board, and all permits shall conform to the terms, conditions, and requirements of the board's decision. No charter provision, ordinance, rule, permit, or other
requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of the facility in accordance with the final decision of the board and permits issued pursuant thereto.

Subd. 3. **Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision of the board and permits issued pursuant thereto. The agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the agency shall be final.

History: *1980 c 564 art 4 s 6; 1981 c 352 s 25; 1985 c 248 s 70; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54*

115A.38 RECONCILIATION PROCEDURES.

Subdivision 1. **Reports to legislative commission.** At least 30 days before making a final decision under section 115A.37 in a review brought pursuant to section 115A.33, clause (d), the chair of the board may report to the legislative commission describing permit conditions or requirements being considered which are not within the existing authority of the agency or the board or which would require legislation or public financial assistance. In any such report the chair of the board may request intervention in the review pursuant to subdivisions 2 and 3.

Subd. 2. **Preintervention assessment.** If the legislative commission determines that intervention might be warranted under the terms of subdivision 1, the commission may suspend the review process for up to 60 days to allow a preintervention assessment. The preintervention assessment shall be conducted by an independent, impartial, and qualified public intervenor appointed by the commission with the advice and consent of the parties to the dispute. The intervenor shall report to the commission. The report shall include:

(a) an assessment of whether the dispute is ripe for mediation and whether the parties are willing to mediate;

(b) an assessment of whether, within the terms of subdivision 1, substantive issues exist which cannot be resolved effectively through normal administrative and judicial procedures;

(c) a preliminary definition of the facts and issues in dispute and actions and decisions being considered;

(d) a description of the diverse parties having a legitimate and direct interest in the outcome of the dispute.

Subd. 3. **Suspension of review process; intervention proceeding.** Following the report of the intervenor, the legislative commission may suspend the review process for an additional period not to exceed 90 days for an intervention proceeding. The intervenor shall be in charge of the intervention proceeding and may call for such participation and establish such procedures as the intervenor deems necessary and appropriate to facilitate agreement. The intervenor shall keep the chair of the legislative commission informed on the progress of the intervention proceeding, particularly with respect to agreements or proposed agreements which may require action or decisions not within the authority of the agency or board, legislative action, or public financial assistance. The intervenor shall make recommendations to the commission respecting any such agreements or proposed agreements. The commission may make recommendations to the intervenor respecting any such agreement or proposed agreement. If the commission approves of an agreement, or a decision based upon an agreement, which requires action or decisions not within the authority of the agency or board, legislative action, or public financial assistance, the commission shall cause the matter and recommendations to be submitted to the legislature for consideration.

History: *1980 c 564 art 4 s 7; 1986 c 444; 1989 c 335 art 1 s 269; 1992 c 593 art 1 s 54*

115A.39 JUDICIAL REVIEW.

Judicial review with respect to conduct or decisions in supplementary reviews brought pursuant to section 115A.33, clause (c) or (d), shall be as provided in section 115A.30.

History: *1980 c 564 art 4 s 8*

SOLID WASTE MANAGEMENT POLICY AND PROGRAMS

115A.41 [Repealed, 1988 c 685 s 44]

115A.411 SOLID WASTE MANAGEMENT POLICY; CONSOLIDATED REPORT.

Subdivision 1. **Authority; purpose.** The commissioner shall prepare and adopt a report on solid waste management policy and activities under this chapter. The report must be submitted by the commissioner to the senate and house of representatives committees having jurisdiction over environment and natural resources by December 31, 2015, and every four years thereafter and shall include reports required under sections 115A.551, subdivision 4; 115A.557, subdivision 4; 473.149, subdivision 6; 473.846; and 473.848, subdivision 4.

Subd. 2. **Contents.** (a) The report may also include:

(1) a summary of the current status of solid waste management, including the amount of solid waste generated and reduced, the manner in which it is collected, processed, and disposed, the extent of separation, recycling, reuse, and recovery of solid waste, and the facilities available or under development to manage the waste;

(2) an evaluation of the extent and effectiveness of implementation of section 115A.02, including an assessment of progress in accomplishing state policies, goals, and objectives, including those listed in paragraph (b);

(3) identification of issues requiring further research, study, and action, the appropriate scope of the research, study, or action, the state agency or political subdivision that should implement the research, study, or action, and a schedule for completion of the activity;

(4) recommendations for establishing or modifying state solid waste management policies, authorities, responsibilities, and programs; and

(5) a report on progress made toward implementation of the objectives of the metropolitan area solid waste policy plan as required in section 473.149, subdivision 6.

(b) The report must include strategies for:

(1) achieving the maximum feasible reduction in waste generation;

(2) encouraging manufacturers to design products that eliminate or reduce the adverse environmental impacts of resource extraction, manufacturing, use, and waste processing and disposal;

(3) educating businesses, public entities, and other consumers about the need to consider the potential environmental and financial impacts of purchasing products that may create a liability or that may be expensive to recycle or manage as waste, due to the presence of toxic or hazardous components;

(4) eliminating or reducing toxic or hazardous components in compost from municipal solid waste composting facilities, in ash from municipal solid waste incinerators, and in leachate and air emissions from municipal solid waste landfills, in order to reduce the potential liability of waste generators, facility owners and operators, and taxpayers;

(5) encouraging the source separation of materials to the extent practicable, so that the materials are most appropriately managed and to ensure that resources that can be reused or recycled are not disposed of or destroyed; and

(6) maximizing the efficiency of the waste management system by managing waste and recyclables close to the point of generation, taking into account the characteristics of the resources to be recovered from the waste and the type and capacity of local facilities.

History: *1987 c 348 s 14; 1989 c 335 art 1 s 269; 1991 c 337 s 14; 1992 c 593 art 1 s 12; 1995 c 247 art 1 s 7; 1996 c 470 s 27; 1999 c 73 s 2; 1Sp2005 c 1 art 2 s 161; 2012 c 272 s 66*

115A.415 SUBSTANDARD DISPOSAL FACILITIES.

Beginning July 1, 1995:

(1) a person may not deliver unprocessed mixed municipal solid waste to a substandard disposal facility; and

(2) an operator of a substandard disposal facility may not accept unprocessed mixed municipal solid waste for deposit in the disposal facility.

For the purpose of this section, "substandard disposal facility" means a disposal facility that does not meet the design, construction, and operation requirements for a new mixed municipal solid waste facility contained in state rules in effect as of January 1, 1993.

For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone at least one process, as defined in section 115A.03, subdivision 25, excluding storage, exchange, and transfer of the waste.

History: *1993 c 249 s 10*

115A.42 REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING.

There is established a program to encourage and improve regional and local solid waste management planning activities and efforts and to further the state policies and purposes expressed in section 115A.02. The

program under sections 115A.42 to 115A.46 is administered by the commissioner pursuant to rules promulgated under chapter 14, except in the metropolitan area where the program is administered by the commissioner pursuant to section 473.149. The commissioner shall ensure conformance with federal requirements and programs established pursuant to the Resource Conservation and Recovery Act of 1976 and amendments thereto.

History: *1980 c 564 art 5 s 1; 1982 c 424 s 130; 1982 c 569 s 12; 1987 c 348 s 15; 1987 c 404 s 137; 1989 c 335 art 1 s 269; 1995 c 247 art 2 s 10; 1Sp2005 c 1 art 2 s 161*

115A.43 [Repealed, 1987 c 348 s 52]

115A.44 [Repealed, 1987 c 348 s 52]

115A.45 TECHNICAL ASSISTANCE.

The commissioner shall provide for technical assistance to encourage and improve solid waste management and to assist political subdivisions in preparing the plans described in section 115A.46. The commissioner shall provide model plans for regional and local solid waste management. The commissioner may contract for the delivery of technical assistance by a regional development commission, any state or federal agency, private consultants, or other persons. The commissioner shall prepare and publish an inventory of sources of technical assistance for solid waste planning, including studies, publications, agencies, and persons available.

History: *1980 c 564 art 5 s 4; 1987 c 348 s 16; 1987 c 404 s 139; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1995 c 247 art 2 s 11; 1Sp2005 c 1 art 2 s 161*

115A.46 REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLAN REQUIREMENTS.

Subdivision 1. **General.** (a) Plans shall address the state policies and purposes expressed in section 115A.02 and may not be inconsistent with state law.

(b) Plans for the location, establishment, operation, maintenance, and postclosure use of facilities and facility sites, for ordinances, and for licensing, permit, and enforcement activities shall be consistent with the rules adopted by the agency pursuant to chapter 116.

(c) Plans shall address:

(1) the resolution of conflicting, duplicative, or overlapping local management efforts;

(2) the establishment of joint powers management programs or waste management districts where appropriate; and

(3) other matters as the rules of the agency may require consistent with the purposes of sections 115A.42 to 115A.46.

(d) Political subdivisions preparing plans under sections 115A.42 to 115A.46 shall consult with persons presently providing solid waste collection, processing, and disposal services.

(e) Plans must be submitted to the commissioner for approval. When a county board is ready to have a final plan approved, the county board shall submit a resolution requesting review and approval by the commissioner. After receiving the resolution, the commissioner shall notify the county within 45 days whether the plan as submitted is complete and, if not complete, the specific items that need to be submitted to make the plan complete. Within 90 days after a complete plan has been submitted, the commissioner shall approve or disapprove the plan. If the plan is disapproved, reasons for the disapproval must be provided.

(f) After initial approval, each plan must be updated and submitted for approval at least every ten years. The plan must be revised as necessary so that it is not inconsistent with state law.

(g) Rules that regulate plan content under subdivision 2 must reflect demographic, geographic, regional, and solid waste system differences that exist among the counties.

Subd. 2. **Contents.** (a) The plans shall describe existing collection, processing, and disposal systems, including schedules of rates and charges, financing methods, environmental acceptability, and opportunities for improvements in the systems.

(b) The plans shall include an estimate of the land disposal capacity in acre-feet which will be needed through the year 2000, on the basis of current and projected waste generation practices. In assessing the need for additional capacity for resource recovery or land disposal, the plans shall take into account the characteristics of waste stream components and shall give priority to waste reduction, separation, and recycling.

(c) The plans shall require the most feasible and prudent reduction of the need for and practice of land disposal of mixed municipal solid waste.

(d) The plans shall address at least waste reduction, separation, recycling, and other resource recovery options, and shall include specific and quantifiable objectives, immediately and over specified time periods, for reducing the land disposal of mixed municipal solid waste and for the implementation of feasible and prudent reduction, separation, recycling, and other resource recovery options. These objectives shall be consistent with statewide objectives as identified in statute. The plans shall describe methods for identifying the portions of the waste stream such as leaves, grass, clippings, tree and plant residue, and paper for application and mixing into the soil and use in agricultural practices. The plans shall describe specific functions to be performed and activities to be undertaken to achieve the abatement, reduction, separation, recycling, and other resource recovery objectives and shall describe the estimated cost, proposed manner of financing, and timing of the functions and activities. The plans shall describe proposed mechanisms for complying with the recycling requirements of section 115A.551, and the household hazardous waste management requirements of section 115A.96, subdivision 6.

(e) The plans shall include a comparison of the costs of the activities to be undertaken, including capital and operating costs, and the effects of the activities on the cost to generators and on persons currently providing solid waste collection, processing, and disposal services. The plans shall include alternatives which could be used to achieve the abatement objectives if the proposed functions and activities are not established.

(f) The plans shall designate how public education shall be accomplished. The plans shall, to the extent practicable and consistent with the achievement of other public policies and purposes, encourage ownership and operation of solid waste facilities by private industry. For solid waste facilities owned or operated by public agencies or supported primarily by public funds or obligations issued by a public agency, the plans shall include criteria and standards to protect comparable private and public facilities already existing in the area from displacement unless the displacement is required in order to achieve the waste management objectives identified in the plan.

(g) The plans shall establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten-year period, including estimated costs and implementation schedules, proposed procedures for operation and maintenance, estimated annual costs and gross revenues, and proposals for the use of facilities after they are no longer needed or usable.

(h) The plans shall describe existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste management and shall describe existing and proposed regulation and enforcement procedures.

Subd. 3. [Repealed, 1984 c 644 s 82]

Subd. 4. **Delegation of solid waste responsibilities.** A county or a solid waste management district established under sections 115A.62 to 115A.72 may not delegate to another governmental unit or other person any portion of its responsibility for solid waste management unless it establishes a funding mechanism to assure the ability of the entity to which it delegates responsibility to adequately carry out the responsibility delegated.

Subd. 5. **Jurisdiction of plan.** (a) After a county plan has been submitted for approval under subdivision 1, a public entity, as defined in section 16B.122, subdivision 1, within the county may not enter into a binding agreement governing a solid waste management activity that is inconsistent with the county plan without the consent of the county.

(b) After a county plan has been approved under subdivision 1, the plan governs all solid waste management in the county and a public entity, as defined in section 16B.122, subdivision 1, within the county may not develop or implement a solid waste management activity, other than an activity to reduce waste generation or reuse waste materials, that is inconsistent with the county plan that the county is actively implementing without the consent of the county.

History: *1980 c 564 art 5 s 5; 1982 c 569 s 13; 1984 c 644 s 32,33; 1987 c 404 s 140; 1989 c 131 s 3; 1989 c 325 s 6; 1989 c 335 art 1 s 269; 1Sp1989 c 1 art 20 s 3,4; 1991 c 337 s 15,16;*
1995 c 247 art 1 s 8; art 2 s 12; 2003 c 13 s 1; 1Sp2005 c 1 art 2 s 161

115A.47 [Repealed, 1995 c 247 art 2 s 55]

115A.471 PUBLIC ENTITIES; MANAGEMENT OF SOLID WASTE.

(a) Prior to entering into or approving a contract for the management of mixed municipal solid waste which would manage the waste using a waste management practice that is ranked lower on the list of preferred waste management practices in section 115A.02, paragraph (b), than the waste management practice selected for such waste in the county plan for the county in which the waste was generated, a public entity must:

(1) determine the potential liability to the public entity and its taxpayers for managing the waste in this manner;

(2) develop and implement a plan for managing the potential liability; and

(3) submit the information from clauses (1) and (2) to the agency.

(b) For the purpose of this subdivision, "public entity" means the state; an office, agency, or institution of the state; the Metropolitan Council; a metropolitan agency; the Metropolitan Mosquito Control District; the legislature; the courts; a county; a statutory or home rule charter city; a town; a school district; another special taxing district; or any other general or special purpose unit of government in the state.

History: *1995 c 247 art 1 s 9*

115A.48 MARKET DEVELOPMENT FOR RECYCLABLE MATERIALS AND COMPOST.

Subdivision 1. **Authority.** The commissioner shall assist and encourage the development of specific facilities, services, and uses needed to provide adequate, stable, and reliable markets for recyclable materials, solid waste suitable for land application, and compost generated in the state. In carrying out this duty, the commissioner shall coordinate and cooperate with the solid waste management efforts of other public agencies and political subdivisions.

Subd. 2. [Repealed, 1996 c 470 s 29]

Subd. 3. **Public procurement.** The commissioner shall provide technical assistance and advice to political subdivisions and other public agencies to encourage solid waste reduction and development of markets for recyclable materials and compost through procurement policies
and practices. Political subdivisions, educational institutions, and other public agencies shall aggressively pursue procurement practices that encourage solid waste reduction, recycling, and development of markets for recyclable materials and compost and shall, whenever practical, procure products containing recycled materials.

Subd. 4. **Land application of solid waste.** The commissioner shall provide technical assistance and advice to political subdivisions on separating portions of the waste stream such as leaves, grass, clippings, tree and plant residue, and paper for application and mixing into the soil and for use in agricultural practices.

Subd. 5. [Repealed, 1996 c 470 s 29]

History: *1987 c 348 s 17; 1988 c 685 s 11; 1989 c 131 s 4-6; 1989 c 335 art 1 s 269; 1Sp1989 c 1 art 18 s 10,11; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.49 SOLID WASTE MANAGEMENT PROJECTS.

There is established a program to encourage and assist cities, counties, solid waste management districts, and sanitary districts in the development and implementation of solid waste management projects and to transfer the knowledge and experience gained from such projects to other communities in the state. The program must be administered to encourage local communities to develop feasible and prudent alternatives to disposal, including waste reduction; waste separation by generators, collectors, and other persons; and waste processing. The commissioner shall administer the program in accordance with the requirements of sections 115A.49 to 115A.54 and rules promulgated under chapter 14. In administering the program, the commissioner shall give priority to projects in the order of preference of the waste management practices listed in section 115A.02. The commissioner shall give special consideration to areas where natural geologic and soil conditions are especially unsuitable for land disposal of solid waste; areas where the capacity of existing solid waste disposal facilities is determined by the commissioner to be less than five years; and projects serving more than one local government unit.

History: *1980 c 564 art 6 s 1; 1982 c 424 s 130; 1Sp1985 c 15 s 32; 1987 c 348 s 18; 1987 c 404 s 141; 1988 c 524 s 2; 1989 c 335 art 1 s 269; 1991 c 337 s 17; 1Sp2005 c 1 art 2 s 161*

115A.50 ELIGIBLE RECIPIENTS.

Eligible recipients for assistance under the program shall be limited to cities, counties, solid waste management districts established pursuant to sections 115A.62 to 115A.72, and sanitary districts. Eligible recipients may apply for assistance under sections 115A.0716 and 115A.52 on behalf of other persons.

History: *1980 c 564 art 6 s 2; 1988 c 524 s 3; 1996 c 470 s 7*

115A.51 APPLICATION REQUIREMENTS.

Applications for assistance under the program shall demonstrate: (a) that the project is conceptually and technically feasible; (b) that affected political subdivisions are committed to implement the project, to provide necessary local financing, and to accept and exercise the government powers necessary to the project; (c) that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project; (d) that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators. The commissioner may require completion of a comprehensive solid waste management plan conforming to the requirements of section 115A.46, before accepting an application.

History: *1980 c 564 art 6 s 3; 1987 c 348 s 19; 1987 c 404 s 142; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.52 TECHNICAL ASSISTANCE FOR PROJECTS.

The commissioner shall ensure the delivery of technical assistance for projects eligible under the program. The commissioner may contract or issue grants for the delivery of technical

assistance by any state or federal agency, a regional development commission, the Metropolitan Council, or private consultants and may use program funds to reimburse the agency, commission, council, or consultants. The commissioner shall prepare and publish an inventory of sources of technical assistance, including studies, publications, agencies, and persons available. The commissioner shall ensure statewide benefit from projects assisted under the program by developing exchange and training programs for local officials and employees and by using the experience gained in projects to provide technical assistance and education for other solid waste management projects in the state.

History: *1980 c 564 art 6 s 4; 1Sp1985 c 15 s 33; 1987 c 348 s 20; 1987 c 404 s 143; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1999 c 73 s 3; 1Sp2005 c 1 art 2 s 161*

115A.53 [Repealed, 1996 c 470 s 29]

115A.54 WASTE PROCESSING FACILITIES.

Subdivision 1. **Purposes; public interest; declaration of policy.** The legislature finds that the establishment of waste processing facilities and transfer stations serving such facilities is needed to manage properly the solid waste generated in the state and to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens; that opportunities to establish the facilities and transfer stations are not being fully realized by individual political subdivisions or by agreements among subdivisions; and that therefore it is necessary to provide capital assistance to stimulate and encourage the acquisition and betterment of the facilities and transfer stations.

Subd. 2. **Administration; assurance of funds.** The commissioner shall provide technical and financial assistance for the acquisition and betterment of the facilities and transfer stations from revenues derived from the issuance of bonds authorized by section 115A.58. Facilities for the incineration of solid waste without resource recovery are not eligible for assistance. Money appropriated for the purposes of the demonstration program may be distributed as grants or loans. An individual project may receive assistance totaling up to 100 percent of the capital cost of the project and grants up to 50 percent of the capital cost of the project. No grant or loan shall be disbursed to any recipient until the commissioner has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

Subd. 2a. **Solid waste management projects.** (a) The commissioner shall provide technical and financial assistance for the acquisition and betterment of solid waste management projects as provided in this subdivision and section 115A.52. Money appropriated for the purposes of this subdivision must be distributed as grants.

(b) Except as provided in paragraph (c), a project may receive grant assistance up to 25 percent of the capital cost of the project or $2,000,000, whichever is less, except that projects constructed as a result of intercounty cooperative agreements may receive (1) grant assistance up to 25 percent of the capital cost of the project; or (2) $2,000,000 times the number of participating counties, whichever is less.

(c) A recycling project or a project to compost or cocompost waste may receive grant assistance up to 50 percent of the capital cost of the project or $2,000,000, whichever is less, except that projects completed as a result of intercounty cooperative agreements may receive (1) grant assistance up to 50 percent of the capital cost of the project; or (2) $2,000,000 times the number of participating counties, whichever is less. The following projects may also receive grant assistance in the amounts specified in this paragraph:

(1) a project to improve control of or reduce air emissions at an existing resource recovery facility; and

(2) a project to substantially increase the recovery of materials or energy, substantially reduce the amount or toxicity of waste processing residuals, or expand the capacity of an existing resource recovery facility to meet the resource recovery needs of an expanded region if each county from which waste is or would be received has achieved a recycling rate in excess of
the goals in section 115A.551, and is implementing aggressive waste reduction and household hazardous waste management programs.

(d) Notwithstanding paragraph (e), the commissioner may award grants for transfer stations that will initially transfer waste to landfills if the transfer stations are part of a planned resource recovery project, the county where the planned resource recovery facility will be located has a comprehensive solid waste management plan approved by the commissioner, and the solid waste management plan proposes the development of the resource recovery facility. If the proposed resource recovery facility is not in place and operating within 16 years of the date of the grant award, the recipient shall repay the grant amount to the state.

(e) Projects without resource recovery are not eligible for assistance.

(f) In addition to any assistance received under paragraph (b) or (c), a project may receive grant assistance for the cost of tests necessary to determine the appropriate pollution control equipment for the project or the environmental effects of the use of any product or material produced by the project.

(g) In addition to the application requirements of section 115A.51, an application for a project serving eligible jurisdictions in only a single county must demonstrate that cooperation with jurisdictions in other counties to develop the project is not needed or not feasible. Each application must also demonstrate that the project is not financially prudent without the state assistance, because of the applicant's financial capacity and the problems inherent in the waste management situation in the area, particularly transportation distances and limited waste supply and markets for resources recovered.

(h) For the purposes of this subdivision, a "project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility. The commissioner shall adopt rules for the program by July 1, 1985.

(i) Notwithstanding anything in this subdivision to the contrary, a project to construct a new mixed municipal solid waste transfer station that has an enforceable commitment of at least ten years, or of sufficient length to retire bonds sold for the facility, to serve an existing resource recovery facility may receive grant assistance up to 75 percent of the capital cost of the project
if addition of the transfer station will increase substantially the geographical area served by the resource recovery facility and the ability of the resource recovery facility to operate more efficiently on a regional basis and the facility meets the criteria in paragraph (c), the second clause (2). A transfer station eligible for assistance under this paragraph is not eligible for assistance under any other paragraph of this subdivision.

Subd. 3. **Obligations of recipient.** No grant or loan for any project shall be disbursed until the governing body of the recipient has made an irrevocable undertaking, by resolution, to use
all funds made available exclusively for the capital cost of the project and to pay any additional amount by which the cost of the project exceeds the estimate by appropriation to the construction fund of additional funds or proceeds of additional bonds of the recipient. The resolution shall also indicate that any subsequent withdrawal of allocated or additional funds of the recipient
will impair the obligation of contract between the state of Minnesota, the recipient, and the bondholders. The resolution shall pledge payment to the debt service account of all revenues of the project to the extent that they exceed costs and shall also obligate the recipient to levy a tax sufficient to make timely payments under the loan agreement, if a deficiency occurs in the amount of user charges, taxes, special assessments, or other money pledged for payment under the loan agreement. Each loan made to a recipient shall be secured by resolutions adopted by the commissioner of the Pollution Control Agency and the governing body of the recipient, obligating the recipient to

repay the loan to the commissioner of management and budget in annual installments including both principal and interest. Installments shall be in an amount sufficient to pay the principal amount within the period required by the commissioner of the Pollution Control Agency. The interest on the loan shall be calculated on the declining balance at a rate not less than the average annual interest rate on the state bonds of the issue from which proceeds of the loan were made. The resolution shall obligate the recipient to provide money for the repayment from user charges, taxes, special assessments or any other funds available to it.

Subd. 4. **Termination of obligations; good faith effort.** Notwithstanding the provisions of section 16A.695, the commissioner may terminate the obligations of a grant or loan recipient under this section, if the commissioner finds that the recipient has made a good faith effort to exhaust all options in trying to comply with the terms and conditions of the grant or loan. In lieu of declaring a default on a grant or a loan under this section, the commissioner may identify additional measures a recipient should take in order to meet the good faith test required for terminating the recipient's obligations under this section. By December 15 of each year, the commissioner shall report to the legislature the defaults and terminations the commissioner has ordered in the

previous year, if any. No decision on termination under this section is effective until the end of the legislative session following the commissioner's report.

History: *1980 c 564 art 6 s 6; 1981 c 352 s 26; 1983 c 373 s 38; 1985 c 274 s 5; 1Sp1985 c 15 s 34; 1987 c 348 s 22; 1989 c 325 s 7; 1989 c 335 art 1 s 269; 1990 c 594 art 1 s 50; 1993 c 249 s 11; 1994 c 585 s 5; 1994 c 639 art 5 s 3; 1997 c 216 s 95; 1Sp2001 c 2 s 123; 2003 c 112 art 2 s 50; 2003 c 128 art 1 s 125; 1Sp2005 c 1 art 2 s 161; 2009 c 101 art 2 s 109*

115A.541 PLAN; GRANT REQUIREMENT.

The commissioner may approve a plan under section 115A.46 or make a grant for a recycling facility under section 115A.54, subdivision 2a, only if the commissioner finds that the applicant demonstrates a commitment to recycle materials separated by generators to the extent the program is cost-effective in meeting recycling goals.

History: *1988 c 685 s 12; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.542 [Repealed, 1994 c 585 s 57]

115A.545 [Repealed, 2007 c 13 art 2 s 6]

115A.55 SOLID WASTE REDUCTION.

Subdivision 1. **Coordination.** The commissioner shall develop and coordinate solid waste reduction programs to include at least public education, promotion of waste reduction, and technical and financial assistance to solid waste generators.

Subd. 2. **Technical assistance.** The commissioner shall provide technical assistance to solid waste generators to enable the waste generators to implement programs or methods to reduce
the amount of solid waste generated. The commissioner may use any means specified in section 115A.52 to provide technical assistance.

Subd. 3. [Repealed, 1996 c 470 s 29]

Subd. 4. **Statewide source reduction goal.** (a) It is a goal of the state that there be a minimum ten percent per capita reduction in the amount of mixed municipal solid waste generated in the state by December 31, 2000, based on a reasonable estimate of the amount of mixed municipal solid waste that was generated in calendar year 1993.

(b) As part of the 1997 report required under section 115A.411, the commissioner shall submit to the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance a proposed strategy for meeting the goal in paragraph (a). The strategy

must include a discussion of the different reduction potentials to be found in various sectors and may include recommended interim goals. The commissioner shall report progress on meeting the goal in paragraph (a), as well as recommendations and revisions to the proposed strategy, as part of the 1999 report required under section 115A.411.

History: *1Sp1989 c 1 art 20 s 5; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 10,11; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161*

115A.5501 REDUCTION OF PACKAGING IN WASTE.

Subdivision 1. **Statewide waste packaging reduction goal.** It is the goal of the state that there be a minimum 25 percent statewide per capita reduction in the amount of discarded packaging delivered to facilities by December 31, 1995, based on a reasonable estimate of the amount of packaging that was delivered to facilities in calendar year 1992.

Subd. 2. **Measurement; procedures.** To measure the overall percentage of packaging in the statewide solid waste stream, the commissioner shall conduct annual solid waste composition studies in the nonmetropolitan and metropolitan areas or shall develop an alternative method that is as statistically reliable as a waste composition study to measure the percentage of packaging in the waste stream.

The commissioner shall average the nonmetropolitan and metropolitan results and submit the statewide percentage, along with a statistically reliable margin of error, to the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance by July 1 of each year. The 1994 report must include a discussion of the reliability of data gathered under this subdivision and the methodology used to determine a statistically reliable margin of error.

Subd. 3. **Facility cooperation and reports.** The owner or operator of a facility shall allow access upon reasonable notice to authorized agency staff for the purpose of conducting waste composition studies or otherwise assessing the amount of total packaging in the waste delivered to the facility under this section.

Beginning in 1993, by February 1 of each year the owner or operator of a facility governed by this subdivision shall submit a report to the commissioner, on a form prescribed by the commissioner, specifying the total amount of solid waste received by the facility between January 1 and December 31 of the previous year. The commissioner shall calculate the total amount of solid waste delivered to solid waste facilities from the reports received from the facility owners or operators and shall report the aggregate amount by April 1 of each year. The commissioner shall assess a nonforgivable administrative penalty under section 116.072 of $500 plus any forgivable amount necessary to enforce this subdivision on any owner or operator who fails to submit a report required by this subdivision.

Subd. 4. **Report.** The commissioner shall apply the statewide percentage determined under subdivision 2 to the aggregate amount of solid waste determined under subdivision 3 to determine the amount of packaging in the waste stream. By July 1, 1996, the commissioner shall submit to the Legislative Commission on Waste Management an analysis of the extent to which the waste packaging reduction goal in subdivision 1 has been met. In determining whether the goal has been met, the margin of error must be applied in favor of meeting the goal. The commissioner shall use the statistical mean for the data collected in determining whether the goal has been met and shall include in the analysis a discussion of the margin of error and statistical reliability for the data collected.

Subd. 5. **Recommendations for further reduction goals.** If the goal in subdivision 1 is met, the commissioner shall include in the report required in subdivision 4 recommendations for appropriate goals for further reducing the amount of discarded packaging delivered to facilities. The report must include an analysis of the costs of further reductions.

Subd. 6. **Definition.** For the purposes of this section, "facility" means a composting, incineration, refuse-derived fuel, or disposal facility that accepts mixed municipal solid waste or construction waste.

History: *1992 c 593 art 1 s 13; 1993 c 249 s 12; 1994 c 585 s 6-10; 1994 c 632 art 2 s 30; 1995 c 247 art 1 s 12; art 2 s 13,14; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161*

115A.5502 PACKAGING PRACTICES; PREFERENCES; GOALS.

Packaging forms a substantial portion of solid waste and contributes to environmental degradation and the costs of managing solid waste. It is imperative to reduce the amount and toxicity of packaging that must be managed as solid waste. In order to achieve significant reduction of packaging in solid waste and to assist packagers and others to meet the packaging reduction goal in section 115A.5501, the goal of the state is that items be distributed without any packaging where feasible and, only when necessary to protect health and safety or product integrity, with the minimal amount of packaging possible. The following categories of packaging are listed in order of preference for use by all persons who find it necessary to package items for distribution or use in the state:

(1) minimal packaging that contains no intentionally introduced toxic materials and that is designed to be and actually is reused for its original purpose at least five times;

(2) minimal packaging that contains no intentionally introduced toxic materials and consists of a significant percentage of postconsumer material;

(3) minimal packaging that contains no intentionally introduced toxic materials, that is recyclable, and is regularly collected through recycling collection programs available to at least 75 percent of the residents of the state;

(4) minimal packaging that does not comply with clause (1), (2), or (3) because it is required under federal or state law and for which there does not exist a commercially feasible alternative that does comply with clause (1), (2), or (3);

(5) packaging that contains no intentionally introduced toxic materials but does not comply with clauses (1) to (4); and

(6) all other packaging.

History: *1994 c 585 s 11; 1995 c 247 art 1 s 13*

115A.551 RECYCLING.

Subdivision 1. **Definition.** (a) For the purposes of this section, "recycling" means, in addition to the meaning given in section 115A.03, subdivision 25b, yard waste composting, and recycling that occurs through mechanical or hand separation of materials that are then delivered for reuse in their original form or for use in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

(b) For the purposes of this section, "total solid waste generation" means the total by weight of:

(1) materials separated for recycling;

(2) materials separated for yard waste composting;

(3) mixed municipal solid waste plus yard waste, motor and vehicle fluids and filters, tires, lead acid batteries, and major appliances; and

(4) residential waste materials that would be mixed municipal solid waste but for the fact that they are not collected as such.

Subd. 2. **County recycling goals.** By December 31, 1993, each county outside of the metropolitan area will have as a goal to recycle a minimum of 25 percent by weight of total solid waste generation; and by December 31,

1993, each county within the metropolitan area will have as a goal to recycle a minimum of 35 percent by weight of total solid waste generation. Each county will develop and implement or require political subdivisions within the county to develop and implement programs, practices, or methods designed to meet its recycling goal. Nothing in this section or in any other law may be construed to prohibit a county from establishing a higher recycling goal.

Subd. 2a. **Supplementary recycling goals.** By December 31, 1996, each county will have as a goal to recycle the following amounts:

(1) for a county outside of the metropolitan area, 35 percent by weight of total solid waste generation;

(2) for a metropolitan county, 50 percent by weight of total solid waste generation. Each county will develop and implement or require political subdivisions within the county to develop and implement programs, practices, or methods designed to meet its recycling goal. Nothing in this section or in any other law may be construed to prohibit a county from establishing a higher recycling goal.

Subd. 3. **Interim goals; nonmetropolitan counties.** The commissioner shall establish interim recycling goals for the nonmetropolitan counties to assist them in meeting the goals established in subdivision 2.

Subd. 4. **Interim monitoring.** The commissioner shall monitor the progress of each county toward meeting the recycling goals in subdivisions 2 and 2a. The commissioner shall report to the senate and house of representatives committees having jurisdiction over environment and natural resources as part of the report required under section 115A.411. If the commissioner finds that a county is not progressing toward the goals in subdivisions 2 and 2a, the commissioner shall negotiate with the county to develop and implement solid waste management techniques designed to assist the county in meeting the goals, such as organized collection, curbside collection of source-separated materials, and volume-based pricing.

Subd. 5. **Failure to meet goal.** (a) A county failing to meet the interim goals in subdivision 3 shall, as a minimum:

(1) notify county residents of the failure to achieve the goal and why the goal was not achieved; and

(2) provide county residents with information on recycling programs offered by the county. (b) If, based on the recycling monitoring described in subdivision 4, the commissioner finds that a county will be unable to meet the recycling goals established in subdivisions 2 and 2a, the commissioner shall, after consideration of the reasons for the county's inability to meet the goals, recommend legislation for consideration by the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance to establish mandatory recycling standards and to authorize the commissioner to mandate appropriate solid waste management techniques designed to meet the standards in those counties that are unable to meet the goals.

Subd. 6. **County solid waste plans.** Each county shall include in its solid waste management plan described in section 115A.46, or its solid waste master plan described in section 473.803, a recycling implementation strategy for meeting the recycling goal established in subdivision 2a along with mechanisms for providing financial incentives to solid waste generators to reduce the amount of waste generated and to separate recyclable materials from the waste stream.

Subd. 7. **Recycling implementation strategy.** Each county shall submit to the commissioner for approval the recycling implementation strategy required in subdivision 6. The recycling implementation strategy must be submitted by October 31, 1995, and must:

(1) be consistent with the approved county solid waste management plan;

(2) identify the materials that are being and will be recycled in the county to meet the goals under this section and the parties responsible and methods for recycling the material;

(3) provide a budget to ensure adequate funding for needed county and local programs and demonstrate an ongoing commitment to spending the money on recycling programs; and

(4) include a schedule for implementing recycling activities needed to meet the goals in subdivision 2a.

History: *1Sp1989 c 1 art 18 s 12; 1991 c 337 s 19-21; 1992 c 593 art 1 s 14-16,54; 1993 c 249 s 13,14,61; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 14-17; art 2 s 15; 1996 c 470 s 27; 1999 c 73 s 4; 1Sp2005 c 1 art 2 s 161; 2012 c 272 s 67,68*

115A.552 OPPORTUNITY TO RECYCLE.

Subdivision 1. **County requirement.** Counties shall ensure that residents, including residents of single and multifamily dwellings, have an opportunity to recycle. At least one recycling center shall be available in each county. Opportunity to recycle means availability of recycling and curbside pickup or collection centers for recyclable materials at sites that are convenient for persons to use. Counties shall also provide for the recycling of problem materials and major appliances. Counties shall assess the operation of existing and proposed recycling centers and shall give due consideration to those centers in ensuring the opportunity to recycle. To the extent

practicable, the costs incurred by a county for collection, storage, transportation, and recycling of major appliances must be collected from persons who discard the major appliances.

Subd. 2. **Recycling opportunities.** An opportunity to recycle must include:

(1) a local recycling center in the county and sites for collecting recyclable materials that are located in areas convenient for persons to use them;

(2) curbside pickup, centralized drop-off, or a local recycling center for at least four broad types of recyclable materials in cities with a population of 5,000 or more persons; and

(3) monthly pickup of at least four broad types of recyclable materials in cities of the first and second class and cities with 5,000 or more population in the metropolitan area.

Subd. 3. **Recycling information, education, and promotion.** (a) Each county shall provide information on how, when, and where materials may be recycled, including a promotional program that publishes notices at least once every three months and encourages source separation of residential, commercial, industrial, and institutional materials.

(b) The commissioner shall develop materials for counties to use in providing information on and promotion of recycling.

(c) The commissioner shall provide technical assistance to counties to help counties implement recycling programs.

Subd. 4. **Nonresidential recycling.** Each county shall encourage building owners and managers, business owners and managers, and collectors of commercial mixed municipal solid waste to provide appropriate recycling services and opportunities to generators of commercial, industrial, and institutional solid waste in the county.

History: *1Sp1989 c 1 art 18 s 13; 1991 c 337 s 22-24; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.553 COLLECTION AND TRANSPORTATION OF RECYCLABLE MATERIALS.

Subdivision 1. **Collection centers and transportation required.** Each county must ensure alone or in conjunction with other counties that materials separated for recycling are taken to markets for sale or to recyclable material processing centers. An action may not be taken by a county under this section to preclude a person generating or collecting solid waste from delivering recyclable materials to a recycling facility of the generator's or collector's choice.

Subd. 2. **Licensing of recyclable materials collection.** Counties may require county or municipal licenses for collection of recyclable materials.

Subd. 3. **Transportation systems.** The commissioner of the Pollution Control Agency and the commissioner of transportation shall develop an efficient transportation system for recyclable materials to reach markets and processing centers that may be used by counties. The system may include regional collection centers. **History:** *1Sp1989 c 1 art 18 s 14; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.554 AUTHORITY OF SANITARY DISTRICTS.

A sanitary district has the authorities and duties of counties within the district's boundary for purposes of sections 115A.0716; 115A.46, subdivisions 4 and 5; 115A.48; 115A.551; 115A.552; 115A.553; 115A.919; 115A.929; 115A.93; 115A.96, subdivision 6; 115A.961; 116.072; 375.18, subdivision 14; 400.04; 400.06; 400.07; 400.08; 400.16; and 400.161.

History: *1Sp1989 c 1 art 18 s 15; 1991 c 337 s 25; 1994 c 585 s 12; 1995 c 247 art 1 s 18; 1996 c 470 s 8; 1997 c 231 art 16 s 2; 2002 c 220 art 8 s 14; 1Sp2005 c 1 art 2 s 130; 2008 c 277 art 1 s 8*

115A.555 RECYCLING CENTER DESIGNATION.

The agency shall designate recycling centers for the purpose of section 173.086. To be designated as a recycling center, a recycling facility must be open a minimum of 12 operating hours each week, 12 months each year, and must accept for recycling:

(1) at least four different materials such as paper, glass, plastic, and metal; and

(2) if the recycling center accepts metal, hazard signs, as defined in section 161.242, subdivision 2, paragraph (d), to the same extent that a junk yard dealer must accept hazard signs under section 161.242, subdivision 6a.

History: *1Sp1989 c 1 art 18 s 16; 1991 c 197 s 1*

115A.556 MATERIALS USED FOR RECYCLING.

Materials and products used for recycling such as containers, receptacles, and storage bins with short life cycles must be recyclable and made at least in part from recycled materials from this state, if available.

History: *1989 c 325 s 8*

115A.557 COUNTY WASTE REDUCTION AND RECYCLING FUNDING.

Subdivision 1. **Distribution; formula.** Any funds appropriated to the commissioner for the purpose of distribution to counties under this section must be distributed each fiscal year by the commissioner based on population, except a county may not receive less than $55,000 in a fiscal year. If the amount available for distribution under this section is less or more than the amount available in fiscal year 2001, the minimum county payment under this section is reduced or increased proportionately. For purposes of this subdivision, "population" has the definition given in section 477A.011, subdivision 3. A county that participates in a multicounty district that manages solid waste and that has responsibility for recycling programs as authorized in section 115A.552, must pass through to the districts funds received by the county in excess of the minimum county payment under this section in proportion to the population of the county served by that district.

Subd. 2. **Purposes for which money may be spent.** A county receiving money distributed by the commissioner under this section may use the money only for the development and implementation of programs to:

(1) reduce the amount of solid waste generated;

(2) recycle the maximum amount of solid waste technically feasible;

(3) create and support markets for recycled products;

(4) remove problem materials from the solid waste stream and develop proper disposal options for them;

(5) inform and educate all sectors of the public about proper solid waste management procedures;

(6) provide technical assistance to public and private entities to ensure proper solid waste management;

(7) provide educational, technical, and financial assistance for litter prevention; and

(8) process mixed municipal solid waste generated in the county at a resource recovery facility located in Minnesota.

Subd. 3. **Eligibility to receive money.** (a) To be eligible to receive money distributed by the commissioner under this section, a county shall within one year of October 4, 1989:

(1) create a separate account in its general fund to credit the money; and

(2) set up accounting procedures to ensure that money in the separate account is spent only for the purposes in subdivision 2.

(b) In each following year, each county shall also:

(1) have in place an approved solid waste management plan or master plan including a recycling implementation strategy under section 115A.551, subdivision 7, and a household hazardous waste management plan under section 115A.96, subdivision 6, by the dates specified in those provisions;

(2) submit a report by April 1 of each year to the commissioner detailing for the previous calendar year:

(i) how the money was spent including, but not limited to, specific information on the number of employees performing SCORE planning, oversight, and administration; the percentage of those employees' total work time allocated to SCORE planning, oversight, and administration; the specific duties and responsibilities of those employees; and the amount of staff salary for these SCORE duties and responsibilities of the employees; and

(ii) the resulting gains achieved in solid waste management practices; and

(3) provide evidence to the commissioner that local revenue equal to 25 percent of the money sought for distribution under this section will be spent for the purposes in subdivision 2.

(c) The commissioner shall withhold all or part of the funds to be distributed to a county under this section if the county fails to comply with this subdivision and subdivision 2.

Subd. 4. **Report.** The commissioner shall report on how the money was spent and the resulting statewide improvements in solid waste management to the senate and house of representatives committees having jurisdiction over ways and means, finance, environment and natural resources, and environment and natural resources finance. The report shall be included in the report required under section 115A.411.

History: *1Sp1989 c 1 art 19 s 1; 1991 c 337 s 26; 1992 c 593 art 1 s 17,54; 1994 c 585 s 13; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 19,20; 1996 c 470 s 27; 2000 c 490 art 10 s 1; 1Sp2001 c 2 s 125; 2002 c 374 art 6 s 2; 2004 c 284 art 2 s 11; 1Sp2005 c 1 art 2 s 161; 2009 c 37 art 1 s 42; 2012 c 272 s 69*

115A.558 SAFETY GUIDE.

The Pollution Control Agency shall prepare and distribute to all interested persons a guide for operation of a recycling or yard waste composting facility to protect the environment and public health.

History: *1Sp1989 c 1 art 22 s 2; 1995 c 247 art 2 s 16; 1Sp2005 c 1 art 2 s 161*

115A.559 COMPOSTING COMPETITIVE GRANT PROGRAM.

Subdivision 1. **Grant program established.** The commissioner shall make competitive grants to political subdivisions to increase composting, reduce the amount of organic wastes entering disposal facilities, and reduce the costs associated with hauling waste by locating the composting site as close as possible to the site where the waste is generated. To achieve the purpose of the grant program, the commissioner shall actively recruit potential applicants beyond traditional solid waste professionals and organizations, such as soil and water conservation districts and schools. Each grant must include an educational component on the methods and benefits of composting.

Subd. 2. **Application.** (a) The commissioner must develop forms and procedures for soliciting and reviewing applications for grants under this section.

(b) The determination of whether to make a grant under this section is within the discretion of the commissioner, subject to subdivision 4. The commissioner's decisions are not subject to judicial review, except for abuse of discretion.

Subd. 3. **Priorities; eligible projects.** (a) If applications for grants exceed the available appropriations, grants must be made for projects that, in the commissioner's judgment, provide the highest return in public benefits.

(b) To be eligible to receive a grant, a project must: (1) be locally administered;

(2) have measurable outcomes; and

(3) include at least one of the following elements:

(i) the development of erosion control methods that use compost; (ii) activities to encourage on-site composting by homeowners; or

(iii) activities to encourage composting by schools or public institutions.

Subd. 4. **Cancellation of grant.** If a grant is awarded under this section and funds are not encumbered for the grant within four years after the award date, the grant must be canceled.

History: *2009 c 37 art 1 s 43*

115A.56 [Repealed, 1996 c 359 s 11

STATE WASTE MANAGEMENT BONDS

115A.57 [Repealed, 1989 c 271 s 36]

115A.58 MINNESOTA STATE WASTE MANAGEMENT BONDS.

Subdivision 1. **Authority to issue bonds.** The commissioner of management and budget shall sell bonds of the state of Minnesota for the prompt and full payment of which, together with interest, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be sold only upon request of the commissioner of the Pollution Control Agency and in the amount as may otherwise be authorized by this or a subsequently enacted law which authorizes the sale
of additional bonds and the deposit of the proceeds in a waste management account in the bond proceeds fund. Any authorized amount of bonds in this law or any subsequently enacted law authorizing the issuance of bonds for the purposes of the waste management account, together with this section, constitute complete authority for the issue. The bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by the commissioner of the Pollution Control Agency and upon authorization as provided in subdivision 1, the commissioner of management and budget shall sell Minnesota state waste management bonds. The bonds shall be in the aggregate amount requested, and sold upon sealed bids upon the notice, at the price in the form and denominations, bearing interest at the rate or rates, maturing in the amounts and on the dates (with or without option of prepayment upon notice and at specified times and prices), payable at a bank or banks within or outside the state (with provisions, if any, for registration, conversion,
and exchange and for the issuance of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds), and in accordance with further provisions as the commissioner of management and budget shall determine, subject to the approval of the attorney general, but not subject to chapter 14, including section 14.386. The bonds shall be executed by the
commissioner of management and budget under official seal. The signature on the bonds and any interest coupons and the seal may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of the commissioner of management and budget or of an authorized representative of a bank designated by the commissioner of management and budget as registrar or other authenticating agent. The commissioner of management and budget shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. **Expenses.** All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for these purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the waste management account, and the amounts necessary are appropriated from that account.

Subd. 4. **Debt service account.** The commissioner of management and budget shall maintain in the state bond fund a separate account to be called the state waste management debt service account. It shall record receipts of premium and accrued interest, loan repayments, project revenue or other money transferred to the fund and income from the investment of the money and record any disbursements to pay the principal and interest on waste management bonds. Income from investment shall be credited to the account in each fiscal year. The amount credited shall be equal to the average return that year on all funds invested by the commissioner
of management and budget, as determined by the commissioner of management and budget, times the average balance in the account that year.

Subd. 5. **Appropriations to debt service account; appropriation from account to pay debt service.** The premium and accrued interest received on each issue of Minnesota state waste management bonds, and all payments received in repayment of loans and other revenues received, are appropriated to the debt service account. All income from the investment of the waste management account in the bond proceeds fund is appropriated to the debt service

account. In order to reduce the amount of taxes otherwise required to be levied, there is also appropriated to the debt service account from any funds available in the general fund on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand, to pay all principal and interest on Minnesota waste management bonds due and to become due before July 1 in the second ensuing year. So much of the debt service account as is necessary to pay principal and interest on waste management bonds is annually appropriated from the debt service account for the payment of principal and interest of the waste management bonds. All funds appropriated by this subdivision shall be available in the debt service account prior to any levy of the tax in any year required by the Minnesota Constitution, article XI, section 7.

Subd. 6. **Security.** On or before December 1 in each year, the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money currently credited to the debt service account, to pay the entire amount of principal and interest currently due and the principal and interest to become due before July 1 in the second year thereafter on Minnesota waste management bonds. This tax shall be subject to no limitation of rate or amount until all the bonds and interest thereon are fully paid. The proceeds of this tax are appropriated to the debt service account. The principal of and interest on the bonds are payable from the proceeds of this tax.

History: *1980 c 564 art 7 s 2; 1982 c 424 s 130; 1983 c 301 s 110; 1Sp1985 c 14 art 4 s 13; 1989 c 271 s 11-14; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1995 c 233 art 2 s 56; 1997 c 187 art 5 s 13; 2003 c 112 art 2 s 15,50; 1Sp2005 c 1 art 2 s 161; 2009 c 101 art 2 s 109*

115A.59 BOND AUTHORIZATION AND APPROPRIATION OF PROCEEDS.

The commissioner of management and budget is authorized, upon request of the commissioner of the Pollution Control Agency, to sell state bonds in the amount of up to $8,800,000 for the purpose of the waste processing facility capital assistance program under section 115A.54. The bonds shall be sold in the manner and upon the conditions prescribed in sections 16A.631 to 16A.675, and in the Minnesota Constitution, article XI, sections 4 to 7. The amount of bonds issued pursuant to this authorization shall not exceed at any time the amount needed to produce a balance in the waste management account equal to the aggregate amount of the loans and grants then approved and not previously disbursed, plus the amount of the loans and grants to be approved in the current and the following fiscal year, as estimated by the commissioner of the Pollution Control Agency.

History: *1980 c 564 art 7 s 3; 1989 c 271 s 15; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 2002 c 379 art 1 s 30; 1Sp2005 c 1 art 2 s 161; 2009 c 101 art 2 s 109*

SOLID WASTE MANAGEMENT DISTRICTS

115A.62 PURPOSE; PUBLIC INTEREST; DECLARATION OF POLICY.

The legislature finds that the development of integrated and coordinated solid waste management systems is needed to manage properly the solid waste generated in the state, to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens, and to further the state policies and purposes expressed in section 115A.02; that this need cannot always be met solely by the activities of individual political subdivisions or by agreements among subdivisions; and that therefore it is necessary to establish a procedure for the creation of solid waste management districts having the powers and performing the functions prescribed in sections 115A.62 to 115A.72.

History: *1980 c 564 art 8 s 1; 1982 c 569 s 14*

115A.63 SOLID WASTE MANAGEMENT DISTRICTS.

Subdivision 1. **Legal status.** Solid waste management districts established pursuant to sections 115A.62 to 115A.72 shall be public corporations and political subdivisions of the state.

Subd. 2. **Establishment.** The commissioner may establish waste districts as public corporations and political subdivisions of the state, define the powers of such districts in accordance with sections 115A.62 to 115A.72, define and alter the boundaries of the districts as provided in section 115A.64, and terminate districts as provided in section 115A.66. The commissioner shall promulgate rules pursuant to chapter 14 governing the establishment, alteration, and termination of districts.

Subd. 3. **Restrictions.** No waste district shall be established within the boundaries of the Western Lake Superior Sanitary District established under chapter 458D. No waste district shall be established wholly within one county. The commissioner shall not establish a waste district within or extending into the metropolitan area, nor define or alter the powers or boundaries of a district, unless the articles of incorporation of the district require that the district will have the same procedural and substantive responsibilities, duties, and relationship to the metropolitan agencies
as a metropolitan county. The commissioner shall require the completion of a comprehensive solid waste management plan conforming to the requirements of section 115A.46, by petitioners seeking to establish a district.

History: *1980 c 564 art 8 s 2; 1982 c 424 s 130; 1989 c 335 art 1 s 269; 1992 c 464 art 1 s 15; 1992 c 593 art 1 s 19; 1994 c 639 art 5 s 3; 1995 c 247 art 2 s 17; 1Sp2005 c 1 art 2 s 161*

115A.64 PROCEDURE FOR ESTABLISHMENT AND ALTERATION.

Subdivision 1. **Local petition.** Waste districts shall be established and their powers and boundaries defined or altered by the commissioner only after petition requesting the action jointly submitted by the governing bodies of petitioners comprising at least one-half of the counties partly or wholly within the district. A petition for alteration shall include a resolution by the board of directors of the district approving the alteration.

Subd. 2. **Petition contents.** (a) A petition requesting establishment or alteration of a waste district must contain the information the commissioner may require, including at least the following:

(1) the name of the proposed district;

(2) a description of the territory and political subdivisions within and the boundaries of the proposed district or alteration thereto, along with a map showing the district or alteration;

(3) resolutions of support for the district, as proposed to the commissioner, from the governing body of each of the petitioning counties;

(4) a statement of the reason, necessity, and purpose for the district, plus a general description of the solid waste management improvements and facilities contemplated for the district showing how its activities will accomplish the purpose of the district and the purposes for waste resource districts stated in sections 115A.62 to 115A.72;

(5) articles of incorporation stating:

(i) the powers of the district consistent with sections 115A.62 to 115A.72, including a statement of powers proposed pursuant to sections 115A.70, 115A.71, and 115A.715; and

(ii) provisions for representation and election of the board of directors of the district.

(b) After the petition has been filed, no petitioner may withdraw from it except with the written consent of all other petitioners for the district.

Subd. 3. **Local review and comment.** At least 60 days before submitting the petition to the commissioner, the petitioners shall publish notice of the petition in newspapers of general circulation in the proposed district and shall cause a copy of the petition to be served upon
the agency, the governing body of each political subdivision which is wholly or partly within the proposed district or is affected by the proposed alteration and each regional development commission affected by the proposed

district or alteration. Each entity receiving service shall have 60 days within which to comment to the petitioners on the petition and the proposed district or alteration. Proof of service, along with any comments received, shall be attached to the petition when it is submitted to the commissioner.

Subd. 4. **Review procedures.** Upon receipt of the petition, the commissioner shall determine whether the petition conforms in form and substance to the requirements of law and rule. If the petition does not conform to the requirements, the commissioner shall return it immediately to the petitioners with a statement describing the deficiencies and the amendments necessary to rectify them. If the petition does conform to the requirements, and if comments have been received objecting to the establishment or alteration of the district as proposed, the commissioner shall request the Office of Administrative Hearings to conduct a hearing on the petition. The hearing shall be conducted in the proposed district in the manner provided in chapter 14 for contested cases. If no comments have been received objecting to the establishment of the district as proposed, the commissioner may proceed to grant or deny the petition without the necessity of conducting a contested case hearing. If the petition conforms to the requirements of law and rule, the commissioner shall also immediately submit the petition to the solid waste and the technical advisory councils for review and recommendation and shall prepare a report containing recommendations on the disposition of the petition. The commissioner's report shall contain at least the commissioner's findings and conclusions on whether the proposed boundaries, purposes, powers, and management plans of the district or alteration thereto serve the purposes of waste resource districts, are appropriately related to the waste generation, collection, processing, and disposal patterns in the area, and are generally consistent with the purposes of the agency's regulatory program.

Subd. 5. **Corrections allowed.** No petition submitted by the requisite number of counties shall be void or dismissed on account of defects exposed in the hearing documents or report. The commissioner shall permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or any other defects.

Subd. 6. **Order.** After considering the reports of the administrative law judge, if a contested case hearing has been held, and the recommendations of the advisory councils, the commissioner shall make a final decision on the petition. If the commissioner finds and determines that the establishment or alteration of a district as proposed in the petition would not be in the public interest and would not serve the purposes of sections 115A.62 to 115A.72, the commissioner shall give notice to the petitioners of intent to deny the petition. If a contested case hearing has not been held, the petitioners may request a hearing within 30 days of the notice of intent to deny the petition. The request shall be granted. Following the hearing and the report of the administrative law judge, the commissioner shall make a final decision on the petition and mail a copy of the decision to the governing body of each affected political subdivision. If the commissioner finds and determines that the establishment or alteration of a district as proposed in the petition would be in the public interest and would serve the purposes of sections 115A.62 to 115A.72, the commissioner shall, by order, establish the district, define its boundaries, and give it a corporate name by which, in all proceedings, it shall thereafter be known. The order shall include articles of incorporation stating the powers of the district and the location of its registered office. Upon the filing of a certified copy of the order of the commissioner with the secretary of state, the district shall become a political subdivision of the state and a public corporation, with the authority, power, and duties prescribed in sections 115A.62 to 115A.72 and the order of the commissioner. At the time of filing, a copy of the order shall be mailed by the commissioner to the governing body of each political subdivision wholly or partly within the district or affected by the alteration of the district.

History: *1980 c 564 art 8 s 3; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444; 1987 c 186 s 15; 1989 c 335 art 1 s 269; 1991 c 337 s 27; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.65 PERPETUAL EXISTENCE.

A waste district created under the provisions of sections 115A.62 to 115A.72 shall have perpetual existence to the extent necessary to perform all acts necessary and proper for carrying out and exercising the powers and duties expressly given in it. A district shall not be terminated except pursuant to section 115A.66.

History: *1980 c 564 art 8 s 4*

115A.66 TERMINATION.

Subdivision 1. **Petition.** Proceedings for the termination of a district shall be initiated by the filing of a petition with the commissioner. The petition shall be submitted by the governing bodies of not less than one-half of the counties which are wholly or partly in the district. The petition shall state that the existence of the district is no longer in the public interest. The petitioners shall publish notice of the petition in newspapers of general circulation in the district and shall cause
to be served upon each political subdivision wholly or partly within the district a copy of the petition, and proof of service shall be attached to the petition filed with the commissioner.

Subd. 2. **Bond; payment of costs.** If the petition is dismissed or denied, the petitioners shall be required to pay all costs and expenses of the proceeding for termination. At the time of filing the petition, a bond shall be filed by the petitioners with the commissioner in such sum as the commissioner determines to be necessary to ensure payment of costs.

Subd. 3. **Hearing; decision.** If objection is made to the commissioner against the petition for termination, a contested case hearing on the petition shall be held in the waste district pursuant to chapter 14. If the commissioner determines that the termination of the district as proposed in the petition would not be in the public interest, the commissioner shall give notice to the petitioner of intent to deny the petition. If a contested case hearing has not been held, the petitioner may request a hearing within 30 days of the notice of intent to deny the petition. The request shall be granted. Following the hearing and the report of the administrative law judge, the commissioner shall make a final decision on the petition. If the petition is dismissed, all costs of the proceeding shall be assessed against the petitioner. If the commissioner determines that the existence of the district is no longer in the public interest, the commissioner shall by findings and order terminate the district. Upon the filing of a certified copy of the findings and order with the secretary of state, the district shall cease to be a public corporation and a political subdivision of the state.

Subd. 4. **Limitation.** The commissioner shall not entertain a petition for termination of a district within five years from the date of the formation of the district nor shall the commissioner entertain a petition for termination of the same district more often than once in five years.

History: *1980 c 564 art 8 s 5; 1982 c 424 s 130; 1984 c 640 s 32; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.67 ORGANIZATION OF DISTRICT.

Subdivision 1. **Board.** The chair shall be elected from outside the board of directors by majority vote of the board of directors. The first chair shall serve for a term of two years. Members of the board of directors shall be residents of the district.

Subd. 2. **First meeting.** The first meeting of the board of directors shall be held at the call of the chair, after notice, for the purpose of proposing the bylaws, electing officers and for any other business that comes before the meeting. The bylaws of the district, and amendments thereto, shall be adopted by a majority vote of the board of directors unless the certificate of incorporation requires a greater vote.

Subd. 3. **Bylaws.** The bylaws shall state:

(a) the manner and time of calling regular meetings of the representatives and the board of directors, not less than once annually;

(b) the title, manner of selection, and term of office of officers of the district;

(c) the term of office of members of the board of directors, the manner of their removal, and the manner of filling vacancies on the board of directors;

(d) the powers and duties of the board of directors consistent with the order and articles of incorporation establishing the district;

(e) the definition of a quorum for meetings of the board of directors, which shall be not less than a majority of the members;

(f) the compensation and reimbursement for expenses for members of the board of directors, which shall not exceed that provided for in section 15.0575, subdivision 3; and

(g) such other provisions for regulating the affairs of the district as the board of directors shall determine to be necessary.

History: *1980 c 564 art 8 s 6; 1983 c 373 s 39; 1986 c 444; 1989 c 335 art 1 s 269; 1991 c 337 s 28*

115A.68 REGISTERED OFFICE.

Every district shall maintain an office in this state to be known as its registered office. When a district desires to change the location of its registered office, it shall file with the secretary of state and the commissioner of the agency, a certificate stating the new location by city, town, or other community and the effective date of change. When the certificate has been duly filed, the board of directors may make the change without any further action.

History: *1980 c 564 art 8 s 7; 1987 c 186 s 15; 1989 c 335 art 1 s 269; 1Sp2005 c 1 art 2 s 161*

115A.69 POWERS.

Subdivision 1. **General.** A district shall have all powers necessary or convenient to perform its duties, including the powers provided in this section.

Subd. 2. **Actions.** The district may sue and be sued, and shall be a public body within the meaning of chapter 562.

Subd. 3. **Acquisition of property.** The district may acquire by purchase, lease, condemnation, gift, or grant, any right, title, and interest in and to real or personal property deemed necessary for the exercise of its powers or the accomplishment of its purposes, including positive and negative easements and water and air rights. Any local government unit and the commissioners of transportation, natural resources, and administration may convey to or permit the use of any property or facilities by the district, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation and without an election or approval
by any other government agency. The district may hold the property for its purposes, and may lease or rent the property so far as not needed for its purposes, upon the terms and in the manner as it deems advisable. The right to acquire lands and property rights by condemnation shall be exercised in accordance with chapter 117. The district may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation.

Subd. 4. **Right of entry.** Whenever the district deems it necessary to the accomplishment of its purposes, the district or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.

Subd. 5. **Gifts and grants.** The district may apply for and accept gifts, loans, or other property from the United States, the state, or any person for any of its purposes, may enter into any agreement required in connection therewith, and may hold, use, and dispose of the money or property in accordance with the terms of the gift, grant, loan or agreement.

Subd. 6. **Property exempt from taxation.** Any real or personal property owned, used, or occupied by the district for any authorized purpose is declared to be acquired, owned, used and occupied for public and governmental purposes, and shall be exempted from taxation by the state or any political subdivision of the state, except to the extent that the property is subject to the sales and use tax under chapter 297A, provided that those properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate
to and not exceeding the special benefit received by the properties from the improvement. No possible use of the properties in any manner different from their use for solid waste management at the time shall be considered in determining the special benefit received by the properties.

Subd. 7. **Facilities and services.** The district may construct, equip, develop, enlarge, improve, and operate solid waste facilities and services as it deems necessary and may negotiate contracts for the use of public or private facilities and services. The district shall contract with private persons for the construction, maintenance, and operation of facilities and services where the facilities and services are adequate and available for use and competitive with other means of providing the same service.

Subd. 8. **Rates; charges.** The district may establish and collect rates and charges for the facilities and services provided by the district and may negotiate and collect rates and charges for facilities and services contracted for by the district. The board of directors of the district may agree with the holders of district obligations which are secured by revenues of the district as to the maximum or minimum amounts which the district shall charge and collect for services provided by the district. Before establishing or raising any rates and charges, the board of directors shall hold a public hearing regarding the proposed rates and charges. Notice of the hearing shall be published at least once in a legal newspaper of general circulation throughout the area affected by the rates and charges. Publication shall be no more than 45 days and no less than 15 days prior
to the date of the hearing.

Subd. 9. **Disposition of property.** The district may sell or otherwise dispose of any real or personal property acquired by it which is no longer required for accomplishment of its purposes. The property shall be sold in the manner provided by section 469.065, insofar as practical. The district shall give notice of sale which it deems appropriate. When the district determines that any property which has been acquired from a government unit without compensation is no longer required, the district shall transfer it to the government unit.

Subd. 10. **Disposition of products and energy.** The district may use, sell, or otherwise dispose of all of the products and energy produced by its facilities. Section 471.345 shall not apply to the sale of products and energy. The district shall give particular consideration to the needs of purchasers in this state and shall actively promote sales to such purchasers so long as this can be done at prices and under conditions that meet constitutional requirements and that are consistent with the district's object of being financially self supporting to the greatest extent possible.

Subd. 11. **Contracts.** The district may enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

Subd. 12. **Joint powers.** The district may act under the provisions of section 471.59, or any other law providing for joint or cooperative action between government units.

Subd. 13. **Research.** The district may conduct research studies and programs, collect and analyze data, prepare reports, maps, charts, and tables, and conduct all necessary hearings and investigations in connection with its work and may advise and assist other government units on planning matters within the scope of its powers, duties, and objectives.

Subd. 14. **Employees; contracts for services.** The district may employ persons or firms and contract for services to perform engineering, legal, or other services necessary to carry out its functions.

Subd. 15. **Insurance.** The district may require any employee to obtain and file with it an individual bond or fidelity insurance policy. It may procure insurance in amounts it deems necessary to insure against liability of the board of directors and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its facilities, equipment, or other property as it deems necessary.

Subd. 16. **Review of projects.** The district may require that persons shall not acquire, construct, alter, reconstruct, or operate a solid waste facility within the district without prior consultation with and approval of the district.

History: *1980 c 564 art 8 s 8; 1982 c 569 s 15; 1983 c 213 s 3; 1987 c 291 s 195; 2000 c 418 art 2 s 1*

115A.70 DESIGNATION OF RESOURCE RECOVERY FACILITIES; REQUIRED USE.

Subdivision 1. [Repealed, 1984 c 644 s 82] Subd. 2. [Repealed, 1984 c 644 s 82]

Subd. 3. [Repealed, 1984 c 644 s 82] Subd. 4. [Repealed, 1984 c 644 s 82] Subd. 5. [Repealed, 1984 c 644 s 82] Subd. 6. [Repealed, 1984 c 644 s 82] Subd. 7. [Repealed, 1984 c 644 s 82]

Subd. 8. **Authority.** A waste management district possessing designation authority in its articles of incorporation may be authorized to designate a resource recovery facility under sections 115A.80 to 115A.89.

History: *1980 c 564 art 8 s 9; 1982 c 569 s 16-18; 1983 c 373 s 40,41; 1984 c 644 s 34*

115A.71 BONDING POWERS.

Subdivision 1. **General.** A district may exercise the bonding powers provided in this section to the extent the powers are authorized by the order of the commissioner establishing the district and by its articles of incorporation.

Subd. 2. **Debt.** The district's bonds shall be sold, issued, and secured in the manner provided in chapter 475 for revenue bonds and the district shall have the same powers and duties as a municipality and its governing body in issuing revenue bonds under that chapter. No election shall be required. The bonds may be sold at any price and at public or private sale as determined by the district and shall not be subject to any limitation as to rate.

Subd. 3. **Revenue bonds.** A district may borrow money and incur indebtedness by issuing bonds and obligations which are payable solely:

(a) from revenues, income, receipts, and profits derived by the district from its operation and management of solid waste facilities;

(b) from the proceeds of warrants, notes, revenue bonds, debentures, or other evidences of indebtedness issued and sold by the district which are payable solely from such revenues, income, receipts, and profits;

(c) from federal or state grants, gifts, or other moneys received by the district which are available therefor.

Every issue of revenue bonds by the district shall be payable out of any funds or revenues from any facility of the district, subject only to agreements with the holders of particular bonds or notes pledging particular revenues or funds. If any facility of the district is funded in whole
or in part by Minnesota waste management bonds issued under sections 115A.58 and 115A.59, the state bonds shall take priority. The district may provide for priorities of liens in the revenues between the holders of district obligations issued at different times or under different resolutions. The district may provide for the refunding of any district obligation through the issuance of other district obligations entitled to rights and priorities similar in all respects to those held by the obligations that are refunded.

History: *1980 c 564 art 8 s 10; 1989 c 335 art 1 s 269; 1991 c 199 art 2 s 1; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.715 SOLID WASTE AUTHORITY.

A district has all the authority of a county for solid waste management purposes that is given to counties under this chapter and chapters 400 and 473, except the authority to issue general obligation bonds or to levy property taxes. A district has the authority of a county to issue general obligation bonds and to levy property taxes only if and only to the extent that the governing body of each county that is a member of the district agrees to delegate the authority to the district. The delegation of the authority is irrevocable unless the governing body of each county that is a member of the district agrees to the revocation.

History: *1991 c 337 s 29*

115A.72 AUDIT.

The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or the state auditor. Copies of a written report of the audit, certified to by the auditors, shall be placed and kept on file at the principal place of business of the district and shall be filed with the secretary of state and the commissioner.

History: *1980 c 564 art 8 s 11; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

DESIGNATION OF SOLID WASTE MANAGEMENT FACILITIES

115A.80 DESIGNATION OF SOLID WASTE MANAGEMENT FACILITIES; PURPOSE.

In order to further the state policies and purposes expressed in section 115A.02, and to advance the public purposes served by effective solid waste management, the legislature finds and declares that it may be necessary pursuant to sections 115A.80 to 115A.89 to authorize
a qualifying solid waste management district or county to designate a solid waste processing or disposal facility.

History: *1984 c 644 s 35; 1989 c 325 s 9*

115A.81 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 115A.80 to 115A.893 have the meanings given them in this section.

Subd. 2. **Designation.** "Designation" means a requirement by a waste management district or county that all or any portion of the solid waste that is generated within its boundaries or any service area thereof be delivered to a processing or disposal facility identified by the district
or county.

Subd. 3. [Repealed, 1995 c 247 art 2 s 55]

History: *1984 c 644 s 36; 1985 c 274 s 6; 1987 c 348 s 23; 1989 c 325 s 10; 1992 c 593 art 1 s 20*

115A.82 ELIGIBILITY.

Facilities may be designated under sections 115A.80 to 115A.89 by (1) a solid waste management district established pursuant to sections 115A.62 to 115A.72 and possessing designation authority in its articles of incorporation; or (2) a county, but only for waste generated

outside of the boundaries of a district qualifying under clause (1) or the Western Lake Superior Sanitary District established under chapter 458D.

History: *1984 c 644 s 37; 1992 c 464 art 1 s 16*

115A.83 WASTES SUBJECT TO DESIGNATION; EXEMPTIONS.

Subdivision 1. **Application.** Designation applies to the following wastes: (1) mixed municipal solid waste; and

(2) other solid waste that prior to final processing or disposal: (i) is not managed as a separate waste stream; or

(ii) is managed as a separate waste stream using a waste management practice that is ranked lower on the list of waste management practices in section 115A.02, paragraph (b), than the primary waste management practice that would be used on the waste at the designated facility.

Subd. 2. **Exemption.** The designation may not apply to or include:

(1) materials that are separated from solid waste and recovered for reuse in their original form or for use in manufacturing processes;

(2) materials that are processed at a resource recovery facility at the capacity in operation at the time that the designation plan is approved by the commissioner;

(3) materials that are separated at a permitted transfer station located within the boundaries of the designating authority for the purpose of recycling the materials if:

(i) the transfer station was in operation on January 1, 1991; or

(ii) the materials were not being separated for recycling at the designated facility at the time the transfer station began separation of the materials; or

(4) recyclable materials that are being recycled, and residuals from recycling if there is at least an 85 percent volume reduction in the solid waste processed at the recycling facility and the residuals are managed as separate waste streams.

For the purposes of this section, "manufacturing processes" does not include the treatment of waste after collection for the purpose of composting.

History: *1984 c 644 s 38; 1989 c 325 s 11; 1991 c 337 s 30; 1992 c 593 art 1 s 21; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.84 DESIGNATION PLAN.

Subdivision 1. **Requirement.** Before commencing the designation procedure under section 115A.85, the district or county shall adopt a comprehensive solid waste management plan or, under chapter 473, a master plan. The county or district shall then submit a plan for designation to be approved under this section. A county's or district's designation plan must be consistent with its solid waste management plan or master plan and with statewide and regional waste management goals.

Subd. 2. **Designation; plan contents.** (a) The designation plan must evaluate:

(1) the benefits of the designation, including the public purposes achieved by the conservation and recovery of resources, the furtherance of local and any district or regional waste management plans and policies, and the furtherance of the state policies and purposes expressed in section 115A.02; and

(2) the estimated costs of the designation, including the direct capital, operating, and maintenance costs of the facility designated, the indirect costs, and the long-term effects of the designation.

(b) In particular the designation plan must evaluate:

(1) whether the designation will result in the recovery of resources or energy from materials which would otherwise be wasted;

(2) whether the designation will lessen the demand for and use of indiscriminate land disposal;

(3) whether the designation is necessary for the financial support of the facility;

(4) whether less restrictive methods for ensuring an adequate solid waste supply are available;

(5) other feasible and prudent waste management alternatives for accomplishing the purposes of the proposed designation, the direct and indirect costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators; and

(6) whether the designation takes into account and promotes local, regional, and state waste management goals.

(c) When the plan proposes designation to disposal facilities, the designation plan must also evaluate:

(1) whether the disposal facility is part of an integrated waste management system involving a processing facility and the designation is necessary for the financial support of the processing facility;

(2) whether the designation will better serve to protect public health and safety; (3) the impacts on other disposal facilities inside and outside the area;

(4) whether the designation is necessary to promote regional waste management programs and cooperation; and

(5) the extent to which the design and operation of the disposal facility protects the environment including whether it is permitted under current agency rules and whether any portion of the facility's site is listed under section 115B.17, subdivision 13.

(d) When the plan proposes designation to a disposal facility, mixed municipal solid waste that is subject to a contract between a hauler and a different facility that is in effect on the date notice is given under section 115A.85, subdivision 2, is not subject to the designation during the contract period or for one year after the date notice is given, whichever period is shorter.

Subd. 3. **Plan approval.** (a) A district or county planning a designation shall submit the designation plan to the commissioner for review and approval or disapproval.

(b) The commissioner shall complete the review and make a decision within 120 days following submission of the plan for review. The commissioner shall approve the designation plan if the plan satisfies the requirements of subdivision 2 and, in the case of designation to disposal facilities, if the commissioner finds that the plan has demonstrated that the designation is necessary and is consistent with section 115A.02. The commissioner may attach conditions to the approval that relate to matters required in a designation ordinance under section 115A.86, subdivision 1, paragraph (a), clauses (1) to (4), and paragraph (b). Amendments to plans must be submitted for review in accordance with this subdivision.

Subd. 4. **Exclusion of certain materials.** (a) When the commissioner approves the designation plan, the commissioner shall exclude from the designation materials that the commissioner determines will be processed at a resource recovery facility separate from the designated facility if:

(1) the resource recovery facility requesting the exclusion is substantially completed or will be substantially completed within 18 months of the time that the designation plan is approved by the commissioner;

(2) the facility requesting the exclusion has or will have contracts for purchases of its product; and

(3) the materials are or will be under contract for delivery to the facility requesting the exclusion at the time that facility is completed.

(b) In order to qualify for the exclusion of materials under this subdivision, the operator or owner of the resource recovery facility requesting the exclusion shall file with the commissioner and the district or county or counties a written description of the facility, its intended location, its waste supply sources, purchasers of its products, its design capacity and other information that the commissioner and the district or county or counties may reasonably require. The information must be filed as soon as it becomes available but not later than 30 days following the date when the county or district submits its designation plan for approval.

(c) The commissioner may revoke the exclusion granted under this subdivision when the commissioner approves the designation ordinance under section 115A.86 if in the commissioner's judgment the excluded materials will not be processed at the other facility.

Subd. 5. **Exclusion of materials separated at certain facilities.** (a) A county or district shall exclude from the designation, subject to approval by the commissioner, materials that the county or district determines will be separated for recycling at a transfer station located outside of the area subject to designation if:

(1) the residual materials left after separation of the recyclable materials are delivered to a facility designated by the county or district;

(2) each waste collector who would otherwise be subject to the designation ordinance and who delivers waste to the transfer station has not been found in violation of the designation ordinance in the six months prior to filing for an exclusion;

(3) the materials separated at the transfer station are delivered to a recycler and are actually recycled; and

(4) the owner or operator of the transfer station agrees to report and actually reports to the county or district the quantities of materials, by categories to be specified by the county or district, that are recycled by the facility that otherwise would have been subject to designation.

(b) In order to qualify for the exclusion in this subdivision, the owner of a transfer station shall file with the county or district a written description of the transfer station, its operation, location, and waste supply sources, the quantity of waste delivered to the transfer station by the owner of the transfer station, the market for the materials separated for recycling, where the recyclable materials are delivered for recycling, and other information the county or district may reasonably require. Information received by the county or district is nonpublic data as defined in section 13.02, subdivision 9.

(c) A county or district that grants an exclusion under this subdivision may revoke the exclusion if any of the conditions of paragraph (a) are not being met.

History: *1984 c 644 s 39; 1985 c 274 s 7,8; 1989 c 325 s 12; 1989 c 335 art 1 s 269; 1991 c 337 s 31,32; 1994 c 639 art 5 s 3; 1995 c 247 art 2 s 18; 1Sp2005 c 1 art 2 s 161*

115A.85 PROCEDURE.

Subdivision 1. **Requirement.** A district or county with an approved designation plan shall proceed as provided in this section when designating facilities. A district need not repeat the designation procedures in this section to the extent that the procedures have been completed by each county having territory in the district or by a joint powers board composed of each county having territory in the district.

Subd. 2. **Hearing.** (a) The district or county shall hold a public hearing to take testimony on the designation. Notice of the hearing must be:

(1) published in a newspaper of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing; and

(2) mailed to political subdivisions, processing and disposal facility operators, and licensed solid waste collectors who may be expected to use the facility.

(b) The notification must:

(1) describe the area in which the designation will apply and the plans for the use of the solid waste;

(2) specify the point or points of delivery of the solid waste;

(3) estimate the types and quantities of solid waste subject to the designation; and

(4) estimate the fee to be charged for the use of the facilities and for any products of the facilities.

(c) A designation or contract for use is not invalid by reason of the failure of the district or county to provide written notice to an entity listed in this subdivision.

Subd. 3. **Negotiated contracts for use.** During a period of 90 days following the hearing, the district or county shall negotiate with the persons entitled to written notice under subdivision 2 for the purpose of developing contractual agreements that will require use of the facilities proposed to be designated.

Subd. 4. **Designation decision.** At the end of the 90-day contract negotiation period, the district or county may proceed to secure approval for and implement the designation as provided in section 115A.86.

History: *1984 c 644 s 40; 1989 c 325 s 13*

115A.86 IMPLEMENTATION OF DESIGNATION.

Subdivision 1. **Designation ordinance.** (a) The district or county shall prepare a designation ordinance to implement a designation. The designation ordinance must: (1) define the geographic area and the types and quantities of solid waste subject to designation; (2) specify the point or points of delivery of the solid waste; (3) require that the designated solid waste be delivered to the specified point or points of delivery; (4) require the designated facility to accept all designated solid waste delivered to the specified point or points of delivery, unless the facility has notified waste collectors in the designated area that the facility is inoperative; (5) set out the procedures and principles to be followed by the county or district in establishing and amending any rates and charges at the designated facility; and (6) state any additional regulations governing waste collectors or other matters necessary to implement the designation.

(b) The designation ordinance must provide an exception for: (1) materials that are exempt or excluded from the designation under section 115A.83 or 115A.84, subdivision 4; and (2) materials otherwise subject to the designation for which negotiated contractual arrangements exist that will require and effect the delivery of the waste to the facility for the term of the contract.

Subd. 2. **Approval.** A district or county shall submit the designation ordinance, together with any negotiated contracts assuring the delivery of solid waste, to the commissioner for review and approval or disapproval. The commissioner shall complete the review and make a decision within 90 days following submission of the designation for review. The commissioner shall approve the designation if the commissioner determines that the designation procedure specified in section 115A.85 was followed and that the designation is based on a plan approved under section 115A.84. The commissioner may attach conditions to the approval.

Subd. 3. **Implementation.** The designation may not be placed into effect before 60 days after the approval required in subdivision 2. The effective date of the designation must be specified at least 60 days in advance. If the designation is not placed into effect within two years of approval, the designation must be resubmitted to the commissioner for approval or disapproval under subdivision 2, unless bonds have been issued to finance the facility to which the designation applies.

Subd. 4. **Effect.** The designation is binding on all political subdivisions, landfill operators, solid waste generators, and solid waste collectors in the designation area.

Subd. 5. **Amendments.** (a) Except for an amendment authorized under subdivision 6, amendments to a designation ordinance must be submitted to the commissioner for approval. The commissioner shall approve the

amendment if the amendment is in the public interest and in furtherance of the state policies and purposes expressed in section 115A.02. If the commissioner finds that the proposed amendment is a substantive change from the existing designation plan, the commissioner may require that the county or solid waste management district submit a revised designation plan to the commissioner for approval. After receiving approval for the designation plan amendment from the commissioner, the county or district shall follow the procedure outlined in section 115A.85 prior to submitting the amended designation ordinance to the commissioner for approval. If the commissioner does not act within 90 days after receiving the proposed amendment to the designation ordinance, the amendment is approved.

(b) Except for an amendment authorized under subdivision 6, prior to amending an ordinance to designate solid waste to a disposal facility, a county or district shall submit an amended designation plan to the commissioner for approval, and shall follow the procedures outlined in section 115A.85.

Subd. 6. **Penalties.** (a) A county may include in its designation ordinance civil and misdemeanor penalties for violation of the ordinance. Subdivision 5 does not govern a designation ordinance amendment adopted under this paragraph.

(b) A county may by ordinance impose civil and misdemeanor penalties for delivery of mixed municipal solid waste to a processing or disposal facility in the county that is not a facility designated to receive the waste under a designation ordinance adopted by another county under this section.

(c) A civil penalty adopted under paragraph (a) or (b) must be payable to the county and may not exceed a fine of $10,000 per day of violation plus the cost of mitigating any damages caused by the violation and the attorney fees and court costs incurred by the county to enforce the ordinance.

History: *1984 c 644 s 41; 1985 c 274 s 9; 1989 c 325 s 14,15; 1989 c 335 art 1 s 269; 1991 c 337 s 33,34; 1994 c 639 art 5 s 3; 1995 c 247 art 2 s 19; 1Sp2005 c 1 art 2 s 161*

115A.87 JUDICIAL REVIEW; ATTORNEY GENERAL TO PROVIDE COUNSEL.

An action challenging a designation must be brought within 60 days of the approval of the designation by the commissioner. The action is subject to section 562.02.

In any action challenging a designation ordinance or the implementation of a designation ordinance, the person bringing the challenge shall notify the attorney general. The attorney general may intervene in any administrative or court action to represent the state's interest in designation of solid waste, and, on request of a county whose designation ordinance has been challenged, provide legal representation for the county in any administrative or court action related to the challenge.

History: *1984 c 644 s 42; 1992 c 593 art 1 s 22; 1994 c 585 s 14; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.88 SERVICE GUARANTEE.

The district or county may not arbitrarily terminate, suspend, or curtail services provided to any person required by contract or designation ordinance to use designated facilities without the consent of the person or without just cause.

History: *1984 c 644 s 43*

115A.882 RECORDS; INSPECTION.

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "origin" means a general geographical description that at a minimum names the local governmental unit within a county from which waste was collected; and

(2) "type" means a best estimate of the percentage of each truck load that consists of residential, commercial, industrial, construction, or any other general type of waste.

Subd. 2. **Records; collectors; facilities.** Each person who collects solid waste in a county in which a designation ordinance is in effect shall maintain records regarding the volume or weight, type, and origin of waste collected. Each day, a record of the origin, type, and weight of the waste collected that day and the identity of the waste facility at which that day's collected waste is deposited must be kept on the waste collection vehicle. If the waste is measured by volume at the waste facility at which it is deposited, the record may show the volume rather than the weight of the waste.

The owner or operator of a solid waste facility shall maintain records regarding the weight of the waste, or the volume of the waste if the waste is measured by volume; the general type or types of waste; the origin of the waste delivered to the facility; the date and time of delivery; and the name of the waste collector that delivered the waste to the facility.

Subd. 3. **Inspection.** A person authorized by a county in which a designation ordinance is effective may, anywhere in the state:

(1) upon presentation of identification and without a search warrant, inspect or copy the records required to be kept on a waste collection vehicle under subdivision 2 and inspect the waste on the vehicle at the time of deposit of the waste at a facility;

(2) when reasonable notice under the circumstances has been given, upon presentation of identification and without a search warrant, inspect or copy the records of an owner or operator of a solid waste facility that are required to be maintained under subdivision 2;

(3) request, in writing, copies of records of a solid waste collector that indicate the type, origin, and weight or, if applicable, the volume of waste collected, the identity of the facility at which the waste was deposited, and the date of deposit at the facility; and

(4) upon presentation of identification and without a search warrant, inspect or copy that portion of the business records of a waste collector necessary to comply with clause (3) at the central record-keeping location of the waste collector only if the collector fails to provide copies of the records within 15 days of receipt of a written request for them, unless the time has been extended by agreement of the parties.

Records or information received, inspected, or copied by a county under this section are classified as nonpublic data as defined in section 13.02, subdivision 9, and may be used by the county solely for enforcement of a designation ordinance. A waste collector or the owner or operator of a waste facility shall maintain business records needed to comply with this section for two years.

Subd. 4. **Civil enforcement; venue.** (a) A person who fails to comply with this section is subject to:

(1) an action to compel performance or to restrain or enjoin any activity that interferes with the requirement to keep records in subdivision 2 or the requirement to allow timely entry and inspection in subdivision 3;

(2) damages caused by the failure to keep records or by refusal to allow timely entry or inspection;

(3) a civil penalty payable to the county seeking enforcement of up to $10,000 per day for each day of refusal to allow timely entry or inspection; or

(4) any or all of the above.

(b) A county in which a designation ordinance is in effect may enforce this section by commencing an action in district court in the county in which the facility is located or in the county in which the designation ordinance is in effect. The court may compel performance in any manner deemed appropriate by the court, including, but not limited to, issuance of an order to show cause, a temporary restraining order, or an injunction. In addition, the court may order payment of damages or a civil penalty or both. In an action brought by a county to enforce this section in which the county substantially prevails, the court may order payment by the defendant of the county's costs and disbursements, including reasonable attorney fees.

History: *1988 c 521 s 1; 1991 c 337 s 35; 1994 c 585 s 15,16*

115A.89 SUPERVISION OF IMPLEMENTATION.

The commissioner shall: (1) require regular reports on the implementation of each designation; (2) periodically evaluate whether each designation as implemented has accomplished its purposes and whether the designation is in the public interest and in furtherance of the state
policies and purposes expressed in section 115A.02; and (3) report periodically to the legislature on the commissioner's conclusions and recommendations.

History: *1984 c 644 s 44; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

115A.893 PETITION FOR EXCLUSION.

Subdivision 1. **Petition for exclusion.** Any person proposing to own or operate a processing facility using waste materials subject to a designation ordinance may petition the waste district
or county for exclusion of the materials from the designation ordinance. In order to qualify for the exclusion of materials under this section, the petitioner shall submit with the petition a written description of the proposed facility, its intended location, its waste supply sources,
purchasers of its products, its design capacity, and other information that the district or county may reasonably require.

Subd. 2. **Decision.** The district or county, after appropriate notice and hearing, shall issue a written decision with findings of fact and conclusions on all material issues. The district or county shall grant the petition if it determines that:

(1) the materials will be processed at the facility; and

(2) the exclusion can be implemented without impairing the financial viability of the designated facility or impairing contractual obligations or preventing the performance of contracts by the facility owner or operator, the district or county, or users of the facility.

Subd. 3. **Appeal of decision.** A person aggrieved by the decision of the district or county may appeal to the commissioner. The review is confined to the record. The decision of the commissioner must be based on the standards stated in this section.

Subd. 4. **Conformance of designation ordinance.** If the commissioner approves the petition, the designation ordinance must be amended in conformance with the decision of the commissioner. The petition may be amended during the proceedings by agreement between the petitioner and the district or county.

History: *1985 c 274 s 10; 1989 c 325 s 16; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

WASTE TIRES, BATTERIES, AND USED OIL

115A.90 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 115A.90 to 115A.914.

Subd. 2. MS 1990 [Renumbered subd 3]

Subd. 2. **Collection site.** "Collection site" means a permitted site, or a site exempted from permit, used for the storage of waste tires.

Subd. 3. MS 1990 [Renumbered subd 2]

Subd. 3. MS 1994 [Repealed, 1995 c 247 art 2 s 55] Subd. 4. [Repealed, 1988 c 685 s 44]

Subd. 5. **Person.** "Person" has the meaning given in section 116.06, subdivision 17.

Subd. 6. **Processing.** "Processing" means producing or manufacturing usable materials, including fuel, from waste tires including necessary incidental temporary storage activity.

Subd. 6a. **Shredder residue.** "Shredder residue" means the residue generated by shredding a motor vehicle, an appliance, or other source of recyclable steel after removing the reusable and recyclable materials.

Subd. 7. **Tire.** "Tire" means a pneumatic tire or solid tire for motor vehicles as defined in section 169.011.

Subd. 8. **Tire collector.** "Tire collector" means a person who owns or operates a site used for the storage, collection, or deposit of more than 50 waste tires.

Subd. 9. **Tire dump.** "Tire dump" means an establishment, site, or place of business without a required tire collector or tire processor permit that is maintained, operated, used, or allowed to be used for storing, keeping, or depositing unprocessed waste tires.

Subd. 10. **Tire processor.** "Tire processor" means a person engaged in the processing of waste tires.

Subd. 11. **Waste tire.** "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

History: *1984 c 654 art 2 s 92; 1988 c 685 s 45; 1989 c 335 art 1 s 269; 1993 c 172 s 58*

115A.902 PERMIT; TIRE COLLECTORS, PROCESSORS.

Subdivision 1. **Permit required.** A tire collector or tire processor with more than 500 waste tires shall obtain a permit from the agency unless exempted in subdivision 2. The agency may by rule require tire collectors or tire processors with less than 500 waste tires to obtain permits unless exempted by subdivision 2.

Subd. 2. **Exemptions.** A permit is not required for:

(1) a retail tire seller for the retail selling site if no more than 500 waste tires are kept on the business premises;

(2) an owner or operator of a tire retreading business for the business site if no more than 3,000 waste tires are kept on the business premises;

(3) an owner or operator of a business who, in the ordinary course of business, removes tires from motor vehicles if no more than 500 waste tires are kept on the business premises;

(4) a permitted landfill operator with less than 10,000 waste tires stored above ground at the permitted site; or

(5) a person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

Subd. 3. **Local authority.** The issuance of an agency permit does not replace a permit or license required under section 400.16 or 473.811.

Subd. 4. **Permit fee.** The revenue from permit fees shall be credited to the general fund.

History: *1984 c 654 art 2 s 93; 1988 c 685 s 45; 1989 c 335 art 1 s 269; 1999 c 73 s 5*

115A.904 LAND DISPOSAL PROHIBITED.

The disposal of waste tires in the land is prohibited after July 1, 1985, except for beneficial uses of tire-derived products designated by the commissioner. This does not prohibit the storage of unprocessed waste tires at a collection or processing facility.

History: *1984 c 654 art 2 s 94; 1Sp1985 c 13 s 230; 1Sp1985 c 16 art 2 s 42 subd 1; 2012 c 272 s 70*

115A.906 [Repealed, 1Sp2001 c 2 s 162]

115A.908 MOTOR VEHICLE TRANSFER FEE.

Subdivision 1. **Fee charged.** A fee of $10 shall be charged on the initial registration and each subsequent transfer of title within the state, other than transfers for resale purposes, of every motor vehicle weighing more than 1,000 pounds. The fee shall be collected by the commissioner of public safety. Registration plates or certificates of title may not be issued by the commissioner of public safety for the ownership or operation of a motor vehicle subject to the transfer fee unless the fee is paid. The fee may not be charged on the transfer of:

(1) previously registered vehicles if the transfer is to the same person;

(2) vehicles subject to the conditions specified in section 297A.70, subdivision 2; or

(3) vehicles purchased in another state by a resident of another state if more than 60 days have elapsed after the date of purchase and the purchaser is transferring title to this state and has become a resident of this state after the purchase.

Subd. 2. **Deposit of revenue.** Revenue collected under this section shall be credited to the environmental fund.

Subd. 3. [Repealed, 1997 c 216 s 160]

History: *1984 c 654 art 2 s 96; 1Sp1985 c 13 s 231; 1989 c 335 art 4 s 35; 1993 c 172 s 59,60; 1995 c 220 s 97; 1999 c 231 s 132; 2000 c 418 art 1 s 44; 2003 c 128 art 1 s 127; 1Sp2005 c 6 art 2 s 1; 2008 c 179 s 34; 2009 c 101 art 2 s 109; 2011 c 76 art 1 s 7*

115A.909 SHREDDER RESIDUE; MANAGEMENT.

The commissioner, in consultation with persons who are engaged in the business of shredding motor vehicles, appliances, and other sources of recyclable steel, shall study management of shredder residue. To the extent possible under state and federal law, the commissioner shall encourage reduction in the amount of residue generated, allow beneficial use of the residue, and minimize costs of management and disposal. The commissioner shall study all reasonably ascertainable alternatives for management of the residue, including use as cover material at solid waste disposal facilities, use in manufacture of refuse-derived fuel, and any other resource recovery management technique.

History: *1993 c 172 s 61*

115A.912 WASTE TIRE MANAGEMENT.

Subdivision 1. **Purpose.** Money appropriated to the agency for waste tire management may be spent for regulation of permitted waste tire facilities, research and studies to determine the technical and economic feasibility of uses for tire-derived products, and public education on waste tire management.

Subd. 2. [Repealed, 1Sp2001 c 2 s 162] Subd. 3. [Repealed, 1Sp2001 c 2 s 162]

Subd. 4. **Waste tire materials; prohibition.** Materials derived from waste tires may not be used as lightweight fill in the construction of public roads in the state unless the construction plan is prepared by a professional engineer experienced in the geotechnical field and licensed in the state of Minnesota. The plan shall include, but not be limited to, the location, duration, and length of the project, the depth of fill, the depth of cover, the size of waste tire pieces, the plan for encapsulating the waste tire pieces, and the fire protection plan. All engineering specifications must be consistent with the current lightweight tire fill engineering practices as developed for roadways by the Minnesota Department of Transportation.

History: *1984 c 654 art 2 s 97; 1988 c 685 s 14; 1989 c 335 art 1 s 269; 1997 c 216 s 96; 1999 c 73 s 5; 1Sp2001 c 2 s 126; 2002 c 382 art 1 s 2*

115A.913 [Repealed, 2002 c 382 art 1 s 6]

115A.914 ADMINISTRATION; COUNTY PLANNING AND ORDINANCES.

Subdivision 1. **Regulatory and enforcement powers.** For purposes of implementing and enforcing the waste tire programs in sections 115A.90 to 115A.914, the agency may exercise the regulatory and enforcement powers of the agency under chapters 115 and 116.

Subd. 2. **Agency rules.** The agency shall adopt rules for administration of waste tire collector and processor permits and waste tire collection.

Subd. 3. **County planning; ordinances.** Counties shall include collection and processing of waste tires in the solid waste management plan prepared under sections 115A.42 to 115A.46 and shall adopt ordinances under sections 400.16 and 473.811 for management of waste tires that embody, but may be more restrictive than, agency rules.

History: *1984 c 654 art 2 s 98; 1Sp1985 c 13 s 232; 1988 c 685 s 16; 1989 c 335 art 1 s 269; 1999 c 73 s 5; 1Sp2001 c 2 s 127*

115A.915 LEAD ACID BATTERIES; LAND DISPOSAL PROHIBITED.

A person may not place a lead acid battery in mixed municipal solid waste or dispose of a lead acid battery after January 1, 1988. A person who violates this section is guilty of a misdemeanor. This section may be enforced by the agency pursuant to sections 115.071 and 116.072.

History: *1987 c 348 s 24; 1Sp1989 c 1 art 20 s 6; 1991 c 347 art 1 s 18*

115A.9152 TRANSPORTATION OF USED LEAD ACID BATTERIES.

(a) A person who transports used lead acid batteries from a retailer must deliver the batteries to a recycling facility.

(b) A person who violates paragraph (a) is guilty of a misdemeanor. The failure to deliver each used lead acid battery to a recycler is a separate violation.

History: *1Sp1989 c 1 art 20 s 7*

115A.9155 DISPOSAL OF CERTAIN DRY CELL BATTERIES.

Subdivision 1. **Prohibition.** A person may not place in mixed municipal solid waste a dry cell battery containing mercuric oxide electrode, silver oxide electrode, nickel-cadmium, or sealed lead-acid that was purchased for use or used by a government agency, or an industrial, communications, or medical facility.

Subd. 2. **Manufacturer responsibility.** (a) A manufacturer of batteries subject to subdivision 1 shall:

(1) ensure that a system for the proper collection, transportation, and processing of waste batteries exists for purchasers in Minnesota; and

(2) clearly inform each final purchaser of the prohibition on disposal of waste batteries and of the system or systems for proper collection, transportation, and processing of waste batteries available to the purchaser.

(b) To ensure that a system for the proper collection, transportation, and processing of waste batteries exists, a manufacturer shall:

(1) identify collectors, transporters, and processors for the waste batteries and contract or otherwise expressly agree with a person or persons for the proper collection, transportation, and processing of the waste batteries; or

(2) accept waste batteries returned to its manufacturing facility.

(c) At the time of sale of a battery subject to subdivision 1, a manufacturer shall provide in a clear and conspicuous manner a telephone number that the final consumer of the battery can call to obtain information on specific procedures to follow in returning the battery for recycling or proper disposal.

The manufacturer may include the telephone number and notice of return procedures on an invoice or other transaction document held by the purchaser. The manufacturer shall provide the telephone number to the commissioner of the agency.

(d) A manufacturer shall ensure that the cost of proper collection, transportation, and processing of the waste batteries is included in the sales transaction or agreement between the manufacturer and any purchaser.

(e) A manufacturer that has complied with this subdivision is not liable under subdivision 1 for improper disposal by a person other than the manufacturer of waste batteries.

History: *1990 c 409 s 1; 1991 c 257 s 1*

115A.9157 RECHARGEABLE BATTERIES AND PRODUCTS.

Subdivision 1. **Definition.** For the purpose of this section, "rechargeable battery" means a sealed nickel-cadmium battery, a sealed lead acid battery, or any other rechargeable battery, except a rechargeable battery governed by section 115A.9155 or exempted by the commissioner under subdivision 9.

Subd. 2. **Prohibition.** Effective August 1, 1991, a person may not place in mixed municipal solid waste a rechargeable battery, a rechargeable battery pack, a product with a nonremovable rechargeable battery, or a product powered by rechargeable batteries or rechargeable battery pack, from which all batteries or battery packs have not been removed.

Subd. 3. **Collection and management costs.** A manufacturer of rechargeable batteries or products powered by rechargeable batteries is responsible for the costs of collecting and managing its waste rechargeable batteries and waste products to ensure that the batteries are not part of the solid waste stream.

Subd. 4. [Repealed, 2007 c 13 art 2 s 7]

Subd. 5. **Collection and management programs.** By September 20, 1995, the manufacturers or their representative organization shall implement permanent programs, based on the results of the pilot projects required in Minnesota Statutes 1994, section 115A.9157, subdivision 4, that may be reasonably expected to collect 90 percent of the waste rechargeable batteries and the participating manufacturers' products powered by rechargeable batteries that are generated in the state. The batteries and products collected must be recycled or otherwise managed or disposed of properly.

In every odd-numbered year after 1995, each manufacturer or a representative organization shall provide information to the senate and house of representatives committees having jurisdiction over environment and natural resources and environment and natural resources finance that specifies at least the estimated amount of rechargeable batteries subject to this section sold in the state by each manufacturer and the amount of batteries each collected during the previous two years. A representative organization may report the amounts in aggregate for all the members of the organization.

Subd. 6. **List of participants.** A manufacturer or its representative organization shall inform the committees listed in subdivision 5 when they begin participating in the projects and programs and immediately if they withdraw participation.

Subd. 7. **Contracts.** A manufacturer or a representative organization of manufacturers may contract with the state or a political subdivision to provide collection services under this section. The manufacturer or organization shall fully reimburse the state or political subdivision for the value of any contractual services rendered under this subdivision.

Subd. 8. **Anticompetitive conduct.** A manufacturer or organization of manufacturers and its officers, members, employees, and agents who participate in projects or programs to collect and properly manage waste rechargeable batteries or products powered by rechargeable batteries are immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for activities related to the collection and management of batteries and products required under this section.

Subd. 9. **Exemptions.** To ensure that new types of batteries do not add additional hazardous or toxic materials to the mixed municipal solid waste stream, the commissioner of the agency may exempt a new type of rechargeable battery from the requirements of this section if it poses no unreasonable hazard when placed in and processed or disposed of as part of a mixed municipal solid waste.

History: *1991 c 257 s 2; 1992 c 593 art 1 s 23,24; 1994 c 585 s 17,18; 1996 c 470 s 27; 2002 c 379 art 1 s 31; 1Sp2005 c 1 art 2 s 161; 2007 c 13 art 1 s 8*

115A.916 MOTOR VEHICLE FLUIDS AND FILTERS; PROHIBITIONS.

(a) A person may not knowingly place motor oil, brake fluid, power steering fluid, transmission fluid, motor oil filters, or motor vehicle antifreeze:

(1) in solid waste or in a solid waste management facility other than a recycling facility or a household hazardous waste collection facility;

(2) in or on the land, unless approved by the agency; or

(3) in or on the waters of the state, in a subsurface sewage treatment system as defined in section 115.55, or in a storm water or wastewater collection or treatment system except as described in paragraph (c).

(b) For the purposes of this section, "antifreeze" does not include small amounts of antifreeze contained in water used to flush the cooling system of a vehicle after the antifreeze has been drained and does not include deicer that has been used on the exterior of a vehicle.

(c) A person may place waste motor vehicle antifreeze in a wastewater collection or treatment system permitted by the agency, unless prohibited by the operator of the system, if the person:

(1) generates an annual average of less than 50 gallons per month of waste motor vehicle antifreeze; and

(2) keeps records of the amount of waste antifreeze generated. Records must be maintained on site and made available for inspection for a minimum of three years following generation of the waste antifreeze.

(d) Notwithstanding paragraph (a), motor oil filters and portions of motor oil filters may be processed at a permitted mixed municipal solid waste resource recovery facility that directly burns the waste if:

(1) the facility is subject to an industrial waste management plan that addresses management of motor oil filters and the owner or operator of the facility can demonstrate to the satisfaction of the commissioner that the facility is in compliance with that plan;

(2) the facility recovers ferrous metal after incineration for recycling as part of its operation;

and

(3) the motor oil filters are collected separately from mixed municipal solid waste and are not combined with it except for the purpose of incinerating the waste.

(e) The commissioner of the Pollution Control Agency, in conjunction with industry organizations representing automotive repair businesses and antifreeze recycling businesses and environmental organizations shall work together to develop and promote opportunities to recycle waste motor vehicle antifreeze and to review the impact of alternative antifreeze disposal or recycling methods on businesses and the environment.

History: *1987 c 348 s 25; 1988 c 685 s 17; 1991 c 347 art 1 s 18; 1993 c 249 s 16; 1994 c 585 s 19; 1996 c 470 s 9; 1997 c 216 s 97; 1998 c 379 s 2; 1Sp2005 c 1 art 2 s 161; 2009 c 109 s 14*

115A.9162 [Repealed, 1996 c 470 s 29]

NEW DISPOSAL FACILITIES; CERTIFICATE OF NEED

115A.917 CERTIFICATE OF NEED.

No new capacity for disposal of mixed municipal solid waste may be permitted in counties outside the metropolitan area without a certificate of need issued by the commissioner indicating the commissioner's determination that the additional disposal capacity is needed in the county. A certificate of need may not be issued until the county has a plan approved under section 115A.46. If the original plan was approved more than five years before, the commissioner may require the plan to be revised before a certificate of need is issued under this section. The commissioner shall certify need only to the extent that there are no feasible and prudent alternatives to the additional disposal capacity, including waste reduction, source separation, and resource recovery, that would minimize adverse impact upon natural resources. Alternatives that are speculative or conjectural are not feasible and prudent. Economic considerations alone do not justify the certification of need or the rejection of alternatives.

History: *1984 c 644 s 45; 1987 c 404 s 145; 1989 c 335 art 1 s 269; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161*

DISPOSAL FACILITIES; LOCAL FEE AUTHORITY

115A.918 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this section and sections 115A.919 to 115A.929.

Subd. 2. **Closure.** "Closure" means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed solid waste disposal facility including application of final cover; grading and seeding of final cover; installation of an adequate monitoring system, if necessary; and construction of ground and surface water diversion structures.

Subd. 2a. **Equivalent.** For mixed municipal solid waste, the measure of "equivalent" or "equivalent cubic yards of waste" is 3.33 cubic yards per ton of waste.

Subd. 3. **Operator.** "Operator" means:

(1) the permittee of a mixed municipal solid waste disposal facility that has an agency permit; or

(2) the person in control of a mixed municipal solid waste disposal facility that does not have an agency permit.

Subd. 4. **Postclosure, postclosure care.** "Postclosure" and "postclosure care" mean actions taken for the care, maintenance, and monitoring of a solid waste disposal facility after closure that will prevent, mitigate, or minimize the threat to public health and environment posed by the closed facility.

Subd. 5. **Response.** "Response" has the meaning given it in section 115B.02, subdivision 18.

History: *1985 c 274 s 11; 1994 c 585 s 20,21*

115A.919 COUNTY FEE AUTHORITY.

Subdivision 1. **Fee.** (a) A county may impose a fee, by cubic yard of waste or its equivalent, on operators of facilities for the disposal of mixed municipal solid waste or construction debris located within the county. The revenue from the fees shall be credited to the county general fund and shall be used only for landfill abatement purposes, or costs of closure, postclosure care, and response actions or for purposes of mitigating and compensating for the local risks, costs, and other adverse effects of facilities. The interest generated from fees imposed under this subdivision may be credited to the county general fund for use by a county for other purposes.

(b) Fees for construction debris facilities may not exceed 50 cents per cubic yard. Revenues from the fees must offset any financial assurances required by the county for a construction debris facility. The maximum revenue that may be collected for a construction debris facility must be determined by multiplying the total permitted capacity of the facility by 15 cents per cubic yard. Once the maximum revenue has been collected for a facility, the fee may no longer
be imposed. The limitation on the fees in this paragraph and in section 115A.921, subdivision
2, are not intended to alter the liability of the facility operator or the authority of the agency to impose financial assurance requirements.

Subd. 2. **Additional fee.** A county may impose a fee, by cubic yard or the equivalent of waste collected outside the county, in addition to a fee imposed under subdivision 1, on operators of mixed municipal solid waste disposal facilities located within the county. The fee may not exceed $7.50 per cubic yard or the equivalent. A person licensed to collect solid waste in a county that designates the waste under sections 115A.80 to 115A.893 who is referred to a disposal facility outside the county due to temporary closure of the designated facility is exempt from the additional fee; the designated facility is responsible for the fee. Revenue generated from the additional fee must be credited to the county general fund and may be used only for
the purposes listed in subdivision 1.

Subd. 2a. **Joint powers agreement.** If a facility is owned by a joint powers board, total fees in excess of $1 per cubic yard or equivalent may not be imposed or revenue expended under subdivision 1 or 2 without the approval of the board.

Subd. 3. **Exemptions.** (a) Waste residue from recycling facilities at which recyclable materials are separated or processed for the purpose of recycling, or from energy and resource recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste for reuse shall be exempt from any fee imposed by a county under this section if there is at least an 85 percent weight reduction in the solid waste processed. Before any fee is reduced, the verification procedures of section 473.843, subdivision 1, paragraph (c), must be followed and submitted to the appropriate county, except that for facilities operating outside of the metropolitan area the commissioner shall prescribe procedures for verifying the required 85 percent weight reduction.

(b) A facility permitted for the disposal of construction debris is exempt from 25 percent of a fee imposed under subdivision 1 if the facility has implemented a recycling program approved by the county and 25 percent if the facility contains a liner and leachate collection system approved by the agency.

History: *1984 c 644 s 46; 1985 c 274 s 12; 1988 c 685 s 19; 1989 c 325 s 18; 1991 c 337 s 37; 1994 c 585 s 22; 1995 c 247 art 1 s 21; 1996 c 470 s 10; 1996 c 471 art 13 s 3; 2003 c*
128 art 1 s 128

115A.921 CITY OR TOWN FEE AUTHORITY.

Subdivision 1. **Mixed municipal solid waste.** A city or town may impose a fee, not to exceed $1 per cubic yard of waste, or its equivalent, on operators of facilities for the disposal of mixed municipal solid waste located

within the city or town. The revenue from the fees must be credited to the city or town general fund. Revenue produced by 25 cents of the fee must be used only for purposes of landfill abatement or for purposes of mitigating and compensating for the local risks, costs, and other adverse effects of facilities. Revenue produced by the balance of the fee may be used for any general fund purpose.

Waste residue from recycling facilities at which recyclable materials are separated or processed for the purpose of recycling, or from energy and resource recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste for reuse shall be exempt from the fee imposed by a city
or town under this section if there is at least an 85 percent weight reduction in the solid waste processed. Before any fee is reduced, the verification procedures of section 473.843, subdivision
1, paragraph (c), must be followed and submitted to the appropriate city or town, except that for facilities operating outside of the metropolitan area the commissioner shall prescribe procedures for verifying the required 85 percent weight reduction.

Subd. 2. **Construction debris.** (a) A city or town may impose a fee, not to exceed 50 cents per cubic yard of waste, or its equivalent, on operators of facilities for the disposal of construction debris located within the city or town. The revenue from the fees must be credited tothe city or town general fund. Two-thirds of the revenue must be used only for purposes of landfill abatement or for purposes of mitigating and compensating for the local risks, costs, and other adverse effects resulting from the facilities.

(b) A facility permitted for the disposal of construction debris is exempt from 25 percent of a fee imposed under this subdivision if the facility has implemented a recycling program that has been approved by the county and 25 percent if the facility contains a liner and leachate collection system approved by the agency.

(c) Two-thirds of the revenue from fees collected under this subdivision must offset any financial assurances required by the city or town for a construction debris facility.

(d) The maximum revenue that may be collected under this subdivision must be determined by multiplying the total permitted capacity of a facility by 15 cents per cubic yard. Once the maximum revenue has been collected for a facility, the fees in this subdivision may no longer be imposed.

History: *1984 c 644 s 47; 1987 c 348 s 26; 1988 c 685 s 20; 1989 c 325 s 19; 1991 c 337 s 38; 1994 c 585 s 23; 1995 c 247 art 1 s 22*

115A.922 [Repealed, 1990 c 604 art 10 s 32]

115A.923 GREATER MINNESOTA LANDFILL CLEANUP FEE.

Subdivision 1. **Amount of fee.** (a) The operator of a mixed municipal solid waste disposal facility outside of the metropolitan area shall charge a fee on solid waste accepted and disposed of at the facility as follows:

(1) a facility that weighs the waste that it accepts must charge a fee of $2 per cubic yard based on equivalent cubic yards of waste accepted at the entrance of the facility;

(2) a facility that does not weigh the waste but that measures the volume of the waste that it accepts must charge a fee of $2 per cubic yard of waste accepted at the entrance of the facility; and

(3) waste residue from recycling facilities at which recyclable materials are separated or processed for the purpose of recycling, or from energy and resource recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste for reuse is exempt from the fee imposed by this subdivision if there is at least an 85 percent weight reduction in the solid waste processed.

(b) To qualify for exemption under paragraph (a), clause (3), waste residue must be brought to a disposal facility separately. The commissioner shall prescribe procedures for determining the amount of waste residue qualifying for exemption.

Subd. 1a. **Payment of greater Minnesota landfill cleanup fee.** The operator of a disposal facility in greater Minnesota shall remit the fees collected under subdivision 1 to the county or sanitary district where the facility is located, except that the operator of a facility that is owned by a statutory or home rule city shall remit the fees to the city that owns the facility and the operator of a facility that is owned by a joint powers board shall remit the fees to the board. The county, city, joint powers board, or sanitary district may use the revenue from the fees only for the purposes specified in section 115A.919.

Subd. 2. [Repealed, 1990 c 604 art 10 s 32] Subd. 3. [Repealed, 1990 c 604 art 10 s 32] Subd. 4. [Repealed, 1990 c 604 art 10 s 32]

Subd. 5. [Repealed, 1990 c 604 art 10 s 32] Subd. 6. [Repealed, 1994 c 416 art 4 s 5]

History: *1989 c 325 s 21; 1990 c 604 art 10 s 26; 1991 c 337 s 39,40; 1994 c 416 art 4 s 1; 1995 c 247 art 1 s 23; 1996 c 470 s 11; 1996 c 471 art 13 s 4*

115A.924 [Repealed, 1990 c 604 art 10 s 32]

115A.925 [Repealed, 1990 c 604 art 10 s 32]

115A.927 [Repealed, 1990 c 604 art 10 s 32]

115A.928 [Repealed, 1990 c 604 art 10 s 32]

115A.929 FEES; ACCOUNTING.

Each political subdivision that provides for solid waste management shall account for all revenue collected from waste management fees, together with interest earned on revenue from the fees, separately from other revenue collected by the political subdivision and shall report revenue collected from the fees and use of the revenue separately from other revenue and use of revenue in any required financial report or audit. For the purposes of this section, "waste management fees" means:

(1) all fees, charges, and surcharges collected under sections 115A.919, 115A.921, and 115A.923;

(2) all tipping fees collected at waste management facilities owned or operated by the political subdivision;

(3) all charges imposed by the political subdivision for waste collection and management services; and

(4) any other fees, charges, or surcharges imposed on waste or for the purpose of waste management, whether collected directly from generators or indirectly through property taxes or as part of utility or other charges for services provided by the political subdivision.

History: *1991 c 337 s 41; 1993 c 249 s 17; 1994 c 585 s 24; 1Sp2003 c 1 art 2 s 63; 1Sp2005 c 1 art 2 s 131*

SOLID WASTE COLLECTION REQUIREMENTS

115A.93 LICENSING OF SOLID WASTE COLLECTION.

Subdivision 1. **License required.** A person may not collect mixed municipal solid waste for hire without a license from the jurisdiction where the mixed municipal solid waste is collected.

Subd. 2. **Licensing.** (a) Each city and town may issue licenses for persons to collect mixed municipal solid waste for hire within their jurisdictions.

(b) County boards shall by resolution adopt the licensing authority of a city or town that does not issue licenses. A county may delegate its licensing authority to a consortium of counties or to municipalities to license collection of mixed municipal solid waste within the county.

Subd. 3. **License requirements; pricing based on volume or weight.** (a) A licensing authority shall require licensees to impose charges for collection of mixed municipal solid waste that increase with the volume or weight of the waste collected.

(b) A licensing authority may impose requirements that are consistent with the county's solid waste policies as a condition of receiving and maintaining a license.

(c) A licensing authority shall prohibit mixed municipal solid waste collectors from imposing a greater charge on residents who recycle than on residents who do not recycle.

(d) The commissioner may exempt a licensing authority from the requirements of paragraph (a) if the county within which the authority is located has an approved solid waste management plan that concludes that variable rate pricing is not appropriate for that jurisdiction because it
is inconsistent with other incentives and mechanisms implemented within the jurisdiction that are more effective in attaining the goals of this chapter to discourage on-site disposal, littering, and illegal dumping.

(e) In the interim between revisions to the county solid waste management plan, the commissioner may exempt a licensing authority from the requirements of paragraph (a) if the commissioner makes the determination otherwise made by the plan in paragraph (d) and finds that the licensing authority:

(1) operates or contracts for the operation of a residential recycling program that collects more categories of recyclable materials than required in section 115A.552;

(2) has a residential participation rate in its recycling programs of at least 70 percent or in excess of the participation rate for the county in which it is located, whichever is greater; and

(3) is located in a county that has exceeded the recycling goals in section 115A.551.

An exemption granted by the commissioner in the interim between revisions to the county solid waste management plan is only effective until the county solid waste management plan is revised.

Subd. 3a. **Volume requirement.** A licensing authority that requires a pricing system based on volume instead of weight under subdivision 3 shall determine a base unit size for an average small quantity household generator and establish, or require the licensee to establish, a multiple unit pricing system that ensures that amounts of waste generated in excess of the base unit amount are priced higher than the base unit price.

Subd. 4. **Date certain.** By January 1, 1993, each county shall ensure that each city or town within the county requires each mixed municipal solid waste collector that provides curbside collection service in the city or town to obtain a license under this section or the county shall directly require and issue the licenses. No person may collect mixed municipal solid waste after January 1, 1993, without a license.

Subd. 5. **Customer data.** Customer lists provided to counties or cities by solid waste collectors are private data on individuals as defined in section 13.02, subdivision 12, with regard to data on individuals, or nonpublic data as defined in section 13.02, subdivision 9, with regard to data not on individuals.

History: *1Sp1989 c 1 art 20 s 8; 1991 c 337 s 42,43; 1992 c 593 art 1 s 25,26; 1993 c 351 s 23; 1996 c 470 s 12; 1Sp2005 c 1 art 2 s 161*

115A.9301 SOLID WASTE COLLECTION; VOLUME- OR WEIGHT-BASED PRICING.

Subdivision 1. **Requirement.** A local government unit that collects charges for solid waste collection directly from waste generators shall implement charges that increase as the volume or weight of the waste collected on-site from each generator's residence or place of business increases.

Subd. 2. **Volume requirement.** If a local government unit implements a pricing system based on volume instead of weight under subdivision 1, it shall determine a base unit size for an average small quantity household generator and establish a multiple unit pricing system that ensures that amounts of waste generated in excess of the base unit amount are priced higher than the base unit price.

Subd. 3. **Alternative.** A local government unit may satisfy the requirements of this section by establishing at least three price categories for collection of household mixed municipal solid waste to include, for households that generate small volumes of waste, a waste collection unit that is smaller than and priced lower than for other generators if the local government unit:

(1) operates or contracts for the operation of a residential recycling program that collects more categories of recyclable materials than required in section 115A.552;

(2) has a residential participation rate in its recycling programs of at least 70 percent or in excess of the participation rate for the county in which it is located, whichever is greater;

(3) is located in a county that has exceeded the recycling goals in section 115A.551; and

(4) generates, by all waste generators in the city, an amount of mixed municipal solid waste that is managed by incineration, production of refuse-derived fuel, mixed municipal solid waste composting, or disposal that is no greater, in proportion to the total amount of waste managed as listed above by all waste generators in the county in which the city is located, than it was for calendar year 1993.

Subd. 4. **Exemption.** (a) The commissioner may exempt a local government unit from the requirements of subdivision 1 if the county within which the local government unit is located has an approved solid waste management plan that concludes that variable rate pricing is not appropriate for that jurisdiction because it is inconsistent with other incentives and mechanisms implemented within the jurisdiction that are more effective in attaining the goals of this chapter to discourage on-site disposal, littering, and illegal dumping.

(b) In the interim between revisions to the county solid waste management plan, the commissioner may exempt a local government unit from the requirements of subdivision 1 if the commissioner makes the determination otherwise made by the plan in paragraph (a) and finds that the local government unit:

(1) operates or contracts for the operation of a residential recycling program that collects more categories of recyclable materials than required in section 115A.552;

(2) has a residential participation rate in its recycling programs of at least 70 percent or in excess of the participation rate for the county in which it is located, whichever is greater; and

(3) is located in a county that has exceeded the recycling goals in section 115A.551.

An exemption granted by the commissioner in the interim between revisions to the county solid waste management plan is only effective until the county solid waste management plan is revised.

History: *1992 c 593 art 1 s 27; 1994 c 585 s 25; 1996 c 470 s 13; 1Sp2005 c 1 art 2 s 161*

115A.9302 WASTE DEPOSIT DISCLOSURE.

Subdivision 1. **Disclosure required.** (a) By January 1, 1994, and at least annually thereafter between January 1 and March 31, a person that collects construction debris, industrial waste, or mixed municipal solid waste for transportation to a waste facility shall disclose to each waste generator from whom waste is collected the name, location, and type of, and the number of the permit issued by the agency, or its counterpart in another state, if applicable, for the processing or

disposal facility or facilities, excluding a transfer station, at which the waste will be deposited. The collector shall note the approximate percentage of waste deposited at each of the two primary facilities used for the type of waste collected from the generator in the county in which the generator generates the waste and any alternative facilities regularly used by the collector
for the type of waste collected from the generator in the county in which the generator generates the waste.

(b) All written disclosures must include the following statement:

"You may be responsible for any liability that results from contamination at a facility where your waste has been deposited. Minnesota believes that its waste management system provides substantially more financial and environmental protection than depositing waste in landfills in other states. Managing your waste in Minnesota may minimize your potential liability."

All oral disclosures must include the following statement:

"You may be responsible for any liability that results from contamination at a facility where your waste has been deposited. Minnesota believes that its waste management system offers more protection from liability than the waste management systems of other states."

(c) If any of the primary or alternative disposal facilities identified by the collector in paragraph (a) are not located in Minnesota, the disclosure must state "The landfill to which your waste may be sent during the current calendar year is not a Minnesota landfill."

Subd. 2. **Form of disclosure.** (a) A collector shall make the disclosure to the waste generator in writing at least once per year between January 1 and March 31 and on any written contract
for collection services for that year. The written disclosure must include all of the information described in subdivision 1. The oral disclosure required in this section need only include the statement required in subdivision 1, paragraph (b), and the statement required in subdivision 1, paragraph (c), if that paragraph applies. If the license issued by the county to the collector for collection within the county does not require the collector to submit a copy of the disclosure to the county, the collector shall submit a copy to the commissioner by March 31 of each year.

(b) An oral disclosure is only required with regard to the collection of mixed municipal solid waste. A collector must provide the required disclosure orally to a waste generator at
the time the generator agrees to purchase regular collection service and must provide written disclosure to the generator within 45 days from the date of request. This oral disclosure is not required if the city or county within which the waste is generated selects the collector that may provide collection services to the generator.

(c) If a collector provides onetime or occasional service to a waste generator, the collector must orally provide the generator with the required disclosure at the time the generator agrees to purchase the service. The collector shall then provide written disclosure to the generator within
45 days from the date of request.

(d) If an additional facility becomes either a primary facility or an alternative facility during the year, the collector shall make the disclosure set forth in subdivision 1 within 30 days. A
local government unit that collects solid waste without direct charges to waste generators shall make the disclosure on any statement that includes an amount for waste management, provided that, at a minimum, disclosure to waste generators must be made at least twice annually in a form likely to be available to all generators.

(e) The agency may develop standard disclosure forms containing the information that is required in this section. Collectors may use the form developed by the agency.

Subd. 3. **Transfer stations.** If the collector deposits waste at a transfer station, the collector need not disclose the name and location of the transfer station but must disclose the destination of the waste when it leaves the transfer station. **History:** *1993 c 249 s 18; 1995 c 247 art 1 s 24,25*

PROHIBITIONS: YARD WASTE, MERCURY, AND SOLID WASTE IMPORTATION

115A.931 YARD WASTE PROHIBITION.

(a) Except as authorized by the agency, in the metropolitan area after January 1, 1990, and outside the metropolitan area after January 1, 1992, a person may not place yard waste:

(1) in mixed municipal solid waste; (2) in a disposal facility; or

(3) in a resource recovery facility except for the purposes of reuse, composting, or cocomposting.

(b) MS 2008 [Renumbered 115A.03, subd 38]

(c) On or after January 1, 2010, a person may not place yard waste or source-separated compostable materials generated in a metropolitan county in a plastic bag delivered to a transfer station or compost facility unless the bag meets all the specifications in ASTM Standard Specification for Compostable Plastics (D6400). For purposes of this paragraph, "metropolitan county" has the meaning given in section 473.121, subdivision 4, and "ASTM" has the meaning given in section 296A.01, subdivision 6.

(d) A person who immediately empties a plastic bag containing yard waste or source-separated compostable materials delivered to a transfer station or compost facility and removes the plastic bag from the transfer station or compost facility is exempt from paragraph (c).

(e) Residents of a city of the first class that currently contracts for the collection of yard waste are exempt from paragraph (c) until January 1, 2013, if, by that date, the city implements a citywide source-separated compostable materials collection program using durable carts.

History: *1988 c 685 s 21; 1991 c 337 s 44; 1992 c 593 art 1 s 28; 1995 c 247 art 1 s 66; 2009 c 37 art 1 s 44*

115A.932 MERCURY PROHIBITION.

Subdivision 1. **Prohibitions and recycling requirements.** (a) A person may not place mercury or a thermostat, thermometer, electric switch, appliance, gauge, medical or scientific instrument, fluorescent or high-intensity discharge lamp, electric relay, or other electrical device from which the mercury has not been removed for reuse or recycling:

(1) in solid waste; or

(2) in a wastewater disposal system.

(b) A person may not knowingly place mercury or a thermostat, thermometer, electric switch, appliance, gauge, medical or scientific instrument, fluorescent or high-intensity discharge lamp, electric relay, or other electrical device from which the mercury has not been removed for reuse or recycling:

(1) in a solid waste processing facility; or

(2) in a solid waste disposal facility.

(c) A fluorescent or high-intensity discharge lamp must be recycled by delivery of the lamp to a lamp recycling facility, as defined in section 116.93, subdivision 1, or to a facility that collects and stores lamps for the purpose of delivering them to a lamp recycling facility, including, but not limited to, a household hazardous waste collection or recycling facility, retailer take-back and utility provider program sites, or other sites designated by an electric utility under section 216B.241, subdivisions 2 and 4.

Subd. 2. **Enforcement.** (a) Except as provided in paragraph (b), a violation of subdivision 1 is subject to enforcement under sections 115.071 and 116.072.

(b) A violation of subdivision 1 by a generator of household hazardous waste, as defined in section 115A.96, is not subject to enforcement under section 115.071, subdivision 3.

(c) An administrative penalty imposed under section 116.072 for a violation of subdivision 1 by a generator of household hazardous waste, as defined in section 115A.96, may not exceed $700.

History: *1992 c 560 s 1; 1993 c 249 s 19; 1997 c 62 s 1; 1997 c 216 s 98; 2007 c 109 s 1; 2010 c 382 s 18*

115A.935 SOLID WASTE GENERATED OUTSIDE OF MINNESOTA.

No person shall transport into or deposit in this state, for the purpose of processing or disposal, solid waste that was generated in another state, unless the waste:

(1) meets all the solid waste management regulations of the state in which it was generated; and

(2) contains none of the items specifically banned from mixed municip al solid waste in this state, including waste tires, motor and vehicle fluids and filters, waste lead acid batteries, yard waste, major appliances, and any other item specifically banned from the waste stream under this chapter.

History: *1991 c 337 s 45; 1993 c 249 s 61*

115A.936 CONSTRUCTION DEBRIS AS COVER MATERIAL PROHIBITED.

(a) Construction debris or residuals from processed construction debris containing any amount of gypsum shall not be managed as cover material at disposal facilities unless:

(1) residual material is managed in an industrial or construction and demolition disposal facility equipped with a liner and leachate collection system;

(2) residual material is not mechanically pulverized or size-reduced prior to processing, screening, or application;

(3) a maximum effort is made to remove gypsum from the waste prior to processing, screening, or application;

(4) residual material is mixed at a ratio of one part soil to one part residual material prior to application; and

(5) the disposal facility does not accept any amount of cover material greater than what is operationally necessary.

(b) For the purposes of this section, "residual material" means construction debris or residuals from processed construction debris containing any amount of gypsum.

History: *2008 c 300 s 2*

ORGANIZED AND MANDATORY COLLECTION

115A.94 ORGANIZED COLLECTION.

Subdivision 1. **Definition.** "Organized collection" means a system for collecting solid waste in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste that is released by generators for collection.

Subd. 2. **Local authority.** A city or town may organize collection, after public notification and hearing as required in subdivisions 4a to 4d. A county may organize collection as provided in subdivision 5. A city or town that has organized collection as of May 1, 2013, is exempt from subdivisions 4a to 4d.

Subd. 3. **General provisions.** (a) The local government unit may organize collection as a municipal service or by ordinance, franchise, license, negotiated or bidded contract, or other means, using one or more collectors or an organization of collectors.

(b) The local government unit may not establish or administer organized collection in a manner that impairs the preservation and development of recycling and markets for recyclable materials. The local government unit shall exempt recyclable materials from organized collection upon a showing by the generator or collector that the materials are or will be separated from mixed municipal solid waste by the generator, separately collected, and delivered for reuse in their original form or for use in a manufacturing process.

(c) The local government unit shall invite and employ the assistance of interested persons, including persons licensed to operate solid waste collection services in the local government unit, in developing plans and proposals for organized collection and in establishing the organized collection system.

(d) Organized collection accomplished by contract or as a municipal service may include a requirement that all or any portion of the solid waste, except (1) recyclable materials and (2) materials that are processed at a resource recovery facility at the capacity in operation at the time that the requirement is imposed, be delivered to a waste facility identified by the local government unit. In a district or county where a resource recovery facility has been designated by ordinance under section 115A.86, organized collection must conform to the requirements of the designation ordinance.

Subd. 4. [Repealed, 2013 c 45 s 7]

Subd. 4a. **Committee establishment.** (a) Before implementing an ordinance, franchise, license, contract, or other means of organizing collection, a city or town, by resolution of the governing body, must establish an organized collection options committee to identify, examine, and evaluate various methods of organized collection. The governing body shall appoint the committee members.

(b) The organized collection options committee is subject to chapter 13D.

Subd. 4b. **Committee duties.** The committee established under subdivision 4a shall: (1) determine which methods of organized collection to examine, which must include:

(i) a system in which a single collector collects solid waste from all sections of a city or town; and

(ii) a system in which multiple collectors, either singly or as members of an organization of collectors, collect solid waste from different sections of a city or town;

(2) establish a list of criteria on which the organized collection methods selected for examination will be evaluated, which may include: costs to residential subscribers, miles driven by collection vehicles on city streets and alleys, initial and operating costs to the city of implementing the organized collection system, providing incentives for waste reduction, impacts on solid waste collectors, and other physical, economic, fiscal, social, environmental, and aesthetic impacts;

(3) collect information regarding the operation and efficacy of existing methods of organized collection in other cities and towns;

(4) seek input from, at a minimum:

(i) the governing body of the city or town;

(ii) the local official of the city or town responsible for solid waste issues;

(iii) persons currently licensed to operate solid waste collection and recycling services in the city or town; and

(iv) residents of the city or town who currently pay for residential solid waste collection services; and

(5) issue a report on the committee's research, findings, and any recommendations to the governing body of the city or town.

Subd. 4c. **Governing body; implementation.** The governing body of the city or town shall consider the report and recommendations of the organized collection options committee. The governing body must provide public notice and hold at least one public hearing before deciding whether to implement organized collection.

Organized collection may begin no sooner than six months after the effective date of the decision of the governing body of the city or town to implement organized collection.

Subd. 4d. **Participating collectors proposal requirement.** Prior to establishing a committee under subdivision 4a to consider organizing residential solid waste collection, a city or town with more than one licensed collector must notify the public and all licensed collectors in the community. The city or town must provide a 60-day period in which meetings and negotiations shall occur exclusively between licensed collectors and the city or town to develop a proposal
in which interested licensed collectors, as members of an organization of collectors, collect solid waste from designated sections of the city or town. The proposal shall include identified city or town priorities, including issues related to zone creation, traffic, safety, environmental performance, service provided, and price, and shall reflect existing haulers maintaining their
respective market share of business as determined by each hauler's average customer count during the six months prior to the commencement of the 60-day negotiation period. If an existing hauler opts to be excluded from the proposal, the city may allocate their customers proportionally based on market share to the participating collectors who choose to negotiate. The initial organized collection agreement executed under this subdivision must be for a period of three to seven years. Upon execution of an agreement between the participating licensed collectors and city or town, the city or town shall establish organized collection through appropriate local controls and is not required to fulfill the requirements of subdivisions 4a, 4b, and 4c, except that the governing body must provide the public notification and hearing required under subdivision 4c.

Subd. 5. **County organized collection.** (a) A county may by ordinance require cities and towns within the county to organize collection. Organized collection ordinances of counties may:

(1) require cities and towns to require the separation and separate collection of recyclable materials;

(2) specify the material to be separated; and

(3) require cities and towns to meet any performance standards for source separation that are contained in the county solid waste plan.

(b) A county may itself organize collection under subdivisions 4a to 4d in any city or town that does not comply with a county organized collection ordinance adopted under this subdivision, and the county may implement, as part of its organized collection, the source separation program and performance standards required by its organized collection ordinance.

Subd. 6. **Organized collection not required or prevented.** (a) The authority granted in this section to organize solid waste collection is optional and is in addition to authority to govern solid waste collection granted by other law.

(b) Except as provided in subdivision 5, a city, town, or county is not: (1) required to organize collection; or

(2) prevented from organizing collection of solid waste or recyclable material.

(c) Except as provided in subdivision 5, a city, town, or county may exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste.

Subd. 7. **Anticompetitive conduct.** (a) A political subdivision that organizes collection under this section is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized collection system and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

(b) An organization of solid waste collectors, an individual collector, and their officers, members, employees, and agents who cooperate with a political subdivision that organizes collection under this section are authorized to

engage in anticompetitive conduct to the extent necessary to plan and implement the organized collection system, provided that the political subdivision actively supervises the participation of each entity. An organization, entity, or person covered by this paragraph is immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

History: *1987 c 348 s 27; 1989 c 325 s 26,27; 1990 c 600 s 1,2; 1991 c 337 s 46; 1993 c 249 s 20,21; 2013 c 45 s 1-6*

115A.941 SOLID WASTE; REQUIRED COLLECTION.

(a) Except as provided in paragraph (b), each city, and town described in section 368.01, with a population of 1,000 or more, and any other town with a population of 5,000 or more shall ensure that every residential household and business in the city or town has solid waste collection service. To comply with this section, a city or town may organize collection, provide collection, or require by ordinance that every household and business has a contract for collection services. An ordinance adopted under this section must provide for enforcement.

(b) A city or town described in paragraph (a) may exempt a residential household or business in the city or town from the requirement to have solid waste collection service if the household or business ensures that an environmentally sound alternative is used.

(c) To the extent practicable, the costs incurred by a city or town under this section must be incorporated into the collection system or the enforcement mechanisms adopted under this section by the city or town.

History: *1991 c 337 s 47; 1993 c 249 s 22*

VISIBLE COSTS

115A.945 VISIBLE SOLID WASTE MANAGEMENT COSTS.

Any political subdivision that provides or pays for the costs of collection or disposal of solid waste shall, through a billing or other system, make the prorated share of those costs for each solid waste generator visible and obvious to the generator.

History: *1Sp1989 c 1 art 20 s 9*

RECYCLABLE MATERIALS PROHIBITED FROM CERTAIN FACILITIES

115A.95 RECYCLABLE MATERIALS.

(a) Recyclable materials must be delivered to the appropriate materials processing facility as outlined in rules of the agency or any other facility permitted to recycle or compost the materials.

(b) A disposal facility or a resource recovery facility that is composting mixed municipal solid waste, burning waste, or converting waste to energy or to materials for combustion may not accept source-separated recyclable materials, and a solid waste collector or transporter may not deliver source-separated recyclable materials to such a facility, except for recycling or transfer
to a recycler, unless the commissioner determines that no other person is willing to accept the recyclable materials.

History: *1985 c 274 s 13; 1987 c 348 s 28; 1994 c 585 s 26; 1Sp2005 c 1 art 2 s 161; 2011 c 107 s 82*

TELEPHONE DIRECTORIES

115A.951 TELEPHONE DIRECTORIES.

Subdivision 1. **Definition.** For the purposes of this section, a "telephone directory" means a printed list of residential, governmental, or commercial telephone service subscribers or users, or a combination of subscribers or users, that contains more than 7,500 listings and is distributed
to the subscribers or users.

Subd. 2. **Prohibition.** A person may not place a telephone directory: (1) in solid waste;

(2) in a disposal facility; or

(3) in a resource recovery facility, except a recycling facility.

Subd. 3. **Recyclability.** A person may not distribute a telephone directory to any person in this state unless the telephone directory:

(1) is printed on paper that is recyclable;

(2) is printed with inks that contain no heavy metals or other toxic materials; and

(3) is bound with materials that pose no unreasonable barriers to recycling of the directory.

Subd. 4. **Collection of used directories.** Each publisher or distributor of telephone directories shall:

(1) provide for the collection and delivery to a recycler of waste telephone directories; (2) inform recipients of directories of the collection system; and

(3) submit a report to the agency by August 1 of each year that specifies the percentage of distributed directories collected as waste directories by distribution area and the locations where the waste directories were delivered for recycling and that verifies that the directories have been recycled.

History: *1992 c 593 art 1 s 29; 1995 c 247 art 2 s 20; 1Sp2005 c 1 art 2 s 161*

PROBLEM MATERIALS

115A.952 RETAIL SALE OF PROBLEM MATERIALS; UNIFORM LABELING AND CONSUMER INFORMATION.

Subdivision 1. **Duties of agency; rules.** The agency may adopt rules to identify products that are used primarily for personal, family, or household purposes and that constitute a problem material or contain a problem material as defined in section 115A.03, subdivision 24a. The rules may also prescribe a uniform label to be affixed by retailers of identified products as provided in subdivision 4. Packaging that is recyclable or made from recycled material shall not constitute
a problem material.

Subd. 2. **Duties of commissioner of agriculture.** The commissioner of agriculture may adopt rules to provide consumer information and retail handling practices for pesticides, as defined in section 18B.01, subdivision 18; fertilizers, plant amendments, and soil amendments, as defined in section 18C.005, subdivisions 11, 25, and 33; and wood preservatives.

Subd. 3. **Preparation and supply of materials.** The agency and the commissioner of agriculture shall prepare and the agency shall supply to retailers, without charge to the retailers, the labels and informational materials required to comply with subdivision 4. Informational materials must include specific instructions on environmentally sound ways to use identified products and to handle them when the products or their containers are discarded.

Subd. 4. **Duties of retailers.** A person who sells or offers for sale at retail any product that is identified pursuant to rules of the agency adopted under subdivision 1 or under rules of the commissioner of agriculture under subdivision 2 shall:

(1) affix a uniform label as prescribed by the rules in a prominent location upon or near the display area of the product. If the adjacent display area is a shelf, the label shall be affixed to the price information for the product on the shelf;

(2) maintain and prominently display informational materials supplied by the agency at the location where identified products covered by the materials are sold or offered for sale; and

(3) comply with the handling practices required under subdivision 2.

History: *1Sp1989 c 1 art 20 s 10*

115A.9523 [Repealed, 1997 c 216 s 160]

115A.953 [Repealed, 1991 c 337 s 90]

115A.956 SOLID WASTE DISPOSAL PROBLEM MATERIALS.

Subdivision 1. **Problem material processing and disposal plan.** The agency shall develop a plan that designates problem materials and available capacity for processing and disposal of problem materials including household hazardous waste that should not be in mixed municipal solid waste. In developing the plan, the agency shall consider relevant regional characteristics and the impact of problem materials on specific processing and disposal technologies.

Subd. 2. **Problem material separation and collection plan.** After the agency certifies that sufficient processing and disposal capacity is available, but no later than November 15, 1992,
the agency shall develop a plan for separating problem materials from mixed municipal solid waste, collecting the problem materials, and transporting the problem materials to a processing or disposal facility and may by rule prohibit the placement of the designated problem materials in mixed municipal solid waste.

History: *1Sp1989 c 1 art 20 s 12; 1991 c 303 s 2; 1Sp2005 c 1 art 2 s 161*

115A.9561 MAJOR APPLIANCES.

Subdivision 1. **Prohibitions.** A person may not:

(1) place major appliances in mixed municipal solid waste; or

(2) dispose of major appliances in or on the land or in a solid waste processing or disposal facility. The agency may enforce this section pursuant to sections 115.071 and 116.072.

Subd. 2. **Recycling required.** (a) Major appliances must be recycled or reused. Each county shall ensure that its households have the opportunity to recycle used major appliances. For the purposes of this section, recycling includes:

(1) the removal of capacitors that may contain PCB's; (2) the removal of ballasts that may contain PCB's;

(3) the removal of chlorofluorocarbon refrigerant gas; and

(4) the recycling or reuse of the metals, including mercury.

(b) To ensure that the materials removed from a major appliance are not introduced into the environment, an activity described in paragraph (a), clauses (1) to (3), must be conducted in a closed facility if the activity is conducted within 500 feet from the ordinary high water level of a water basin that is a public water, as those terms are described in section 103G.005, or of a watercourse identified by the public waters inventory under section 103G.201.

History: *1Sp1989 c 1 art 20 s 13; 1991 c 337 s 48; 1991 c 347 art 1 s 18; 1992 c 560 s 2; 1994 c 585 s 27; 2002 c 382 art 1 s 3*

115A.9565 CATHODE-RAY TUBE PROHIBITION.

Effective July 1, 2006, a person may not place in mixed municipal solid waste an electronic product containing a cathode-ray tube.

History: *2003 c 128 art 1 s 129; 1Sp2005 c 1 art 2 s 132*

115A.96 HOUSEHOLD HAZARDOUS WASTE MANAGEMENT.

Subdivision 1. **Definitions.** The following definitions apply to this section:

(a) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(b) "Household hazardous waste" means waste generated from household activity that exhibits the characteristics of or that is listed as hazardous waste under agency rules, but does not include waste from commercial activities that is generated, stored, or present in a household.

(c) "Collection site" means a permanent or temporary designated location with scheduled hours for collection where individuals may bring household hazardous wastes.

(d) "Municipality" has the meaning given it in section 466.01, subdivision 1.

Subd. 2. **Management program.** The agency shall establish a statewide program to manage household hazardous wastes. The program must include:

(1) the establishment and operation of collection sites; and

(2) the provision of information, education, and technical assistance regarding proper management of household hazardous wastes.

Subd. 3. **Other participants.** (a) The agency may establish or operate all or part of the management program or may provide for services by contract or other agreement with public or private entities.

(b) The agency shall allow these programs to accept up to 100 pounds of waste per year from a hazardous waste generator that generates 220 pounds or less of hazardous waste per month.

Subd. 4. **Management.** Any person who establishes or operates all or part of a household hazardous waste management program shall manage collected waste in compliance with standards applicable to a hazardous waste generator. If collected waste must be stored for a time exceeding those standards, the entity shall obtain the approval of the commissioner of the agency and shall manage the waste in compliance with applicable standards for the use and management of containers, but no facility permit is required. Waste accepted under subdivision 3, paragraph (b), must be managed in accordance with standards applicable to the waste.

Subd. 5. **Other programs.** A person must notify the commissioner of the agency before establishing and operating any part of a household hazardous waste management program.

Subd. 6. **Household hazardous waste management plans.** (a) Each county shall include in its solid waste management plan required in section 115A.46, or its solid waste master plan required in section 473.803, a household hazardous waste management plan. The plan must at least:

(1) include a broad based public education component;

(2) include a strategy for reduction of household hazardous waste; and

(3) include a strategy for separation of household hazardous waste from mixed municipal solid waste and the collection, storage, and proper management of that waste.

(b) Each county required to submit its plan to the agency under section 115A.46 shall amend its plan to comply with this subdivision within one year after October 4, 1989.

(c) Each county in the state shall implement its household hazardous waste management plan by June 30, 1992.

(d) The agency shall review the plans submitted under this subdivision.

Subd. 7. **Indemnification; municipalities.** (a) A municipality, when operating or participating in a household hazardous waste management program pursuant to a contract with the agency under this section or other law, is an employee of the state, certified to be acting within the scope of employment, for purposes of the indemnification provisions of section 3.736, subdivision 9, for claims that arise out of the transportation, management, or disposal of any waste covered by the contract:

(1) from and after the time the waste permanently leaves the municipality's possession and comes into the possession of the agency's authorized transporter; and

(2) during the time the waste is transported between the municipality's facilities by the agency's authorized transporter.

(b) The state is not obligated to defend or indemnify a municipality under this subdivision to the extent of the municipality's liability insurance. The municipality's right to indemnity is not a waiver of the limitations, defenses, and immunities available to either the municipality or the state by law.

History: *1987 c 186 s 15; 1987 c 348 s 29; 1Sp1989 c 1 art 20 s 15,16; 1991 c 303 s 3; 1991 c 337 s 49; 1993 c 172 s 62,63; 1995 c 247 art 1 s 26; 2002 c 265 s 1,2; 2002 c 374 art 6 s 3-7; 1Sp2005 c 1 art 2 s 161*

115A.961 HOUSEHOLD BATTERIES; COLLECTION, PROCESSING, AND DISPOSAL.

Subdivision 1. **Definition.** For the purposes of this section, "household batteries" means disposable or rechargeable dry cells commonly used as power sources for household or consumer products including, but not limited to, nickel-cadmium, alkaline, mercuric oxide, silver oxide, zinc oxide, lithium, and carbon-zinc batteries, but excluding lead acid batteries.

Subd. 2. **Program.** (a) The commissioner, in consultation with other state agencies, political subdivisions, and representatives of the household battery industry, may develop household battery programs. The commissioner must coordinate the programs with the Legislative-Citizen Commission on Minnesota Resources Study on Batteries.

(b) The commissioner shall investigate options and develop guidelines for collection, processing, and disposal of household batteries. The options the commissioner may investigate include:

(1) establishing a grant program for counties to plan and implement household battery collection, processing, and disposal projects;

(2) establishing collection and transportation systems;

(3) developing and disseminating educational materials regarding environmentally sound battery management; and

(4) developing markets for materials recovered from the batteries.

(c) The commissioner may also distribute funds to political subdivisions to develop battery management plans and implement those plans.

Subd. 3. **Participation.** A political subdivision, on its own or in cooperation with others, may implement a program to collect, process, or dispose of household batteries. A political subdivision may provide financial incentives to any person, including public or private civic groups, to collect the batteries.

Subd. 4. [Obsolete, 1Sp2005 c 1 art 2 s 161]

History: *1Sp1989 c 1 art 20 s 14; 1994 c 639 art 5 s 3; 1Sp2005 c 1 art 2 s 161; 2006 c 243 s 21*

115A.965 PROHIBITIONS ON SELECTED TOXICS IN PACKAGING.

Subdivision 1. **Packaging.** (a) As soon as feasible but not later than August 1, 1993, no manufacturer or distributor may sell or offer for sale or for promotional purposes in this state packaging or a product that is contained in packaging if the packaging itself, or any inks, dyes, pigments, adhesives, stabilizers, or any other additives to the packaging contain any lead,
cadmium, mercury, or hexavalent chromium that has been intentionally introduced as an element during manufacture or distribution of the packaging.

(b) For the purposes of this section:

(1) "distributor" means a person who imports packaging or causes packaging to be imported into the state; it does not include a person involved solely in delivering packages on behalf of a third party;

(2) "intentional introduction" means the act of deliberately using a regulated metal in the formulation of a package where its continued presence is desired in the final package to provide a specific characteristic, appearance, or quality. It does not include:

(i) the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of the metal in the final package is neither desired nor deliberate if the final package is in compliance with subdivision 2;

(ii) the use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal if the new package is in compliance with subdivision 2; or

(iii) the incidental presence of any of the regulated metals.

Subd. 2. **Total toxics concentration levels.** The total concentration level of lead, cadmium, mercury, and hexavalent chromium added together in any packaging must not exceed the following amounts:

(1) 600 parts per million by weight by August 1, 1993;

(2) 250 parts per million by weight by August 1, 1994; and

(3) 100 parts per million by weight by August 1, 1995.

Subd. 3. **Exemptions.** (a) Until January 1, 2010, the following packaging is exempt from the requirements of subdivisions 1 and 2:

(1) packaging that would not exceed the total toxics concentration levels under subdivision 2 but for the addition in the packaging of materials that have fulfilled their intended use and have been discarded by consumers; and

(2) packages that are reused but exceed the total toxics concentration levels in subdivision 2, provided that:

(i) the product being conveyed by the package is regulated under federal or state health or safety requirements;

(ii) transportation of the packaged product is regulated under federal or state transportation requirements; and

(iii) disposal of the package is performed according to federal or state radioactive or hazardous waste disposal requirements.

(b) Until January 1, 2010, packages that have a controlled distribution and reuse, but exceed the total toxics concentration levels in subdivision 2 and do not meet the requirements of paragraph (a), may be exempted from subdivisions 1 and 2 if the manufacturers or distributors of the packages petition for and receive approval from the commissioner. In granting approval, the commissioner shall base the decision on satisfactory demonstrations that the environmental benefit of the controlled distribution and reuse is significantly greater compared to the same package manufactured in compliance with the total toxics concentration levels in subdivision 2, and on plans proposed by the manufacturer that include each of the following elements:

(1) a means of identifying the packaging in a permanent and visible manner;

(2) a method of regulatory and financial accountability so that a specified percentage of the packaging manufactured and distributed to other persons is not discarded by those persons after use but are returned to the manufacturer or the manufacturer's designee;

(3) a system of inventory and record maintenance to account for the packaging placed in, and removed from, service;

(4) a means of transforming packaging that is no longer reusable into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing such manufacturing wastes that ensure that these wastes do not enter the industrial or mixed municipal solid waste stream; and

(5) a system of annually reporting to the commissioner changes to the system and changes in designees.

(c) Packaging to which lead, cadmium, mercury, or hexavalent chromium has been intentionally introduced in the manufacturing process may be exempted from the requirements of subdivisions 1 and 2 by the commissioner of the Pollution Control Agency if:

(1) the use of the toxic element in the packaging is required by federal or state health or safety laws; or

(2) there is no feasible alternative for the packaging because the toxic element used is essential to the protection, safe handling, or function of the contents of the package.

The commissioner may grant an exemption under this paragraph for a period not to exceed two years upon application by the packaging manufacturer that includes documentation showing that the criteria for an exemption are met. Exemptions granted by the commissioner may be renewed upon reapplication every two years.

Subd. 4. **Certificate of compliance.** (a) Beginning August 1, 1993, each manufacturer and distributor of packaging for sale or other distribution in this state shall certify to each of their purchasers or receivers that the packaging purchased or received complies with this section. The certificate of compliance must be in writing and must be signed by an official of the manufacturer or distributor. For packaging that has received an exemption under subdivision 3, the certificate
of compliance must list the amount of total toxics concentration in the packaging, the specific toxics present, and the basis for the exemption.

(b) The manufacturer or distributor shall keep on file a copy of the certificate of compliance for each type of packaging manufactured or distributed and shall make copies available to the commissioner of the Pollution Control Agency or the attorney general on request, or to any member of the public within 60 days of receipt of a written request that specifies the type of packaging for which the information is requested.

(c) Each purchaser or receiver, except a retailer, of packaging shall retain the certificate of compliance for as long as the packaging is in use.

(d) If a manufacturer or distributor of packaging reformulates the packaging or creates new packaging, the manufacturer or distributor shall provide an amended or new certificate of compliance to purchasers and receivers for the reformulated or new packaging.

Subd. 5. **Enforcement.** This section may be enforced under sections 115.071 and 116.072. A person who fails to comply with this section is subject to a civil fine of up to $5,000 per day
of violation, court costs and attorney fees, and all costs associated with the separate collection, storage, transfer, and appropriate processing or disposal of nonconforming packaging, to be determined by the true cost of those activities per ton times the approximate actual tonnage of nonconforming packaging sold or otherwise distributed in the state.

Subd. 6. [Repealed, 1997 c 186 s 4]

Subd. 6a. **Implementation.** In the interests of promoting consistent, nationally applicable standards, the commissioner shall have discretion to coordinate efforts under this section with similar efforts in other jurisdictions.

Subd. 7. [Repealed, 2012 c 272 s 98]

History: *1991 c 337 s 50; 1993 c 249 s 24; 1994 c 585 s 28,29; 1995 c 247 art 1 s 27; 1996 c 470 s 14,15,27; 1997 c 186 s 1-3; 2000 c 370 s 2; 1Sp2005 c 1 art 2 s 161*

115A.9651 LISTED METALS IN SPECIFIED PRODUCTS; ENFORCEMENT.

Subdivision 1. **Prohibition.** After July 1, 1998, no person may distribute a listed product for sale or use in this state.

Subd. 2. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Council" means the council established under subdivision 5.

(c) "Essential product" means a specified product into which the introduction of a listed metal is required under military specifications or to ensure the integrity of a product essential for aviation or railroad safety, and which is being used only in that application.

(d) "Intentionally introduce" means to deliberately use a listed metal as an element during manufacture or distribution of a specified product. Intentional introduction does not include the incidental presence of a listed metal.

(e) "Listed metal" means lead, cadmium, mercury, or hexavalent chromium.

(f) "Listed product" means a specified product that is included on the prohibited products list published under subdivision 4.

(g) "New product" means a specified product which was not used, sold, or distributed in the state before July 2, 1998, or which has been reformulated so that it contains more of a listed metal.

(h) "Official" means an officer of a corporation, a general partner of a partnership or limited partnership, a sole proprietor, or, in the case of any other entity, a person with high level management responsibilities.

(i) "Specified product" means an ink, dye, pigment, paint, or fungicide into which a listed metal has been intentionally introduced or in which the incidental presence of a listed metal exceeds a concentration of 100 parts per million.

Subd. 3. **Certification of compliance.** (a) By July 1, 1998, each person who has filed the progress report specified in Laws 1994, chapter 585, section 30, subdivision 2, paragraph (e), indicating compliance would be achieved by July 1, 1998, shall certify to the commissioner that the products referenced in that report have been reformulated and no longer meet the definition of a specified product. The certification must be in writing and signed by an official of the company. If, due to significant change in circumstances, the person cannot so certify by July 1, 1998, a product review report and fee shall be submitted as provided under subdivision 6.

(b) The person submitting the certification shall keep a copy on file and make copies available to the commissioner or the attorney general upon request or to any member of the public within 60 days of receipt of a written request that specifies the type of product for which the information is requested.

Subd. 4. **Prohibited products list.** By October 1, 1998, the commissioner shall publish in the State Register a list of specified products for which the commissioner has received certifications as provided under subdivision 3.

Subd. 5. [Repealed, 2007 c 133 art 2 s 13]

Subd. 6. **Product review reports.** (a) Except as provided under subdivision 7, the manufacturer, or an association of manufacturers, of any specified product distributed for sale or use in this state that is not listed pursuant to subdivision 4 shall submit a product review report and fee as provided in paragraph (c) to the commissioner for each product by July 1, 1998. Each product review report shall contain at least the following:

(1) a policy statement articulating upper management support for eliminating or reducing intentional introduction of listed metals into its products;

(2) a description of the product and the amount of each listed metal distributed for use in this state;

(3) a description of past and ongoing efforts to eliminate or reduce the listed metal in the product;

(4) an assessment of options available to reduce or eliminate the intentional introduction of the listed metal including any alternatives to the specified product that do not contain the listed metal, perform the same technical function, are commercially available, and are economically practicable;

(5) a statement of objectives in numerical terms and a schedule for achieving the elimination of the listed metals and an environmental assessment of alternative products;

(6) a listing of options considered not to be technically or economically practicable; and

(7) certification attesting to the accuracy of the information in the report signed and dated by an official of the manufacturer or user.

If the manufacturer fails to submit a product review report, a user of a specified product may submit a report and fee which comply with this subdivision by August 15, 1998.

(b) By July 1, 1999, and annually thereafter until the commissioner takes action under subdivision 9, the manufacturer or user must submit a progress report and fee as provided in paragraph (c) updating the information presented under paragraph (a).

(c) The fee shall be $295 for each report. The fee shall be deposited in the state treasury and credited to the environmental fund. The fee is exempt from section 16A.1285.

(d) Where it cannot be determined from a progress report submitted by a person pursuant to Laws 1994, chapter 585, section 30, subdivision 2, paragraph (e), the number of products for which product review reports are due under this subdivision, the commissioner shall have the authority to determine, after consultation with that person, the number of products for which product review reports are required.

(e) The commissioner shall summarize, aggregate, and publish data reported under paragraphs (a) and (b) annually.

(f) A product that is the subject of a recommendation by the Toxics in Packaging Clearinghouse, as administered by the Council of State Governments, is exempt from this section.

Subd. 7. **Essential products; published list.** (a) By January 1, 1998, a manufacturer or user of an essential product must submit a certification to the commissioner that the product meets the definition in subdivision 2, paragraph (c). By July 1, 2002, each manufacturer or user of an essential product shall submit a report to the commissioner which includes the information required in subdivision 6, paragraph (a), and a statement of whether the product continues to meet the definition in subdivision 2, paragraph (c).

(b) By October 1, 1998, the commissioner shall publish in the State Register a list of essential products for which the commissioner has received certification pursuant to this subdivision. By October 1, 2002, the commissioner shall publish in the State Register a list of essential products based on reports submitted by July 1, 2002, as provided in paragraph (a).

Subd. 8. **New products; criteria for review.** (a) After July 1, 1998, but before July 1, 2005, no person shall sell, distribute, or offer for sale in this state a new product prior to the manufacturer or user submitting a product review report and fee specified in subdivision 6.

(b) The council shall review reports submitted under this subdivision and provide advice to the commissioner. The council's advice to the commissioner under this subdivision shall be based on an evaluation of the environmental impact of the product and the ability of the manufacturer or user to reduce or eliminate the listed metal. Before making a recommendation that the commissioner take action under subdivision 9, the council must conclude that:

(1) there is an alternative to the specified product that does not contain the listed metal that performs the same technical function, is commercially available, and is economically practicable, and replacement of the product with the alternative will result in an environmental benefit in the state; or

(2) if there is no alternative to the new product, that the use of the listed metal in the new product presents a significant threat to the safe and efficient operation of waste facilities, or use of the listed metal does not increase the useful life span of the new product, reduce the overall toxicity of the final product or of material used in production of the final product, or otherwise provide a net environmental benefit to the state.

(c) Notwithstanding subdivision 5, paragraph (f), where the commissioner determines that a new product subject to paragraph (a) is sufficiently similar to a product or products previously reviewed by the council, the commissioner may authorize the permanent members of the council to perform the duties established in paragraph (b) without the appointment of temporary members. In performing those duties, the council shall utilize information gathered in any previous review of a similar product or products.

(d) Beginning July 1, 2005, no person shall sell, distribute, or offer for sale in this state a new product without the commissioner's approval. A person seeking approval of a new product shall submit a product review report including the information and fee specified in subdivision 6. The commissioner shall not approve the new product unless the commissioner determines that it meets the criteria in paragraph (b). The commissioner shall make a determination within six months of receipt of a complete request.

Subd. 9. **Authority of commissioner.** (a) The commissioner may, upon the recommendation of the council, prohibit the distribution for sale or use in this state of a specified product that is not an essential product.

(b) Before taking action under this subdivision, the commissioner must conclude that:

(1) there is an alternative to the specified product that does not contain the listed metal that performs the same technical function, is commercially available, and is economically practicable, and replacement of the product with the alternative will result in an environmental benefit to the state; or

(2) if there is no alternative to the new product, that the use of the listed metal in the new product presents a significant threat to the safe and efficient operation of waste facilities, or use of the listed metal does not increase the useful life span of the new product, reduce the overall toxicity of the final product or of material used in production of the final product, or otherwise provide a net environmental benefit to the state.

(c) If the commissioner fails to take action under this subdivision as recommended by the council, the commissioner shall submit a report to the legislature explaining the reasons for not taking such action.

(d) The commissioner shall provide the legislature a report and recommendations based on any report prepared by the council under subdivision 5, paragraph (c), clause (2).

Subd. 10. **Application; enforcement.** (a) This section does not apply to art supplies.

(b) This section may be enforced under sections 115.071 and 116.072. The attorney general or the commissioner of the agency shall coordinate enforcement of this section.

Subd. 11. **Rulemaking authority.** (a) The Pollution Control Agency may adopt, amend, suspend, and repeal rules to implement this section.

(b) Publication of notice under subdivision 5, paragraph (g), shall be deemed to satisfy the requirements of section 14.101.

(c) The commissioner may adopt a council recommendation under subdivision 5 as the agency's statement of need and reasonableness. A recommendation adopted in this manner shall be deemed to satisfy any content requirements for a statement of need and reasonableness imposed by law.

(d) Any hearings on rules adopted under this section shall be conducted in accordance with sections 14.14 to 14.20 and address whether the rule meets the standards for review under which the judge is required to approve or disapprove the rule.

(e) Section 14.125 does not apply to the agency's rulemaking authority under this section. (f) A rule adopted under this section is effective until repealed by the agency.

History: *1991 c 337 s 51; 1993 c 249 s 25; 1993 c 366 s 7; 1994 c 585 s 30; 1995 c 247 art 1 s 28; 1996 c 455 art 3 s 1; 1996 c 470 s 16,27; 1997 c 221 s 1; 2000 c 370 s 3; 2003 c 128 art 2 s 6; 1Sp2005 c 1 art 2 s 16*

115A.97 SPECIAL WASTE; INCINERATOR ASH.

Subdivision 1. **Policy; goals.** It is the policy of the legislature that mixed municipal solid waste incinerators be planned and managed to achieve to the maximum extent feasible and prudent:

(1) reduction of the toxicity of incinerator ash;

(2) reduction of the quantity of the incinerator ash; and

(3) reduction of the quantity of waste processing residuals that require disposal.

The purpose of this section is to establish temporary and permanent programs to achieve these reduction goals.

Subd. 2. **Definitions.** For the purposes of this section the following terms have the meanings given them.

"Incinerator ash" means ash resulting from the combustion of mixed municipal solid waste and ash resulting from the combustion of refuse-derived fuel.

"Noncombustible fraction" means constituents of mixed municipal solid waste, including glass, ferrous metals, nonferrous metals and other inorganics, that, when burned, disproportionately add to the quantity of incinerator ash.

Subd. 3. **Rules.** The agency shall adopt rules to establish techniques to measure the noncombustible fraction of mixed municipal solid waste prior to incineration or processing into refuse-derived fuel and for at least the testing, management, and disposal of incinerator ash. The rules must be designed to meet the goals in subdivision 1.

Subd. 4. [Repealed, 1996 c 310 s 1]

Subd. 5. **Plans; report.** A county solid waste plan, or revision of a plan, that includes incineration of mixed municipal solid waste must clearly state how the county plans to meet the goals in subdivision 1 of reducing the toxicity and quantity of incinerator ash and of reducing the quantity of processing residuals that require disposal. The commissioner, in cooperation with the counties, may develop guidelines for counties to use to identify ways to meet the goals in subdivision 1.

Subd. 6. **Permits; agency report.** An application for a permit to build or operate a mixed municipal solid waste incinerator, including an application for permit renewal, must clearly state how the applicant will achieve the goals in subdivision 1 of reducing the toxicity and quantity of incinerator ash and of reducing the quantity of processing residuals that require disposal. The agency, in cooperation with the counties, may develop guidelines for applicants to use to identify ways to meet the goals in subdivision 1.

History: *1988 c 685 s 13; 1989 c 335 art 1 s 269; 1990 c 469 s 1; 1991 c 337 s 52; 1994 c 639 art 5 s 3; 1995 c 247 art 2 s 21,22; 1Sp2005 c 1 art 2 s 161; 2007 c 13 art 1 s 9*

115A.98 [Repealed, 1989 c 325 s 77]

115A.981 [Repealed, 2000 c 370 s 5]

LITTER

115A.99 LITTER PENALTIES AND DAMAGES.

Subdivision 1. **Civil penalty.** (a) A person who unlawfully places any portion of solid waste in or on public or private lands, shorelands, roadways, or waters is subject to a civil penalty of not less than twice nor more than five times the costs incurred by a state agency or political subdivision to remove, process, and dispose of the waste.

(b) A state agency or political subdivision that incurs costs as described in this section may bring an action to recover the civil penalty, related legal, administrative, and court costs, and damages for injury to or pollution of the lands, shorelands, roadways, or waters where the waste was placed if owned or managed by the entity bringing the action.

Subd. 2. **Deposit of penalties and damages.** Civil penalties and damages collected under subdivision 1 must be collected and distributed as required in chapter 484.

Subd. 3. **Joinder; private action for damages.** A private person may join an action by the state or a political subdivision to recover a civil penalty under subdivision 1 to allow the person to recover damages for waste unlawfully placed on the person's property.

History: *1Sp1989 c 1 art 20 s 17; 1994 c 412 s 2; 2007 c 13 art 3 s 10*

115A.991 [Repealed, 1996 c 470 s 29]1

RECYCLABILITY AND ENERGY EFFICIENCY

16B.121 PURCHASE OF RECYCLED, REPAIRABLE, AND DURABLE MATERIALS.

The commissioner shall take the recycled content and recyclability of commodities to be purchased into consideration in bid specifications. When feasible and when the price of recycled materials does not exceed the price of nonrecycled materials by more than ten percent, the commissioner, and state agencies when purchasing under delegated authority, shall purchase recycled materials. In order to maximize the quantity and quality of recycled materials purchased, the commissioner, and state agencies when purchasing under delegated authority, may also use other appropriate procedures to acquire recycled materials at the most economical cost to the state.

When purchasing commodities and services, the commissioner, and state agencies when purchasing under delegated authority, shall apply and promote the preferred waste management practices listed in section 115A.02, with special emphasis on reduction of the quantity and toxicity of materials in waste. The commissioner, and state agencies when purchasing under delegated authority, in developing bid specifications, shall consider the extent to which a commodity or product is durable, reusable, or recyclable and marketable through the state resource recovery program and the extent to which the commodity or product contains postconsumer material.

History: *1Sp1989 c 1 art 18 s 1; 1992 c 514 s 3; 1992 c 593 art 1 s 1; 1993 c 249 s 1*

16B.122 PURCHASE AND USE OF PAPER STOCK; PRINTING.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section. (a) "Copier paper" means paper purchased for use in copying machines.

(b) "Office paper" means notepads, loose-leaf fillers, tablets, and other paper commonly

used in offices.

(c) "Postconsumer material" means a finished material that would normally be discarded as a solid waste, having completed its life cycle as a consumer item.

(d) "Practicable" means capable of being used, consistent with performance, in accordance with applicable specifications, and availability within a reasonable time.

(e) "Printing paper" means paper designed for printing, other than newsprint, such as offset and publication paper.

(f) "Public entity" means the state, an **office**, agency, or institution of the state, the Metropolitan Council, a metropolitan agency, the Metropolitan Mosquito Control District, the legislature, the courts, a county, a statutory or home rule charter city, a town, a school district, another special taxing district, or any contractor acting pursuant to a contract with a public entity.

(g) "Soy-based ink" means printing ink made from soy oil.

(h) "Uncoated" means not coated with plastic, clay, or other material used to create a glossy finish.

Subd. 2. **Purchases; printing.** (a) Whenever practicable, a public entity shall:

(1) purchase uncoated office paper and printing paper;

(2) purchase recycled content paper with at least ten percent postconsumer material by weight;

(3) purchase paper which has not been dyed with colors, excluding pastel colors;

(4) purchase recycled content paper that is manufactured using little or no chlorine bleach or chlorine derivatives;

(5) use no more than two colored inks, standard or processed, except in formats where they are necessary to convey meaning;

(6) use reusable binding materials or staples and bind documents by methods that do not use glue;

(7) use soy-based inks; and

(8) produce reports, publications, and periodicals that are readily recyclable within the state resource recovery program.

(b) Paragraph (a), clause (1), does not apply to coated paper that is made with at least 50 percent postconsumer material.

(c) A public entity shall print documents on both sides of the paper where commonly accepted publishing practices allow.

(d) Notwithstanding paragraph (a), clause (2), and section 16B.121, copier paper purchased by a state agency must contain at least ten percent postconsumer material by fiber content.

Subd. 3. **Public entity purchasing.** (a) Notwithstanding section 365.37, 375.21, 412.311, or 473.705, a public entity may purchase recycled materials when the price of the recycled materials does not exceed the price of nonrecycled materials by more than ten percent. In order to maximize the quantity and quality of recycled materials purchased, a public entity also may use other appropriate procedures to acquire recycled materials at the most economical cost to the public entity.

(b) When purchasing commodities and services, a public entity shall apply and promote the preferred waste management practices listed in section 115A.02, with special emphasis on reduction of the quantity and toxicity of materials in waste. A public entity, in developing bid specifications, shall consider the extent to which a commodity or product is durable, reusable, or recyclable and marketable through the applicable local or regional recycling program and the extent to which the commodity or product contains postconsumer material. When a project by a public entity involves the replacement of carpeting, the public entity may require all persons who wish to bid on the project to designate a carpet recycling company in their bids.

History: *1Sp1989 c 1 art 18 s 2; 1991 c 337 s 3; 1992 c 464 art 1 s 7; 1992 c 593 art 1 s 2; 1993 c 249 s 2; 1994 c 465 art 1 s 1; 1995 c 247 art 1 s 1*

16B.123 [Repealed, 1998 c 386 art 1 s 35]

16B.124 CONSIDERATION OF ENVIRONMENTAL IMPACTS OF METAL RECYCLING FACILITIES.

(a) The state, counties, towns, and home rule charter or statutory cities shall include consideration of environmental impacts in selecting a recycling facility for the recycling of scrap metal.

(b) For the purposes of this section, "recycling facility" has the meaning given in section 115A.03, subdivision 25c.

History: *1995 c 247 art 1 s 2*

16B.24 GENERAL AUTHORITY.

Subd. 6. **Property leases.** (a) **Leases.** The commissioner shall lease land and other premises when necessary for state purposes. Notwithstanding subdivision 6a, paragraph (a), the commissioner may lease land or premises for up to ten years, subject to cancellation upon 30 days' written notice by the state for any reason except lease of other non-state-owned land or premises for the same use. The commissioner may not lease non-state-owned land and buildings or

substantial portions of land or buildings within the Capitol Area as defined in section 15B.02 unless the commissioner first consults with the Capitol Area Architectural and Planning Board. If the commissioner enters into a lease-purchase agreement for buildings or substantial portions of buildings

within the Capitol Area, the commissioner shall require that any new construction of non-state-owned buildings conform to design guidelines of the Capitol Area Architectural and Planning Board. Lands needed by the Department of Transportation for storage of vehicles or road materials may be leased for five years or less, such leases for terms over two years being subject to cancellation upon 30 days' written notice by the state for any reason except lease of other non-state-owned land or premises for the same use. An agency or department head must consult with the chairs of the house of representatives appropriations and senate finance committees before entering into any agreement that would cause an agency's rental costs to increase by ten percent or more per square foot or would increase the number of square feet of office space rented by the agency by 25 percent or more in any fiscal year.

(b) **Use vacant public space.** No agency may initiate or renew a lease for space for its own use in a private building unless the commissioner has thoroughly investigated presently vacant space in public buildings, such as closed school buildings, and found that none is available or use of the space is not feasible, prudent, and cost-effective compared with available alternatives.

(c) **Preference for certain buildings.** For needs beyond those which can be accommodated in state-owned buildings, the commissioner shall acquire and utilize space in suitable buildings of

historical, architectural, or cultural significance for the purposes of this subdivision unless use of that space is not feasible, prudent and cost-effective compared with available alternatives.
Buildings are of historical, architectural, or cultural significance if they are listed on the National Register of Historic Places, designated by a state or county historical society, or designated by a municipal preservation commission.

(d) **Recycling space.** Leases for space of 30 days or more for 5,000 square feet or more must require that space be provided for recyclable materials.

Subd. 7. **Power, heating, and lighting plants.** The commissioner shall inspect all state power, heating, and lighting plants, make rules governing their operation, and recommend improvements in the plants which will promote their economical and efficient operation.

Subd. 11. **Recycling of fluorescent lamps.** When a fluorescent lamp containing mercury is removed from service in a building or premises owned by the state or rented by the state, the commissioner shall ensure that the lamp is recycled if a recycling facility, which has been licensed or permitted by the agency or is operated subject to a compliance agreement with, or other approval by, the commissioner, is available in this state.

17.135 FARM DISPOSAL OF SOLID WASTE.

(a) A permit is not required from a state agency, except under sections 88.16, 88.17, and 88.22 for a person who owns or operates land used for farming that buries, or burns and buries:

(1) solid waste generated from the person's household or as part of the person's farming operation; or

(2) concrete or reinforcing bar from a building or structure located on the land used for farming.

Items in clauses (1) and (2) must be buried in a nuisance-free, pollution-free, and aesthetic manner on the land used for farming. The exception in clause (1) does not apply if regularly scheduled pickup of solid waste is reasonably available at the person's farm, as determined by resolution of the county board of the county where the person's farm is located.

(b) The exemption in paragraph (a), clause (1), does not apply to burning tires or plastics, except plastic baling twine, or to burning or burial of the following materials:

(1) household hazardous waste as defined in section 115A.96, subdivision 1;

(2) appliances, including but not limited to, major appliances as defined in section 115A.03, subdivision 17a;

(3) household batteries; (4) used motor oil; and

(5) lead acid batteries from motor vehicles.

(c) Within 90 days after completion of the burial, an owner of land used for farming who buries material under the authority of paragraph (a), clause (2), shall record, with the county recorder or registrar of titles of the county in which the land is located, an affidavit containing a legal description of the property and a map drawn from available information showing the boundary of the property and the location of concrete or reinforcing bar buried on the property. The county recorder or registrar of titles must record an affidavit presented under this paragraph in a manner that ensures its disclosure in the ordinary course of a title search of the subject property.

History: *1989 c 131 s 2; 1993 c 249 s 5; 2011 c 14 s*

17.861 REPLACEMENT OF MERCURY MANOMETERS.

The commissioner, in cooperation with the Pollution Control Agency, dairy equipment manufacturers and suppliers, and other interested parties, shall develop a program to provide replacement nonmercury manometers for a $50 fee and to arrange for the acceptance, disposal, and recycling of the mercury, apparatus, and manometers at no cost to the dairy farmer. The mercury, manometers, and apparatus shall be managed in accordance with sections 115A.932 and 116.92.
History: *1997 c 216 s 26; 1Sp2005 c 1 art 2 s 161*

18B.01 Subd. 31a. **Waste pesticide.** "Waste pesticide" means a pesticide that the pesticide end user considers a waste. A waste pesticide can be a canceled pesticide, an unusable pesticide, or a usable pesticide.

18B.01 DEFINITIONS.

Subdivision 1.**Applicability.**

The definitions in this section apply to this chapter.

Subd. 1a.**Agricultural pesticide.**

"Agricultural pesticide" means a pesticide that bears labeling that meets federal worker protection agricultural use requirements established in Code of Federal Regulations, title 40, parts 156 and 170.

Subd. 1b.**Agricultural pesticide dealer.**

"Agricultural pesticide dealer" means a person who distributes an agricultural pesticide in the state or into the state to an end user. This action would commonly be described as a retail sale.

Subd. 2.**Approved agency.**

"Approved agency" means a state agency, other than the Department of Agriculture, or an agency of a county, municipality, or other political subdivision that has signed a joint powers agreement under section 471.59 with the commissioner.

Subd. 3.**Beneficial insects.**

"Beneficial insects" means insects that are: (1) effective pollinators of plants; (2) parasites or predators of pests; or (3) otherwise beneficial.

Subd. 4.**Bulk pesticide.**

"Bulk pesticide" means a pesticide that is held in an individual container, with a pesticide content of 56 United States gallons or more, or 100 pounds or greater net dry weight.

Subd. 4a.

MS 2012 [Renumbered subd 4b]

Subd. 4a.**Bulk pesticide storage facility.**

"Bulk pesticide storage facility" means a facility that is required to have a permit under section 18B.14.

Subd. 4b.**Collection site.**

"Collection site" means a permanent or temporary designated location with scheduled hours for authorized collection where pesticide end users may bring their waste pesticides.

Subd. 5.**Commercial applicator.**

"Commercial applicator" means a person who has or is required to have a commercial applicator license.

Subd. 6.**Commissioner.**

"Commissioner" means the commissioner of agriculture or an agent authorized by the commissioner.

Subd. 6a.**Container.**

"Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

Subd. 6b.**Corrective action.**

"Corrective action" means an action taken to minimize, eliminate, or clean up an incident.

Subd. 7.**Device.**

"Device" means an instrument or contrivance, other than a firearm, that is intended or used to destroy, repel, or mitigate a pest, a form of plant or animal life other than humans, or a bacterium, virus, or other microorganism on or in living animals, including humans. A device does not include equipment used for the application of pesticides if the equipment is sold separately from the instrument or contrivance.

Subd. 8.**Distribute.**

"Distribute" means offer for sale, sell, barter, ship, deliver for shipment, receive and deliver, and offer to deliver pesticides in this state or into this state.

Subd. 9.**Environment.**

"Environment" means surface water, groundwater, air, land, plants, humans, and animals and their interrelationships.

Subd. 9a.**Fixed location.**

"Fixed location" means all stationary restricted and bulk pesticide facility operations owned or operated by a person located in the same plant location or locality.

Subd. 10.**FIFRA.**

"FIFRA" means the Federal Insecticide, Fungicide, Rodenticide Act, United States Code, title 7, sections 136 to 136y, and regulations under Code of Federal Regulations, title 40, subchapter E, parts 150 to 180.

Subd. 10a.**Genetic engineering.**

"Genetic engineering" means the modification of the genetic composition of an organism using molecular techniques. This does not include selective breeding, hybridization, or nondirected mutagenesis.

Subd. 10b.**Genetically engineered pesticide.**

"Genetically engineered pesticide" means an organism that has been modified through the use of genetic engineering, intended to prevent, destroy, repel, or mitigate a pest, and an organism that has been modified through the use of genetic engineering, intended for use as a plant regulator, defoliant, or desiccant.

Subd. 11.**Hazardous waste.**

"Hazardous waste" means any substance identified or listed as hazardous waste in the rules adopted under section 116.07, subdivision 4.

Subd. 12.**Incident.**

"Incident" means a flood, fire, tornado, transportation accident, storage container rupture, leak, spill, emission discharge, escape, disposal, or other event that releases or immediately threatens to release a pesticide accidentally or otherwise into the environment, and may cause unreasonable adverse effects on the environment. "Incident" does not include a release from normal use of a pesticide or practice in accordance with law.

Subd. 13.**Label.**

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or their containers or wrappers.

Subd. 14.**Labeling.**

"Labeling" means all labels and other written, printed, or graphic matter:

(1) accompanying the pesticide or device;

(2) referred to by the label or literature accompanying the pesticide or device; or

(3) that relates or refers to the pesticide or to induce the sale of the pesticide or device.

"Labeling" does not include current official publications of the United States Environmental Protection Agency, United States Department of Agriculture, United States Department of Interior, United States Department of Health, Education and Welfare, state agricultural experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

Subd. 14a.**Local unit of government.**

"Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, another special purpose district, and local or regional board.

Subd. 14b.**Nonagricultural pesticide.**

"Nonagricultural pesticide" means a pesticide that does not bear labeling that meets federal worker protection agricultural use requirements established in Code of Federal Regulations, title 40, parts 156 and 170.

Subd. 15.**Noncommercial applicator.**

"Noncommercial applicator" means a person who has or is required to have a noncommercial applicator license.

Subd. 15a.**Organism.**

"Organism" means an animal, plant, bacterium, cyanobacterium, fungus, protist, or virus.

Subd. 15b.**Owner of real property.**

"Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including a person who has legal title to property and a person who has the right to use or contract use of the property under a lease, contract for deed, or license.

Subd. 16.

[Repealed, 1996 c 310 s 1]

Subd. 17.**Pest.**

"Pest" means an insect, rodent, nematode, fungus, weed, terrestrial or aquatic plant, animal life, virus, bacteria, or other organism designated by rule as a pest, except a virus, bacteria, or other microorganism on or in living humans or other living animals.

Subd. 18.**Pesticide.**

"Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Subd. 19.**Pesticide dealer.**

"Pesticide dealer" means a person who has or is required to have a pesticide dealer license.

Subd. 19a.**Pesticide end user.**

"Pesticide end user" means a farmer or other person who uses, intends to use, or owns a pesticide. Pesticide end user does not include a dealer, manufacturer, formulator, or packager.

Subd. 20.**Plant regulator.**

"Plant regulator" means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation of a plant, or to otherwise alter the behavior of ornamental or crop plants or the produce of the plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

Subd. 21.**Private applicator.**

"Private applicator" means a person certified or required to be certified to use restricted use pesticides.

Subd. 22.**Registrant.**

"Registrant" means a person that has registered a pesticide under this chapter.

Subd. 22a.**Release.**

"Release" means the placement or use of a genetically engineered organism outside a contained laboratory, greenhouse, building, structure, or other similar facility or under other conditions not specifically determined by the commissioner to be adequately contained.

Subd. 23.**Responsible party.**

"Responsible party" means a person who at the time of an incident has custody of, control of, or responsibility for a pesticide, pesticide container, or pesticide rinsate.

Subd. 24.**Restricted use pesticide.**

"Restricted use pesticide" means a pesticide formulation designated as a restricted use pesticide under FIFRA or by the commissioner under this chapter.

Subd. 24a.**Returnable container.**

"Returnable container" means a container for distributing pesticides that enables the unused pesticide product to be returned to the distributor, manufacturer, or packager, and includes bulk, mini-bulk, or dedicated containers designed to protect the integrity of the pesticide and prevent contamination through the introduction of unauthorized materials.

Subd. 25.**Rinsate.**

"Rinsate" means a dilute mixture of a pesticide or pesticides with water, solvents, oils, commercial rinsing agents, or other substances, that is produced by or results from the cleaning of pesticide application equipment or pesticide containers.

Subd. 26.**Safeguard.**

"Safeguard" means a facility, equipment, device, or system, or a combination of these, designed to prevent an incident as required by rule.

Subd. 26a.**School pest management coordinator.**

"School pest management coordinator" means a person employed by a Minnesota kindergarten through 12th grade public school who is responsible for the school's pest management plans and implementation of pest management at the school, including the application of pesticides to the inside or outdoor property of the school.

Subd. 27.**Site.**

"Site" means all land and water areas, including air space, and all plants, animals, structures, buildings, contrivances, and machinery whether fixed or mobile, including anything used for transportation.

Subd. 28.**Structural pest.**

"Structural pest" means a pest, other than a plant, in, on, under, or near a structure.

Subd. 29.**Structural pest control.**

"Structural pest control" means the control of any structural pest through the use of a device, a procedure, or application of pesticides in or around a building or other structures, including trucks, boxcars, ships, aircraft, docks, and fumigation vaults, and the business activity related to use of a device, a procedure, or application of a pesticide.

Subd. 30.**Structural pest control applicator.**

"Structural pest control applicator" means a person who has or is required to have a structural pest control applicator license.

Subd. 30a.**Substantially altering; substantially alter; substantial alteration.**

"Substantially altering," "substantially alter," or "substantial alteration" means modifying a bulk agricultural chemical storage facility by:

(1) changing the capacity of a safeguard;

(2) adding storage containers in excess of the capacity of a safeguard as required by rule; or

(3) increasing the size of the single largest storage container in a safeguard as approved or permitted by the Department of Agriculture. This does not include routine maintenance of safeguards, storage containers, appurtenances, piping, mixing, blending, weighing, or handling equipment.

Subd. 31.**Unreasonable adverse effects on the environment.**

"Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

Subd. 31a.**Waste pesticide.**

"Waste pesticide" means a pesticide that the pesticide end user considers a waste. A waste pesticide can be a canceled pesticide, an unusable pesticide, or a usable pesticide.

Subd. 32.**Wildlife.**

"Wildlife" means all living things that are not human, domesticated, or pests.

History:

1987 c 358 s 43; 1989 c 326 art 5 s 1-15; 1991 c 250 s 6-9; 1993 c 367 s 1,2; 1Sp2001 c 2 s 34; 2009 c 94 art 1 s 44-47; 2013 c 114 art 2 s 28,68

18B.065 WASTE PESTICIDE COLLECTION PROGRAM.

Subdivision 1. **Collection and disposal.** The commissioner of agriculture shall establish and operate a program to collect and dispose of waste pesticides. The program must be made available to agricultural and nonagricultural pesticide end users whose waste generating activity occurs in this state. Waste pesticide generated in another state is not eligible for collection under this section.

Subd. 2. **Implementation.** (a) The commissioner may obtain a United States Environmental Protection Agency hazardous waste identification number to manage the waste pesticides collected.

(b) The commissioner may limit the type and quantity of waste pesticides accepted for collection and may assess pesticide end users for portions of the costs incurred.

Subd. 2a. **Disposal site requirement.** (a) For agricultural waste pesticides, the commissioner must designate a place in each county of the state that is available at least every other year for persons to dispose of unused portions of agricultural pesticides. The commissioner shall consult with the person responsible for solid waste management and disposal in each county to determine an appropriate location and to advertise each collection event. The commissioner may provide a collection opportunity in a county more frequently if the commissioner determines that a collection is warranted.

(b) For nonagricultural waste pesticides, the commissioner must provide a disposal opportunity each year in each county or enter into a contract with a group of counties under a joint powers agreement or contract for household hazardous waste disposal.

(c) As provided under subdivision 7, the commissioner may enter into cooperative agreements with local units of government to provide the collections required under paragraph (a) or (b) and shall provide a local unit of government, as part of the cooperative agreement, with funding for reasonable costs incurred including, but not limited to, related supplies, transportation, advertising, and disposal costs as well as reasonable overhead costs.

(d) A person who collects waste pesticide under this section shall, on a form provided or in a method approved by the commissioner, record information on each waste pesticide product collected including, but not limited to, the quantity collected and either the product name and its active ingredient or ingredients or the United States Environmental Protection Agency registration number. The person must submit this information to the commissioner at least annually by January 30.

Subd. 3. **Information; education; report.** (a) The commissioner shall provide informational and educational materials regarding waste pesticides and the proper management of waste pesticides to the public.

(b) No later than March 15 each year, the commissioner must report the following to the legislative committees with jurisdiction over agriculture finance:

(1) each instance of a refusal to collect waste pesticide or the assessment of a fee to a pesticide end user as authorized in subdivision 2, paragraph (b); and

(2) waste pesticide collection information including a discussion of the type and quantity of waste pesticide collected by the commissioner and any entity collecting waste pesticide under subdivision 7 during the previous calendar year, a summary of waste pesticide collection trends, and any corresponding program recommendations.

Subd. 4. **Consultation with Pollution Control Agency.** The commissioner shall develop the program in this section in consultation and cooperation with the Pollution Control Agency.

Subd. 5. [Repealed, 1Sp2005 c 1 art 1 s 98]

Subd. 6. [Repealed, 1996 c 310 s 1]

Subd. 7. **Cooperative agreements.** (a) The commissioner may enter into cooperative agreements with state agencies and local units of government for administration of the waste pesticide collection program. The commissioner shall ensure that the program is carried out in all counties. If the commissioner cannot contract with another party to administer the program in a county, the commissioner shall perform collections according to the provisions of this section.

(b) The commissioner, according to the terms of a cooperative agreement between the commissioner and a local unit of government, may establish limits for unusual types or excessive quantities of waste pesticide offered by pesticide end users to the local unit of government.

Subd. 8. **Waste pesticide program surcharge.** The commissioner shall annually collect a waste pesticide program surcharge of $50 on each pesticide product registered in the state as part of a pesticide product registration application under section 18B.26, subdivision 3.

Subd. 9. **Waste pesticide cooperative agreement account.** (a) A waste pesticide cooperative agreement account is created in the agricultural fund. Notwithstanding section 18B.05, the proceeds of surcharges imposed under subdivision 8 must be deposited in the agricultural fund and credited to the waste pesticide cooperative agreement account.

(b) Money in the waste pesticide cooperative agreement account, including interest, is appropriated to the commissioner and may only be used for costs incurred under a cooperative agreement pursuant to this section.

(c) Notwithstanding paragraph (b), if the amount available in the waste pesticide cooperative agreement account in any fiscal year exceeds the amount obligated to local units of government under subdivision 7, the excess is appropriated to the commissioner to perform waste pesticide collections under this section.

Subd. 10. **Indemnification.** (a) A local unit of government, when operating or participating in a waste pesticide collection program pursuant to a cooperative agreement with the commissioner under this section, is an employee of the state, certified to be acting within the scope of employment, for purposes of the indemnification provisions of section 3.736, subdivision 9, for claims that arise out of the transportation, management, or disposal of any waste pesticide covered by the agreement:

(1) from and after the time the waste permanently leaves the local unit of government's possession and comes into the possession of the state's authorized transporter; and

(2) during the time the waste is transported between the local unit of government facilities by the state's authorized transporter.

(b) The state is not obligated to defend or indemnify a local unit of government under this subdivision to the extent of the local unit of government's liability insurance. The local unit of government's right to indemnify is not a waiver of the limitation, defenses, and immunities available to either the local unit of government or the state by law.

History: *1989 c 326 art 5 s 20; 1993 c 367 s 3; 1Sp2001 c 2 s 35; 2007 c 45 art 1 s 22,23; 2008 c 297 art 1 s 2-5; 2009 c 94 art 1 s 48-54; 2012 c 244 art 1 s 4,5*

18B.135 SALE OF PESTICIDES IN RETURNABLE CONTAINERS AND MANAGEMENT OF UNUSED PORTIONS.

Subdivision 1. **Acceptance of pesticide containers.** (a) A person distributing, offering for sale, or selling a pesticide must accept empty pesticide containers from a pesticide end user if:

(1) the person does not participate in a designated collection program for pesticide containers after July 1, 1994;

(2) the empty container is prepared for disposal in accordance with label instructions and is returned to the place of purchase within the state; and

(3) a collection site that is seasonably accessible on multiple days has not been designated either by the county board or by agreement with other counties, the agricultural chemical dealer(s) in their respective counties, or the commissioner for the public to return empty pesticide containers for the purpose of reuse or recycling or following other approved management practices for pesticide containers in the order of preference established in section 115A.02, paragraph (b), and the county or counties have notified the commissioner of their intentions annually by February 1, in writing, to manage the empty pesticide containers.

(b) This subdivision does not prohibit the use of refillable and reusable pesticide containers. (c) A person who has

been notified by the county or counties of the designated collection site and who sells pesticides to a pesticide end user must notify purchasers of pesticides at the time of sale of the date and location designated for disposal of empty containers.

(d) For purposes of this section, pesticide containers do not include containers that have held sanitizers and disinfectants, containers made of metal or paper, plastic bags, bag-in-a-box, water soluble bags, and aerosol packaging, pesticides labeled primarily for use on humans or pets, or pesticides not requiring dilution or mixing.

Subd. 2. **Rules.** The commissioner may adopt rules to implement this section, including procedures and standards prescribing the exemption of certain pesticide products and pesticide containers.

History: *1989 c 326 art 5 s 29; 1993 c 367 s 4; 1994 c 557 s 9*

85 DEPARTMENT OF NATURAL RESOURCES

85.20 VIOLATIONS OF RULES; LITTERING; PENALTIES.

Subdivision 1. **Violation of rules.** (a) Any person who, within the limits of any outdoor recreation unit established in chapter 86A, shall willfully cut, injure, or destroy any live tree, shrub, timber, evergreen, or ornamental plant of any kind, or who shall willfully injure, remove, destroy, deface, or mutilate any guideboard, guidepost, furniture, fixture, improvement, monument, tablet, or other property of the state of any kind, or who shall willfully violate, or fail to comply with, any rule of the commissioner adopted according to section 86A.06, is guilty of a petty misdemeanor.

(b) Violations under paragraph (a) adopted for wildlife management areas described in section 86A.05, subdivision 8, are misdemeanors, consistent with game and fish law penalties defined in section 97A.301, subdivision 1, clause (6).

(c) If a different penalty is provided in another section of law for the violation and the person is charged under that section of law, the penalty specified for the violation will control over the penalty specified in paragraphs (a) and (b). Violations relating to the taking of wild animals are subject to the penalties as specified in the game and fish laws described in section 97A.011.

Subd. 2. [Repealed, 1975 c 353 s 41] Subd. 3. [Repealed, 1975 c 353 s 41] Subd. 4. [Repealed, 1975 c 353 s 41]

Subd. 5. [Repealed, 1975 c 353 s 41]

Subd. 6. **Littering; penalty.** (a) No person shall drain, throw, or deposit upon the lands and waters within any unit of the outdoor recreation system as defined in section 86A.04 any substance, including cigarette filters and debris from fireworks, that would mar the appearance, create a stench, destroy the cleanliness or safety of the land, or would be likely to injure any animal, vehicle, or person traveling upon those lands and waters. The operator of a vehicle or watercraft, except a school bus or a vehicle transporting passengers for hire and regulated by a successor agency of the former Interstate Commerce Commission, shall not permit articles to be thrown or discarded from the vehicle upon any lands or waters within any unit of the outdoor recreation system.

(b) Violation of this subdivision is a misdemeanor. Any person sentenced under this subdivision shall in lieu of the sentence imposed be permitted, under terms established by the court, to work under the direction of the Department of Natural Resources at clearing rubbish, trash, and debris from any unit of the outdoor recreation system. The court may for any violation of this subdivision order the offender to perform such work under terms established by the court with the option of a jail sentence being imposed.

(c) In lieu of enforcement under paragraph (b), this subdivision may be enforced by imposition of a civil penalty and an action for damages for littering under section 115A.99.

History: *(6462, 6467-6, 6471, 6490, 6496, 6500, 6504, 6508) RL s 2500,2503; 1905 c 297 s 5; 1911 c 259 s 5; 1911 c 355 s 5; 1913 c 361 s 5; 1923 c 430 s 10; 1933 c 396 s 6; 1969 c 525 s 3,4; 1975 c 168 s 1; 1985 c 248 s 70; 1994 c 412 s 1; 2002 c 351 s 2; 2003 c 2 art 4 s 4; 2003 c 28 art 1 s 9; 2012 c 272 s 19*

85.205 RECEPTACLES FOR RECYCLING.

The commissioner of natural resources must provide recycling conveniences at all state parks.

(a) State park managers must provide and maintain adequate receptacles for collection of food containers for recycling in all state parks.

(b) Appropriate recycling information must be available to all state park visitors.

(c) State park managers must post a notice of recycling availability at appropriate locations within each state park.

(d) State park managers must where practicable recycle the gathered recyclable materials, provide for the local unit of government to recycle the gathered materials, or contract with private nonprofit groups for recycling.

(e) Money collected by state park managers for recycling must be deposited in the state treasury and credited to the general fund.

History: *1989 c 205 s 1; 1990 c 594 art 3 s 3*

88.171 OPEN BURNING PROHIBITIONS.

Subdivision 1. **Continual.** Open burning prohibitions specified in this section are in effect at all times of the year.

Subd. 2. **Prohibited materials; exceptions.** No person shall conduct, cause, or permit open burning of rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke including, but not limited to, tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters. The

commissioner may allow burning of prohibited materials when the commissioner of health or the local board of health has made a determination that the burning is necessary to abate a public health nuisance. Except as specifically authorized by the commissioner of the Pollution Control Agency as an emergency response to an oil spill, no person shall conduct, cause, or permit open burning of oil.

Subd. 3. **Hazardous wastes.** No person shall conduct, cause, or permit open burning of hazardous waste as defined in section 116.06, subdivision 11, and applicable commissioner's rules.

Subd. 4. **Industrial solid waste.** (a) No person shall conduct, cause, or permit open burning of solid waste generated from an industrial or manufacturing process or from a service or commercial structure.

(b) The commissioner may allow open burning of raw untreated wood if the commissioner determines that reuse, recycling, or land disposal is not a feasible or prudent alternative.

Subd. 5. **Demolition debris.** No person shall conduct, cause, or permit open burning of burnable building material generated from demolition of commercial or institutional structures. A farm building is not a commercial structure.

Subd. 6. **Salvage operations.** No person shall conduct, cause, or permit salvage operations by open burning.

Subd. 7. **Motor vehicles.** No person shall conduct, cause, or permit the processing of motor vehicles by open burning.

Subd. 8. **Garbage.** (a) No person shall conduct, cause, or permit open burning of discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food, unless specifically allowed under section 17.135.

(b) A county may allow a resident to conduct open burning of material described in paragraph (a) that is generated from the resident's household if the county board by resolution determines that regularly scheduled pickup of the material is not reasonably available to the resident.

Subd. 9. **Burning ban.** No person shall conduct, cause, or permit open burning during a burning ban put into effect by a local authority, county, or a state department or agency.

Subd. 10. **Smoldering fires.** Fires must not be allowed to smolder with no flame present, except when conducted for the purpose of managing forests, prairies, or wildlife habitats.

History: *1993 c 328 s 27; 1995 c 240 art 2 s 1; 1996 c 295 s 1,2*

ENVIRONMENTAL RESPONSE AND LIABILITY ACT

115B.01 CITATION.

Sections 115B.01 to 115B.20 may be cited as the Environmental Response and Liability Act.

History: *1983 c 121 s 1; 2004 c 228 art 1 s 73*

115B.02 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 115B.01 to 115B.20, the following terms have the meanings given them.

Subd. 1a. [Repealed, 2003 c 128 art 2 s 56]

Subd. 2. **Act of God.** "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Subd. 3. **Agency.** "Agency" means the commissioner of agriculture for actions, duties, or authorities relating to agricultural chemicals, or for other substances, the Pollution Control Agency.

Subd. 3a. **Agricultural chemical.** "Agricultural chemical" has the meaning given in section 18D.01, subdivision 3.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture for actions, duties, or authorities related to agricultural chemicals or the commissioner of the Pollution Control Agency for other substances.

Subd. 5. **Facility.** "Facility" means:

(1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(2) any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(3) any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

Facility does not include any consumer product in consumer use.

Subd. 6. **Federal Superfund Act.** "Federal Superfund Act" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, United States Code, title 42, section 9601 et seq.

Subd. 7. [Renumbered subd 1a]

Subd. 8. **Hazardous substance.** "Hazardous substance" means:

(1) any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under United States Code, title 33, section 1321(b)(2)(A);

(2) any hazardous air pollutant listed pursuant to the Clean Air Act, under United States Code, title 42, section 7412; and

(3) any hazardous waste.

Hazardous substance does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

Subd. 9. **Hazardous waste.** "Hazardous waste" means:

(1) any hazardous waste as defined in section 116.06, subdivision 11, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(2) any hazardous waste as defined in the Resource Conservation and Recovery Act, under United States Code, title 42, section 6903, which is listed or has the characteristics identified under United States Code, title 42, section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

Subd. 9a. **Institutional controls.** "Institutional controls" means legally enforceable restrictions, conditions, or controls on the use of real property, groundwater, or surface water located at or adjacent to a facility where response actions are taken that are reasonably required to assure that the response actions are protective of public health or welfare or the environment. Institutional controls include restrictions, conditions, or controls enforceable by contract, easement, restrictive covenant, statute, ordinance, or rule, including official controls such as zoning, building codes, and official maps. An affidavit required under section 115B.16, subdivision 2, or similar notice of a release recorded with real property records is also an institutional control.

Subd. 10. **Natural resources.** "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

Subd. 11. **Owner of real property.** "Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including without limitation a person who may be a fee owner, lessee, renter, tenant, lessor, contract for deed vendee, licensor, licensee, or occupant; provided that:

(1) a lessor of real property under a lease which in substance is a financing device and is treated as such under the United States Internal Revenue Code, common law, or statute, is not an owner of the real property;

(2) a public utility holding a public utility easement is an owner of the real property described in the easement only for the purpose of carrying out the specific use for which the easement was granted;

(3) any person holding a remainder or other nonpossessory interest or estate in real property is an owner of the real property beginning when that person's interest or estate in the real property vests in possession or that person obtains the unconditioned right to possession, or to control the use of, the real property; and

(4) the state or an agency of the state is not an owner of real property solely because it holds title to the property in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

Subd. 12. **Person.** "Person" means any individual, partnership, association, public or private corporation or other entity including the United States government, any interstate body, the state and any agency, department or political subdivision of the state.

Subd. 13. **Pollutant or contaminant.** "Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism,

either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

Pollutant or contaminant does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

Subd. 14. **Public utility easement.** "Public utility easement" means an easement used for the purposes of transmission, distribution, or furnishing, at wholesale or retail, natural or manufactured gas, or electric or telephone service, by a public utility as defined in section 216B.02, subdivision 4, a cooperative electric association organized under the provisions of chapter 308A, a telephone company as defined in section 237.01, subdivisions 3 and 7, or a municipality producing or furnishing gas, electric, or telephone service.

Subd. 15. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

Release does not include:

(1) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(2) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title 42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal Nuclear Regulatory Commission under United States Code, title 42, section 2210;

(3) release of source, by-product or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under United States Code, title 42, section 7912(a)(1) or 7942(a); or

(4) any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18B.01, subdivision 18.

Subd. 16. **Remedy or remedial action.** (a) "Remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, or a pollutant or contaminant, into the environment, to prevent, minimize or eliminate the release in order to protect the public health or welfare or the environment.

(b) Remedy or remedial action includes, but is not limited to:

(1) actions at the location of the release such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants or contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring and maintenance, and institutional controls reasonably required to assure that these actions protect the public health and welfare and the environment; and

(2) the costs of permanent relocation of residents and businesses and community facilities when the agency determines that, alone or in combination with other measures, relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous substances, or pollutants or contaminants, or may otherwise be necessary to protect the public health or welfare.

(c) Remedy or remedial action does not include offsite transport of hazardous substances, pollutants or contaminants, or contaminated materials or their storage, treatment, destruction, or secure disposition offsite unless the agency determines that these actions:

(1) are more cost-effective than other remedial actions;

(2) will create new capacity to manage hazardous substances in addition to those located at the affected facility, in compliance with section 116.07 and subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq.; or

(3) are necessary to protect the public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of the hazardous substances, pollutants or contaminants, or contaminated materials.

Subd. 17. **Remove or removal.** "Remove" or "removal" means:

(1) the cleanup or removal of a released hazardous substance, or a pollutant or contaminant, from the environment;

(2) necessary actions taken in the event of a threatened release of a hazardous substance, or a pollutant or contaminant, into the environment;

(3) actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance, or a pollutant or contaminant;

(4) disposal or processing of removed material; or

(5) other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threatened release.

Remove or removal includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken pursuant to the federal Superfund Act, under United States Code, title 42, section 9604(b), and any emergency assistance which may be provided under the Disaster Relief Act of 1974, United States Code, title 42, section
5121 et seq.

Subd. 18. **Respond or response.** "Respond" or "response" means remove, removal, remedy, and remedial action.

Subd. 19. **Water.** "Water" has the meaning given to the term "waters of the state" in section 115.01, subdivision 22.

History: *1983 c 121 s 2; 1987 c 186 s 15; 1989 c 209 art 2 s 1; 1989 c 335 art 4 s 106; 1989 c 356 s 7; 1990 c 586 s 1; 1990 c 597 s 52-54; 1997 c 216 s 99,100*

115B.03 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** For the purposes of sections 115B.01 to 115B.20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

(1) owned or operated the facility:

(i) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility;

(ii) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or

(iii) during the time of the release or threatened release;

(2) owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(3) knew or reasonably should have known that waste the person accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subd. 2. **Employees and employers.** When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of employment:

(1) The employee is subject to liability under section 115B.04 or 115B.05 only if the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew that the substance was hazardous and that the conduct, if negligent, could result in serious harm.

(2) The person's employer shall be considered a person responsible for the release or threatened release and is subject to liability under section 115B.04 or 115B.05 regardless of the degree of care exercised by the employee.

Subd. 3. **Owner of real property.** An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(1) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(2) knowingly permitted any person to make regular use of the facility for disposal of waste; (3) knowingly permitted any person to use the facility for disposal of a hazardous substance; (4) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the release; or

(5) took action which significantly contributed to the release after that person knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (4), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 115B.01 to 115B.15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

Subd. 4. **Tax-forfeited land.** (a) The state, an agency of the state, or a political subdivision that may be considered an owner of tax-forfeited real property is not a person responsible for a release or threatened release from a facility in or on the property under subdivision 3, clause (4).

(b) The state, an agency of the state, or a political subdivision is not an operator of a facility in or on tax-forfeited land solely as a result of actions taken to manage, sell, or transfer the land in accordance with chapter 282 and other laws applicable to tax-forfeited land.

(c) Nothing in this subdivision relieves the state, a state agency, or a political subdivision from liability for causing or significantly contributing to the release of a hazardous substance from a facility in or on the land.

Subd. 5. **Eminent domain.** (a) The state, an agency of the state, or a political subdivision is not a responsible person under this section solely as a result of the acquisition of property, or as a result of providing funds for the acquisition of such property either through loan or grant,
if the property was acquired by the state, an agency of the state, or a political subdivision (1) through exercise of the power of eminent domain, (2) through negotiated purchase in lieu of, or after filing a petition for the taking of the property through eminent domain, (3) after adopting a redevelopment or development plan under sections 469.001 to 469.133 describing the property and stating its intended use and the necessity of its taking, (4) after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking, or (5) through the use of a loan to purchase right-of-way in the seven-county metropolitan area under section 473.167.

(b) A person who acquires property from the state, an agency of the state, or a political subdivision, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the state, agency, or political subdivision through exercise of the power of eminent domain or by negotiated purchase after filing a petition for the taking of the property through eminent domain, after adopting a redevelopment or development plan under sections 469.001 to 469.133 describing the property and stating its intended use and the necessity of its taking, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

Subd. 6. **Mortgages.** (a) A mortgagee is not a responsible person under this section solely because the mortgagee becomes an owner of real property through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a facility is located or a holder of a security interest in facility assets or inventory is not an operator of the facility for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the facility to protect its security interest in the real property or assets.

Subd. 7. **Contract for deed vendors.** A contract for deed vendor who is otherwise not a responsible party for a release or a threatened release of a hazardous substance from a facility is not a responsible person under this section solely as a result of a termination of the contract for deed under section 559.21.

Subd. 8. **Trustees.** A trustee who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this

section solely because the facility is among the trust assets or solely because the trustee has the capacity to direct the operation of the facility.

Subd. 9. **Personal representatives of estates.** A personal representative, guardian, or conservator of an estate who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this section solely because the facility is among the assets of the estate or solely because the personal representative, guardian, or conservator has the capacity to direct the operation of the facility.

Subd. 10. **Contractor.** (a) For the purposes of this subdivision, "contractor" means a person who is not otherwise responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, and who, under contract with another person:

(1) performs response actions, including investigative, removal, or remedial actions to address the release or threatened release pursuant to a plan approved by the commissioner; or

(2) performs development actions at the site of the release or threatened release, such as site preparation, engineering, construction, and similar actions with respect to which the commissioner approves a contingency plan or other conditions which the commissioner deems necessary to protect public health or welfare or the environment.

(b) A contractor is not a responsible person for a release or threatened release solely as the result of performing response actions to address that release or threatened release if the contractor performs the response actions in accordance with a plan approved by the commissioner.

(c) A contractor who performs development actions, such as site preparation, engineering, construction, or similar actions, at the site of a release or threatened release is not responsible for the release or threatened release solely as a result of performing the development actions if the contractor complies with a contingency plan or other conditions approved by the commissioner. The contractor must obtain approval from the commissioner for the contingency plan or other conditions:

(1) for a site with a known release or threatened release, before the contractor commences the development actions; or

(2) for a site with a release or threatened release discovered during the contractor's performance of the development actions, before the contractor performs further development actions at the site after discovery of the release or threatened release.

(d) This subdivision shall not apply to a contractor who causes or contributes to a release or threatened release by an act or omission that is negligent, grossly negligent, or that constitutes intentional misconduct.

History: *1983 c 121 s 3; 1986 c 444; 1990 c 586 s 2; 1991 c 223 s 1-3; 1991 c 347 art 2 s 1,2; 1995 c 168 s 1,2; 1996 c 359 s 1; 1997 c 200 art 2 s 1; 1998 c 341 s 1; 2013 c 125 art 1 s 107*

115B.04 LIABILITY FOR RESPONSE COSTS AND NATURAL RESOURCES; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 12, and notwithstanding any other provision or rule of law, any person who is responsible for a release or threatened release of a hazardous substance from a facility is strictly liable, jointly and severally, for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(1) all reasonable and necessary response costs incurred by the state, a political subdivision of the state or the United States;

(2) all reasonable and necessary removal costs incurred by any person; and

(3) all damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss.

Subd. 2. **Liability for pollutant or contaminant excluded.** There is no liability under this section for response costs or damages which result from the release of a pollutant or contaminant.

Subd. 3. **Liability for a threatened release.** Liability under this section for a threatened release of a hazardous substance is limited to the recovery by the agency of reasonable and necessary response costs as provided in section 115B.17, subdivision 6.

Subd. 4. **Liability of political subdivisions.** (a) The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1, except when the political subdivision is liable under this section as the owner or operator of a disposal facility as defined in section 115A.03, subdivision 10.

(b) When a political subdivision is liable as an owner or operator of a disposal facility, the liability of each political subdivision is limited to $400,000 at each facility unless the facility was owned or operated under a valid joint powers agreement by three or more political subdivisions, in which case the aggregate liability of all political subdivisions that are parties to the joint powers agreement is limited to $1,200,000.

(c) The limits on the liability of a political subdivision for ownership or operation of a disposal facility apply to the costs of response action incurred between the date a request for response action is issued by the agency and the date one year after the construction certificate of completion is approved by the commissioner, excluding the costs of negotiation of a consent order agreement.

(d) When a political subdivision takes response action as the owner or operator of a disposal facility between the dates in paragraph (c), it may receive, after approval by the agency, reimbursement of any amount spent pursuant to an approved work plan that exceeds the applicable liability limit specified in this subdivision.

Subd. 4a. **Claims by mixed municipal solid waste disposal facilities.** (a) Except as provided in paragraph (b), liability under this section for claims by owners or operators of mixed municipal solid waste disposal facilities that accept waste on or after April 9, 1994, and are not qualified facilities under section 115B.39, subdivision 2, is limited to liability for response costs exceeding the amount of available financial assurance funds required under section 116.07, subdivision 4h.

(b) This subdivision does not affect liability under this section for claims based on the illegal disposal of waste at a facility.

Subd. 5. **Transportation of household refuse.** A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the

refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. **Defense to certain claims by political subdivisions and private persons.** It is a defense to a claim by a political subdivision or private person for recovery of the costs of its response actions under this section that the hazardous substance released from the facility was placed or came to be located in or on the facility before April 1, 1982, and that the response actions of the political subdivision or private person were not authorized by the agency as provided in section 115B.17, subdivision 12. This defense applies only to response costs incurred on or after July 1, 1983.

Subd. 7. **Defense for intervening acts.** It is a defense to liability under this section that the release or threatened release was caused solely by:

(1) an act of God; (2) an act of war;

(3) an act of vandalism or sabotage; or

(4) an act or omission of a third party or the plaintiff.

"Third party" for the purposes of clause (4) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (3) and (4) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 8. **Intervening acts of public agencies.** When the agency or the federal Environmental Protection Agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 9. **Releases subject to certain permits or standards; federal postclosure fund.** It is a defense to liability under this section that:

(1) the release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(2) the hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(3) the release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(4) the release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(5) the release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(6) liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 10. **Natural resources.** It is a defense to liability under this section, for any injury to, destruction of, or loss of natural resources that:

(1) the natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement, or other comparable approved final environmental analysis for a project or facility which was the subject of a governmental permit or license; and

(2) the project or facility was being operated within the terms of its permit or license. Subd. 11. **Rendering assistance in response actions.** It is a defense to liability under this section that the response costs or damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the commissioner or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 12. **Burden of proof for defenses.** Any person claiming a defense provided in subdivisions 6 to 11 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: *1983 c 121 s 4; 1986 c 444; 1987 c 186 s 15; 1989 c 325 s 29; 1991 c 337 s 53; 1994 c 639 art 1 s 1*

115B.05 LIABILITY FOR ECONOMIC LOSS, DEATH, PERSONAL INJURY AND DISEASE; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 10, and notwithstanding any other provision or rule of law, any person who is responsible for the release of a hazardous substance from a facility is strictly liable for the following damages which result from the release or to which the release significantly contributes:

(1) all damages for actual economic loss including:

(i) any injury to, destruction of, or loss of any real or personal property, including relocation costs;
(ii) any loss of use of real or personal property;
(iii) any loss of past or future income or its resulting from injury to, destruction of, or prof
loss of real or personal property without regard to the ownership of the property; and
(2) all damages for death, personal injury, or disease including: (i) any medical expenses, rehabilitation costs or burial expenses;

(ii) any loss of past or future income, or loss of earning capacity; and

(iii) damages for pain and suffering, including physical impairment.
Subd. 2. **Liability for pollutant or contaminant excluded.** There is no liability under this section for damages which result from the release of a pollutant or contaminant.

Subd. 3. **Certain employee claims not covered.** Except for a third party who is subject to liability under section 176.061, subdivision 5, there is no liability under this section for the death, personal injury or disease of an

employee which is compensable under chapter 176 as an injury or disease arising out of and in the course of employment.

Subd. 4. **Liability limitations.** The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1.

Subd. 5. **Transportation of household refuse.** A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. **Defense for intervening acts.** It is a defense to liability under this section that the release or threatened release was caused solely by:

(1) an act of God; (2) an act of war;

(3) an act of vandalism or sabotage; or

(4) an act or omission of a third party or the plaintiff.

"Third party" for the purposes of clause (4) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (3) and (4) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 7. **Intervening acts of public agencies.** When the agency or the federal Environmental Protection Agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 8. **Releases subject to certain permits or standards; federal postclosure fund.** It is a defense to liability under this section that:

(1) the release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(2) the hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(3) the release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(4) the release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(5) the release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(6) liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 9. **Rendering assistance in response actions.** It is a defense to liability under this section that the damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the commissioner or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 10. **Burden of proof for defenses.** Any person claiming a defense provided in subdivisions 6 to 9 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: *1983 c 121 s 5; 1Sp1985 c 8 s 1; 1986 c 444; 1987 c 186 s 15*

115B.055 EFFECT OF REMOVING AND REPEALING CERTAIN PROVISIONS.

Subdivision 1. **Joint and several liability for personal injury.** The enactment of Laws 1983, chapter 121, section 5, relating to joint and several liability, and the subsequent amendment of section 115B.05 as provided in Laws 1985, First Special Session chapter 8, shall not be construed in any way as a determination of legislative intent regarding the applicability of joint and several liability in any action brought under section 115B.05. The determination of whether joint and several liability applies in any action brought under section 115B.05 shall be based solely on applicable statutory and common law.

Subd. 2. **Causation of personal injury.** In any action brought under section 115B.05, or under any other law, to recover damages for death, personal injury, or disease arising out of the release of a hazardous substance, the enactment of Laws 1983, chapter 121, section 7, and subsequent repeal of Minnesota Statutes 1984, section 115B.07, under Laws 1985, First Special Session chapter 8, relating to proof of causation, shall not be construed in any way as a determination of legislative intent regarding the legal principles applicable to the proof of the causal connection between the release and the death, injury, or disease. The legal principles applicable to the proof of causation shall be determined solely on the basis of applicable statutory and common law.

History: *1Sp1985 c 8 s 17*

115B.06 APPLICATION TO PAST ACTIONS.

Subdivision 1. **Application of section 115B.05.** Section 115B.05 does not apply to any claim for damages arising out of the release of a hazardous substance which was placed or came to be located in or on the facility wholly before July 1, 1983.

Subd. 2. [Repealed, 1Sp1985 c 8 s 19]

History: *1983 c 121 s 6; 1Sp1985 c 8 s 2*

115B.07 [Repealed, 1Sp1985 c 8 s 19]

115B.08 LIABILITY UNDER SECTION 115B.04; APPORTIONMENT AND CONTRIBUTION.

Subdivision 1. **Right of apportionment; factors.** Any person held jointly and severally liable under section 115B.04 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each defendant to show how that defendant's liability should be apportioned. The court shall reduce the amount of damages in proportion to any amount of liability apportioned to the party recovering.

In apportioning the liability of any party under this section, the trier of fact shall consider the following:

(1) the extent to which that party's contribution to the release of a hazardous substance can be distinguished;

(2) the amount of hazardous substance involved;

(3) the degree of toxicity of the hazardous substance involved;

(4) the degree of involvement of and care exercised by the party in manufacturing, treating, transporting, and disposing of the hazardous substance;

(5) the degree of cooperation by the party with federal, state, or local officials to prevent any harm to the public health or the environment; and

(6) knowledge by the party of the hazardous nature of the substance.

Subd. 2. **Contribution.** If a person is held jointly and severally liable under section 115B.04 and establishes a proportionate share of the aggregate liability, the provisions of section 604.02, subdivisions 1 and 2, shall apply with respect to contribution and reallocation of any uncollectible amounts.

History: *1983 c 121 s 8; 1986 c 444*

115B.09 LIABILITY UNDER SECTION 115B.05; COMPARATIVE FAULT AND CONTRIBUTION.

The provisions of sections 604.01 and 604.02, subdivisions 1 and 2, apply to any action for damages under section 115B.05.

History: *1983 c 121 s 9; 1Sp1985 c 8 s 3*

115B.10 NO AVOIDANCE OF LIABILITY; INSURANCE AND SUBROGATION.

An owner or operator of a facility or any other person who may be liable under sections 115B.01 to 115B.15 may not avoid that liability by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement. Nothing in this section shall be construed:

(1) to prohibit any party who may be liable under sections 115B.01 to 115B.15 from entering an agreement by which that party is insured, held harmless or indemnified for part or all of that liability;

(2) to prohibit the enforcement of any insurance, hold harmless or indemnification agreement; or

(3) to bar any cause of action brought by a party who may be liable under sections 115B.01 to 115B.15 or by an insurer or guarantor, whether by right of subrogation or otherwise.

History: *1983 c 121 s 10*

115B.11 STATUTE OF LIMITATIONS.

Subdivision 1. **Construction.** For the purposes of this section, "construction" means actions taken after the selection of remedial action such as excavation, building of structures, installation of equipment or fixtures, and other physical actions to respond to a release or threatened release.

Subd. 2. **Action for recovery of costs.** (a) An action for recovery of response costs under section 115B.04, including recovery of costs and expenses under section 115B.17, subdivision 6, may be commenced any time after costs and expenses have been incurred but must be commenced no later than six years after initiation of physical on-site construction of a response action.

(b) A party prevailing in an action commenced within the time required under paragraph (a) shall be entitled to a declaratory judgment of liability for all future reasonable and necessary costs incurred by that party to respond to the release or threatened release, including costs and expenses under section 115B.17, subdivision 6.

Subd. 3. **Action for damages.** No person may recover damages pursuant to sections 115B.01 to 115B.15 unless the action is commenced within six years from the date when the cause of action accrues. In determining when the cause of action accrues for an action to recover damages for death, personal injury or disease, the court shall consider factors including the following:

(1) when the plaintiff discovered the injury or loss;

(2) whether a personal injury or disease had sufficiently manifested itself; and

(3) when the plaintiff discovered, or using due diligence should have discovered, a causal connection between the injury, disease, or loss and the release of a hazardous substance.

Subd. 4. **Application.** Subdivisions 1 to 3 apply to actions for recovery of costs commenced on or after April 1, 1998. Response costs incurred before April 1, 1998, are recoverable in an action commenced on or after April 1, 1998, only if physical on-site construction of the response action was initiated not more than six years before the cost recovery action is commenced. Notwithstanding any provision in Laws 1998, chapter 341, to the contrary, the running of the statute of limitations imposed by subdivisions 1 to 3 with respect to cost recovery actions is suspended until July 1, 1999. Subdivisions 1 to 3 shall not apply to any litigation pending in court on March 31, 1998, if the statute of limitations under this chapter has been contested in the litigation. Subdivisions 1 to 3 shall not be offered by any party as evidence of the intent, meaning, or application of the statute of limitations under this chapter.

History: *1983 c 121 s 11; 1998 c 341 s 2,5*

115B.12 OTHER REMEDIES PRESERVED.

Nothing in sections 115B.01 to 115B.15 shall be construed to abolish or diminish any remedy or affect the right of any person to bring a legal action or use any remedy available under any other provision of state or federal law, including common law, to recover for personal injury, disease, economic loss or response costs arising out of a release of any hazardous substance, or for removal or the costs of removal of that hazardous substance. Nothing in sections 115B.01 to
115B.15 shall be construed to limit or restrict in any way the liability of any person under any other state or federal law, including common law, for loss due to personal injury or disease, for economic loss, or for response costs arising out of any release or threatened release of a hazardous substance from a facility regardless of the time at which a hazardous substance was placed or came to be located in or on the facility. The provisions of sections 115B.01 to 115B.15 shall not be considered, interpreted, or construed in any way as reflecting a determination, in whole or in part, of policy regarding the inapplicability of strict liability, or strict liability doctrines under any other state or federal law, including common law, to activities past, present or future, relating to hazardous substances, or pollutants or contaminants, or other similar activities.

History: *1983 c 121 s 12*

115B.13 DOUBLE RECOVERY PROHIBITED.

A person who recovers response costs or damages pursuant to sections 115B.01 to 115B.15 may not recover the same costs or damages pursuant to any other law. A person who recovers response costs or damages pursuant to any other state or federal law may not recover for the same costs or damages pursuant to sections 115B.01 to 115B.15.

History: *1983 c 121 s 13*

115B.14 AWARD OF COSTS.

Upon motion of a party prevailing in an action under sections 115B.01 to 115B.15 the court may award costs, disbursements and reasonable attorney fees and witness fees to that party.

History: *1983 c 121 s 14*

115B.15 APPLICATION OF SECTIONS 115B.01 TO 115B.14.

Sections 115B.01 to 115B.14 apply to any release or threatened release of a hazardous substance occurring on or after July 1, 1983, including any release which began before July 1,

1983, and continued after that date. Sections 115B.01 to 115B.14 do not apply to a release or threatened release which occurred wholly before July 1, 1983, regardless of the date of discovery of any injury or loss caused by the release or threatened release.

History: *1983 c 121 s 15*

115B.16 DISPOSITION OF FACILITIES.

Subdivision 1. **Closed disposal facilities; use of property.** No person shall use any property on or in which hazardous waste remains after closure of a disposal facility as defined in section 115A.03, subdivision 10, in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the disposal facility's monitoring systems, unless the agency finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

Subd. 2. **Recording of affidavit.** Before any transfer of ownership of any property which the owner knew or should have known was used as the site of a hazardous waste disposal facility as defined in section 115A.03, subdivision 10, or which the owner knew or should have known is subject to extensive contamination by release of a hazardous substance, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

(1) that the land has been used to dispose of hazardous waste or that the land is contaminated by a release of a hazardous substance;

(2) the identity, quantity, location, condition and circumstances of the disposal or contamination to the full extent known or reasonably ascertainable; and

(3) that the use of the property or some portion of it may be restricted as provided in subdivision 1.

An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under clauses (1) to (3) with respect to property for which an affidavit has already been recorded.

If the owner or any subsequent owner of the property removes the hazardous substance, together with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal of the hazardous substance.

Failure to record an affidavit as provided in this subdivision does not affect or prevent any transfer of ownership of the property.

Subd. 3. **Duty of county recorder.** The county recorder shall record all affidavits presented in accordance with subdivision 2. The affidavits shall be recorded in a manner which will assure their disclosure in the ordinary course of a title search of the subject property.

Subd. 4. **Penalties.** (a) Any person who knowingly violates the provisions of subdivision 1 is subject to a civil penalty in an amount determined by the court of not more than $100,000, and shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance resulting from the violation.

(b) Any person who knowingly fails to record an affidavit as required by subdivision 2 shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance from a facility located on that property.

(c) A civil penalty may be imposed and recovered by an action brought by a county attorney or by the attorney general in the district court of the county in which the property is located.

(d) Any civil fines recovered under this subdivision shall be deposited in the remediation fund.

History: *1983 c 121 s16; 1986 c 444; 1989 c 335 art 4 s 106; 2004 c 228 art 1 s 24*

115B.17 STATE RESPONSE TO RELEASES.

Subdivision 1. **Removal and remedial action.** Whenever there is a release or substantial threat of release from a facility of any pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or whenever a hazardous substance is released or there is a threatened release of a hazardous substance from a facility:

(a) The agency may take any removal or remedial action relating to the hazardous substance, or pollutant or contaminant, which the agency deems necessary to protect the public health or welfare or the environment. Before taking any action the agency shall:

(1) Request any responsible party known to the agency to take actions which the agency deems reasonable and necessary to protect the public health or welfare or the environment, stating the reasons for the actions, a reasonable time for beginning and completing the actions taking into account the urgency of the actions for protecting the public health or welfare or the environment, and the intention of the agency to take action if the requested actions are not taken as requested;

(2) Notify the owner of real property where the facility is located or where response actions are proposed to be taken, if the owner is not a responsible party, that responsible parties have been requested to take response actions and that the owner's cooperation will be required in order for responsible parties or the agency to take those actions; and

(3) Determine that the actions requested by the agency will not be taken by any known responsible party in the manner and within the time requested.

(b) The commissioner may take removal action which the commissioner deems necessary to protect the public health or welfare or the environment if the commissioner determines that the release or threatened release constitutes an emergency requiring immediate action to prevent, minimize or mitigate damage to the public health or welfare or the environment. Before taking any action the commissioner shall make reasonable efforts in light of the urgency of the action to follow the procedure provided in clause (a).

No removal action taken by any person shall be construed as an admission of liability for a release or threatened release.

Subd. 2. **Other actions.** Whenever the agency or commissioner is authorized to act pursuant to subdivision 1 or whenever the agency or commissioner has reason to believe that a release of a hazardous substance, or a pollutant or contaminant, has occurred or is about
to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, or a pollutant or contaminant, the agency or commissioner may undertake investigations, monitoring, surveys, testing, and other similar activities necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, or pollutants or contaminants, and the extent of danger to the public health or welfare or the environment. In addition, the agency may undertake planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action, and to enforce the provisions of sections 115B.01 to 115B.18.

Subd. 2a. **Cleanup standards.** In determining the appropriate standards to be achieved by response actions taken or requested under this section to protect public health and welfare and the environment from a release or threatened release, the commissioner shall consider the planned use of the property where the release or threatened release is located.

Subd. 2b. **Public notice of proposed response actions.** Before selecting a remedial action to respond to a release or threatened release listed pursuant to subdivision 13, the commissioner shall give written notice of the proposed remedial action to the public by publication of a notice in a newspaper of general circulation in the affected

area, and provide an opportunity for submission of comments on the proposed remedial action. The notice shall also be given by certified mail
to all persons known to the commissioner at the time of the notice who the commissioner has reason to believe are responsible for the release or threatened release, including all persons who
have previously received a request for response action under subdivision 1 with respect to the release or threatened release.

Subd. 3. **Duty to provide information.** Any person who the agency has reason to believe is responsible for a release or threatened release as provided in section 115B.03, or who is the owner of real property where the release or threatened release is located or where response actions are proposed to be taken, when requested by the agency, or any member, employee or agent thereof who is authorized by the agency, shall furnish to the agency any information which that person may have or may reasonably obtain which is relevant to the release or threatened release.

Subd. 4. **Access to information and property.** The agency or any member, employee or agent thereof authorized by the agency, upon presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda or data of any person who has a duty to provide information to the agency under subdivision 3; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized by this section including obtaining information from any person who has a duty to provide the information under subdivision 3, conducting surveys or investigations, and taking removal or remedial action.

Subd. 5. **Classification of data.** Except as otherwise provided in this subdivision, data obtained from any person pursuant to subdivision 3 or 4 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information which would tend to affect adversely the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Notwithstanding any other law to the contrary, data classified as private or nonpublic under this subdivision may be disclosed when relevant in any proceeding under sections 115B.01 to 115B.18, or to other public agencies concerned with the implementation of sections 115B.01 to 115B.18.

Subd. 6. **Recovery of expenses.** Any reasonable and necessary expenses incurred by the agency or commissioner pursuant to this section, including all response costs, and administrative and legal expenses, may be recovered in a civil action brought by the attorney general against any person who may be liable under section 115B.04 or any other law. The agency's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. Any
expenses incurred pursuant to this section which are recovered by the attorney general pursuant to section 115B.04 or any other law, including any award of attorneys fees, shall be deposited in
the remediation fund.

Subd. 7. **Actions relating to natural resources.** For the purpose of this subdivision, the state is the trustee of the air, water and wildlife of the state. An action pursuant to section 115B.04 for damages with respect to air, water or wildlife may be brought by the attorney general in the name of the state as trustee for those natural resources. Any damages recovered by the attorney general pursuant to section 115B.04 or any other law for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance, or a pollutant or contaminant,
shall be deposited in the remediation fund.

Subd. 8. [Repealed, 1990 c 597 s 73]

Subd. 9. **Actions relating to occupational safety and health.** The agency, commissioner, and the commissioner of labor and industry shall make reasonable efforts to coordinate any actions taken under this section and under sections 182.65 to 182.674 to avoid duplication or

conflict of actions or requirements with respect to a release or threatened release affecting the safety of any conditions or place of employment.

Subd. 10. **Actions relating to health.** The agency and commissioner shall make reasonable efforts to coordinate and consult with the commissioner of health in planning and directing response actions with respect to a release or threatened release affecting the public health. If the commissioner of health, upon the request of the agency, takes any actions authorized under this section, the agency shall reimburse the commissioner of health from the fund for the reasonable and necessary expenses incurred in taking those actions and may recover any amount spent
from the fund under subdivision 6.

Subd. 11. **Limit on actions by political subdivisions.** When the agency or commissioner has requested a person who is responsible for a release or threatened release to take any response action under subdivision 1, no political subdivision shall request or order that person to take any action which conflicts with the action requested by the agency or commissioner of the Pollution Control Agency.

Subd. 12. **Authorization of certain response actions.** For the purpose of permitting a political subdivision or private person to recover response costs as provided in section 115B.04, subdivision 6, the agency may authorize the political subdivision to take removal or remedial actions or may authorize the private person to take removal actions with respect to any release of a hazardous substance which was placed or came to be located in the facility before April 1,
1982. The authorization shall be based on application of the criteria in the rules of the agency adopted under subdivision 13 or, if the rules have not been adopted, under the criteria set forth in subdivision 13 on which the rules are required to be based. The authorization shall not be inconsistent with the criteria. This subdivision shall not be construed to prohibit a political subdivision or private person from taking removal or remedial actions without the authorization of the agency.

Subd. 13. **Priorities; rules.** By November 1, 1983, the Pollution Control Agency shall establish a temporary list of priorities among releases or threatened releases for the purpose of taking remedial action and, to the extent practicable consistent with the urgency of the action, for taking removal action under this section. The temporary list, with any necessary modifications, shall remain in effect until the Pollution Control Agency adopts rules establishing state criteria for determining priorities among releases and threatened releases. The Pollution Control Agency shall adopt the rules by July 1, 1984. After rules are adopted, a permanent priority list shall be established, and may be modified from time to time, according to the criteria set forth in the rules. Before any list is established under this subdivision the Pollution Control Agency shall publish the list in the State Register and allow 30 days for comments on the list by the public.

The temporary list and the rules required by this subdivision shall be based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the administrative and financial capabilities of the Pollution Control Agency, and other appropriate factors.

Subd. 14. **Requests for review, investigation, and oversight.** (a) The commissioner may, upon request, assist a person in determining whether real property has been the site
of a release or threatened release of a hazardous substance, pollutant, or contaminant. The commissioner may also assist in, or supervise, the development and implementation of reasonable
and necessary response actions. Assistance may include review of agency records and files, and review and approval of a requester's investigation plans and reports and response action plans and implementation.

(b) Except as otherwise provided in this paragraph, the person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. A state agency, political subdivision, or other public entity is not required

to pay for the agency's cost to review agency records and files. Money received by the agency for assistance under this section must be deposited in the remediation fund and is exempt from section 16A.1285.

(c) When a person investigates a release or threatened release in accordance with an investigation plan approved by the commissioner under this subdivision, the investigation does not associate that person with the release or threatened release for the purpose of section 115B.03, subdivision 3, clause (4).

Subd. 15. **Acquisition of property.** The agency may acquire, by purchase or donation, interests in real property, including easements, environmental covenants under chapter 114E, and leases, that the agency determines are necessary for response action. The agency may acquire
an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision. Agency approval of an environmental covenant under chapter 114E is sufficient evidence of acceptance of an interest in real property where the agency is expressly identified as a holder in the covenant.

Subd. 16. **Disposition of property acquired for response action.** (a) If the commissioner determines that real or personal property acquired by the agency for response action is no longer needed for response action purposes, the commissioner may:

(1) transfer the property to the commissioner of administration to be disposed of in the manner required for other surplus property subject to conditions the commissioner determines necessary to protect the public health and welfare or the environment, or to comply with federal law;

(2) transfer the property to another state agency, a political subdivision, or special purpose district as provided in paragraph (b); or

(3) if required by federal law, take actions and dispose of the property as required by federal law.

(b) If the commissioner determines that real or personal property acquired by the agency for response action must be operated, maintained, or monitored after completion of other phases of the response action, the commissioner may transfer ownership of the property to another state agency, a political subdivision, or special purpose district that agrees to accept the property.
A state agency, political subdivision, or special purpose district is authorized to accept and implement the terms and conditions of a transfer under this paragraph. The commissioner may set terms and conditions for the transfer that the commissioner considers reasonable and necessary
to ensure proper operation, maintenance, and monitoring of response actions, protect the public health and welfare and the environment, and comply with applicable federal and state laws
and regulations. The state agency, political subdivision, or special purpose district to which the

property is transferred is not liable under this chapter solely as a result of acquiring the property or acting in accordance with the terms and conditions of the transfer.

(c) If the agency acquires property under subdivision 15, the commissioner may lease or grant an easement in the property to a person during the implementation of response actions if the lease or easement is compatible with or necessary for response action implementation.

(d) The proceeds of a sale, lease, or other transfer of property under this subdivision by the commissioner or by the commissioner of administration shall be deposited in the remediation fund. Any share of the proceeds that the agency is required by federal law or regulation to reimburse to the federal government is appropriated from the account to the agency for that purpose. Except
for section 94.16, subdivision 2, the provisions of section 94.16 do not apply to real property sold by the commissioner of administration which was acquired under subdivision 15.

Subd. 17. **Settlements; general authority.** In addition to the general authority vested in the agency to settle any claims under sections 115B.01 to 115B.18, the agency may exercise the settlement authorities provided in subdivisions 17 to 20. If the agency does not obtain complete relief for all of its claims under sections 115B.01 to 115B.18, pursuant to a settlement, the agency may bring claims under those sections against any person who is not a party to the settlement, but the settlement shall reduce the liability of any person who is not a party to the settlement by the amount of the settlement.

Subd. 18. **Contribution protection for settlors.** Notwithstanding anything to the contrary in section 115B.08 or any other law, a person who resolves its liability to the agency under sections 115B.01 to 115B.18 in a settlement shall not be liable for any claim for contribution regarding matters addressed in the settlement. Except as otherwise provided in the settlement, a party to a settlement retains any right under section 115B.08 or any other law to bring a claim for contribution against any person who is not a party to the settlement. Any claim for contribution against a person who is not a party to the settlement shall be subordinate to any claim asserted against such person by the agency.

Subd. 19. **Reimbursement under certain settlements.** (a) When the agency determines that some but not all persons responsible for a release are willing to implement response actions, the agency may agree, pursuant to a settlement of its claims under sections 115B.01 to 115B.18, to reimburse the settling parties for response costs incurred to take the actions. The agency may agree to reimburse any amount which does not exceed the amount that the agency estimates
may be attributable to the liability of responsible persons who are not parties to the settlement. Reimbursement may be provided only for the cost of conducting remedial design and constructing remedial action pursuant to the terms of the settlement. Reimbursement under this subdivision shall be paid only upon the agency's determination that the remedial action approved by the agency has been completed in accordance with the terms of the settlement. The agency may use money appropriated to it for actions authorized under section 115B.20, subdivision 2, clause (2), to pay reimbursement under this subdivision.

(b) The agency may agree to provide reimbursement under a settlement only when all of the following requirements have been met:

(1) the agency has made the determination under paragraph (c) regarding persons who are not participating in the settlement, and has provided written notice to persons identified under paragraph (c), clauses (1) and (2), of their opportunity to participate in the settlement or in a separate settlement under subdivision 20;

(2) the release addressed in the settlement has been assigned a priority pursuant to agency rules adopted under subdivision 13, and the priority is at least as high as a release for which the agency would be allowed to allocate funds for remedial action under the rules;

(3) an investigation of the release addressed in the settlement has been completed in accordance with a plan approved by the agency; and

(4) the agency has approved the remedial action to be implemented under the settlement. (c) Before entering into a settlement providing for reimbursement under this subdivision, the agency shall determine that there are one or more persons who meet any of the following criteria who are not participating in the settlement:

(1) persons identified by the agency as responsible for the release addressed in the settlement but who are likely to have only minimal involvement in actions leading to the release, or are insolvent or financially unable to pay any significant share of response action costs;

(2) persons identified by the agency as responsible for the release other than persons described in clause (1) and who are unwilling to participate in the settlement or to take response actions with respect to the release;

(3) persons whom the agency has reason to believe are responsible for the release addressed in the settlement but whom the agency has been unable to identify; or

(4) persons identified to the agency by a party to the proposed settlement as persons who are potentially responsible for the release but for whom the agency has insufficient information to determine responsibility.

(d) Except as otherwise provided in this subdivision, a decision of the agency under this subdivision to offer or agree to provide reimbursement in any settlement, or to determine the amount of reimbursement it will provide under a settlement, is a matter of agency discretion in the exercise of its enforcement authority. In exercising discretion in this matter, the agency may consider, among other factors, the degree of cooperation with the agency that has been shown prior to the settlement by the parties seeking reimbursement.

(e) The agency may require as a term of settlement under this subdivision that the parties receiving reimbursement from the agency waive any rights they may have to bring a claim for contribution against persons who are not parties to the settlement.

(f) Notwithstanding any provision to the contrary in paragraphs (a) to (e), until June 30, 2001, the agency may use the authority under this subdivision to enter into agreements for the implementation of a portion of an approved response action plan and to provide funds in the form of a grant for the purpose of implementing the agreement. The amount paid for implementing a portion of an approved response action plan may not exceed the proportion of the costs of the response action plan which are attributable to the liability of responsible persons who are not parties to the agreement.

(g) A decision of the agency under paragraph (f) to offer or agree to provide funds in any agreement or to determine the specific remedial actions included in any agreement to implement an approved action plan or the amount of funds the agency will provide under an agreement is a matter of agency discretion in the exercise of its enforcement authority.

Subd. 20. **Settlements with de minimis parties and parties with limited financial resources.** (a) The agency may agree to separately settle its claims under sections 115B.01 to 115B.18 with any persons:

(1) whose liability for response costs or response actions, in the determination of the agency, is minimal in comparison with the liability of other persons responsible for the release; or

(2) who are responsible for a release but, in the determination of the agency, are insolvent or financially unable to pay any significant share of their liability for the response costs.

(b) A settlement under this subdivision may require the parties to pay a fixed amount in money or in kind toward the implementation of response actions, and may include a premium for the risk of additional future response costs or response action requirements. The agency may require as a term of a settlement under this subdivision that the settling responsible persons waive any rights they may have to bring a claim for contribution against persons who are not parties to the settlement.

(c) All amounts paid to the agency under a settlement entered into pursuant to this subdivision shall be deposited in the account and are appropriated to the agency to pay for response actions and associated administrative and legal costs related to the release addressed in the settlement, including reimbursement for response costs under subdivision 19.

History: *1983 c 121 s 17; 1986 c 444; 1987 c 186 s 15; 1988 c 685 s 23; 1989 c 325 s 30; 1989 c 335 art 4 s 36; 1990 c 528 s 1; 1990 c 597 s 69; 1992 c 512 s 1; 1995 c 168 s 3; 1997 c 216 s 101-106; 1998 c 254 art 1 s 26; 1998 c 341 s 3; 2000 c 376 s 1; 2003 c 128 art 2 s 7-10; 2007 c 131 art 1 s 74*

115B.175 VOLUNTARY RESPONSE ACTIONS; LIABILITY PROTECTION; PROCEDURES.

Subdivision 1. **Protection from liability; scope.** (a) Subject to the provisions of this section, a person who is not otherwise responsible under sections 115B.01 to 115B.18 for a release or threatened release will not be responsible under those sections for the release or threatened release if the person undertakes and completes response actions to remove or remedy all known releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

(b) The liability protection provided under this subdivision applies to releases or threatened releases at the identified property that are not required to be removed or remedied by the approved voluntary response action plan if the requirements of subdivision 2 are met.

Subd. 2. **Partial response action plans; criteria for approval.** (a) The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all releases and threatened releases at an identified area of real property if the commissioner determines that all of the following criteria have been met:

(1) if reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that meets the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2;

(2) the response actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan, and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

(3) the owner of the property agrees to cooperate with the commissioner or other persons acting at the direction of the commissioner in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.

(b) Under paragraph (a), clause (3), an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:

(1) to provide access to the property to the commissioner and the commissioner's authorized representatives;

(2) to allow the commissioner, or persons acting at the direction of the commissioner, to undertake reasonable and necessary activities at the property including placement of borings, wells, equipment, and structures on the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment; and

(3) to grant easements or other interests in the property to the agency for any of the purposes provided in clause (1) or (2).

(c) An agreement under paragraph (a), clause (3), must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

Subd. 3. **Submission and approval of voluntary response action plans.** (a) A person shall submit a voluntary response action plan to the commissioner under section 115B.17, subdivision 14. The commissioner may provide assistance to review voluntary response action plans or supervise response action implementation under that subdivision.

(b) A voluntary response action plan submitted for approval of the commissioner must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified area of real property. The commissioner must not approve the voluntary response action plan unless the commissioner determines that the nature and extent of the releases and threatened releases at the identified area of real property have been adequately identified and evaluated in the investigation report.

(c) Response actions required in a voluntary response action plan under this section must meet the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2.

(d) When the commissioner approves a voluntary response action plan, the commissioner may include in the approval an acknowledgment that, upon certification of completion of the response actions as provided in subdivision 5, the person submitting the plan will receive the protection from liability provided under this section.

Subd. 4. **Performance of response actions does not associate persons with release.** Persons specified in subdivision 6 or 6a, paragraph (c), do not associate themselves with, or aggravate or contribute to, any release or threatened release identified in an approved voluntary response action plan for the purpose of subdivision 7, clause (1), or section 115B.03, subdivision 3, clause (4), as a result of performance of the response actions required in accordance with the plan and the direction of the commissioner. Nothing in this section relieves a person of any liability for failure to exercise due care in performing a response action.

Subd. 5. Certification of completion of response actions. (a) Response actions taken under an approved voluntary response action plan are not completed until the commissioner certifies completion in writing.

(b) Certification of completion of response actions taken under a voluntary response action plan that does not require removal or remedy of all releases and threatened releases is subject to compliance by the owner, and the owner's successors and assigns, with the terms of the agreement required under subdivision 2, paragraph (a), clause (3).

Subd. 6. **Persons protected from liability.** In addition to the person who undertakes and completes response actions, and subject to the provisions of subdivision 7, the liability protection provided by this section applies to the following persons when the commissioner issues the certificate of completion of response actions under subdivision 5:

(1) the owner of the identified property, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;

(2) a person providing financing to the person who undertakes and completes the response actions, or who acquires or develops the identified property; and

(3) a successor or assign of any person to whom the liability protection applies.

Subd. 6a. **Voluntary response actions by responsible persons.** (a) Notwithstanding subdivision 1, paragraph (a), when a person who is responsible for a release or threatened release under sections 115B.01 to 115B.18 undertakes and completes response actions, the protection from liability provided by this section applies to persons described in paragraph (c) if the response actions are undertaken and completed in accordance with this subdivision.

(b) The response actions must be undertaken and completed in accordance with a voluntary response action plan approved as provided in subdivision 3. Notwithstanding subdivision 2,
a voluntary response action plan submitted by a person who is responsible for the release or threatened release must require remedy or removal of all releases and threatened releases at the identified area of real property. The identified area of real property must correspond to the boundaries of a parcel that is either separately platted or is the entire parcel.

(c) Subject to the provisions of subdivision 7, when the commissioner issues a certificate of completion under subdivision 5 for response actions completed at an identified area of real property in accordance with this subdivision, the liability protection under this section applies to:

(1) a person who acquires the identified real property after approval of the voluntary response action plan;

(2) a person providing financing for response actions or development at the identified real property after approval of the response action plan, whether the financing is provided to the person undertaking the response actions or other person who acquires or develops the property; and

(3) a successor or assign of a person to whom the liability protection applies under this paragraph.

(d) When the commissioner issues a certificate of completion for response actions completed by a responsible person, the commissioner and the responsible person may enter into an agreement that resolves the person's future liability to the agency under sections 115B.01 to
115B.18 for the release or threatened release addressed by the response actions.

Subd. 7. **Persons not protected from liability.** The protection from liability provided by this section does not apply to:

(1) a person who aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan;

(2) a person who was responsible under sections 115B.01 to 115B.18 for a release or threatened release identified in the approved voluntary response action plan before taking an action that would have made the person subject to the protection under subdivision 6 or 6a; or

(3) a person who obtains approval of a voluntary response action plan for purposes of this section by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the protection under subdivision 6 or 6a.

Subd. 8. **Other rights and authorities not affected.** Nothing in this section affects the authority of the agency or commissioner to exercise any powers or duties under this chapter or other law with respect to any release or threatened release, or the right of the agency, the commissioner, or any other person to seek any relief available under this chapter against any party who is not subject to the liability protection provided under this section.

History: *1992 c 512 s 2; 1993 c 287 s 1-3; 1995 c 168 s 4,5; 1997 c 216 s 107,108*

115B.177 OWNER OF REAL PROPERTY AFFECTED BY OFF-SITE RELEASE.

Subdivision 1. **Determination or agreement by commissioner.** (a) The commissioner may issue a written determination or enter into an agreement to take no action under sections 115B.01 to 115B.18 against a person who owns real property subject to a release of a hazardous substance, or pollutant or contaminant, if the commissioner finds that the release originates from a source on adjacent or nearby real property and that the person is not otherwise responsible for the release.

(b) A determination issued or agreement entered into under this section must be conditioned upon the following:

(1) agreement by the person to allow entry upon the property to the commissioner and the authorized representatives of the commissioner to take response actions to address the release, including in appropriate cases an agreement to grant easements to the state for that purpose;

(2) agreement by the person to avoid any interference with the response actions to address the release taken by or at the direction of the agency or the commissioner, and to avoid actions that contribute to the release;

(3) invalidation of the determination or agreement if the commissioner receives new information indicating that the property owned by the person is a source of the release or that the person is otherwise responsible for the release; and

(4) any other condition that the commissioner deems reasonable and necessary to ensure that the agency and commissioner can adequately respond to the release.

Subd. 2. **Scope and effect of determination or agreement.** (a) A determination issued or agreement entered into under this section may extend to the successors and assigns of the person to whom it originally applies, if the successors and assigns are not otherwise responsible for the release and are bound by the conditions in the determination or agreement.

(b) Issuance of a determination or execution of an agreement under this section does not affect the authority of the agency or commissioner to take any response action under sections 115B.01 to 115B.18 with respect to the release subject to the determination or agreement, or to

take administrative or judicial action under those sections with respect to persons not bound by the determination or agreement.

History: *1992 c 512 s 3*

115B.178 ASSOCIATION WITH RELEASE; COMMISSIONER'S DETERMINATION.

Subdivision 1. **Determination.** (a) The commissioner may issue determinations that certain actions proposed to be taken at real property subject to a release or threatened release of a hazardous substance or pollutant or contaminant will not constitute conduct associating the person with the release or threatened release for the purpose of section 115B.03, subdivision 3, clause (4). Proposed actions that may be covered by a determination under this section include response actions approved by the commissioner to address the release or threatened release, actions to improve or develop the real property, loans secured by the real property, or other similar actions. A determination may be subject to terms and conditions deemed reasonable
by the commissioner. When a person takes actions in accordance with a determination issued under this subdivision, the actions do not associate the person with the release for the purpose of section 115B.03, subdivision 3, clause (4).

(b) The commissioner may also issue a determination under paragraph (a) that certain actions taken in the past at the real property did not constitute conduct associating the person requesting the determination with the release or threatened release for purposes of section
115B.03, subdivision 3, clause (4). The person requesting a determination under this paragraph shall conduct an investigation approved by the commissioner that identifies the nature and extent of the release or threatened release or shall take response actions in accordance with a response action plan approved by the commissioner. Any such determination shall be limited to the represented facts of the past actions and shall not apply to actions that are not represented
or disclosed. The determination may be subject to such other terms and conditions as the commissioner deems reasonable.

Subd. 2. **Scope and effect of determination.** Section 115B.177, subdivision 2, applies to a determination by the commissioner under this section.

History: *1993 c 287 s 4; 1994 c 639 art 4 s 1; 1995 c 168 s 6*

115B.179 COMMISSIONER'S AUTHORITY NOT LIMITED.

The commissioner's authority to make a determination or enter into an agreement under section 115B.177 and to make a determination under section 115B.178 does not limit or preclude any other authority of the commissioner under any law.

History: *1993 c 287 s 5*

115B.18 FAILURE TO TAKE REQUESTED ACTIONS; CIVIL PENALTIES; ACTION TO COMPEL PERFORMANCE; INJUNCTIVE RELIEF.

Subdivision 1. **Civil penalties.** Any person responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility shall forfeit and pay to the state a civil penalty in an amount to be determined by the court of not more than $20,000 per day for each day that the person fails to take reasonable and necessary response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3.

The penalty provided under this subdivision may be recovered by an action brought by the attorney general in the name of the state in connection with an action to recover expenses of the agency under section 115B.17, subdivision 6, or by a separate action in the District Court of Ramsey County. All penalties recovered under this subdivision shall be deposited in the remediation fund.

Subd. 2. **Action to compel performance.** When any person who is responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility, fails to take response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3, the attorney general may bring an action in the name of the state to compel performance of the requested response actions. If any person having any right, title, or interest in and to the real property where the facility is located or where response actions are proposed to be taken is not a person responsible for the release or threatened release, the person may be joined as an indispensable party in an action to compel performance in order to assure that the requested response actions can be taken on that property by the responsible parties.

Subd. 3. **Requests for response actions.** A request for emergency removal action shall be made by the commissioner of the Pollution Control Agency. Other requests for response actions shall be made by the agency. A request shall be in writing, shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed taking into account the urgency of the action for protection of the public health or welfare or the environment.

Subd. 4. **Injunctive relief.** The release or threatened release of a hazardous substance, or a pollutant or contaminant, shall constitute a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

History: *1983 c 121 s 18; 1987 c 186 s 15; 2004 c 228 art 1 s 25*

115B.19 PURPOSE OF FUND.

In establishing the remediation fund in section 116.155 it is the purpose of the legislature to: (1) encourage treatment and disposal of hazardous waste in a manner that adequately protects the public health or welfare or the environment;

(2) encourage responsible parties to provide the response actions necessary to protect the public and the environment from the effects of the release of hazardous substances;

(3) encourage the use of alternatives to land disposal of hazardous waste including resource recovery, recycling, neutralization, and reduction;

(4) provide state agencies with the financial resources needed to prepare and implement an effective and timely state response to the release of hazardous substances, including investigation, planning, removal and remedial action;

(5) compensate for increased governmental expenses and loss of revenue and to provide other appropriate assistance to mitigate any adverse impact on communities in which commercial hazardous waste processing or disposal facilities are located under the siting process provided in chapter 115A;

(6) recognize the environmental and public health costs of land disposal of solid waste and of the use and disposal of hazardous substances and to place the burden of financing state

hazardous waste management activities on those whose products and services contribute to hazardous waste management problems and increase the risks of harm to the public and the environment.

History: *1983 c 121 s 19; 1989 c 335 art 4 s 106; 2003 c 128 art 2 s 11*

115B.20 ACTIONS USING MONEY FROM REMEDIATION FUND.

Subdivision 1. [Repealed by amendment, 2003 c 128 art 2 s 12]

Subd. 2. **Purposes for which money may be spent.** Money appropriated from the remediation fund under section 116.155, subdivision 2, paragraph (a), clause (1), may be spent only for the following purposes:

(1) preparation by the agency and the commissioner of agriculture for taking removal or remedial action under section 115B.17, or under chapter 18D, including investigation, monitoring and testing activities, enforcement and compliance efforts relating to the release of hazardous substances, pollutants or contaminants under section 115B.17 or 115B.18, or chapter 18D;

(2) removal and remedial actions taken or authorized by the agency or the commissioner of the Pollution Control Agency under section 115B.17, or taken or authorized by the commissioner of agriculture under chapter 18D including related enforcement and compliance efforts under section 115B.17 or 115B.18, or chapter 18D, and payment of the state share of the cost of remedial action which may be carried out under a cooperative agreement with the federal government pursuant to the federal Superfund Act, under United States Code, title 42, section 9604(c)(3)
for actions related to facilities other than commercial hazardous waste facilities located under the siting authority of chapter 115A;

(3) reimbursement to any private person for expenditures made before July 1, 1983,
to provide alternative water supplies deemed necessary by the agency or the commissioner of agriculture and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance;

(4) assessment and recovery of natural resource damages by the agency and the commissioner of natural resources for administration, planning, and implementation by the commissioner of natural resources of the rehabilitation, restoration, or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance; before implementing a project to rehabilitate, restore, or acquire natural resources under this clause, the commissioner of natural resources shall provide written notice of the proposed project to the chairs of the senate and house of representatives committees with jurisdiction over environment and natural resources finance;

(5) acquisition of a property interest under section 115B.17, subdivision 15;

(6) reimbursement, in an amount to be determined by the agency in each case, to a political subdivision that is not a responsible person under section 115B.03, for reasonable and necessary expenditures resulting from an emergency caused by a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(7) reimbursement to a political subdivision for expenditures in excess of the liability limit under section 115B.04, subdivision 4.

Subd. 3. **Limit on certain expenditures.** The commissioner of agriculture or the Pollution Control Agency or the agency may not spend any money under subdivision 2, clause (2), for removal or remedial actions to the extent that the costs of those actions may be compensated from

any fund established under the federal Superfund Act, United States Code, title 42, section 9600 et seq. The commissioner of agriculture or the Pollution Control Agency or the agency shall determine the extent to which any of the costs of those actions may be compensated under the federal act based on the likelihood that the compensation will be available in a timely fashion. In making this determination the commissioner of agriculture or the Pollution Control Agency or the agency shall take into account:

(1) the urgency of the removal or remedial actions and the priority assigned under the federal Superfund Act to the release which necessitates those actions;

(2) the availability of money in the funds established under the federal Superfund Act; and

(3) the consistency of any compensation for the cost of the proposed actions under the federal Superfund Act with the national contingency plan, if such a plan has been adopted under that act.

Subd. 4. [Repealed by amendment, 2003 c 128 art 2 s 12] Subd. 5. [Repealed by amendment, 2003 c 128 art 2 s 12]

Subd. 6. **Report to legislature.** By January 31 of each odd-numbered year, the commissioner of agriculture and the agency shall submit to the senate Finance Committee, the house of representatives Ways and Means Committee, the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance, and the Environmental Quality Board a report detailing the activities for which money has been spent pursuant to this section during the previous fiscal year.

History: *1983 c 121 s 20; 1987 c 186 s 15; 1989 c 325 s 31; 1989 c 326 art 8 s 7; 1989 c 335 art 1 s 269; art 4 s 37-39,106; 1990 c 597 s 55; 1993 c 4 s 14; 1994 c 557 s 25; 1995 c 220 s 98; 1995 c 247 art 2 s 54; 1996 c 470 s 27; 1997 c 7 art 1 s 31,32; 1999 c 86 art 1 s 22; art 3 s 13; 2002 c 379 art 1 s 32-34; 2003 c 128 art 2 s 12; 2005 c 10 art 1 s 23; 2013 c 114 art 4 s 80*

115B.21 [Repealed, 1993 c 172 s 93]

115B.22 Subdivision 1. [Repealed, 1993 c 172 s 93] Subd. 1a. [Repealed, 1993 c 172 s 93]

Subd. 2. [Repealed, 1993 c 172 s 93] Subd. 2a. [Repealed, 1993 c 172 s 93] Subd. 3. [Repealed, 1993 c 172 s 93]

Subd. 3a. [Repealed, 1993 c 172 s 93] Subd. 4. [Repealed, 1993 c 172 s 93] Subd. 4a. [Repealed, 1993 c 172 s 93]

Subd. 5. [Repealed, 1993 c 172 s 93] Subd. 6. [Repealed, 1993 c 172 s 93] Subd. 7. [Repealed, 1993 c 172 s 93]

Subd. 8. [Repealed, 1993 c 172 s 93; 2001 c 7 s 91]

115B.223 [Repealed, 1993 c 172 s 93; 1997 c 216 s 160]

115B.224 [Repealed, 1993 c 172 s 93; 1997 c 216 s 160]

115B.23 [Repealed, 1993 c 172 s 93]

115B.24 [Repealed, 1993 c 172 s 93]

115B.241 [Repealed, 2004 c 228 art 1 s 76]

HARMFUL SUBSTANCE COMPENSATION

115B.25 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 115B.25 to 115B.37.

Subd. 1a. **Fund.** Except when another fund or account is specified, "fund" means the remediation fund established in section 116.155.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Compensable loss.** "Compensable loss" means a loss that is compensable under section 115B.34.

Subd. 4. **Eligible person.** "Eligible person" means a person who is eligible to file a claim with the fund under section 115B.29.

Subd. 5. **Eligible personal injury.** "Eligible personal injury" means personal injury that is eligible for compensation under section 115B.30.

Subd. 6. **Eligible property damage.** "Eligible property damage" means property damage that is eligible for compensation under section 115B.30.

Subd. 6a. **Facility.** "Facility" has the meaning given it in section 115B.02, subdivision 5. Subd. 7.

[Renumbered subd 1a]

Subd. 7a. **Harmful substance.** "Harmful substance" means:

(1) any commercial chemical designated under the Federal Water Pollution Control Act, United States Code, title 33, section 1321(b)(2)(A);

(2) any hazardous air pollutant listed under the Clean Air Act, United States Code, title 42, section 7412;

(3) any hazardous waste;

(4) petroleum as defined in section 115C.02, subdivision 10; and

(5) pesticide as defined in chapter 18B, or fertilizer, plant amendment, or soil amendment as defined in chapter 18C.

Subd. 7b. **Hazardous waste.** "Hazardous waste" has the meaning given in section 115B.02, subdivision 9.

Subd. 7c. **Person.** "Person" has the meaning given in section 115B.02, subdivision 12. Subd. 8. **Protected information.** "Protected information" means information provided to the agency by a nongovernmental third party, or information provided to the agency by a governmental party if access to that information is protected under other law, that is relevant to a determination required of the agency under section 115B.33, subdivisions 1, clauses (2) to (4), and 2, clause (2).

Subd. 9. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(a) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(b) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title

42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal Nuclear Regulatory Commission under United States Code, title 42, section 2210;

(c) release of source, by-product, or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under United States Code, title 42, section 7912(a)(1) or 7942(a);

(d) discharges or designed venting of petroleum from a tank allowed under the rules of the Pollution Control Agency; or

(e) the use of a pesticide, fertilizer, plant amendment, or soil amendment in accordance with its labeling.

History: *1Sp1985 c 8 s 4; 1989 c 325 s 32-39; 1989 c 335 art 4 s 42; 1991 c 199 art 1 s 19; 1995 c 220 s 99; 1998 c 254 art 1 s 27; 2002 c 379 art 2 s 3; 2003 c 128 art 2 s 14,15; 2011 c 76 art 1 s 8*

115B.26 PAYMENT OF CLAIMS.

Subdivision 1. [Repealed, 1995 c 220 s 141]

Subd. 2. **Appropriation.** The amount necessary to pay claims of compensation granted by the agency under sections 115B.25 to 115B.37 must be directly appropriated to the agency from the fund by the legislature. The agency shall submit claims for compensation to the legislature at the next legislative session.

Subd. 3. [Repealed by amendment, 2003 c 128 art 2 s 16]

Subd. 4. **Transfer request.** At the end of each fiscal year, the agency shall submit a request to the Petroleum Tank Release Compensation Board for transfer to the fund from the petroleum tank release cleanup fund under section 115C.08, subdivision 5, of an amount equal to the compensation granted by the agency for claims related to petroleum releases plus administrative costs related to determination of those claims.

History: *1Sp1985 c 8 s 5; 1989 c 325 s 40; 1989 c 335 art 4 s 43; 1991 c 199 art 1 s 20,21; 1995 c 220 s 100; 1995 c 254 art 1 s 96; 2002 c 379 art 2 s 4; 2003 c 128 art 2 s 16*

115B.27 [Repealed, 2002 c 379 art 2 s 24]

115B.28 POWERS AND DUTIES OF AGENCY.

Subdivision 1. **Duties.** In addition to performing duties specified in sections 115B.25 to 115B.37 or in other law, and subject to the limitations on disclosure contained in section 115B.35, the agency shall:

(1) adopt rules, including rules governing practice and procedure before the agency, the form and procedure for applications for compensation, and procedures for claims investigations;

(2) publicize the availability of compensation and application procedures on a statewide basis with special emphasis on geographical areas surrounding sites identified by the agency as having releases from a facility where a harmful substance was placed or came to be located prior to July 1, 1983;

(3) collect, analyze, and make available to the public, in consultation with the Department of Health, the Pollution Control Agency, the University of Minnesota Medical and Public Health Schools, and the medical community, data regarding injuries relating to exposure to harmful substances; and

(4) prepare and transmit the legislative report required under section 115B.20, subdivision 6, to include (i) a summary of agency activity under clause (3); (ii) data determined by the agency from actual cases, including but not limited to number of cases, actual compensation received by each claimant, types of cases, and

types of injuries compensated, as they relate to types of harmful substances as well as length of exposure, but excluding identification of the claimants; (iii) all administrative costs associated with the business of the agency; and (iv) agency recommendations for legislative changes, further study, or any other recommendation aimed at improving the system of compensation.

Subd. 2. **Powers.** In addition to exercising any powers specified in sections 115B.25 to 115B.37 or in other law, the agency may:

(1) in reviewing a claim, consider any information relevant to the claim, in accordance with the evidentiary standards contained in section 115B.35;

(2) contract for consultant or other services necessary to carry out the agency's duties under sections 115B.25 to 115B.37;

(3) grant reasonable partial compensation on an emergency basis pending the final decision on a claim if the claim is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made;

(4) limit access to information collected and maintained by the agency and take any other action necessary to protect not public data as defined in section 13.02, subdivision 8a, and protected information, in accordance with the limitations contained in section 115B.35.

Subd. 3. **Investigation; obtaining information.** The agency may investigate any claim for compensation and for this purpose it may require from the claimant and request from any person information regarding any matter, fact, or circumstance which is relevant to determination of a claim under section 115B.33. In exercising its powers under this subdivision, the agency may collect information reasonably calculated to lead to the discovery of evidence admissible under section 115B.35. The agency shall reimburse the person requested to provide information the actual cost of copies of documents, papers, samples, or other tangible items necessary to respond to the request from the agency. In order to obtain this information the agency, subject to any applicable privilege, may:

(a) request any person to produce documents, papers, books, or other tangible things in the possession, custody, or control of that person;

(b) request the sworn testimony of any person as to any relevant fact or opinion;

(c) direct written questions to any person and request written answers and objections;

(d) request a mental or physical examination of the claimant or autopsy of any deceased person whose death is the basis of the claim, provided that notice is given to the claimant and the claimant receives a copy of the report; and

(e) request a waiver of medical privilege by the claimant.

The agency shall give written notice of any request under this subdivision at least 15 days before the person is expected to comply with the request. If a person fails or refuses to comply with a request for information relevant to the release of a harmful substance, the agency may issue a subpoena for the production of the information and may petition the district court for an order enforcing the subpoena. If a person fails or refuses to comply with a request for other information relevant to determination of the claim, the agency may petition the district court for an order to compel compliance with the request. If the claimant refuses to comply with a request by the agency for information relevant to the claim, the agency may dismiss the claim.

Subd. 4. **Information from state agencies.** In order to perform its duties, the agency may request information from the supervising officer of any state agency or state institution of higher education. When requesting health data as defined in section 13.3805, subdivision 1, or sections 144.671 to 144.69, the agency must submit a written release signed by the subject of the data or, if the subject is deceased, a representative of the deceased, authorizing release of the data in whole or in part. The supervising officer shall comply with the agency's request to the extent possible considering available agency or institution

appropriations and may assign agency or institution employees to assist the agency in performing its duties under sections 115B.25 to 115B.37.

History: *1Sp1985 c 8 s 7; 1987 c 209 s 1; 1989 c 325 s 42,78; 1991 c 199 art 2 s 1; 1999 c 227 s 22; 2002 c 379 art 2 s 5; 2013 c 114 art 4 s 81*

115B.29 ELIGIBLE PERSONS.

Subdivision 1. **Personal injury and certain property claims.** A person may file a claim with the agency pursuant to this section for compensation for an eligible injury, or for eligible property damage that could reasonably have resulted from an exposure in Minnesota to a harmful substance released from a facility.

Subd. 2. [Repealed, 1989 c 325 s 77]

History: *1Sp1985 c 8 s 8; 1989 c 325 s 43; 2002 c 379 art 2 s 6*

115B.30 ELIGIBLE INJURY AND DAMAGE.

Subdivision 1. **Eligible personal injury.** (a) A personal injury which could reasonably have resulted from exposure to a harmful substance released from a facility where it was placed or came to be located is eligible for compensation from the fund if:

(1) it is a medically verified chronic or progressive disease, illness, or disability such as cancer, organic nervous system disorders, or physical deformities, including malfunctions in reproduction, in humans or their offspring, or death; or

(2) it is a medically verified acute disease or condition that typically manifests itself rapidly after a single exposure or limited exposures and the persons responsible for the release of the harmful substance are unknown or cannot with reasonable diligence be determined or located or a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the harmful substance.

(b) A personal injury is not compensable from the account if:

(1) the injury is compensable under the workers' compensation law, chapter 176; (2) the injury arises out of the claimant's use of a consumer product;

(3) the injury arises out of an exposure that occurred or is occurring outside the geographical boundaries of the state;

(4) the injury results from the release of a harmful substance for which the claimant is a responsible person; or

(5) the injury is an acute disease or condition other than one described in paragraph (a). Subd. 2. **Eligible property damage.** Damage to real property in Minnesota owned by the claimant is eligible for compensation from the fund if the damage results from the presence in or on the property of a harmful substance released from a facility where it was placed or came to be located. Damage to property is not eligible for compensation from the fund if it results from the release of a harmful substance for which the claimant is a responsible person.

Subd. 3. **Time for filing claim.** (a) A claim is not eligible for compensation from the fund unless it is filed with the agency within the time provided in this subdivision.

(b) A claim for compensation for personal injury must be filed within two years after the injury and its connection to exposure to a harmful substance was or reasonably should have been discovered.

(c) A claim for compensation for property damage must be filed within two years after the full amount of compensable losses can be determined.

(d) Notwithstanding the provisions of this subdivision, claims for compensation that would otherwise be barred by any statute of limitations provided in sections 115B.25 to 115B.37 may be filed not later than January 1, 1992.

History: *1Sp1985 c 8 s 9; 1989 c 325 s 44,78; 1989 c 335 art 4 s 106; 1991 c 199 art 1 s 22; 2002 c 379 art 2 s 7; 2003 c 128 art 2 s 17*

115B.31 OTHER ACTIONS.

Subdivision 1. **Subsequent action or claim prohibited in certain cases.** (a) A person who has settled a claim for an eligible injury or eligible property damage with a responsible person, either before or after bringing an action in court for that injury or damage, may not file a claim with the fund for the same injury or damage. A person who has received a favorable judgment
in a court action for an eligible injury or eligible property damage may not file a claim with the fund for the same injury or damage, unless the judgment cannot be satisfied in whole or in part against the persons responsible for the release of the harmful substance. A person who has filed a claim with the agency or its predecessor, the Harmful Substance Compensation Board, may not file another claim with the agency for the same eligible injury or damage, unless the claim was inactivated by the agency or board as provided in section 115B.32, subdivision 1.

(b) A person who has filed a claim with the agency or board for an eligible injury or damage, and who has received and accepted an award from the agency or board, is precluded from bringing an action in court for the same eligible injury or damage.

(c) A person who files a claim with the agency for personal injury or property damage must include all known claims eligible for compensation in one proceeding before the agency.

Subd. 2. **Use of protected information and agency findings.** The findings and decision of the agency are inadmissible in any court action. Protected information may not be used in any court action except to the extent that the information is otherwise available to a party or discovered under the applicable Rules of Civil or Criminal Procedure.

Subd. 3. **Subrogation by state.** The state is subrogated to all the claimant's rights under statutory or common law to recover losses compensated from the fund from other sources, including responsible persons as defined in section 115B.03. The state may bring a subrogation action in its own name or in the name of the claimant. The state may not bring a subrogation action against a person who was a party in a court action by the claimant for the same eligible injury or damage, unless the claimant dismissed the action prior to trial. Money recovered by the state under this subdivision must be deposited in the fund. Nothing in sections 115B.25 to
115B.37 shall be construed to create a standard of recovery in a subrogation action.

Subd. 4. **Simultaneous claim and court action prohibited.** A claimant may not commence a court action to recover for any injury or damage for which the claimant seeks compensation from the fund during the time that a claim is pending before the agency. A person may not file a claim with the agency for compensation for any injury or damage for which the claimant seeks
to recover in a pending court action. The time for filing a claim under section 115B.30 or the statute of limitations for any civil action is suspended during the period of time that a claimant is precluded from filing a claim or commencing an action under this subdivision.

History: *1Sp1985 c 8 s 10; 1986 c 444; 1989 c 325 s 78; 1991 c 199 art 1 s 23; 2002 c 379 art 2 s 8-10; 2003 c 128 art 2 s 18-20; 2004 c 228 art 1 s 26*

115B.32 CLAIM FOR COMPENSATION.

Subdivision 1. **Form.** A claim for compensation from the fund must be filed with the agency in the form required by the agency. When a claim does not include all the information required by subdivision 2 and applicable agency rules, the agency staff shall notify the claimant of the absence of the required information within 14 days of the filing of the claim. All required information must be received by the agency not later than 60 days after the claimant received notice of its absence or the claim will be inactivated and may not be resubmitted for at least one year following the date of inactivation. The agency may decide not to inactivate a claim under this subdivision if it finds serious extenuating circumstances.

Subd. 2. **Required information.** A claimant must provide the following information as part of the claim, provided that nothing in this chapter shall be construed to require the claimant to initiate a court action before filing a claim:

(1) a sworn verification by the claimant of the facts set forth in the claim to the best of the claimant's knowledge;

(2) evidence that the claimant is an eligible person;

(3) evidence of the claimant's exposure to a named harmful substance;

(4) evidence that the claimant's exposure to the substance in the amount and duration experienced by the claimant could reasonably have been caused or significantly contributed to by the release of a harmful substance from a facility where the substance was placed or came to be located, to the extent the information is available to the claimant;

(5) evidence that the exposure experienced by the claimant can cause or can significantly contribute to the injury suffered by the claimant;

(6) evidence of the injury eligible for compensation suffered by the claimant and the compensable losses resulting from the injury;

(7) evidence of any property damage eligible for compensation and the amount of compensable losses resulting from the damage;

(8) information regarding any collateral sources of compensation; and

(9) other information required by the rules of the agency.

Subd. 3. **Death claims.** In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

History: *1Sp1985 c 8 s 11; 1989 c 325 s 78; 1991 c 199 art 1 s 24; 2002 c 379 art 2 s 11; 2003 c 128 art 2 s 21*

115B.33 DETERMINATION OF CLAIM.

Subdivision 1. **Standard for personal injury.** The agency shall grant compensation to a claimant who shows that it is more likely than not that:

(1) the claimant suffers a medically verified injury that is eligible for compensation from the fund and that has resulted in a compensable loss;

(2) the claimant has been exposed to a harmful substance;

(3) the release of the harmful substance from a facility where the substance was placed or came to be located could reasonably have resulted in the claimant's exposure to the substance in the amount and duration experienced by the claimant; and

(4) the injury suffered by the claimant can be caused or significantly contributed to by exposure to the harmful substance in an amount and duration experienced by the claimant.

Subd. 2. **Standard for property damage.** The agency shall grant compensation to a claimant who shows that it is more likely than not that:

(1) the claimant has suffered property damage that is eligible for compensation and that has resulted in compensable loss; and

(2) the presence of the harmful substance in or on the property could reasonably have resulted from the release of the harmful substance from a facility where the substance was placed or came to be located.

History: *1Sp1985 c 8 s 12; 1989 c 325 s 78; 1991 c 199 art 1 s 25; 2002 c 379 art 2 s 12; 2003 c 128 art 2 s 22*

115B.34 COMPENSABLE LOSSES.

Subdivision 1. **Personal injury losses.** Losses compensable by the fund for personal injury are limited to:

(1) medical expenses directly related to the claimant's injury;

(2) up to two-thirds of the claimant's lost wages not to exceed $2,000 per month or $24,000 per year;

(3) up to two-thirds of a self-employed claimant's lost income, not to exceed $2,000 per month or $24,000 per year;

(4) death benefits to dependents which the agency shall define by rule subject to the following conditions:

(i) the rule adopted by the agency must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;

(ii) the total benefits paid to all dependents of a claimant must not exceed $2,000 per month; (iii) benefits paid

to a spouse and all dependents other than children must not continue
for a period longer than ten years;

(iv) payment of benefits is subject to the limitations of section 115B.36; and

(5) the value of household labor lost due to the claimant's injury or disease, which must be determined in accordance with a schedule established by the agency by rule, not to exceed
$2,000 per month or $24,000 per year.

Subd. 2. **Property damage losses.** (a) Losses compensable by the fund for property damage are limited to the following losses caused by damage to the principal residence of the claimant:

(1) the reasonable cost of replacing or decontaminating the primary source of drinking water for the property not to exceed the amount actually expended by the claimant or assessed by a local taxing authority, if the Department of Health has confirmed that the remedy provides safe drinking water and advised that the water not be used for drinking or determined that the replacement or decontamination of the source of drinking water was necessary, up to a maximum of $25,000;

(2) losses incurred as a result of a bona fide sale of the property at less than the appraised market value under circumstances that constitute a hardship to the owner, limited to 75 percent of the difference between the appraised market value and the selling price, but not to exceed
$25,000; and

(3) losses incurred as a result of the inability of an owner in hardship circumstances to sell the property due to the presence of harmful substances, limited to the increase in costs associated with the need to maintain two residences, but not to exceed $25,000.

(b) In computation of the loss under paragraph (a), clause (3), the agency shall offset the loss by the amount of any income received by the claimant from the rental of the property.

(c) For purposes of paragraph (a), the following definitions apply:

(1) "appraised market value" means an appraisal of the market value of the property disregarding any decrease in value caused by the presence of a harmful substance in or on the property; and

(2) "hardship" means an urgent need to sell the property based on a special circumstance of the owner including catastrophic medical expenses, inability of the owner to physically maintain the property due to a physical or mental condition, and change of employment of the owner or other member of the owner's household requiring the owner to move to a different location.

(d) Appraisals are subject to agency approval. The agency may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision.

History: *1Sp1985 c 8 s 13; 1989 c 325 s 45; 1991 c 199 art 1 s 26; 2002 c 379 art 2 s 13; 2003 c 128 art 2 s 23; 2011 c 76 art 1 s 9*

115B.35 DETERMINATION OF CLAIMS.

Subdivision 1. [Repealed, 2002 c 379 art 2 s 24]

Subd. 2. **Treatment of protected information.** In making a final decision under this section, the agency shall examine protected information outside of the presence of the claimant, the claimant's attorney, or any other person except agency staff. The agency, the agency's staff, and any other person who obtains access to protected information under this section may not reveal protected information to any person except as provided in this section.

Subd. 3. **Evidence admissible in claim proceedings.** In the determination of a claim, the agency may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law. The agency may exclude incompetent, irrelevant, immaterial, and repetitious evidence.

Subd. 4. **Preliminary decision.** The agency shall review all materials filed in support of the claim and may cause an investigation to be conducted into the validity of the claim. The agency may make a preliminary decision on the basis of the papers filed in support of the claim and the report of any investigation of it. The decision must be in writing and include the reasons for the decision, subject to the limitations on disclosure of protected information.

Subd. 5. [Repealed, 2002 c 379 art 2 s 24] Subd. 6. [Repealed, 2002 c 379 art 2 s 24]

Subd. 7. **Record.** Any appearance by a claimant or witnesses must be tape recorded but a formal record pursuant to chapter 14 is not required.

Subd. 8. **Appeal.** A final decision of the agency made under this section is conclusive on all matters decided. There is no right to judicial review of a final decision of the agency.

Subd. 9. **Remedies and penalties.** An agency member, agency staff person, or other person who reveals protected information in violation of this section is subject to the civil remedies contained in section 13.08 and the penalties in section 13.09.

History: *1Sp1985 c 8 s 14; 1986 c 444; 2002 c 379 art 2 s 14-18*

115B.36 AMOUNT AND FORM OF PAYMENT.

If the agency decides to grant compensation, it shall determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of
insurance and Social Security and any emergency award made by the agency. The agency shall pay compensation in the amount of the net uncompensated loss, provided that no claimant may receive more than $250,000. In the case of a death, the total amount paid to all persons on behalf of the claimant may not exceed $250,000.

Compensation from the fund may be awarded in a lump sum or in installments at the discretion of the agency.

History: *1Sp1985 c 8 s 15; 1991 c 199 art 1 s 27; 2002 c 379 art 2 s 19; 2003 c 128 art 2 s 24*

115B.37 ATTORNEY FEES.

The agency may by rule limit the fee charged by any attorney for representing a claimant before the agency.

History: *1Sp1985 c 8 s 16; 2002 c 379 art 2 s 20*

LANDFILL CLEANUP PROGRAM

115B.39 LANDFILL CLEANUP PROGRAM; ESTABLISHMENT.

Subdivision 1. **Establishment.** The landfill cleanup program is established to provide environmental response at qualified facilities and is to be administered by the commissioner.

Subd. 2. **Definitions.** (a) In addition to the definitions in this subdivision, the definitions in sections 115A.03 and 115B.02 apply to sections 115B.39 to 115B.445, except as specifically modified in this subdivision.

(b) "Cleanup order" means a consent order between responsible persons and the agency or an order issued by the United States Environmental Protection Agency under section 106 of the federal Superfund Act.

(c) "Closure" means actions to prevent or minimize the threat to public health and the environment posed by a mixed municipal solid waste disposal facility that has stopped accepting waste by controlling the sources of releases or threatened releases at the facility. "Closure" includes removing contaminated equipment and liners; applying final cover; grading and seeding final cover; installing wells, borings, and other monitoring devices; constructing groundwater and surface water diversion structures; and installing gas control systems and site security systems, as necessary. The commissioner may authorize use of final cover that includes processed materials that meet the requirements in Code of Federal Regulations, title 40, section 503.32, paragraph (a).

(d) "Closure upgrade" means construction activity that will, at a minimum, modify an existing cover so that it satisfies current rule requirements for mixed municipal solid waste land disposal facilities.

(e) "Contingency action" means organized, planned, or coordinated courses of action to be followed in case of fire, explosion, or release of solid waste, waste by-products, or leachate that could threaten human health or the environment.

(f) "Corrective action" means steps taken to repair facility structures including liners, monitoring wells, separation equipment, covers, and aeration devices and to bring the facility into compliance with design, construction, groundwater, surface water, and air emission standards.

(g) "Decomposition gases" means gases produced by chemical or microbial activity during the decomposition of solid waste.

(h) "Dump materials" means nonhazardous mixed municipal solid wastes disposed at a
Minnesota waste disposal site other than a qualified facility prior to 1973.

(i) "Environmental response action" means response action at a qualified facility, including corrective action, closure, postclosure care; contingency action; environmental studies, including remedial investigations and feasibility studies; engineering, including remedial design; removal; remedial action; site construction; and other similar cleanup-related activities.

(j) "Environmental response costs" means:

(1) costs of environmental response action, not including legal or administrative expenses; And (2) costs required to be paid to the federal government under section 107(a) of the federal Superfund Act, as amended.

(k) "Postclosure" or "postclosure care" means actions taken for the care, maintenance, and monitoring of closure actions at a mixed municipal solid waste disposal facility.

(l) "Qualified facility" means a mixed municipal solid waste disposal facility as described in the most recent agency permit, including adjacent property used for solid waste disposal that did not occur under a permit from the agency, that:

(i) is or was permitted by the agency;

(ii) stopped accepting solid waste, except demolition debris, for disposal by April 9, 1994; and

(iii) stopped accepting demolition debris for disposal by June 1, 1994, except that demolition debris may be accepted until May 1, 1995, at a permitted area where disposal of demolition debris is allowed, if the area where the demolition debris is deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid waste was deposited; or

(2)(i) is or was permitted by the agency; and

(ii) stopped accepting waste by January 1, 2000, except that demolition debris, industrial waste, and municipal solid waste combustor ash may be accepted until January 1, 2001, at a permitted area where disposal of such waste is allowed, if the area where the waste is deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid waste was deposited.

History: *1994 c 639 art 1 s 2; 1997 c 7 art 1 s 33; 1998 c 306 s 1; 1999 c 231 s 133*

115B.40 PROGRAM.

Subdivision 1. **Response to releases.** The commissioner may take any environmental response action, including emergency action, related to a release or threatened release of a hazardous substance, pollutant or contaminant, or decomposition gas from a qualified facility that the commissioner deems reasonable and necessary to protect the public health or welfare or the environment under the standards required in sections 115B.01 to 115B.20. The commissioner may undertake studies necessary to determine reasonable and necessary environmental response actions at individual facilities. The commissioner may develop general work plans for environmental studies, presumptive remedies, and generic remedial designs for facilities with similar characteristics. Prior to selecting environmental response actions for a facility, the commissioner shall hold at least one public informational meeting near the facility and provide for receiving and responding to comments related to the selection. The commissioner shall design, implement, and provide oversight consistent with the actions selected under this subdivision.

Subd. 2. **Priority list.** (a) The commissioner shall establish a priority list for preventing or responding to releases of hazardous substances, pollutants and contaminants, or decomposition gases at qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1). The commissioner shall periodically revise the list to reflect changing conditions at facilities that affect priority for response actions. The initial priority list must be established by January 1, 1995.

(b) The priority list required under this subdivision must be based on the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facility, the potential for contamination of drinking water supplies, the potential for direct human contact, and the potential for destruction of sensitive ecosystems.

Subd. 3. **Notification.** By September 1, 1994, the commissioner shall notify the owner or operator of, and persons subject to a cleanup order at, each qualified facility defined in section 115B.39, subdivision 2, paragraph (l), clause (1), of whether the requirements of subdivision 4 or 5 have been met. If the requirements have not been met at a facility, the commissioner, by the earliest practicable date, shall notify the owner or operator and persons subject to a cleanup order of what actions need to be taken.

Subd. 4. **Qualified facility not under cleanup order; duties.** (a) The owner or operator of a qualified facility that is not subject to a cleanup order shall:

(1) complete closure activities at the facility, or enter into a binding agreement with the commissioner to do so, as provided in paragraph (e), within one year from the date the owner or operator is notified by the commissioner under subdivision 3 of the closure activities that are necessary to properly close the facility in compliance with facility's permit, closure orders, or enforcement agreement with the agency, and with the solid waste rules in effect at the time the facility stopped accepting waste;

(2) undertake or continue postclosure care at the facility until the date of notice of compliance under subdivision 7;

(3) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 any funds required for proof of financial responsibility under section 116.07, subdivision 4h, that remain after facility closure and any postclosure care and response action undertaken by the owner or operator at the facility including, if proof of financial responsibility is provided through a letter of credit or other financial instrument or mechanism that does not accumulate money in an account, the amount that would have accumulated had the owner or operator utilized a trust fund, less any amount used for closure, postclosure care, and response action at the facility; and

(4) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (2), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 an amount of cash that is equal to the sum of their approved current contingency action cost estimate and the present value of their approved estimated remaining postclosure care costs required for proof of financial responsibility under section 116.07, subdivision 4h.

(b) The owner or operator of a qualified facility that is not subject to a cleanup order shall: (1) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), provide the commissioner with a copy of all applicable comprehensive general liability insurance policies and other liability policies relating to property damage, certificates, or other evidence of insurance coverage held during the life of the facility; and

(2) enter into a binding agreement with the commissioner to:

(i) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), take any actions necessary to preserve the owner or operator's rights to payment or defense under insurance policies included in clause (1); cooperate with the commissioner in asserting claims under the policies; and, within 60 days of a request by the commissioner, but no earlier than July 1, 1996, assign only those rights under the policies related to environmental response costs;

(ii) cooperate with the commissioner or other persons acting at the direction of the commissioner in taking additional environmental response actions necessary to address releases
or threatened releases and to avoid any action that interferes with environmental response actions, including allowing entry to the property and to the facility's records and allowing entry and installation of equipment; and

(iii) refrain from developing or altering the use of property described in any permit for the facility except after consultation with the commissioner and in conformance with any conditions established by the commissioner for that property, including use restrictions, to protect public health and welfare and the environment.

(c) The owner or operator of a qualified facility defined in section 115B.39, subdivision 2, paragraph (l), clause (1), that is a political subdivision may use a portion of any funds established for response at the facility, which are available directly or through a financial instrument or other financial arrangement, for closure or postclosure care at the facility if funds available for closure or postclosure care are inadequate and shall assign the rights to any remainder to the commissioner.

(d) The agreement required in paragraph (b), clause (2), must be in writing and must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

(e) A binding agreement entered into under paragraph (a), clause (1), may include a provision that the owner or operator will reimburse the commissioner for the costs of closing the facility to the standard required in that clause.

Subd. 5. **Qualified facility under cleanup order; duties.** (a) For a qualified facility that is subject to a cleanup order, persons identified in the order shall complete construction of the remedy required under the cleanup order and:

(1) for a federal order, receive a concurrent determination of the United States Environmental Protection Agency and the agency or commissioner that the remedy is functioning properly and is performing as designed; or

(2) for a state order, receive acknowledgment from the agency or commissioner that the obligations under the order for construction of the remedy have been met.

(b) The owner or operator of a qualified facility that is subject to a cleanup order, in addition to any applicable requirement in paragraph (a), shall comply with subdivision 4, paragraphs (a), clause (3) or (4); and (b).

Subd. 6. **Commissioner; duties.** (a) If the owner or operator of a qualified facility that is subject to the requirements of subdivision 4, paragraph (a), fails to comply with subdivision 4, paragraph (a), clause (1) or (2), the commissioner shall:

(1) undertake or complete closure activities at the facility in compliance with the solid waste rules in effect at the time the commissioner takes action under this clause; and

(2) undertake or continue postclosure care at the facility as required under subdivision 2.

(b) If a facility has been properly closed under subdivision 4, but the applicable closure requirements are less environmentally protective than closure requirements in the solid waste rules in effect on January 1, 1993, the commissioner shall determine whether the facility should be closed to the higher standards and, if so, shall undertake additional closure activities at the facility to meet those standards. The commissioner may determine that additional closure activities are unnecessary only if it is likely that response actions will be taken in the near future and that those response actions will result in removal or significant alteration of the closure activities or render the closure activities unnecessary.

Subd. 7. **Notice of compliance; effects.** (a) The commissioner shall provide written notice of compliance to the appropriate owner or operator or person subject to a cleanup order when:

(1) the commissioner determines that the requirements of subdivision 4 or 5 have been met; and

(2) the person who will receive the notice has submitted to the commissioner a written waiver of any claims the person may have against any other person for recovery of any environmental response costs related to a qualified facility that were incurred prior to the date of notice of compliance.

(b) Beginning on the date of the notice of compliance:

(1) the commissioner shall assume all obligations of the owner or operator or person for environmental response actions under the federal Superfund Act and any federal or state cleanup orders and shall undertake all further action under subdivision 1 at or related to the facility that the commissioner deems appropriate and in accordance with the priority list; and

(2) the commissioner may not seek recovery against the owner or operator of the facility or any responsible person of any costs incurred by the commissioner for environmental response action at or related to the facility, except:

(i) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), to the extent of insurance coverage held by the owner or operator or responsible person; or

(ii) as provided in section 115B.402.

(c) The commissioner and the attorney general shall communicate with the United States Environmental Protection Agency addressing the manner and procedure for the state's assumption of federal obligations under paragraph (b), clause (1).

Subd. 8. **Statutes of limitations.** (a) With respect to claims for recovery of environmental response costs related to qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), the running of all applicable periods of limitation under state law is suspended until July 1, 2004.

(b) A waiver of claims for recovery of environmental response costs under this section or section 115B.43 is extinguished for that portion of reimbursable costs under section 115B.43 that have not been reimbursed by July 1, 2004.

History: *1994 c 639 art 1 s 3; 1995 c 220 s 130; 1999 c 231 s 134-140; 2003 c 128 art 2 s 25; 2004 c 228 art 1 s 73*

115B.402 ILLEGAL ACTIONS AT QUALIFIED FACILITIES.

The commissioner may recover under section 115B.17, subdivision 6, that portion of the costs of response actions at any qualified facility attributable to a person who otherwise would be responsible for the release or threatened release under section 115B.03, and whose actions related to the release or threatened release were in violation of federal or state hazardous waste management laws in effect at the time of those actions. The commissioner's determination of the portion of the costs of a response action attributable to a person under this section, based on
the volume and toxicity of waste in the facility associated with the person and other factors reasonably related to the contribution of the person to a release or threatened release, is prima facie evidence that those costs are attributable to the person.

History: *1994 c 639 art 1 s 4*

115B.403 ACCEPTANCE OF DUMP MATERIALS TO AUGMENT CLOSURE OR CLOSURE UPGRADE ACTIVITIES AT QUALIFIED FACILITIES.

(a) The commissioner may allow dump materials at qualified facilities from sites that have been in public ownership on or after January 1, 1998, provided that the commissioner finds that:

(1) accepting the dump materials will not significantly increase the potential environmental impacts of the qualified facility;

(2) accepting the dump materials will benefit the qualified facility by improving final slopes, or in some other tangible manner, and the materials will be provided to the qualified facility according to a schedule consistent with closure or closure upgrade activities at the qualified facility;

(3) the owner of the site where the dump materials were disposed complies with the requirements of paragraph (b) and agrees to:

(i) pay any costs of screening and inspection needed at point of excavation or point of deposit to ensure that unacceptable materials are not delivered to the qualified facility;

(ii) secure any permissions necessary from the owner of the property containing the qualified facility;

(iii) transport the dump materials to the qualified facility according to a process and schedule acceptable to the commissioner and, at owner's cost, pay all transportation costs related to the activity; and

(iv) complete cleanup, final grading, seeding, and other related activities for the area where the dump existed.

(b) In order to qualify for consideration for disposal of dump materials at qualified facilities, the owner of the site where the dump materials were disposed shall notify the commissioner, in writing, at least six months before closure activity at the qualified facility indicating the owner's desire to dispose of the dump material at the qualified facility in order to allow adequate time
for construction planning and public information activities. The commissioner shall consider requests based on the schedule of closure and closure upgrade activities at qualified facilities. The commissioner shall require the owner of the site to submit, at the owner's expense, physical and chemical evaluation data regarding the dump material including any necessary coring, excavation, or other sampling data at least six months before closure construction to assist the commissioner in making the determination whether or not to accept the material.

(c) The commissioner may reject any and all requests to dispose of dump materials at qualified facilities.

(d) Nothing in this section shall be construed as allowing unpermitted disposal facilities to be included as qualified facilities in the closed landfill program.

History: *1998 c 306 s 2*

115B.405 EXCLUDED FACILITIES.

Subdivision 1. **Application.** The owner or operator of a qualified facility may apply to the commissioner for exclusion from the landfill cleanup program under sections 115B.39, 115B.40, 115B.41, 115B.412, and 115B.43. Applications for qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), must be received by the commissioner by February 1, 1995. Applications for qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (2), must be received by the commissioner by December 31, 1999. The owner or operator of a qualified facility that is subject to a federal cleanup order or that includes any portion that is tax-forfeited may not apply for exclusion under this section. In addition to other information required by the commissioner, an application must include a disclosure of all financial assurance accounts established for the facility. Applications for exclusion must:

(1) show that the operator or owner is complying with the agency's rules adopted under section 116.07, subdivision 4h, and is complying with a financial assurance plan for the facility that the commissioner has approved after determining that the plan is adequate to provide for closure, postclosure care, and contingency action;

(2) demonstrate that the facility is closed or is in compliance with a closure schedule approved by the commissioner; and

(3) include a waiver of all claims for recovery of costs incurred under sections 115B.01 to 115B.20 and the federal Superfund Act at or related to a qualified facility.

Subd. 2. **Evaluation of exclusion status.** Within 90 days after the commissioner has received a complete application for exclusion, the commissioner shall notify the owner or operator if the facility is excluded. If the commissioner finds that the facility does not satisfy the requirements for exclusion, the commissioner shall notify the owner or operator of that fact.

Subd. 3. **Restriction on use of property at excluded facilities.** (a) A person may not use any property described in the most recent agency permit issued for an excluded facility in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the facility's monitoring systems, unless the agency finds that the disturbance:

(1) is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(b) Before any transfer of ownership of property described in paragraph (a), the owner must obtain approval from the commissioner. The commissioner shall approve a transfer if the owner can demonstrate to the satisfaction of the commissioner that persons and property will not be exposed to undue risk from releases of hazardous substances or pollutants or contaminants.

(c) After obtaining approval from the commissioner, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

(1) that the land has been used as a mixed municipal solid waste disposal facility;

(2) the identity, quantity, location, condition, and circumstances of the disposal and any release of hazardous substances or pollutants or contaminants from the facility to the full extent known or reasonably ascertainable; and

(3) that the use of the property or some portion of it may be restricted as provided in paragraph (a).

(d) An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under paragraph (c), with respect to property for which an affidavit has already been recorded. If the owner or any subsequent owner of the property removes the waste from the facility together with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal. Failure to record
an affidavit as provided in this paragraph does not affect or prevent any transfer of ownership of the property.

(e) The county recorder shall record all affidavits presented in accordance with paragraphs (c) and (d). The affidavits must be recorded in a manner that will ensure their disclosure in the ordinary course of a title search of the subject property.

(f) This subdivision is enforceable under sections 115.071 and 116.072.

Subd. 4. **Closure.** If the commissioner determines that the owner or operator of an excluded facility did not complete the terms of an approved closure plan by the date in the plan, the commissioner shall complete closure at the facility and may seek cost recovery against the owner or operator under section 115B.17, subdivision 6.

History: *1994 c 639 art 1 s 5; 1999 c 231 s 141; 2004 c 228 art 1 s 73*

115B.41 ALLOCATION OF COSTS; FAILURE TO COMPLY.

Subdivision 1. **Allocation and recovery of costs.** (a) A person who is subject to the requirements in section 115B.40, subdivision 4 or 5, paragraph (b), is responsible for all environmental response costs incurred by the commissioner at or related to the facility until the date of notice of compliance under section 115B.40, subdivision 7. The commissioner may use any funds available for closure, postclosure care, and response action established by the owner or operator. If those funds are insufficient or if the owner or operator fails to assign rights to them to the commissioner, the commissioner may seek recovery of environmental response costs against the owner or operator in the county of Ramsey or in the county where the facility is located or where the owner or operator resides.

(b) In an action brought under this subdivision in which the commissioner prevails, the court shall award the commissioner reasonable attorney fees and other litigation expenses incurred by the commissioner to bring the action. All costs, fees, and expenses recovered under this subdivision must be deposited in the remediation fund established in section 116.155.

Subd. 2. **Environmental response costs; liens.** All environmental response costs, including administrative and legal expenses, incurred by the commissioner at a qualified facility before the date of notice of compliance under section 115B.40, subdivision 7, constitute a lien in favor of
the state upon any real property located in the state, other than homestead property, owned by the owner or operator who is subject to the requirements of section 115B.40, subdivision 4 or 5. A lien under this subdivision attaches when the environmental response costs are first incurred and continues until the lien is satisfied or becomes unenforceable as for an environmental lien under section 514.672. Notice, filing, and release of the lien are governed by sections 514.671 to 514.676, except where those requirements specifically are related to only cleanup action expenses as defined in section 514.671. Relative priority of a lien under this subdivision is governed by section 514.672, except that a lien attached to property that was included in any permit for the solid

waste disposal facility takes precedence over all other liens regardless of when the other liens were or are perfected. Amounts received to satisfy all or a part of a lien must be deposited in the remediation fund.

Subd. 3. **Local government aid; offset.** If an owner or operator fails to comply with section 115B.40, subdivision 4, or 5, paragraph (b), fails to remit payment of environmental response costs incurred by the commissioner before the date of notice of compliance under section 115B.40, subdivision 7, and is a local government unit, the commissioner may seek payment of the costs from any state aid payments, except payments made under section 115A.557, subdivision 1, otherwise due the local government unit. The commissioner of revenue, after being notified by the commissioner that the local government unit has failed to pay the costs and the amount due, shall pay an annual proportionate amount of the state aid payment otherwise payable to the local government unit into the remediation fund that will, over a period of no more than five years, satisfy the liability of the local government unit for the costs.

Subd. 4. **Disqualification; permits.** If an owner or operator of a qualified facility that is not a local government unit does not undertake closure or postclosure care in compliance with section 115B.40, subdivision 4, the owner or operator is ineligible to obtain or renew a state or local permit or license to engage in a business that manages solid waste. Failure of an owner or operator that is not a local government unit to complete closure or postclosure care at a qualified facility is prima facie evidence of the lack of fitness of that owner or operator to conduct any solid waste business and is grounds for revocation of any solid waste business permit or license held by that owner or operator.

For the purposes of this subdivision and subdivision 2, "owner or operator" means a person, partnership, firm, limited liability company, cooperative, association, corporation, or other entity and includes any entity in which the owner or operator owns a controlling interest.

Subd. 5. **Expedited closure.** To expedite compliance with section 115B.40, subdivision 4, a person other than an owner or operator may undertake closure or postclosure care in compliance with that subdivision under an agreement with the commissioner.

History: *1994 c 639 art 1 s 6; 1995 c 220 s 101,130; 2003 c 128 art 2 s 26-28*

115B.412 PROGRAM OPERATION.

Subdivision 1. **Duty to provide information.** Any person who the commissioner has reason to believe has or may obtain information related to the generation, composition, transportation, treatment, or disposal of waste in a qualified facility or who has or may obtain information related to the ownership or operation of a facility shall furnish to the commissioner or the commissioner's designee any information that person may have or may reasonably obtain that is relevant to a release or threatened release at a qualified facility.

Subd. 2. **Access to information and property.** The commissioner or a person designated by the commissioner, on presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda, or data of any person who has a duty to provide information to the agency under subdivision 1; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized by sections 115B.39 to 115B.43 including obtaining information from any person who has a duty to provide the information under subdivision 1, conducting surveys or investigations, and taking response action.

This subdivision and subdivision 1 are enforceable under sections 115.071 and 116.072. If the commissioner prevails in an enforcement action under this subdivision, the commissioner may recover all costs, including court costs, attorney fees, and administrative costs, related to the enforcement action.

Subd. 3. **Acquisition and disposition of real property.** The commissioner may acquire and dispose of real property the commissioner deems reasonably necessary for environmental response actions at or related to a qualified facility under section 115B.17, subdivisions 15 and 16.

Subd. 4. **Affected real property; notice.** (a) The commissioner shall provide to affected local government units, to be available as public information, and shall make available to others, on request, a description of the real property described in the original and any revised permits
for a qualified facility, along with a description of activities that will be or have been taken on the property under sections 115B.39 to 115B.43 and a reasonably accurate description of the types, locations, and potential movement of hazardous substances, pollutants and contaminants, or decomposition gases related to the facility. The commissioner shall provide and make this information available at the time the facility is placed on the priority list under section 115B.40, subdivision 2; shall revise, provide, and make the information available when response actions, other than long-term maintenance actions, have been completed; and shall revise the information over time if significant changes occur that make the information obsolete or misleading.

(b) A local government unit that receives information from the commissioner under paragraph (a) shall incorporate that information in any land use plan that includes the affected property and shall notify any person who applies for a permit related to development of the affected property of the existence of the information and, on request, provide a copy of the information.

Subd. 5. **Environmental lien.** An environmental lien for environmental response costs incurred, including reimbursements made under section 115B.43, by the commissioner under sections 115B.39 to 115B.445 attaches in the same manner as a lien under sections 514.671 to
514.676 to all the real property described in the original and any revised permits for a qualified facility and any adjacent property owned by the facility owner or operator from the date the first assessment, closure, postclosure care, or response activities related to the facility are undertaken by the commissioner. For the purposes of filing an environmental lien under this subdivision, the term "cleanup action" as used in sections 514.671 to 514.676 includes all of the costs incurred by the commissioner to assess, close, maintain, monitor, and respond to releases at qualified facilities under sections 115B.39 to 115B.445. Notwithstanding section 514.672, subdivision 4, a lien under this paragraph takes precedence over all other liens on the property regardless of when the other liens were or are perfected. For the purpose of this subdivision, "owner or operator" has the meaning given it in section 115B.41, subdivision 4.

Subd. 6. **Contracts.** The commissioner shall, to the extent practicable, ensure that contracts for activities or consulting services under this section are entered into with contractors or consultants located within the region where the facility subject to the contracts is located. The commissioner shall tailor specifications in requests for proposals to the types of activities or services that need to be undertaken at a specific facility or group of facilities located in the same region and shall not include specifications that require specialized expertise or laboratory work not available within the region unless it is necessary to do so to meet the requirements of this section.

Subd. 7. **Separate accounting.** The commissioner shall maintain separate accounting for each qualified facility regarding:

(1) the amount of financial assurance funds transferred under section 115B.40, subdivisions
4 and 5; and

(2) costs of response actions taken at the facility.

Subd. 8. **Transfer of title; disposal of property.** The owner of a qualified facility may, as part of the owner's activities under section 115B.40, subdivision 4 or 5, offer to transfer title to all or any portion of the property described in the facility's most recent permit, including any property adjacent to that property the owner wishes to transfer, to the commissioner.

The commissioner may accept the transfer of title if the commissioner determines that to do so is in the best interest of the state. If, after transfer of title to the property, the commissioner determines that no further response actions are required on the portion of the property being disposed of under sections 115B.39 to 115B.445 and it is in the best interest of the state to dispose of property acquired under this subdivision, the commissioner may do so under section115B.17, subdivision16. The property disposed of under this subdivision is no longer part of the qualified facility.

Subd. 8a. **Boundary modification.** The commissioner may modify the boundaries of a qualified facility to exclude certain property if the commissioner determines that no further response actions are required to be conducted under sections 115B.39 to 115B.445 on the excluded property and the excluded property is not affected by disposal activities on the remaining portions of the qualified facility. Any property excluded under this subdivision is no longer part of the qualified facility.

Subd. 8b. **Delisting.** If all solid waste from a qualified facility has been relocated outside the qualified facility's boundaries and the commissioner has determined that no further response actions are required on the property under sections 115B.39 to 115B.445, the commissioner may delist the facility by removing it from the priority list established under section 115B.40, subdivision 2, after which the property shall no longer be a qualified facility. The commissioner has no further responsibilities under sections 115B.39 to 115B.445 for a facility delisted under this subdivision.

Subd. 9. **Land management plans.** The commissioner shall develop a land use plan for each qualified facility. All local land use plans must be consistent with a land use plan developed under this subdivision. Plans developed under this subdivision must include provisions to prevent any use that disturbs the integrity of the final cover, liners, any other components of any containment system, or the function of any monitoring systems unless the commissioner finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

Before completing any plan under this subdivision, the commissioner shall consult with the commissioner of management and budget regarding any restrictions that the commissioner of management and budget deems necessary on the disposition of property resulting from the use of bond proceeds to pay for response actions on the property, and shall incorporate the restrictions in the plan.

Subd. 10. **Report.** By December 1 of each year, the commissioner shall report to the environment and natural resources committees and to the appropriate finance committees of the senate and the house of representatives on the commissioner's activities under sections 115B.39 to 115B.43 and the commissioner's anticipated activities during future fiscal years.

Subd. 11. **Rules.** The commissioner may adopt rules necessary to implement sections 115B.39 to 115B.43.

History: *1994 c 639 art 1 s 7; 1996 c 470 s 27; 1997 c 7 art 1 s 34; 1997 c 216 s 109; 2009 c 101 art 2 s 109; 2011 c 107 s 83-85*

115B.414 THIRD-PARTY CLAIMS; MEDIATION; DEFENSE.

Subdivision 1. **Third-party claims; definition.** For the purposes of this section, "third-party claims" means claims made against mixed municipal solid waste generators by a responsible person or group of responsible persons under state or federal law for payment of response costs and related costs at a qualified facility, when the claimant or claimants do not produce evidence, other than statistical or circumstantial evidence, that the persons against whom the claims are made ever arranged for disposal or transported for disposal mixed municipal solid waste containing a hazardous substance or pollutant or contaminant to the facility.

Subd. 2. **Mediation.** A third-party claim or group of third-party claims that all arise from the same facility may be submitted to the Minnesota Office of Dispute Resolution for mediation under the Minnesota Civil Mediation Act, sections 572.31 to 572.40. The costs of mediation must be allocated equally between the person or persons against whom the claims are made and the person or persons making the claims.

Subd. 3. **Partial reimbursement.** A person or persons against whom one or more third-party claims are made may seek reimbursement from the commissioner of one-half of the costs of mediation allocated to the person or persons under subdivision 2. The commissioner shall reimburse the person or persons that request reimbursement unless the commissioner finds that the mediation was not entered into and conducted in good faith by the person or persons seeking reimbursement.

Subd. 4. **Defense costs.** If a person or persons against whom one or more third-party claims are made request the person or persons making the claims to submit the claims to mediation and the claimants refuse to submit to mediation or if the person or persons against whom third-party claims are made enter into and conduct the mediation in good faith but the mediation fails to resolve the claims, the person or persons, in cooperation with other persons against whom third-party claims have been made that arise from the same facility, may retain legal counsel to defend them against the claims and may seek partial reimbursement from the commissioner for reasonable attorney fees. The commissioner shall provide partial reimbursement for reasonable attorney fees under this subdivision of $75 per hour for a maximum number of hours to be established by the commissioner by rule. The maximum number of hours for reimbursement must increase as the number of persons who collectively retain legal counsel to defend against related claims increases but need not increase proportionately to the increase in the number of persons seeking collective defense. Under no circumstances may a person or group of persons receive reimbursement of more than 75 percent of their reasonable attorney fees under this subdivision.

History: *1994 c 639 art 1 s 8*

115B.42 REMEDIATION FUND.

Subdivision 1. [Repealed, 2003 c 128 art 2 s 56]

Subd. 2. **Expenditures.** The commissioner may spend money from the remediation fund under section 116.155,
subdivision 2, paragraph (a), clause (2), to:

(1) inspect permitted mixed municipal solid waste disposal facilities to:

(i) evaluate the adequacy of final cover, slopes, vegetation, and erosion control;

(ii) determine the presence and concentration of hazardous substances, pollutants or contaminants, and decomposition gases; and

(iii) determine the boundaries of fill areas;

(2) monitor and take, or reimburse others for, environmental response actions, including emergency response actions, at qualified facilities;

(3) acquire and dispose of property under section 115B.412, subdivision 3; (4) recover costs under section 115B.39;

(5) administer, including providing staff and administrative support for, sections 115B.39 to 115B.445;

(6) enforce sections 115B.39 to 115B.445;

(7) pay for private water supply well monitoring and health assessment costs of the commissioner of health in areas affected by unpermitted mixed municipal solid waste disposal facilities;

(8) reimburse persons under section 115B.43;

(9) reimburse mediation expenses up to a total of $250,000 annually or defense costs up to a total of $250,000 annually for third-party claims for response costs under state or federal law as provided in section 115B.414; and

(10) perform environmental assessments, up to $1,000,000, at unpermitted mixed municipal solid waste disposal facilities.

History: *1992 c 513 art 2 s 26; 1993 c 172 s 71; 1994 c 639 art 3 s 1,2; 1995 c 185 s 3; 1995 c 220 s 102; 1997 c 7 art 1 s 35; 1999 c 231 s 142; 2003 c 128 art 2 s 29*

115B.421 CLOSED LANDFILL INVESTMENT FUND.

The closed landfill investment fund is established in the state treasury. The fund consists of money credited to the fund, and interest and other earnings on money in the fund. Beginning July 1, 2003, funds must be deposited as described in section 115B.445. The fund shall be managed to maximize long-term gain through the State Board of Investment. Money in the fund may be spent by the commissioner after fiscal year 2020 in accordance with sections 115B.39 to 115B.444.

History: *1999 c 231 s 143; 2003 c 128 art 2 s 30; 2009 c 101 art 2 s 109; 2013 c 114 art 4 s 82*

115B.43 REIMBURSABLE PARTIES AND EXPENSES.

Subdivision 1. **Generally.** Environmental response costs at qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), for which a notice of compliance has been issued under section 115B.40, subdivision 7, are reimbursable as provided in this section. Subd. 2. Reimbursable persons. (a) Except as provided in paragraphs(b) to (d), the following persons are eligible for reimbursement under this section:

(1) owners or operators, after the owners or operators have agreed to waive all claims for recovery of environmental response costs against any other persons and have agreed to reimburse, on a proportionate basis from each reimbursement received, each person from whom the applicant has collected funds towards reimbursable costs; and

(2) persons, other than owners and operators after the persons have agreed to:

(i) reimburse, on a proportionate basis from each reimbursement payment received, each person from whom the applicant has collected funds towards reimbursable costs; and

(ii) waive all claims for environmental response costs related to the facility and all other qualified facilities, against all other persons.

(b) A person is not eligible for reimbursement under this section if the person is an owner or operator who failed to properly close the qualified facility within the time specified in the facility's permit or the solid waste rules in effect at the time the facility stopped accepting waste.

(c) A person is not eligible for reimbursement under this section for environmental response costs at a facility if the person's actions relating to a release or threatened release at the facility were in violation of federal or state hazardous waste management laws in effect at the time of those actions.

(d) A person is not eligible for reimbursement under this section if, after June 15, 1994, the person files or continues to pursue an action asserting a claim for recovery of environmental response costs relating to a qualified facility, or otherwise seeks contributions for these costs, from another person.

Subd. 3. **Reimbursable expenses.** (a) Environmental response costs are eligible for reimbursement under this section to the extent that they:

(1) exceed:

(i) for each political subdivision that is an owner or operator of the facility, $250,000; and

(ii) for a private owner or operator, or a political subdivision that jointly owned or operated the facility with two or more other political subdivisions under a valid joint powers agreement, $750,000;

(2) are documented with billings or other proof of project cost; and

(3) if the commissioner finds that they were reasonable and necessary under the circumstances.

The commissioner may request further documentation from those requesting reimbursement if it is necessary in the commissioner's judgment.

(b) For owners or operators, the following costs are not reimbursable:

(1) costs attributable to normal operations of the facility or to activities required under the facility permit and applicable solid waste rules, including corrective action, closure, postclosure, and contingency action; and

(2) the acquisition of real property if required of the owner or operator in order to carry out requirements of the facility permit or applicable solid waste rules.

Subd. 4. **Reimbursement plan.** The commissioner shall prepare a reimbursement plan and present it by October 1, 1995, to the Legislative Commission on Waste Management, the chairs of the senate Finance Committee and Environment and Natural Resources Finance Division and the committees on Ways and Means and Environment and Natural Resources Finance of the house of representatives, and owners and operators of, and persons subject to a cleanup order at, qualified facilities. The plan shall identify sites where reimbursement will occur and the estimated dollar amount for each site and shall set out priorities and payment schedules. The plan must give first priority for reimbursement to persons who are not owners or operators of qualified facilities.

Subd. 5. **Reimbursement timing.** The commissioner shall not issue reimbursement payments before October 15, 1995. The commissioner shall not issue reimbursements for expense statements filed after October 15, 1996, and shall approve or deny all reimbursement requests by October 15, 1997. The commissioner shall fully reimburse all persons eligible for reimbursement no later than six years after the date of notice of compliance for the facility under section 115B.40, subdivision 7.

Subd. 6. **Reimbursement ceiling.** The commissioner shall not issue reimbursements in an amount exceeding $7,000,000 per fiscal year.

History: *1994 c 639 art 1 s 9; 1999 c 231 s 144*

115B.44 [Repealed, 1996 c 370 s 7]

115B.441 INSURANCE CLAIMS SETTLEMENT AND RECOVERY PROCESS; FINDINGS AND PURPOSE.

(a) The legislature finds that:

(1) insurers have issued certain insurance policies to their policyholders that may have provided coverage for environmental response costs related to qualified facilities for which their policyholders bear legal responsibility;

(2) because the commissioner is required by law to take over responsibility for environmental response actions relating to all qualified facilities, any rights to coverage based upon the insurers' contractual obligations to their policyholders to pay environmental response costs that are assumed by the state related to these facilities, to the extent the obligations may exist, are rights that should fairly accrue to the state; and

(3) the resolution of these potential insurance coverage rights should provide a fair share of the cost to the state of taking over these environmental responsibilities consistent with the insurers' potential coverage obligations to their policyholders.

(b) The purposes of sections 115B.441 to 115B.445 are:

(1) to provide the means for the state and insurers to resolve claims of the state for environmental response costs related to qualified facilities that may be covered by insurance policies of persons who bear legal responsibility for those costs; and

(2) to create a fair and efficient settlement process that provides insurers with an opportunity to settle claims based upon a reasonable approximation of the insurers' potential coverage exposure and a fair opportunity for the state to recover claims by legal action from nonsettling insurers. **History:** *1996 c 370 s 1*

115B.442 SETTLEMENT PROCESS; INFORMATION GATHERING.

Subdivision 1. **Selection of qualified facilities.** The commissioner and the attorney general shall select qualified facilities for which they intend to make offers of settlement to insurers under section 115B.443. The first group of qualified facilities, consisting of not less than ten facilities, must be selected within 60 days after March 27, 1996. Upon selection of a qualified
facility under this subdivision, the commissioner shall commence reasonable efforts to identify potential insurance policyholders and insurance coverage for the qualified facility in accordance with this section.

Subd. 1a. **Definition of qualified facilities.** For the purposes of sections 115B.441 to 115B.445, "qualified facility" means only those qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1).

Subd. 2. **Potential insurance policyholder.** For the purpose of this section, "potential insurance policyholder" means a person who may bear legal responsibility for environmental response costs related to a qualified facility including the following:

(1) a person who has been the subject of a request for response action under section 115B.17, or an order under section 106 of the federal Superfund Act with respect to a qualified facility;

(2) an owner or operator of a qualified facility;

(3) a person who engaged in commercial, industrial, or other activities generally known to produce waste containing a hazardous substance, or pollutant or contaminant, and whose waste was disposed of at a qualified facility; and

(4) a person who engaged in the business of hauling waste for disposal and who accepted waste from one or more persons of the type described in clause (3) for transport to a qualified facility.

Subd. 3. **Identification of potential insurance policyholders.** The commissioner may request information from a person that the commissioner has reason to believe is a potential insurance policyholder or has information needed to identify potential insurance policyholders. The recipient of the request shall provide to the commissioner any information in the person's possession, or which the person can reasonably obtain, that the commissioner requires to identify potential insurance policyholders for a qualified facility and to explain to the commissioner the person's efforts to discover and provide the information. An owner or operator of a qualified facility shall retain and preserve all documents and other information relevant to the identification of potential insurance policyholders for the qualified facility.

Subd. 4. **Identification of potential insurance coverage.** The commissioner may request a person that the commissioner has reason to believe is a potential insurance policyholder to provide, and the recipient of the request shall provide to the commissioner, any information
in the person's possession, or which the person can reasonably obtain, regarding the person's potential liability insurance coverage for environmental response costs related to a qualified facility. A potential insurance policyholder for which evidence of potential coverage has been identified shall cooperate with reasonable requests of the commissioner or the attorney general for assistance in preparing for and negotiating a settlement under this section or in preparing
or pursuing a claim under section 115B.444 related to that policyholder's potential coverage. Nothing in this subdivision relieves a potential insurance policyholder of any duties imposed upon it pursuant to the terms, conditions, and provisions of its insurance policy, including any duty to cooperate with its insurer in the investigation, negotiation, and settlement of claims or demands, or the defense of suits. The commissioner may contract for the services of persons to assist in reconstructing insurance policies and potential coverage from

incomplete insurance information. The commissioner may authorize the attorney general to carry out all or a portion of the authority provided in this section.

Subd. 5. Identification of potential coverage by insurers. The commissioner may request an insurer to make reasonable efforts to identify or confirm potential insurance coverage of

any potential insurance policyholder identified under subdivision 4, or may direct the potential insurance policyholder to make this request of an insurer. An insurer that is requested to identify or confirm potential coverage of a potential insurance policyholder under this subdivision has 90 days after receiving the request to confirm coverage or to provide all information in the possession of the insurer that may assist in identifying potential coverage, and to explain the insurer's efforts to discover and provide such information. An insurer requested to provide information under this subdivision shall preserve all information relevant to the request until any claim relating to the request is resolved.

Subd. 6. **Enforcement.** Subdivisions 3 to 5 are enforceable under sections 115.071 and 116.072.

History: *1996 c 370 s 2; 1999 c 231 s 145*

115B.443 SETTLEMENT PROCESS.

Subdivision 1. **Determination of facility costs.** Beginning not later than one year after selection of a qualified facility under section 115B.442, subdivision 1, the commissioner shall determine the current total estimated amount of environmental response costs incurred and to be incurred by the state for the qualified facility under sections 115B.39 to 115B.43, including reimbursement under section 115B.43.

Subd. 2. **Settlement offers.** The attorney general and the commissioner shall select one or more insurers who have been identified by the commissioner as providing potential coverage to persons identified under section 115B.442 as potential insurance policyholders for a qualified facility and shall make settlement offers with respect to one or more of the qualified facilities to the selected insurers. The attorney general and the commissioner shall base the settlement offer on their evaluation of the potential coverage available for environmental response costs under policies issued by the insurer to persons identified as potential insurance policyholders for that qualified facility and on the total estimated costs for the qualified facility, as determined under subdivision 1. The attorney general shall provide written notice of the settlement to the insurer together with a written explanation of how the offer was calculated. The attorney general may exclude from a settlement offer claims relating to policyholders who are known by the attorney general to have claims against the insurer for coverage for environmental liabilities at locations

other than qualified facilities, or who are actively litigating or settling claims against their insurers relating to any qualified facility.

Subd. 3. **Settlement negotiations; mediation.** An insurer shall have 60 days after receipt of a settlement offer and written explanation from the state to evaluate the offer, after which the insurer, the commissioner, and the attorney general shall commence negotiations to attempt to reach a settlement with respect to the potential insurance coverage and qualified facilities subject to the settlement offer. The insurer shall have 180 days to negotiate and commit to a settlement with the state before the attorney general may commence an action under section 115B.444, unless the commissioner and the attorney general agree to extend the negotiation period upon request by the insurer made before expiration of the 180-day period. Any extension shall be limited to one additional 60-day period.

The attorney general, commissioner, and the insurer may agree to use any method of alternative dispute resolution for all or a portion of the issues in the negotiation, or may agree to negotiate all matters directly among themselves. If the parties do not agree in writing on the

manner in which they will negotiate a settlement within 60 days after commencement of the negotiation period, the parties shall submit the negotiation of the settlement to mediation by an independent and neutral mediator selected by the Minnesota Office of Dispute Resolution. The attorney general shall submit on behalf of all parties a request to the Office of Dispute Resolution to appoint a mediator for the negotiations. The cost of mediation under this subdivision shall be divided equally between the state and the insurer.

Any settlement offer or any proposal, statement, or view expressed or document prepared in the course of negotiation under this section shall not be considered an admission by any party and shall not be admissible in evidence in any judicial proceeding affecting matters subject to settlement negotiation, provided that any matter otherwise admissible in a judicial proceeding is not made inadmissible by virtue of its use in negotiation under this section.

Subd. 4. **Participation by affected policyholders.** (a) Within 30 days of notifying an insurer of a settlement offer, the attorney general shall make reasonable efforts to notify policyholders who may be affected by settlement negotiations under subdivision 3. The notification shall inform the policyholder of the commencement of negotiations between the state and the insurer and the manner in which a policyholder, with agreement of the insurer, may participate in the negotiation process. If the insurer and the state reach a settlement of the state's claims, the attorney general shall provide notice of any proposed settlement to any affected policyholder who makes a written request for such notice.

(b) Subject to the limitations of this paragraph, an insurer to whom a settlement offer is made under subdivision 3, and any policyholder who may be affected by the negotiation, may agree to negotiate a resolution of any other outstanding environmental claims, related to the qualified facility or facilities that are subject to the state's settlement offer, within the settlement negotiation process provided under this section. Environmental claims unrelated to the qualified facility or facilities that are subject to the state settlement offer may be included within the settlement negotiation process provided under this section at the discretion of the attorney general, provided that the state will not bear any costs of mediation or alternative dispute resolution arising from the unrelated claims. The agreement of the insurer and affected policyholders to negotiate must be reached by the time that the insurer and the state commence negotiations as provided under subdivision 3. The policyholder shall not participate in the selection of the method of negotiation by the state and the insurer under subdivision 3. If the attorney general in the attorney general's discretion determines, at any time after the first 60 days of the negotiation period, that continued participation of the policyholders in the negotiation process with the state and the insurer is detrimental to the effective negotiation of a settlement between the state and the insurer, the attorney general shall so notify the insurer and the policyholders. After such notification by the attorney general, the insurer and policyholders may continue to negotiate separately from the negotiation between the insurer and the state, and may use the same mediator or other person who is facilitating negotiation between the state and the insurer. Policyholders shall be responsible for an equitable share of any costs of mediation or other alternative dispute resolution process in which they participate. Notwithstanding a determination to discontinue negotiations involving policyholders, the attorney general may engage in an additional 30 days of negotiation with the insurer and policyholders if, within the time limit for committing to a settlement provided under subdivision 3, the attorney general finds, in the discretion of the attorney general, that participation by the policyholders in a settlement between the state and the insurer would be beneficial to that settlement.

Inability of the insurer or the state to reach a settlement with policyholders under this subdivision shall not preclude a settlement between the state and the insurer.

Subd. 5. **Adjustment for retrospective premiums.** A settlement that includes payment of any amount under a policy subject to a retrospective premium plan shall include terms which assure that the settlement does not result in the imposition of any retrospective premium on any policyholder. In negotiating with respect to any state offer of settlement which is based in whole or in part on coverage known to the insurer to be subject to a retrospective premium plan:

(1) the insurer shall calculate the amount of any retrospective premium that would result from payment of the state's settlement offer amount and shall disclose the calculation and the basis for it to the attorney general and the commissioner; and

(2) the attorney general and commissioner may reduce the settlement offer amount by the amount of the retrospective premium or agree to assume the obligation to pay the retrospective premium in order to assure that no retrospective premium is imposed on the policyholder.

Subd. 6. **Option to settle natural resource damages.** An insurer who has received a settlement offer may request the attorney general and the commissioner to address in any settlement under this section natural resource damages related to qualified facilities subject to the settlement offer. The attorney general and the commissioner, after receiving a request under this subdivision, shall determine an amount to be added to the state's settlement offer that would be sufficient to address and resolve in the settlement any state claims for natural resource damages related to the qualified facilities subject to the settlement.

Subd. 7. **Settlement option for all qualified facilities.** If an insurer has entered settlements with the state under this section with respect to qualified facilities for which the aggregate amount of total estimated environmental response costs equals at least 60 percent of the total estimated environmental response costs for all qualified facilities as determined by the commissioner, the attorney general and the commissioner, upon request of the insurer, may settle with the insurer with respect to the remaining qualified facilities for the amount determined in this subdivision. The amount of the settlement for the remaining qualified facilities must be the amount that bears the same proportion to the total estimated costs for the remaining facilities that the amount payable under all of the insurer's existing settlements under this section bears to the aggregate of the total estimated costs for the qualified facilities subject to those settlements.

Subd. 8. **Scope of release by state; effect of settlement.** Except for any claims excluded from the settlement process under subdivision 2, a settlement under this section shall release a settling insurer, and its policyholders to the extent of their insurance coverage under policies of that insurer, from all liability for all environmental response costs incurred and to be incurred by the state related to the qualified facility or facilities that are the subject of the settlement, including natural resource damages if addressed in the settlement. Except for claims excluded under subdivision 2, the settlement shall release a settling insurer and its policyholders from liability as described in this subdivision under all insurance policies issued by the insurer, regardless of whether the policies or policyholders were identified by the commissioner or attorney general under section 115B.442.

Subd. 9. **Other settlement terms.** (a) An insurer who enters a settlement under this section is not liable for claims for contribution regarding matters addressed in the settlement. As a condition of settlement, an insurer shall waive its rights to seek contribution for any amounts paid in the settlement or to bring a subrogation action against any other person for any amounts paid in the settlement.

(b) Settlement under this section does not discharge the liability of an insurer that has not entered a settlement under this section nor of a person to whom a nonsettling insurer has issued insurance coverage to the extent of that coverage.

(c) No settlement offer, settlement, or negotiation under this section shall affect any joint and several liability for environmental response costs or damages related to the facility of any person whose liability has not been settled under this section.

(d) A settlement under this section or section 115B.444, subdivision 2, paragraph (b), reduces the state's claims for environmental response costs, and natural resource damages if addressed in the settlement, related to qualified facilities subject to the settlement by the amounts paid to the state under the settlement for the facilities.

(e) A settlement agreement approved by the attorney general and the commissioner under this section shall be presumed to be a reasonable settlement of the state's claims.

Subd. 10. **Reduction of outstanding coverage.** Any amounts paid by an insurer pursuant to a judgment under section 115B.444 or settlement under this section reduce the outstanding coverage available under policies of the insurer to the extent permitted under applicable law
and policy provisions.

History: *1996 c 370 s 3*

115B.444 STATE ACTION AGAINST INSURERS.

Subdivision 1. **State action.** The state, by the attorney general, may bring a state action against any insurer for recovery of all environmental response costs incurred and to be incurred by the state, which costs are related to qualified facilities for which the state has assumed response action obligations or responsibilities under sections 115B.39 to 115B.43, and for which costs policyholders of the insurer may be liable. No assignment of any rights of a policyholder
to the state and no judgment against the policyholder is required as a condition for the state bringing an action under this subdivision. The state shall make reasonable efforts to notify affected policyholders of the state's commencement of an action under this section. An affected policyholder may intervene in an action under this section. For purposes of this section, an "affected policyholder" means a policyholder whose rights under an insurance policy relevant to an action under this section may be affected by the action. All defenses available to a policyholder to any claim of liability for environmental response costs asserted or which could be asserted against it shall be available to the insurer in an action brought by the state under this subdivision. In any action under this subdivision, the claim of the state shall be limited by the applicable terms, conditions, and provisions of the relevant insurance policy under which coverage may be provided, and the state shall have no greater rights than the rights of the policyholder under
its insurance policy subject to the statutory and common law that applies to the determination of those rights. Nothing in sections 115B.441 to 115B.445 shall be construed to relieve any policyholder of liability for environmental response costs to the extent of any insurance coverage of the policyholder by reason of the assumption of obligations or responsibilities by the state for environmental response actions under sections 115B.39 to 115B.43. Before the attorney general may commence an action against an insurer under this subdivision, for any claims with respect
to a qualified facility, the attorney general and the commissioner shall present to the insurer a written settlement offer, and shall provide the insurer with an opportunity to negotiate and enter a settlement with the state as provided in section 115B.443. In any action under this subdivision, the state shall have the same rights as individual policyholders to recover its reasonable expenses
and costs of litigation, including attorney fees.

Subd. 2. **Actions by policyholders; state approval of settlements.** (a) Except as provided in paragraph (b), nothing in sections 115B.441 to 115B.444 affects the right of a policyholder to bring or pursue any action against, or enter any settlement with, an insurer for any claims for which the state has a right of action against the insurer under this section and that have not been resolved by a settlement or judgment under this section. The state may intervene in an action in which a policyholder seeks to recover a claim for which the state has a right of action under this section.

(b) A policyholder may not enter a settlement that releases an insurer from any claims for which the state has an action under subdivision 1, unless the attorney general has given prior written approval to the settlement and the policyholder agrees to assign to the state any amounts recovered under the settlement from the insurer that are attributable to the resolution of the claims.

History: *1996 c 370 s 4*

115B.445 DEPOSIT OF PROCEEDS.

All amounts paid to the state by an insurer pursuant to any settlement under section 115B.443 or judgment under section 115B.444 must be deposited in the state treasury and credited equally to the remediation fund and the closed landfill investment fund.

History: *1996 c 370 s 5; 2003 c 128 art 2 s 31*

115B.45 [Repealed, 1996 c 370 s 7]

115B.46 [Repealed, 1996 c 370 s 7]

DRY CLEANER ENVIRONMENTAL RESPONSE AND REIMBURSEMENT LAW

115B.47 CITATION.

Sections 115B.47 to 115B.51 may be cited as the "Dry Cleaner Environmental Response and Reimbursement Law."

History: *1995 c 252 s 1*

115B.48 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in section 115B.02 and this section apply to sections 115B.47 to 115B.51.

Subd. 2. **Dry cleaner environmental response and reimbursement account; account.** "Dry cleaner environmental response and reimbursement account" or "account" means the dry cleaner environmental response and reimbursement account in the remediation fund established in sections 115B.49 and 116.155.

Subd. 3. **Dry cleaning facility.** "Dry cleaning facility" means a facility located in this state that is or has been used for a dry cleaning operation, other than:

(1) a coin-operated dry cleaning operation;

(2) a facility located on a United States military base; (3) a uniform service or linen supply facility;

(4) a prison or other penal institution;

(5) a facility on the national priorities list established under the federal Superfund Act; or

(6) a facility at which a response action has been taken or started before July 1, 1995, except as authorized in a settlement agreement approved by the commissioner by July 1, 1997.

Subd. 4. Dry cleaning operation. "Dry cleaning operation" means commercial cleaning of apparel and household fabrics for the general public, using one or more dry cleaning solvents.

Subd. 5. **Dry cleaning solvent.** "Dry cleaning solvent" means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including, but not limited to:

(1) perchloroethylene and its degradation products; and

(2) petroleum-based solvents and their degradation products.

Subd. 6. **Environmental response costs.** "Environmental response costs" means those costs described in section 115B.17, subdivision 6.

Subd. 7. **Facility.** "Facility" means one or more buildings or parts of a building and the equipment, installations, and structures contained in the building, located on a single site or on contiguous or adjacent sites. Facility includes any site or area where a hazardous substance,
or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise comes to be located.

Subd. 8. **Full-time equivalence.** "Full-time equivalence" means 2,000 hours worked by employees, owners, and others in a dry cleaning facility during a 12-month period beginning July
1 of the preceding year and running through June 30 of the year in which the annual registration fee is due. For those dry cleaning facilities that were in business less than the 12-month period, full-time equivalence means the total of all of the hours worked in the dry cleaning facility, divided by 2,000 and multiplied by a fraction, the numerator of which is 50 and the denominator of which is the number of weeks in business during the reporting period. For the purposes of section
115B.49, an owner working 2,000 hours or more shall be considered as one full-time equivalent.

History: *1995 c 252 s 2; 1996 c 471 art 2 s 1,2; 1997 c 216 s 110,111; 2002 c 324 s 1; 2003 c 128 art 2 s 32; 1Sp2005 c 1 art 2 s 133; 2006 c 281 art 5 s 2*

115B.49 DRY CLEANER ENVIRONMENTAL RESPONSE AND REIMBURSEMENT ACCOUNT.

Subdivision 1. **Establishment.** The dry cleaner environmental response and reimbursement account is established as an account in the remediation fund.

Subd. 2. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to the account:

(1) the proceeds of the fees imposed by subdivision 4;

(2) interest attributable to investment of money in the account;

(3) penalties and interest collected under subdivision 4, paragraph (c); and

(4) money received by the commissioner for deposit in the account in the form of gifts, grants, and appropriations.

Subd. 3. **Expenditures.** (a) Money in the account may be used:

(1) for environmental response costs incurred by the commissioner under section 115B.50, subdivision 1;

(2) for reimbursement of amounts spent by the commissioner from the remediation fund for expenses described in clause (1);

(3) for reimbursements under section 115B.50, subdivision 2; and

(4) for administrative costs of the commissioner of revenue.

(b) Money in the account is appropriated to the commissioner for the purposes of this subdivision. The commissioner shall transfer funds to the commissioner of revenue sufficient to cover administrative costs pursuant to paragraph (a), clause (4).

Subd. 4. **Registration; fees.** (a) The owner or operator of a dry cleaning facility shall register on or before October 1 of each year with the commissioner of revenue in a manner prescribed by the commissioner of revenue and pay a registration fee for the facility. The amount of the fee is:

(1) $500, for facilities with a full-time equivalence of fewer than five; (2) $1,000, for facilities with a full-

time equivalence of five to ten; and (3) $1,500, for facilities with a full-time equivalence of more than ten.

The registration fee must be paid on or before October 18 or the owner or operator of a dry cleaning facility may elect to pay the fee in equal installments. Installment payments must be paid on or before October 18, on or before January 18, on or before April 18, and on or before June 18. All payments made after October 18 bear interest at the rate specified in section 270C.40.

(b) A person who sells dry cleaning solvents for use by dry cleaning facilities in the state shall collect and remit to the commissioner of revenue in a manner prescribed by the commissioner of revenue, on or before the 20th day of the month following the month in which the sales of dry cleaning solvents are made, a fee of:

(1) $3.50 for each gallon of perchloroethylene sold for use by dry cleaning facilities in the state;

(2) 70 cents for each gallon of hydrocarbon-based dry cleaning solvent sold for use by dry cleaning facilities in the state; and

(3) 35 cents for each gallon of other nonaqueous solvents sold for use by dry cleaning facilities in the state.

(c) The audit, assessment, appeal, collection, enforcement, and administrative provisions of chapters 270C and 289A apply to the fee imposed by this subdivision. To enforce this subdivision, the commissioner of revenue may grant extensions to file returns and pay fees, impose penalties and interest on the annual registration fee under paragraph (a) and the monthly fee under paragraph (b), and abate penalties and interest in the manner provided in chapters
270C and 289A. The penalties and interest imposed on taxes under chapter 297A apply to the fees imposed under this subdivision. Disclosure of data collected by the commissioner of revenue under this subdivision is governed by chapter 270B.

Subd. 4a. [Repealed, 2005 c 10 art 1 s 82; 2005 c 157 s 2]

Subd. 4b. **Fee adjustment.** Notwithstanding section 16A.1285, each fiscal year the commissioner shall adjust the fees in subdivision 4 as necessary to maintain an annual income to the account of $650,000.

History: *1995 c 252 s 3; 1996 c 471 art 2 s 3,4; 1997 c 216 s 112; 1999 c 250 art 3 s 14,15; 2000 c 333 s 1,2; 1Sp2001 c 2 s 128; 2002 c 324 s 2; 2003 c 128 art 2 s 33,34; 2005 c 151 art 2 s 2; 2005 c 157 s 1; 2006 c 259 art 7 s 1*

115B.491 DRY CLEANING FACILITY USE FEE; FACILITIES TO FILE RETURN.

Subdivision 1. **Use fee.** A dry cleaning facility that purchases dry cleaning solvents for use in Minnesota without paying the seller of dry cleaning solvents the fee under section 115B.49, subdivision 4, paragraph (b), is subject to an equivalent fee. Liability for the fee is incurred when dry cleaning solvents are received in Minnesota by the dry cleaning facility.

Subd. 2. **Return required.** On or before the 20th of each calendar month, every dry cleaning facility that has purchased dry cleaning solvents for use in this state during the preceding calendar month, upon which the fee imposed by section 115B.49, subdivision 4, paragraph (b), has not been paid to the seller of the dry cleaning solvents, shall file a return with the commissioner of revenue showing the quantity of solvents purchased and a computation of the fee under section
115B.49, subdivision 4, paragraph (c). The fee must accompany the return. The return must be made upon a form furnished and prescribed by the commissioner of revenue and must contain such other information as the commissioner of revenue may require.

Subd. 3. **Applicability.** All of the provisions of section 115B.49, subdivision 4, paragraph
(c), apply to this section.

History: *1996 c 471 art 2 s 5; 1999 c 250 art 3 s 16,17*

115B.492 ALLOCATION OF PAYMENT.

In the discretion of the commissioner of revenue, payments received for fees may be credited first to the oldest liability not secured by a judgment or lien. For liabilities to which payments are applied, the commissioner of revenue may credit payments first to penalties, next to interest, and then to the fee due.

History: *1996 c 471 art 2 s 6*

115B.50 RESPONSE ACTIONS.

Subdivision 1. **Response actions by commissioner.** (a) In accordance with the priority list established under section 115B.17, subdivision 13, the commissioner shall take all response actions at or related to a dry cleaning facility that the commissioner determines are reasonable and necessary to protect the public health or welfare or the environment under the standards required in sections 115B.01 to 115B.20. The commissioner shall review and approve any investigation and response action plan submitted by an owner or operator of a dry cleaning facility who is taking response actions under subdivision 2 and shall oversee the implementation of the approved plans. In carrying out the duties under this subdivision, the commissioner may take emergency removal actions as provided in section 115B.17, subdivision 1, paragraph (b), and may exercise the authority provided in section 115B.17, subdivisions 2 to 5, 15, and 16.

(b) The commissioner may not seek recovery against a current or former owner or operator of a dry cleaning facility of any environmental response costs in excess of $10,000 incurred
by the commissioner at the facility, except:

(1) to the extent of insurance coverage, in excess of $10,000, held by the owner or operator;
or

(2) as provided in section 115B.51.

If the commissioner seeks recovery of environmental response costs against an owner
or operator pursuant to this paragraph, the owner or operator shall act as directed by the commissioner to assert any rights of the owner or operator to any insurance coverage applicable to those costs and, if coverage is denied, to assign those rights to the commissioner.

(c) Before taking a response action under this subdivision, the commissioner shall notify the owner or operator of the facility. Except for emergency removal actions under section 115B.17, subdivision 1, paragraph (b), the commissioner shall not take response actions under this subdivision at a dry cleaning facility where an owner or operator of the facility is taking response actions under subdivision 2 in accordance with an investigation or response action plan approved by the commissioner.

Subd. 2. **Response actions by owners or operators; reimbursement.** (a) At the request of the owner or operator of a dry cleaning facility who takes response actions at the facility in accordance with a response action plan approved by the commissioner, the commissioner shall reimburse the owner or operator for all but $10,000 of the environmental response costs incurred by the owner or operator if the commissioner determines that the costs are reasonable and were actually incurred. If a request for reimbursement is denied, the owner or operator may appeal the decision as a contested case under chapter 14.

(b) If the commissioner reimburses an owner or operator for environmental response costs under this subdivision for which the owner or operator has insurance coverage, the commissioner is subrogated to the rights of the owner or operator with respect to that insurance coverage to the extent of the reimbursement. Acceptance of reimbursement under this subdivision constitutes an assignment by the owner or operator with respect to any insurance coverage applicable to the costs that are reimbursed.

Subd. 3. **Limitation on amount that may be spent.** The commissioner may not, in a single fiscal year, make expenditures from the account related to a single dry cleaning facility that exceed 20 percent of the balance in the account at the beginning of the fiscal year.

History: *1995 c 252 s 4; 2004 c 228 art 1 s 73*

115B.51 ILLEGAL ACTIONS.

The commissioner may recover under section 115B.17, subdivision 6, that portion of the environmental response costs at a dry cleaning facility that is attributable to a person who otherwise would be responsible for the release or threatened release under section 115B.03, and whose actions related to the release or threatened release were in violation of federal or state hazardous waste management laws in effect at the time of those actions.

History: *1995 c 252 s 5*

115D.01 CITATION.

Sections 115D.01 to 115D.12 may be cited as the "Minnesota Toxic Pollution Prevention Act." **History:** *1990 c 560 art1 s 1*

115D.02 POLICY.

(a) To protect the public health, welfare, and the environment, the legislature declares that it is the policy of the state to encourage toxic pollution prevention. The preferred means of preventing toxic pollution are techniques and processes that are implemented at the source and that minimize the transfer of toxic pollutants from one environmental medium to another.

(b) The legislature intends that the programs developed under sections 115D.01 to 115D.12 shall encourage and lead to a greater awareness of the need for and benefits of toxic pollution prevention, and to a greater degree of cooperation and coordination among all elements of government, industry, and the public in encouraging and carrying out pollution prevention activities.

History: *1990 c 560 art 1 s 2; 1991 c 199 art 1 s 29*

115D.03 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Commission.** "Commission" means the Emergency Response Commission under section 299K.03.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 4. [Repealed, 1Sp2005 c 1 art 2 s 162]

Subd. 5. **Eligible recipients.** "Eligible recipients" means persons who use, generate, or release toxic pollutants, hazardous substances, or hazardous wastes, or individuals or organizations that provide assistance to these persons.

Subd. 6. **Facility.** "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with such person.

Subd. 6a. **Officer of the company.** "Officer of the company" means one of the following:

(1) an owner or sole proprietor; (2) a partner;

(3) for a corporation incorporated under chapter 300, the president, secretary, treasurer, or other officer as provided for in the corporation's bylaws or certificate of incorporation;

(4) for a corporation incorporated under chapter 302A, an individual exercising the functions of the chief executive officer or the chief financial officer under section 302A.305 or another officer elected or appointed by the directors of the corporation under section 302A.311;

(5) for a corporation incorporated outside this state, an officer of the company as defined by the laws of the state in which the corporation is incorporated; or

(6) for a limited liability company organized under chapter 322B, the chief manager or treasurer.

Subd. 7. **Person.** "Person" means any individual, partnership, association, public or private corporation or other entity including the United States government, any interstate body, the state and any agency, department or political subdivision of the state.

Subd. 8. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the use, generation, or release of toxic pollutants, hazardous substances, and hazardous wastes.

Subd. 9. **Reduce, reducing, or reduction.** "Reduce," "reducing," or "reduction" means lessening the quantity or toxicity of toxic pollutants, hazardous substances, and hazardous wastes used, generated, or released at the source. Methods of reducing pollution include, but are not limited to, process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

Subd. 10. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(1) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(2) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title 42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal Nuclear Regulatory Commission under United States Code, title 42, section 2210;

(3) release of source, by-product, or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under United States Code, title 42, section 7912(a)(1) or 7942(a); or

(4) any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18B.01, subdivision 18.

Subd. 11. **Toxic pollutant.** "Toxic pollutant" means a chemical identified in United States Code, title 42, section 11023(c).

History: *1990 c 560 art 1 s 3; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 29,30*

115D.04 POLLUTION PREVENTION ASSISTANCE PROGRAM.

Subdivision 1. **Establishment.** The commissioner shall establish a pollution prevention assistance program to assist eligible recipients in preventing pollution. The program must emphasize techniques and processes that minimize the transfer of pollutants from one environmental medium to another and must focus primarily on toxic pollutants.

Subd. 2. **Assistance.** The pollution prevention assistance program must include at least the following:

(1) a program to assemble, catalog, and disseminate information on pollution prevention; (2) a program to provide technical research and assistance, including on-site consultations to identify alternative methods that may be applied to prevent pollution and to provide assistance for planning under section 115D.07, excluding design engineering services; and

(3) outreach programs including seminars, workshops, training programs, and other similar activities designed to provide pollution prevention information and assistance to eligible recipients and other interested persons.

Subd. 3. **Administration.** (a) The pollution prevention assistance program must be coordinated with other public and private programs that provide management and technical assistance to eligible recipients.

(b) The commissioner may make grants to public or private entities to operate elements of the program. Grantees shall provide periodic reports on their efforts to assist eligible recipients to reduce pollution.

(c) A person, when operating or participating in elements of the technical assistance program pursuant to a grant or contract with the office under this section or other law, is an employee of the state, certified to be acting within the scope of employment, for purposes of the indemnification provisions of section 3.736, subdivision 9, for claims that arise out of the information, assistance, and recommendations covered by the grant or contract. The state is not
obligated to defend or indemnify a grantee or contractor under this subdivision to the extent of the grantee's or contractor's liability insurance. The grantee's or contractor's right to indemnity is not a waiver of limitations, defenses, and immunities available to either the grantee or contractor or
the state by law.

History: *1990 c 560 art 1 s 4; 1992 c 513 art 2 s 31; 1Sp2005 c 1 art 2 s 134,161*

115D.05 [Repealed, 1996 c 470 s 29]

115D.06 GOVERNOR'S AWARD FOR EXCELLENCE IN POLLUTION PREVENTION.

The governor may issue annual awards in the form of a commendation for excellence in pollution prevention. Applications for these awards shall be administered by the commissioner.

History: *1990 c 560 art 1 s 6; 1Sp2005 c 1 art 2 s 161*

115D.07 TOXIC POLLUTION PREVENTION PLANS.

Subdivision 1. **Requirement to prepare and maintain plan.** (a) Persons who operate a facility required by United States Code, title 42, section 11023, or section 299K.08, subdivision 3,
to submit a toxic chemical release form shall prepare a toxic pollution prevention plan for that facility. A facility that is required to submit a toxic chemical release form but does not release a toxic chemical is exempt from the requirements of this subdivision. The plan must contain the information listed in subdivision 2.

(b) Except as provided in paragraphs (d) and (e), for facilities that release a total of 10,000 pounds or more of toxic pollutants annually, the plan must be completed as follows:

(1) on or before July 1, 1991, for facilities having a two-digit standard industrial classification of 35 to 39;

(2) by January 1, 1992, for facilities having a two-digit standard industrial classification of 28 to 34; and

(3) by July 1, 1992, for all other persons required to prepare a plan under this subdivision. (c) Except as

provided in paragraphs (d) and (e), facilities that release less than a total of
10,000 pounds of toxic pollutants annually must complete their plans by July 1, 1992.

(d) For the following facilities, the plan must be completed as follows:

(1) by January 1, 1995, for facilities required to report under section 299K.08, subdivision
3, that have a two-digit standard industrial classification of 01 to 50; and

(2) by January 1, 1996, for facilities required to report under section 299K.08, subdivision
3, that have a two-digit standard industrial classification of 51 to 99.

(e) For facilities that become subject to this subdivision after July 1, 1993, the plan must be completed by six months after the first submittal for the facility under United States Code, title
42, section 11023, or section 299K.08, subdivision 3.

(f) Each plan must be updated by January 1 of every even-numbered year and must be maintained at the facility to which it pertains.

Subd. 2. **Contents of plan.** (a) Each toxic pollution prevention plan must establish a program identifying the specific technically and economically practicable steps that could be taken during at least the three years following the date the plan is due, to eliminate or reduce the generation or release of toxic pollutants reported by the facility. Toxic pollutants resulting solely from research and development activities need not be included in the plan.

(b) At a minimum, each plan must include:

(1) a policy statement articulating upper management support for eliminating or reducing the generation or release of toxic pollutants at the facility;

(2) a description of the current processes generating or releasing toxic pollutants that specifically describes the types, sources, and quantities of toxic pollutants currently being generated or released by the facility;

(3) a description of the current and past practices used to eliminate or reduce the generation or release of toxic pollutants at the facility and an evaluation of the effectiveness of these practices;

(4) an assessment of technically and economically practicable options available to eliminate or reduce the generation or release of toxic pollutants at the facility, including options such as changing the raw materials, operating techniques, equipment and technology, personnel training, and other practices used at the facility. The assessment may include a cost benefit analysis of
the available options;

(5) a statement of objectives based on the assessment in clause (4) and a schedule for achieving those objectives. Wherever technically and economically practicable, the objectives for eliminating or reducing the generation or release of each toxic pollutant at the facility must be expressed in numeric terms based on a specified base year that is no earlier than 1987. Otherwise, the objectives must include a clearly stated list of actions designed to lead to the establishment
of numeric objectives as soon as practicable;

(6) an explanation of the rationale for each objective established for the facility;

(7) a listing of options that were considered not to be economically and technically practicable; and

(8) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting to the accuracy of the information in the plan.

History: *1990 c 560 art 1 s 7; 1993 c 172 s 72; 1995 c 247 art 1 s 32,33*

115D.08 PROGRESS REPORTS.

Subdivision 1. **Requirement to submit progress report.** (a) All persons required to prepare a toxic pollution prevention plan under section 115D.07 shall submit an annual progress report to the commissioner of public safety that may be drafted in a manner that does not disclose proprietary information. Progress reports are due on July 1 of each year. The first progress reports are due in 1992.

(b) At a minimum, each progress report must include:

(1) a summary of each objective established in the plan, including the base year for any objective stated in numeric terms, and the schedule for meeting each objective;

(2) a summary of progress made during the past year, if any, toward meeting each objective established in the plan including the quantity of each toxic pollutant eliminated or reduced;

(3) a statement of the methods through which elimination or reduction has been achieved; (4) if necessary, an explanation of the reasons objectives were not achieved during the previous year, including identification of any technological, economic, or other impediments the facility faced in its efforts to achieve its objectives; and

(5) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting that a plan meeting the requirements of section 115D.07 has been prepared and also attesting to the accuracy of the information in the progress report.

Subd. 2. **Review of progress reports.** (a) The commissioner of public safety shall review all progress reports to determine if they meet the requirements of subdivision 1. If the commissioner of public safety determines that a progress report does not meet the requirements, the commissioner of public safety shall notify the facility in writing and shall identify specific deficiencies and specify a reasonable time period of not less than 90 days for the facility to modify the progress report.

(b) The commissioner of public safety shall be given access to a facility plan required under section 115D.07 if the commissioner of public safety determines that the progress report for that facility does not meet the requirements of subdivision 1. Twenty-five or more persons living within ten miles of the facility may submit a petition to the commissioner of public safety that identifies specific deficiencies in the progress report and requests the commissioner of public safety to review the facility plan. Within 30 days after receipt of the petition, the commissioner
of public safety shall respond in writing. If the commissioner of public safety agrees that the
progress report does not meet requirements of subdivision 1, the commissioner of public safety shall be given access to the facility plan.

(c) After reviewing the plan and the progress report with any modifications submitted, the commissioner of public safety shall state in writing whether the progress report meets the requirements of subdivision 1. If the commissioner of public safety determines that a modified progress report still does not meet the requirements of subdivision 1, the commissioner of public safety shall schedule a public meeting. The meeting shall be held in the county where the facility is located. The meeting is not subject to the requirements of chapter 14.

(d) The facility shall be given the opportunity to amend the progress report within a period of not less than 30 days after the public meeting.

(e) If the commissioner of public safety determines that a modified progress report still does not meet the requirements of subdivision 1, action may be taken under section 115.071 to obtain compliance with sections 115D.01 to 115D.12.

History: *1990 c 560 art 1 s 8; 1995 c 247 art 1 s 34; 2012 c 272 s 71*

115D.09 CONFIDENTIALITY.

Information and techniques developed under section 115D.04, the reduction information and techniques under section 115A.0716, and the progress reports required under section 115D.08 are public data under chapter 13. The plans required under section 115D.07 are nonpublic data under chapter 13.

History: *1990 c 560 art 1 s 9; 1996 c 470 s 18*

115D.10 TOXIC POLLUTION PREVENTION EVALUATION REPORT.

The commissioner, in cooperation with the commission, shall report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance on progress being made in achieving the objectives of sections 115D.01 to 115D.12. The report must be done in conjunction with the report required under section 115A.121.

History: *1990 c 560 art 1 s 10; 1993 c 172 s 73; 1995 c 247 art 1 s 35; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161; 2013 c 114 art 4 s 86*

115D.12 POLLUTION PREVENTION FEES.

Subdivision 1. **Imposition.** The pollution prevention fees in this section are imposed on persons and facilities under subdivision 2, paragraphs (a) and (b).

Subd. 2. **Fees.** (a) Persons required by United States Code, title 42, section 11023, to submit a toxic chemical release form to the commission, and owners or operators of facilities listed in section 299K.08, subdivision 3, shall pay a pollution prevention fee of $150 for each toxic pollutant reported released plus a fee based on the total pounds of toxic pollutants reported as released from each facility. Facilities reporting less than 25,000 pounds annually of toxic pollutants released per facility shall be assessed a fee of $500. Facilities reporting annual releases of toxic pollutants in excess of 25,000 pounds shall be assessed a graduated fee at the rate of two cents per pound of toxic pollutants reported.

(b) Persons who generate more than 1,000 kilograms of hazardous waste per month but who are not subject to the fee under paragraph (a) must pay a pollution prevention fee of $500 per facility. Hazardous waste as used in this paragraph has the meaning given it in section 116.06, subdivision 11, and Minnesota Rules, chapter 7045.

(c) Fees required under this subdivision must be paid to the commissioner by January 1 of each year. The fees shall be deposited in the state treasury and credited to the environmental fund.

(d) The fees under this subdivision are exempt from section 16A.1285.

History: *1990 c 560 art 1 s 11; 1992 c 546 s 1; 1993 c 172 s 74; 2003 c 128 art 2 s 35; 1Sp2005 c 1 art 2 s 161*

115D.14 DEFINITIONS.

Subdivision 1. **Scope.** As used in this section and section 115D.15, the terms defined in this section have the meanings given.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Integrity of aquatic or terrestrial ecosystems.** "Integrity of aquatic or terrestrial ecosystems" means the maintenance of mutually beneficial species of plants and animals and of other natural characteristics so that the biological viability of the ecosystem is ensured.

Subd. 4. **Toxic air contaminant.** "Toxic air contaminant" means an air contaminant that may cause or contribute to an increase in mortality or an increase in a chronic or an acute illness, or which may pose a present or potential hazard to human health or the integrity of aquatic or terrestrial ecosystems.

History: *1993 c 172 s 75*

115D.15 REPORTS TO LEGISLATURE.

Subdivision 1. **Initial report.** By January 1, 1995, the agency must submit to the environment and natural resources committees of the legislature a report that includes:

(1) a five-year regulatory strategy to protect the public health and the environment from emissions of toxic air contaminants; and

(2) a list prioritizing and categorizing facilities emitting toxic air contaminants.

Subd. 2. **Continuing reports.** Beginning January 1, 1997, and every two years thereafter, the agency shall submit to the legislative committees with jurisdiction over environment and natural resource issues a report that provides an update of the following:

(1) an analysis of the achievements, shortfalls, and resource needs for implementing the agency's strategy under subdivision 1, clause (1);

(2) an analysis of the data collected from the agency's statewide monitoring and inventory program under section 116.454;

(3) an analysis of reductions in emissions of toxic air contaminants; and

(4) an updated list prioritizing and categorizing facilities emitting toxic air contaminants.

History: *1993 c 172 s 76*

116.01 POLICY.

GENERALTo meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state, it is in the public interest that there be established a Pollution Control Agency.

History: *1967 c 882 s 1; 1969 c 1046 s 1*

116.011 POLLUTION REPORT.

A goal of the Pollution Control Agency is to reduce the amount of pollution that is emitted in the state. By April 1 of each even-numbered year, the Pollution Control Agency shall report the best estimate of the agency of the total volume of water and air pollution that was emitted in the state in the previous two calendar years for which data are available. The agency shall report its findings for both water and air pollution:

(1) in gross amounts, including the percentage increase or decrease over the previously reported two calendar years; and

(2) in a manner which will demonstrate the magnitude of the various sources of water and air pollution.

History: *1995 c 247 art 1 s 36; 2001 c 187 s 3; 2012 c 272 s 72*

116.02 POLLUTION CONTROL AGENCY, CREATION AND POWERS.

Subdivision 1. **Creation.** A pollution control agency, designated as the Minnesota Pollution Control Agency, is hereby created. The agency shall consist of the commissioner and eight members appointed by the governor, by and with the advice and consent of the senate. One
of such members shall be a person knowledgeable in the field of agriculture and one shall be representative of organized labor.

Subd. 2. **Terms, compensation, removal, vacancies.** The membership terms, compensation, removal of members, and filling of vacancies on the agency shall be as provided in section 15.0575.

Subd. 3. **Membership.** The membership of the Pollution Control Agency shall be broadly representative of the skills and experience necessary to effectuate the policy of sections 116.01 to
116.075, except that no member other than the commissioner shall be an officer or employee of the state or federal government. Only two members at one time may be officials or employees of a municipality or any governmental subdivision, but neither may be a member ex officio or otherwise on the management board of a municipal sanitary sewage disposal system.

Subd. 4. **Chair.** The commissioner shall serve as chair of the agency. The agency shall elect such other officers as it deems necessary.

Subd. 5. **Agency is successor to commission.** The Pollution Control Agency is the successor of the Water Pollution Control Commission, and all powers and duties now vested in or imposed upon said commission by chapter 115, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota Pollution Control Agency, except as to those matters pending before the commission in which hearings have been held and evidence has been adduced. The Water Pollution Commission shall complete its action in such pending matters not later than six months from May 26, 1967. The Water Pollution Control Commission, as heretofore constituted, is hereby abolished, (a) effective upon completion of its action in the pending cases, as hereinbefore provided for; or (b) six months from May
26, 1967, whichever is the earlier.

Subd. 6. **Required decisions.** The agency shall make final decisions on the following matters:

(1) a petition for the preparation of an environmental assessment worksheet, if the project proposer or a person commenting on the proposal requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8;

(2) the need for an environmental impact statement following preparation of an environmental assessment worksheet under applicable rules, if:

(i) the agency has received a request for an environmental impact statement;

(ii) the project proposer or a person commenting on the proposal requests that the declaration be made by the agency and the agency requests that it make the decision under subdivision 8; or

(iii) the commissioner is recommending preparation of an environmental impact statement; (3) the scope and adequacy of environmental impact statements;

(4) issuance, reissuance, modification, or revocation of a permit if:

(i) a variance is sought in the permit application or a contested case hearing request is pending; or

(ii) the permit applicant, the permittee, or a person commenting on the permit action requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8;

(5) final adoption or amendment of agency rules for which a public hearing is required under section 14.25 or for which the commissioner decides to proceed directly to a public hearing under section 14.14, subdivision 1;

(6) approval or denial of an application for a variance from an agency rule if:

(i) granting the variance request would change an air, soil, or water quality standard;

(ii) the commissioner has determined that granting the variance would have a significant environmental impact; or

(iii) the applicant or a person commenting on the variance request requests that the decision be made by the agency and the agency requests that it make the decision under subdivision 8; and

(7) whether to reopen, rescind, or reverse a decision of the agency.

Subd. 7. **Additional decisions.** The commissioner may request that the agency make additional decisions or provide advice to the commissioner.

Subd. 8. **Other actions.** Any other action not specifically within the authority of the commissioner shall be made by the agency if:

(1) prior to the commissioner's final decision on the action, one or more members of the agency notify the commissioner of their request that the decision be made by the agency; or

(2) any person submits a petition to the commissioner requesting that the decision be made by the agency and the commissioner grants the petition.

If the commissioner denies a petition submitted under clause (2), the commissioner shall advise the agency and the petitioner of the reasons for the denial.

Subd. 9. **Informing public.** The commissioner shall inform interested persons as appropriate in public notices and other public documents of their right to request the agency to make decisions in specific matters provided in subdivision 6 and the right of agency members to request that decisions be made by the agency as provided in subdivision 8. The commissioner shall also regularly inform the agency of activities that have broad policy implications or potential environmental significance and of activities in which the public has exhibited substantial interest.

Subd. 10. **Changing decisions.** (a) The agency must not reopen, rescind, or reverse a decision of the agency except upon:

(1) the affirmative vote of two-thirds of the agency; or

(2) a finding that there was an irregularity in a hearing related to the decision, an error of law, or a newly discovered material issue of fact.

(b) The requirements in paragraph (a) are minimum requirements and do not limit the agency's authority under sections 14.06 and 116.07, subdivision 3, to adopt rules:

(1) applying the requirement in paragraph (a), clause (1) or (2), to certain decisions of the agency; or

(2) establishing additional or more stringent requirements for reopening, rescinding, or reversing decisions of the agency.

History: *1967 c 882 s 2; 1969 c 1038 s 1,2; 1973 c 35 s 27; 1976 c 134 s 25-27; 1980 c 509 s 26; 1Sp1981 c 4 art 1 s 73; 1986 c 444; 1995 c 168 s 7; 1996 c 348 s 1; 1996 c 405 s 1-5*

116.03 COMMISSIONER.

Subdivision 1. **Office.** (a) The Office of Commissioner of the Pollution Control Agency is created and is under the supervision and control of the commissioner, who is appointed by the governor under the provisions of section 15.06.

(b) The commissioner may appoint a deputy commissioner and assistant commissioners who shall be in the unclassified service.

(c) The commissioner shall make all decisions on behalf of the agency that are not required to be made by the agency under section 116.02.

Subd. 2. **Organization of office.** The commissioner shall organize the agency and employ such assistants and other officers, employees and agents as the commissioner may deem necessary to discharge the functions of the commissioner's office, define the duties of such officers, employees and agents, and delegate to them any of the commissioner's powers, duties, and responsibilities, subject to the commissioner's control and under such conditions as the commissioner may prescribe. The commissioner may also contract with, and enter into grant agreements with, persons, firms, corporations, the federal government and any agency or instrumentality thereof, the Water Research Center of the University of Minnesota or any other instrumentality of such university, for doing any of the work of the commissioner's office. None of the provisions of chapter 16C, relating to bids, shall apply to such contracts.

Subd. 2a. **Mission; efficiency.** It is part of the agency's mission that within the agency's resources the commissioner and the members of the agency shall endeavor to:

(1) prevent the waste or unnecessary spending of public money;

(2) use innovative fiscal and human resource practices to manage the state's resources and operate the agency as efficiently as possible;

(3) coordinate the agency's activities wherever appropriate with the activities of other governmental agencies;

(4) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;

(5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;

(6) report to the legislature on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and

(7) recommend to the legislature appropriate changes in law necessary to carry out the mission and improve the performance of the agency.

Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and resource management permits be issued or denied within 150 days of the submission of a permit application. The commissioner of the Pollution Control Agency shall establish management systems designed to achieve the goal.

(b) The commissioner shall prepare semiannual permitting efficiency reports that include statistics on meeting the goal in paragraph (a). The reports are due February 1 and August 1 each year. For permit applications that have not met the goal, the report must state the reasons for not meeting the goal. In stating the reasons for not meeting the goal, the commissioner shall separately identify delays caused by the responsiveness of the proposer, lack of staff, scientific or technical disagreements, or the level of public engagement. The report must specify the number of days from initial submission of the application to the day of determination that the application is complete. The report for August 1 each year must aggregate the data for the year
and assess whether program or system changes are necessary to achieve the goal. The report must be posted on the agency's Web site and submitted to the governor and the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction
over environment policy and finance.

(c) The commissioner shall allow electronic submission of environmental review and permit documents to the agency.

(d) Beginning July 1, 2011, within 30 business days of application for a permit subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify the project proposer, in writing, whether the application is complete or incomplete. If the commissioner determines
that an application is incomplete, the notice to the applicant must enumerate all deficiencies, citing specific provisions of the applicable rules and statutes, and advise the applicant on how the deficiencies can be remedied. This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

(e) For purposes of this subdivision, "permit professional" means an individual not employed by the Pollution Control Agency who:

(1) has a professional license issued by the state of Minnesota in the subject area of the permit;

(2) has at least ten years of experience in the subject area of the permit; and

(3) abides by the duty of candor applicable to employees of the Pollution Control Agency under agency rules and complies with all applicable requirements under chapter 326.

(f) Upon the agency's request, an applicant relying on a permit professional must participate in a meeting with the agency before submitting an application:

(1) at least two weeks prior to the preapplication meeting, the applicant must submit at least the following:

(i) project description, including, but not limited to, scope of work, primary emissions points, discharge outfalls, and water intake points;

(ii) location of the project, including county, municipality, and location on the site; (iii) business schedule for project completion; and

(iv) other information requested by the agency at least four weeks prior to the scheduled meeting; and

(2) during the preapplication meeting, the agency shall provide for the applicant at least the following:

(i) an overview of the permit review program;

(ii) a determination of which specific application or applications will be necessary to complete the project;

(iii) a statement notifying the applicant if the specific permit being sought requires a mandatory public hearing or comment period;

(iv) a review of the timetable established in the permit review program for the specific permit being sought; and

(v) a determination of what information must be included in the application, including a description of any required modeling or testing.

(g) The applicant may select a permit professional to undertake the preparation of the permit application and draft permit.

(h) If a preapplication meeting was held, the agency shall, within seven business days of receipt of an application, notify the applicant and submitting permit professional that the application is complete or is denied, specifying the deficiencies of the application.

(i) Upon receipt of notice that the application is complete, the permit professional shall submit to the agency a timetable for submitting a draft permit. The permit professional shall submit a draft permit on or before the date provided in the timetable. Within 60 days after the close of the public comment period, the commissioner shall notify the applicant whether the permit can be issued.

(j) Nothing in this section shall be construed to modify:

(1) any requirement of law that is necessary to retain federal delegation to or assumption by the state; or

(2) the authority to implement a federal law or program.

(k) The permit application and draft permit shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the permit application and draft permit. The commissioner shall request additional studies, if needed,
and the project proposer shall submit all additional studies and information necessary for the commissioner to perform the commissioner's responsibility to review, modify, and determine the completeness of the application and approve the draft permit.

Subd. 3. **Federal funds.** The commissioner of the Pollution Control Agency is the state agent to apply for, receive, and disburse federal funds made available to the state by federal law or rules and regulations promulgated thereunder for any purpose related to the powers and duties

of the Pollution Control Agency or the commissioner. The commissioner shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder to facilitate application for, receipt, and disbursement of such funds. All such moneys received by the commissioner shall be deposited in the state treasury and are hereby annually appropriated
to the commissioner for the purposes for which they are received. None of such moneys in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.

The provisions of section 3.3005 shall not apply to money available under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, United States Code, title 42, sections 9601 to 9657, for which a state match is not required or for which a state match is available under the Environmental Response and Liability Act or from a political subdivision. The receipt of the money shall be reported to the Legislative Advisory Commission.

Subd. 4. [Repealed by amendment, 1996 c 405 s 6] Subd. 5. [Repealed by amendment, 1996 c 405 s 6] Subd. 6. [Repealed by amendment, 1996 c 405 s 6]

History: *1967 c 882 s 3; 1974 c 406 s 9; 1974 c 483 s 2; 1977 c 305 s 19,45; 1982 c 458 s 1; 1983 c 301 s 111; 1986 c 444; 1987 c 186 s 15; 1991 c 326 s 6; 1995 c 186 s 31; 1995 c 248 art 11 s 7; 1996 c 405 s 6; 1998 c 366 s 54; 1998 c 386 art 2 s 32; 2003 c 128 art 2 s 36; 2011 c 4 s 3; 2012 c 150 art 1 s 5*

116.04 EXECUTIVE SECRETARY.

The commissioner of the Pollution Control Agency is the executive secretary and chief executive officer of the Minnesota Pollution Control Agency and is responsible for performing the executive duties of such agency prescribed by law.

History: *1967 c 882 s 4; 1987 c 186 s 15*

116.05 COOPERATION.

Subdivision 1. **Other departments and agencies.** All state departments and agencies are hereby directed to cooperate with the Pollution Control Agency and its commissioner and assist them in the performance of their duties, and are authorized to enter into necessary agreements with the agency, and the Pollution Control Agency is authorized to cooperate and to enter into necessary agreements with other departments and agencies of the state, with municipalities, with other states, with the federal government and its agencies and instrumentalities, in the public interest and in order to control pollution under this chapter and chapter 115.

Subd. 2. **Governor's order.** Upon the request of the Pollution Control Agency the governor may, by order, require any department or agency of the state to furnish such assistance to the agency or its commissioner in the performance of its duties or in the exercise of the commissioner's powers imposed by law, as the governor may, in the order, designate or specify; and with the consent of the department or agency concerned, the governor may direct all or part of the cost or expense for the amount of such assistance to be paid from the general fund or appropriation in such amount as the governor may deem just and proper.

Subd. 3. **Air quality control regions.** The Pollution Control Agency through its commissioner may designate air quality control regions which shall as far as practical
follow regional boundaries designated by state statutes or executive order, and consider other jurisdictional boundaries, urban-industrial concentrations and other factors including atmospheric conditions and necessary procedures to provide adequate implementation of air quality standards. Within a designated air quality control region the Pollution Control Agency may by contract delegate its administrative powers to local governmental authorities to be exercised by such authorities within the region and within their own jurisdictional boundaries.

Local governmental authorities which are delegated administrative powers shall have legal authority to conduct such activities, and, in conducting such activities, may enter into contracts, employ personnel, expend funds, acquire property and adopt ordinances for such purposes. Such ordinances may include provisions establishing permit or license requirements and fees therefor.

With the approval of the Pollution Control Agency, local governmental authorities with jurisdiction wholly or in part within a designated region may enter into an agreement as provided by chapter 471 to exercise jointly all or some of the powers delegated by agreement with the Pollution Control Agency. The term "local governmental authorities" as used herein includes every city, county, town or other political subdivision and any agency of the state of Minnesota, or subdivision thereof, having less than statewide jurisdiction.

History: *1967 c 882 s 5; 1969 c 1046 s 2; Ex1971 c 14 s 1; 1973 c 123 art 5 s 7; 1973 c 374 s 19; 1986 c 444; 1987 c 186 s 15; 1989 c 335 art 4 s 106*

116.06 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions given in this section shall obtain for the purposes of sections 116.01 to 116.075 except as otherwise expressly provided or indicated by the context.

Subd. 2. **Air contaminant or air contamination.** "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Air contaminant treatment facility or treatment facility.** "Air contaminant treatment facility" or "treatment facility" means any structure, work, equipment, machinery, device, apparatus, or other means for treatment of an air contaminant or combination thereof to prevent, abate, or control air pollution.

Subd. 4. MS 1990 [Renumbered subd 9]

Subd. 4. **Air pollution.** "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

Subd. 4a. **Animal unit.** "Animal unit" means a unit of measure used to compare differences in the production of animal manure that employs as a standard the amount of manure produced on a regular basis by a slaughter steer or heifer for an animal feedlot or manure storage area calculated by multiplying the number of animals of each type in clauses (1) to (9) by the respective multiplication factor and summing the resulting values for the total number of animal units. For purposes of this chapter, the following multiplication factors apply:

(1) one mature dairy cow, whether milked or dry: (i) over 1,000 pounds, 1.4 animal units; or

(ii) under 1,000 pounds, 1.0 animal unit; (2) one cow and calf pair, 1.2 units;

(3) one calf, 0.2 unit;

(4) one slaughter steer, 1.0 animal unit;

(5) head of feeder cattle or heifer, 0.7 unit; (6) one head of swine:

(i) over 300 pounds, 0.4 animal unit;

(ii) between 55 pounds and 300 pounds, 0.3 animal unit; and

(iii) under 55 pounds, 0.05 animal unit; (7) one horse, 1.0 animal unit;

(8) one sheep or lamb, 0.1 animal unit; (9) one chicken:

(i) one laying hen or broiler, if the facility has a liquid manure system, 0.033 animal unit; or

(ii) one chicken if the facility has a dry manure system: (A) over five pounds, 0.005 animal unit; or

(B) under five pounds, 0.003 animal unit; (10) one turkey:

(i) over five pounds, 0.018 animal unit; or (ii) under five pounds, 0.005 animal unit; (11) one duck, 0.01 animal unit; and

(12) for animals not listed in clauses (1) to (8), the number of animal units is the average weight of the animal in pounds divided by 1,000 pounds.

Subd. 5. MS 1990 [Renumbered subd 10]

Subd. 5. **Assistant commissioner.** "Assistant commissioner" means the assistant commissioner of the Minnesota Pollution Control Agency.

Subd. 6. MS 1990 [Renumbered subd 3]

Subd. 6. **Collection.** "Collection" of waste has the meaning given it in section 115A.03. Subd. 7. MS 1990 [Renumbered subd 18]

Subd. 7. **Deputy commissioner.** "Deputy commissioner" means the deputy commissioner of the Minnesota Pollution Control Agency.

Subd. 8. MS 1990 [Renumbered subd 17]

Subd. 8. **Disposal.** "Disposal" of waste has the meaning given it in section 115A.03. Subd. 9. MS 1990 [Renumbered subd 14]

Subd. 9. **Emission.** "Emission" means a release or discharge into the outdoor atmosphere of any air contaminant or combination thereof.

Subd. 9a. [Renumbered subd 23] Subd. 9b. [Renumbered subd 24] Subd. 9c. [Renumbered subd 6] Subd. 9d. [Renumbered subd 19] Subd. 9e. [Renumbered subd 8] Subd. 9f. [Renumbered subd 12] Subd. 9g. [Renumbered subd 13] Subd. 9h. [Renumbered subd 20] Subd. 9i. [Renumbered subd 21]

Subd. 10. MS 1990 [Renumbered subd 22]

Subd. 10. **Emission facility.** "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.

Subd. 11. MS 1990 [Renumbered subd 15]

Subd. 11. **Hazardous waste.** "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose
a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Subd. 12. MS 1990 [Renumbered subd 16]

Subd. 12. **Intrinsic hazard.** "Intrinsic hazard" of a waste has the meaning given it in section 115A.03.

Subd. 13. MS 1990 [Renumbered subd 11]

Subd. 13. **Intrinsic suitability.** "Intrinsic suitability" of a land area or site has the meaning given it in section 115A.03.

Subd. 14. MS 1990 [Renumbered subd 7]

Subd. 14. **Land pollution.** "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration, and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.

Subd. 15. MS 1990 [Renumbered subd 5]

Subd. 15. **Noise.** "Noise" means any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources.

Subd. 16. **Noise pollution.** "Noise pollution" means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under such conditions as could potentially be injurious to human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.

Subd. 17. **Person.** "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency.

Subd. 18. **Potential air contaminant storage facility or storage facility.** "Potential air contaminant storage facility" or "storage facility" means any structure, work, equipment, device, apparatus, tank, container, or other means for the storage or confinement, either stationary or in transit, of any substance which, if released or discharged into the outdoor atmosphere, might cause air contamination or air pollution.

Subd. 19. **Processing.** "Processing" of waste has the meaning given it in section 115A.03. Subd. 20. **Sewage sludge.** "Sewage sludge" has the meaning given it in section 115A.03. Subd. 21. **Sludge.** "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.

Subd. 22. **Solid waste.** "Solid waste" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; concrete diamond grinding and saw slurry associated with the construction, improvement, or repair of a road when deposited on the road project site in a manner that is in compliance with best management practices and rules of the agency; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Subd. 23. **Waste.** "Waste" has the meaning given it in section 115A.03.

Subd. 24. **Waste management.** "Waste management" has the meaning given it in section 115A.03.

History: *1967 c 882 s 6; 1969 c 1046 s 3,4; 1971 c 727 s 1,2; 1973 c 35 s 29; 1974 c 346 s 1; 1974 c 483 s 3,4; 1980 c 564 art 11 s 1-4; 1Sp1981 c 4 art 1 s 74; 1983 c 373 s 42,43; 1987 c 186 s 15; 2000 c 435 s 3; 2012 c 161 s 1*

116.061 AIR POLLUTION EMISSIONS AND ABATEMENT.

Subdivision 1. **Emission notification required.** (a) A person who controls the source of an emission must notify the agency immediately of excessive or abnormal unpermitted emissions that:

(1) may cause air pollution endangering human health;

(2) may cause air pollution damaging property; or

(3) cause obnoxious odors constituting a public nuisance.

(b) If a person who controls the source of an emission has knowledge of an event that has occurred and that will subsequently cause an emission described in paragraph (a), the person must notify the agency when the event occurs.

Subd. 2. **Abatement required.** A person who is required to notify the agency under subdivision 1 must take immediate and reasonable steps to minimize the emissions or abate the air pollution and obnoxious odors caused by the emissions.

Subd. 3. **Exemption.** The following are exempt from the requirements of subdivisions 1 and 2:

(1) emissions resulting from the activities of public fire services or law enforcement services;

(2) emissions from motor vehicles, as defined in section 169.011, subdivision 42;

(3) emissions from an agricultural operation deemed not a nuisance under section 561.19, subdivision 2; or

(4) emissions from agency regulated sources that are routine or authorized by the agency. Subd. 4. **Penalty exception.** A person who notifies the agency of emissions under subdivision 1 and who complies with subdivision 2 shall not be subject to criminal prosecution under section 115.071, subdivision 2.

Subd. 5. **Use of notification.** Any notice submitted under subdivision 1 is not admissible in any proceeding as an admission of causation.

History: *1988 c 600 s 1*

116.07 POWERS AND DUTIES.

Subdivision 1. **Generally.** In addition to any powers or duties otherwise prescribed by law and without limiting the same, the Pollution Control Agency shall have the powers and duties hereinafter specified.

Subd. 2. **Adoption of standards.**

(a) The Pollution Control Agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods which produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set standards of air quality which are more stringent than those set by the Pollution Control Agency.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

(c) The Pollution Control Agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of
the state. Such standards shall give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the Pollution Control Agency.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

(e) A person who generates less than 100 kilograms of hazardous waste per month is exempt from the following agency hazardous waste rules:

(1) rules relating to transportation, manifesting, storage, and labeling for photographic fixer and x-ray negative wastes that are hazardous solely because of silver content; and

(2) any rule requiring the generator to send to the agency or commissioner a copy of each manifest for the transportation of hazardous waste for off-site treatment, storage, or disposal, except that counties within the metropolitan area may require generators to provide manifests.

Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:

(1) an assessment of any differences between the proposed rule and:

(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);

(ii) similar standards in states bordering Minnesota; and

(iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

Subd. 2a. **Exemptions from standards.** No standards adopted by any state agency for limiting levels of noise in terms of sound pressure which may occur in the outdoor atmosphere shall apply to (1) segments of trunk highways constructed with federal interstate substitution money, provided that all reasonably available noise mitigation measures are employed to abate noise, (2) an existing or newly constructed segment of a highway, provided that all reasonably available noise mitigation measures, as approved by the commissioners of the Department of Transportation and Pollution Control Agency, are employed to abate noise, (3) except for the cities of Minneapolis and St. Paul, an existing or newly constructed segment of a road, street, or highway under the jurisdiction of a road authority of a town, statutory or home rule charter city, or county, except for roadways for which full control of access has been acquired, (4) skeet, trap or shooting sports clubs, or (5) motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1996. Nothing herein shall prohibit a local unit of government or a public corporation with the power to make rules for the government of its real property from regulating the location and operation of skeet, trap or shooting sports clubs, or motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1996.

Subd. 2b. **PCB waste; oil-filled electric equipment.** (a) A person who generates waste containing greater than 50 parts per million PCB which is subject to the federal requirements for the management of waste under Code of Federal Regulations, title 40, part 761, is also subject to state hazardous waste requirements for proper disposal, licensing, and fees. PCB small capacitors and lighting ballasts are also subject to state on-site accumulation requirements.

(b) PCB waste associated with oil-filled electric equipment voluntarily disposed of or retrofilled prior to the end of its service life is eligible for a waiver from annual hazardous waste fees. To be eligible for the waiver, a generator and the commissioner must execute a voluntary PCB phase-out agreement, and before relicensing, the generator must demonstrate performance of the agreement. The PCB phase-out agreement must include a description of specific goals, activities to be performed to achieve the goals, phase-out criteria, and a schedule for implementation.

(c) For the purpose of this subdivision, "PCB" has the meaning given in section 116.36.

Subd. 3. **Administrative rules.** Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Subd. 4. **Rules and standards.** (a) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

(b) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

(c) The rules for the disposal of solid waste shall include site-specific criteria to prohibit solid waste disposal based on the area's sensitivity to groundwater contamination, including site-specific testing. The rules shall provide criteria for locating landfills based on a site's sensitivity to groundwater contamination. Sensitivity to groundwater contamination is based on the predicted minimum time of travel of groundwater contaminants from the solid waste to the compliance boundary. The rules shall prohibit landfills in areas where karst is likely to develop. The rules shall specify testable or otherwise objective thresholds for these criteria. The rules shall also include modifications to financial assurance requirements under subdivision 4h that ensure the state is protected from financial responsibility for future groundwater contamination. The modifications to the financial assurance rules specified in this paragraph must require that a solid waste disposal facility subject to them maintain financial assurance so long as the facility poses a potential environmental risk to human health, wildlife, or the environment, as determined by the agency following an empirical assessment. The financial assurance and siting modifications to the rules specified in this paragraph do not apply to:

(1) solid waste facilities initially permitted before January 1, 2011, including future contiguous expansions and noncontiguous expansions within 600 yards of a permitted boundary;

(2) solid waste disposal facilities that accept only construction and demolition debris and incidental nonrecyclable packaging, and facilities that accept only industrial waste that is limited to wood, concrete, porcelain fixtures, shingles, or window glass resulting from the manufacture of construction materials; and

(3) requirements for permit by rule solid waste disposal facilities.

(d) Until the rules are modified as provided in paragraph (c) to include site-specific criteria to prohibit areas from solid waste disposal due to groundwater contamination sensitivity, as required under this section, the agency shall not issue a permit for a new solid waste disposal facility, except for:

(1) the reissuance of a permit for a land disposal facility operating as of March 1, 2008; (2) a permit to expand a land disposal facility operating as of March 1, 2008, beyond its permitted boundaries, including expansion on land that is not contiguous to, but is located within 600 yards of, the land disposal facility's permitted boundaries;

(3) a permit to modify the type of waste accepted at a land disposal facility operating as of March 1, 2008;

(4) a permit to locate a disposal facility that accepts only construction debris as defined in section 115A.03, subdivision 7;

(5) a permit to locate a disposal facility that:

(i) accepts boiler ash from an electric energy power plant that has wet scrubbed units or has units that have been converted from wet scrubbed units to dry scrubbed units as those terms are defined in section 216B.68;

(ii) is on land that was owned on May 1, 2008, by the utility operating the electric energy power plant; and

(iii) is located within three miles of the existing ash disposal facility for the power plant; or

(6) a permit to locate a new solid waste disposal facility for ferrous metallic minerals regulated under Minnesota Rules, chapter6130, or for nonferrous metallic minerals regulated under Minnesota Rules, chapter 6132.

(e) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

(f) As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the Pollution Control Agency.

(g) Pursuant to chapter 14, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the Pollution Control Agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

(h) The Pollution Control Agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

Subd. 4a. **Permits.** (a) The Pollution Control Agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the

installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.

The Pollution Control Agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.

The agency may not issue a permit to a facility without analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the geographic area within which the facility's emissions are likely to be deposited, provided that the facility is located in a community in a city of the first class in Hennepin County that meets all of the following conditions:

(1) is within a half mile of a site designated by the federal government as an EPA superfund site due to residential arsenic contamination;

(2) a majority of the population are low-income persons of color and American Indians; (3) a disproportionate

percent of the children have childhood lead poisoning, asthma, or
other environmentally related health problems;

(4) is located in a city that has experienced numerous air quality alert days of dangerous air quality for sensitive populations between February 2007 and February 2008; and

(5) is located near the junctions of several heavily trafficked state and county highways and two one-way streets which carry both truck and auto traffic.

The Pollution Control Agency may revoke or modify any permit issued under this subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

(b) The Pollution Control Agency has the authority for approval over the siting, expansion, or operation of a solid waste facility with regard to environmental issues. However, the agency's
issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by any applicable county ordinances. Nothing in this chapter precludes, or shall be construed to preclude, a county from enforcing land use controls, regulations, and ordinances existing at the time of the permit application and adopted pursuant to sections 366.10 to 366.181, 394.21 to 394.37, or 462.351 to 462.365, with regard to the siting, expansion, or operation of a solid waste facility.

(c) Except as prohibited by federal law, a person may commence construction, reconstruction, replacement, or modification of any facility prior to the issuance of a construction permit by the agency.

Subd. 4b. **Permits; hazardous waste facilities.** (a) Except as otherwise provided in sections 115A.18 to 115A.30, the agency shall commence any environmental review required under chapter 116D within 120 days of its acceptance of a completed permit application. The agency shall respond to a permit application for a hazardous waste facility within 120 days following a decision not to prepare environmental documents or following the acceptance of a negative declaration notice or an environmental impact statement. Except as otherwise provided in sections 115A.18 to 115A.30, within 60 days following the submission of a final permit application for a hazardous waste facility, unless a time extension is agreed to by the applicant, the agency shall issue or deny all permits needed for the construction of the proposed facility.

(b) The agency shall promulgate rules pursuant to chapter 14 for all hazardous waste facilities. The rules shall require:

(1) contingency plans for all hazardous waste facilities which provide for effective containment and control in any emergency condition;

(2) the establishment of a mechanism to assure that money to cover the costs of closure and postclosure monitoring and maintenance of hazardous waste facilities will be available;

(3) the maintenance of liability insurance by the owner or operator of hazardous waste facilities during the operating life of the facility.

Subd. 4c. [Repealed, 1983 c 373 s 72]

Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The fee schedule must reflect reasonable and routine direct and indirect costs associated with permitting, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the environmental fund.

(b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to the requirement to obtain a permit under subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or section 116.081. The annual fee shall be used to pay for all direct and indirect reasonable costs, including attorney general costs, required to develop and administer the permit program requirements of subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., and sections of this chapter and the rules adopted under this chapter related to air contamination and noise. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and demonstrations; preparing inventories and tracking emissions; and providing information to the public about these activities.

(c) The agency shall set fees that:

(1) will result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than $25 per ton of each volatile organic compound; pollutant regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national primary ambient air quality standard has been promulgated;

(2) may result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than $25 per ton of each pollutant not listed in clause (1) that is regulated under this chapter or air quality rules adopted under this chapter; and

(3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount needed to match grant funds received by the state under United States Code, title 42, section 7405 (section 105 of the federal Clean Air Act).

The agency must not include in the calculation of the aggregate amount to be collected under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant from a source. The increase in air permit fees to match federal grant funds shall be a surcharge on existing fees. The commissioner may not collect the surcharge after the grant funds become unavailable. In addition, the commissioner shall use nonfee funds to the extent practical to match the grant funds so that the fee surcharge is minimized.

(d) To cover the reasonable costs described in paragraph (b), the agency shall provide in the rules promulgated under paragraph (c) for an increase in the fee collected in each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year the fee is collected

exceeds the Consumer Price Index for the calendar year 1989. For purposes of this paragraph the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(e) Any money collected under paragraphs (b) to (d) must be deposited in the environmental fund and must be used solely for the activities listed in paragraph (b).

(f) Persons who wish to construct or expand a facility may offer to reimburse the agency for the costs of staff overtime or consultant services needed to expedite permit review. The reimbursement shall be in addition to fees imposed by law. When the agency determines that it needs additional resources to review the permit application in an expedited manner, and that expediting the review would not disrupt permitting program priorities, the agency may accept the reimbursement. Reimbursements accepted by the agency are appropriated to the agency for the purpose of reviewing the permit application. Reimbursement by a permit applicant shall precede and not be contingent upon issuance of a permit and shall not affect the agency's decision on whether to issue or deny a permit, what conditions are included in a permit, or the application of state and federal statutes and rules governing permit determinations.

(g) The fees under this subdivision are exempt from section 16A.1285.

Subd. 4e. **Hazardous waste processing facilities; agreements; financial responsibility.** When the agency issues a permit for a facility for the processing of hazardous waste, the agency may approve as a condition of the permit an agreement by which the permittee indemnifies the generators of hazardous waste accepted by the facility for part or all of any liability which may accrue to the generators as a result of a release or threatened release of a hazardous waste from the facility. The agency may approve an agreement under this subdivision only if the agency determines that the permittee has demonstrated financial responsibility to carry out the agreement during the term of the permit. If a generator of hazardous waste accepted by a permitted processing facility is held liable for costs or damages arising out of a release of a hazardous waste from the facility, and the permittee is subject to an agreement approved under this subdivision, the generator is liable to the extent that the costs or damages were not paid under this agreement.

Subd. 4f. **Closure and postclosure responsibility and liability.** An operator or owner of a facility is responsible for closure of the facility and postclosure care relating to the facility. If an owner or operator has failed to provide the required closure or postclosure care of the facility
the agency may take the actions. The owner or operator is liable for the costs of the required closure and postclosure care taken by the agency.

Subd. 4g. **Closure and postclosure rules.** The agency shall adopt rules establishing requirements for the closure of solid waste disposal facilities and for the postclosure care of closed facilities. The rules apply to all solid waste disposal facilities in operation at the time the rules are effective. The rules must provide standards and procedures for closing disposal facilities and for the care, maintenance, and monitoring of the facilities after closure that will prevent, mitigate, or minimize the threat to public health and the environment posed by closed disposal facilities.

Subd. 4h. **Financial responsibility rules.** (a) The agency shall adopt rules requiring the operator or owner of a solid waste disposal facility to submit to the agency proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for 30 years after closure for a mixed municipal solid waste disposal facility or for a minimum of 20 years after closure, as determined by agency rules, for any other solid waste disposal facility, and to provide for the closure of the facility and postclosure care required under agency rules. Proof of financial responsibility is required of the operator or owner of a facility receiving an original permit or a permit for expansion after adoption of the rules. Within 180 days of the effective date of the rules or by July 1, 1987, whichever is later, proof

of financial responsibility is required of an operator or owner of a facility with a remaining capacity of more than five years or 500,000 cubic yards that is in operation at the time the rules are adopted. Compliance with the rules and the requirements of paragraph (b) is a condition of obtaining or retaining a permit to operate the facility.

(b) A municipality, as defined in section 475.51, subdivision 2, including a sanitary district, that owns or operates a solid waste disposal facility that was in operation on May 15, 1989,
may meet its financial responsibility for all or a portion of the contingency action portion of the reasonable and necessary response costs at the facility by pledging its full faith and credit to meet its responsibility.

The pledge must be made in accordance with the requirements in chapter 475 for issuing bonds of the municipality, and the following additional requirements:

(1) The governing body of the municipality shall enact an ordinance that clearly accepts responsibility for the costs of contingency action at the facility and that reserves, during the

operating life of the facility and for the time period required in paragraph (a) after closure, a portion of the debt limit of the municipality, as established under section 475.53 or other law, that is equal to the total contingency action costs.

(2) The municipality shall require that all collectors that haul to the facility implement a plan for reducing solid waste by using volume-based pricing, recycling incentives, or other means.

(3) When a municipality opts to meet a portion of its financial responsibility by relying on its authority to issue bonds, it shall also begin setting aside in a dedicated long-term care trust fund money that will cover a portion of the potential contingency action costs at the facility, the amount to be determined by the agency for each facility based on at least the amount of waste deposited in the disposal facility each year, and the likelihood and potential timing of conditions arising at the facility that will necessitate response action. The agency may not require a municipality to set aside more than five percent of the total cost in a single year.

(4) A municipality shall have and consistently maintain an investment grade bond rating as a condition of using bonding authority to meet financial responsibility under this section.

(5) The municipality shall file with the commissioner of revenue its consent to have the amount of its contingency action costs deducted from state aid payments otherwise due the municipality and paid instead to the remediation fund created in section 116.155, if the
municipality fails to conduct the contingency action at the facility when ordered by the agency. If the agency notifies the commissioner that the municipality has failed to conduct contingency action when ordered by the agency, the commissioner shall deduct the amounts indicated by the agency from the state aids in accordance with the consent filed with the commissioner.

(6) The municipality shall file with the agency written proof that it has complied with the requirements of paragraph (b).

(c) The method for proving financial responsibility under paragraph (b) may not be applied to a new solid waste disposal facility or to expansion of an existing facility, unless the expansion is a vertical expansion. Vertical expansions of qualifying existing facilities cannot be permitted for a duration of longer than three years.

(d) The commissioner shall consult with the commissioner of management and budget for guidance on the forms of financial assurance that are acceptable for private owners and public owners, and in carrying out a periodic review of the adequacy of financial assurance for solid waste disposal facilities. Financial assurance rules shall allow financial mechanisms to public owners of solid waste disposal facilities that are appropriate to their status as subdivisions of the state.

Subd. 4i. **Civil penalties.** The civil penalties of sections 115.071 and 116.072 apply to any person in violation of the rules adopted under subdivision 4g or 4h.

Subd. 4j. **Permits; solid waste facilities.** (a) The agency may not issue a permit for new or additional capacity for a mixed municipal solid waste resource recovery or disposal facility as defined in section 115A.03 unless each county using or projected in the permit to use the facility has in place a solid waste management plan approved under section 115A.46 or 473.803 and amended as required by section 115A.96, subdivision 6. The agency shall issue the permit only if the capacity of the facility is consistent with the needs for resource recovery or disposal capacity identified in the approved plan or plans. Consistency must be determined by the Pollution Control Agency. Plans approved before January 1, 1990, need not be revised if the capacity sought in the permit is consistent with the approved plan or plans.

(b) The agency shall require as part of the permit application for a waste incineration facility identification of preliminary plans for ash management and ash leachate treatment or ash utilization. The permit issued by the agency must include requirements for ash management
and ash leachate treatment.

(c) Within 30 days of receipt by the agency of a permit application for a solid waste facility, the commissioner shall notify the applicant in writing whether the application is complete and if not, what items are needed to make it complete, and shall give an estimate of the time it will take to process the application. Within 180 days of receipt of a completed application, the agency shall approve, disapprove, or delay decision on the application, with reasons for the delay, in writing.

Subd. 4k. **Household hazardous waste and other problem materials management.** (a) The agency shall adopt rules to require the owner or operator of a solid waste disposal facility or resource recovery facility to submit to the agency and to each county using or projected to use the facility a management plan for the separation of household hazardous waste and other problem materials from solid waste prior to disposal or processing and for the proper management of the waste. The rules must require that the plan be developed in coordination with each county using, or projected to use, the facility. The plan must not be inconsistent with the plan developed under section 115A.956, subdivision 2, and must include:

(1) identification of materials that are problem materials, as defined in section 115A.03, subdivision 24a, for the facility;

(2) participation in public education activities on management of household hazardous waste and other problem materials in the facility's service area;

(3) a strategy for reduction of household hazardous waste and other problem materials entering the facility; and

(4) a plan for the storage and proper management of separated household hazardous waste and other problem materials.

(b) By September 30, 1992, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to household hazardous waste management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to household hazardous waste management;

(2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

(c) By September 30, 1993, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to problem materials management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to problem materials management; (2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

Subd. 5. **Variances.** The Pollution Control Agency may grant variances from its rules as provided in section 14.05, subdivision 4, in order to avoid undue hardship and to promote the effective and reasonable application and enforcement of laws, rules, and standards for prevention, abatement and control of water, air, noise, and land pollution. The variance rules shall provide for notice and opportunity for hearing before a variance is granted.

A local government unit authorized by contract with the Pollution Control Agency pursuant to section 116.05 to exercise administrative powers under this chapter may grant variances after notice and public hearing from any ordinance, rule, or standard for prevention, abatement, or control of water, air, noise and land pollution, adopted pursuant to said administrative powers and under the provisions of this chapter.

Subd. 6. **Pollution Control Agency; exercise of powers.** In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

Subd. 7. **Counties; processing of applications for animal lot permits.** Any Minnesota county board may, by resolution, with approval of the Pollution Control Agency, assume responsibility for processing applications for permits required by the Pollution Control Agency under this section for livestock feedlots, poultry lots or other animal lots. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to any appropriate county officer or employee.

(a) For the purposes of this subdivision, the term "processing" includes:

(1) the distribution to applicants of forms provided by the Pollution Control Agency;

(2) the receipt and examination of completed application forms, and the certification, in writing, to the Pollution Control Agency either that the animal lot facility for which a permit is sought by an applicant will comply with applicable rules and standards, or, if the facility will not comply, the respects in which a variance would be required for the issuance of a permit; and

(3) rendering to applicants, upon request, assistance necessary for the proper completion of an application.

(b) For the purposes of this subdivision, the term "processing" may include, at the option of the county board, issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the Pollution Control Agency. The Pollution Control Agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14. For permit applications filed after October 1, 2001, section 15.99 applies to feedlot permits issued by the agency or a county pursuant to this subdivision.

(c) For the purpose of administration of rules adopted under this subdivision, the commissioner and the agency may provide exceptions for cases where the owner of a feedlot has specific written plans to close the feedlot within five years. These exceptions include waiving requirements for major capital improvements.

(d) For purposes of this subdivision, a discharge caused by an extraordinary natural event such as a precipitation event of greater magnitude than the 25-year, 24-hour event, tornado, or flood in excess of the 100-year flood is not a "direct discharge of pollutants."

(e) In adopting and enforcing rules under this subdivision, the commissioner shall cooperate closely with other governmental agencies.

(f) The Pollution Control Agency shall work with the Minnesota Extension Service, the Department of Agriculture, the Board of Water and Soil Resources, producer groups, local units of government, as well as with appropriate federal agencies such as the Natural Resources Conservation Service and the Farm Service Agency, to notify and educate producers of rules under this subdivision at the time the rules are being developed and adopted and at least every two years thereafter.

(g) The Pollution Control Agency shall adopt rules governing the issuance and denial of permits for livestock feedlots, poultry lots or other animal lots pursuant to this section. Pastures are exempt from the rules authorized under this paragraph. A feedlot permit is not required for livestock feedlots with more than ten but less than 50 animal units; provided they are not in shoreland areas. A livestock feedlot permit does not become required solely because of a change in the ownership of the buildings, grounds, or feedlot. These rules apply both to permits issued by counties and to permits issued by the Pollution Control Agency directly.

(h) The Pollution Control Agency shall exercise supervising authority with respect to the processing of animal lot permit applications by a county.

(i) Any new rules or amendments to existing rules proposed under the authority granted in this subdivision, or to implement new fees on animal feedlots, must be submitted to the members of legislative policy and finance committees with jurisdiction over agriculture and the environment prior to final adoption. The rules must not become effective until 90 days after the proposed rules are submitted to the members.

(j) Until new rules are adopted that provide for plans for manure storage structures, any plans for a liquid manure storage structure must be prepared or approved by a registered professional engineer or a United States Department of Agriculture, Natural Resources Conservation Service employee.

(k) A county may adopt by ordinance standards for animal feedlots that are more stringent than standards in Pollution Control Agency rules.

(l) After January 1, 2001, a county that has not accepted delegation of the feedlot permit program must hold a public meeting prior to the agency issuing a feedlot permit for a feedlot facility with 300 or more animal units, unless another public meeting has been held with regard to the feedlot facility to be permitted.

(m) After the proposed rules published in the State Register, volume 24, number 25, are finally adopted, the agency may not impose additional conditions as a part of a feedlot permit, unless specifically required by law or agreed to by the feedlot operator.

(n) For the purposes of feedlot permitting, a discharge from land-applied manure or a manure stockpile that is managed according to agency rule must not be subject to a fine for a discharge violation.

(o) For the purposes of feedlot permitting, manure that is land applied, or a manure stockpile that is managed according to agency rule, must not be considered a discharge into waters of the state, unless the discharge is to waters of the state, as defined by section 103G.005,

subdivision 17, except type 1 or type 2 wetlands, as defined in section 103G.005, subdivision 17b, and does not meet discharge standards established for feedlots under agency rule.

(p) Unless the upgrade is needed to correct an immediate public health threat under section 145A.04, subdivision 8, or the facility is determined to be a concentrated animal feeding operation under Code of Federal Regulations, title 40, section 122.23, in effect on April 15, 2003, the agency may not require a feedlot operator:

(1) to spend more than $3,000 to upgrade an existing feedlot with less than 300 animal units unless cost-share money is available to the feedlot operator for 75 percent of the cost of the upgrade; or

(2) to spend more than $10,000 to upgrade an existing feedlot with between 300 and 500 animal units, unless cost-share money is available to the feedlot operator for 75 percent of the cost of the upgrade or $50,000, whichever is less.

(q) For the purposes of this section, "pastures" means areas, including winter feeding areas as part of a grazing area, where grass or other growing plants are used for grazing and where the concentration of animals allows a vegetative cover to be maintained during the growing season except that vegetative cover is not required:

(1) in the immediate vicinity of supplemental feeding or watering devices;

(2) in associated corrals and chutes where livestock are gathered for the purpose of sorting, veterinary services, loading and unloading trucks and trailers, and other necessary activities related to good animal husbandry practices; and

(3) in associated livestock access lanes used to convey livestock to and from areas of the pasture.

Subd. 7a. **Notice of application for livestock feedlot permit.** (a) A person who applies to the Pollution Control Agency or a county board for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not less than 20 business days before the date on which a permit is issued, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot. Notification under this subdivision is satisfied under an equal or greater notification requirement of a county or town permit process. A person must also send a copy of the notice by first class mail to the clerk of the town in which the feedlot is proposed not less than 20 business days before the date on which a permit is issued.

(b) The agency or a county board must verify that notice was provided as required under paragraph (a) prior to issuing a permit.

Subd. 7b. **Feedlot inventory notification and public meeting requirements.** (a) Any state agency or local government unit conducting an inventory or survey of livestock feedlots under its jurisdiction must publicize notice of the inventory in a newspaper of general circulation in the affected area and in other media as appropriate. The notice must state the dates the inventory will be conducted, the information that will be requested in the inventory, and how the information collected will be provided to the public. The notice must also specify the date for a public meeting to provide information regarding the inventory.

(b) A local government unit conducting an inventory or survey of livestock feedlots under its jurisdiction must hold at least one public meeting within the boundaries of the jurisdiction

of the local unit of government, prior to beginning the inventory. A state agency conducting a survey of livestock feedlots must hold at least four public meetings outside of the seven-county Twin Cities metropolitan area, prior to beginning the inventory. The public meeting must provide information concerning the dates the inventory will be conducted, the procedure the agency or local unit of government will use to request the information to be included in the inventory, and how the information collected will be provided to the public.

Subd. 7c. **NPDES feedlot permitting requirements.** (a) The agency must issue national pollutant discharge elimination system permits for feedlots only as required by federal law. The issuance of national pollutant discharge elimination system permits for feedlots must be based on the following:

(1) a permit for a newly constructed or expanded animal feedlot that is identified as a priority by the commissioner, using criteria in effect on January 1, 2010, must be issued as an individual permit;

(2) an existing feedlot that is identified as a priority by the commissioner, using criteria in effect on January 1, 2010, must be issued as an individual permit; and

(3) the agency must issue a general national pollutant discharge elimination system permit, if required, for animal feedlots that are not identified under clause (1) or (2).

(b) Prior to the issuance of a general national pollutant discharge elimination system permit for a category of animal feedlot facility permittees, the agency must hold at least one public hearing on the permit issuance.

(c) To the extent practicable, the agency must include a public notice and comment period for an individual national pollutant discharge elimination system permit concurrent with any public notice and comment for:

(1) the purpose of environmental review of the same facility under chapter 116D; or

(2) the purpose of obtaining a conditional use permit from a local unit of government where the local government unit is the responsible governmental unit for purposes of environmental review under chapter 116D.

(d) A feedlot owner may choose to apply for a national pollutant discharge elimination system permit even if the feedlot is not required by federal law to have a national pollutant discharge elimination system permit.

Subd. 7d. **Exemption.** (a) Notwithstanding subdivision 7 or Minnesota Rules, chapter 7020, to the contrary, and notwithstanding the proximity to public or private waters, an owner or resident of agricultural land on which livestock have been allowed to pasture at any time during the ten-year period beginning January 1, 2010, is permanently exempt from requirements related to feedlot or manure management on that land for so long as the property remains in pasture.

(b) For the purposes of this subdivision, "pasture" means areas where livestock graze on grass or other growing plants. Pasture also means agricultural land where livestock are allowed to forage during the winter time and which land is used for cropping purposes in the growing season. In either case, the concentration of animals must be such that a vegetative cover, whether of grass, growing plants, or crops, is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

Subd. 7e. **Manure digester permits.** Except for areas within the metropolitan area, as defined in section 473.121, subdivision 2, or within cities of the first or second class, an

air emission permit is not required for a manure digester and associated electrical generation equipment that process manure from the farm or provide for backup power for the farm.

Subd. 8. **Public information.** The agency may publish, broadcast, or distribute information pertaining to agency activities, laws, rules, and standards.

Subd. 9. **Orders; investigations.** The agency shall have the following powers and duties for the enforcement of any provision of this chapter and chapter 114C, relating to air contamination or waste:

(a) to adopt, issue, reissue, modify, deny, revoke, enter into or enforce reasonable orders, schedules of compliance and stipulation agreements;

(b) to require the owner or operator of any emission facility, air contaminant treatment facility, potential air contaminant storage facility, or any system or facility related to the storage, collection, transportation, processing, or disposal of waste to establish and maintain records; to make reports; to install, use, and maintain monitoring equipment or methods; and to make tests, including testing for odor where a nuisance may exist, in accordance with methods, at locations, at intervals, and in a manner as the agency shall prescribe; and to provide other information as the agency may reasonably require;

(c) to conduct investigations, issue notices, public and otherwise, and order hearings as it may deem necessary or advisable for the discharge of its duties under this chapter and chapter 114C, including but not limited to the issuance of permits; and to authorize any member, employee, or agent appointed by it to conduct the investigations and issue the notices.

Subd. 10. [Repealed, 1997 c 231 art 13 s 20]

Subd. 11. **Permits; land farming contaminated soil.** (a) If the agency receives an application for a permit to spread soil contaminated by a harmful substance as defined in section 115B.25, subdivision 7a, on land in an organized or unorganized township other than the township of origin of the soil, the agency must notify the board of the organized township, or the county board of the unorganized township where the spreading would occur at least 60 days prior to issuing the permit.

(b) The agency must not issue a permit to spread contaminated soil on land outside the township of origin if, by resolution, the township board of the organized township, or the county board of the unorganized township where the soil is to be spread requests that the agency not issue a permit.

Subd. 12. **Fire training ash disposal.** The ash from a legitimate fire training exercise involving the live burning of a structure is classified as demolition debris and may be disposed in any permit-by-rule land disposal facility authorized under agency rules or any permitted demolition land disposal facility, with the consent of the disposal facility operator, if a person certified by a Minnesota state college or university fire safety center certifies in writing in advance to the commissioner that the structure has been adequately prepared for such a training exercise, taking into account all applicable safety concerns and regulations, including Pollution Control Agency guidelines regarding the removal of hazardous materials from training-burn structures before the training event.

History: *1967 c 882 s 7; 1969 c 1046 s 5-7; 1971 c 727 s 3-5; 1971 c 904 s 1; 1973 c 412 s 13; 1973 c 573 s 1; 1973 c 733 s 1; 1974 c 346 s 2-4; 1974 c 483 s 5-7; 1976 c 76 s 4; 1977 c 90 s 10; 1979 c 304 s 1; 1980 c 564 art 11 s 5-10; 1980 c 614 s 123; 1980 c 615 s 60; 1981 c 352 s 27,28; 1982 c 424 s 130; 1982 c 425 s 17; 1982 c 458 s 2; 1982 c 569 s 19; 1983 c 247 s 51; 1983 c 301 s 112-114; 1983 c 373 s 44,45; 1984 c 640 s 32; 1984 c 644 s 49; 1985 c 248 s 70; 1985 c 274 s 14; 1Sp1985 c 13 s 233; 1986 c 425 s 28; 1987 c 348 s 30; 1989 c 131 s 7; 1989 c 276 s 1; 1989 c 325 s 48; 1989 c 335 art 1 s 269; 1Sp1989 c 1 art 20 s 19; 1990 c 426 art 2 s 1; 1990 c 604 art 10 s 6; 1991 c 199 art 2 s 1; 1991 c 254 art 2 s 37; 1991 c 291 art 21 s 3; 1991 c 303 s 4,5; 1991 c 337 s 55; 1991 c 347 art 1 s 8,18; 1992 c 546 s 2; 1992 c 593 art 1 s 31; 1993 c 172 s 77;*

1994 c 585 s 32; 1994 c 619 s 8; 1994 c 632 art 2 s 31; 1994 c 637 s 1; 1994 c 639 art 3 s 3; 1995 c 111 s 1; 1995 c 220 s 104,130; 1995 c 233 art 1 s 7,8; art 2 s 49; 1995 c 247 art 1 s 37,38; art 2 s 54; 1995 c 250 s 1; 1995 c 265 art 2 s 14; 1996 c 305 art 1 s 28; art 2 s 25; 1996 c 437 s 20;
1996 c 470 s 19; 1997 c 7 art 1 s 36; 1997 c 143 s 1; 1997 c 158 s 1; 1997 c 216 s 113,114; 1998 c 401 s 41-43; 1999 c 231 s 146; 1999 c 250 art 3 s 18; 2000 c 435 s 4,5; 2001 c 67 s 1; 2001 c 116 s 1; 2001 c 128 s 1; 1Sp2001 c 2 s 137; 2003 c 107 s 29; 2003 c 128 art 2 s 37,38; art 3 s 39; 2004 c 176 s 1; 1Sp2005 c 1 art 1 s 78; art 2 s 161; 2007 c 131 art 1 s 75; 2008 c 357 s 34; 2008 c 363 art 5 s 24; 2010 c 361 art 4 s 63,64; 2011 c 4 s 4; 1Sp2011 c 2 art 4 s 21,22; 2012 c 150 art 1 s 6,7

116.071 CAUSE OF ACTION FOR ABANDONMENT OF HAZARDOUS WASTE ON PROPERTY OF ANOTHER.

(a) If an owner of property on which containers of hazardous waste or material which is hazardous waste is abandoned by another disposes of the waste in compliance with all applicable laws and at the owner's expense, the property owner is entitled to recover from any person responsible for the waste that was abandoned damages of twice the costs incurred for removal, processing, and disposal of the waste, together with the costs and losses that result from the abandonment and court costs. If, before the waste is properly disposed of, the property owner knows the identity and location of a person responsible for the waste that was abandoned, the property owner is not entitled to recover against that person under this section unless:

(1) the property owner requests in writing that the person responsible for the waste that was abandoned remove and properly dispose of the abandoned waste and allows the responsible person 30 days after the request is mailed to remove the waste;

(2) the property owner allows the person responsible for the waste that was abandoned reasonable access to the owner's property to remove the waste within the 30-day period after giving the notice; and

(3) the person responsible for the waste that was abandoned fails to remove all of the waste within the 30-day period.

(b) A person who is purchasing property on a contract for deed is a property owner for the purposes of this section.

History: *1995 c 119 s 1*

116.0711 FEEDLOT PERMITS; CONDITIONS; COUNTY GRANTS.

Subdivision 1. **Conditions.** (a) The agency shall not require feedlot permittees to maintain records as to rainfall or snowfall as a condition of a general feedlot permit if the owner directs the commissioner or agent of the commissioner to appropriate data on precipitation maintained by a government agency or educational institution.

(b) A feedlot permittee shall give notice to the agency when the permittee proposes to transfer ownership or control of the feedlot to a new party. The commissioner shall not unreasonably withhold or unreasonably delay approval of any transfer request. This request shall be handled in accordance with sections 116.07 and 15.992.

(c) An animal feedlot in shoreland that has been unused may resume operation after obtaining a permit from the agency or county, regardless of the number of years that the feedlot was unused.

Subd. 2. **County feedlot program grants; three-part formula.** (a) Money appropriated to the commissioner to make grants to delegated counties to administer the county feedlot program must be distributed according to the three-part formula in paragraphs (b) to (d).

(b) Number of feedlots in the county: 60 percent of the total appropriation must be distributed according to the number of feedlots that are required to be registered in the county. Grants awarded under this paragraph must be matched with a combination of local cash and in-kind contributions.

(c) Minimum program requirements: 25 percent of the total appropriation must be distributed based on the county (1) conducting an annual number of inspections at feedlots that is equal to or greater than seven percent of the total number of registered feedlots that are required to be registered in the county; and (2) meeting noninspection minimum program requirements
as identified in the county feedlot workplan form. Counties that do not meet the inspection requirement must not receive 50 percent of the eligible funding under this paragraph. Counties must receive funding for noninspection requirements under this paragraph according to a scoring system checklist administered by the commissioner. The commissioner, in consultation with the Minnesota Association of County Feedlot Officers executive team, shall make a final decision regarding any appeal by a county regarding the terms and conditions of this paragraph.

(d) Performance credits: 15 percent of the total appropriation must be distributed according to work that has been done by the counties during the fiscal year. The amount must be determined by the number of performance credits a county accumulates during the year based on a performance credit matrix jointly agreed upon by the commissioner in consultation with the
Minnesota Association of County Feedlot Officers executive team. To receive an award under this paragraph, the county must meet the requirements of paragraph (c), clause (1), and achieve 90 percent of the requirements according to paragraph (c), clause (2), of the formula. The rate of reimbursement per performance credit item must not exceed $200.

Subd. 3. **Minimum grant; prorated grant; transfers.** Delegated counties are eligible for a minimum grant of $7,500. To receive the full $7,500 amount, a county must meet the requirements under subdivision 2, paragraph (c). Nondelegated counties that apply for delegation shall receive
a grant prorated according to the number of full quarters remaining in the program year from the date of commissioner approval of the delegation. Awards to any newly delegated counties must be made out of the appropriation reserved under subdivision 2, paragraph (d). The commissioner,
in consultation with the Minnesota Association of County Feedlot Officers executive team, may decide to use money reserved under subdivision 2, paragraph (d), in an amount not to exceed five percent of the total annual appropriation for initiatives to enhance existing delegated county feedlot programs, information and education, or technical assistance efforts to reduce feedlot-related pollution hazards. Any amount remaining after distribution under subdivision 2, paragraphs (b) and (c), must be transferred for purposes of subdivision 2, paragraph (d).

History: *2001 c 128 s 2; 2009 c 37 art 1 s 45*

116.0712 MODIFIED LEVEL ONE FEEDLOT INVENTORY.

(a) Except as provided in paragraph (b), a delegated county that has completed a modified level 1 inventory that includes facility location, approximate number of animal units, and whether the facility is an open lot or confinement operation, may report that information to the agency in aggregate. A feedlot that is included in an inventory meeting these criteria has satisfied registration requirements under agency rule.

(b) A county must submit to the agency the complete registration information for a feedlot having 1,000 animal units or greater or a feedlot meeting the definition of a concentrated animal feeding operation as defined in Code of Federal Regulations, title 40, section 122.23.

History: *2001 c 128 s 3*

116.0713 LIVESTOCK ODOR.

(a) The Pollution Control Agency must:

(1) monitor and identify potential livestock facility violations of the state ambient air quality standards for hydrogen sulfide, using a protocol for responding to citizen complaints regarding feedlot odor and its hydrogen sulfide component, including the appropriate use of portable monitoring equipment that enables monitoring staff to follow plumes;

(2) when livestock production facilities are found to be in violation of ambient hydrogen sulfide standards, take appropriate actions necessary to ensure compliance, utilizing appropriate technical assistance and enforcement and penalty authorities provided to the agency by statute and rule.

(b) Livestock production facilities are exempt from state ambient air quality standards while manure is being removed and for seven days after manure is removed from barns or manure storage facilities.

(c) For a livestock production facility having greater than 300 animal units, the maximum cumulative exemption in a calendar year under paragraph (b) is 21 days for the removal process.

(d) The operator of a livestock production facility that claims exemption from state ambient air quality standards under paragraph (b) must provide notice of that claim to either the Pollution Control Agency or the county feedlot officer delegated under section 116.07.

(e) State ambient air quality standards are applicable at the property boundary of a farm or a parcel of agricultural land on which a livestock production facility is located, except that if the owner or operator of the farm or parcel obtains an air quality easement from the owner of land adjoining the farm or parcel, the air quality standards must be applicable at the property boundary of the adjoining land to which the easement pertains. The air quality easement must be for no more than five years, must be in writing, and must be available upon request by the agency or the county feedlot officer. Notwithstanding the provisions of this paragraph, state ambient air quality standards are applicable at locations to which the general public has access. The "general public" does not include employees or other categories of people who have been
directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose, or trespassers.

(f) The agency may not require air emission modeling for a type of livestock system that has not had a hydrogen sulfide emission violation.

History: *1997 c 216 s 115; 2000 c 435 s 6*

116.0714 NEW OPEN AIR SWINE BASINS.

The commissioner of the Pollution Control Agency or a county board shall not approve any permits for the construction of new open air swine basins, except that existing facilities may use one basin of less than 1,000,000 gallons as part of a permitted waste treatment program for resolving pollution problems or to allow conversion of an existing basin of less than 1,000,000 gallons to a different animal type, provided all standards are met. This section expires June
30, 2017.

History: *2002 c 373 s 30; 2007 c 45 art 1 s 56; 2012 c 272 s 73*

116.0715 LIMIT ON BASIS FOR ACTION.

The agency shall not issue or deny a permit or amendment or impose control requirements based solely on computer models projecting compliance or noncompliance with the secondary particulate matter standard.

History: *1996 c 409 s 1*

116.0716 RULE VARIANCE.

The Pollution Control Agency may issue a permit without regard to the maximum annual geometric mean standards for particulate matter or the primary maximum 24 hour concentrate standard for particulate matter.

History: *1996 c 409 s 2*

116.0717 MINERALS DEPOSITION.

Notwithstanding rules prohibiting discharge of waste into saturated zones or rules governing variance procedures, the Pollution Control Agency may issue a permit for deposition of fine tailings from minerals processing facilities into mine pits provided the proposer demonstrates through an environmental impact statement and risk assessment that the deposition will not pose an unreasonable risk of pollution or degradation of groundwater.

History: *1996 c 407 s 56; 2004 c 157 s 1*

116.072 ADMINISTRATIVE PENALTIES.

Subdivision 1. **Authority to issue penalty orders.** (a) The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of this chapter and chapters 114C, 115, 115A, 115D, and 115E, any rules adopted under those chapters, and any standards, limitations, or conditions established in an agency permit; and for failure to respond to a request for information under section 115B.17, subdivision 3. The order must be issued as provided in this section.

(b) A county board may adopt an ordinance containing procedures for the issuance of administrative penalty orders and may issue orders beginning August 1, 1996. Before adopting ordinances, counties shall work cooperatively with the agency to develop an implementation plan for the orders that substantially conforms to a model ordinance developed by the counties and the agency. After adopting the ordinance, the county board may issue orders requiring violations to be corrected and administratively assessing monetary penalties for violations of county ordinances adopted under section 400.16, 400.161, or 473.811 or chapter 115A that regulate solid and hazardous waste and any standards, limitations, or conditions established in a county license issued pursuant to these ordinances. For violations of ordinances relating to hazardous waste, a county's penalty authority is described in subdivisions 2 to 5. For violations of ordinances relating to solid waste, a county's penalty authority is described in subdivision 5a. Subdivisions 6 to 11 apply to violations of ordinances relating to both solid and hazardous waste.

(c) Monetary penalties collected by a county must be used to manage solid and hazardous waste. A county board's authority is limited to violations described in paragraph (b). Its authority to issue orders under this section expires August 1, 1999.

Subd. 2. **Amount of penalty; considerations.** (a) The commissioner or county board may issue an order assessing a penalty up to $10,000 for all violations identified during an inspection or other compliance review.

(b) In determining the amount of a penalty the commissioner or county board may consider:

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person by allowing or committing the violation; and

(6) other factors as justice may require, if the commissioner or county board specifically identifies the additional factors in the commissioner's or county board's order.

(c) For a violation after an initial violation, the commissioner or county board shall, in determining the amount of a penalty, consider the factors in paragraph (b) and the:

(1) similarity of the most recent previous violation and the violation to be penalized; (2) time elapsed since the last violation;

(3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

Subd. 3. **Contents of order.** An order assessing an administrative penalty under this section shall include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, ordinance, variance, order, stipulation agreement, or term or condition of a permit or license that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 4. **Corrective order.** (a) The commissioner or county board may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.

(b) The person to whom the order was issued shall provide information to the commissioner or county board before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The commissioner or county board shall determine whether the violation has been corrected and notify the person subject to the order of the commissioner's or county board's determination.

Subd. 5. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner or county board determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the person requests review of the order under subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner or county board showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the person receives the commissioner's or county board's determination under subdivision 4, paragraph (b), if the person subject to the order has provided information to the commissioner or county board that the commissioner or county board determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For a repeated or serious violation, the commissioner or county board may issue an order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due by 31 days after the order was received unless review of the order under subdivision 6, 7, or 8 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 5a. **County penalty authority for solid waste violations.** (a) A county board's authority to issue a corrective order and assess a penalty for all violations relating to solid waste that are identified during an inspection or other compliance review is as described in this subdivision. The model ordinance described in subdivision 1, paragraph (b), must include provisions for letters or warnings that may be issued following the inspection and before proceeding under paragraph (b).

(b) For all violations described in paragraph (a), a county attorney or county department with responsibility for environmental enforcement may first issue a notice of violation that complies with the requirements of subdivision 4, except that no penalty may be assessed unless, in the opinion of the county board, the gravity of the violation and its potential for damage to,
or actual damage to, public health or the environment is such that a penalty under paragraph (c) or (d) is warranted. In that case the county attorney or department may proceed directly to paragraph (c) or (d).

(c) If the violations are not corrected, if appropriate steps have not been taken to correct them, or if the county board has determined that the gravity of the violations are such that action under this paragraph is warranted, a county board may issue a corrective order as described in subdivision 4, except that the penalty may not exceed $2,000.

(d) If the violations are still not corrected, if appropriate steps have not been taken to correct them, or if the county board has determined that the gravity of the violations are such that action under this paragraph is warranted, a county board may issue a corrective order as described in subdivision 4, except that the penalty may not exceed $5,000.

(e) In determining the amount of the penalty in paragraph (c) or (d), the county board shall be governed by subdivision 2, paragraphs (b) and (c). The penalty assessed under paragraph (c) or (d) shall be due and payable, forgiven, or assessed without forgiveness as described in subdivision 5.

Subd. 6. **Expedited administrative hearing.** (a) Within 30 days after receiving an order or within 20 days after receiving notice that the commissioner or county board has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing, utilizing the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, to review the commissioner's or county board's action. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order is directed and the commissioner or county board are the parties to the expedited hearing. The commissioner or county board must notify the person to whom the order is directed of the time and place of the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner or county board unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the commissioner's or county board's action to the commissioner or county board within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision 2, the amount of the penalty is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner or county board may add to the amount of the penalty the costs charged to the agency by the Office of Administrative Hearings for the hearing.

(e) If a hearing has been held, the commissioner or county board may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom an order is issued may, within those five days, comment to the commissioner or county board on the recommendations and the commissioner or county board will consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

(f) If a hearing has been held and a final order issued by the commissioner or county board, the penalty shall be paid by 30 days after the date the final order is received unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Subd. 7. **District court hearing.** (a) Within 30 days after the receipt of an order from the commissioner or a county board or within 20 days of receipt of notice that the commissioner or a county board has determined that a

violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may file a petition in district court for review of the order in lieu of requesting an administrative hearing under subdivision 6. The petition shall be filed with the court administrator with proof of service on the commissioner or county board. The petition shall be captioned in the name of the person making the petition as petitioner and the commissioner or county board as respondent. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order, including the facts upon which each claim is based.

(b) At trial, the commissioner or county board must establish by a preponderance of the evidence that a violation subject to this section occurred, the petitioner is responsible for the violation, a penalty immediately assessed as provided for under subdivision 5, paragraph (b) or (c), is justified by the violation, and the factors listed in subdivision 2 were considered when the penalty amount was determined and the penalty amount is justified by those factors.

Subd. 8. **Mediation.** In addition to review under subdivision 6 or 7, the commissioner or county board is authorized to enter into mediation concerning an order issued under this section if the commissioner or county board and the person to whom the order is issued both agree to mediation.

Subd. 9. **Enforcement.** (a) The attorney general on behalf of the state, or the county attorney on behalf of the county, may proceed to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general or county attorney may petition the district court to file the administrative order as an order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general or county attorney may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 10. **Revocation and suspension of permit.** If a person fails to pay a penalty owed under this section, the agency or county board has grounds to revoke or refuse to reissue or renew a permit or license issued by the agency or county board.

Subd. 11. **Cumulative remedy.** The authority of the agency or county board to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law, except that the state or county board may not seek civil penalties under any other provision of law for the violations covered by the administrative penalty order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

Subd. 12. [Repealed, 1999 c 99 s 24]

Subd. 13. **Feedlot administrative penalty orders.** (a) Prior to the commissioner proposing an administrative penalty order to a feedlot operator for a violation of feedlot laws or rules, the agency staff who will determine if a penalty is appropriate and who will determine the size of the penalty shall offer to meet with the feedlot operator to discuss the violation, and to allow the feedlot operator to present any information that may affect any agency decisions on the administrative penalty order.

(b) Notwithstanding subdivision 5, for feedlot law or rule violations for which an administrative penalty order is issued under this section, not less than 75 percent of the penalty must be forgiven if:

(1) the abated penalty is used for approved measures to mitigate the violation for which the administrative penalty order was issued or for environmental improvements to the farm; and

(2) the commissioner determines that the violation has been corrected or that appropriate steps are being taken to correct the action.

History: *1987 c 174 s 1; 1987 c 186 s 15; 1991 c 347 art 1 s 9-13; 1992 c 464 art 1 s 54; 1995 c 247 art 1 s 39; 1996 c 437 s 21; 1996 c 470 s 27; 1999 c 231 s 147; 2000 c 435 s 7*

116.073 FIELD CITATIONS.

Subdivision 1. **Authority to issue.** (a) Pollution Control Agency staff designated by the commissioner and Department of Natural Resources conservation officers may issue citations to a person who:

(1) disposes of solid waste as defined in section 116.06, subdivision 22, at a location not authorized by law for the disposal of solid waste without permission of the owner of the property;

(2) fails to report or recover discharges as required under section 115.061;

(3) fails to take discharge preventive or preparedness measures required under chapter 115E; or

(4) fails to install or use vapor recovery equipment during the transfer of gasoline from a transport delivery vehicle to an underground storage tank as required in section 116.49, subdivisions 3 and 4.

(b) In addition, Pollution Control Agency staff designated by the commissioner may issue citations to owners and operators of facilities who violate sections 116.46 to 116.50 and Minnesota Rules, chapters 7150 and 7151 and parts 7001.4200 to 7001.4300. A citation issued under this subdivision must include a requirement that the person cited remove and properly dispose of or otherwise manage the waste or discharged oil or hazardous substance, reimburse any government agency that has disposed of the waste or discharged oil or hazardous substance and contaminated debris for the reasonable costs of disposal, or correct any storage tank violations.

(c) Citations for violations of sections 115E.045 and 116.46 to 116.50 and Minnesota Rules, chapters 7150 and 7151, may be issued only after the owners and operators have had a 60-day period to correct violations stated in writing by Pollution Control Agency staff, unless there is a discharge associated with the violation or the violation is a repeat violation from a previous inspection.

Subd. 2. **Penalty amount.** The citation must impose the following penalty amounts: (1) $100 per major appliance, as defined in section 115A.03, subdivision 17a, up to a maximum of $2,000;

(2) $25 per waste tire, as defined in section 115A.90, subdivision 11, up to a maximum of $2,000;

(3) $25 per lead acid battery governed by section 115A.915, up to a maximum of $2,000; (4) $1 per pound of other solid waste or $20 per cubic foot up to a maximum of $2,000; (5) up to $200 for any amount of waste that escapes from a vehicle used for the transportation of solid waste if, after receiving actual notice that waste has escaped the vehicle, the person or company transporting the waste fails to immediately collect the waste;

(6) $50 per violation of rules adopted under section 116.49, relating to underground storage tank system design, construction, installation, and notification requirements, up to a maximum of $2,000;

(7) $500 per violation of rules adopted under section 116.49, relating to upgrading of existing underground storage tank systems, up to a maximum of $2,000 per tank system;

(8) $250 per violation of rules adopted under section 116.49, relating to underground storage tank system general operating requirements, up to a maximum of $2,000;

(9) $250 per violation of rules adopted under section 116.49, relating to underground storage tank system release detection requirements, up to a maximum of $2,000;

(10) $50 per violation of rules adopted under section 116.49, relating to out-of-service underground storage tank systems and closure, up to a maximum of $2,000;

(11) $50 per violation of sections 116.48 to 116.491 relating to underground storage

tank system notification, monitoring, environmental protection, and tank installers training and certification requirements, up to a maximum of $2,000;

(12) $25 per gallon of oil or hazardous substance discharged which is not reported or recovered under section 115.061, up to a maximum of $2,000;

(13) $1 per gallon of oil or hazardous substance being stored, transported, or otherwise handled without the prevention or preparedness measures required under chapter 115E, up to a maximum of $2,000;

(14) $250 per violation of Minnesota Rules, parts 7001.4200 to 7001.4300 or chapter 7151, related to aboveground storage tank systems, up to a maximum of $2,000; and

(15) $250 per delivery made in violation of section 116.49, subdivision 3 or 4, levied against:

(i) the retail location if vapor recovery equipment is not installed or maintained properly; (ii) the carrier if the transport delivery vehicle is not equipped with vapor recovery equipment; or

(iii) the driver for failure to use supplied vapor recovery equipment.

Subd. 3. **Appeals.** Citations may be appealed under the procedures in section 116.072, subdivision 6, if the person requests a hearing by notifying the commissioner in writing within 15 days after receipt of the citation. If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.

Subd. 4. **Enforcement of field citations.** Field citations may be enforced under section 116.072, subdivisions 9 and 10.

Subd. 5. **Cumulative remedy.** The authority to issue field citations is in addition to other remedies available under statutory or common law, except that the state may not seek penalties under any other provision of law for the incident subject to the citation.

History: *1994 c 585 s 33; 1998 c 379 s 3,4; 1999 c 231 s 148,149; 2000 c 488 art 3 s 28; 2003 c 128 art 1 s 138,139; 2004 c 169 s 2,3*

116.074 NOTICE OF PERMIT CONDITIONS TO LOCAL GOVERNMENTS.

Before the agency grants a permit for a solid waste facility, allows a significant alteration of permit conditions or facility operation, or allows the change of a facility permittee, the commissioner must notify the county and town where the facility is located, contiguous counties and towns, and all home rule charter and statutory cities within the contiguous townships. If a local government unit requests a public meeting within 30 days after being notified, the agency must hold at least one public meeting in the area near the facility before granting the permit, allowing the alterations in the permit conditions or facility operation, or allowing the change of the facility permittee.

History: *1988 c 685 s 24*

116.075 HEARINGS AND RECORDS PUBLIC.

Subdivision 1. **Public records.** All hearings conducted by the Pollution Control Agency pursuant to sections 103F.701 to 103F.755 and chapters 115 and 116 shall be open to the public, and the transcripts thereof are public records. All final records, studies, reports, orders, and other documents prepared in final form by order of, or for the consideration of, the agency, are public records. Any documents designated as public records by this section may be inspected by members of the public at all reasonable hours and places under such rules as the agency shall promulgate.

Subd. 2. **Confidential records; conditions; exceptions.** Any records or other information obtained by the Pollution Control Agency or furnished to the agency by the owner or operator of one or more air contaminant or water or land pollution sources which are certified by said owner or operator, and said certification, as it applies to water pollution sources, is approved in writing by the commissioner, to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner or operator, shall be only for the confidential use of the agency in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air and land resources so long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the agency may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to comply with federal law and regulations, to the extent and for the purpose of such federally required disclosure.

History: *1971 c 887 s 1; 1973 c 374 s 20; 1985 c 248 s 70; 1987 c 186 s 15; 1990 c 391 art 10 s 3; 2011 c 107 s 107*

116.08 [Repealed, 1973 c 374 s 22]

116.081 PROHIBITIONS; AIR CONTAMINANT AND WASTE FACILITIES AND SYSTEMS.

Subdivision 1. **Permit required.** It shall be unlawful for any person to construct, install or operate an emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, storage facility, or system or facility related to the collection, transportation, storage, processing, or disposal of waste, or any part thereof unless otherwise exempted by any agency rule now in force or hereinafter adopted, until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency. The requirements of this section shall not be applied to motor vehicles.

Subd. 2. **Permits previously issued.** Any permit authorized by section 116.07, subdivision 4a issued prior to June 8, 1971, and any rule which required said prior permit, shall be valid and remain enforceable subject, however, to the right of the agency to modify or revoke said permit or amend said rule in the same manner as other permits and rules.

Subd. 3. **Permission for alteration.** It shall be unlawful for any person to make any change in, addition to or extension of any existing system or facility specified in subdivision 1, or part thereof, that would materially alter the method or the effect of treating or disposing of any air contaminant or solid waste, or to operate said system or facility, or part thereof, so changed, added to, or extended until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency.

History: *1971 c 904 s 2; 1974 c 483 s 8; 1980 c 564 art 11 s 11; 1985 c 248 s 70*

116.082 OPEN BURNING OF LEAVES; LOCAL ORDINANCES.

Subject to sections 88.16, 88.17 and 88.22, but notwithstanding any law or rule to the contrary, a town or home rule charter or statutory city located outside the metropolitan area as defined in section 473.121, subdivision 2, by adoption of an ordinance, may permit the open burning of dried leaves within the boundaries of the town or city. The ordinance shall limit leaf burning to the period between September 15 and December 1 and shall set forth limits and conditions on leaf burning to minimize air pollution and fire danger and any other hazards or nuisance conditions. No open burning of leaves shall take place during an air pollution alert, warning or emergency declared by the agency. Any town or city adopting an ordinance pursuant to this section shall submit a copy of the ordinance to the agency and the Department of Natural Resources.

History: *1982 c 569 s 37* **116.09** [Repealed, 1969 c 1046 s 12]

116.091 SYSTEMS AND FACILITIES.

Subdivision 1. **Information.** Any person operating any emission system or facility specified in chapter 114C or section 116.081, subdivision 1, when requested by the Pollution Control Agency, shall furnish to it any information which that person may have which is relevant to pollution or the rules or provisions of this chapter.

Subd. 2. **Examination of records.** The agency or any employee or agent thereof, when authorized by it, may examine any books, papers, records or memoranda pertaining to the operation of any system or facility specified in subdivision 1.

Subd. 3. **Access to premises.** Whenever the agency deems it necessary for the purposes of this chapter or chapter 114C, the agency or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

History: *1971 c 904 s 3; 1985 c 248 s 70; 1986 c 444; 1996 c 437 s 22,23*

116.10 POLICY; LONG-RANGE PLAN; PURPOSE.

Consistent with the policy announced herein and the purposes of Laws 1963, chapter 874, the Pollution Control Agency shall prepare a long-range plan and program for the effectuation of said policy.

History: *1969 c 1046 s 10; 1Sp1981 c 4 art 2 s 12; 2012 c 272 s 74*

116.101 HAZARDOUS WASTE CONTROL AND SPILL CONTINGENCY PLAN.

The Pollution Control Agency shall study and investigate the problems of hazardous waste control and shall develop a statewide hazardous waste spill contingency plan detailing the location of hazardous waste facilities and storage sites throughout the state and the needs relative to the interstate transportation of hazardous waste.

The statewide hazardous waste spill contingency plan shall be incorporated into the statewide hazardous waste management plans of the Pollution Control Agency. The Pollution Control Agency shall develop an informational reporting system of hazardous waste quantities generated, processed, and disposed of in the state.

History: *1974 c 346 s 5; 1980 c 564 art 11 s 12; 1989 c 335 art 1 s 269; 1991 c 199 art 2 s 1; 1995 c 247 art 2 s 54; 1Sp2005 c 1 art 2 s 161*

116.11 EMERGENCY POWERS.

If there is imminent and substantial danger to the health and welfare of the people of the state, or of any of them, as a result of the pollution of air, land, or water, the agency may by emergency order direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. The agency order or temporary restraining order shall remain effective until notice, hearing, and determination pursuant to other provisions of law, or, in the interim, as otherwise ordered. A final order of the agency in these cases shall be appealable in accordance with chapter 14.

History: *1969 c 1046 s 11; 1973 c 374 s 21; 1982 c 424 s 130; 1983 c 247 s 52*

116.12 HAZARDOUS WASTE ADMINISTRATION FEES.

Subdivision 1. **Fee schedules.** The agency shall establish the fees provided in subdivisions 2 and 3 to cover expenditures of amounts appropriated from the environmental fund to the agency for permitting, monitoring, inspection, and enforcement expenses of the hazardous waste activities of the agency.

Subd. 2. **Hazardous waste generator fee.** (a) Each generator of hazardous waste shall pay a fee on the hazardous waste generated by that generator. The agency shall base the amount of fees on the quantity of hazardous waste generated and may charge a minimum fee for each generator not exempted by the agency. In adopting the fee rules, the agency shall consider:

(1) reducing the fees for generators using environmentally beneficial hazardous waste management methods, including recycling;

(2) the agency resources allocated to regulating the various sizes or types of generators; (3) adjusting fees for

sizes or types of generators that would bear a disproportionate share
of the fees to be collected; and

(4) whether implementing clauses (1) to (3) would require excessive staff time compared to staff time available for providing technical assistance to generators or would make the fee system difficult for generators to understand.

(b) The agency may exempt generators of very small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee.

(c) The agency shall reduce fees charged to generators in counties which also charge generator fees to reflect a lesser level of activity by the agency in those counties. The fees charged by the agency in those counties shall be collected by the counties in the manner in which and at the same time as those counties collect their generator fees. Counties shall remit to the agency
the amount of the fees charged by the agency by the last day of the month following the month in which they were collected. If a county does not collect or remit generator fees due to the agency, the agency may collect fees from generators in that county according to rules adopted under paragraph (a).

(d) The agency may not impose a volume-based fee under this subdivision on material that is reused at the facility where the material is generated in a manner that the facility owner or operator can demonstrate does not increase the toxicity of, or the level of hazardous substances
or pollutants or contaminants in, products that leave the facility. The agency may impose a flat annual fee on a facility that generates the type of material described in the preceding sentence, provided that the fee reflects the reasonable and necessary costs of inspections of the facility.

Subd. 3. **Facility fees.** The agency shall charge hazardous waste facility fees including, but not limited to, an original permit fee, a reissuance fee, a major modification fee, and an annual facility fee for any hazardous waste facility regulated by the agency. The agency may exempt facilities otherwise subject to the fee if regulatory oversight of those facilities is minimal. The agency may include reasonable and necessary costs of any environmental review required under chapter 116D in the original permit fee for any hazardous waste facility.

History: *1983 c 121 s 25; 1Sp1985 c 13 s 234; 1986 c 444; 1989 c 335 art 4 s 106; 1992 c 593 art 1 s 32; 1993 c 279 s 1; 1995 c 220 s 105; 1999 c 250 art 3 s 19*

116.125 NOTIFICATION OF FEE INCREASES.

Before the Pollution Control Agency adopts a fee increase to cover an unanticipated shortfall in revenues, the commissioner shall give written notice of the proposed increase to the chairs of the senate Committee on Finance, the house of representatives Committee on Ways and Means, the senate and house of representatives committees having jurisdiction over environment and natural resources, and the senate and house of representatives committees having jurisdiction over environment and natural resources finance.

History: *1995 c 220 s 106; 1Sp2005 c 1 art 2 s 161*

116.14 HAZARDOUS WASTE FACILITIES; LIABILITY OF GUARANTOR.

If the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment, a person having a claim arising from conduct for which evidence of financial responsibility must be provided under the rules adopted under section 116.07, subdivision 4b, may bring the claim directly against the guarantor providing the evidence of financial responsibility. For the purposes of this section, "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for that owner or operator. In an action against a guarantor under this section, the guarantor is entitled to invoke the rights and defenses that would have been available to the owner or operator if the action had been brought against the owner
or operator and that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator. In an action under this section, the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the owner or operator under the rules. Nothing in this section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section shall be
construed to diminish the liability of any person under chapter 115B or the federal Superfund Act, United States Code, title 42, section 9601 et seq., or other applicable law.

History: *1987 c 391 s 1*

116.15 [Repealed, 1973 c 423 s 10]

116.155 REMEDIATION FUND.

Subdivision 1. **Creation.** The remediation fund is created as a special revenue fund in the state treasury to provide a reliable source of public money for response and corrective actions to address releases of hazardous substances, pollutants or contaminants, agricultural chemicals, and petroleum, and for environmental response actions at qualified landfill facilities for which the agency has assumed such responsibility, including perpetual care of such facilities. The specific purposes for which the general portion of the fund may be spent are provided in subdivision
2. In addition to the general portion of the fund, the fund contains two accounts described in subdivisions 4 and 5.

Subd. 2. **Appropriation.** (a) Money in the general portion of the remediation fund is appropriated to the agency and the commissioners of agriculture and natural resources for the following purposes:

(1) to take actions related to releases of hazardous substances, or pollutants or contaminants as provided in section 115B.20;

(2) to take actions related to releases of hazardous substances, or pollutants or contaminants, at and from qualified landfill facilities as provided in section 115B.42, subdivision 2;

(3) to provide technical and other assistance under sections 115B.17, subdivision 14,
115B.175 to 115B.179, and 115C.03, subdivision 9;

(4) for corrective actions to address incidents involving agricultural chemicals, including related administrative, enforcement, and cost recovery actions pursuant to chapter 18D; and

(5) together with any amount approved for transfer to the agency from the petroleum tank fund by the commissioner of management and budget, to take actions related to releases of petroleum as provided under section 115C.08.

(b) The commissioner of management and budget shall allocate the amounts available in any biennium to the agency, and the commissioners of agriculture and natural resources for the purposes provided in this subdivision based upon work plans submitted by the agency and the commissioners of agriculture and natural resources, and may adjust those allocations upon submittal of revised work plans. Copies of the work plans shall be submitted to the chairs of the senate and house of representatives committees having jurisdiction over environment and environment finance.

Subd. 3. **Revenues.** The following revenues shall be deposited in the general portion of the remediation fund:

(1) response costs and natural resource damages related to releases of hazardous substances, or pollutants or contaminants, recovered under sections 115B.17, subdivisions 6 and 7, 115B.443, 115B.444, or any other law;

(2) money paid to the agency or the Agriculture Department by voluntary parties who have received technical or other assistance under sections 115B.17, subdivision 14, 115B.175 to 115B.179, and 115C.03, subdivision 9;

(3) money received in the form of gifts, grants, reimbursement, or appropriation from any source for any of the purposes provided in subdivision 2, except federal grants; and

(4) interest accrued on the fund.

Subd. 4. **Dry cleaner environmental response and reimbursement account.** The dry cleaner environmental response and reimbursement account is as described in sections 115B.47 to 115B.51.

Subd. 5. **Metropolitan landfill contingency action trust account.** The metropolitan landfill contingency action trust account is as described in section 473.845.

Subd. 6. **Transfers to fund.** The remediation fund shall also be supported by transfers as may be authorized by the legislature from time to time from the environmental fund.

History: *2003 c 128 art 2 s 39; 1Sp2005 c 1 art 2 s 161; 2008 c 179 s 35; 2009 c 101 art 2 s 109; 2010 c 382 s 19*

116.156 [Repealed, 2009 c 93 art 1 s 47]

WATER POLLUTION CONTROL PROGRAM

116.16 MINNESOTA STATE WATER POLLUTION CONTROL PROGRAM.

Subdivision 1. **Purpose.** A Minnesota state water pollution control program is created to provide money to be granted or loaned to agencies and subdivisions of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the long-range state policy, plan, and program established in sections 115.41 to 115.63, and in accordance with standards adopted pursuant to law by the Minnesota Pollution Control Agency. It is determined that state financial assistance for the construction of water pollution prevention and abatement facilities for municipal disposal systems and combined sewer overflow is a public purpose and a proper function of state government, in that the state is trustee of the waters of the state and such financial assistance is necessary to protect the purity of state waters, and to protect the public health of the citizens of the state, which is endangered whenever pollution enters state waters at one point and flows to other points in the state.

Subd. 2. **Definitions.** In this section and sections 116.17 and 116.18:

(1) agency means the Minnesota Pollution Control Agency created by this chapter;

(2) municipality means any county, city, town, the metropolitan council, or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state;

(3) water pollution control program means the Minnesota state water pollution control program created by subdivision 1;

(4) bond account means the Minnesota state water pollution control bond account created in the state bond fund by section 116.17, subdivision 4;

(5) terms defined in section 115.01 have the meanings therein given them;

(6) the eligible cost of any municipal project, except as otherwise provided in clause (7), includes (a) preliminary planning to determine the economic, engineering, and environmental feasibility of the project; (b) engineering, architectural, legal, fiscal, economic, sociological, project administrative costs of the agency and the municipality, and other investigations and studies; (c) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the planning, design, and construction of the project; (d) erection, building, acquisition, alteration, remodeling, improvement, and extension of disposal systems; (e) inspection and supervision of construction; and (f) all other expenses of the kinds enumerated in section 475.65;

(7) for state grants under the state independent grants program, the eligible cost includes the acquisition of land for stabilization ponds, the construction of collector sewers for totally unsewered statutory and home rule charter cities and towns described under section 368.01,
subdivision 1 or 1a, that are in existence on January 1, 1985, and the provision of reserve capacity sufficient to serve the reasonable needs of the municipality for 20 years in the case of treatment works and 40 years in the case of sewer systems. For state grants under the state independent grants program, the eligible cost does not include the provision of service to seasonal homes, or cost increases from contingencies that exceed three percent of as-bid costs or cost increases from unanticipated site conditions that exceed an additional two percent of as-bid costs;
(8) authority means the Minnesota Public Facilities Authority established in section 446A.03.

Subd. 3. **Receipts.** The commissioner of management and budget shall deposit in the state treasury and credit to a separate account in the bond proceeds fund as received all proceeds of Minnesota water pollution control bonds, except accrued interest and premiums received upon the sale thereof. All money granted to the state for such purposes by the federal government or any agency thereof must be credited to a separate account in the federal fund. All such receipts are annually appropriated for the permanent construction and improvement

purposes of the water pollution control program, and shall be and remain available for expenditure in accordance with this section and federal law until the purposes for which such appropriations were made have been accomplished or abandoned.

Subd. 4. **Disbursements.** Disbursements for the water pollution control program shall be made by the commissioner of management and budget at the times and in the amounts requested by the agency or the Minnesota Public Facilities Authority in accordance with the applicable state and federal law governing such disbursements; except that no appropriation or loan of state
funds for any project shall be disbursed to any municipality until and unless the agency has by resolution determined the total estimated cost of the project, and ascertained that financing of the project is assured by:

(1) a grant to the municipality by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state; or

(2) a grant of funds appropriated by state law; or

(3) a loan authorized by state law; or

(4) the appropriation of proceeds of bonds or other funds of the municipality to a fund for the construction of the project; or

(5) any or all of the means referred to in clauses (1) to (4); and

(6) an irrevocable undertaking, by resolution of the governing body of the municipality, to use all funds so made available exclusively for the construction of the project, and to pay any additional amount by which the cost of the project exceeds the estimate, by the appropriation
to the construction fund of additional municipal funds or the proceeds of additional bonds to be issued by the municipality; and

(7) conformity of the project and of the loan or grant application with the state water pollution control plan as certified to the federal government and with all other conditions under applicable state and federal law for a grant of state or federal funds of the nature and in the amount involved.

Subd. 5. **Rules.** (a) The agency shall promulgate permanent rules for the administration of grants and loans authorized to be made under the water pollution control program, which rules, however, shall not be applicable to the issuance of bonds by the commissioner of management and budget as provided in section 116.17. The rules shall contain as a minimum:

(1) procedures for application by municipalities;

(2) conditions for the administration of the grant or loan;

(3) criteria for the ranking of projects in order of priority for grants or loans, based on factors including the extent and nature of pollution, technological feasibility, assurance of proper operation, maintenance and replacement, and participation in multimunicipal systems; and

(4) such other matters as the agency and the commissioner find necessary to the proper administration of the grant program.

(b) The agency shall award the amount of additional priority points necessary to place a project in the fundable range of the intended use plan if the agency determines that the project would repair a facility that is an imminent threat to discharge untreated or partially treated sewage to the Boundary Waters Canoe Area Wilderness if it fails.

(c) For purposes of awarding independent state grants, the agency may by rule waive the federal 20-year planning requirement for municipalities with a population of less than 1,500.

Subd. 6. [Repealed, 1984 c 597 s 55] Subd. 7. [Repealed, 1984 c 597 s 55]

Subd. 8. **Loans.** Each loan made to a municipality from the proceeds of state bonds, when authorized by law, shall be evidenced by resolutions adopted by the agency and by the governing body of the municipality, obligating the municipality to repay the loan to the commissioner of management and budget, for credit to the water pollution control bond account in the state bond fund, in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within such period as may be provided by the agency in accordance with the law authorizing the loan, with interest on the declining balance thereof at a rate not less than the average annual interest rate on state bonds of the issue from the proceeds of which the loan was made, and obligating the municipality to provide money for such repayment from user charges, taxes, special assessments, or other funds available to it. For the purpose of repaying such loans the municipality by resolution of its governing body may undertake to fix rates and charges for disposal system service and enter into contracts for the payment by others of costs of construction, maintenance, and use of the project in accordance with section 444.075, and may pledge the revenues derived therefrom, and the agency may condition any such loans upon the establishment of rates and charges or the execution of contracts sufficient to produce the revenues pledged.

Subd. 9. **Applications.** Applications by municipalities for grants or loans under the water pollution control program shall be made to the authority on forms requiring information prescribed by rules of the agency. The authority shall send the application to the agency within ten days of receipt. The commissioner shall certify to the authority those applications which appear to meet the criteria set forth in sections 116.16 to 116.18 and the rules promulgated hereunder, and the authority shall award the grants or loans on the basis of the criteria and priorities established by the agency in its rules and in sections 116.16 to 116.18. A municipality that is designated under agency rules to receive state or federal funding for a project and that does not make a timely application for or that refuses the funding is not eligible for either state or federal funding for that project in that fiscal year or the subsequent year.

Subd. 9a. **Subsequent grants.** A municipality awarded a final grant of funding for a project under the program established by the 1972 Federal Water Pollution Control Act amendments
or the state independent grants program is not eligible for additional funding to replace that project under the federal program or the state program, unless the funding is necessary as a
result of subsequent changes in state water quality standards, effluent limits, or technical design requirements, or for a municipality awarded the final grant before October 1, 1984, if the funding is necessary for the provision of increased capacity.

Subd. 10. **Costs.** To the extent the agency administers or engages in activities necessary for administering any aspects of the Federal Water Pollution Control Act as amended, United States Code, title 33, section 1251 et seq., the agency may assess the costs of such administrative activities, in an amount not to exceed that allowed by federal law, against the federal construction grant funds allotted to the state.

Subd. 11. **Awards of grants and loans.** Upon certification by the commissioner of the Pollution Control Agency, the authority shall notify a municipality that is to receive a grant or loan and advise the municipality of the grant agreement or loan form or other document that must be executed to complete the grant or loan. Upon certification from the commissioner that the work has been completed and that payment is proper, the authority shall pay to the municipality the periodic grant or loan payment.

Subd. 12. **Amendments.** A municipality that seeks an amendment to a previously awarded grant or loan shall follow the procedure in subdivision 9 for applying to the authority. The request for a grant or loan amendment must be forwarded by the authority to the commissioner of the Pollution Control Agency for consideration, and the authority shall process a grant or loan amendment that is approved by the commissioner.

History: *Ex1971 c 20 s 1; 1973 c 123 art 5 s 7; 1973 c 423 s 1-6; 1973 c 492 s 14; 1976 c 2 s 53; 1976 c 76 s 5; 1977 c 418 s 1; 1980 c 397 s 1; 1980 c 509 s 27; 1983 c 301 s 115; 1984 c 597 s 42-46; 1984 c 640 s 32; 1Sp1985 c 14 art 19 s 1,2; 1987 c 186 s 15; 1987 c 386 art 3 s1-6; 1989 c 271 s 16-21; 1990 c 564 s 1,2; 1994 c 628 art 3 s 8; 1995 c 233 art 2 s 56; 1998 c 404 s 37; 2003 c 112 art 2 s 16,50; 2009 c 101 art 2 s 109*

116.162 [Repealed, 1996 c 463 s 61]

116.163 AGENCY FUNDING APPLICATION REVIEW.

Subdivision 1. **Construction grant and loan applications.** The agency shall, pursuant to agency rules and within 90 days of receipt of a completed application for a wastewater treatment facility construction grant or loan, grant or deny the application and notify the municipality of the agency's decision. The time for consideration of the application by the agency may be extended up to 180 days if the municipality and the agency agree it is necessary.

Subd. 2. **Limitation on municipal planning time.** A municipality shall complete all planning work required by the agency for award of a grant or loan, and be ready to advertise for bids for construction, within two years of receipt of grant or loan funds under subdivision 1. The planning time may be extended automatically by the amount of time the agency exceeds its
90-day review under subdivision 1.

Subd. 3. **Bid review.** After a municipality has accepted bids for construction of a wastewater treatment project, the agency must review the bids within 30 days of receipt.

History: *1986 c 465 art 3 s 4*

116.165 INSPECTION RESPONSIBILITY.

When a wastewater treatment plant is constructed with federal funds and a federal agency conducts inspections of the plant, the owner of the plant or the owner's designee must conduct inspections and forward all inspection documents required by the agency to the agency for its review.

History: *1986 c 465 art 3 s 5*

116.167 [Repealed, 1987 c 386 art 3 s 30]

116.17 MINNESOTA STATE WATER POLLUTION CONTROL BONDS.

Subdivision 1. **Purpose and appropriation.** For the purpose of providing money to be appropriated or loaned to municipalities under the Minnesota state water pollution control program for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the provisions of section 116.16, when such appropriations or loans are authorized by law and funds therefor are requested by the agency, the commissioner of management and budget shall sell and issue bonds of the state of Minnesota for the prompt and full payment of which, with interest thereon, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be issued pursuant to this section only as authorized by a law specifying the purpose thereof and the maximum amount of the proceeds authorized to be expended for this purpose. Any act authorizing the issuance of bonds for this purpose, together with this section, constitutes complete authority for such issue, and such bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by resolution of the agency and upon authorization as provided in subdivision 1 the commissioner of management and budget shall sell and issue Minnesota state water pollution control bonds in the aggregate amount requested, upon sealed bids and upon such notice, at such price, in such form and denominations, bearing
interest at a rate or rates, maturing in amounts and on dates, with or without option of prepayment upon notice and at specified times and prices, payable at a bank or banks within or outside the state, with provisions, if any, for registration, conversion, and exchange and for the issuance
of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds, and

in accordance with further provisions, as the commissioner of management and budget shall determine, subject to the approval of the attorney general, but not subject to chapter 14, including section 14.386. The bonds shall be

executed by the commissioner of management and budget under official seal. The signature of the commissioner on the bonds and any appurtenant interest coupons and the seal may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of the commissioner or of an authorized representative of a bank designated by the commissioner as registrar or other authenticating agent. The commissioner of management and budget shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. **Expenses.** All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for such purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the bond proceeds fund, and the amounts necessary therefor are appropriated from that fund; provided that if any amount is specifically appropriated for this purpose in an act authorizing the issuance of bonds pursuant to this section, such expenses shall be limited to the amount so appropriated.

Subd. 4. **State water pollution control bond account in state bond fund.** The commissioner of management and budget shall maintain in the state bond fund a separate bookkeeping account which shall be designated as the state water pollution control bond account, to record receipts and disbursements of money transferred to the fund to pay Minnesota state water pollution control bonds and income from the investment of such money, which income shall be credited to the account in each fiscal year in an amount equal to the approximate average return that year on all funds invested by the commissioner of management and budget, as determined by the commissioner of management and budget, times the average balance in the account that year.

Subd. 5. **Appropriations to bond account.** The premium and accrued interest received on each issue of Minnesota state water pollution control bonds, and all loan payments received under the provisions of section 116.16, subdivision 5, shall be credited to the bond account. All income from the investment of Minnesota state water pollution control bond proceeds, shall also be credited to the bond account. In order to reduce the amount of taxes otherwise required to be levied, there shall also be credited to the bond account therein from the general fund in the state treasury, on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand therein, to pay all Minnesota water pollution control bonds and interest thereon due and to become due to and including July 1 in the second ensuing year. All money so credited and all income from the investment thereof is annually appropriated to the bond account for the payment of such bonds and interest thereon, and shall be available in the bond account prior to the levy of the tax in any year required by the Constitution, article XI, section 7. The commissioner of management and budget is directed to make the appropriate entries in the accounts of the respective funds.

Subd. 6. **Tax levy.** On or before December 1 in each year the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money then and theretofore credited to the bond account, to pay the entire amount of principal and interest then and theretofore due and principal and interest to become due on or before July 1 in the second year thereafter on Minnesota water pollution control bonds. This tax shall be subject to no limitation of rate or amount until all such bonds and interest thereon are fully paid. The proceeds of this tax are appropriated and shall be credited to the state bond fund, and the principal of and interest on the bonds are payable from such proceeds, and the whole thereof, or so much as may be necessary, is appropriated for such payments. If at any time there is insufficient money from the proceeds of such taxes to pay the principal and interest when due on Minnesota water pollution control bonds, such principal and interest shall be paid out of the general fund in the state treasury, and the amount necessary therefor is hereby appropriated.

History: *Ex1971 c 20 s 2; 1973 c 423 s 7; 1973 c 492 s 14; 1976 c 2 s 172; 1982 c 424 s 130; 1983 c 301 s 116; 1Sp1985 c 14 art 4 s 14; 1989 c 271 s 22-24; 1995 c 233 art 2 s 56; 1997 c 187 art 5 s 14; 2003 c 112 art 2 s 17,50; 2009 c 101 art 2 s 109*

116.18 WATER POLLUTION CONTROL FUNDS; APPROPRIATIONS AND BONDS.

Subdivision 1. **Appropriation from bond proceeds fund.** The sum of $167,000,000, or so much thereof as may be necessary, is appropriated from the bond proceeds fund in the state treasury to the Pollution Control Agency, for the period commencing on July 23, 1971, to be granted and disbursed to municipalities and agencies of the state in aid of the construction of projects conforming to section 116.16, in accordance with the rules, priorities, and criteria therein described.

Subd. 2. [Repealed, 1Sp1985 c 14 art 19 s 38]

Subd. 2a. **State matching grants program beginning October 1, 1987.** For projects tendered, on or after October 1, 1987, a grant of federal money under section 201(g), section 202, 203, or 206(f) of the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1251 to 1376, at 55 percent or more of the eligible cost for construction of the treatment works, state money appropriated under subdivision 1 must be expended for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subd. 3. [Repealed, 1973 c 423 s 10]

Subd. 3a. **State independent grants program.** (a) The Public Facilities Authority must adopt the objective of maintaining financial assistance to municipalities that the agency has listed on its annual municipal project list of approximately 50 percent of the eligible cost of construction for municipalities with populations over 25,000 and 80 percent of the eligible cost for municipalities with populations of 25,000 or less. Financial assistance may be provided by the Public Facilities Authority through a combination of low interest loans under the state revolving fund under chapter 446A, independent state grants, and other financial assistance available to the municipality. The Public Facilities Authority may award independent grants for projects certified by the state pollution control commissioner for 35 percent or, if the population of the municipality is 25,000 or less, 65 percent of the eligible cost of construction. These grants may be awarded in separate steps for planning and design in addition to actual construction. Not more than $2,000,000 of the total amount of grants awarded under this subdivision in any single fiscal year may be awarded to a single grantee.

(b) Up to $1,000,000 of the money to be awarded as grants under this subdivision in any single fiscal year shall be set aside for municipalities having substantial economic development projects that cannot come to fruition without municipal wastewater treatment improvements. The agency shall forward its municipal needs list to the authority at the beginning of each fiscal year, and the authority shall review the list and identify those municipalities having substantial economic development projects. After the available money is allocated to municipalities in accordance with agency priorities, the set-aside shall be used by the authority to award grants to remaining municipalities that have been identified.

(c) Grants may also be awarded under this subdivision to reimburse municipalities willing to proceed with projects and be reimbursed in a subsequent year at the grant percentage determined in paragraph (a).

(d) Municipalities that entered into an intent to award agreement with the agency under paragraph (c), in the state fiscal years 1985 to 1988, will be reimbursed at 55 percent or, if the population of the municipality is 25,000 or less, 85 percent of the eligible cost of construction.

Subd. 3b. **Capital cost component grant.** (a) The definitions of "capital cost component," "capital cost component grant," "service fee," "service contract," and "private vendor" in section 471A.02 apply to this subdivision.

(b) Beginning in fiscal year 1989, up to $1,500,000 of the money to be awarded as grants under subdivision 3a in any single fiscal year may be set aside for the award of capital cost component grants to municipalities on the municipal needs list for part of the capital cost

component of the service fee under a service contract for a term of at least 20 years with a private vendor for the purpose of constructing and operating wastewater treatment facilities.

(c) The amount granted to a municipality shall be 50 percent of the average total eligible costs of municipalities of similar size recently awarded state and federal grants under the provisions of subdivisions 2a and 3a and the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299. Federal and state eligibility requirements for determining the amount of grant dollars to be awarded to a municipality are not applicable to municipalities awarded capital cost component grants. Federal and state eligibility requirements for determining which cities qualify for state and federal grants are applicable, except as provided in this subdivision.

(d) Except as provided in this subdivision, municipalities receiving capital cost component grants shall not be required to comply with federal and state regulations regarding facilities planning and procurement contained in sections 116.16 to 116.18, except those necessary to issue a national pollutant discharge elimination system permit or state disposal system permit and those necessary to assure that the proposed facilities are reasonably capable of meeting the conditions of the permit over 20 years. The municipality and the private vendor shall be parties to the permit. Municipalities receiving capital cost component grants may also be exempted by rules of the agency from other state and federal regulations relating to the award of state and federal grants for wastewater treatment facilities, except those necessary to protect the state from fraud or misuse of state funds.

(e) Funds shall be distributed from the set-aside to municipalities that apply for the funds in accordance with these provisions in the order of their ranking on the municipal needs list.

(f) The authority shall award capital cost component grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' projects and applications have been reviewed and approved in accordance with this subdivision and agency rules adopted under paragraph (g).

(g) The agency shall adopt permanent rules to provide for the administration of grants awarded under this subdivision.

(h) The commissioner of employment and economic development may adopt rules containing procedures for administration of the authority’s duties as set forth in paragraph (f).

Subd. 3c. **Individual on-site treatment systems and alternative discharging sewage systems program.** (a) Beginning in fiscal year 1989, up to ten percent of the money to be awarded as grants under subdivision 3a in any single fiscal year, up to a maximum of $1,000,000, may be set aside for the award of grants by the agency to municipalities to reimburse owners of individual on-site wastewater treatment systems or alternative discharging sewage systems for a part of the costs of upgrading or replacing the systems.

(b) An individual on-site treatment system is a wastewater treatment system, or part thereof, that uses soil treatment and disposal technology to treat 5,000 gallons or less of wastewater per day from dwellings or other establishments.

(c) An alternative discharging sewage system is a system permitted under section 115.58 that:

(1) serves one or more dwellings and other establishments;

(2) discharges less than 10,000 gallons of water per day; and

(3) uses and treatment and disposal methods other than subsurface soil treatment and disposal.

(d) Municipalities may apply yearly for grants of up to 50 percent of the cost of replacing or upgrading individual on-site treatment systems, including conversion to an alternative discharging sewage system, within their jurisdiction, up to a limit of $5,000 per system or per connection to a cluster system. Before agency approval of the grant application, a municipality must certify that:

(1) it has adopted and is enforcing the requirements of Minnesota Rules governing subsurface sewage treatment systems;

(2) the existing systems for which application is made do not conform to those rules, are at least 20 years old, do not serve seasonal residences, and were not constructed with state or federal funds; and

(3) the costs requested do not include administrative costs, costs for improvements or replacements made before the application is submitted to the agency unless it pertains to the plan finally adopted, and planning and engineering costs other than those for the individual site evaluations and system design.

(e) The federal and state regulations regarding the award of state and federal wastewater treatment grants do not apply to municipalities or systems funded under this subdivision, except as provided in this subdivision.

(f) The agency shall adopt permanent rules regarding priorities, distribution of funds, payments, inspections, procedures for administration of the agency's duties, and other matters that the agency finds necessary for proper administration of grants awarded under this subdivision.

Subd. 3d. **Adjustments to matching grants and state independent grants.** A municipality with a population of 25,000 or less that was tendered a state matching grant under subdivision 2a, or a state independent grant under subdivision 3a, or a federal grant under the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299, from October 1, 1984, through September 30, 1987, shall, after the municipality has awarded bids for construction of the treatment works, and upon request, receive a grant increase of 2.5 percent of the total eligible costs of construction, up to the maximum entitlement for grants awarded on or after October 1, 1987, under subdivisions 2a and 3a. The municipality must inform other entities that are providing funding for construction of the treatment works of the grant increase, and repay any funds to which it is not entitled. A municipality must not receive funding for more than 100 percent of the total costs of the treatment works. Documentation of money received from other sources must be submitted with the request for the grant increase. Money remaining after all grants have been awarded under this subdivision may be used for the award of grants under subdivisions 2a and 3a. An adjustment grant awarded after July 1, 1989, that is a continuation of a previously awarded adjustment grant must be awarded through a letter from the agency to the municipality stating the grant amount. A formal grant agreement is not required.

Subd. 4. **Bond authorization.** For the purpose of providing money appropriated in subdivision 1 for grants to municipalities and agencies of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution, the commissioner of management and budget is authorized upon request of the Pollution Control Agency to sell and issue Minnesota state water pollution control bonds in the amount of $156,000,000, in the manner and upon the conditions prescribed in section 116.17 and in the Constitution, article XI, sections 4 to 7. The proceeds of the bonds, except as provided in section 116.17, subdivision 5, are appropriated and shall be credited to a Minnesota state water pollution control account in the bond proceeds fund. The amount of bonds issued pursuant to this

authorization shall not exceed at any time the amount needed to produce a balance in the water pollution control account equal to the aggregate amount of grants then approved and not previously disbursed, plus the amount of grants to be approved in the current and the following fiscal year, as estimated by the Pollution Control Agency.

Subd. 5. **Federal and other funds.** All federal and other funds made available for any purpose of the water pollution control program are also appropriated for the program.

Subd. 6. **Continuance of appropriations.** None of the appropriations made in this section shall lapse until the purpose for which it is made has been accomplished or abandoned. The amount of each grant approved for the water pollution control program shall be and remain appropriated for that purpose until the grant is fully disbursed or part or all thereof is revoked
by the Pollution Control Agency.

History: *Ex1971 c 20 s 3; 1973 c 423 s 8,9; 1973 c 492 s 14; 1973 c 771 s 1,2; 1975 c 354 s 1,2; 1976 c 2 s 172; 1977 c 418 s 2,3; 1979 c 285 s 1,2; 1981 c 361 s 14,15; 1983 c 301 s 117; 1984 c 597 s 47; 1Sp1985 c 14 art 19 s 4-6; 1987 c 186 s 15; 1987 c 277 s 1,2; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 3 s 7,8; 1988 c 686 art 1 s 59; 1989 c 271 s 25-28; 1989 c 300 art 1 s 28; 1989 c 354 s 1,2; 1990 c 564 s 3; 1993 c 180 s 5; 1997 c 246 s 13; 1998 c 401 s 44; 1998 c 404 s 38; 1Sp2003 c 4 s 1; 2009 c 101 art 2 s 109; 2009 c 109 s 14*

116.181 CORRECTIVE ACTION GRANTS.

Subdivision 1. **Definitions.** (a) The definitions in section 116.16, subdivision 2, apply to this section.

(b) "Corrective action" means action taken to upgrade or correct wastewater treatment facilities, funded under the Federal Water Pollution Control Act or the independent state grants program, that have failed to meet performance standards, and includes engineering, design, construction, legal assistance, and other action as the agency may allow.

Subd. 2. **Set aside.** In any fiscal year, up to ten percent of the money available for independent state grants, up to a maximum of $1,000,000, may be set aside for the award of grants to municipalities for corrective action.

Subd. 3. **Grant limitations.** The amount of a corrective action grant awarded to a municipality shall not exceed $500,000. In no event shall the grant amount exceed the cost of the corrective action. Construction costs that were not eligible under the original grant are not eligible under a corrective action grant.

Subd. 4. **Repayment.** Any municipality that is awarded a corrective action grant shall seek recovery from any person who is responsible for the failure of the facility to perform. The municipality shall reimburse the state in the event the municipality recovers any funds from responsible persons. Any repayments must be deposited in the Minnesota state water pollution control fund.

Subd. 5. **Award of grants.** Until June 30, 1988, the agency shall award corrective action grants. On July 1, 1988, the authority shall award corrective action grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' projects and applications have been reviewed and approved in accordance with this section and agency rules adopted under subdivision 6.

Subd. 6. **Agency rules.** The agency shall promulgate permanent rules for the administration of the corrective action grant program. The rules must contain at a minimum:

(1) the method for determining the amount of the corrective action grant;

(2) application requirements;

(3) criteria for determining which municipalities will be awarded grants when there are more applicants than money;

(4) conditions for use of the grant funds;

(5) identification of eligible costs;

(6) the amount that must be reimbursed to the authority in the event funds are recovered by the municipality from the responsible person; and

(7) other matters that the agency finds necessary for proper administration of the program. Subd. 7. **Authority rules.** The commissioner of employment and economic development may adopt rules containing procedures for administration of the authority's duties as set forth in subdivision 5.

History: *1987 c 186 s 15; 1987 c 277 s 3; 1987 c 312 art 1 s 26 subd 2; 1995 c 233 art 2 s 56; 1Sp2003 c 4 s 1*

116.182 FINANCIAL ASSISTANCE PROGRAM.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Agency" means the Pollution Control Agency.

(c) "Authority" means the Public Facilities Authority established in section 446A.03. (d) "Commissioner" means the commissioner of the Pollution Control Agency.

(e) "Essential project components" means those components of a wastewater disposal system that are necessary to convey or treat a municipality's existing wastewater flows and loadings.

(f) "Municipality" means a county, home rule charter or statutory city, town, the Metropolitan Council, an Indian tribe or an authorized Indian tribal organization; or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

(g) "Outstanding international resource value waters" are the surface waters of the state in the Lake Superior Basin, other than Class 7 waters and those waters designated as outstanding resource value waters.

(h) "Outstanding resource value waters" are those that have high water quality, wilderness characteristics, unique scientific or ecological significance, exceptional recreation value, or other special qualities that warrant special protection.

Subd. 2. **Applicability.** This section governs the commissioner's certification of projects seeking financial assistance under section 103F.725, subdivision 1a; 446A.07; 446A.072; or 446A.073.

Subd. 3. **Project review.** The commissioner shall review a municipality's proposed project to determine whether it meets the criteria in this section and the rules adopted under this section. The review must include a determination of the essential project components for wastewater treatment projects.

Subd. 3a. **Notification of other government units.** In addition to other applicable statutes or rules that are required to receive financial assistance consistent with this subdivision, the commissioner may not approve or certify a project to the Public Facilities Authority for wastewater financial assistance unless the following requirements are met:

(1) prior to the initiation of the public facilities planning process for a new wastewater treatment system, the project proposer gives written notice to all municipalities within ten miles of the proposed project service area, including the county in which the project is located, the Office of Strategic and Long-Range Planning, and the Pollution Control Agency. The notice shall state the proposer's intent to begin the facilities planning process and provide a description of the need for the proposed project. The notice also shall request a response within 30 days of the notice date from all government units who wish to receive and comment on the future facilities plan for the proposed project;

(2) during development of the facility plan's analysis of service alternatives, the project proposer must request information from all municipalities and sanitary districts which have existing systems that have current

capacity to meet the proposer's needs or can be upgraded to meet those needs. At a minimum, the proposer must notify in writing those municipalities and sanitary districts whose corporate limits or boundaries are within three miles of the proposed project's service area;

(3) 60 days prior to the municipality's public hearing on the facilities plan, a copy of the draft facilities plan and notice of the public hearing on the facilities plan must be given to the local government units who previously expressed interest in the proposed project under clause (1);

(4) for a proposed project located or proposed to be located outside the corporate limits of a city, the affected county has certified to the agency that the proposed project is consistent with the applicable county comprehensive plan and zoning and subdivision regulations; and

(5) copies of the notifications required under clauses (1) and (2), as well as the certification from the county and a summary of the comments received, must be included by the municipality in the submission of its facilities plan to the Pollution Control Agency, along with other required items as specified in the agency's rules.

This subdivision does not apply to the Western Lake Superior Sanitary District or the Metropolitan Council.

Subd. 4. **Certification of approved projects.** The commissioner shall certify to the authority each approved project, including for wastewater treatment projects a statement of the essential project components and associated costs.

Subd. 5. **Rules.** The agency shall adopt rules for the administration of the financial assistance program. For wastewater treatment projects, the rules must include:

(1) application requirements;

(2) criteria for the ranking of projects in order of priority based on factors including the type of project and the degree of environmental impact, and scenic and wild river standards; and

(3) criteria for determining essential project components.

Subd. 6. **Transfer of funds.** As the projects in the programs specified under section 116.18, except the program under subdivision 3c of that section, are completed, any amounts remaining from appropriations for the programs are appropriated to the authority for the wastewater infrastructure funding program in section 446A.072, provided this use of the funds does not

violate applicable provisions of any bond or note resolutions, indentures, or other instruments, contracts, or agreements associated with the source of the funds.

History: *1992 c 601 s 10; 1994 c 628 art 3 s 9; 1994 c 632 art 2 s 32-35; 1996 c 463 s 60; 1998 c 404 s 39,40; 1999 c 86 art 1 s 24; 2000 c 492 art 1 s 44; 2005 c 20 art 1 s 32; 2007 c 96 art 2 s 1; 2013 c 125 art 1 s 26*

116.19 [Repealed, 2002 c 379 art 1 s 114]

116.195 BENEFICIAL USE OF WASTEWATER AND STORM WATER; CAPITAL GRANTS FOR DEMONSTRATION PROJECTS.

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

(b) "Agency" means the Pollution Control Agency.

(c) "Beneficial use of wastewater or storm water" means:

(1) use of the effluent from a wastewater treatment plant that replaces use of groundwater; or

(2) use of storm water that replaces the use of groundwater.

(d) "Capital project" means the acquisition or betterment of public land, buildings, and other public improvements of a capital nature for the treatment of wastewater intended for beneficial use or for the use of storm water to replace groundwater use. Capital project includes projects to retrofit, expand, or construct new treatment facilities.

Subd. 2. **Grants for capital project design.** The agency shall make grant awards to political subdivisions for up to 50 percent of the costs to predesign and design capital projects that demonstrate the beneficial use of wastewater or storm water. The grant agreement must provide that the predesign and design work being funded is public information and available to anyone without charge. The agency must make the predesign and design work available on its Web site.

Subd. 3. **Grants for capital project implementation.** The agency shall make grant awards to political subdivisions for up to 50 percent of the costs to acquire, construct, install, furnish, and equip capital projects that demonstrate the beneficial use of wastewater or storm water. The political subdivision must submit design plans and specifications to the agency as part of the application.

The agency must consult with the Public Facilities Authority and the commissioner of natural resources in reviewing and ranking applications for grants under this section.

The application must identify the uses of the treated wastewater or storm water and greater weight will be given to applications that include a binding commitment to participate by the user or users.

The agency must give preference to projects that will reduce use of the greatest volume of groundwater from aquifers with the slowest rate of recharge.

Subd. 4. **Application form; procedures.** The agency shall develop an application form and procedures.

Subd. 5. **Reports.** The agency shall report by February 1 of each year to the chairs of the house of representatives and senate committees with jurisdiction over environment policy and finance and capital investment on the grants made and projects funded under this section. For each demonstration project funded, the report must include information on the scale of water constraints for the area, the volume of treated wastewater supplied or storm water available, the quality of the storm water or treated wastewater supplied and treatment implications for the industrial user, impacts to stream flow and downstream users, and any considerations related to water appropriation and discharge permits.

History: *2008 c 179 s 37; 1Sp2011 c 6 art 2 s 22*

116.201 [Repealed, 2013 c 137 art 2 s 23]

116.202 COAL TAR SEALANT USE AND SALE PROHIBITED.

Subdivision 1. **Definitions.** The following terms have the meanings given.

(a) "Coal tar sealant product" means a surface applied sealing product containing coal tar, coal tar pitch, coal tar pitch volatiles, or any variation assigned the Chemical Abstracts Service (CAS) number 65996-93-2, 65996-89-6, or 8007-45-2.

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

Subd. 2. **Use prohibited.** Except as provided in subdivision 4, a person shall not apply coal tar sealant products on asphalt-paved surfaces.

Subd. 3. **Sale prohibited.** Except as provided in subdivision 4, a person shall not sell a coal tar sealant product that is formulated or marketed for application on asphalt-paved surfaces.

Subd. 4. **Exemptions.** The commissioner may exempt a person from this section if the commissioner determines that one or both of the following apply:

(1) the person is researching the effects of a coal tar sealant product on the environment; or

(2) the person is developing an alternative technology and the use of a coal tar sealant product is required for research or development.

A request for exemption must be made to the commissioner in writing, including an explanation of why the exemption is needed for research or the development of an alternative technology.

Subd. 5. **Compliance and enforcement.** Local units of government may adopt by reference and enforce the provisions of this section. The commissioner may provide technical support to local units of government for compliance and enforcement of this section. The commissioner
may respond to compliance and enforcement cases transcending jurisdictional boundaries, cases requiring statewide corrective actions, or requests for assistance or referral from local units
of government.

History: *2013 c 137 art 2 s 17*

NUTRIENTS IN CLEANING AGENTS AND WATER CONDITIONERS

116.21 NUTRIENTS IN CLEANING AGENTS AND WATER CONDITIONERS, CONTROL; STATEMENT OF POLICY.

The legislature seeks to encourage the Minnesota Pollution Control Agency through the passage of sections 116.21 to 116.35, to set standards limiting the amount of nutrients in various cleaning agents and water conditioning agents. The legislature realizes that the nutrients contained in many of these products serve a valuable purpose in increasing their overall effectiveness, but we are also aware that they overstimulate the growth of aquatic life and eventually lead to an acceleration of the natural eutrophication process of our state's waters. Limitations imposed under sections 116.21 to 116.35 should, however, be made taking the following factors into consideration:

(1) the availability of safe, nonpolluting, and effective substitutes;

(2) the difference in the mineral content of water in various parts of the state; and

(3) the differing needs of industrial, commercial and household users of cleaning agents and chemical water conditioners.

History: *1971 c 896 s 1*

116.22 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of sections 116.21 to 116.35, the terms defined in this section shall have the meanings given them.

Subd. 2. MS 1990 [Renumbered subd 3]

Subd. 2. **Chemical water conditioner.** "Chemical water conditioner" means a water softening chemical, antiscale chemical, corrosion inhibitor or other substance intended to be used to treat water.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Cleaning agent.** "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes.

Subd. 4. MS 1990 [Renumbered subd 2]

Subd. 4. **Nutrient.** "Nutrient" means a substance or combination of substances which, if added to waters in sufficient quantities, provides nourishment that promotes growth of aquatic vegetation in densities which:

(1) interfere with use of the waters by humans or by any animal, fish or plant useful to humans, or

(2) contribute to degradation or alteration of the quality of the waters to an extent detrimental to their use by humans or by any animal, fish or plant that is useful to humans.

History: *1971 c 896 s 2; 1986 c 444*

116.23 PROHIBITION AND RESTRICTIONS.

Subdivision 1. **Nutrient concentrations.** No person shall manufacture for use or sale in Minnesota or import into Minnesota for resale any cleaning agent or chemical water conditioner which contains a prescribed nutrient in a concentration that is greater than the prescribed maximum permissible concentration of that nutrient in that cleaning agent or chemical water conditioner.

Subd. 2. **Residential dishwasher detergent.** No person shall sell, distribute, offer, or expose for sale at retail any household dishwasher detergent that contains more than 0.5 percent phosphorus by weight. This subdivision does not apply to the sale or distribution of detergents for commercial or institutional dishwashing purposes.

History: *1971 c 896 s 3; 2007 c 131 art 1 s 76*

116.24 RULES.

The Pollution Control Agency may make rules:

(1) prescribing for the purpose of section 116.23 nutrients and the maximum permissible concentration if any, of a prescribed nutrient in any cleaning agent or chemical water conditioner;

(2) respecting the manner in which the concentration of any prescribed nutrient in a cleaning agent or chemical water conditioner shall be determined; and

(3) requiring persons who manufacture in Minnesota any cleaning agent or chemical water conditioner to maintain books and records necessary for the proper enforcement of sections 116.21 to 116.35 and rules thereunder, and to submit samples of cleaning agents or water conditioners to the Pollution Control Agency.

History: *1971 c 896 s 4; 1985 c 248 s 70*

116.25 SEIZURE.

Subdivision 1. **Agency may seize.** The Pollution Control Agency may seize a cleaning agent or chemical water conditioner which it reasonably believes was manufactured or imported in violation of section 116.23.

Subd. 2. **Storage.** A cleaning agent or chemical water conditioner seized under sections

116.21 to 116.35, may be kept or stored in the building or place where it was seized or may be removed to any other proper place by or at the direction of the Pollution Control Agency.

Subd. 3. **Removal; sample.** Except with the authority of the Pollution Control Agency, no person shall remove, alter or interfere with a cleaning agent or chemical water conditioner seized under sections 116.21 to 116.35, but the Pollution Control Agency shall, at the request of a person from whom it was seized, furnish a sample thereof to the person for analysis.

History: *1971 c 896 s 5*

116.26 RESTORATION.

Subdivision 1. **Application to district court.** When a cleaning agent or chemical water conditioner has been seized under sections 116.21 to 116.35, any person may within two months after the date of seizure, upon prior notice in accordance with subdivision 2 to the Pollution Control Agency by certified mail, apply to the district court within whose jurisdiction the seizure was made for an order of restoration under subdivision 3.

Subd. 2. **Notice.** Notice under subdivision 1 shall be mailed at least 15 days prior to the day on which the application is to be made to the district court and shall specify:

(1) the district court to which the application is to be made;

(2) the place where and the time when the application is to be heard;

(3) the cleaning agent or chemical water conditioner in regard to which the application is to be made; and

(4) the evidence upon which the applicant relies to establish entitlement to possession of the cleaning agent or chemical water conditioner.

Subd. 3. **Return of items.** Subject to section 116.27 when upon hearing, the district court is satisfied (1) that the applicant is otherwise entitled to possession of the items seized, and (2) that the items seized are not and will not be required as evidence in proceedings under sections 116.21 to 116.35, the court shall order that the items seized be restored forthwith to the applicant. Where the court is satisfied that the applicant is otherwise entitled to possession but is not satisfied as to the necessity for retention as evidence, the court shall order restoration to the applicant (1) four months after the date of seizure if no proceedings under section 116.23 have been commenced before that time, or (2) upon the final conclusion of any such proceedings.

Subd. 4. **Disposal.** When no application has been made under subdivision 1 within two months from the date of seizure, or when upon application no order of restoration is made, the items seized shall be delivered to the Pollution Control Agency, which may dispose of them as it sees fit.

History: *1971 c 896 s 6; 1978 c 674 s 60; 1986 c 444*

116.27 ADDITIONAL PROHIBITION.

Subdivision 1. **Phosphorus content.** No manufacturer, wholesaler, or retailer shall sell, possess with intent to sell, or display for sale, a household laundry or dishwashing compound, including household detergents and presoaks, unless a verified or certified test result is filed with the Pollution Control Agency stating the percentage content of phosphorus by weight contained in the product.

Subd. 2. **Tests.** Tests shall be conducted pursuant to the methods and procedures adopted by the federal Water Quality Administration.

History: *1971 c 896 s 7*

116.28 LISTS REQUIRED.

Subdivision 1. **Contents of product.** No household laundry or dishwashing compound, including household detergents and presoaks, shall be sold or displayed for sale unless the product name is on a list prominently displayed near the product display stating the phosphorus content by percentage of weight to weight of the package contents. The products shall be listed in descending order and in letters and figures not less than one half inch high and proportionately wide. No list shall be required if the Pollution Control Agency adopts and has in effect standards for maximum allowable phosphorus content of household laundry and dishwashing compounds.

Subd. 2. **Current listing; availability.** The Pollution Control Agency shall supply any person upon request with a current listing of household laundry and dishwashing compounds and their phosphorus contents received pursuant to sections 116.21 to 116.35. This list shall be updated periodically.

History: *1971 c 896 s 8; 1974 c 275 s 1,2*

116.29 FORFEITURE.

Subdivision 1. **Conviction.** When a person is convicted of an offense under section 116.28 any cleaning agent or chemical water conditioner seized in accordance with sections 116.21 to 116.35 is forfeited to the Pollution Control Agency and shall be disposed of as it directs.

Subd. 2. **Consent.** When a cleaning agent or chemical water conditioner is seized under sections 116.21 to 116.35, the owner or the person in whose possession it was at the time of seizure consents in writing to its destruction, it is forfeited to the Pollution Control Agency and shall be disposed of as it directs.

History: *1971 c 896 s 9*

116.30 [Repealed, 1973 c 374 s 22]

116.31 [Repealed, 1973 c 374 s 22]

116.32 ORDER TO REFRAIN.

If a person is convicted of an offense under sections 116.21 to 116.35, the court may, in addition to any punishment it may impose, order that person to refrain from any further violations of the provision of sections 116.21 to 116.35, or rules for the violation of which the offender has been convicted, or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in any further violation thereof.

History: *1971 c 896 s 12; 1985 c 248 s 70; 1986 c 444*

116.33 PROOF OF OFFENSE.

In a prosecution for an offense under sections 116.21 to 116.35, it is sufficient proof of the offense to establish that it was committed by an employee or agent of the accused whether or not the employee agent is identified or has been prosecuted for the offense, unless the accused establishes that the offense was committed without the accused's knowledge or consent and that the accused exercised all due diligence to prevent its commission.

History: *1971 c 896 s 13; 1986 c 444*

116.34 TIME LIMITED FOR PROCEEDINGS.

Proceedings in respect of an offense under sections 116.21 to 116.35, may be instituted at any time within two years after the time when the subject matter of the proceedings arose.

History: *1971 c 896 s 14*

116.35 TRIAL OF OFFENSES.

Any complaint or information in respect of an offense under sections 116.21 to 116.35, may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

History: *1971 c 896 s 15*

116.36 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116.36 to 116.38, the following terms have the meanings given.

Subd. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 4. **PCB.** "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.

Subd. 5. **Person.** "Person" has the meaning specified in section 115.01, subdivision 10.

History: *1976 c 344 s 1; 1977 c 347 s 16; 1987 c 186 s 15; 1990 c 594 art 1 s 51*

116.37 PCB; PROHIBITED USE.

Subdivision 1. **Certificate of exemption.** Beginning January 1, 1978, no person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is exempted by the agency. If the agency finds after there is opportunity for a public hearing on an application presented by any person, that no substitutes or feasible alternatives are reasonably available for PCB or a product containing PCB or class of products containing PCB, it shall grant a certificate
of exemption which shall clearly set out the permitted use, possession, sale or purchase of PCB or a PCB product containing PCB. If the agency grants a certificate of exemption, it shall be valid for all subsequent uses of PCB or products containing PCB if the subsequent uses are consistent with the terms and conditions of the certificate of exemption. In granting certificates of exemption the agency shall at all times consider the public health and safety threatened by the use of PCB.
In the consideration of certificates of exemption for the use or replacement of existing electrical transformers and capacitors the agency shall review, but not be limited to, considerations of the safety of proven alternatives, replacement costs and rules controlling the final disposal of PCB.

Subd. 2. **Exclusion.** In no event shall the certificate of exemption requirement or the labeling requirement of this section apply to any individual person who purchases or otherwise acquires a product containing PCB intended for consumer use in the home, provided that the use has previously been exempted by the agency and that the use is consistent with the terms and conditions of the certificate of exemption. Wastepaper, pulp, or other wood fiber materials purchased for use within this state in the manufacture of recycled paper products are exempt from the requirements of this section.

Subd. 3. **Labels required.** Beginning July 1, 1977, no person in this state shall add PCB in the manufacture of any new item, product or material, nor shall any person in this state sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.

Subd. 4. **Rules.** The agency shall promulgate rules by January 1, 1977, governing the granting of certificates of exemption and the requirements of labels specified in subdivision 3. The rules governing the requirement of labels specified in subdivision 3 may require other information relating to the public health and environmental effects of PCB and shall apply to persons holding certificates of exemption.

Subd. 5. **Penalties.** Violations of this section and sections 116.36 and 116D.045 shall be subject to the provisions of section 115.071.

History: *1976 c 344 s 2*

116.38 PCB BURNING.

Subdivision 1. **State policy.** The legislature finds that risks to human health must be adequately evaluated before a facility may burn PCB's. The legislature also finds that if there is a risk to human health, all human health must be treated with equal concern, and facilities that cause risks to human health must not be allowed to operate in sparsely populated areas if they would not be allowed to operate in heavily populated areas.

Subd. 2. **EIS required.** The Pollution Control Agency may not allow burning of wastes containing 50 ppm or greater PCB's by permit or otherwise unless an environmental impact statement is completed. It may not renew a permit for burning wastes containing 50 ppm or greater PCB's until an environmental impact statement is completed. This section does not apply to experimental burning of small quantities of waste containing 50 ppm or greater PCB's.

History: *1990 c 594 art 1 s 52*

OZONE LAYER PRESERVATION

116.39 OZONE LAYER PRESERVATION.

Subdivision 1. **Sale prohibited.** Except as provided by subdivision 3, after July 1, 1979, no person shall sell or offer for sale in this state any pressurized container which contains as a propellant trichloromonofluoromethane, difluorodichloromethane, dichlorotetrafluoroethane, or any other saturated chlorofluorocarbon compound or other similar inert fluorocarbon compound that does not contain reactive carbon hydrogen bonds.

Subd. 2. **Warning.** Commencing October 31, 1977, no person shall sell or offer for sale at wholesale in this state a pressurized container using chlorofluorocarbon propellants unless the container has prominently displayed on the front panel this statement: "Warning: Contains a chlorofluorocarbon that may harm the public health and environment by reducing ozone in the upper atmosphere."

Subd. 3. **Other compounds permitted.** Nothing in this section prohibits the sale or use of refrigeration equipment containing chlorofluorocarbon compounds, or the sale of chlorofluorocarbon compounds for use in such equipment. This section shall not apply to the sale of chlorofluorocarbon compounds for the following essential medical uses:

(a) metered-dose steroid human drugs for nasal inhalation; (b) metered-dose steroid human drugs for oral inhalation;

(c) metered-dose adrenergic bronchodilator human drugs for oral inhalation; (d) contraceptive vaginal foams for human use; or

(e) cytology fixatives; nor

for other medical uses by or under the supervision of a licensed physician, dentist or veterinarian, or a hospital, nursing home or other health care institution licensed by the Department of Health. This section shall also not apply to the sale of chlorofluorocarbon compounds for use in the cleaning, maintenance, testing and repair of electronic equipment.

Subd. 4. **Penalty.** A violation of this section is a misdemeanor.

History: *1977 c 373 s 1*

WASTE FACILITY TRAINING AND CERTIFICATION

116.41 WASTE AND WASTE FACILITIES TRAINING AND CERTIFICATION.

Subdivision 1. [Repealed, 1983 c 373 s 72] Subd. 1a. [Repealed, 1983 c 373 s 72]

Subd. 2. **Training and certification programs.** The agency shall develop standards of competence for persons operating and inspecting various classes of disposal facilities. The agency shall conduct training programs for persons operating facilities for the disposal of waste and for inspectors of such facilities, and shall charge such fees as are necessary to cover the actual costs of the training programs. All fees received shall be paid into the state treasury and credited to the Pollution Control Agency training account and are appropriated to the agency to pay expenses relating to the training of disposal facility personnel.

The agency shall require operators and inspectors of such facilities to obtain from the agency a certificate of competence. The agency shall conduct examinations to test the competence of applicants for certification, and shall require that certificates be renewed at reasonable intervals. The agency may charge such fees as are necessary to cover the actual costs of receiving and processing applications, conducting examinations, and issuing and renewing certificates. Certificates shall not be required for a private individual for land-spreading and associated interim and temporary storage of sewage sludge on property owned or farmed by that individual.

Subd. 3. **Regulation and enforcement assistance.** The agency shall establish a program to provide technical and financial assistance for regulation and enforcement to counties which have certified operators and inspectors conforming to the requirements of the agency, chapters 400
and 473, and sections 115A.01 to 115A.72.

Subd. 4. **Rules.** The agency shall adopt, amend, and rescind rules as may be necessary to carry out the provisions of this section in accordance with chapter 14.

History: *1973 c 646 s 1; 1980 c 564 art 11 s 13; 1981 c 352 s 29; 1982 c 424 s 130; 1983 c 301 s 118; 1987 c 348 s 31; 1987 c 404 s 146; 1989 c 335 art 4 s 46; 2009 c 37 art 1 s 46*

TOXIC SUBSTANCES DEPOSITION

116.42 ACID DEPOSITION; LEGISLATIVE INTENT.

The legislature recognizes that acid deposition substantially resulting from the conduct of commercial and industrial operations, both within and without the state, poses a present and severe danger to the delicate balance of ecological systems within the state, and that the failure to act promptly and decisively to mitigate or eliminate this danger will soon result in untold and irreparable damage to the agricultural, water, forest, fish, and wildlife resources of the state.
It is therefore the intent of the legislature in enacting sections 116.42 to 116.45 to mitigate or eliminate the acid deposition problem by curbing sources of acid deposition within the state and to support and encourage other states, the federal government, and the province of Ontario in recognizing the dangers of acid deposition and taking steps to mitigate or eliminate it within their own jurisdictions.

History: *1982 c 482 s 1*

116.43 ACID DEPOSITION DEFINED.

As used in sections 116.42 to 116.45, "acid deposition" means the wet or dry deposition from the atmosphere of chemical compounds, usually in the form of rain or snow, having the potential to form an aqueous compound with a pH level lower than the level considered normal under natural conditions, or lower than 5.6.

History: *1982 c 482 s 2*

116.44 SENSITIVE AREAS; STANDARDS.

Subdivision 1. **List of areas.** By January 1, 1983, the Pollution Control Agency shall publish a preliminary list of counties determined to contain natural resources sensitive to the impacts of acid deposition. Sensitive areas shall be designated on the basis of:

(a) the presence of plants and animal species which are sensitive to acid deposition;

(b) geological information identifying those areas which have insoluble bedrock which is incapable of adequately neutralizing acid deposition; and

(c) existing acid deposition reports and data prepared by the Pollution Control Agency and the federal Environmental Protection Agency. The Pollution Control Agency shall conduct public meetings on the preliminary list of acid deposition sensitive areas. Meetings shall be concluded by March 1, 1983, and a final list published by May 1, 1983.

Subd. 2. **Standards.** (a) By January 1, 1986, the agency shall adopt an acid deposition standard for wet plus dry acid deposition in the acid deposition sensitive areas listed pursuant to subdivision 1.

(b) By January 1, 1986, the agency shall adopt an acid deposition control plan to attain and maintain the acid deposition standard adopted under clause (a), addressing sources both inside and outside of the state which emit more than 100 tons of sulphur dioxide per year. The plan shall include an analysis of the estimated compliance costs for facilities emitting sulphur dioxide. Any emission reductions required inside of the state shall be based on the contribution of sources inside of the state to acid deposition in excess of the standard.

(c) By January 1, 1990, sources located inside the state shall be in compliance with the provisions of the acid deposition control plan.

History: *1982 c 482 s 3; 1984 c 519 s 1; 1989 c 209 art 1 s 11; 1997 c 187 art 1 s 11*

116.45 [Obsolete, 1Sp2005 c 1 art 2 s 161]

116.454 MONITORING PROGRAM.

By July 1, 1993, the agency shall establish a statewide monitoring program for, and inventory of probable sources of, releases into the air, ambient concentrations in the air, and deposition from the air of toxic substances.

History: *1992 c 546 s 3*

116.46 DEFINITIONS.

STORAGE TANKS

Subdivision 1. **Scope.** As used in sections 116.47 to 116.50, the terms defined in this section have the meanings given them.

Subd. 1a. **Aboveground storage tank.** "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 2a. **Installer.** "Installer" means a person who places, constructs, or repairs an aboveground or underground tank, or permanently takes an aboveground or underground tank out of service.

Subd. 3. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

Subd. 4. **Owner.** "Owner" means a person who owns an underground storage tank and a person who owned it immediately before discontinuation of its use.

Subd. 5. **Person.** "Person" has the meaning given it in section 116.06, subdivision 17. Subd. 6. **Regulated substance.** "Regulated substance" means:

(1) a hazardous material listed in Code of Federal Regulations, title 49, section 172.101; or

(2) petroleum, including crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

Subd. 7. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment. Release does not include designed venting consistent with the agency's air quality rules.

Subd. 7a. **Retail location.** "Retail location" means a facility located in the metropolitan area as defined in section 473.121, subdivision 2, where gasoline is offered for sale to the general public for use in automobiles and trucks.

Subd. 7b. **Transport delivery vehicle.** "Transport delivery vehicle" means a liquid fuel cargo tank used to deliver gasoline into underground storage tanks.

Subd. 8. **Underground storage tank.** "Underground storage tank" means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground.

Subd. 9. [Renumbered subd 1a]

Subd. 10. **Vapor recovery system.** "Vapor recovery system" means a system which transfers vapors from underground storage tanks during the filling operation to the storage compartment of the transport vehicle delivering gasoline.

History: *1Sp1985 c 13 s 235; 1987 c 389 s 11,12; 2003 c 128 art 1 s 140-142*

116.47 EXEMPTIONS.

Sections 116.48, 116.49, and 116.491 do not apply to:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(3) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29;

(4) surface impoundments, pits, ponds, or lagoons; (5) storm water or wastewater collection systems; (6) flow-through process tanks;

(7) tanks located in an underground area, including basements, cellars, mine workings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor;

(8) septic tanks;

(9) tanks used for storing liquids that are gaseous at atmospheric temperature and pressure; or

(10) tanks used for storing agricultural chemicals regulated under chapter 18B, 18C, or 18D.

History: *1Sp1985 c 13 s 236; 1987 c 389 s 13; 1993 c 87 s 2*

116.48 NOTIFICATION REQUIREMENTS.

Subdivision 1. **Tank status.** (a) An owner of an underground storage tank must notify the agency by June 1, 1986, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

(b) An owner of an aboveground storage tank must notify the agency by June 1, 1990, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

Subd. 2. **Abandoned tanks.** An owner of an underground or aboveground storage tank permanently taken out of service on or after January 1, 1974, must notify the agency by June 1, 1986, in the case of underground storage tanks; by June 1, 1990, in the case of aboveground storage tanks; or, in either case, within 30 days of discovery, whichever is later, of the existence of the tank and specify or estimate to the best of the owner's knowledge on forms prescribed by the agency, the date the tank was taken out of service, the age, size, type, and location of the tank, and the type and quantity of substance remaining in the tank.

Subd. 3. **Change in status.** An owner must notify the agency within 30 days of a permanent removal from service or a change in the reported uses, contents, or ownership of an underground or aboveground storage tank.

Subd. 4. **Deposit information.** Beginning on January 1, 1986, and until July 1, 1987, a person who transfers the title to regulated substances to be placed directly into an underground storage tank must inform the owner or operator in writing of the notification requirement of this section.

Subd. 5. **Seller's responsibility.** A person who sells a tank intended to be used as an underground or aboveground storage tank or property that the seller knows contains an underground or aboveground storage tank must inform the purchaser in writing of the owner's notification requirements of this section.

Subd. 6. **Affidavit.** (a) Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank or contained an underground or aboveground storage tank that had a release for which no corrective action was taken or if required by the agency as a condition of a corrective action under chapter 115C, the owner shall record with the county recorder or registrar of titles of the county in which the property is located an affidavit containing:

(1) a legal description of the property where the tank is located;

(2) a description of the tank, of the location of the tank, and of any known release from the tank of a regulated substance to the full extent known or reasonably ascertainable;

(3) a description of any restrictions currently in force on the use of the property resulting from any release; and

(4) the name of the owner.

(b) The county recorder shall record the affidavits in a manner that will insure their disclosure in the ordinary course of a title search of the subject property. Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank, the owner shall deliver to the purchaser a copy of the affidavit and any additional information necessary to make the facts in the affidavit accurate as of the date of transfer of ownership.

(c) Failure to record an affidavit as provided in this subdivision does not affect or prevent any transfer of ownership of the property.

Subd. 7. **Recording of removal affidavit.** If an affidavit has been recorded under subdivision 6 and the tank and any regulated substance released from the tank have been removed from the property in accordance with applicable law, the owner or other interested party may file with the county recorder or registrar of titles an affidavit stating the name of the owner, the legal description of the property, the place and date of filing and

document number of the affidavit filed under subdivision 6, and the approximate date of removal of the tank and regulated substance. Upon filing the affidavit described in this subdivision, the affidavit and the affidavit filed under subdivision 6, together with the information set forth in the affidavits, cease to constitute either actual or constructive notice.

Subd. 8. **Notice of tank installation or removal.** Before beginning installation or removal of an underground tank system, owners and operators must notify the commissioner. Notification must be in writing or by telephone at least ten days before the tank installation or removal. Owners and operators must renotify the commissioner if the date of the tank installation or removal changes by more than 48 hours. The notification must include the following information:

(1) the name, address, and telephone number of the site owner; (2) the location of the site, if different from

clause (1);

(3) the date of the tank installation or removal; and

(4) the name of the contractor or company that will install or remove the tank.

History: *1Sp1985 c 13 s 237; 1987 c 389 s 14; 1988 c 686 art 1 s 60,61; 1989 c 226 s 4; 1992 c 490 s 11; 2013 c 114 art 4 s 87*

116.481 MONITORING.

Subdivision 1. **Measurement of tank capacity.** (a) By September 1, 1996, all aboveground tanks of 2,000 gallons or more used for storage and subsequent resale of petroleum products
must be equipped with:

(1) a gauge in working order that shows the current level of product in the tank; or

(2) an audible or visual alarm which alerts the person delivering fuel into the tank that the tank is within 100 gallons of capacity.

(b) In lieu of the equipment specified in paragraph (a), the owner or operator of a tank may use a manual method of measurement which accurately determines the amount of product in the tank and the amount of capacity available to be used. This information must be readily available to anyone delivering fuel into the tank prior to delivery. Documentation that a tank has the available capacity for the amount of product to be delivered must be transmitted to the person making the delivery.

Subd. 2. **Contents labeled.** (a) By December 1, 1995, all aboveground tanks governed by this section must be numbered and labeled as to the tank contents, total capacity, and capacity
in volume increments of 500 gallons or less.

(b) Piping connected to the tank must be labeled with the product carried at the point of delivery and at the tank inlet. Manifolded delivery points must have all valves labeled as to product distribution.

Subd. 3. **Site diagram.** (a) All tanks at a facility shall be shown on a site diagram which is permanently mounted in an area accessible to delivery personnel. The diagram shall show the number, capacity, and contents of tanks and the location of piping, valves, storm sewers, and other information necessary for emergency response, including the facility owner's or operator's telephone number.

(b) Prior to delivering product into an underground or aboveground tank, delivery personnel shall:

(1) consult the site diagram, where applicable, for proper delivery points, tanks and piping locations, and valve settings, tank and pipings;

(2) visually inspect the tank, piping, and valve settings to determine that the product being delivered will flow only into the appropriate tank; and

(3) determine, using equipment and information available at the site, that the available capacity of the tank is sufficient to hold the amount being delivered.

Delivery personnel must remain in attendance during delivery.

Subd. 4. **Capacity of tank.** A tank may not be filled from a transport vehicle compartment containing more than the available capacity of the tank, unless the hose of the transport vehicle is equipped with a manually operated shutoff nozzle.

Subd. 5. **Exemption.** Aboveground and underground tanks located at refineries, pipeline terminals, and river terminals are exempt from this section.

History: *1995 c 240 art 1 s 13*

116.482 PETROLEUM RELEASE NOTIFICATION.

(a) When a potential receptor survey is conducted for a petroleum tank release as provided in agency guidance documents, the tank owner must provide information on the results of the survey, reports of all releases, and any corrective actions, as defined in section 115C.02, that are related to the petroleum tank release in an understandable manner to residents contacted in the survey. The information may be provided through personal contact, mail, or e-mail.

(b) An owner may delegate the owner's responsibility under paragraph (a) to the owner's consultant or contractor, as those terms are defined in section 115C.02, or to the operator of the tank.

History: *2008 c 357 s 35*

116.49 ENVIRONMENTAL PROTECTION REQUIREMENTS.

Subdivision 1. **Rules.** The agency must adopt rules applicable to all owners and operators of underground storage tanks. The rules must establish the safeguards necessary to protect human health and the environment. The agency may delay adopting the rules until the United States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1). The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.

Subd. 1a. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not considered an owner or operator of a tank solely as a result of the forfeiture of title to the tank or real property where the tank is located for nonpayment of taxes, or solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where a tank is located under chapter 282 and other laws applicable to tax-forfeited lands. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 2. **Interim standards.** Until the rules required by subdivision 1 become effective, a person may not install an underground storage tank unless the tank:

(1) is installed according to requirements of the American Petroleum Institute Bulletin 1615 (November 1979) and all manufacturer's recommendations;

(2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release of any stored substance; and

(3) is constructed to be compatible with the substance to be stored.

Subd. 3. **Vapor recovery system.** Every underground gasoline storage tank at a retail location must be fitted with vapor recovery equipment by January 1, 2006. The equipment must be certified by the manufacturer as capable of collecting 95 percent of hydrocarbons emitted during gasoline transfers from a transport delivery vehicle to an underground storage tank. Product delivery and vapor recovery access points must be on the same side of the transport vehicle when the transport vehicle is positioned for delivery into the underground tank. After January 1, 2006, no gasoline may be delivered to a retail location that is not equipped with a vapor recovery system.

Subd. 4. **Vapor recovery on transports.** All transport delivery vehicles that deliver gasoline into underground storage tanks in the metropolitan area as defined in section 473.121, subdivision 2, must be fitted with vapor recovery equipment. The equipment must recover and manage 95 percent of hydrocarbons emitted during the transfer of gasoline from the underground storage tank and the transport delivery vehicle by January 1, 2006. After January 1, 2006, no gasoline may be delivered to a retail location by a transport vehicle that is not fitted with vapor recovery equipment.

History: *1Sp1985 c 13 s 238; 1990 c 586 s 5; 2003 c 128 art 1 s 143,144*

116.491 TANK INSTALLERS TRAINING AND CERTIFICATION.

Subdivision 1. **Requirement.** (a) After the effective date of rules adopted under subdivision 3, a person may not install, repair, or take an aboveground or underground tank permanently out of service without first obtaining a certification of competence issued by the agency.

(b) The agency shall conduct examinations to test the competence of applicants for certification, issue documentation of certification, and require certification to be renewed at reasonable intervals. The agency may conduct training programs for installers.

Subd. 2. **Fees.** The agency may charge fees as are necessary to cover the actual costs of processing applications, conducting examinations, issuing and renewing certificates, and providing training programs. The fees received under this section must be credited to the petroleum tank release cleanup fund.

Subd. 3. **Rules.** The agency shall adopt rules containing standards of competence for installers and to implement this section.

History: *1987 c 389 s 15*

116.492 BASEMENT STORAGE TANKS; REMOVAL.

A person who removes a basement heating oil storage tank shall ensure that fill and vent pipes through the basement wall to the outside are also removed or permanently sealed.

History: *1992 c 597 s 3*

116.50 PREEMPTION.

Sections 116.46 to 116.49 preempt conflicting local and municipal rules or ordinances requiring notification or establishing environmental protection requirements for underground storage tanks. A state agency or local unit of government may not adopt rules or ordinances establishing or requiring vapor recovery for underground storage tanks.

History: *1Sp1985 c 13 s 239; 2003 c 128 art 1 s 145*

116.51 [Repealed, 1992 c 522 s 48; 1992 c 595 s 29]

116.52 [Repealed, 1992 c 522 s 48; 1992 c 595 s 29]

116.53 Subdivision 1. [Repealed, 1992 c 522 s 48; 1992 c 595 s 29] Subd. 2. MS 1990 [Renumbered 144.878, subd 2a]

TESTING; INJECTION OF CERTAIN MATERIALS

116.54 INJECTION OF CERTAIN MATERIALS.

The Pollution Control Agency shall authorize and may monitor not less than one or more than five projects to test the controlled injection of oxygen-bearing materials and appropriate microbiological systems into sites of water or soil contamination. An applicant for authority to conduct one of the tests shall describe to the agency plans for the test injection project including at least the following:

(1) the quantity and type of chemicals and microbes to be used in the injection project; (2) the frequency and planned duration of the injections;

(3) test monitoring and evaluation equipment that will be maintained at the site; and

(4) procedures for recording, analyzing, and maintaining information on the injection project.

The applicant shall make available to the agency all significant test results from the injection project. Trade secret information, as defined in section 13.37, made available by an applicant is classified as nonpublic data, pursuant to section 13.02, subdivision 9, or private data on individuals, pursuant to section 13.02, subdivision 12.

History: *1986 c 398 art 26 s 1*

116.55 [Repealed, 1988 c 685 s 44]

116.60 [Repealed, 1999 c 178 s 10]

116.61 [Repealed, 1999 c 178 s 10]

116.62 [Repealed, 1999 c 178 s 10]

116.63 [Repealed, 1999 c 178 s 10]

116.64 [Repealed, 1999 c 178 s 10]

116.65 [Repealed, 1999 c 178 s 10]

116.66 [Repealed, 1995 c 247 art 1 s 41]

116.67 [Repealed, 1Sp2001 c 2 s 162]

CHLOROFLUOROCARBON REGULATION

116.70 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.731 to 116.734.

Subd. 2. [Repealed, 1Sp2001 c 2 s 162]

Subd. 3. **Chlorofluorocarbons or CFC's.** "Chlorofluorocarbons" or "CFC's" means the substances identified as Class I or Class II substances under section 602 of the Clean Air Act, United States Code, title 42, section 7401 et seq., as amended by the Clean Air Act Amendments of 1990, Public Law 101-549.

Subd. 3a. [Repealed, 1Sp2001 c 2 s 162] Subd. 4. [Repealed, 1Sp2001 c 2 s 162] Subd. 5. [Renumbered subd 3a]

History: *1988 c 671 s 1; 1990 c 560 art 2 s 3; 1992 c 546 s 4; 1Sp2001 c 2 s 138*

116.71 [Repealed, 1Sp2001 c 2 s 162]

116.72 [Repealed, 1Sp2001 c 2 s 162]

116.73 [Repealed, 1Sp2001 c 2 s 162]

116.731 REQUIREMENTS TO RECYCLE CFC'S.

Subdivision 1. **Salvage automobiles.** A person who processes automobiles for salvage must remove CFC's for recycling prior to disposal or sale of the materials containing CFC's. This subdivision does not apply to crushed automobiles or automobiles that have been processed in a manner that makes removal and recovery of CFC's impossible.

Subd. 2. **Refrigeration equipment.** A person processing scrap refrigerators, air conditioning units, dehumidifiers, heat pumps, under-the-counter ice makers, vending machines, drinking water coolers, chillers, commercial refrigeration, industrial process refrigeration, or freezers must remove and recycle, destroy, or properly dispose of the CFC's.

Subd. 3. **Mobile air conditioning equipment.** A person servicing or removing mobile air conditioning equipment must:

(1) recapture CFC's, provide storage for recaptured CFC's, and transfer recaptured CFC's to a recycler; or

(2) recapture CFC's and recycle the CFC's to an allowed use.

Subd. 4. **Servicing and recycling of appliances.** (a) A person servicing or recycling refrigerators, air conditioning units, dehumidifiers, heat pumps, under-the-counter ice makers, vending machines, drinking water coolers, chillers, commercial refrigeration, industrial process refrigeration, or freezers must:

(1) recapture CFC's, provide storage for recaptured CFC's, and transfer recaptured CFC's to a recycler; or

(2) recapture CFC's and recycle the CFC's to an allowed use.

(b) The recovered CFC's may be properly disposed of or destroyed.

Subd. 4a. **Venting.** A person may not knowingly vent or otherwise release into the environment any CFC used as a refrigerant.

Subd. 5. **Foam not required to be recycled.** This section does not require recycling of rigid or flexible foam.

Subd. 6. **Rules.** The agency shall adopt rules for recycling CFC's and establish standards for CFC recycling equipment under this section.

History: *1990 c 560 art 2 s 4; 1994 c 585 s 34; 1995 c 147 s 1-3*

116.732 REQUIREMENT TO RECYCLE FIRE EXTINGUISHER HALONS.

A person who recharges, services, or retires fire extinguishers must recapture and recycle halons.

History: *1990 c 560 art 2 s 5*

116.733 MEDICAL DEVICE EXEMPTION.

Laws 1990, chapter 560, article 2, sections 1 and 2, and sections 116.70, 116.731, and 116.732, do not apply to processes using CFC's or halons on medical devices, in sterilization processes in health care facilities, or by a person or facility in manufacturing or selling of medical devices.

History: *1990 c 560 art 2 s 6; 1991 c 199 art 1 s 30*

116.734 UNIFORM CFC REGULATION.

It is the policy of this state to regulate and manage CFC's in a uniform manner throughout the state. Political subdivisions may not adopt, and are preempted from adopting or enforcing, requirements relating to CFC's that are different than state law.

History: *1990 c 560 art 2 s 7*

116.735 TRAINING AND CERTIFICATION.

The agency shall develop standards of competence for persons who engage in activities relating to products that may contain CFC's, as described in section 116.731, subdivisions 1 to 4, and the commissioner may conduct training programs for these persons. The persons shall obtain from the commissioner a certificate of competence or equivalent federal certification that has been approved by the commissioner.

The agency may adopt rules to implement this section.

History: *1994 c 585 s 35; 1995 c 147 s 4*

116.74 [Repealed, 1Sp2001 c 2 s 162]

INFECTIOUS WASTE CONTROL ACT

116.75 CITATION.

Sections 116.76 to 116.82 may be cited as the "Infectious Waste Control Act."

History: *1989 c 337 s 1; 1993 c 206 s 2*

116.76 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.76 to 116.83.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Blood.** "Blood" means waste human blood and blood products in containers, or solid waste saturated and dripping human blood or blood products. Human blood products include serum, plasma, and other blood components.

Subd. 4. **Commercial transporter.** "Commercial transporter" means a person, other than the United States government, who transports infectious or pathological waste for compensation.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 6. **Decontamination.** "Decontamination" means rendering infectious waste safe for routine handling as a solid waste.

Subd. 7. [Repealed, 1Sp1993 c 1 art 9 s 75]

Subd. 8. **Facility.** "Facility" means a site where infectious waste is generated, stored, decontaminated, incinerated, or disposed.

Subd. 9. **Generator.** "Generator" means a person whose activities produce infectious waste. "Generator" does not include a person who produces sharps as a result of administering medication to oneself. "Generator" does not include an ambulance service licensed under section
144E.10, an eligible board of health, community health board, or public health nursing agency as defined in section 116.78, subdivision 10, or a program providing school health service under section 121A.21.

Subd. 10. **Household.** "Household" means a single detached dwelling unit or a single unit of a multiple dwelling.

Subd. 11. **Infectious agent.** "Infectious agent" means an organism that is capable of producing infection or infectious disease in humans.

Subd. 12. **Infectious waste.** "Infectious waste" means laboratory waste, blood, regulated body fluids, sharps, and research animal waste that have not been decontaminated.

Subd. 13. **Laboratory waste.** "Laboratory waste" means waste cultures and stocks of agents that are generated from a laboratory and are infectious to humans; discarded contaminated items used to inoculate, transfer, or otherwise manipulate cultures or stocks of agents that are infectious to humans; wastes from the production of biological agents that are infectious to humans; and discarded live or attenuated vaccines that are infectious to humans.

Subd. 14. **Pathological waste.** "Pathological waste" means human tissues and body parts removed accidentally or during surgery or autopsy intended for disposal.

Subd. 15. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, the United States government, an interstate body, the state, and an agency, department, or political subdivision of the state.

Subd. 16. **Regulated human body fluids.** "Regulated human body fluids" means cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid that are in containers or that drip freely from body fluid soaked solid waste items.

Subd. 17. **Research animal waste.** "Research animal waste" means carcasses, body parts, and blood derived from animals knowingly and intentionally exposed to agents that are infectious to humans for the purpose of research, production of biologicals, or testing of pharmaceuticals.

Subd. 18. **Sharps.** "Sharps" means:

(1) discarded items that can induce subdermal inoculation of infectious agents, including needles, lancets, scalpel blades, pipettes, and other items derived from human or animal patient care, blood banks, laboratories, mortuaries, research facilities, and industrial operations; and

(2) discarded glass or rigid plastic vials containing infectious agents.

History: *1989 c 337 s 2; 1990 c 568 art 2 s 2; 1993 c 206 s 3; 1Sp1993 c 1 art 9 s 2; 1Sp1993 c 6 s 3; 1994 c 585 s 36; 1997 c 199 s 14; 1998 c 397 art 11 s 3; 2010 c 286 s 1*

116.77 COVERAGE.

Sections 116.75 to 116.83 and 609.671, subdivision 10, cover any person, including a veterinarian, who generates, treats, stores, transports, or disposes of infectious or pathological waste but not including infectious or pathological waste generated by households, farm operations, or agricultural businesses. Except as specifically provided, sections 116.75 to 116.83 do not limit or alter treatment or disposal methods for infectious or pathological waste.

History: *1989 c 337 s 3; 1991 c 344 s 1; 1993 c 206 s 4; 1Sp1993 c 6 s 4*

116.78 WASTE MANAGEMENT.

Subdivision 1. **Segregation.** All untreated infectious waste must be segregated from other waste material at its point of generation and maintained in separate packaging throughout collection, storage, and transport. Infectious waste must be packaged, contained, and transported in a manner that prevents release of the waste material.

Subd. 2. **Labeling.** All bags, boxes, and other containers used to collect, transport, or store infectious waste must be clearly labeled with a biohazard symbol or with the words "infectious waste" written in letters no less than one inch in height.

Subd. 3. **Reusable containers.** Containers which have been in direct contact with infectious waste must be disinfected prior to reuse.

Subd. 3a. **Waste containers.** Noninfectious mixed municipal solid waste generated by a facility must be placed for containment, collection, and processing or disposal in containers that are sufficiently transparent that the contents of the containers may be viewed from the exterior of the containers. The operator of a mixed municipal solid waste facility may not refuse to accept mixed municipal solid waste generated by a facility that complies with this subdivision, unless the operator observes that the waste contains sharps or other infectious waste.

Subd. 4. **Sharps.** Sharps, except those generated from a household or from a farm operation or agricultural business:

(1) must be placed in puncture-resistant containers;

(2) may not be compacted or mixed with other waste material whether or not the sharps are decontaminated unless it is part of an infectious waste decontamination process approved by the commissioner of the Pollution Control Agency that will prevent exposure during transportation and disposal; and

(3) may not be disposed of at refuse-derived fuel facilities or at other facilities where waste is hand sorted.

Subd. 5. **Pathological waste.** Pathological waste must be managed according to sanitary standards established by state and federal laws or regulations for the disposal of the waste.

Subd. 6. **Storage.** Infectious and pathological waste must be stored in a specially designated area that is designed to prevent the entry of vermin and that prevents access by unauthorized persons.

Subd. 7. **Compaction and mixture with other wastes.** Infectious waste may not be compacted or mixed with other waste materials prior to incineration or disposal. Compaction is acceptable if it is part of an infectious waste system, approved by the commissioner of the Pollution Control Agency, that is designed to prevent exposure during storage, transportation, and disposal.

Subd. 8. **Disposal.** Except for disposal procedures specifically prescribed, this section and section 116.81 do not limit disposal methods for infectious and pathological waste.

Subd. 9. **Disposal of infectious waste by ambulance services.** Any infectious waste, as defined in section 116.76, subdivision 12, produced by an ambulance service in the transport or care of a patient must be properly packaged and disposed of at the destination hospital or at the nearest hospital if the patient is not transported. A hospital must accept the infectious waste if it is properly packaged according to the standards the hospital uses for packaging its own infectious wastes. The hospital may charge the ambulance service a reasonable fee for disposal of the infectious waste. Nothing in this subdivision shall require a hospital to accept infectious waste if the waste is of a type not generated by the hospital or if the hospital cannot safely store the waste. A hospital that accepts infectious waste under this subdivision is not subject to those provisions of section 116.79, subdivision 4, paragraph (a), that apply to the storage or decontamination of infectious or pathological waste generated at a site other than the hospital.

Subd. 10. **Disposal of infectious waste by public health agencies and programs providing school health services.** Any infectious waste, as defined in section 116.76, subdivision 12, produced by an eligible board of health, community health board, or public health nursing agency or a program providing school health services under section 121A.21, must be properly packaged and may be disposed of at a hospital. For purposes of this subdivision, an "eligible board of health, community health board, or public health nursing agency" is defined as a board of health, community health board, or public health nursing agency located in a county with a population of less than 40,000. A hospital must accept the infectious waste if it is properly packaged according to the standards the hospital uses for packaging its own infectious wastes. The hospital may charge an eligible board of health, community health board, or public health nursing agency or a program providing school health services a reasonable fee for disposal of the infectious waste. Nothing in this subdivision shall require a hospital to accept infectious waste if the waste is of a type not generated by the hospital or if the hospital cannot safely store the waste. A hospital that accepts infectious waste under this subdivision is not subject to those provisions of section 116.79, subdivision 4, paragraph (a), that apply to the storage or decontamination of infectious or pathological waste generated at a site other than the hospital.

History: *1989 c 337 s 4; 1990 c 568 art 2 s 3,4; 1991 c 344 s 2,3; 1993 c 249 s 27; 1Sp1993 c 1 art 9 s 3,4; 1998 c 397 art 11 s 3*

116.79 MANAGEMENT PLANS.

Subdivision 1. **Preparation of management plans.** (a) To the extent applicable to the facility, a person in charge of a facility that generates, stores, decontaminates, incinerates, or disposes of infectious or pathological waste must prepare a management plan for the infectious or pathological waste handled by the facility. A person may prepare a common management plan for all generating facilities owned and operated by the person. If a single plan is prepared to cover multiple facilities, the plan must identify common policy and procedures for the facilities and any management procedures that are facility specific. The plan must identify each generating facility covered by the plan. A management plan must list all physicians, dentists, chiropractors, podiatrists, veterinarians, certified nurse practitioners, certified nurse midwives, or physician assistants, employed by, under contract to, or working at the generating facilities, except hospitals or laboratories. A management plan from a hospital must list the number of licensed beds and from a laboratory must list the number of generating employees.

(b) The management plan must describe, to the extent the information is applicable to the facility:

(1) the type of infectious waste and pathological waste that the person generates or handles; (2) the segregation, packaging, labeling, collection, storage, and transportation procedures for the infectious waste or pathological waste that will be followed;

(3) the decontamination or disposal methods for the infectious or pathological waste that will be used;

(4) the transporters and disposal facilities that will be used for the infectious waste;

(5) the steps that will be taken to minimize the exposure of employees to infectious agents throughout the process of disposing of infectious or pathological wastes; and

(6) the name of the individual responsible for the management of the infectious waste or pathological waste.

(c) If the generator mails sharps for storage, decontamination, or disposal, the plan must specify how the generator will comply with applicable federal laws and rules. The plan must also specify the name, address, and telephone number of the facility to which the sharps are mailed, the name of the person who receives the sharps at the facility, and the annual amount mailed to the facility. If the facility to which the sharps are mailed is not the disposal facility, the plan must
also identify the disposal facility.

(d) The management plan must be kept at the facility.

(e) To the extent applicable to the facility, management plans must be accompanied by a statement of the quantity of infectious and pathological waste generated, decontaminated, stored, incinerated, or disposed of at the facility during the previous two-year period. Quantities shall be reported in pounds.

(f) A management plan must be updated at least once every two years.

Subd. 2. **Compliance with management plans.** A person who prepares a management plan must comply with the management plan.

Subd. 3. [Repealed, 1Sp1993 c 1 art 9 s 75]

Subd. 4. **Plans for storage, decontamination, incineration, and disposal facilities.** (a) A person who stores, incinerates, or decontaminates infectious or pathological waste, other than at the facility where the waste was generated, or a person who incinerates infectious or pathological waste on site, must submit a copy of the management plan to the commissioner of the Pollution Control Agency with a fee of $225. The fee must be deposited in the state treasury and credited
to the general fund.

(b) The commissioner shall review the plans and may require a plan to be modified within
180 days after the plan is submitted if the commissioner determines that the plan is not consistent with state or federal law or that the plan is not adequate to minimize exposure of persons to
the waste.

History: *1989 c 337 s 5; 1991 c 344 s 4-6; 1Sp1993 c 1 art 9 s 5,6; 1994 c 585 s 37*

116.80 TRANSPORTATION OF INFECTIOUS WASTE.

Subdivision 1. **Transfer of infectious waste.** (a) A generator may not transfer infectious waste to a commercial transporter unless the transporter is registered with the commissioner.

(b) A transporter may not deliver infectious waste to a facility prohibited to accept the waste. (c) A person who

is registered to transport infectious waste may not refuse waste generated
from a facility that is properly packaged and labeled.

Subd. 2. **Preparation of management plans.** (a) A commercial transporter in charge of a business that transports infectious waste must prepare a management plan for the infectious waste handled by the commercial transporter.

(b) The management plan must describe, to the extent the information is applicable to the commercial transporter:

(1) the type of infectious waste that the commercial transporter handles;

(2) the transportation procedures for the infectious waste that will be followed;

(3) the disposal facilities that will be used for the infectious waste;

(4) the steps that will be taken to minimize the exposure of employees to infectious agents throughout the process of transporting and disposing of infectious waste; and

(5) the name of the individual responsible for the transportation and management of the infectious waste.

(c) The management plan must be kept at the commercial transporter's principal place of business.

(d) Management plans must be accompanied by a statement of the quantity of infectious waste transported during the previous two-year period. Quantities shall be reported in pounds.

(e) A management plan must be updated and resubmitted at least once every two years.

(f) The commissioner shall review the plans and may require a plan to be modified within 180 days after the plan is submitted if the commissioner determines that the plan is not consistent with state or federal law or that the plan is not adequate to minimize exposure of persons to the waste.

Subd. 3. **Registration required.**

(a) A commercial transporter must register with the commissioner.

(b) To register, a commercial transporter must submit a copy of the management plan to the commissioner of the Pollution Control Agency with a fee of $225. The fee must be deposited in the state treasury and credited to the general fund.

(c) The registration is valid for two years.

(d) The commissioner shall issue a registration card with a unique registration number to a person who has submitted a transporter's management plan unless the commissioner finds that registrant has outstanding unresolved violations of this section or a history of serious violations of chapter 115, 115A, 115B, or 116. The registration card must include the date the card expires.

Subd. 4. **Waste from other states.** A person may not transport infectious waste into the state for decontamination, storage, incineration, or disposal without complying with sections 116.76 to 116.82.

History: *1989 c 337 s 6; 1991 c 344 s 7; 1Sp1993 c 1 art 9 s 7,8*

116.801 INCINERATION OF INFECTIOUS WASTE; PERMIT REQUIRED.

(a) Except as provided in paragraph (b), a person may not construct, or expand the capacity of, a facility for the incineration of infectious waste, as defined in section 116.76, without having obtained an air emission permit from the agency.

(b) This section does not affect permit requirements under the rules of the agency for an incinerator that is upgraded to meet pollution control standards or an incinerator with a capacity of 350 pounds or less per hour that is planned to manage waste generated primarily by the owner or operator of the incinerator.

History: *1991 c 231 s 1*

116.802 INCINERATION OF INFECTIOUS WASTE; ENVIRONMENTAL IMPACT.

Until the Pollution Control Agency adopts revisions to its air emission rules for incinerators, a new or expanded facility for the incineration of infectious waste that is subject to the permit requirement in section 116.801 may not receive a permit until an environmental impact statement for the facility has been prepared and approved. The Pollution Control Agency is the governmental unit responsible for preparation of an environmental impact statement required under this section. **History:** *1991 c 231 s 2*

116.81 RULES.

Subdivision 1. **Agency rules.** The agency, in consultation with the commissioner of health, may adopt rules to implement sections 116.76 to 116.82. The agency, before adopting rules affecting animals or research animal waste, must consult the commissioner of agriculture and
the Board of Animal Health.

Subd. 2. [Repealed, 1Sp1993 c 1 art 9 s 75]

History: *1989 c 337 s 7; 1Sp1993 c 1 art 9 s 9*

116.82 AUTHORITY OF LOCAL GOVERNMENT.

Subdivision 1. **Preemption of regulation.** A county, municipality, or other political subdivision of the state may not adopt a definition of infectious or pathological waste that differs
from the definitions in section 116.76, or management requirements for infectious or pathological waste that differ from the requirements of sections 116.78 and 116.79.

Subd. 2. **Local solid waste authority.** (a) Sections 116.76 to 116.81 do not affect local implementation of collection, storage, or disposal of solid waste that does not contain infectious waste.

(b) Sections 116.76 to 116.81 do not affect county authority under other law to regulate and manage solid waste that does not contain infectious waste.

(c) A political subdivision, as defined in section 115A.03, subdivision 24, may not require a refuse-derived fuel facility to accept infectious waste.

Subd. 3. **Local enforcement.** Sections 116.76 to 116.81 may be enforced by a county by delegation of enforcement authority granted to the agency in section 116.83. Separate enforcement actions may not be brought by a state agency and a county for the same violations. The state or county may not bring an action that is being enforced by the federal Office of Safety and Health Administration.

History: *1989 c 337 s 8; 1993 c 206 s 5; 1Sp1993 c 1 art 9 s 10; 1Sp1993 c 6 s 5*

116.83 ENFORCEMENT.

Subdivision 1. **Enforcement authority.** The agency may enforce sections 116.76 to 116.81. Subd. 2.

[Repealed, 1Sp1993 c 1 art 9 s 75]

Subd. 3. **Access to information and property.** Subject to section 144.651, the commissioner of the Pollution Control Agency may on presentation of credentials, during regular business hours:

(1) examine and copy any books, records, memoranda, or data that is related to compliance with sections 116.76 to 116.81; and

(2) enter public or private property regulated by sections 116.76 to 116.81 for the purpose of taking an action authorized by this section including obtaining information and conducting investigations.

History: *1989 c 337 s 9; 1991 c 347 art 1 s 18; 1Sp1993 c 1 art 9 s 11,12*

116.835 SAFE SHARPS MANAGEMENT.

(a) A sharps manufacturer that sells or distributes sharps that are usually intended for home use and a pharmaceutical manufacturer that sells or distributes a medication in Minnesota that is usually intended to be self-injected in a home resulting in the generation of sharps shall, on or before July 1, 2011, post to its Web site a plan that describes how the manufacturer supports the safe collection and proper disposal of the sharps.

(b) The plan required under paragraph (a) shall include, at a minimum, a description of the actions, if any, taken by the manufacturer to do the following:

(1) provide for the safe collection and proper disposal of sharps;

(2) educate consumers about safe management and collection opportunities; and

(3) support efforts by retailers, pharmaceutical distributors, local governments, health care organizations, public health officers, solid waste service providers, organizations representing patients who use sharps, and other groups with interest in protecting public health and safety through the sale, collection, and proper disposal of sharps.

(c) A public health agency or clinic that participates in a needle exchange program must post to its Web site a plan that describes how the agency or clinic supports the safe collection and proper disposal of the sharps.

History: *2010 c 286 s 2*

MONITORS FOR INCINERATORS

116.84 MONITORS REQUIRED FOR PCB INCINERATORS.

Notwithstanding any other law to the contrary, an incinerator permit issued to a facility that allows burning of PCB's must, as a condition of the permit, require the installation of a continuous emission monitoring system approved by the commissioner. The monitoring system must provide continuous emission measurements to ensure optimum combustion efficiency
of dioxin precursors. The system must also be capable of providing a permanent record of monitored emissions that will be available upon request to the commissioner and the general public. The commissioner shall provide periodic inspection of the monitoring system to determine its continued accuracy. Should, at any time, the permitted facility's emissions exceed permit requirements based on accurate and valid emissions data, the facility shall immediately commence shutdown of the incinerator until the appropriate modifications to the facility have been made to ensure its ability to meet permitted requirements.

History: *1989 c 335 art 1 s 132*

116.85 MONITORS REQUIRED FOR OTHER INCINERATORS.

Subdivision 1. **Emission monitors.** Notwithstanding any other law to the contrary, an incinerator permit that contains emission limits for dioxin, cadmium, chromium, lead, or mercury must, as a condition of the permit, require the installation of an air emission monitoring system approved by the commissioner. The monitoring system must provide continuous measurements to ensure optimum combustion efficiency for the purpose of ensuring optimum dioxin destruction. The system shall also be capable of providing a permanent record of monitored emissions that will be available upon request to the commissioner and the general public. The commissioner shall provide periodic inspection of the monitoring system to determine its continued accuracy.

Subd. 1a. **Mercury testing.** (a) Notwithstanding any other law to the contrary, a facility holding an incinerator permit that contains emission limits for mercury must, as a condition of the permit, conduct periodic stack testing for mercury as described by this subdivision. Hospital waste incinerators having a design capacity of less than 3,000,000 BTU's per hour may use mercury segregation practices as an alternative to stack testing if allowed by applicable federal requirements, with the approval of the commissioner.

(b) A facility shall conduct stack testing for mercury at intervals not to exceed three months. An incinerator facility burning greater than 30 percent by weight of refuse-derived fuel must conduct periodic stack testing for mercury at intervals not to exceed 12 months unless a previous test showed a permit exceedence after which the agency may require quarterly testing until permit requirements are satisfied. With the approval of the commissioner, an incinerator facility may use methods other than stack testing for determining mercury in air emissions.

(c) After demonstrating that mercury emissions have been below 50 percent of the facility's permitted mercury limit for three consecutive years, as tested under the conditions of paragraph (b), an incinerator facility may choose to conduct stack testing once every three years or according to applicable federal requirements, whichever is more stringent. The facility shall

notify the commissioner of its alternative mercury testing schedule, and the commissioner shall include operating conditions in the facility's permit that ensure that the facility will continue to emit mercury emissions less than 50 percent of the applicable standard.

(d) The provisions of paragraph (c) allowing for less frequent stack testing for mercury apply to a new unit constructed at a facility that has previously met the requirements of paragraph (c), provided that the new unit demonstrates, as tested under the conditions of paragraph (b), that mercury emissions have been below 50 percent of the new unit's permitted mercury limit for
one year.

(e) If a test conducted under the provisions of paragraph (c) shows mercury emissions greater than 50 percent of the facility's permitted mercury limit, the facility shall conduct annual mercury stack sampling until emissions are below 50 percent of the facility's permitted mercury limit. Once the facility demonstrates that mercury emissions are again below 50 percent of the facility's permitted mercury limit, the facility may resume testing every three years or according to federal requirements, whichever is more stringent, upon notifying the commissioner.

(f) In amending, modifying, or reissuing a facility's air emissions permit which contains a provision that restricts mercury emissions from the facility the commissioner shall, at a minimum, continue that permit restriction at the same level unless the applicant demonstrates that no good cause exists to do so.

Subd. 2. **Continuously monitored emissions.** Should, at any time after normal startup, the permitted facility's continuously monitored emissions exceed permit requirements, based on accurate and valid emissions data, the facility shall immediately report the exceedance to the commissioner and immediately either commence appropriate modifications to the facility to ensure its ability to meet permitted requirements or commence shutdown if the modifications cannot be completed within 72 hours. Compliance with permit requirements must then be demonstrated based on additional testing.

Subd. 3. **Periodically tested emissions.** Should, at any time after normal startup, the permitted facility's periodically tested emissions exceed permit requirements based on accurate and valid emissions data, the facility shall immediately report the exceedance to the commissioner, shall undertake appropriate steps to ensure the facility's compliance with permitted requirements, and shall demonstrate compliance within 60 days of the initial report of the exceedance. If the commissioner determines that compliance has not been achieved within 60 days, then the facility shall shut down until compliance with permit requirements is demonstrated based on additional testing.

Subd. 4. **Other law.** This section shall not be construed to limit the authority of the agency to regulate incinerator operations under any other law.

History: *1989 c 335 art 1 s 133; 1990 c 594 art 1 s 54; 1997 c 189 s 1; 1999 c 235 s 2; 2010 c 213 s 1*

116.86 [Repealed, 1991 c 254 art 2 s 48]

RESIDENTIAL LEAD PAINT WASTE

116.87 DEFINITIONS.

Subdivision 1. **Residential lead paint waste.** "Residential lead paint waste" means waste produced by removing lead paint from the interior or exterior structure or the ground surface of a residence. Residential lead paint waste does not include:

(1) lead paint waste removed with the aid of any chemical paint stripper; or

(2) lead paint waste that is mixed with water and that contains any free liquid.

Subd. 2. **Residence.** The term "residence" has the meaning given in rules adopted under sections 144.9501 to 144.9512.

History: *1Sp1993 c 1 art 9 s 13; 1995 c 213 art 1 s 2; 2007 c 147 art 16 s 20*

116.875 AUTHORIZED MANAGEMENT METHODS.

Subdivision 1. **Disposal.** Notwithstanding any other law, a person who disposes of residential lead paint waste in the state may dispose of the waste at:

(1) a land disposal facility that meets the requirements of Minnesota Rules, chapter 7045; (2) a facility that meets the requirements for a new mixed municipal solid waste land disposal facility under Minnesota Rules, chapter 7035, that began operation after January 1, 1989;

(3) a demolition debris land disposal facility equipped with a clay or artificial liner and leachate collection system; or

(4) a solid waste incinerator ash landfill if disposal is approved by the commissioner in accordance with agency rules.

Subd. 2. **Management responsibility; not transferable to occupant.** (a) A person whose activities produce residential lead paint waste is responsible for the management and proper disposal of the waste.

(b) When residential lead paint waste is produced by activities of a person other than the occupant of the residence from which the waste is removed, the person shall not leave the residential lead paint waste at that residence and shall not transfer responsibility for managing or disposing of the waste to the occupant.

Subd. 3. **Waste produced by occupant.** Residential lead paint waste produced by activities of the occupant of the residence from which the waste is removed must be managed as provided by law for household hazardous waste.

Subd. 4. **Demolition debris.** Residential lead paint waste attached to woodwork, walls, or other elements removed from the structure of a residence that constitute demolition debris may be disposed of at any permitted demolition debris land disposal facility.

History: *1Sp1993 c 1 art 9 s 14*

116.88 PROHIBITED METHODS OF MANAGEMENT.

Subdivision 1. **Unlined landfills.** Except as provided in section 116.875, subdivision 4, no person shall dispose of residential lead paint waste at an unlined land disposal facility.

Subd. 2. **Incineration.** No person shall send or accept residential lead paint waste for incineration by a mixed municipal solid waste incinerator.

History: *1Sp1993 c 1 art 9 s 15*

116.885 RECYCLING AND TREATMENT.

Nothing in sections 116.87 to 116.89 is intended to prevent or discourage treatment or recycling of residential lead paint waste. The commissioner shall encourage treatment and recycling of residential lead paint waste.

History: *1Sp1993 c 1 art 9 s 16*

116.89 ENFORCEMENT.

Subdivision 1. **Rules.** The Minnesota Pollution Control Agency may adopt rules necessary to implement and enforce the provisions of sections 116.87 to 116.885, including rules to regulate the transportation, storage, disposal, and other management of residential lead paint waste after the waste leaves the site where it was produced.

Subd. 2. **License revocation.** In addition to enforcement by the Minnesota Pollution Control Agency, the commissioner of health may revoke the license of an abatement contractor that violates any provision of sections 116.87 to 116.885 or the rules adopted under subdivision 1.

History: *1Sp1993 c 1 art 9 s 17*

116.90 REFUSE-DERIVED FUEL.

GENERAL

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section. (b) "Agency" means the Pollution Control Agency.

(c) "Minor modification" means a physical or operational change that does not increase the rated energy production capacity of a solid fuel fired boiler and which does not involve capital costs in excess of 20 percent of a new solid fuel fired boiler having the same rated capacity.

(d) "Refuse-derived fuel" means a product resulting from the processing of mixed municipal solid waste in a manner that reduces the quantity of noncombustible material present in the waste, reduces the size of waste components through shredding or other mechanical means, and produces a fuel suitable for combustion in existing or new solid fuel fired boilers.

(e) "Solid fuel fired boiler" means a device that is designed to combust solid fuel, including but not limited to: wood, coal, biomass, or lignite to produce steam or heat water.

Subd. 2. **Use of refuse-derived fuel.** (a) Existing or new solid fuel fired boilers may utilize refuse-derived fuel in an amount up to 30 percent by weight of the fuel feed stream under the following conditions:

(1) utilization of refuse-derived fuel involves no modification or only minor modification to the solid fuel fired boiler;

(2) utilization of refuse-derived fuel does not cause a violation of emissions limitations or ambient air quality standards applicable to the solid fuel fired boiler;

(3) the solid fuel fired boiler has a valid permit to operate;

(4) the refuse-derived fuel is manufactured and sold in compliance with permits issued by the agency and:

(i) is produced by a facility for which a permit was issued by the agency before June 1, 1991; or

(ii) is produced by an agency-permitted facility designed as part of a regional waste management system at which facility the waste is mechanically and hand sorted to avoid inclusion of items containing mercury or other heavy metals in the waste that is processed into refuse-derived fuel, and the refuse-derived fuel producer has contracted with an end user to combust the fuel; and

(5) the owner or operator of the solid fuel fired boiler gives prior written notice to the commissioner of the agency of the amount of refuse-derived fuel expected to be used and the date on which the use is expected to begin.

(b) A facility that produces refuse-derived fuel that is sold for use in a solid fuel fired boiler may accept waste for processing only from counties that provide for the removal of household hazardous waste from the waste.

(c) The agency may not require, as a condition of using refuse-derived fuel under this section, any additional monitoring or testing of a solid fuel fired boiler's air emissions beyond the monitoring or testing required by state or federal law or by the terms of the solid fuel fired boiler's permit issued by the agency.

History: *1991 c 337 s 56; 1992 c 593 art 1 s 33*

116.91 CITIZEN REPORTS OF ENVIRONMENTAL VIOLATIONS.

The agency shall maintain and publicize a toll-free number to enable citizens to report information about potential environmental violations. The agency may establish a program to pay awards from funds raised from private sources to persons who provide information that leads to the conviction for an environmental crime.

History: *1991 c 347 art 3 s 2*

MERCURY CONTAMINATION REDUCTION

116.915 MERCURY REDUCTION.

Subdivision 1. **Goal.** It is the goal of the state to reduce mercury contamination by reducing the release of mercury into the air and water of the state by 60 percent from 1990 levels by December 31, 2000, and by 70 percent from 1990 levels by December 31, 2005. The goal applies to the statewide total of releases from existing and new sources of mercury. The commissioner shall publish updated estimates of 1990 releases in the State Register.

Subd. 2. **Reduction strategies.** The commissioner shall implement the strategies recommended by the Mercury Contamination Reduction Initiative Advisory Council and identified on pages 31 to 42 of the Minnesota Pollution Control Agency's report entitled "Report on the Mercury Contamination Reduction Initiative Advisory Council's Results and Recommendations" as transmitted to the legislature by the commissioner's letter dated March 15, 1999. The commissioner shall solicit, by July 1, 1999, voluntary reduction agreements from sources that emit more than 50 pounds of mercury per year.

Subd. 3. [Obsolete, 1Sp2005 c 1 art 2 s 161]

History: *1999 c 231 s 150*

116.92 MERCURY EMISSIONS REDUCTION.

Subdivision 1. **Sales.** A person may not sell mercury to another person in this state without providing a material safety data sheet, as defined in United States Code, title 42, section 11049, and requiring the purchaser to sign a statement that the purchaser:

(1) will use the mercury only for a medical, dental, instructional, research, or manufacturing purpose; and

(2) understands the toxicity of mercury and will appropriately store and use it and will not place, or allow anyone under the purchaser's control to place, the mercury in the solid waste stream or in a wastewater disposal system, as defined in section 115.01, subdivision 4.

Subd. 2. **Use of mercury.** A person who uses mercury in any application may not place, or deliver the mercury to another person who places residues, particles, scrapings, or other materials that contain mercury in solid waste or wastewater, except for traces of materials that may inadvertently pass through a filtration system during a dental procedure.

Subd. 3. **Labeling; products containing mercury.** (a) A manufacturer or wholesaler may not sell and a retailer may not knowingly sell any of the following items in this state that contain mercury unless the item is labeled in a manner to clearly inform a purchaser or consumer that mercury is present in the item and that the item may not be placed in the garbage until the mercury is removed and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater:

(1) a thermostat or thermometer;

(2) an electric switch, individually or as part of another product, other than a motor vehicle; (3) an appliance;

(4) a medical or scientific instrument;

(5) an electric relay or other electrical device;

(6) a fluorescent or high-intensity discharge lamp, individually or as part of another product; and

(7) laboratory chemicals, reagents, fixatives, and electrodes.

(b) Labeling of items in accordance with mercury product labeling plans approved by another state that is a member of the Interstate Mercury Education and Reduction Clearinghouse (IMERC) shall be considered to be in compliance with this section. The manufacturer shall provide a copy of the labeling plan to the agency and shall notify the agency if the approval is modified.

(c) Manufacturers of products that contain a mercury-containing lamp not intended to be replaceable by the user or consumer shall meet the product labeling requirements of this section by placing the label on the product or in the care and use manual or product instructions.

Subd. 4. **Removal from service; products containing mercury.** (a) When an item listed in subdivision 3 is removed from service the mercury in the item must be reused, recycled, or otherwise managed to ensure compliance with section 115A.932.

(b) A person who is in the business of replacing or repairing an item listed in subdivision 3 in households shall ensure, or deliver the item to a facility that will ensure, that the mercury contained in an item that is replaced or repaired is reused or recycled or otherwise managed in compliance with section 115A.932.

(c) A person may not crush a motor vehicle unless the person has first made a good faith effort to remove all of the mercury switches in the motor vehicle.

Subd. 5. **Thermostats.** A manufacturer of thermostats that contain mercury or that may replace thermostats that contain mercury shall, in addition to the requirements of subdivision 3, provide incentives for and sufficient information to purchasers and consumers of the thermostats for the purchasers or consumers to ensure that mercury in thermostats being removed from service is reused or recycled or otherwise managed in compliance with section 115A.932. A manufacturer that has complied with this subdivision is not liable for improper disposal by purchasers or consumers of thermostats.

Subd. 5a. **Displacement relays.** (a) A manufacturer of a displacement relay that contains mercury is responsible for the costs of collecting and managing its displacement relays to ensure that the relays do not become part of the solid waste stream.

(b) A manufacturer of a displacement relay that contains mercury shall, in addition to the requirements of subdivision 3, provide incentives for, and sufficient information to, purchasers and consumers of the relay to ensure that the relay does not become part of the waste stream.
A manufacturer that has complied with this subdivision is not liable for improper disposal by purchasers or consumers of its relays.

(c) A manufacturer subject to this subdivision, or an organization of such manufacturers and its officers, members, employees, and agents, may participate in projects or programs to collect and properly manage waste displacement relays. Any person who participates in such a project or program is immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for activities related to the collection and management of the relays under this subdivision.

(d) For the purposes of this subdivision, a "displacement relay" means an electric flow control device having one or more poles that contain metallic mercury and a plunger which, when energized by a magnetic field, moves into a pool of mercury, displacing the mercury sufficiently to create a closed electrical circuit.

Subd. 6. **Mercury thermometers prohibited.** (a) A manufacturer, wholesaler, or retailer may not sell or distribute at no cost a thermometer containing mercury that was manufactured after June 1, 2001.

(b) Paragraph (a) does not apply to:

(1) an electronic thermometer with a battery containing mercury if the battery is in compliance with section 325E.125;

(2) a mercury thermometer used for food research and development or food processing, including meat, dairy products, and pet food processing;

(3) a mercury thermometer that is a component of an animal agriculture climate control system or industrial measurement system until such time as the system is replaced or a nonmercury component for the system is available; or

(4) a mercury thermometer used for calibration of other thermometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the National Institute of Standards and Technology.

Subd. 7. **Fluorescent and high intensity discharge lamps; large use applications.** (a) A person who sells fluorescent or high intensity discharge lamps that contain mercury to the owner or manager of an industrial, commercial, office, or multiunit residential building, or to any person who replaces or removes from service outdoor lamps that contain mercury, shall clearly inform the purchaser in writing on the invoice for the lamps, or in a separate writing, that the lamps contain mercury, a hazardous substance that is regulated by federal

or state law and that they may not be placed in solid waste. This paragraph does not apply to a person who incidentally sells fluorescent or high intensity discharge lamps at retail to the specified purchasers.

(b) A person who contracts with the owner or manager of an industrial, commercial, office, or multiunit residential building, or with a person responsible for outdoor lighting, to remove from service fluorescent or high intensity discharge lamps that contain mercury shall clearly inform, in writing, the person for whom the work is being done that the lamps being removed from service contain mercury and what the contractor's arrangements are for the management of the mercury in the removed lamps.

Subd. 7a. **Fluorescent and high-intensity discharge lamps; residential applications.** (a) Any information regarding fluorescent and high-intensity discharge lamps containing mercury that is sent by a utility to a customer, present on a utility's Web site, or contained in a utility's print, radio, or video advertisement, must:

(1) state that the lamps contain mercury;

(2) state that mercury is harmful to the environment;

(3) state that placing the lamps in garbage is illegal; and

(4) provide a toll-free telephone number or Web site that customers can access to learn how to lawfully dispose of the lamps.

(b) The information under paragraph (a) must be:

(1) provided in a minimum of 12-point type in print or online media; and

(2) provided in a manner that the ordinary consumer will understand that fluorescent and high-intensity discharge lamps contain mercury and must not be placed in garbage in Minnesota.

(c) A television or radio advertisement regarding fluorescent and high-intensity discharge lamps containing mercury must prominently convey the information that the lamps contain mercury and must be recycled.

Subd. 8. **Ban; toys, games, and apparel.** A person may not sell for resale or at retail in this state a toy or game that contains mercury, or an item of clothing or wearing apparel that is exempt from sales tax under section 297A.67, subdivision 8, that contains an electric switch that contains mercury.

Subd. 8a. **Ban; mercury manometers.** After June 30, 1997, mercury manometers for use on dairy farms may not be sold or installed, nor may mercury manometers in use on dairy farms be repaired. After December 31, 2000, all mercury manometers on dairy farms must be removed from use.

Subd. 8b. **Ban; mercury-containing sphygmomanometers.** After August 1, 2007, a person may not sell, offer for sale, distribute, install, or reinstall in the state a sphygmomanometer containing mercury.

Subd. 8c. **Ban; mercury-containing gastrointestinal devices.** After August 1, 2007, a person may not sell, offer for sale, distribute, or use in the state an esophageal dilator, bougie tube, gastrointestinal tube, feeding tube, or similar device containing mercury.

Subd. 8d. **Ban; mercury-containing thermostats.** After August 1, 2007, a person may not sell, offer for sale, distribute, install, or reinstall in the state a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. This subdivision does not apply to a thermostat used to sense and control temperature as part of a manufacturing process.

Subd. 8e. **Ban; mercury-containing switches and relays.** (a) After August 1, 2007, a person may not sell, offer for sale, or distribute in the state a mercury switch or mercury relay individually or as part of another product.

(b) For the purposes of this subdivision:

(1) "mercury relay" means a mercury-containing product or device that opens or closes electrical contacts to affect the operation of other devices in the same or another electrical circuit and includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays; and

(2) "mercury switch" means a mercury-containing product or device that opens or closes an electrical circuit or gas valve and includes, but is not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors. A mercury switch does not include a mercury-added thermostat or a mercury diostat.

(c) A manufacturer shall be in compliance with this subdivision if:

(1) it has received an exclusion or exemption from a state that is a member of the Interstate Mercury Education and Reduction Clearinghouse (IMERC) for replacement parts or for a use where no feasible alternative is available;

(2) it submits a copy of the approved exclusion or exemption to the commissioner; and

(3) it meets all of the requirements in the approved exclusion or exemption for its activities within the state.

Subd. 8f. **Ban; mercury diostats.** After January 1, 2008, a person may not sell, offer for sale, or distribute a new gas oven, range, or stove containing a mercury-containing switch that controls a gas valve in an oven or oven portion of a gas range or stove.

Subd. 8g. **Ban; mercury-containing barometers, manometers, and pyrometers.** After January 1, 2008, a person may not sell, offer for sale, or distribute in the state a mercury-containing device used for measuring atmospheric pressure or for measuring pressure of liquids and gases
or a mercury-containing device used for measuring the temperature of extremely hot materials, individually or as part of another product.

Subd. 8h. **Ban; mercury in over-the-counter pharmaceuticals.** After January 1, 2008, a person may not sell, offer for sale, or distribute in the state for human use an over-the-counter pharmaceutical product containing mercury.

Subd. 8i. **Ban; mercury in cosmetics, toiletries, and fragrances.** After January 1, 2008, a person may not sell, offer for sale, or distribute in the state a cosmetic, toiletry, or fragrance product containing mercury.

Subd. 8j. **Exclusion for existing equipment.** The prohibitions in subdivisions 8b to 8g do not apply if a switch, relay, or measuring device is used to replace a switch, relay, or measuring device that is a component of a larger product in use prior to January 1, 2008, provided the owner
of that equipment has made every reasonable effort to determine that no compatible nonmercury replacement component exists.

Subd. 9. **Enforcement; generators of household hazardous waste.** (a) A violation
of subdivision 2 or 4, paragraph (a), by a generator of household hazardous waste, as defined
in section 115A.96, or a violation of subdivision 8 by a person selling at retail, is not subject to enforcement under section 115.071, subdivision 3.

(b) An administrative penalty imposed under section 116.072 for a violation of subdivision
2 or 4, paragraph (a), by a generator of household hazardous waste, as defined in section 115A.96, or for a violation of subdivision 8 by a person selling at retail, may not exceed $700.

Subd. 10. **Definition of mercury-containing.** For the purposes of this section,
"mercury-containing" or "containing mercury" means that the product, component of a product, or chemical formulation contains intentionally added mercury.

History: *1992 c 560 s 3; 1992 c 603 s 37; 1993 c 249 s 28; 1994 c 585 s 38; 1995 c 247 art 1 s 43; 1997 c 62 s 2,3; 1997 c 216 s 116; 2000 c 418 art 1 s 44; 2001 c 47 s 1; 2006 c201 s 2; 2007 c 109 s 2-13*

116.921 MULTISTATE CLEARINGHOUSE.

The agency is authorized to participate in the Interstate Mercury Education and Reduction Clearinghouse (IMERC) to assist in carrying out the requirements and coordinating any other activities related to the administration of statutes governing the purchase, sale, use, labeling, disposal, and management of mercury and mercury-containing products.

History: *2007 c 109 s 14*

116.925 ELECTRIC ENERGY; MERCURY EMISSIONS REPORT.

Subdivision 1. **Report.** To address the shared responsibility between the providers and consumers of electricity for the protection of Minnesota's lakes, each electric utility, as defined in section 216B.38, subdivision 5, and each person that generates electricity in this state for that person's own use or for sale at retail or wholesale shall provide to the commissioner of
the Pollution Control Agency by April 1 an annual report of the amount of mercury emitted in generating that electricity at that person's facilities for the previous calendar year.

Subd. 2. **Contents of report.** (a) A report must include:

(1) a list of all generation facilities owned or operated by the utility or person subject to subdivision 1;

(2) all readily available information regarding the amount of electricity purchased by the utility or person subject to subdivision 1, for use in the state; and

(3) information for each facility owned or operated by the utility or person subject to subdivision 1, stating: (i) the amount of electricity generated at the facility for use or for sale in this state at retail or wholesale; (ii) the amount of fuel used to generate that electricity at the facility; and (iii) the amount of mercury emitted in generating that electricity in the previous calendar year, based on emission factors, stack tests, fuel analysis, or other methods approved by the commissioner. The report must include the mercury content of the fuel if it is determined in conjunction with a stack test.

(b) The following are de minimis standards for small and little-used generation facilities: (1) less than 240 hours of operation by the combustion unit per year;

(2) a fuel capacity input at the combustion unit of less than 150,000,000 British thermal units per hour; or

(3) an electrical generation unit with maximum output of less than or equal to 15 megawatts. A utility or person subject to this section who owns or operates a combustion unit that
qualifies under one of these de minimis standards is not required to provide the information described in paragraph (a) for that combustion unit.

(c) A report need not be filed for a combustion device for a year in which the device has documented mercury emissions of three pounds or less.

Subd. 3. **Report to consumers.** By January 1, 1999, and biennially thereafter in the report on air toxics required under section 115D.15, the commissioner shall report the amount of mercury emitted in the generation of electricity.

History: *1997 c 191 art 2 s 2*

116.93 LAMP RECYCLING FACILITIES.

Subdivision 1. **Definition.** For the purposes of this section, "lamp recycling facility" means a facility operated to remove, recover, and recycle for reuse mercury or other hazardous materials from fluorescent or high intensity discharge lamps.

Subd. 2. **Lamp recycling facility; permits or licenses; reporting.** (a) A person may not operate a lamp recycling facility without obtaining a permit or license for the facility from the agency. The permit or license must require:

(1) a plan for response to releases, including emergency response;

(2) proof of financial responsibility for closure and any necessary postclosure care at the facility which may include a performance bond or other insurance;

(3) liability insurance or another financial mechanism that provides proof of financial responsibility for response actions required under chapter 115B; and

(4) by March 1 each year, beginning in 2008, an annual report to the agency on the number and type of lamps received from businesses and households in the state and total number of lamps received from all generators outside of the state.

The agency shall specify the format for the report under clause (4) and make the reported information available on the agency's Web site.

(b) A lamp recycling facility that is licensed or permitted by a county under section 473.811, subdivision 5b, complies with this subdivision if the license or permit held by the facility contains at least all the terms and conditions required by the agency for a license or permit issued under this subdivision.

(c) A lamp recycling facility with a demonstrated capability for recycling that is in operation prior to adoption of rules for a licensing or permitting process for the facility by the agency may continue to operate in accordance with a compliance agreement or other approval by the commissioner until a license or permit is issued by the agency under this subdivision.

History: *1993 c 249 s 29; 2007 c 109 s 15* **116.94** [Repealed, 1995 c 247 art 1 s 67]

CHEMICALS OF HIGH CONCERN

116.9401 DEFINITIONS.

(a) For the purposes of sections 116.9401 to 116.9407, the following terms have the meanings given them.

(b) "Agency" means the Pollution Control Agency.

(c) "Alternative" means a substitute process, product, material, chemical, strategy, or combination of these that is technically feasible and serves a functionally equivalent purpose to a chemical in a children's product.

(d) "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation, or metabolism.

(e) "Chemical of high concern" means a chemical identified on the basis of credible scientific evidence by a state, federal, or international agency as being known or suspected with a high degree of probability to:

(1) harm the normal development of a fetus or child or cause other developmental toxicity;

(2) cause cancer, genetic damage, or reproductive harm;

(3) disrupt the endocrine or hormone system;

(4) damage the nervous system, immune system, or organs, or cause other systemic toxicity; (5) be persistent, bioaccumulative, and toxic; or

(6) be very persistent and very bioaccumulative. (f) "Child" means a person under 12 years of age.

(g) "Children's product" means a consumer product intended for use by children, such as baby products, toys, car seats, personal care products, and clothing.

(h) "Commissioner" means the commissioner of the Pollution Control Agency. (i) "Department" means the Department of Health.

(j) "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis.

(k) "Green chemistry" means an approach to designing and manufacturing products that minimizes the use and generation of toxic substances.

(l) "Manufacturer" means any person who manufactures a final consumer product sold at retail or whose brand name is affixed to the consumer product. In the case of a consumer product imported into the United States, manufacturer includes the importer or domestic distributor of the consumer product if the person who manufactured or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States.

(m) "Priority chemical" means a chemical identified by the Department of Health as a chemical of high concern that meets the criteria in section 116.9403.

(n) "Safer alternative" means an alternative whose potential to harm human health is less than that of the use of a priority chemical that it could replace.

History: *2009 c 37 art 1 s 47*

116.9402 IDENTIFICATION OF CHEMICALS OF HIGH CONCERN.

(a) By July 1, 2010, the department shall, after consultation with the agency, generate a list of chemicals of high concern.

(b) The department must periodically review and revise the list of chemicals of high concern at least every three years. The department may add chemicals to the list if the chemical meets one or more of the criteria in section 116.9401, paragraph (e).

(c) The department shall consider chemicals listed as a suspected carcinogen, reproductive or developmental toxicant, or as being persistent, bioaccumulative, and toxic, or very persistent and very bioaccumulative by a state, federal, or international agency. These agencies may include, but are not limited to, the California Environmental Protection Agency, the Washington Department of Ecology, the United States Department of Health, the United States Environmental Protection Agency, the United Nation's World Health Organization, and European Parliament Annex XIV concerning the Registration, Evaluation, Authorisation, and Restriction of Chemicals.

(d) The department may consider chemicals listed by another state as harmful to human health or the environment for possible inclusion in the list of chemicals of high concern.

History: *2009 c 37 art 1 s 48*

116.9403 IDENTIFICATION OF PRIORITY CHEMICALS.

(a) The department, after consultation with the agency, may designate a chemical of high concern as a priority chemical if the department finds that the chemical:

(1) has been identified as a high-production volume chemical by the United States Environmental Protection Agency; and

(2) meets any of the following criteria:

(i) the chemical has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

(ii) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

(iii) the chemical has been found through monitoring to be present in fish, wildlife, or the natural environment.

(b) By February 1, 2011, the department shall publish a list of priority chemicals in the State Register and on the department's Internet Web site and shall update the published list whenever a new priority chemical is designated.

History: *2009 c 37 art 1 s 49*

116.9405 APPLICABILITY.

The requirements of sections 116.9401 to 116.9407 do not apply to: (1) chemicals in used children's products;

(2) priority chemicals used in the manufacturing process, but that are not present in the final product;

(3) priority chemicals used in agricultural production;

(4) motor vehicles as defined in chapter 168 or watercraft as defined in chapter 86B or their component parts, except that the use of priority chemicals in detachable car seats is not exempt;

(5) priority chemicals generated solely as combustion by-products or that are present in combustible fuels;

(6) retailers;

(7) pharmaceutical products or biologics;

(8) a medical device as defined in the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321(h);

(9) food and food or beverage packaging, except a container containing baby food or infant formula;

(10) consumer electronics products and electronic components, including but not limited to personal computers; audio and video equipment; calculators; digital displays; wireless phones; cameras; game consoles; printers; and handheld electronic and electrical devices used to access interactive software or their associated peripherals; or products that comply with the provisions of directive 2002/95/EC of the European Union, adopted by the European Parliament and Council of the European Union now or hereafter in effect; or

(11) outdoor sport equipment, including snowmobiles as defined in section 84.81, subdivision 3; all-terrain vehicles as defined in section 84.92, subdivision 8; personal watercraft as defined in section 86B.005, subdivision 14a; watercraft as defined in section 86B.005, subdivision 18; and off-highway motorcycles, as defined in section 84.787, subdivision 7, and all attachments and repair parts for all of this equipment.

History: *2009 c 37 art 1 s 50*

116.9406 DONATIONS TO THE STATE.

The commissioner may accept donations, grants, and other funds to carry out the purposes of sections 116.9401 to 116.9407. All donations, grants, and other funds must be accepted without preconditions regarding the outcomes of the regulatory oversight processes set forth in sections 116.9401 to 116.9407.

History: *2009 c 37 art 1 s 51*

116.9407 PARTICIPATION IN INTERSTATE CHEMICALS CLEARINGHOUSE.

The state may cooperate with other states in an interstate chemicals clearinghouse regarding chemicals in consumer products, including the classification of priority chemicals in commerce; organizing and managing available data on chemicals, including information on uses, hazards, risks, and environmental and health concerns; and producing and evaluating information on safer alternatives to specific uses of priority chemicals.

History: *2009 c 37 art 1 s 52*

SMALL BUSINESS ASSISTANCE

116.95 CITATION.

Sections 116.96 to 116.99 may be cited as the "Small Business Air Quality Compliance Assistance Act."

History: *1992 c 546 s 5*

116.96 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 116.96 to 116.99.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Clean Air Act.** "Clean Air Act" means the federal Clean Air Act, United States Code, title 42, section 7401 et seq., as amended.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 5. **Regulated pollutant.** "Regulated pollutant" means:

(1) a volatile organic compound that participates in atmospheric photochemical reactions; (2) a pollutant for which a national ambient air quality standard has been promulgated;

(3) a pollutant that is addressed by a standard promulgated under section 7411 or 7412 of the Clean Air Act; or

(4) any pollutant that is regulated under this chapter or air quality rules adopted under this chapter.

Subd. 6. **Small business stationary source.** "Small business stationary source" means a business that:

(1) is owned or operated by a person that employs 100 or fewer individuals;

(2) is a small business concern as defined in the Small Business Act, United States Code, title 15, section 632(a);

(3) is not a major stationary source as defined in section 7661 of the Clean Air Act; (4) does not emit 50 tons or more per year of any regulated pollutant; and

(5) emits less than 75 tons per year of all regulated pollutants.

History: *1992 c 546 s 6; 1995 c 220 s 107*

116.97 SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM.

Subdivision 1. **Creation.** The commissioner shall establish a small business air quality compliance assistance program that incorporates the small business stationary source technical and environmental compliance assistance program required by section 7661f of the Clean Air Act.

Subd. 2. **Requirements.** The commissioner shall ensure that the program provides at least the following:

(1) direct, timely, one-on-one information and technical assistance to small businesses that are stationary sources on matters including, but not limited to, their legal rights and obligations under federal and state air quality laws and regulations, applicable requirements and alternatives for achieving compliance, permit procedures, preparation of permit applications, sources of technical expertise, consequences of operating in violation, enforcement, fines, penalties, and appeals;

(2) a clearinghouse to provide information and referral to appropriate technical experts concerning Clean Air Act regulatory requirements, compliance methods, and control technologies;

(3) information and assistance on methods of pollution prevention and the prevention and detection of accidental releases;

(4) audits of the operations of small business stationary sources to determine compliance with federal and state air quality laws and regulations, or establishment of a procedure for referring sources to qualified auditors. Audits may include, but need not be limited to, and

evaluation of work practices, compliance monitoring procedures, record-keeping requirements, and technical assistance on pollution prevention opportunities and control options;

(5) to the extent permitted by federal and state air quality laws and regulations, procedures for responding to requests from small business stationary sources for modification of work practices or methods compliance because of the financial or technological capability of the source; and

(6) coordination of efforts with trade associations, small business assistance providers, and federal, state, and local governmental agencies that provide information and technical assistance to small businesses, in order to maximize the information and assistance available to small businesses and to prevent duplication of effort and services.

History: *1992 c 546 s 7*

116.98 OMBUDSMAN FOR SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM.

Subdivision 1. **Appointment.** The commissioner shall appoint an ombudsman for small business air quality compliance assistance in the classified service.

Subd. 2. **Duties.** The ombudsman shall provide direct oversight of the small business air quality compliance assistance program. The ombudsman's duties include, but are not limited to:

(1) conducting independent evaluations of all aspects of the program;

(2) monitoring, reviewing, and providing comments and recommendations to federal, state, and local air quality authorities on laws and regulations that impact small businesses;

(3) facilitating and promoting the participation of small businesses in the development of laws and regulations that affect them;

(4) providing reports to federal, state, and local air quality authorities and the public on the requirements of the Clean Air Act and their impact on small businesses;

(5) disseminating information concerning proposed air quality regulations, control technologies, and other information to small businesses and other interested parties;

(6) participating in and sponsoring meetings and conferences concerning air quality laws and regulations with state and local regulatory officials, industry groups, and small business representatives;

(7) investigating and assisting in the resolution of complaints and disputes from small businesses against state or local air quality authorities;

(8) periodically reviewing the work and services provided by the program with trade associations and small business representatives;

(9) operating a toll-free telephone line to provide free, confidential help on individual source problems and grievances;

(10) referring small businesses to appropriate technical specialists for information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(11) arranging for and assisting in the preparation of program guideline documents to ensure that the language is readily understandable by the lay person;

(12) establishing cooperative programs with trade associations and small businesses to promote and achieve voluntary compliance with federal and state air quality laws and regulations;

(13) establishing cooperative programs with federal, state, and local governmental entities and the private sector to assist small businesses in securing sources of funds to comply with federal, state, and local air quality laws and regulations;

(14) conducting studies to evaluate the impacts of federal and state air quality laws and regulations on the state's economy, local economies, and small businesses;

(15) serving as a voting member of the Small Business Air Quality Compliance Advisory Council established by section 116.99; and

(16) performing the ombudsman's duties in cooperation and coordination with governmental entities and private organizations as appropriate so as to eliminate overlap and duplication to the extent practicable.

Subd. 3. **Independence of action.** In carrying out the duties imposed by sections 116.96 to 116.99, the ombudsman may act independently of the agency in providing testimony to the legislature, contacting and making periodic reports to federal and state officials as necessary to carry out the duties imposed by sections 116.96 to 116.99, and addressing problems of concern to small businesses.

Subd. 4. **Qualifications.** The ombudsman must be knowledgeable about federal and state air quality laws and regulations, control technologies, and federal and state legislative and regulatory processes. The ombudsman must be experienced in dealing with both private enterprise and governmental entities, arbitration and negotiation, interpretation of laws and regulations, investigation, record keeping, report writing, public speaking, and management.

Subd. 5. **Office support.** The commissioner shall provide the ombudsman with the necessary office space, supplies, equipment, and clerical support to effectively perform the duties imposed by sections 116.96 to 116.99.

History: *1992 c 546 s 8*

116.99 SMALL BUSINESS AIR QUALITY COMPLIANCE ADVISORY COUNCIL.

Subdivision 1. **Creation.** A Small Business Air Quality Compliance Assistance Advisory Council is established within the agency.

Subd. 2. **Duties.** The council has the following duties:

(1) rendering advisory opinions on the effectiveness of the program, difficulties encountered, and degree and severity of enforcement;

(2) preparing periodic reports on matters relating to the program as requested by appropriate federal and state agencies;

(3) reviewing information for sources to ensure the information is complete, comprehensive, and understandable to the lay person; and

(4) other duties it finds appropriate to comply with applicable federal or state air quality laws and regulations.

Subd. 3. **Membership.** The council consists of the following members:

(1) two members appointed by the governor who represent the general public and are not owners or representatives of owners who are small business stationary sources;

(2) the commissioner or the commissioner's designee, who shall represent the agency;

(3) four members appointed by the legislature who are owners or representatives of owners of small business stationary sources; and

(4) the commissioner of employment and economic development or the commissioner's designee.

The majority and minority leaders of the house of representatives and the senate shall each appoint one of the members listed in clause (3).

Subd. 4. **Membership terms; compensation; removal.** The membership terms, compensation, and removal of council members are governed by section 15.0575, except that subdivision 5 does not apply.

Subd. 5. **Chair.** The council shall select its chair by a majority vote.

Subd. 6. **Program.** The council may set its own agenda and work program, consistent with the requirements of the Clean Air Act, after consultation with the commissioner and the small business ombudsman established by this chapter.

Subd. 7. **Funding.** The commissioner shall allocate and administer the funds reasonably necessary to cover the operational costs of the council.

Subd. 8. **Staff.** The commissioner shall provide staff services reasonably required by the council.

History: *1992 c 546 s 9; 1995 c 247 art 2 s 54; 1Sp2003 c 4 s 1; 1Sp2005 c 1 art 2 s 161*

116.991 [Repealed, 1997 c 216 s 160]

116.992 [Repealed, 1997 c 216 s 160]

116.993 SMALL BUSINESS ENVIRONMENTAL IMPROVEMENT LOAN PROGRAM.

Subdivision 1. **Establishment.** A small business environmental improvement revolving loan program is established to provide loans to small businesses for the purpose of capital equipment purchases that will meet or exceed environmental rules and regulations or for investigation and cleanup of contaminated sites. The small business environmental improvement revolving loan program replaces the small business environmental loan program in Minnesota Statutes 1996, section 116.991, and the hazardous waste generator loan program in Minnesota Statutes 1996, section 115B.223.

Subd. 2. **Eligible borrower.** To be eligible for a loan under this section, a borrower must: (1) be a small business corporation, sole proprietorship, partnership, or association;

(2) be a potential emitter of pollutants to the air, ground, or water;

(3) need capital for equipment purchases that will meet or exceed environmental regulations or need capital for site investigation and cleanup;

(4) have less than 50 full-time employees;

(5) have an after tax profit of less than $500,000; and

(6) have a net worth of less than $1,000,000.

Subd. 3. **Loan application and award procedure.** The commissioner of the Pollution Control Agency may give priority to applicants that include, but are not limited to, those subject to Clean Air Act standards adopted under United States Code, title 42, section 7412, those undergoing site investigation and remediation, those involved with facility wide environmental compliance and pollution prevention projects, and those determined by the commissioner to be small business outreach priorities. The commissioner shall decide whether to award a loan to an eligible borrower based on:

(1) the applicant's financial need;

(2) the applicant's ability to secure and repay the loan; and

(3) the expected environmental benefit.

Subd. 4. **Screening committee.** The commissioner shall appoint a screening committee to evaluate applications and determine loan awards. The committee shall have diverse expertise in air quality, water quality, solid and hazardous waste management, site response and cleanup, pollution prevention, and financial analysis.

Subd. 5. **Limitation on loan obligation.** Numbers of applications accepted, evaluated, and awarded are based upon the available money in the small business environmental improvement loan account.

Subd. 6. **Loan conditions.** A loan made under this section must include:

(1) an interest rate that is four percent or one-half the prime rate, whichever is greater; (2) a term of payment of not more than seven years; and

(3) an amount not less than $1,000 or exceeding $50,000.

History: *1997 c 216 s 117*

116.994 SMALL BUSINESS ENVIRONMENTAL IMPROVEMENT LOAN ACCOUNTING.

Repayments of loans made under section 116.993 must be credited to the environmental fund. Money deposited in the fund under section 116.993 is appropriated to the commissioner for loans under section 116.993.

History: *1997 c 216 s 118; 2003 c 128 art 2 s 40*

GENERAL

116C.01 FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

History: *1973 c 342 s 1*

116C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.01 to 116C.08, the following terms have the meaning given them.

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

History: *1973 c 342 s 2; 1975 c 271 s 6*

116C.03 CREATION OF ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIR; STAFF.

Subdivision 1. **Creation.** An environmental quality board, designated as the Minnesota Environmental Quality Board, is hereby created.

Subd. 2. **Membership.** The members of the board are the director of the Office of Strategic and Long-Range Planning, the commissioner of commerce, the commissioner of the Pollution Control Agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of employment and economic development, the commissioner of transportation, the chair of the Board of Water and Soil Resources, and a representative of the governor's office designated by the governor. The governor shall appoint five members from the general public to the board, subject to the advice and consent of the senate.
At least two of the five public members must have knowledge of and be conversant in water management issues in the state. Notwithstanding the provisions of section 15.06, subdivision 6, members of the board may not delegate their powers and responsibilities as board members to any other person.

Subd. 2a. **Public members.** The membership terms, compensation, removal, and filling of vacancies of public members of the board shall be as provided in section 15.0575.

Subd. 3. [Repealed, 1982 c 524 s 9]

Subd. 3a. **Chair.** The representative of the governor's office shall serve as chair of the board.

Subd. 4. **Support.** Staff and consultant support for board activities shall be provided by the Office of Strategic and Long-Range Planning. This support shall be provided based upon an annual budget and work program developed by the board and certified to the commissioner by the chair of the board. The board shall have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the board.

Subd. 5. **Administration.** The board shall contract with the Office of Strategic and Long-Range Planning for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

Subd. 6. **Annual budget and work program.** The board shall adopt an annual budget and work program.

History: *1973 c 342 s 3; 1974 c 307 s 16; 1975 c 271 s 6; 1976 c 134 s 28,29; 1976 c 166 s 7; 1981 c 356 s 122-124; 1982 c 524 s 1-6; 1983 c 289 s 115 subd 1; 1983 c 301 s 119; 1984 c 558 art 2 s 2,3; 1986 c 444; 1987 c 186 s 15; 1987 c 312 art 1 s 6; 1987 c 358 s 105; 1988 c 501 s 1; 1988 c 685 s 25; 1989 c 335 art 1 s 134; 1991 c 345 art 2 s 20-22; 1994 c 639 art 5 s 3; 1997 c 53 s 1; 1Sp2001 c 4 art 6 s 77; 1Sp2003 c 4 s 1; 1Sp2005 c 1 art 2 s 161*

116C.04 POWERS AND DUTIES.

Subdivision 1. **Scope; votes.** The powers and duties of the Minnesota Environmental Quality Board shall be as provided in this section and as otherwise provided by law or executive order. Actions of the board shall be taken only at an open meeting upon a majority vote of all the permanent members of the board.

Subd. 2. **Jurisdiction.** (a) The board shall determine which environmental problems of interdepartmental concern to state government shall be considered by the board. The board shall initiate interdepartmental investigations into those matters that it determines are in need of study. Topics for investigation may include but need not be limited to future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning.

(b) The board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and insure agency compliance with state environmental policy.

(c) The board may review environmental rules and criteria for granting and denying permits by state agencies and may resolve conflicts involving state agencies with regard to programs, rules, permits and procedures significantly affecting the environment, provided that such resolution of conflicts is consistent with state environmental policy.

(d) State agencies shall submit to the board all proposed legislation of major significance relating to the environment and the board shall submit a report to the governor and the legislature with comments on such major environmental proposals of state agencies.

Subd. 3. **Cooperation.** The board shall cooperate with regional development commissions in appropriate matters of environmental concern.

Subd. 4. **Task forces.** The board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.

Subd. 5. [Repealed, 1984 c 558 art 2 s 4] Subd. 6. [Repealed, 1984 c 558 art 2 s 4]

Subd. 7. **Annual congress.** At its discretion, the board shall convene an annual Environmental Quality Board congress including, but not limited to, representatives of state, federal and regional agencies, citizen organizations, associations, industries, colleges and universities, and private enterprises who are active in or have a major impact on environmental quality. The purpose of the congress shall be to receive reports and exchange information on progress and activities related to environmental improvement.

Subd. 8. [Repealed, 1982 c 524 s 9] Subd. 9. [Repealed, 1982 c 524 s 9]

Subd. 10. **Stipulation agreements.** The board may enter into and enforce stipulation agreements made to enforce statutes and rules administered by the board.

Subd. 11. **Coordination.** The Environmental Quality Board shall coordinate the implementation of an interagency compliance with existing state and federal lead regulations and report to the legislature by January 31, 1992, on the changes in programs needed to comply.

History: *1973 c 342 s 4; 1975 c 271 s 6; 1985 c 248 s 70; 1988 c 501 s 2; 1991 c 292 art 9s1* **116C.05** [Repealed, 1982 c 524 s 9]

116C.06 HEARINGS.

Subdivision 1. **Process.** The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule in conformity to the provisions of chapter 14, the procedures for the conduct of all hearings and review procedures.

Subd. 2. **Delegation to hearings officer.** The board may delegate its authority to conduct a hearing to a hearings officer. The hearings officer shall have the same power as the board to compel the attendance of witnesses to examine them under oath, to require the production of books, papers, and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state. The hearings officer shall be knowledgeable in matters of law and the environment.

If a hearings officer conducts a hearing, the officer shall make findings of fact and submit them to the board. The transcript of testimony and exhibits shall constitute the exclusive record upon which such findings are made. The findings shall be available for public inspection.

Subd. 3. **Recommendations.** After receipt of the findings of fact of the hearings officer, the board shall make recommendations to the governor and legislature as to administrative and legislative actions to be considered in regard to the matter.

History: *1973 c 342 s 6; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444; 1995 c 233 art 2 s 56; 1997 c 187 art 5 s 15*

116C.07 [Repealed, 1982 c 524 s 9]

116C.08 FEDERAL FUNDS; DONATIONS.

The board may apply for, receive, and disburse federal funds made available to the state by federal law or rules promulgated thereunder for any purpose related to the powers and duties of the board. The board shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder in order to apply for, receive, and disburse such funds. The board is authorized to accept any donations or grants from any public or private concern. All such moneys received by the board shall be deposited in the state treasury and are hereby appropriated to it for the purpose for which they are received. None of such moneys in the state treasury shall cancel.

History: *1973 c 342 s 8; 1975 c 271 s 6*

ENVIRONMENTAL COORDINATION PROCEDURES

116C.22 CITATION.

Sections 116C.22 to 116C.34 may be cited as the Minnesota Environmental Coordination Procedures Act.

History: *1976 c 303 s 1*

116C.23 PURPOSE.

It shall be the purpose of sections 116C.22 to 116C.34:

(1) to provide an optional procedure to assist those who, in the course of satisfying the requirements of state government prior to undertaking a project which contemplates the use of the state's air, land, or water resources, must obtain more than one state permit, by establishing a mechanism in state government which will coordinate administrative decision-making procedures, and related quasi-judicial and judicial review, pertaining to these permits;

(2) to provide to the members of the public a better and easier opportunity to present their views comprehensively on proposed uses of natural resources and related environmental matters prior to the making of decisions on these uses by state or local agencies;

(3) to provide to the members of the public a greater degree of certainty in terms of permit requirements of state and local government;

(4) to provide better coordination and understanding between state and local agencies in the administration of the various programs relating to air, water, and land resources; and

(5) to establish the opportunity for members of the public to obtain information pertaining to requirements of federal and state law which must be satisfied prior to undertaking a project in this state.

History: *1976 c 303 s 2*

116C.24 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.22 to 116C.34, the terms defined in this section have the meanings given them.

Subd. 1a. **Agency.** "Agency" means a state department, commission, board or other agency of the state however titled or a local governmental unit or instrumentality, only when that unit or instrumentality is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subd. 2a. **Commissioner.** "Commissioner" means the commissioner of employment and economic development.

Subd. 3. **Coordination unit.** "Coordination unit" means the Bureau of Business Licenses established pursuant to sections 116J.73 to 116J.76.

Subd. 4. **Local governmental unit.** "Local governmental unit" means a county, city, town, or special district with legal authority to issue a permit.

Subd. 5. **Permit.** "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of, or interference with, the natural

resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state.

Nothing in sections 116C.22 to 116C.34 shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

Subd. 6. **Person.** "Person" means an individual, an association or partnership, or a cooperative, or a municipal, public or private corporation, including but not limited to a state agency and a county.

Subd. 7. **Project.** "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and for which permits are required from an agency prior to construction or operation, including but not limited to industrial and commercial operations and developments. Sections 116C.22 to 116C.34 shall not apply to projects which are:

(1) covered by chapter 93 or 216E or section 216B.243; or

(2) initiated for the purpose of taconite tailings disposal or mining, or the producing or beneficiating of copper, nickel or copper-nickel.

Subd. 8. [Renumbered subd 1a]

History: *1975 c 271 s 6; 1976 c 303 s 3; 1981 c 356 s 248; 1983 c 289 s 34,35,115 subd 2; 1984 c 558 art 4 s 10; 1987 c 312 art 1 s 26 subd 2; 1Sp2003 c 4 s 1*

116C.25 ENVIRONMENTAL PERMITS COORDINATION UNIT.

The commissioner of employment and economic development shall direct the Bureau of Business Licenses to act as the coordination unit to implement and administer the provisions of sections 116C.22 to 116C.34. The commissioner shall employ necessary staff to work for the coordination unit on a continuous basis.

History: *1975 c 271 s 6; 1976 c 303 s 4; 1983 c 289 s 36; 1987 c 312 art 1 s 26 subd 2; 1Sp2003 c 4 s 1*

116C.26 APPLICATION PROCEDURE.

Subdivision 1. **Master application.** A person proposing a project which may require more than one permit may, prior to the initial construction of the project or prior to the initial operation of the project if construction of the project required no state permits, submit a master application to the coordination unit requesting the issuance of all state permits necessary for construction and operation of the project. The master application shall be on a form furnished by the coordination unit and shall contain precise information as to the location of the project, and shall describe the nature of the project including any contemplated discharges of wastes therefrom and any uses of, or interferences with, natural resources. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by the certifications issued not more than 120 days prior to the date of the master application as required by section 116C.31. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by a certification from the board that either an environmental impact statement concerning the project has been completed or that an environmental impact statement is not required concerning the project.

Subd. 2. **Notice; response.** Upon receipt of a completed master application, the coordination unit shall immediately notify in writing each agency having a possible interest in the master application arising from requirements pertaining to a permit program under its jurisdiction. The notification from the coordination unit shall be accompanied by a copy of the master application together with the date by which the agency shall respond to the notice. Each notified agency shall respond in writing to the coordination unit within the specified date, not exceeding 20 days from receipt, as determined by the coordination unit, advising whether the agency does or does not have an interest in the master application.

If an agency timely responds that it has an interest in the master application, the response shall include information concerning the specific permit programs under its jurisdiction which are pertinent to the project described in the master application. The agency response shall also advise the coordination unit whether a public hearing concerning the master application as provided in section 116C.28 would or would not be required or of value considering the overall public interest.

Subd. 3. **Subsequent permit requirement.** Each notified agency which responds within the specified date that it does not have an interest in the master application or which does not respond as required by subdivision 2 within the specified date, shall not subsequently require a permit of the applicant for the project described in the master application; provided the bar to requiring a permit subsequently shall not be applicable if:

(a) the master application provided to the notified agency contained false, misleading, or deceptive information, or lacked information, which would reasonably lead an agency to misjudge its interest in a master application; or

(b) subsequent laws or rules require additional permits; or

(c) unusual circumstances prevented the agency from notifying the coordination unit and the agency can establish that failure to require a permit would result in substantial harm to the public health or welfare, in which case the board may order that the permit be required.

Subd. 4. **Application forms.** The coordination unit shall submit application forms concerning the permit programs identified in the affirmative responses under subdivision 2 to the applicant with a direction to complete and return them to the coordination unit within 90 days.

Subd. 5. **Transmittal to agency.** Within ten days of receipt of the full set of completed application forms by the coordination unit, each application shall be transmitted to the appropriate agency for the performance of its responsibilities of decision making in accordance with the procedures of sections 116C.22 to 116C.33.

Subd. 6. **Date.** If an agency has a procedure for setting priorities in issuing a permit according to the date of the application for the permit, the date used shall be the date upon which a master application is received by the coordination unit.

History: *1975 c 271 s 6; 1976 c 303 s 5*

116C.261 ENVIRONMENTAL PERMIT PLAN TIMELINE REQUIREMENT.

(a) If environmental review under chapter 116D will be conducted for a project and a state agency is the responsible government unit, that state agency shall prepare:

(1) a plan that will coordinate administrative decision-making practices, including monitoring, analysis and reporting, and public comments and hearings; and

(2) a timeline for the issuance of all federal, state, and local permits required for the project.

(b) The plan and timeline shall be delivered to the project proposer by the time the environmental assessment worksheet or draft environmental impact statement is published in the EQB Monitor.

History: *2011 c 107 s 86*

116C.27 NOTICE.

Subdivision 1. **Publication.** The coordination unit immediately after transmittal of the completed applications to the appropriate agency shall cause a notice to be published at the applicant's expense once each week on the same day of the week for three consecutive weeks in a newspaper of general circulation within each county in which the project is proposed to be constructed or operated. The notice shall describe the nature of the master application including, with reasonable specificity, the project proposed, its location, the various permits applied for, and the agency having jurisdiction over each permit. Except as provided in subdivision 2, the notice shall also state the time and place of the public hearing, to be held not less than 20 days after the date of last publication of the notice. It shall further state that a copy of the master application and a copy of all permit applications for the project are available for public inspection in the office of the county auditor of each county in which the project is proposed to be constructed or operated, as well as in other locations which the coordination unit may designate.

Subd. 2. **Public hearing.** If the responses to the master application received by the coordination unit from the state agencies unanimously state the position that a public hearing in relation to a master application would not be of value in consideration of the overall public interest and are not required by any other law or rule, the provisions of subdivision 1 pertaining to the time and place of a public hearing shall not be included in the notice. In place thereof the notice shall state that members of the public may present relevant views and supporting materials in writing to the coordination unit concerning any of the permits applied for within 30 days after the last date of publication of the notice in a newspaper.

History: *1976 c 303 s 6*

116C.28 PUBLIC HEARING.

Subdivision 1. **Process.** When one or more agencies notifies the coordination unit that a public hearing is required or appropriate on matters relating to the project described in the master application, the coordination unit shall set the time and place for a hearing in which each of the affected agencies shall participate. The hearing shall be held pursuant to the contested case provisions of chapter 14 and section 116C.27.

Subd. 2. **Representation at hearing.** Each participating state agency shall be represented at the public hearing by its chief administrative officer or a designee. The representative of any state agency within whose jurisdiction a specific application lies shall participate in the portion of the hearing pertaining to submission of information, views, and supporting materials which are relevant to its application. The administrative law judge may, when appropriate, continue a hearing from time to time and place to place. The hearing shall be recorded in any manner suitable for transcription pursuant to chapter 14.

Subd. 3. **Agency's final decision.** Within 60 days of receipt of the administrative law judge's report, each state agency which is a party to the hearing shall forward its final decision on permit applications within its jurisdiction to the coordination unit, provided that this date may be extended by the chair of the board for reasonable cause. Every final decision shall set forth the basis for the decision together with a final order denying the permit or granting the permit including the specifying of any conditions under which the permit is issued.

Subd. 4. **Procedure if no hearing is held.** If notice has been published pursuant to section 116C.27, subdivision 2, and no public hearing is conducted, the coordination unit shall, not less than 30 days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency having jurisdiction concerning any permit application described in the notice. Concurrently therewith, the coordination unit shall notify

each state agency, in writing, of the date not to exceed 60 days by which final decisions on applications shall be forwarded to the coordination unit; provided that this date may be extended by the chair of the board for reasonable cause. Each final decision shall set forth the information required by subdivision 3.

Subd. 5. **Incorporation into one document.** As soon as all final decisions are received by the coordination unit from the various participating state agencies, the coordination unit shall immediately incorporate them, without modification, into one document and shall transmit the document to the applicant either personally or by certified mail.

History: *1975 c 271 s 6; 1976 c 303 s 7; 1978 c 674 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444*

116C.29 WITHDRAWAL OF AGENCY PARTICIPATION.

After an agency has responded that it has an interest in the master application, it may withdraw from further participation in the processing of that master application at any time by written notification to the coordination unit, if it subsequently appears to the agency that it has no permit programs under its jurisdiction which are applicable to the project.

History: *1976 c 303 s 8*

116C.30 APPLICATION.

Subdivision 1. **Appeal.** A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by chapter 14, or any other statute authorizing either judicial or administrative review of an agency decision.

Subd. 2. **Agency jurisdiction.** Each state agency having jurisdiction to approve or deny an application for a permit shall have continuing power as vested in it prior to February 15, 1977, to make such determinations. Nothing in sections 116C.22 to 116C.34 shall lessen or reduce such powers, and such sections shall modify only the procedures to be followed in the carrying out of such powers.

Subd. 3. **Additional information.** A state agency may in the performance of its responsibilities of decision making under sections 116C.22 to 116C.33, request or receive additional information from an applicant.

Subd. 4. **Fee schedules.** Fee schedules authorized by statute for an application or permit shall continue to be applicable even though the application or permit is processed under the provisions set forth in sections 116C.22 to 116C.33. The coordination unit shall not charge the applicant or participating agencies a fee for its services.

Subd. 5. **No applicability.** Sections 116C.22 to 116C.33 shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under sections 116C.27 to 116C.29, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of a state agency.

Subd. 6. **Land use; zoning.** Nothing in sections 116C.22 to 116C.34 shall modify in any manner whatsoever the applicability or inapplicability of any land use rule, statute or local zoning ordinance to the lands of any state agency.

History: *1976 c 303 s 9; 1982 c 424 s 130; 1985 c 248 s 70*

116C.31 LOCAL CERTIFICATION.

Subdivision 1. **Generally.** No master application shall be processed pursuant to sections 116C.22 to 116C.33 unless it is accompanied by a certification issued not more than 120 days prior to the date the master application is first received by the coordination unit, from the local governmental units in whose jurisdiction the proposed project is located, certifying that the project is in compliance with all zoning ordinances, subdivision regulations, and environmental regulations administered by the local governmental unit and certifying that the preparation of any environmental impact statement which the local governmental unit is authorized to require pursuant to local ordinance, state statute, or board rule, has been completed or deemed not necessary. If the local governmental unit has required any environmental impact statement concerning the project, a copy of the completed environmental impact statement shall be attached to the local governmental unit's certification. If the local governmental unit has no zoning ordinances, subdivision regulations, or environmental regulations, the certification from the local governmental unit shall so state. A local governmental unit may accept applications for certifications as provided in this section and shall rule upon the same expeditiously to insure that the purposes of sections 116C.22 to 116C.33 are accomplished fully. After issuing a certification for the purposes of this section, no local government shall rescind it even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under sections 116C.22 to 116C.33. Upon certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of sections 116C.22 to 116C.33, including any administrative or judicial reviews, are completed.

Subd. 2. **Appeal.** A ruling by a local governmental unit denying an application for certification shall not be appealable under sections 116C.22 to 116C.34. The denial of an application for certification by a local governmental unit shall not preclude the applicant from filing a permit application under any other available statute or procedure.

History: *1975 c 271 s 6; 1976 c 303 s 10*

116C.32 RULES; COOPERATION.

The commissioner shall as soon as practicable adopt rules, not inconsistent with rules of procedure established by the Office of Administrative Hearings, to implement the provisions of sections 116C.22 to 116C.34, including master application procedures, notice procedures, and public hearing procedures and costs.

History: *1975 c 271 s 6; 1976 c 303 s 11; 1980 c 615 s 60; 1983 c 289 s 37*

116C.33 CONFLICT WITH FEDERAL REQUIREMENTS.

Subdivision 1. **Federal requirements prevail.** If in a final order of a court of competent jurisdiction, any part of sections 116C.22 to 116C.34 as enacted or administered is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds authorized to this state, the conflicting part of sections 116C.22 to 116C.34 shall be void to the limited extent necessary to remove the conflict and the remainder of sections 116C.22 to 116C.34 shall remain effective.

Subd. 2. **Modification.** The commissioner, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing, and related procedural matters provided in sections 116C.22 to 116C.34.

History: *1975 c 271 s 6; 1976 c 303 s 12; 1983 c 289 s 38*

116C.34 BUREAU OF BUSINESS LICENSES.

Subdivision 1. **Purpose.** The Bureau of Business Licenses shall establish and maintain an information and referral system to assist the public in the understanding and compliance with the requirements of state and local governmental rules concerning the use of natural resources and protection of the environment. The system shall provide a telephone information service and disseminate printed materials. The bureau shall provide assistance to regional development commissions desiring to create a permit information center.

Subd. 2. **Duties.** The bureau shall:

(1) identify all existing state licenses, permit certifications, approvals, compliance schedules, or other programs which pertain to the use of natural resources and to protection of the environment;

(2) standardize permit titles and assign designation codes to all such permits which would thereafter be imprinted on all permit forms;

(3) develop permit profiles including applicable rules copies of all appropriate permit forms, statutory mandate and legislative history, names of individuals administering the program, permit processing procedures, documentation of the magnitude of the program and of geographic and seasonal distribution of the workload, and estimated application processing time;

(4) identify the public information procedures currently associated with each permit program;

(5) identify the data monitored or acquired through each permit and ascertain current users of that data;

(6) recommend revisions to the list of natural resource management and development permits contained in Minnesota Statutes 1974, section 116D.04, subdivision 5; and

(7) recommend legislative or administrative modifications of existing permit programs to increase their efficiency and utility.

Subd. 3. **County responsibility.** The auditor of each county shall post in a conspicuous place in the auditor's office the telephone numbers of the Bureau of Business Licenses and the permit information center in the office of the applicable regional development commission; copies of any master applications or permit applications forwarded to the auditor pursuant to section 116C.27, subdivision 1; and copies of any information published by the bureau or an information center pursuant to subdivision 1.

History: *1975 c 271 s 6; 1976 c 303 s 13; 1983 c 289 s 39; 1985 c 248 s 70; 1986 c 444*

169.42 LITTERING; DROPPING OBJECT ON VEHICLE; MISDEMEANOR.

Subdivision 1. **Objects on highway.** No person shall throw, deposit, place, or dump, or cause to be thrown, deposited, placed, or dumped upon any street or highway or upon any public or privately owned land adjacent thereto without the owner's consent any snow, ice, glass bottle, glass, nails, tacks, wire, cans, garbage, swill, papers, ashes, cigarette filters, debris from fireworks, refuse, carcass of any dead animal, offal, trash or rubbish or any other form of offensive matter, or any other substance likely to injure any person, animal, or vehicle upon any such street or highway.

Subd. 2. MS 1969 [Repealed, Ex1971 c 27 s 49]

Subd. 2. **Dropping dangerous object on highway.** Any person who drops, or permits to be dropped or thrown, upon any highway any of the material specified in subdivision 1, shall immediately remove the same or cause it to be removed.

Subd. 3. **Removing object; responsibility.** Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Subd. 4. **Dropping object on vehicle.** No person shall drop or hurl any destructive or injurious material or object at or upon any motor vehicle upon any highway or the occupants thereof.

Subd. 5. **Misdemeanor.** Any person violating the provisions of this section is guilty of a misdemeanor. The record of any conviction of or plea of guilty under this section of a person operating a motor vehicle shall be immediately forwarded to the Department of Public Safety for inclusion upon that offender's driving record. Any second or subsequent offense under this section shall require a minimum fine in the amount of $400. Any judge may, for any violation of this section, order the offender to pick up litter along any public highway or road for four to eight hours under the direction of the Department of Transportation, with the option of a jail sentence being imposed.

History: *(2720-227) 1937 c 464 s 77; 1951 c 663 s 1,2; 1967 c 104 s 1; 1973 c 299 s 1; 1976 c 166 s 7; 1980 c 533 s 13; 1983 c 359 s 11; 1991 c 138 s 1; 2003 c 28 art 1 s 17*

169.421 CIVIL LIABILITY FOR LITTERING.

Subdivision 1. **Finding.** The legislature finds that the cost of removal and disposal of solid waste, including litter, from vehicles is an onerous burden upon the public, and that the criminal law is not always adequate in dealing with the problem. This requires the imposition of civil liability as provided in this section.

Subd. 2. **Definition.** For purposes of this section, "owner" as to a vehicle means the owner of the vehicle, but in the case of a leased vehicle means the lessee.

Subd. 3. **Civil liability imposed.** If any solid waste, including litter, glass, nails, tacks, wire, cans, bottles, garbage, papers, refuse, trash, cigarette filters, debris from fireworks, or any form of offensive matter is thrown, deposited, placed, or dumped from a vehicle upon an street or highway, public land, or upon private land without the consent of the owner of the land, a violation of this subdivision occurs and civil liability is imposed upon the owner of the vehicle. The driver and passengers riding in a vehicle are constituted as the agents of the owner of the vehicle for purposes of this subdivision. It is a defense to any action brought pursuant to this section that the vehicle was stolen. This section is not applicable to the owner of a vehicle transporting persons for hire or transporting school children.

Subd. 4. **Civil penalty; damages.** A person who violates this section is subject to the civil penalties for littering and an action for damages as specified in section 115A.99.

Subd. 5. **Procedures.** A civil action may be commenced as is any civil action or by the issuance of a citation to the owner of the vehicle by any law enforcement officer who has reason to believe that a violation has occurred. Actions commenced by the issuance of a citation by a law enforcement officer shall be tried by the prosecuting authority responsible for misdemeanor prosecutions in the jurisdiction where a violation occurs. Any damages recovered in an action brought by a public agency shall be deposited in the treasury of the jurisdiction trying the action and distributed as provided in section 484.90. Any district court may establish a separate civil calendar for cases brought under this section.

Subd. 6. **Relationship to criminal law; election of remedy.** If an act is a violation of this section and of a statute or ordinance providing a criminal penalty, a public agency elects its remedy by commencing either an action under this section or a criminal prosecution, and the commencement of one type of action by a public agency is a bar to its bringing of the other.

Subd. 7. **Payment.** Any district court may establish a schedule of costs and civil damages, and procedures for payment, in cases brought by a public agency under which the defendant may consent to default judgment and make payment according to the schedule without making a personal appearance in court.

Subd. 8. **Citation.** This section may be cited as the Civil Litter Act.

History: *1979 c 235 s 1; 1991 c 138 s 2; 1994 c 412 s 3; 1998 c 254 art 2 s 14,15; 2003 c 28 art 1 s 18; 2008 c 277 art 1 s22*

173.086 RECYCLING CENTER SIGN.

Subdivision 1. **Authority to erect.** A recycling facility that has complied with the permitting rules of the Pollution Control Agency and has been designated a recycling center by the agency under section 115A.555 may erect a recycling center sign upon payment of a fee to the Department of Transportation or to the local road authority required to cover all costs of fabrication and installation of the signs.

Subd. 2. **Sign standards.** The Department of Transportation shall design and manufacture the recycling center sign to specifications not contrary to other federal and state highway sign standards. The sign must contain the international three-arrow recycling symbol followed by the words "recycling center."

Subd. 3. **Location.** Each local road authority shall permit recycling center signs to be located on roads in its jurisdiction, subject to sign placement and distance requirements of the local authority in conformance with standard policies for placement of signs for other traffic generators.

History: *1Sp1989 c 1 art 1818.*

ENERGY CONSERVATION; UTILITY CONSTRUCTION

216B.24 CONSTRUCTION OF MAJOR FACILITY; FILING PLANS.

Subd. 2. **Construction plan filed; rules.** Under rules as the commission may prescribe, every public utility shall file with the commission, within the time and in the form as the commission may designate, plans showing any contemplated construction of major utility facilities.

Subd. 3. **Applicability to municipalities.** The provisions of this section shall apply to the construction of major utility facilities by a municipally owned gas or electric utility.

History: *1974 c 429 s 24; 1985 c 248 s 70*

216B.2401 ENERGY CONSERVATION POLICY GOAL.

It is the energy policy of the state of Minnesota to achieve annual energy savings equal to 1.5 percent of annual retail energy sales of electricity and natural gas directly through energy conservation improvement programs and rate design, and indirectly through energy codes and appliance standards, programs designed to transform the market or change consumer behavior, energy savings resulting from efficiency improvements to the utility infrastructure and system, and other efforts to promote energy efficiency and energy conservation.

History: *2007 c 136 art 2 s 4; 2010 c 361 art 5 s 8; 2011 c 97 s 17*

216B.241 ENERGY CONSERVATION IMPROVEMENT.

Subdivision 1. **Definitions.** For purposes of this section and section 216B.16, subdivision 6b, the terms defined in this subdivision have the meanings given them.

(a) "Commission" means the Public Utilities Commission. (b) "Commissioner" means the commissioner of

commerce. (c) "Department" means the Department of Commerce.

(d) "Energy conservation" means demand-side management of energy supplies resulting in a net reduction in energy use. Load management that reduces overall energy use is energy conservation.

(e) "Energy conservation improvement" means a project that results in energy efficiency or energy conservation. Energy conservation improvement may include waste heat recovery converted into electricity but does not include electric utility infrastructure projects approved by the commission under section 216B.1636.

(f) "Energy efficiency" means measures or programs, including energy conservation measures or programs, that target consumer behavior, equipment, processes, or devices designed to produce either an absolute decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis without a reduction in the quality or level of service provided to the energy consumer.

(g) "Gross annual retail energy sales" means annual electric sales to all retail customers in a utility's or association's Minnesota service territory or natural gas throughput to all retail customers, including natural gas transportation customers, on a utility's distribution system in Minnesota. For purposes of this section, gross annual retail energy sales exclude:

(1) gas sales to:

(i) a large energy facility;

(ii) a large customer facility whose natural gas utility has been exempted by the commissioner under subdivision 1a, paragraph (b), with respect to natural gas sales made to the large customer facility; and

(iii) a commercial gas customer facility whose natural gas utility has been exempted by the commissioner under subdivision 1a, paragraph (c), with respect to natural gas sales made to the commercial gas customer facility; and

(2) electric sales to a large customer facility whose electric utility has been exempted by the commissioner under subdivision 1a, paragraph (b), with respect to electric sales made to the large customer facility.

(h) "Investments and expenses of a public utility" includes the investments and expenses incurred by a public utility in connection with an energy conservation improvement, including but not limited to:

(1) the differential in interest cost between the market rate and the rate charged on a no-interest or below-market interest loan made by a public utility to a customer for the purchase or installation of an energy conservation improvement;

(2) the difference between the utility's cost of purchase or installation of energy conservation improvements and any price charged by a public utility to a customer for such improvements.

(i) "Large customer facility" means all buildings, structures, equipment, and installations at a single site that collectively (1) impose a peak electrical demand on an electric utility's system of not less than 20,000 kilowatts, measured in the same way as the utility that serves the customer facility measures electrical demand for billing purposes or (2) consume not less than 500 million cubic feet of natural gas annually. In calculating peak electrical demand, a large customer facility may include demand offset by on-site cogeneration facilities and, if engaged in mineral extraction, may aggregate peak energy demand from the large customer facility's mining and processing operations.

(j) "Large energy facility" has the meaning given it in section 216B.2421, subdivision 2, clause (1).

(k) "Load management" means an activity, service, or technology to change the timing or the efficiency of a customer's use of energy that allows a utility or a customer to respond to wholesale market fluctuations or to reduce peak demand for energy or capacity.

(l) "Low-income programs" means energy conservation improvement programs that directly serve the needs of low-income persons, including low-income renters.

(m) "Qualifying utility" means a utility that supplies the energy to a customer that enables the customer to qualify as a large customer facility.

(n) "Waste heat recovery converted into electricity" means an energy recovery process that converts otherwise lost energy from the heat of exhaust stacks or pipes used for engines or manufacturing or industrial processes, or the reduction of high pressure in water or gas pipelines.

Subd. 1a. **Investment, expenditure, and contribution; public utility.** (a) For purposes of this subdivision and subdivision 2, "public utility" has the meaning given it in section 216B.02, subdivision 4. Each public utility shall spend and invest for energy conservation improvements under this subdivision and subdivision 2 the following amounts:

(1) for a utility that furnishes gas service, 0.5 percent of its gross operating revenues from service provided in the state;

(2) for a utility that furnishes electric service, 1.5 percent of its gross operating revenues from service provided in the state; and

(3) for a utility that furnishes electric service and that operates a nuclear-powered electric generating plant within the state, two percent of its gross operating revenues from service provided in the state.

For purposes of this paragraph (a), "gross operating revenues" do not include revenues

from large customer facilities exempted under paragraph (b), or from commercial gas customers that are exempted under paragraph (c) or (e).

(c) A commercial gas customer that is not a large customer facility and that purchases or acquires natural gas from a public utility having fewer than 600,000 natural gas customers in Minnesota may petition the commissioner to exempt gas utilities serving the commercial gas customer from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the commercial gas customer. The petition must be supported by evidence demonstrating that the commercial gas customer has acquired or can reasonably acquire the capability to bypass use of the utility's gas distribution system by obtaining natural gas directly from a supplier not regulated by the commission. The commissioner shall grant the exemption if the commissioner finds that the petitioner has made the demonstration required by this paragraph.

(d) The commissioner may require investments or spending greater than the amounts required under this subdivision for a public utility whose most recent advance forecast required under section 216B.2422 or 216C.17 projects a peak demand deficit of 100 megawatts or greater within five years under midrange forecast assumptions.

(b) The owner of a large customer facility may petition the commissioner to exempt both electric and gas utilities serving the large customer facility from the investment and expenditure requirements of paragraph (a) with respect to retail revenues attributable to the large customer facility. The filing must include a discussion of the competitive or economic pressures facing the owner of the facility and the efforts taken by the owner to identify, evaluate, and implement energy conservation and efficiency improvements. A filing submitted on or before October 1 of any year must be approved within 90 days and become effective January 1 of the year following the filing, unless the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements. If a facility qualifies as a large customer facility solely due to its peak electrical demand or annual natural gas usage, the exemption may be limited to the qualifying utility if the commissioner finds that the owner of the large customer facility has failed to take reasonable measures to identify, evaluate, and implement energy conservation and efficiency improvements with respect to the nonqualifying utility. Once an exemption is approved, the commissioner may request the owner of a large customer facility to submit, not more often than once every five years, a report demonstrating the large customer facility's ongoing commitment to energy conservation and efficiency improvement after the exemption filing. The commissioner may request such reports for up to ten years after the effective date of the exemption, unless the majority ownership of the large customer facility changes, in which case the commissioner may request additional reports for up to ten years after the change in ownership occurs. The commissioner may, within 180 days of receiving a report submitted under this paragraph, rescind any exemption granted under this paragraph upon a determination that the large customer facility is not continuing to make reasonable efforts to identify, evaluate, and implement energy conservation improvements.

A large customer facility that is, under an order from the commissioner, exempt from the investment and expenditure requirements of paragraph (a) as of December 31, 2010, is not required to submit a report to retain its exempt status, except as otherwise provided in this paragraph with respect to ownership changes. No exempt large customer facility may participate in a utility conservation improvement program unless the owner of the facility submits a filing with the commissioner to withdraw its exemption.

(e) A public utility or owner of a large customer facility may appeal a decision of the commissioner under paragraph (b), (c), or (d) to the commission under subdivision 2. In reviewing a decision of the commissioner under paragraph (b), (c), or (d), the commission shall rescind the decision if it finds that the required investments or spending will:

(1) not result in cost-effective energy conservation improvements; or (2) otherwise not be in the public interest.

Subd. 1b. **Conservation improvement by cooperative association or municipality.** (a) This subdivision applies to:

(1) a cooperative electric association that provides retail service to its members;

(2) a municipality that provides electric service to retail customers; and

(3) a municipality with more than 1,000,000,000 cubic feet in annual throughput sales to natural gas to retail customers.

(b) Each cooperative electric association and municipality subject to this subdivision shall spend and invest for energy conservation improvements under this subdivision the following amounts:

(1) for a municipality, 0.5 percent of its gross operating revenues from the sale of gas and 1.5 percent of its gross operating revenues from the sale of electricity, excluding gross operating revenues from electric and gas service provided in the state to large electric customer facilities; and

(2) for a cooperative electric association, 1.5 percent of its gross operating revenues from service provided in the state, excluding gross operating revenues from service provided in the state to large electric customer facilities indirectly through a distribution cooperative electric association.

(c) Each municipality and cooperative electric association subject to this subdivision shall identify and implement energy conservation improvement spending and investments that are appropriate for the municipality or association, except that a municipality or association may not spend or invest for energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption under subdivision 1a, paragraph (b).

(d) Each municipality and cooperative electric association subject to this subdivision may spend and invest annually up to ten percent of the total amount required to be spent and invested on energy conservation improvements under this subdivision on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the municipality or cooperative electric association.

(e) Load-management activities may be used to meet 50 percent of the conservation investment and spending requirements of this subdivision.

(f) A generation and transmission cooperative electric association that provides energy services to cooperative electric associations that provide electric service at retail to consumers may invest in energy conservation improvements on behalf of the associations it serves and may fulfill the conservation, spending, reporting, and energy-savings goals on an aggregate basis. A municipal power agency or other not-for-profit entity that provides energy service to municipal utilities that provide electric service at retail may invest in energy conservation improvements on behalf of the municipal utilities it serves and may fulfill the conservation, spending, reporting, and

energy-savings goals on an aggregate basis, under an agreement between the municipal power agency or not-for-profit entity and each municipal utility for funding the investments.

(g) Each municipality or cooperative shall file energy conservation improvement plans by June 1 on a schedule determined by order of the commissioner, but at least every three years. Plans received by June 1 must be approved or approved as modified by the commissioner by December 1 of the same year. The municipality or cooperative shall provide an evaluation to the commissioner detailing its energy conservation improvement spending and investments for the previous period.

The evaluation must briefly describe each conservation program and must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility or association that is the result of the spending and investments. The evaluation must analyze the cost-effectiveness of the utility's or association's conservation programs, using a list of baseline energy and capacity savings assumptions developed in consultation with the department. The commissioner shall review each evaluation and make recommendations, where appropriate, to the municipality or association to increase the effectiveness of conservation improvement activities.

(h) MS 2010 [Expired, 1Sp2003 c 11 art 3 s 4; 2007 c 136 art 2 s 5]

(i) The commissioner shall consider and may require a utility, association, or other entity providing energy efficiency and conservation services under this section to undertake a program suggested by an outside source, including a political subdivision, nonprofit corporation, or community organization.

Subd. 1c. **Energy-saving goals.** (a) The commissioner shall establish energy-saving goals for energy conservation improvement expenditures and shall evaluate an energy conservation improvement program on how well it meets the goals set.

(b) Each individual utility and association shall have an annual energy-savings goal equivalent to 1.5 percent of gross annual retail energy sales unless modified by the commissioner under paragraph (d). The savings goals must be calculated based on the most recent three-year weather-normalized average. A utility or association may elect to carry forward energy savings in excess of 1.5 percent for a year to the succeeding three calendar years, except that savings from electric utility infrastructure projects allowed under paragraph (d) may be carried forward for five years. A particular energy savings can be used only for one year's goal.

(c) The commissioner must adopt a filing schedule that is designed to have all utilities and associations operating under an energy-savings plan by calendar year 2010.

(d) In its energy conservation improvement plan filing, a utility or association may request the commissioner to adjust its annual energy-savings percentage goal based on its historical conservation investment experience, customer class makeup, load growth, a conservation potential study, or other factors the commissioner determines warrants an adjustment. The commissioner may not approve a plan of a public utility that provides for an annual energy-savings goal of less than one percent of gross annual retail energy sales from energy conservation improvements.

A utility or association may include in its energy conservation plan energy savings from electric utility infrastructure projects approved by the commission under section 216B.1636 or waste heat recovery converted into electricity projects that may count as energy savings in addition to a minimum energy-savings goal of at least one percent for energy conservation improvements. Electric utility infrastructure projects must result in increased energy efficiency greater than that which would have occurred through normal maintenance activity.

(e) An energy-savings goal is not satisfied by attaining the revenue expenditure requirements of subdivisions 1a and 1b, but can only be satisfied by meeting the energy-savings goal established in this subdivision.

(f) An association or utility is not required to make energy conservation investments to attain the energy-savings goals of this subdivision that are not cost-effective even if the investment is necessary to attain the energy-savings goals. For the purpose of this paragraph, in determining cost-effectiveness, the commissioner shall consider the costs and benefits to ratepayers, the utility, participants, and society. In addition, the commissioner shall consider the rate at which an association or municipal utility is increasing its energy savings and its expenditures on energy conservation.

(g) On an annual basis, the commissioner shall produce and make publicly available a report on the annual energy savings and estimated carbon dioxide reductions achieved by the energy conservation improvement programs for the two most recent years for which data is available. The commissioner shall report on program performance both in the aggregate and for each entity filing an energy conservation improvement plan for approval or review by the commissioner.

(h) By January 15, 2010, the commissioner shall report to the legislature whether the spending requirements under subdivisions 1a and 1b are necessary to achieve the energy-savings goals established in this subdivision.

Subd. 1d. **Technical assistance.** The commissioner shall evaluate energy conservation improvement programs on the basis of cost-effectiveness and the reliability of the technologies employed. The commissioner shall, by order, establish, maintain, and update energy-savings assumptions that must be used when filing energy conservation improvement programs. The commissioner shall establish an inventory of the most effective energy conservation programs, techniques, and technologies, and encourage all Minnesota utilities to implement them, where appropriate, in their service territories. The commissioner shall describe these programs in sufficient detail to provide a utility reasonable guidance concerning implementation. The commissioner shall prioritize the opportunities in order of potential energy savings and in order of cost-effectiveness. The commissioner may contract with a third party to carry out any of the commissioner's duties under this subdivision, and to obtain technical assistance to evaluate the effectiveness of any conservation improvement program. The commissioner may assess up to $800,000 annually until June 30, 2009, and $450,000 annually thereafter for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1e. **Applied research and development grants.** (a) The commissioner may, by order, approve and make grants for applied research and development projects of general applicability that identify new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs. When approving projects, the commissioner shall consider proposals and comments from utilities and other interested parties. The commissioner may assess up to $3,600,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

(b) The commissioner, as part of the assessment authorized under paragraph (a), shall annually assess and grant up to $500,000 for the purpose of subdivision 9.

Subd. 1f. **Facilities energy efficiency.** (a) The commissioner of administration and the commissioner of commerce shall maintain and, as needed, revise the sustainable building design guidelines developed under section 16B.325.

(b) The commissioner of administration and the commissioner of commerce shall maintain and update the benchmarking tool developed under Laws 2001, chapter 212, article 1, section 3, so that all public buildings can use the benchmarking tool to maintain energy use information for the purposes of establishing energy efficiency benchmarks, tracking building performance, and measuring the results of energy efficiency and conservation improvements.

(c) The commissioner shall require that utilities include in their conservation improvement plans programs that facilitate professional engineering verification to qualify a building as Energy Star-labeled, Leadership in Energy and Environmental Design (LEED) certified, or Green Globes-certified. The state goal is to achieve certification of 1,000 commercial buildings as Energy Star-labeled, and 100 commercial buildings as LEED-certified or Green Globes-certified by December 31, 2010.

(d) The commissioner may assess up to $500,000 annually for the purposes of this subdivision. The assessments must be deposited in the state treasury and credited to the energy and conservation account created under subdivision 2a. An assessment made under this subdivision is not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 1g. **Manner of filing and service.** (a) A public utility, generation and transmission cooperative electric association, municipal power agency, cooperative electric association, and municipal utility shall submit filings to the department via the department's electronic filing system. The commissioner may approve an exemption from this requirement in the event an affected utility or association is unable to submit filings via the department's electronic filing system. All other interested parties shall submit filings to the department via the department's electronic filing system whenever practicable but may also file by personal delivery or by mail.

(b) Submission of a document to the department's electronic filing system constitutes service on the department. Where department rule requires service of a notice, order, or other document by the department, utility, association, or interested party upon persons on a service list maintained by the department, service may be made by personal delivery, mail, or electronic service, except that electronic service may only be made upon persons on the service list who have previously agreed in writing to accept electronic service at an electronic address provided to the department for electronic service purposes.

Subd. 2. **Programs.** (a) The commissioner may require public utilities to make investments and expenditures in energy conservation improvements, explicitly setting forth the interest rates, prices, and terms under which the improvements must be offered to the customers. The required programs must cover no more than a three-year period. Public utilities shall file conservation improvement plans by June 1, on a schedule determined by order of the commissioner, but at least every three years. Plans received by a public utility by June 1 must be approved or approved as modified by the commissioner by December 1 of that same year. The commissioner shall evaluate the program on the basis of cost-effectiveness and the reliability of technologies employed. The commissioner's order must provide to the extent practicable for a free choice, by consumers participating in the program, of the device, method, material, or project constituting the energy conservation improvement and for a free choice of the seller, installer, or contractor of the energy conservation improvement, provided that the device, method, material, or project seller, installer, or contractor is duly licensed, certified, approved, or qualified, including under the residential conservation services program, where applicable.

(b) The commissioner may require a utility to make an energy conservation improvement investment or expenditure whenever the commissioner finds that the improvement will result in energy savings at a total cost to the utility less than the cost to the utility to produce or purchase an equivalent amount of new supply of energy. The commissioner shall nevertheless ensure that every public utility operate one or more programs under periodic review by the department.

(c) Each public utility subject to subdivision 1a may spend and invest annually up to ten percent of the total amount required to be spent and invested on energy conservation improvements under this section by the utility on research and development projects that meet the definition of energy conservation improvement in subdivision 1 and that are funded directly by the public utility.

(d) A public utility may not spend for or invest in energy conservation improvements that directly benefit a large energy facility or a large electric customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b). The commissioner shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision, a nonprofit corporation, or community organization.

(e) A utility, a political subdivision, or a nonprofit or community organization that has suggested a program, the attorney general acting on behalf of consumers and small business interests, or a utility customer that has suggested a program and is not represented by the attorney general under section 8.33 may petition the commission to modify or revoke a department decision under this section, and the commission may do so if it determines that the program is not cost-effective, does not adequately address the residential conservation improvement needs of low-income persons, has a long-range negative effect on one or more classes of customers, or is otherwise not in the public interest. The commission shall reject a petition that, on its face, fails to make a reasonable argument that a program is not in the public interest.

(f) The commissioner may order a public utility to include, with the filing of the utility's annual status report, the results of an independent audit of the utility's conservation improvement programs and expenditures performed by the department or an auditor with experience in the provision of energy conservation and energy efficiency services approved by the commissioner and chosen by the utility. The audit must specify the energy savings or increased efficiency in the use of energy within the service territory of the utility that is the result of the spending and investments. The audit must evaluate the cost-effectiveness of the utility's conservation programs.

(g) A gas utility may not spend for or invest in energy conservation improvements that directly benefit a large customer facility or commercial gas customer facility for which the commissioner has issued an exemption pursuant to subdivision 1a, paragraph (b), (c), or (e). The commissioner shall consider and may require a utility to undertake a program suggested by an outside source, including a political subdivision, a nonprofit corporation, or a community organization.

Subd. 2a. **Energy and conservation account.** The energy and conservation account is established in the special revenue fund in the state treasury. The commissioner must deposit money assessed or contributed under subdivisions 1d, 1e, 1f, and 7 in the state treasury and credit it to the energy and conservation account in the special revenue fund. Money in the account is appropriated to the commissioner for the purposes of subdivisions 1d, 1e, 1f, and 7. Interest on money in the account accrues to the account.

Subd. 2b. **Recovery of expenses.** The commission shall allow a utility to recover expenses resulting from a conservation improvement program required by the department and contributions and assessments to the energy and conservation account, unless the recovery would be inconsistent with a financial incentive proposal approved by the commission.

The commission shall allow a cooperative electric association subject to rate regulation under section 216B.026, to recover expenses resulting from energy conservation improvement programs, load management programs, and assessments and contributions to the energy and conservation account unless the recovery would be inconsistent with a financial incentive proposal approved by the commission. In addition, a utility may file annually, or the Public Utilities Commission may require the utility to file, and the commission may approve, rate schedules containing provisions for the automatic adjustment of charges for utility service in direct relation to changes in the expenses of the utility for real and personal property taxes, fees, and permits, the amounts of which the utility cannot control. A public utility is eligible to file for adjustment for real and personal property taxes, fees, and permits under this subdivision only if, in the year previous to the year in which it files for adjustment, it has spent or invested at least 1.75 percent of its gross revenues from provision of electric service, excluding gross operating revenues from electric service provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), and 0.6 percent of its gross revenues from provision of gas service, excluding gross operating revenues from gas services provided in the state to large electric customer facilities for which the commissioner has issued an exemption under subdivision 1a, paragraph (b), for that year for energy conservation improvements under this section.

Subd. 2c. **Performance incentives.** By December 31, 2008, the commission shall review any incentive plan for energy conservation improvement it has approved under section 216B.16, subdivision 6c, and adjust the utility performance incentives to recognize making progress toward and meeting the energy-savings goals established in subdivision 1c.

Subd. 3. **Ownership of energy conservation improvement.** An energy conservation improvement made to or installed in a building in accordance with this section, except systems owned by the utility and designed to turn off, limit, or vary the delivery of energy, are the exclusive property of the owner of the building except to the extent that the improvement is subjected to a security interest in favor of the utility in case of a loan to the building owner.
The utility has no liability for loss, damage or injury caused directly or indirectly by an energy conservation improvement except for negligence by the utility in purchase, installation, or modification of the product.

Subd. 4. **Federal law prohibitions.** If investments by public utilities in energy conservation improvements are in any manner prohibited or restricted by federal law and there is a provision under which the prohibition or restriction may be waived, then the commission, the governor, or any other necessary state agency or officer shall take all necessary and appropriate steps to secure a waiver with respect to those public utility investments in energy conservation improvements included in this section.

Subd. 5. **Efficient lighting program.** (a) Each public utility, cooperative electric association, and municipal utility that provides electric service to retail customers shall include as part of its conservation improvement activities a program to strongly encourage the use of fluorescent and high-intensity discharge lamps. The program must include at least a public information campaign to encourage use of the lamps and proper management of spent lamps by all customer classifications.

(b) A public utility that provides electric service at retail to 200,000 or more customers shall establish, either directly or through contracts with other persons, including lamp manufacturers, distributors, wholesalers, and retailers and local government units, a system to collect for delivery to a reclamation or recycling facility spent fluorescent and high-intensity discharge lamps from households and from small businesses as defined in section 645.445 that generate an average of fewer than ten spent lamps per year.

(c) A collection system must include establishing reasonably convenient locations for collecting spent lamps from households and financial incentives sufficient to encourage spent lamp generators to take the lamps to the collection locations. Financial incentives may include coupons for purchase of new fluorescent or high-intensity discharge lamps, a cash back system, or any other financial incentive or group of incentives designed to collect the maximum number of spent lamps from households and small businesses that is reasonably feasible.

(d) A public utility that provides electric service at retail to fewer than 200,000 customers, a cooperative electric association, or a municipal utility that provides electric service at retail to customers may establish a collection system under paragraphs (b) and (c) as part of conservation improvement activities required under this section.

(e) The commissioner of the Pollution Control Agency may not, unless clearly required by federal law, require a public utility, cooperative electric association, or municipality that establishes a household fluorescent and high-intensity discharge lamp collection system under this section to manage the lamps as hazardous waste as long as the lamps are managed to avoid breakage and are delivered to a recycling or reclamation facility that removes mercury and other toxic materials contained in the lamps prior to placement of the lamps in solid waste.

(f) If a public utility, cooperative electric association, or municipal utility contracts with a local government unit to provide a collection system under this subdivision, the contract must provide for payment to the local government unit of all the unit's incremental costs of collecting and managing spent lamps.

(g) All the costs incurred by a public utility, cooperative electric association, or municipal utility for promotion and collection of fluorescent and high-intensity discharge lamps under this subdivision are conservation improvement spending under this section.

Subd. 5a. **Qualifying solar energy project.** (a) A utility or association may include in its conservation plan programs for the installation of qualifying solar energy projects as defined by section 216B.2411 to the extent of the spending allowed for generation projects by section 216B.2411. The cost-effectiveness of a qualifying solar energy project may be determined by a different standard than for other energy conservation improvements under this section if the commissioner determines it is in the public interest to do so to encourage solar energy projects. Energy savings from qualifying solar energy projects may not be counted toward the minimum energy-savings goal of at least one percent for energy conservation improvements required under subdivision 1c, but may, if the conservation plan is approved:

(1) be counted toward energy savings above that minimum percentage; and

(2) be eligible for a performance incentive under section 216B.16, subdivision 6c, or 216B.241, subdivision 2c, that is distinct from the incentive for energy conservation and is based on the competitiveness and cost-effectiveness of solar projects in relation to other potential solar projects available to the utility.

(b) Qualifying solar energy projects may not be considered when establishing demand-side management targets under section 216B.2422, 216B.243, or any other section of this chapter.

Subd. 5b. **Biomethane purchases.** (a) A natural gas utility may include in its conservation plan purchases of biomethane, and may use up to five percent of the total amount to be spent on energy conservation improvements under this section for that purpose. The cost-effectiveness of biomethane purchases may be determined by a different standard than for other energy conservation improvements under this section if the commissioner determines that doing so

is in the public interest in order to encourage biomethane purchases. Energy savings from purchasing biomethane may not be counted toward the minimum energy-savings goal of at least one percent for energy conservation improvements required under subdivision 1c, but may, if the conservation plan is approved:

(1) be counted toward energy savings above that minimum percentage; and

(2) be considered when establishing performance incentives under subdivision 2c.

(b) For the purposes of this subdivision, "biomethane" means biogas produced through anaerobic digestion of biomass, gasification of biomass, or other effective conversion processes, that is cleaned and purified into biomethane that meets natural gas utility quality specifications for use in a natural gas utility distribution system.

Subd. 5c. **Large solar electric generating plant.** (a) For the purpose of this subdivision:

(1) "project" means a solar electric generation project consisting of arrays of solar photovoltaic cells with a capacity of up to two megawatts located on the site of a closed landfill in Olmsted County owned by the Minnesota Pollution Control Agency; and

(2) "cooperative electric association" means a generation and transmission cooperative electric association that has a member distribution cooperative association to which it provides wholesale electric service in whose service territory a project is located.

(b) A cooperative electric association may elect to count all of its purchases of electric energy from a project toward only one of the following:

(1) its energy-savings goal under subdivision 1c; or

(2) its energy objective or standard under section 216B.1691.

(c) A cooperative electric association may include in its conservation plan purchases of electric energy from a project. The cost-effectiveness of project purchases may be determined by a different standard than for other energy conservation improvements under this section if the commissioner determines that doing so is in the public interest in order to encourage solar energy. The kilowatt hours of solar energy purchased by a cooperative electric association from a project may count for up to 33 percent of its one percent savings goal under subdivision 1c or up to 22 percent of its 1.5 percent savings goal under that subdivision. Expenditures made by a cooperative association for the purchase of energy from a project may not be used to meet the revenue expenditure requirements of subdivisions 1a and 1b.

Subd. 6. MS 2008 [Expired]

Subd. 7. **Low-income programs.** (a) The commissioner shall ensure that each utility and association provides low-income programs. When approving spending and energy-savings goals for low-income programs, the commissioner shall consider historic spending and participation levels, energy savings for low-income programs, and the number of low-income persons residing in the utility's service territory. A utility that furnishes gas service must spend at least 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.
A utility or association that furnishes electric service must spend at least 0.1 percent of its gross operating revenue from residential customers in the state on low-income programs. For a generation and transmission cooperative association, this requirement shall apply to each association's members' aggregate gross operating revenue from sale of electricity to residential customers in the state.
Beginning in 2010, a utility or association that furnishes electric service must spend 0.2 percent of its gross operating revenue from residential customers in the state on low-income programs.

(b) To meet the requirements of paragraph (a), a utility or association may contribute

money to the energy and conservation account. An energy conservation improvement plan must state the amount, if any, of low-income energy conservation improvement funds the utility or association will contribute to the energy and conservation account. Contributions must be remitted to the commissioner by February 1 of each year.

(c) The commissioner shall establish low-income programs to utilize money contributed to the energy and conservation account under paragraph (b). In establishing low-income programs, the commissioner shall consult political subdivisions, utilities, and nonprofit and community organizations, especially organizations engaged in providing energy and weatherization assistance to low-income persons. Money contributed to the energy and conservation account under paragraph (b) must provide programs for low-income persons, including low-income renters, in the service territory of the utility or association providing the money. The commissioner shall record and report expenditures and energy savings achieved as a result of low-income programs funded through the energy and conservation account in the report required under subdivision 1c, paragraph (g). The commissioner may contract with a political subdivision, nonprofit or community organization, public utility, municipality, or cooperative electric association to implement low-income programs funded through the energy and conservation account.

(d) A utility or association may petition the commissioner to modify its required spending under paragraph (a) if the utility or association and the commissioner have been unable to expend the amount required under paragraph (a) for three consecutive years.

Subd. 8. **Assessment.** The commission or department may assess utilities subject to this section in proportion to their respective gross operating revenue from sales of gas or electric service within the state during the last calendar year to carry out the purposes of subdivisions 1d, 1e, and 1f. Those assessments are not subject to the cap on assessments provided by section 216B.62, or any other law.

Subd. 9. **Building performance standards; Sustainable Building 2030.** (a) The purpose of this subdivision is to establish cost-effective energy-efficiency performance standards for new and substantially reconstructed commercial, industrial, and institutional buildings that can significantly reduce carbon dioxide emissions by lowering energy use in new and substantially reconstructed buildings. For the purposes of this subdivision, the establishment of these standards may be referred to as Sustainable Building 2030.

(b) The commissioner shall contract with the Center for Sustainable Building Research at the University of Minnesota to coordinate development and implementation of energy-efficiency performance standards, strategic planning, research, data analysis, technology transfer, training, and other activities related to the purpose of Sustainable Building 2030. The commissioner and the Center for Sustainable Building Research shall, in consultation with utilities, builders, developers, building operators, and experts in building design and technology, develop a Sustainable Building 2030 implementation plan that must address, at a minimum, the following issues:

(1) training architects to incorporate the performance standards in building design;

(2) incorporating the performance standards in utility conservation improvement programs; and

(3) developing procedures for ongoing monitoring of energy use in buildings that have adopted the performance standards.

The plan must be submitted to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over energy policy by July 1, 2009.

(c) Sustainable Building 2030 energy-efficiency performance standards must be firm, quantitative measures of total building energy use and associated carbon dioxide emissions per square foot for different building types and uses, that allow for accurate determinations of a building's conformance with a performance standard. Performance standards must address energy use by electric vehicle charging infrastructure in or adjacent to buildings as that infrastructure begins to be made widely available. The energy-efficiency performance standards must be updated every three or five years to incorporate all cost-effective measures. The performance standards must reflect the reductions in carbon dioxide emissions per square foot resulting from actions taken by utilities to comply with the renewable energy standards in section 216B.1691.

The performance standards should be designed to achieve reductions equivalent to the following reduction schedule, measured against energy consumption by an average building in each applicable building sector in 2003: (1) 60 percent in 2010; (2) 70 percent in 2015; (3) 80 percent in 2020; and (4) 90 percent in 2025. A performance standard must not be established or increased absent a conclusive engineering analysis that it is cost-effective based upon established practices used in evaluating utility conservation improvement programs.

(d) The annual amount of the contract with the Center for Sustainable Building Research is up to $500,000. The Center for Sustainable Building Research shall expend no more than $150,000 of this amount each year on administration, coordination, and oversight activities related to Sustainable Building 2030. The balance of contract funds must be spent on substantive programmatic activities allowed under this subdivision that may be conducted by the Center for Sustainable Building Research and others, and for subcontracts with not-for-profit energy organizations, architecture and engineering firms, and other qualified entities to undertake technical projects and activities in support of Sustainable Building 2030. The primary work to be accomplished each year by qualified technical experts under subcontracts is the development and thorough justification of recommendations for specific energy-efficiency performance standards.

Additional work may include:

(1) research, development, and demonstration of new energy-efficiency technologies and techniques suitable for commercial, industrial, and institutional buildings;

(2) analysis and evaluation of practices in building design, construction, commissioning and operations, and analysis and evaluation of energy use in the commercial, industrial, and institutional sectors;

(3) analysis and evaluation of the effectiveness and cost-effectiveness of Sustainable Building 2030 performance standards, conservation improvement programs, and building energy codes;

(4) development and delivery of training programs for architects, engineers, commissioning agents, technicians, contractors, equipment suppliers, developers, and others in the building industries; and

(5) analysis and evaluation of the effect of building operations on energy use.

(e) The commissioner shall require utilities to develop and implement conservation improvement programs that are expressly designed to achieve energy efficiency goals consistent with the Sustainable Building 2030 performance standards. These programs must include offerings of design assistance and modeling, financial incentives, and the verification of the proper installation of energy-efficient design components in new and substantially reconstructed buildings. A utility's design assistance program must consider the strategic planting of trees and shrubs around buildings as an energy conservation strategy for the designed project.

A utility making an expenditure under its conservation improvement program that results in a building meeting the Sustainable Building 2030 performance standards may claim the energy savings toward its energy-savings goal established in subdivision 1c.

(f) The commissioner shall report to the legislature every three years, beginning January 15, 2010, on the cost-effectiveness and progress of implementing the Sustainable Building 2030 performance standards and shall make recommendations on the need to continue the program as described in this section.

History: *1980 c 579 s 18; 1980 c 614 s 123; 1981 c 356 s 182,248; 1982 c 561 s 4; 1983 c 179 s 6-8; 1989 c 338 s 2,3; 1991 c 235 art 1 s 2; 1992 c 478 s 2,3; 1993 c 249 s 31; 1994 c 483 s 1; 1994 c 641 art 3 s 1; art 4 s 4; 1994 c 644 s 3; 1998 c 273 s 11; 1998 c 350 s 1; 1999 c 140 s 2-7; 2001 c 212 art 8 s 4-7,12; 1Sp2001 c 4 art 6 s 44-46,77; 2003 c 130 s 12; 1Sp2003 c 11 art 2 s 5; art 3 s 4; 2004 c 216 s 3; 2005 c 97 art 7 s 1,2; 2007 c 10 s 5; 2007 c 57 art 2 s 21; 2007 c 136 art 2 s 5; 2008 c 278 s 2,3; 2008 c 296 art 1 s 9; 2009 c 86 art 1 s 31; 2009 c 110 s 15-18; 2009 c 134 s 5; 2010 c 372 s 1; 2011 c 97 s 18-21*

216B.2411 DISTRIBUTED ENERGY RESOURCES.

Subdivision 1. **Generation projects.** (a) Any municipality or rural electric association providing electric service and subject to section 216B.241 may, and each public utility may, use five percent of the total amount to be spent on energy conservation improvements under section 216B.241, on:

(1) projects in Minnesota to construct an electric generating facility that utilizes eligible renewable energy sources as defined in subdivision 2, such as methane or other combustible gases derived from the processing of plant or animal wastes, biomass fuels such as short-rotation woody or fibrous agricultural crops, or other renewable fuel, as its primary fuel source;

(2) projects in Minnesota to install a distributed generation facility of ten megawatts or less of interconnected capacity that is fueled by natural gas, renewable fuels, or another similarly clean fuel; or

(3) projects in Minnesota to install a qualifying solar energy project as defined in subdivision 2.

(b) A municipality, rural electric association, or public utility that offers a program to customers to promote installing qualifying solar energy projects may request authority from the commissioner to exceed the five percent limit in paragraph (a), but not to exceed ten percent, to meet customer demand for installation of qualifying solar energy projects. In considering this request, the commissioner shall consider customer interest in qualifying solar energy and the impact on other customers. A municipality, rural electric association, or public utility may not participate in a qualifying solar energy project on a property unless it is provided evidence that all reasonable cost-effective conservation investments have previously been made to the property.

(c) For a municipality, rural electric association, or public utility, projects under this section must be considered energy conservation improvements as defined in section 216B.241.

Subd. 2. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision and section 216B.241, subdivision 1, have the meanings given them.

(b) "Eligible renewable energy sources" means fuels and technologies to generate electricity through the use of any of the resources listed in section 216B.1691, subdivision 1, paragraph (a), except that the incineration of wastewater sludge is not an eligible renewable energy source, "biomass" has the meaning provided under paragraph (c), and "solar" must be from a qualified solar energy project as defined in paragraph (d).

(c) "Biomass" includes:

(1) methane or other combustible gases derived from the processing of plant or animal material;

(2) alternative fuels derived from soybean and other agricultural plant oils or animal fats;

(3) combustion of barley hulls, corn, soy-based products, or other agricultural products; (4) wood residue from the wood products industry in Minnesota or other wood products such as short-rotation woody or fibrous agricultural crops;

(5) landfill gas;

(6) the predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works; and

(7) mixed municipal solid waste, and refuse-derived fuel from mixed municipal solid waste. (d) "Qualifying solar energy project" means a qualifying solar thermal project or qualifying solar electric project.

(e) "Qualifying solar thermal project" means a flat plate or evacuated tube that meets the requirements of section 216C.25 with a fixed orientation that collects the sun's radiant energy and transfers it to a storage medium for distribution as energy to heat or cool air or water, but

does not include equipment used to heat water at a residential property (1) for domestic use if less than one-half of the energy used for that purpose is derived from the sun or (2) for use in a hot tub or swimming pool.

(f) "Qualifying solar electric project" means:

(1) solar electric equipment that: (i) meets the requirements of section 216C.25; (ii) has a peak generating capacity of 100 kilowatts or less; and (iii) is used to generate electricity for use in a residential, commercial, or publicly owned property or facility; and

(2) if applicable, equipment that is used to store the electricity generated by a qualified solar electric project under clause (1) and that is located proximate to the property or facility using the electricity.

(g) "Residential property" means the principal residence of a homeowner at the time the solar equipment is placed in service.

Subd. 3. **Other provisions.** (a) Electricity generated by a facility constructed with funds provided under this section and using an eligible renewable energy source may be counted toward the renewable energy objectives in section 216B.1691, subject to the provisions of that section.

(b) Two or more entities may pool resources under this section to provide assistance jointly to proposed eligible renewable energy projects. The entities shall negotiate and agree among themselves for allocation of benefits associated with a project, such as the ability to count energy generated by a project toward a utility's renewable energy objectives under section 216B.1691. The entities shall provide a summary of the allocation of benefits to the commissioner. A utility may spend funds under this section for projects in Minnesota that are outside the service territory of the utility.

History: *2001 c 212 art 8 s 13,14; 2002 c 398 s 11; 1Sp2003 c 11 art 2 s 6; 2007 c 136 art 2 s 8; 2008 c 258 s 2; 2008 c 296 art 1 s 10,11; 2009 c 110 s 19,20*

216B.2412 DECOUPLING OF ENERGY SALES FROM REVENUES.

Subdivision 1. **Definition and purpose.** For the purpose of this section, "decoupling" means a regulatory tool designed to separate a utility's revenue from changes in energy sales. The purpose of decoupling is to reduce a utility's disincentive to promote energy efficiency.

Subd. 2. **Decoupling criteria.** The commission shall, by order, establish criteria and standards for decoupling. The commission may establish these criteria and standards in a separate proceeding or in a general rate case or other proceeding in which it approves a pilot program, and shall design the criteria and standards to mitigate the impact on public utilities of the energy-savings goals under section 216B.241 without adversely affecting utility ratepayers. In designing the criteria, the commission shall consider energy efficiency, weather, and cost of capital, among other factors.

Subd. 3. **Pilot programs.** The commission shall allow one or more rate-regulated utilities to participate in a pilot program to assess the merits of a rate-decoupling strategy to promote energy efficiency and conservation. Each pilot program must utilize the criteria and standards established in subdivision 2 and be designed to determine whether a rate-decoupling strategy achieves energy savings. On or before a date established by the commission, the commission shall require electric and gas utilities that intend to implement a decoupling program to file a decoupling pilot plan, which shall be approved or approved as modified by the commission. A pilot program may not exceed three years in length. Any extension beyond three years can only be approved in a general rate case, unless that decoupling program was previously approved as part of a general rate case. The commission shall report on the programs annually to the chairs of the house of representatives and senate committees with primary jurisdiction over energy policy.

History: *2007 c 136 art 2 s 6; 2009 c 110 s 21*

216B.242 [Repealed, 2011 c 97 s 34]

RENEWABLE ENERGY INITIATIVES

216B.2421 DEFINITION OF LARGE ENERGY FACILITY.

Subdivision 1. **Applicability.** The definition in this section applies to this section and sections 216B.2422 and 216B.243.

Subd. 2. **Large energy facility.** "Large energy facility" means:

(1) any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system;

(2) any high-voltage transmission line with a capacity of 200 kilovolts or more and greater than 1,500 feet in length;

(3) any high-voltage transmission line with a capacity of 100 kilovolts or more with more than ten miles of its length in Minnesota or that crosses a state line;

(4) any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives;

(5) any pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota;

(6) any facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural gas or synthetic gas;

(7) any underground gas storage facility requiring a permit pursuant to section 103I.681;

(8) any nuclear fuel processing or nuclear waste storage or disposal facility; and

(9) any facility intended to convert any material into any other combustible fuel and having the capacity to process in excess of 75 tons of the material per hour.

Subd. 3. [Repealed, 2001 c 212 art 7 s 36]

History: *1974 c 307 s 2; 1975 c 170 s 1; 1977 c 381 s 8; Ex1979 c 2 s 11; 1981 c 356 s 248; 1982 c 561 s 1; 1991 c 199 art 2 s 1; 1993 c 327 s 8,9; 1993 c 356 s 2; 2001 c 212 art 7 s 29; 2005 c 97 art 1 s 4*

216B.2422 RESOURCE PLANNING; RENEWABLE ENERGY.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Utility" means an entity with the capability of generating 100,000 kilowatts or more of electric power and serving, either directly or indirectly, the needs of 10,000 retail customers in Minnesota. Utility does not include federal power agencies.

(c) "Renewable energy" means electricity generated through use of any of the following resources:

(1) wind; (2) solar;

(3) geothermal;

(4) hydro;

(5) trees or other vegetation;

(6) landfill gas; or

(7) predominantly organic components of wastewater effluent, sludge, or related by-products from publicly owned treatment works, but not including incineration of wastewater sludge.

(d) "Resource plan" means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs. These resource options include using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation.

(e) "Refurbish" means to rebuild or substantially modify an existing electricity generating resource of 30 megawatts or greater.

Subd. 2. **Resource plan filing and approval.** A utility shall file a resource plan with the commission periodically in accordance with rules adopted by the commission. The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest. In the resource plan proceedings of all other utilities, the commission's order shall be advisory and the order's findings and conclusions shall constitute prima facie evidence which may be rebutted by substantial evidence in all other proceedings. With respect to utilities other than those defined in section 216B.02, subdivision 4, the commission shall consider the filing requirements and decisions in any comparable proceedings in another jurisdiction.

As a part of its resource plan filing, a utility shall include the least cost plan for meeting 50 and 75 percent of all new and refurbished capacity needs through a combination of conservation and renewable energy resources.

Subd. 2a. **Historical data and advance forecast.** Each utility required to file a resource plan under this section shall include in the filing all applicable annual information required by section 216C.17, subdivision 2, and the rules adopted under that section. To the extent that a utility complies with this subdivision, it is not required to file annual advance forecasts with the department under section 216C.17, subdivision 2.

Subd. 2b. **Optional integrated resource plan compliance for certain cooperatives.** For the purposes of this subdivision, a "cooperative" means a generating and transmission cooperative electric association that has at least 80 percent of its member distribution cooperatives located outside of Minnesota and that provides less than four percent of the electricity annually sold at retail in the state of Minnesota. A cooperative may, in lieu of filing a resource plan under subdivision 2, elect to file a report to the commission under this subdivision. The report must include projected demand levels for the next 15 years and generation resources to meet any projected generation deficiencies. To supply the information required in a report under this subdivision, a cooperative may use reports submitted under section 216C.17, subdivision 2, reports to regional reliability organizations, or similar reports submitted to other state utility commissions. A report must be submitted annually by July 1, but the commission may extend the time if it finds the extension in the public interest. Presentation of the annual report shall be done in accordance with procedures established by the commission. Data in a report under this subdivision may be aggregate data and need not be separately reported for individual distribution cooperative members of the cooperative. The commission may take whatever action in response to a report under this subdivision that it could take with respect to a report by a cooperative under subdivision 2.

[See Note.]

Subd. 3. **Environmental costs.** (a) The commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation. A utility shall use the values established by the commission in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings.

(b) The commission shall establish interim environmental cost values associated with each method of electricity generation by March 1, 1994. These values expire on the date the commission establishes environmental cost values under paragraph (a).

Subd. 4. **Preference for renewable energy facility.** The commission shall not approve a new or refurbished nonrenewable energy facility in an integrated resource plan or a certificate of need, pursuant to section 216B.243, nor shall the commission allow rate recovery pursuant to section 216B.16 for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest.

Subd. 5. **Bidding; exemption from certificate of need proceeding.** (a) A utility may select resources to meet its projected energy demand through a bidding process approved or established by the commission. A utility shall use the environmental cost estimates determined under subdivision 3 in evaluating bids submitted in a process established under this subdivision.

(b) Notwithstanding any other provision of this section, if an electric power generating plant, as described in section 216B.2421, subdivision 2, clause (1), is selected in a bidding process approved or established by the commission, a certificate of need proceeding under section 216B.243 is not required.

(c) A certificate of need proceeding is also not required for an electric power generating

plant that has been selected in a bidding process approved or established by the commission, or such other selection process approved by the commission, to satisfy, in whole or in part, the wind power mandate of section 216B.2423 or the biomass mandate of section 216B.2424.

Subd. 6. **Consolidation of resource planning and certificate of need.** A utility shall indicate in its resource plan whether it intends to site or construct a large energy facility. If the utility's resource plan includes a proposed large energy facility and construction of that facility is likely to begin before the utility files its next resource plan, the commission shall conduct the resource plan proceeding consistent with the requirements of section 216B.243 with respect to the proposed facility. If the commission approves the proposed facility in the resource plan, a separate certificate of need proceeding is not required.

History: *1993 c 356 s 3; 1994 c 644 s 4; 1997 c 176 s 2; 1997 c 198 s 1; 2008 c 258 s 3; 2012 c 268 s 1*

NOTE: A cooperative must complete an integrated resource plan pending on May 3, 2012, under subdivision 2 before it may make an election under subdivision 2b, as added by Laws 2012, chapter 268, section 1. Laws 2012, chapter 268, section 1, the effective date.

216B.2423 WIND POWER MANDATE.

Subdivision 1. **Mandate.** A public utility, as defined in section 216B.02, subdivision 4, that operates a nuclear-powered electric generating plant within this state must construct and operate, purchase, or contract to construct and operate: (1) 225 megawatts of electric energy installed capacity generated by wind energy conversion systems within the state by December 31, 1998; and (2) an additional 200 megawatts of installed capacity so generated by December 31, 2002.

For the purpose of this section, "wind energy conversion system" has the meaning given it in section 216C.06, subdivision 19.

Subd. 2. **Resource planning mandate.** The Public Utilities Commission shall order a public utility subject to subdivision 1, to construct and operate, purchase, or contract to purchase an additional 400 megawatts of electric energy installed capacity generated by wind energy conversion systems by December 31, 2002, subject to resource planning and least cost planning requirements in section 216B.2422.

Subd. 2a. **Site preference.** The Public Utilities Commission shall ensure that a utility subject to the requirements of subdivision 1, clause (2), shall implement that clause with a preference for wind energy conversion systems within the state. This preference shall not prevent the utility from constructing or contracting to construct wind energy conversion systems outside the state, if the Public Utilities Commission determines that selection of a facility within the state conflicts with the requirements of section 216B.03.

Subd. 3. **Standard contract for wind energy conversion systems.** The Public Utilities Commission shall require a public utility subject to subdivision 1 to develop and file in a form acceptable to the commission by October 1, 1997, a standard form contract for the purchase of electricity from wind conversion systems with installed capacity of two megawatts and less. For purposes of applying the two megawatts limit, the installed capacity sold to the public utility from a single seller or affiliated group of sellers shall be cumulated. The standard contract shall include all the terms and conditions for purchasing wind-generated power by the utility, except for price and any other specific terms necessary to ensure system reliability and safety, which shall be separately negotiable.

History: *1994 c 641 art 3 s 2; 1997 c 216 s 123; 1999 c 200 s 3*

216B.2424 BIOMASS POWER MANDATE.

Subdivision 1. **Farm-grown closed-loop biomass.** (a) For the purposes of this section, "farm-grown closed-loop biomass" means herbaceous crops, trees, agricultural waste, and aquatic plant matter that is used to generate electricity, but does not include mixed municipal solid waste, as defined in section 115A.03, and that:

(1) is intentionally cultivated, harvested, and prepared for use, in whole or in part, as a fuel for the generation of electricity;

(2) when combusted, releases an amount of carbon dioxide that is less than or approximately equal to the carbon dioxide absorbed by the biomass fuel during its growing cycle; and

(3) is fired in a new or substantially retrofitted electric generating facility that is:

(i) located within 400 miles of the site of the biomass production; and

(ii) designed to use biomass to meet at least 75 percent of its fuel requirements.

(b) The legislature finds that the negative environmental impacts within 400 miles of the facility resulting from transporting and combusting the biomass are offset in that region by the environmental benefits to air, soil, and water of the biomass production.

(c) Among the biomass fuel sources that meet the requirements of paragraph (a), clauses (1) and (2), are poplar, aspen, willow, switch grass, sorghum, alfalfa, cultivated prairie grass, and sustainably managed woody biomass.

(d) For the purpose of this section, "sustainably managed woody biomass" means:

(1) brush, trees, and other biomass harvested from within designated utility, railroad, and road rights-of-way;

(2) upland and lowland brush harvested from lands incorporated into brushland habitat management activities of the Minnesota Department of Natural Resources;

(3) upland and lowland brush harvested from lands managed in accordance with Minnesota Department of Natural Resources "Best Management Practices for Managing Brushlands";

(4) logging slash or waste wood that is created by harvest, by precommercial timber stand improvement to meet silvicultural objectives, or by fire, disease, or insect control treatments, and that is managed in compliance with the Minnesota Forest Resources Council's "Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines for Landowners, Loggers and Resource Managers" as modified by the requirement of this subdivision; and

(5) trees or parts of trees that do not meet the utilization standards for pulpwood, posts, bolts, or sawtimber as described in the Minnesota Department of Natural Resources Division of Forestry Timber Sales Manual, 1998, as amended as of May 1, 2005, and the Minnesota Department of Natural Resources Timber Scaling Manual, 1981, as amended as of May 1, 2005, except as provided in paragraph (a), clause (1), and this paragraph, clauses (1) to (3).

Subd. 1a. **Municipal waste-to-energy project.** (a) This subdivision applies only to a biomass project owned or controlled, directly or indirectly, by two municipal utilities as described in subdivision 5a, paragraph (b).

(b) Woody biomass from state-owned land must be harvested in compliance with an adopted management plan and a program of ecologically based third-party certification.

(c) The project must prepare a fuel plan on an annual basis after commercial operation of

the project as described in the power contract between the project and the public utility, and must also prepare annually certificates reflecting the types of fuel used in the preceding year by the project, as described in the power contract. The fuel plans and certificates shall also be filed with the Minnesota Department of Natural Resources and the Minnesota Department of Commerce within 30 days after being provided to the public utility, as provided by the power contract. Any person who believes the fuel plans, as amended, and certificates show that the project does not or will not comply with the fuel requirements of this subdivision may file a petition with the commission seeking such a determination.

(d) The wood procurement process must utilize third-party audit certification systems to verify that applicable best management practices were utilized in the procurement of the sustainably managed biomass. If there is a failure to so verify in any two consecutive years during the original contract term, the farm-grown closed-loop biomass requirements of subdivision 2 must be increased to 50 percent for the remaining contract term period; however, if in two consecutive subsequent years after the increase has been implemented, it is verified that the conditions in this subdivision have been met, then for the remaining original contract term the closed-loop biomass mandate reverts to 25 percent. If there is a subsequent failure to verify in a year after the first failure and implementation of the 50 percent requirement, then the closed-loop percentage shall remain at 50 percent for each remaining year of the contract term.

(e) In the closed-loop plantation, no transgenic plants may be used.

(f) No wood may be harvested from any lands identified by the final or preliminary Minnesota County Biological Survey as having statewide significance as native plant communities, large populations or concentrations of rare species, or critical animal habitat.

(g) A wood procurement plan must be prepared every five years and public meetings must be held and written comments taken on the plan and documentation must be provided on why or why not the public inputs were used.

(h) Guidelines or best management practices for sustainably managed woody biomass must be adopted by:

(1) the Minnesota Department of Natural Resources for managing and maintaining brushland and open land habitat on public and private lands, including, but not limited to, provisions of sections 84.941, 84.942, and 97A.125; and

(2) the Minnesota Forest Resources Council for logging slash, using the most recent available scientific information regarding the removal of woody biomass from forest lands, to sustain the management of forest resources as defined by section 89.001, subdivisions 8 and 9, with particular attention to soil productivity, biological diversity as defined by section 89A.01, subdivision 3, and wildlife habitat.

These guidelines must be completed by July 1, 2007, and the process of developing them must incorporate public notification and comment.

(i) The University of Minnesota Initiative for Renewable Energy and the Environment is encouraged to solicit and fund high-quality research projects to develop and consolidate scientific information regarding the removal of woody biomass from forest and brush lands, with particular attention to the environmental impacts on soil productivity, biological diversity, and sequestration of carbon. The results of this research shall be made available to the public.

(j) The two utilities owning or controlling, directly or indirectly, the biomass project described in subdivision 5a, paragraph (b), shall fund or obtain funding from nonstate sources of up to $150,000 by April 1, 2006, to complete the guidelines or best management practices described in paragraph (h). The expenditures to be funded under this paragraph do not include any of the expenditures to be funded under paragraph (i).

Subd. 2. **Interim exemption.** (a) A biomass project proposing to use, as its primary fuel over the life of the project, short-rotation woody crops, may use as an interim fuel agricultural waste and other biomass which is not farm-grown closed-loop biomass for up to six years after the project's electric generating facility becomes operational; provided, the project developer demonstrates the project will use the designated short-rotation woody crops as its primary fuel after the interim period and provided the location of the interim fuel production meets the requirements of subdivision 1, paragraph (a), clause (3).

(b) A biomass project proposing to use, as its primary fuel over the life of the project, short-rotation woody crops, may use as an interim fuel agricultural waste and other biomass which is not farm-grown closed-loop biomass for up to three years after the project's electric generating facility becomes operational; provided, the project developer demonstrates the project will use the designated short-rotation woody crops as its primary fuel after the interim period.

(c) A biomass project that uses an interim fuel under the terms of paragraph (b) may, in addition, use an interim fuel under the terms of paragraph (a) for six years less the number of years that an interim fuel was used under paragraph (b).

(d) A project developer proposing to use an exempt interim fuel under paragraphs (a) and (b) must demonstrate to the public utility that the project will have an adequate supply of short-rotation woody crops which meet the requirements of subdivision 1 to fuel the project after the interim period.

(e) If a biomass project using an interim fuel under this subdivision is or becomes owned or controlled, directly or indirectly, by two municipal utilities as described in subdivision 5a, paragraph (b), the project is deemed to comply with the requirement under this subdivision to use as its primary fuel farm-grown closed-loop biomass if farm-grown closed-loop biomass comprises no less than 25 percent of the fuel used over the life of the project. For purposes of this subdivision, "life of the project" means 20 years from the date the project becomes operational or the term of the applicable power purchase agreement between the project owner and the public utility, whichever is longer.

Subd. 3. **Fuel exemption.** Over the duration of the contract of a biomass power facility selected to satisfy the mandate in subdivision 5, fuel sources that are not biomass may be used to satisfy up to 25 percent of the fuel requirements of a biomass power facility selected to satisfy the biomass power mandate in subdivision 5, except that agricultural crop wastes, such as oat hulls, may be used to satisfy more than 25 percent of the fuel requirements of a power facility selected to satisfy the biomass power mandate in subdivision 5 if the wastes are co-fired with the fuel authorized for the facility. A biomass power facility selected to satisfy the mandate in subdivision 5 also may use fuel sources that are not biomass during any period when biomass fuel sources are not reasonably available to the facility due to any circumstances constituting an act of God. Fuel sources that are not biomass used during such a period of biomass fuel source unavailability shall not be counted toward the 25 percent exemption provided in this subdivision. For purposes of this subdivision, "act of God" means any natural disaster or other natural phenomenon of an exceptional, inevitable, or irresistible character, including, but not limited to, flood, fire, drought, earthquake, and crop failure resulting from climatic conditions, infestation, or disease.

Subd. 4. **Financial viability.** A biomass project developer must demonstrate to the public utility evidence of sufficient financial viability necessary for the construction and operation of the biomass project.

Subd. 5. **Mandate.** (a) A public utility, as defined in section 216B.02, subdivision 4, that operates a nuclear-powered electric generating plant within this state must construct and operate, purchase, or contract to construct and operate (1) by December 31, 1998, 50 megawatts of electric energy installed capacity generated by farm-grown closed-loop biomass scheduled to be

operational by December 31, 2001; and (2) by December 31, 1998, an additional 75 megawatts of installed capacity so generated scheduled to be operational by December 31, 2002.

(b) Of the 125 megawatts of biomass electricity installed capacity required under this subdivision, no more than 55 megawatts of this capacity may be provided by a facility that uses poultry litter as its primary fuel source and any such facility:

(1) need not use biomass that complies with the definition in subdivision 1;

(2) must enter into a contract with the public utility for such capacity, that has an average purchase price per megawatt hour over the life of the contract that is equal to or less than the average purchase price per megawatt hour over the life of the contract in contracts approved by the Public Utilities Commission before April 1, 2000, to satisfy the mandate of this section, and file that contract with the Public Utilities Commission prior to September 1, 2000; and

(3) must schedule such capacity to be operational by December 31, 2002.

(c) Of the total 125 megawatts of biomass electric energy installed capacity required under this section, no more than 75 megawatts may be provided by a single project.

(d) Of the 75 megawatts of biomass electric energy installed capacity required under paragraph (a), clause (2), no more than 33 megawatts of this capacity may be provided by a St. Paul district heating and cooling system cogeneration facility utilizing waste wood as a primary fuel source. The St. Paul district heating and cooling system cogeneration facility need not use biomass that complies with the definition in subdivision 1.

(e) The public utility must accept and consider on an equal basis with other biomass proposals:

(1) a proposal to satisfy the requirements of this section that includes a project that exceeds the megawatt capacity requirements of either paragraph (a), clause (1) or (2), and that proposes to sell the excess capacity to the public utility or to other purchasers; and

(2) a proposal for a new facility to satisfy more than ten but not more than 20 megawatts of the electrical generation requirements by a small business-sponsored independent power producer facility to be located within the northern quarter of the state, which means the area located north of Constitutional Route No. 8 as described in section 161.114, subdivision 2, and that utilizes biomass residue wood, sawdust, bark, chipped wood, or brush to generate electricity. A facility described in this clause is not required to utilize biomass complying with the definition in subdivision 1, but must be under construction by December 31, 2005.

(f) If a public utility files a contract with the commission for electric energy installed capacity that uses poultry litter as its primary fuel source, the commission must do a preliminary review of the contract to determine if it meets the purchase price criteria provided in paragraph (b), clause (2). The commission shall perform its review and advise the parties of its determination within 30 days of filing of such a contract by a public utility. A public utility may submit by September 1, 2000, a revised contract to address the commission's preliminary determination.

(g) The commission shall finally approve, modify, or disapprove no later than July 1, 2001, all contracts submitted by a public utility as of September 1, 2000, to meet the mandate set forth in this subdivision.

(h) If a public utility subject to this section exercises an option to increase the generating capacity of a project in a contract approved by the commission prior to April 25, 2000, to satisfy the mandate in this subdivision, the public utility must notify the commission by September 1, 2000, that it has exercised the option and include in the notice the amount of additional megawatts to be generated under the option exercised. Any review by the commission of the project after exercise of such an option shall be based on the same criteria used to review the existing contract.

(i) A facility specified in this subdivision qualifies for exemption from property taxation under section 272.02, subdivision 45.

Subd. 5a. **Reduction of biomass mandate.** (a) Notwithstanding subdivision 5, the biomass electric energy mandate must be reduced from 125 megawatts to 110 megawatts.

(b) The Public Utilities Commission shall approve a request pending before the commission as of May 15, 2003, for amendments to and assignment of a power purchase agreement with the owner of a facility that uses short-rotation, woody crops as its primary fuel previously approved to satisfy a portion of the biomass mandate if the owner of the project agrees to reduce the size of its project from 50 megawatts to 35 megawatts, while maintaining an average price for energy in nominal dollars measured over the term of the power purchase agreement at or below $104 per megawatt-hour, exclusive of any price adjustments that may take effect subsequent to commission approval of the power purchase agreement, as amended. The commission shall also approve, as necessary, any subsequent assignment or sale of the power purchase agreement or ownership of the project to an entity owned or controlled, directly or indirectly, by two municipal utilities located north of Constitutional Route No. 8, as described in section 161.114, which currently own electric and steam generation facilities using coal as a fuel and which propose to retrofit their existing municipal electrical generating facilities to utilize biomass fuels in order to perform the power purchase agreement.

(c) If the power purchase agreement described in paragraph (b) is assigned to an entity that is, or becomes, owned or controlled, directly or indirectly, by two municipal entities as described in paragraph (b), and the power purchase agreement meets the price requirements of paragraph (b), the commission shall approve any amendments to the power purchase agreement necessary to reflect the changes in project location and ownership and any other amendments made necessary by those changes. The commission shall also specifically find that:

(1) the power purchase agreement complies with and fully satisfies the provisions of this section to the full extent of its 35-megawatt capacity;

(2) all costs incurred by the public utility and all amounts to be paid by the public utility to the project owner under the terms of the power purchase agreement are fully recoverable pursuant to section 216B.1645;

(3) subject to prudency review by the commission, the public utility may recover from its Minnesota retail customers the Minnesota jurisdictional portion of the amounts that may be incurred and paid by the public utility during the full term of the power purchase agreement; and

(4) if the purchase power agreement meets the requirements of this subdivision, it is reasonable and in the public interest.

(d) The commission shall specifically approve recovery by the public utility of any and all Minnesota jurisdictional costs incurred by the public utility to improve, construct, install, or upgrade transmission, distribution, or other electrical facilities owned by the public utility or other persons in order to permit interconnection of the retrofitted biomass-fueled generating facilities or to obtain transmission service for the energy provided by the facilities to the public utility pursuant to section 216B.1645, and shall disapprove any provision in the power purchase agreement that requires the developer or owner of the project to pay the jurisdictional costs or that permit the public utility to terminate the power purchase agreement as a result of the existence of those costs or the public utility's obligation to pay any or all of those costs.

(e) Upon request by the project owner, the public utility shall agree to amend the power purchase agreement described in paragraph (b) and approved by the commission as required by paragraph (c). The amendment must be negotiated and executed within 45 days of May 20, 2009, and must

apply to prices paid after January 1, 2009. The average price for energy in nominal dollars measured over the term of the power purchase agreement must not exceed $104 per megawatt hour by more than five percent. The public utility shall request approval of the amendment by the commission within 30 days of execution of the amended power purchase agreement. The amendment is not effective until approval by the commission. The commission shall act on the amendment within 90 days of submission of the request by the public utility. Upon approval of the amended power purchase agreement, the commission shall allow the public utility to recover the costs of the amended power purchase agreement, as provided in section 216B.1645.

Subd. 6. **Remaining megawatt compliance process.** (a) If there remain megawatts of biomass power generating capacity to fulfill the mandate in subdivision 5 after the commission has taken final action on all contracts filed by September 1, 2000, by a public utility, as amended and assigned, this subdivision governs final compliance with the biomass energy mandate in subdivision 5 subject to the requirements of subdivisions 7 and 8.

(b) To the extent not inconsistent with this subdivision, the provisions of subdivisions 2, 3, 4, and 5 apply to proposals subject to this subdivision.

(c) A public utility must submit proposals to the commission to complete the biomass mandate. The commission shall require a public utility subject to this section to issue a request for competitive proposals for projects for electric generation utilizing biomass as defined in paragraph (f) of this subdivision to provide the remaining megawatts of the mandate. The commission shall set an expedited schedule for submission of proposals to the utility, selection by the utility of proposals or projects, negotiation of contracts, and review by the commission of the contracts or projects submitted by the utility to the commission.

(d) Notwithstanding the provisions of subdivisions 1 to 5 but subject to the provisions of subdivisions 7 and 8, a new or existing facility proposed under this subdivision that is fueled either by biomass or by co-firing biomass with nonbiomass may satisfy the mandate in this section. Such a facility need not use biomass that complies with the definition in subdivision 1 if it uses biomass as defined in paragraph (f) of this subdivision. Generating capacity produced by co-firing of biomass that is operational as of April 25, 2000, does not meet the requirements of the mandate, except that additional co-firing capacity added at an existing facility after April 25, 2000, may be used to satisfy this mandate. Only the number of megawatts of capacity at a facility which co-fires biomass that are directly attributable to the biomass and that become operational after April 25, 2000, count toward meeting the biomass mandate in this section.

(e) Nothing in this subdivision precludes a facility proposed and approved under this subdivision from using fuel sources that are not biomass in compliance with subdivision 3.

(f) Notwithstanding the provisions of subdivision 1, for proposals subject to this subdivision, "biomass" includes farm-grown closed-loop biomass; agricultural wastes, including animal, poultry, and plant wastes; and waste wood, including chipped wood, bark, brush, residue wood, and sawdust.

(g) Nothing in this subdivision affects in any way contracts entered into as of April 25, 2000, to satisfy the mandate in subdivision 5.

(h) Nothing in this subdivision requires a public utility to retrofit its own power plants for the purpose of co-firing biomass fuel, nor is a utility prohibited from retrofitting its own power plants for the purpose of co-firing biomass fuel to meet the requirements of this subdivision.

Subd. 7. **Effect on existing projects.** The commission may not approve a project proposed after April 25, 2000, which would have an adverse impact on the ability of a project approved before April 25, 2000, to obtain an adequate supply of the fuel source designated for the project.

Subd. 8. **Agricultural biomass requirement.** Of the 125 megawatts mandated in subdivision 5, or 110 megawatts mandated in subdivision 5a, at least 75 megawatts of the generating capacity must be generated by facilities that use agricultural biomass as the principal fuel source. For purposes of this subdivision, agricultural biomass includes only farm-grown closed-loop biomass and agricultural waste, including animal, poultry, and plant wastes. For purposes of this subdivision, "principal fuel source" means a fuel source that satisfies at least 75 percent of the fuel requirements of an electric power generating facility. Nothing in this subdivision is intended to expand the fuel source requirements of subdivision 5.

History: *1994 c 641 art 3 s 3; 1995 c 224 s 76; 1996 c 450 s 1; 1998 c 345 s 2; 2000 c 443 s 1-5; 2001 c 7 s 46; 1Sp2001 c 5 art 3 s 13; 2002 c 379 art 1 s 55; 2003 c 127 art 2 s 3; 1Sp2003 c 11 art 2 s 7,16; 2005 c 97 art 5 s 1-6; 1Sp2005 c 1 art 2 s 140; 2006 c 259 art 4 s 4; 2008 c 296 art 1 s 12; 2009 c 110 s 22*

216B.2425 STATE TRANSMISSION PLAN.

Subdivision 1. **List.** The commission shall maintain a list of certified high-voltage transmission line projects.

Subd. 2. **List development; transmission projects report.** (a) By November 1 of each odd-numbered year, a transmission projects report must be submitted to the commission by each utility, organization, or company that:

(1) is a public utility, a municipal utility, a cooperative electric association, the generation and transmission organization that serves each utility or association, or a transmission company; and

(2) owns or operates electric transmission lines in Minnesota, except a company or organization that owns a transmission line that serves a single customer or interconnects a single generating facility.

(b) The report may be submitted jointly or individually to the commission.

(c) The report must:

(1) list specific present and reasonably foreseeable future inadequacies in the transmission system in Minnesota;

(2) identify alternative means of addressing each inadequacy listed;

(3) identify general economic, environmental, and social issues associated with each alternative; and

(4) provide a summary of public input related to the list of inadequacies and the role of local government officials and other interested persons in assisting to develop the list and analyze alternatives.

(d) To meet the requirements of this subdivision, reporting parties may rely on available information and analysis developed by a regional transmission organization or any subgroup of a regional transmission organization and may develop and include additional information as necessary.

Subd. 3. **Commission approval.** By June 1 of each even-numbered year, the commission shall adopt a state transmission project list and shall certify, certify as modified, or deny certification of the projects proposed under subdivision 2. The commission may only certify a project that is a high-voltage transmission line as defined in section 216B.2421, subdivision 2, that the commission finds is:

(1) necessary to maintain or enhance the reliability of electric service to Minnesota consumers;

(2) needed, applying the criteria in section 216B.243, subdivision 3; and

(3) in the public interest, taking into account electric energy system needs and economic, environmental, and social interests affected by the project.

Subd. 4. **List; effect.** Certification of a project as a priority electric transmission project satisfies section 216B.243. A certified project on which construction has not begun more than six years after being placed on the list, must be reapproved by the commission.

Subd. 5. **Transmission inventory.** The Department of Commerce shall create, maintain, and update annually an inventory of transmission lines in the state.

Subd. 6. **Exclusion.** This section does not apply to any transmission line proposal that has been approved by, or was pending before, a local unit of government, the Environmental Quality Board, or the Public Utilities Commission on August 1, 2001.

Subd. 7. **Transmission needed to support renewable resources.** (a) Each entity subject to this section shall determine necessary transmission upgrades to support development of renewable energy resources required to meet objectives under section 216B.1691 and shall include those upgrades in its report under subdivision 2.

(b) MS 2008 [Expired]

History: *2001 c 212 art 7 s 30; 2002 c 379 art 1 s 56; 1Sp2003 c 11 art 2 s 8; 2005 c 97 art 1 s 7; art 2 s 3,7; 2011 c 97 s 22*

216B.2426 OPPORTUNITIES FOR DISTRIBUTED GENERATION.

The commission shall ensure that opportunities for the installation of distributed generation, as that term is defined in section 216B.169, subdivision 1, paragraph (c), are considered in any proceeding under section 216B.2422, 216B.2425, or 216B.243.

History: *2005 c 97 art 8 s 1*

MERCURY EMISSIONS REDUCTION

216B.68 DEFINITIONS; MERCURY EMISSIONS REDUCTION.

Subdivision 1. **Scope.** Terms used in sections 216B.68 to 216B.688 have the meanings given them in this section and section 216B.02.

Subd. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subd. 3. **Dry scrubbed unit.** "Dry scrubbed unit" means a targeted unit at which pollution control technology that uses a spray dryer and fabric filter system to remove pollutants from air emissions is installed or will be installed by December 31, 2007.

Subd. 4. **Federal mercury regulations.** "Federal mercury regulations" means the federal Clean Air Mercury Rule as of January 1, 2006, published in Code of Federal Regulations, title 40, parts 60, 63, 70, and 72.

Subd. 5. **Mercury emissions reduction.** "Mercury emissions reduction" means the amount of mercury reduced from the emissions of a targeted or supplemental unit, relative to the emissions baseline from that unit established under section 216B.681, expressed as a percentage.

Subd. 6. **Qualifying facility.** "Qualifying facility" means an electric generating power plant in Minnesota that, as of January 1, 2006, had a total net dependable capacity in excess of 500 megawatts from all coal-fired electric generating units at the power plant.

Subd. 7. **Start-up period.** "Start-up period" means a period of one year after the date mercury-control equipment is installed at a targeted unit under an approved mercury emissions-reduction plan, or such longer period as the commission may approve after consultation

with the Pollution Control Agency, if a longer period is necessary to optimize equipment performance for mercury reduction.

Subd. 8. **Targeted unit.** "Targeted unit" means a coal-fired electric generation unit greater than 100 megawatts at a qualifying facility.

Subd. 9. **Wet scrubbed unit.** "Wet scrubbed unit" means a targeted unit at which pollution control technology that uses water or solutions to remove pollutants from air emissions is installed.

History: *2006 c 201 s 5*

216B.681 MONITORING MERCURY EMISSIONS.

By July 1, 2007, a public utility that owns or operates a qualifying facility shall install, maintain, and operate continuous mercury emission-monitoring systems or other method of monitoring approved by the agency on each targeted unit and, where applicable, on each supplemental unit pursuant to section 216B.6851. The monitoring systems must use methods set forth in federal mercury regulations or such other methods as may be approved by the agency. The public utility shall report to the agency as public data the quality assured data produced from monitoring implemented pursuant to this section on a quarterly basis in a form prescribed by the agency. The data from at least six months' monitoring must be used to establish a baseline for mercury emissions reductions under sections 216B.68 to 216B.688.

History: *2006 c 201 s 6*

216B.682 MERCURY EMISSIONS-REDUCTION PLANS.

Subdivision 1. **Dry scrubbed units.** (a) By December 31, 2007, a public utility that owns a dry scrubbed unit at a qualifying facility shall develop and submit to the agency and the commission a plan for mercury emissions reduction at each such unit. At each dry scrubbed unit owned and operated by the utility, the plan must propose to employ the available technology for mercury removal that is most likely to result in the removal of at least 90 percent of the mercury emitted from the unit.

(b) A plan submitted under this subdivision must provide for mercury emissions reduction at each dry scrubbed unit to be implemented by December 31, 2010. A public utility that owns two dry scrubbed targeted units must submit a plan that provides for implementation at one unit by December 31, 2009, and at the other unit by December 31, 2010.

Subd. 2. **Wet scrubbed units.** (a) By December 31, 2009, a public utility that owns a wet scrubbed unit at a qualifying facility shall develop and submit to the agency and the commission a plan for mercury emissions reduction at each such unit. At each wet scrubbed unit owned by the utility, the plan must propose to employ the available technology for mercury removal that is most likely to result in the removal of at least 90 percent of the mercury emitted from the unit.

(b) A plan submitted under this subdivision must provide for mercury emissions reduction at each wet scrubbed unit to be implemented by December 31, 2014.

Subd. 3. **Mercury emissions plans generally.** (a) In each plan submitted under this section, a utility shall present information assessing that plan's ability to optimize human health benefits and achieve cost efficiencies. Each plan must provide the cost, technical feasibility, and mercury emissions reduction expected for the utility's preferred technology option and each alternative considered. The utility shall demonstrate that it has considered achieving the mercury emissions reduction required under this section through multiple pollutant control technology.

(b) A plan submitted under this section may also:

(1) provide measures to reduce the cost and maximize the flexibility of each option proposed or considered; and

(2) specify permit targets or conditions proposed by the public utility for each mercury emission-control option proposed or considered, including, but not limited to, numeric emission targets, percent removal expectations, emission control technology installation and operation requirements or work practice standards, and potential changes in the performance of the mercury emissions-reduction technology over time.

(c) The utility may submit an emissions rate rider to the commission under section 216B.683 to recover the costs associated with plans filed under this section.

History: *2006 c 201 s 7*

216B.683 MERCURY EMISSIONS REDUCTION; COST RECOVERY, FINANCIAL INCENTIVES.

Subdivision 1. **Emissions-reduction riders.** (a) A public utility required to file a mercury emissions-reduction plan under sections 216B.68 to 216B.688 may also file for approval of emissions-reduction rate riders pursuant to section 216B.1692, subdivision 3, for its mercury control and other environmental improvement initiatives under sections 216B.68 to 216B.688.

(b) In addition to the cost recovery provided by section 216B.1692, subdivision 3, the emissions-reduction rate riders may include recovery of costs associated with (1) the purchase and installation of continuous mercury emission-monitoring systems, (2) costs associated with the purchase and installation of emissions-reduction equipment, (3) construction work in progress, (4) ongoing operation and maintenance costs associated with the utility's emission-control initiatives, including, but not limited to, the cost of any sorbent or emission-control reagent injected into the unit, (5) any project costs incurred before plan approval that are demonstrated to the commission's satisfaction to be part of the plan, and (6) any studies undertaken by the utility in support of the emissions-reduction plan.

(c) The utility may propose to phase in the emissions-reduction riders to recover these costs over the development and life of the projects.

Subd. 2. **Performance-based incentives.** A mercury emissions-reduction rider approved by the commission may include performance-based financial incentives if the commission determines that the incentives will increase the likelihood that the utility will exceed 90 percent mercury emissions reductions, provided the incentives do not impose excessive costs on the utility's consumers when added to the costs recovered under subdivision 1. These incentives may include increased returns on investments or other performance-based incentives. The commission may structure the financial incentives to escalate for each additional increment of mercury emissions reduction achieved by the utility above the 90 percent mercury emissions reduction.

Subd. 3. **Application of other law; associated rider.** (a) Section 216B.1692 applies to plans and emissions-control riders proposed under sections 216B.68 to 216B.688, except that:

(1) projects included in a plan approved under sections 216B.68 to 216B.688 are deemed to be qualifying projects for the purposes of section 216B.1692; and

(2) section 216B.1692, subdivisions 5, paragraph (c), and 6, do not apply to plans or riders submitted under sections 216B.68 to 216B.688.

(b) Commission approval of an emissions-reduction plan under this section includes approval of an emissions-reduction rider associated with that plan if submitted by the utility.

History: *2006 c 201 s 8*

216B.684 ENVIRONMENTAL ASSESSMENT OF MERCURY EMISSIONS-REDUCTION PLAN.

The Pollution Control Agency shall evaluate a utility's mercury emissions-reduction plans filed under sections 216B.682 and 216B.6851 and submit its evaluation to the Public Utilities Commission within 180 days of the date the plan is filed with the agency and commission. In its review, the agency shall (1) assess whether the utility's plan meets the requirements of section 216B.682 or 216B.6851, as applicable, (2) evaluate the environmental and public health benefits of each option proposed or considered by the utility, including benefits associated with reductions in pollutants other than mercury, (3) assess the technical feasibility and cost-effectiveness of technologies proposed or considered by the utility for achieving mercury emissions reduction, and (4) advise the commission of the appropriateness of the utility's plan. In preparing its assessment, the agency may request additional information from the utility, especially with regard to alternative technologies or configurations applicable to the specific unit, and the estimated costs of those alternatives.

History: *2006 c 201 s 9*

216B.685 MERCURY EMISSIONS-REDUCTION PLAN APPROVAL.

Subdivision 1. **Commission review and evaluation.** The Public Utilities Commission shall review and evaluate a utility's mercury emissions-reduction plans and associated emissions-reduction riders submitted under section 216B.682 or pursuant to subdivision 2, paragraph (b). In its review, the commission shall consider the environmental and public health benefits, the agency's assessment of technical feasibility, competitiveness of customer rates, and cost-effectiveness of the utility's proposed mercury-control initiatives in light of the Pollution Control Agency's report under section 216B.684.

Subd. 2. **Commission approval.** (a) Within 180 days of receiving the agency's report on a utility's plan filed under section 216B.682, subdivision 1 or 2, the commission shall order the implementation of a utility's mercury emissions-reduction plan and associated emissions-reduction rider that complies with the requirements of the applicable subdivision of section 216B.682, unless the commission determines that the plan as proposed fails to provide for increased environmental and health benefits or would impose excessive costs on the utility's customers.

(b) If the commission is unable to approve the utility's plan and associated emissions-reduction riders as proposed, it shall direct the utility to amend and resubmit its proposed plan in light of the record developed on the proposed plan or, at the utility's option, to file a new plan consistent with the requirements of the applicable subdivision of section 216B.682.

Subd. 3. **Technical issues.** The commission shall give due consideration to the assessment of the Pollution Control Agency on compliance issues under sections 216B.68 to 216B.688, technical feasibility of emission-control technology, and environmental and public health benefits associated with emissions reductions.

Subd. 4. **Equipment replacement; deadline extensions.** (a) Unless the utility proposes to do so, the commission may not require the replacement of existing pollution control equipment at a targeted or supplemental unit as a condition for approving a plan pursuant to this section or section 216B.6851.

(b) The commission may allow a utility up to two extensions of any deadline established under sections 216B.68 to 216B.688 or commission order under those sections, if the utility demonstrates the unavailability of necessary equipment or other extraordinary circumstances.

An extension under this paragraph may last no longer than 12 months. The commission may not extend a deadline for final installation of pollution control equipment for longer than 12 months.

Subd. 5. **Equipment optimization required.** A commission order under this section must require the utility to optimize the operation of equipment installed under a plan approved under this section to obtain maximum mercury reductions and to report the utility's efforts and results annually to the Pollution Control Agency, until such time as the agency determines the reports to be no longer necessary.

History: *2006 c 201 s 10*

216B.6851 UTILITY OPTION.

Subdivision 1. **Election.** A public utility with less than 200,000 customers subject to sections 216B.68 to 216B.688 that owns two wet scrubbed units at a qualifying facility may opt to be regulated under this section for those units in lieu of section 216B.682. Plans under this section are subject to section 216B.682, subdivision 3. Except where otherwise provided, all other provisions of sections 216B.68 to 216B.688 apply.

Subd. 2. **Supplemental unit.** "Supplemental unit" means a coal-fired electric generation unit at an electric generating power plant in Minnesota at which mercury emissions-reduction measures are taken as part of an emissions-reduction plan under this section.

Subd. 3. **Plan for 90 percent reduction required.** A public utility that elects to be regulated under this section must file a mercury emissions-reduction plan that is designed to achieve total mercury reduction at targeted and supplemental units owned by the utility equivalent to a goal of 90 percent reduction of mercury emissions at the utility's targeted units by December 31, 2018.

Subd. 4. **Alternative plans.** The utility shall also submit one or more alternatives to the 90 percent reduction plan required under subdivision 3. Alternative plans must be designed to come as near as technically possible to achieving the goal established in subdivision 3 without imposing excessive costs on the utility's customers.

Subd. 5. **Early action; wet scrubbed units.** (a) The utility electing for regulation under this section shall file an initial plan for mercury emissions reduction at one of its two wet scrubbed units on or before December 31, 2007. The plan must provide for mercury emissions reduction to be implemented at that unit by December 31, 2010. If the plan is approved by the commission, and implemented by the utility, the utility may have until July 1, 2015, to file its plans for reduction at its other wet scrubbed unit at the qualifying facility, and may have until December 31, 2018, to implement mercury emissions reduction at that unit.

(b) Until the utility files its plans for the other wet scrubbed unit, the utility must submit to the commission and agency, by July 1 each year, beginning in 2011, a report containing the following information:

(1) mercury control plans for units subject to this section, including how elements of the plans may affect the performance and cost-effectiveness of emission controls for air pollutants other than mercury;

(2) an assessment of the impacts of federal laws regulating various air pollutants emitted by coal-fired power plants that can reasonably be expected to be enacted by 2018 on the utility's units subject to this section, and potential utility responses to those laws, including, but not limited to:

(i) installing pollution control equipment;

(ii) using pollution allowances to achieve regulatory compliance; and

(iii) retiring or repowering the plant that is the subject of the filing with cleaner fuels

considering the costs of complying with state and federal environmental regulations.

For each potential response, the report must include an analysis of the impacts on ratepayers, the utility's financial position, and utility operations, including the impacts on the service life of affected units.

(c) The utility shall consult with the agency, the Department of Commerce, and other interested stakeholders to determine which future federal laws to assess under paragraph (b), clause (2), and the scope of the assessment of the impact of those laws.

Subd. 6. **Agency review and commission approval.** (a) The agency shall review the utility's plans as provided in section 216B.684.

(b) The Public Utilities Commission shall review and evaluate a utility's mercury emissions-reduction plans submitted under this section. In its review, the commission shall consider the environmental and public health benefits, the agency's determination of technical feasibility, competitiveness of customer rates, and cost-effectiveness of the utility's proposed mercury-control initiatives in light of the Pollution Control Agency's review under paragraph (a). Within 180 days of receiving the agency's report, the commission shall approve a utility's mercury emissions-reduction plan that the commission reasonably expects will come closest to achieving total mercury reductions at targeted and supplemental units owned by the utility equivalent to a goal of 90 percent reduction of mercury emissions at the utility's targeted units by December 31, 2018, in a manner that provides for increased environmental and public health benefits without imposing excessive costs on the utility's customers. If the commission is unable to approve the utility's 90 percent reduction plan filed under subdivision 3, the commission, in consultation with the Pollution Control Agency, shall order the utility to implement the most stringent mercury-control alternative proposed by the utility under this section that provides for increased environmental and public health benefits without imposing excessive costs on the utility's customers.

(c) At each targeted and supplemental unit included in a plan under this section, a utility shall propose to implement mercury emissions-control measures that will result in the greatest reduction of mercury emitted from that unit that is technically feasible without imposing excessive costs.

History: *2006 c 201 s 11; 2010 c 325 s 2-4*

216B.686 OTHER ENVIRONMENTAL IMPROVEMENT PLANS.

Subdivision 1. **Utility filing.** (a) In order to encourage a utility to address multiple pollutants, a utility required to submit mercury-reduction plans under sections 216B.68 to 216B.688 may also propose plans for investments and related expenses in pollution control equipment to be installed at facilities in Minnesota needed to comply with state or federal emission-control statutes or regulations that became effective after December 31, 2004.

(b) For each plan, the utility must show that the investments in pollution control equipment to be installed at facilities in Minnesota under the plan will provide for increased environmental and public health benefits, do not impose excessive costs on the utility's customers, and will achieve at least the pollution control required by applicable state or federal regulations.

Subd. 2. **Emissions-reduction riders.** A public utility that files a plan under this section may also file for approval of an emissions-reduction rate rider under section 216B.683, subdivision 1.

Subd. 3. **Agency review.** (a) The Pollution Control Agency shall evaluate a utility's plans filed under this section and, within 180 days of receiving the filing, provide the commission with:

(1) verification that the emissions-reduction project qualifies under subdivision 1;

(2) a description of the projected environmental benefits of the proposed project; and (3) its assessment of the appropriateness of the proposed plans.

(b) In preparing its review under this subdivision, the agency may request additional information from the utility, especially with regard to alternative technologies or configurations applicable to a specific unit, and the estimated costs of those alternatives.

Subd. 4. **Commission approval.** The commission shall review and evaluate a utility's plans and associated emissions-reduction riders for other environmental improvement initiatives submitted under this section. The commission shall consider the overall environmental and public health benefits, total costs, and competitiveness of customer rates. Within 180 days of receiving the agency's report prepared under subdivision 3, the commission shall approve the plan and associated emissions-reduction rider if the commission finds that it meets the requirements of subdivision 1, paragraph (b).

History: *2006 c 201 s 12*

216B.687 MERCURY EMISSIONS REDUCTION IMPLEMENTATION, OPERATION.

Subdivision 1. **Permit conditions for mercury reductions.** The agency shall establish the mercury emissions reduction for each targeted unit included in a plan approved under section 216B.685, or where applicable, for each targeted and supplemental unit included in a plan approved under section 216B.6851.

Subd. 2. **Enforcement by agency.** (a) Except as required by federal regulation, any mercury reduction incorporated into the permit for a targeted unit as established under a plan approved under section 216B.685, or where applicable, for each targeted and supplemental unit included in a plan approved under section 216B.6851, must be a state-only condition of the permit and will not be enforced by the agency during the start-up period.

(b) After the start-up period ends, the Pollution Control Agency shall incorporate into the permit the mercury reduction reasonably expected to be achieved at each unit or facility as an enforceable state-only reduction. For a qualifying facility with multiple units that has one or more units included in approved plans, the agency may establish the mercury emissions reduction for the facility covering all targeted and supplemental units at that facility after the start-up periods for all units have concluded, and the actual mercury emissions for the units have been determined. In setting the reduction, the agency shall give due consideration to the results of monitoring before implementation of the plan, the results of monitoring during the start-up period, and any factors that may impact the performance of the unit for the next five years.

Subd. 3. **Equipment optimization required.** The agency shall revise the unit's air permit every five years to ensure optimal mercury emissions reduction by equipment installed under an approved plan, in light

of technical and operational advances made since the date of plan approval. In revising the unit's air permit, the agency may recommend, but shall not require, additional investments in pollution control equipment, or the removal of equipment installed
pursuant to an approved plan. The utility may seek commission review of the costs associated with a permit requirement or request for equipment optimization proposed by the agency and,
if review is requested, the revision is not effective until approved by the commission. The commission shall approve the revision unless the utility or other party shows that it will impose excessive consumer costs.

History: *2006 c 201 s 13*

216B.688 RELATIONSHIP TO OTHER STATE FINANCIAL REQUIREMENTS.

Except as otherwise provided for equipment optimization as specified in section 216B.687,
a public utility implementing an approved mercury emissions-reduction plan is not required to undertake additional investments or incur additional operating or maintenance costs to reduce mercury at a unit included in a plan approved under section 216B.685 or 216B.6851.

History: *2006 c 201 s 14*

239.011 DIVISION RESPONSIBILITIES AND POWERS.

Subdivision 1. **Responsibilities.** The division shall:

(1) ensure that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate, and properly maintained by their owners or users;

(2) prevent unfair or deceptive dealing by weight or measure in a commodity or service advertised, packaged, sold, or purchased within the state;

(3) make the precision calibration and related metrological certification capabilities of the division available to users of physical standards or weighing and measuring equipment;

(4) promote uniformity, to the extent practicable and desirable, between the weights and measures requirements of Minnesota and those of other states and federal agencies; and

(5) adopt weights and measures requirements that will protect consumers, promote equity between buyers and sellers, and encourage desirable economic growth.

Subd. 2. **Duties and powers.** To carry out the responsibilities in section 239.01 and subdivision 1, the director:

(17) shall distribute and post notices for used motor oil and used motor oil filters and lead acid battery recycling in accordance with sections 239.54, 325E.11, and 325E.115;

MOTOR OIL, BATTERIES

239.54 INSPECTION OF MOTOR OIL AND AUTOMOTIVE BATTERY RETAILERS.

The division shall produce, print, and distribute the notices required by sections 325E.11 and 325E.115 and shall inspect all places where motor oil and motor oil filters are offered for sale by persons subject to section 325E.11 and where lead acid batteries are offered for sale at retail subject to section 325E.115 at least once every two years to determine compliance with those sections. In performing its duties under this section the division may inspect any place, building, or premises governed by sections 325E.11 and 325E.115. Authorized employees of the division may issue warnings and citations to persons who fail to comply with the requirements of those sections.

History: *1987 c 348 s 36; 1995 c 220 s 115*

297H.01 SOLID WASTE MANAGEMENT TAX DEFINITIONS.

Subdivision 1. **Scope.** When used in this chapter, the following terms have the meanings given to them in this section. For terms not defined in this section, the definitions contained in chapter 115A are incorporated into this chapter.

Subd. 2. **Commercial generator.** "Commercial generator" means any of the following:

(1) an owner or operator of a business, including a home-operated business, industry, church, nursing home, nonprofit organization, school, or any other commercial or institutional enterprise that generates mixed municipal solid waste or nonmixed municipal solid waste; or

(2) any other generator of taxable waste that is not a residential generator defined in subdivision 8. A commercial generator does not include a self-hauler.

Subd. 3. **Cubic yard.** "Cubic yard" means a cubic yard of nonmixed municipal solid waste that is not compacted.

Subd. 4. **Market price.** "Market price" means the lowest price available in the area, assuming transactions between separate parties that are willing buyers and willing sellers in a market.

Subd. 5. **Mixed municipal solid waste.** "Mixed municipal solid waste" means mixed municipal solid waste as defined in section 115A.03, subdivision 21.

Subd. 6. **Nonmixed municipal solid waste.** "Nonmixed municipal solid waste" means:

(1) infectious waste as defined in section 116.76, subdivision 12;

(2) pathological waste as defined in section 116.76, subdivision 14;

(3) industrial waste as defined in section 115A.03, subdivision 13a; and (4) construction debris as defined in section 115A.03, subdivision 7.

Subd. 7. **Periodic waste collection.** "Periodic waste collection" means each time a waste container is emptied by the person that collects the nonmixed municipal solid waste at the point that the waste has been aggregated for collection by the generator.

Subd. 8. **Residential generator.** "Residential generator" means any of the following: (1) a detached single family residence that generates mixed municipal solid waste or nonmixed municipal solid waste;

(2) a person residing in a building or site containing multiple residences that generates mixed municipal solid waste, including apartment buildings, common interest communities, or manufactured home parks, where each residence is separately billed by the waste service provider;

(3) an owner of a building or site containing multiple residences or an association representing residences that generate mixed municipal solid waste or nonmixed municipal solid waste, including apartment buildings, condominiums, manufactured home parks, or townhomes where no residence is separately billed for such service by the waste management service provider and the owner or association is billed directly for the waste management services. A residential generator does not include a self-hauler.

Subd. 9. **Sales price.** "Sales price" means total consideration valued in money for waste management services, excluding separately stated charges for exemptions listed under section 297H.06.

Subd. 10. **Self-hauler.** "Self-hauler" means a person who transports mixed municipal solid waste or nonmixed municipal solid waste generated by that person or another person without compensation.

Subd. 11. **Waste management service provider.** "Waste management service provider"

means the person who directly bills the generator or self-hauler for waste management services, and includes, but is not limited to, waste haulers, waste management facilities, utility services, and political subdivisions, to the extent they directly bill for waste management services.

Subd. 12. **Waste management services.** "Waste management services" means waste collection, transportation, processing, and disposal.

History: *1997 c 231 art 13 s 6; 1999 c 11 art 3 s 9*

297H.02 RESIDENTIAL GENERATORS.

Subdivision 1. **Imposition.** (a) A tax is imposed upon the sales price of mixed municipal solid waste management services received by a residential generator.

(b) The tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility where the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

(c) The tax is imposed upon the market price of waste management services where a political subdivision directly bills on a property tax statement for organized collection of mixed municipal solid waste. The political subdivision is liable for the tax.

(d) The political subdivision shall, by resolution, identify the market price. The political subdivision shall submit the market price to the commissioner of the Pollution Control Agency for review by October 1 of the year prior to the calendar year in which the market price will be in effect. The prices that the state pays for waste management services in that jurisdiction or the county where the jurisdiction is located must be a guideline in determining the market price. The commissioner of the Pollution Control Agency shall review the market price and shall inform the political subdivisions of any necessary changes to market price by November 15 of that year. The market price shall be effective as of January 1 of the next calendar year following review. The commissioner of the Pollution Control Agency may consider adjustment to the market price if a political subdivision submits a resolution for adjustment by May 1 of any year. The effective date of the adjustment shall be July 1.

If the commissioner of revenue believes a market price declared by resolution is not accurate, the commissioner may request that the Pollution Control Agency advise the political subdivision to identify by resolution an updated market price and submit the updated market price to the Pollution Control Agency for review.

Subd. 2. **Rates.** The rate of tax under this section is 9.75 percent.

Subd. 3. **Sales price of bags, stickers, or other indicia.** When the sales price of a bag, sticker, or other indicia includes mixed municipal solid waste management services for residential generators, the tax on the bag, sticker, and other indicia sold by vendors on behalf of a political subdivision or waste hauler shall be collected when the bag, sticker, or other indicia are sold to the vendor by the political subdivision or waste hauler, and shall be taxed at the rate imposed under subdivision 2. The solid waste management service and the solid waste management tax shall be included in the sales price of the bag, sticker, or other indicia.

History: *1997 c 231 art 13 s 7; 1Sp2005 c 1 art 2 s 161*

297H.03 MIXED MUNICIPAL SOLID WASTE COMMERCIAL GENERATORS.

Subdivision 1. **Imposition.** (a) A tax is imposed upon the sales price of mixed municipal solid waste management services received by a commercial generator.

(b) The tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility where the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

(c) The tax is imposed upon the market price of waste management services where a political subdivision directly bills on a property tax statement for organized collection of mixed municipal solid waste. The political subdivision is liable for the tax.

(d) Section 297H.02, subdivision 1, paragraph (d), applies to paragraphs (b) and (c) of this subdivision.

Subd. 2. **Rate.** The rate of the tax under this section is 17 percent.

Subd. 3. **Sales price of bags, stickers, or other indicia.** When the sales price of a bag, sticker, or other indicia includes mixed municipal solid waste management services for commercial generators, the tax on the bag, sticker, and other indicia sold by vendors on behalf of a political subdivision or waste hauler shall be collected when the bag, sticker, or other indicia are sold to the vendor by the political subdivision or waste hauler, and shall be taxed at the rate imposed under subdivision 2. The solid waste management service and the solid waste management tax shall be included in the sales price of the bag, sticker, or other indicia.

History: *1997 c 231 art 13 s 8*

297H.04 NONMIXED MUNICIPAL SOLID WASTE.

Subdivision 1. **Imposition.** A tax is imposed upon the volume of nonmixed municipal solid waste that is managed.

Subd. 2. **Rate.** (a) Commercial generators that generate nonmixed municipal solid waste shall pay a solid waste management tax of 60 cents per noncompacted cubic yard of periodic waste collection capacity purchased by the generator, based on the size of the container for the nonmixed municipal solid waste, the actual volume, or the weight-to-volume conversion schedule in paragraph (c). However, the tax must be calculated by the waste management service provider using the same method for calculating the waste management service fee so that both are calculated according to container capacity, actual volume, or weight.

(b) Notwithstanding section 297H.02, a residential generator that generates nonmixed municipal solid waste shall pay a solid waste management tax in the same manner as provided in paragraph (a).

(c) The weight-to-volume conversion schedule for:

(1) construction debris as defined in section 115A.03, subdivision 7, is one ton equals 3.33 cubic yards, or $2 per ton;

(2) industrial waste as defined in section 115A.03, subdivision 13a, is equal to 60 cents per cubic yard. The commissioner of revenue after consultation with the commissioner of the Pollution Control Agency, shall determine, and may publish by notice, a conversion schedule for various industrial wastes; and

(3) infectious waste as defined in section 116.76, subdivision 12, and pathological waste as defined in section 116.76, subdivision 14, is 150 pounds equals one cubic yard, or 60 cents per 150 pounds.

Subd. 3. **Incineration with mixed waste; rate.** Nonmixed municipal solid waste that is separately collected and processed, but must be incinerated with mixed municipal solid waste in accordance with an industrial solid waste management plan approved by the Pollution Control Agency, shall be taxed at the rate for nonmixed municipal solid waste.

Subd. 4. **Disposal with mixed waste; rate.** Nonmixed municipal solid waste that is separately collected or processed, but is disposed of within the permitted boundaries of a land disposal facility that is also actively accepting and disposing of mixed municipal solid waste, shall be taxed at the rate for mixed municipal solid waste, unless the facility owner and operator can demonstrate a physical separation between the mixed municipal solid waste disposal area and nonmixed municipal solid waste disposal area, such that any air or liquid emissions being collected from the disposal areas are collected separately.

History: *1997 c 231 art 13 s 9; 1998 c 389 art 16 s 15; 1Sp2001 c 5 art 13 s 8*

297H.05 SELF-HAULERS.

(a) A self-hauler of mixed municipal solid waste shall pay the tax to the operator of the waste management facility to which the waste is delivered at the rate imposed under section 297H.03, based on the sales price of the waste management services.

(b) A self-hauler of nonmixed municipal solid waste shall pay the tax to the operator of the waste management facility to which the waste is delivered at the rate imposed under section 297H.04.

(c) The tax imposed on the self-hauler of nonmixed municipal solid waste may be based either on the capacity of the container, the actual volume, or the weight-to-volume conversion schedule in paragraph (d). However, the tax must be calculated by the operator using the same method for calculating the tipping fee so that both are calculated according to container capacity, actual volume, or weight.

(d) The weight-to-volume conversion schedule for:

(1) construction debris as defined in section 115A.03, subdivision 7, is one ton equals 3.33 cubic yards, or $2 per ton;

(2) industrial waste as defined in section 115A.03, subdivision 13a, is equal to 60 cents per cubic yard. The commissioner of revenue, after consultation with the commissioner of the Pollution Control Agency, shall determine, and may publish by notice, a conversion schedule for various industrial wastes; and

(3) infectious waste as defined in section 116.76, subdivision 12, and pathological waste as defined in section 116.76, subdivision 14, is 150 pounds equals one cubic yard, or 60 cents per 150 pounds.

(e) For mixed municipal solid waste the tax is imposed upon the difference between the market price and the tip fee at a processing or disposal facility if the tip fee is less than the market price and the political subdivision subsidizes the cost of service at the facility. The political subdivision is liable for the tax.

History: *1997 c 231 art 13 s 10; 1999 c 243 art 7 s 11*

297H.06 EXEMPTIONS.

Subdivision 1. **Certain surcharges or fees.** The amount of a surcharge, fee, or charge established pursuant to section 115A.919, 115A.921, 115A.923, 400.08, 473.811, or 473.843, or a service charge by a home rule charter or statutory city that owns and operates a solid waste-to-energy resource recovery facility, is exempt from the solid waste management tax.

The exemption does not apply to the tax imposed on market price under section 297H.02, subdivision 1, paragraphs (b) and (c), or section 297H.03, subdivision 1, paragraphs (b) and (c).

Subd. 2. **Materials.** The tax is not imposed upon charges to generators of mixed municipal solid waste or upon the volume of nonmixed municipal solid waste for waste management services to manage the following materials:

(1) mixed municipal solid waste and nonmixed municipal solid waste generated outside of Minnesota;

(2) recyclable materials that are separated for recycling by the generator, collected separately from other waste, and recycled, to the extent the price of the service for handling recyclable material is separately itemized;

(3) recyclable nonmixed municipal solid waste that is separated for recycling by the generator, collected separately from other waste, delivered to a waste facility for the purpose of recycling, and recycled;

(4) industrial waste, when it is transported to a facility owned and operated by the same person that generated it;

(5) mixed municipal solid waste from a recycling facility that separates or processes recyclable materials and reduces the volume of the waste by at least 85 percent, provided that the exempted waste is managed separately from other waste;

(6) recyclable materials that are separated from mixed municipal solid waste by the generator, collected and delivered to a waste facility that recycles at least 85 percent of its waste, and are collected with mixed municipal solid waste that is segregated in leakproof bags, provided that the mixed municipal solid waste does not exceed five percent of the total weight of the materials delivered to the facility and is ultimately delivered to a waste facility identified as a preferred waste management facility in county solid waste plans under section 115A.46;

(7) source-separated compostable waste, if the waste is delivered to a facility exempted as described in this clause. To initially qualify for an exemption, a facility must apply for an exemption in its application for a new or amended solid waste permit to the Pollution Control Agency. The first time a facility applies to the agency it must certify in its application that it will comply with the criteria in items (i) to (v) and the commissioner of the agency shall so certify to the commissioner of revenue who must grant the exemption. For each subsequent calendar year, by October 1 of the preceding year, the facility must apply to the agency for certification to renew its exemption for the following year. The application must be filed according to the procedures of, and contain the information required by, the agency. The commissioner of revenue shall grant the exemption if the commissioner of the Pollution Control Agency finds and certifies to the commissioner of revenue that based on an evaluation of the composition of incoming waste and residuals and the quality and use of the product:

(i) generators separate materials at the source;

(ii) the separation is performed in a manner appropriate to the technology specific to the facility that:

(A) maximizes the quality of the product;

(B) minimizes the toxicity and quantity of residuals; and

(C) provides an opportunity for significant improvement in the environmental efficiency of the operation;

(iii) the operator of the facility educates generators, in coordination with each county using the facility, about separating the waste to maximize the quality of the waste stream for technology specific to the facility;

(iv) process residuals do not exceed 15 percent of the weight of the total material delivered to the facility; and

(v) the final product is accepted for use;

(8) waste and waste by-products for which the tax has been paid; and

(9) daily cover for landfills that has been approved in writing by the Minnesota Pollution Control Agency.

Subd. 3. **Construction debris in a disaster area.** The tax is not imposed on construction debris generated from repair and demolition activities caused by a disaster occurring in a presidentially declared disaster area, provided that the construction debris is disposed of in a waste management facility designated by the commissioner of the Pollution Control Agency. To be exempt, the debris must be disposed of within 18 months following the presidential declaration.

History: *1997 c 231 art 13 s 11; 1999 c 243 art 7 s 12; 1Sp2001 c 5 art 13 s 9; 2002 c 377 art 12 s 13; 2003 c 127 art 14 s 10; 2009 c 88 art 12 s 6*

297H.07 BILLING.

The amount of the tax imposed under this chapter shall be itemized separately on the generator's bill, and shall be designated as the "solid waste management tax."

History: *1997 c 231 art 13 s 12*

297H.08 PAYMENT; REPORTING.

(a) The waste management service provider, or a political subdivision specified in section 297H.02, subdivision 1, and section 297H.03, subdivision 1, shall report the tax on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle and due dates provided for taxes imposed under chapter 297A.

(b) The waste hauler or political subdivision that sells bags, stickers, or other indicia to vendors must report and remit the tax imposed by section 297H.02, subdivision 3, and section 297H.03, subdivision 3, on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle provided for taxes imposed under chapter 297A.

(c) Any partial payments received by waste management service providers for waste management services shall be prorated between the tax imposed under section 297H.02, 297H.03, or 297H.04 and the service.

History: *1997 c 231 art 13 s 13*

297H.09 BAD DEBTS.

The remitter of the solid waste management tax may offset against the tax payable, with respect to any reporting period, the amount of tax imposed by this chapter previously remitted to the commissioner of revenue which qualified as a bad debt under section 166(a) of the Internal Revenue Code as defined in section 289A.02, subdivision 7, during such reporting period, but only in proportion to the portion of such debt which became uncollectible. This section applies only to accrual basis remitters that remit tax before it is collected and to the extent they are unable to collect the tax.

History: *1997 c 231 art 13 s 14; 2008 c 366 art 11 s 25*

297H.10 ADMINISTRATION; ENFORCEMENT; PENALTY.

Subdivision 1. **Administration and enforcement.** The audit, assessment, appeal, collection, refund, penalty, interest, enforcement, and administrative provisions of chapters 270C and 289A that are applicable to taxes imposed by chapter 297A apply to this chapter.

Subd. 2. **Penalty.** If the form prescribed by the commissioner of revenue for remitting the tax is the sales tax return, a penalty is imposed on a person or political subdivision who fails to separately report the amount of tax due under this chapter. The specified penalties are ten percent for the first violation and 20 percent for the second and subsequent violations. The penalty applies only to that portion of the tax that should have been reported on the separate lines for the tax due under this chapter and that was included on other lines of the sales tax return.

History: *1997 c 231 art 13 s 15; 2005 c 151 art 2 s 15*

297H.11 REQUIREMENTS AND POTENTIAL LIABILITY OF WASTE MANAGEMENT SERVICE PROVIDERS.

Subdivision 1. **Requirements.** Waste management service providers are required to:

(1) separately and accurately state the amount of the tax in the appropriate statement of charges for waste management services, or other statement if there are no charges for waste management services, and in any action to enforce payment on delinquent accounts;

(2) accurately account for and remit tax received; and

(3) work with the commissioner of revenue to ensure that generators pay the tax.

Subd. 2. **Liability.** A waste management service provider is liable for an amount equal to the solid waste management tax that was either:

(1) received by the waste management service provider but not timely remitted to the commissioner of revenue; or

(2) not received by the waste management service provider and the waste management service provider failed to separately and accurately state the amount of the tax in the appropriate statement of charges for waste management services and in any action to enforce payment on delinquent accounts.

Subd. 3. **Recovery.** A person who is liable under subdivision 2 is not prohibited from recovering from the generator or self-hauler the amount of the liability paid to the commissioner of revenue that is equal to the solid waste management tax owed by the generator or self-hauler.

History: *1997 c 231 art 13 s 16*

297H.115 USE TAX.

Subdivision 1. **Imposition; liability of generators and self-haulers.** (a) A use tax is imposed on the sales price of mixed municipal solid waste management services received by a residential generator at the rate imposed under section 297H.02, unless the tax imposed under section 297H.02 was paid. The residential generator is liable.

(b) A use tax is imposed on the sales price of mixed municipal solid waste management services received by a commercial generator at the rate imposed under section 297H.03, unless the tax imposed under section 297H.03 was paid. The commercial generator is liable.

(c) A use tax is imposed on the volume of nonmixed municipal solid waste that is managed at the rate imposed under section 297H.04, unless the tax imposed under section 297H.04 was paid. The generator is liable.

(d) A use tax is imposed on the sales price of mixed municipal solid waste management

services received by a self-hauler at the rate imposed under section 297H.05, paragraph (a), unless the tax imposed under section 297H.05, paragraph (a), was paid. The self-hauler is liable.

(e) A use tax is imposed on the volume of nonmixed municipal solid waste managed at the rate imposed under section 297H.05, paragraph (b), unless the tax imposed under section 297H.05, paragraph (b), was paid. The self-hauler is liable.

Subd. 2. **Payment; reporting.** A generator or self-hauler that is liable under subdivision 1 shall report the use tax on a return prescribed by the commissioner of revenue, and shall remit the tax with the return. The return and the tax must be filed using the filing cycle and due dates provided for taxes imposed under chapter 297A.

Subd. 3. **Commissioner assessment.** (a) The commissioner of revenue may not assess the generator or self-hauler a use tax on a transaction for which the waste management service provider has paid the solid waste management tax, except as provided in paragraph (b).

(b) If the waste management service provider who is an accrual basis taxpayer remits a payment and thereafter offsets the amount as a bad debt under section 297H.09, the commissioner of revenue may assess the generator or self-hauler a use tax for the offset amount.

History: *1Sp2001 c 5 art 7 s 60*

297H.12 INFORMATION REGARDING THE SOLID WASTE MANAGEMENT TAX.

The commissioner of the Pollution Control Agency, after consulting with the commissioner of revenue and waste management service providers, shall develop information regarding the solid waste management tax for distribution to waste generators in the state. The information shall include facts about the substitution of the solid waste management tax for the sales tax on solid waste services and the solid waste generator assessment and the purposes for which revenue from the tax will be spent.

History: *1997 c 231 art 13 s 17; 1Sp2005 c 1 art 2 s 161*

297H.13 DEPOSIT OF REVENUES; USE OF PROCEEDS; REPORT ON RECEIPTS.

Subdivision 1. **Deposit of revenues.** The revenues derived from the taxes imposed on waste management services under this chapter shall be deposited by the commissioner of revenue in the state treasury.

Subd. 2. **Allocation of revenues.** (a) $33,760,000, or 70 percent, whichever is greater, of the amounts remitted under this chapter must be credited to the environmental fund established in section 16A.531, subdivision 1.

(b) The remainder must be deposited into the general fund.

Subd. 3. [Repealed, 2003 c 128 art 2 s 56] Subd. 4. [Repealed, 2003 c 128 art 2 s 56]

Subd. 5. **Report on receipts.** The commissioner of revenue shall report to the chairs of the house of representatives and senate Environment and Natural Resources Committees; the house of representatives Environment and Natural Resources Finance Division; the senate Environment and Agriculture Budget Division; the house of representatives Tax Committee and the senate Taxes and Tax Laws Committee; and the commissioner of the Pollution Control Agency on the total tax revenues received from the taxes imposed under this chapter. The reports shall be made as follows:

(1) a report by August 31 of each year based on amounts received by the commissioner of revenue from January 1 through June 30 of that year; and

(2) a report by February 28 of each year based on amounts received by the commissioner of revenue from July 1 through December 31 of the preceding year.

Subd. 6. [Repealed, 2000 c 370 s 5]

History: *1997 c 231 art 13 s 18; 1999 c 231 s 181; 2003 c 128 art 2 s 42,43; 1Sp2005 c 1 art 2 s 145,161*

Chapter 297K

Hazardous Chemical Emergency; Planning and Response

299K.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 299K.01 to 299K.10.

Subd. 2. **Commission.** "Commission" means the Emergency Response Commission established in section 299K.03.

Subd. 3. **Emergency response organization.** "Emergency response organization" means a firefighting, law enforcement, emergency management, emergency medical services, health, or local environmental organization, or a hospital.

Subd. 4. **Facility.** "Facility" means the buildings, equipment, structures, and other stationary items that:

(1) are located on a single site or on contiguous or adjacent sites; and

(2) are owned or operated by one person, or are under the sole or common control of one person.

Subd. 5. **Federal act.** "Federal act" means the federal Emergency Planning and Community Right To Know Act, United States Code, title 42, sections 11001 to 11046.

Subd. 6. **Person.** "Person" means any individual, partnership, association, public or private corporation, or other entity including the United States government, any interstate body, the state and any agency, department, or political subdivision of the state.

History: *1989 c 315 s 1*

299K.02 OFFICE OF EMERGENCY RESPONSE.

The Office of Emergency Response is established in the Department of Public Safety, consisting of the Emergency Response Commission and its staff, to coordinate state compliance with the federal act.

History: *1989 c 315 s 2*

299K.03 EMERGENCY RESPONSE COMMISSION.

Subdivision 1. **Establishment.** The Emergency Response Commission is established to comply with and administer the federal act.

Subd. 2. **Agency members.** The commission consists of the commissioners of the Department of Public Safety, the Pollution Control Agency, the Department of Health, and the Department of Agriculture.

Subd. 3. **Appointed members.** (a) The governor shall appoint 18 additional members to the commission.

(b) The 18 appointed members must include one representative each of fire chiefs, professional firefighters, volunteer firefighters, fire marshals, law enforcement personnel, emergency medical personnel, health professionals, wastewater treatment operators, labor, emergency managers, and local elected officials, three representatives of community groups or the public, and four representatives from business and industry, at least one of whom must represent small business.

(c) At least four of the appointed members must reside outside the metropolitan area, as defined in section 473.121, subdivision 2.

(d) The appointed members must be appointed, serve, and be compensated in the manner provided in section 15.059.

Subd. 4. [Repealed, 2001 c 161 s 58]

Subd. 5. **Duties of commission.** The commission shall carry out all requirements of a commission under the federal act and may adopt rules to do so. The commission shall encourage use of and shall utilize existing emergency planning systems under section 299K.05 whenever practical.

Subd. 6. **Agreements.** The commission may cooperate and enter into necessary agreements with other state departments and agencies, political subdivisions of the state, or the federal government to perform its duties.

Subd. 7. **Cooperation.** State departments, agencies, and political subdivisions shall cooperate with the commission and its director and shall assist in the performance of the commission's duties.

History: *1989 c 315 s 3; 1994 c 584 s 1*

299K.04 REGIONAL REVIEW COMMITTEE.

Subdivision 1. **Membership.** (a) The commission shall establish emergency planning districts and appoint and supervise a regional review committee for each district. The regional review committee shall serve as the local emergency planning committee under the federal act, except where a local emergency planning committee has been established by one or more political subdivisions.

(b) Each regional review committee must have nine members consisting of:

(1) three representatives of facilities regulated under the federal act; (2) three representatives of emergency response organizations; and

(3) three representatives of the public including community groups, broadcast and print media, and elected officials.

Subd. 2. **Compensation.** Regional review committee members shall be compensated in the manner provided in section 15.059.

Subd. 3. **Duties of regional review committee.** Regional review committees shall:

(1) review emergency operations plans prepared by political subdivisions within their emergency planning district to determine whether they meet the requirements of section 11003(c) of the federal act;

(2) consult and coordinate with the regional program coordinators of the Division of Emergency Management of the Department of Public Safety and with local and county organizations for civil defense designated under section 12.25;

(3) submit emergency plans to the commission for review and recommendations;

(4) establish procedures for receiving and processing requests from the public for information available under the federal act; and

(5) perform any other duties specified in the federal act.

History: *1989 c 315 s 4*

299K.05 LOCAL EMERGENCY PLAN.

Subdivision 1. **Preparation.** Political subdivisions should prepare emergency plans that adequately address the requirements contained in section 11003 of the federal act. The emergency plan may be a part of a plan prepared by a political subdivision in accordance with chapter 12. County organizations, through the county director designated under section 12.25, shall receive the plans for review, shall coordinate the emergency planning required under the federal act for political subdivisions within the county, and shall submit the plans to the regional office of the
Division of Emergency Management. The Division of Emergency Management shall submit the plans to the regional review committee.

Subd. 2. **Local emergency planning committee.** A political subdivision or two or more political subdivisions that are contiguous may request the commission to establish a local emergency planning committee for the political subdivision or subdivisions. A local emergency planning committee established by the commission shall carry out all requirements specified under sections 11001 to 11046 of the federal act.

Subd. 3. **Planning advisory committee.** A political subdivision or two or more political subdivisions that are contiguous may establish, in lieu of a local emergency planning committee, a planning advisory committee to prepare an emergency plan under section 11003 of the federal act.

History: *1989 c 315 s 5*

299K.06 PUBLIC INFORMATION DEPOSITORY.

Subdivision 1. **County designation of library.** Each county shall designate a library in the county for maintaining updated information on the facilities subject to the federal act that are located in the county and a copy of the emergency response plan for the county.

Subd. 2. **Information provided.** When the commission develops a computerized information system, the commission shall provide updated information on a regular basis to libraries designated under subdivision 1, listing the facilities subject to sections 299K.01 to 299K.10 and noting types of hazards, specific chemicals on site, and amounts of chemicals on site at each facility, and identifying the regional review committee that may be contacted for further information. The commission also shall provide to the libraries a copy of the most recently approved emergency response plan for the county and designate a contact person for public participation in emergency planning.

History: *1989 c 315 s 6*

299K.07 NOTIFICATION TO EMERGENCY MANAGEMENT CENTER.

(a) The notification of the commission required under the federal act must be made to the state Emergency Management Center. The owner or operator of a facility shall immediately notify the state Emergency Management Center of the release of a reportable quantity of the following materials:

(1) a hazardous substance on the list established under United States Code, title 42, section 9602; or

(2) an extremely hazardous substance on the list established under United States Code, title 42, section 11002.

(b) This section does not apply to a release that results in exposure to persons solely within the site or sites on which a facility is located or to a release specifically authorized by state law.

(c) A person who is required to report to or notify a state agency of a discharge, release, or

incident under section 221.0341, this chapter, chapter 18B, 18C, 18D, 115, 115A, 115B, 115C, 115D, 116, or 299J, or any other statute, administrative rule, or federal regulation may satisfy the requirement to report by notifying the Emergency Management Center established in this section.

The commissioner of the Department of Public Safety shall ensure that the center is staffed with adequate personnel to answer all calls 24 hours a day and that those staff are adequately trained to efficiently notify all appropriate state and federal agencies with jurisdiction over the discharge or release, and provide emergency responder information. No state agency may adopt a rule or guideline that requires a person who notifies the Emergency Management Center to also notify that agency. The commissioner of each affected state agency shall include the telephone number of the Emergency Management Center in all files, permits, correspondence, educational publications, and other communications with the public and other persons, and shall designate personnel to coordinate receipt of reports or notifications with Emergency Management Center personnel.

History: *1989 c 315 s 7; 1991 c 233 s 97; 2004 c 225 s 14*

299K.08 FACILITY REQUIRED TO COMPLY.

Subdivision 1. **Generally.** Facilities subject to the federal act must comply with the federal act and sections 299K.01 to 299K.10.

Subd. 2. **Hazardous chemical inventory reporting.** (a) In addition to facilities specified in the federal act, facilities that are operated by employers subject to the occupational health and safety provisions of sections 182.65 to 182.675 shall comply with the hazardous chemical inventory reporting of the federal act.

(b) This section is a designation of additional facilities under sections 11021 and 11022 of the federal act, and the legislative process meets the requirements for public notice and opportunity to comment.

Subd. 3. **Toxic chemical release reporting.** (a) Except as provided in paragraph (b), in addition to facilities specified in the federal act, the following facilities shall comply with the toxic chemical release reporting requirements of section 11023 of the federal act and United States Code, title 42, section 13106, to the same extent as facilities that are required by federal law to comply with these requirements: facilities having a two-digit standard industrial classification of 10, 40, 45, or 49; a three-digit standard industrial classification of 806, 807, or 822; or a four-digit standard industrial classification of 5161, 5162, 5169, 7384, 7389 (solvent recovery facilities only), 8734, or 9223.

(b) For the facilities added in this section, the toxic chemical release reporting requirements of section 11023 of the federal act, and sections 115D.07, 115D.08, and 115D.12, do not apply to substances that are associated with or incidental to the combustion of fossil fuels or other fuels for the generation of electricity or the production of steam.

Subd. 3a. **Use of alternative threshold and certifications; restrictions.** (a) For Minnesota facilities required to report under subdivision 3, the alternative threshold quantities outlined in Code of Federal Regulations, title 40, section 372.27, paragraphs (a)(1) and (a)(2)(ii), or a successor regulation, shall be changed back to the threshold levels prior to implementation of the toxic release inventory burden reduction rule of December 18, 2006.

(b) The use of Environmental Protection Agency certification form 9530-2, (Form A), or any equivalent successor to the form, shall not be used by facilities:

(1) if the total annual reportable amount is 500 pounds or more for nonpersistent bioaccumulative and toxic chemicals; or

(2) with respect to any chemical identified by the Environmental Protection Agency administrator as a chemical of special concern under Code of Federal Regulations, title 40, section 372.28, or a successor regulation.

(c) Facilities affected by paragraph (b) must use Environmental Protection Agency form 9350-1 (Form R), or any equivalent successor to the form.

Subd. 4. **Exemptions.** (a) A person may petition the commission to:

(1) exempt all facilities having a standard industrial classification listed in subdivision 3, or a classification within one of the listed classifications, from the reporting requirements of subdivision 3; or

(2) review a previously granted exemption.

(b) In making a determination on a petition under paragraph (a), the commission shall consider:

(1) the reported or estimated releases and transfers from facilities within the affected classification;

(2) the quality of the data submitted;

(3) the extent to which facilities within the affected classification report no releases or transfers;

(4) the number of reporting facilities in the affected classification;

(5) the percentage of all releases and transfers in the state that are reported by facilities in the affected classification;

(6) hazards to public safety and the environment posed by releases and transfers from facilities in the affected classification; and

(7) other factors identified by the commission.

(c) The commission shall hold at least one public meeting to receive testimony on the petition. The commission shall publish in the State Register notice of granted exemptions. The commission shall report on the status of petitions and exemptions as part of the annual toxic release inventory report.

(d) A facility specified in paragraph (a) that is not within a classification exempted under paragraph (b) and does not release or transfer chemicals subject to reporting under section 11023 of the federal act is exempt from reporting under subdivision 3 if the owner or operator of the facility certifies in writing to the commission that there are no releases or transfers at the facility. The certification must be submitted to the commission by the first reporting date for the facility under the federal act. The facility is exempt from further reporting unless there is a release or transfer from the facility or there is a change in the facility's standard industrial classification.
Facilities that qualify for this exemption shall maintain documentation supporting the exemption and shall provide this documentation at the request of the commission.

History: *1989 c 315 s 8; 1993 c 172 s 81,82; 2008 c 357 s 37*

299K.09 FEE RULES.

Subdivision 1. **Fees.** The commission shall adopt rules setting the following fees:

(1) a material safety data sheet fee to be paid by a facility when it submits material safety data sheets in lieu of a hazardous chemical report form as required under section 11021 of the federal act;

(2) a fee to be paid by a facility when the owner or operator submits its emergency and hazardous chemical inventory form, required under section 11022 of the federal act, for calendar year 1990 and annually afterwards; and

(3) a late fee to be paid by a facility that fails to pay a fee under clause (1) or (2) in a timely manner, not to exceed 200 percent of the original fee.

Subd. 2. **Fee structure.** The fee established under subdivision 1 may not exceed, in the aggregate, the amount necessary to cover the costs for all data management, including administration of fees, by the commission and regional review committees, and a portion of the costs of operation of the Emergency Management Center. **History:** *1989 c 315 s 9; 1991 c 233 s 98*

299K.095 HAZARDOUS MATERIALS INCIDENT RESPONSE FEES.

(a) Persons, except individuals engaged in a farming operation, required under section 11002 of the federal act to notify the commission of the storage of an extremely hazardous substance shall pay an annual fee of $75 for each facility.

(b) Persons required under section 11023 of the federal act to submit a toxic chemical release form to the commission shall pay an annual fee of $200 for zero releases and transfers annually, $400 for more than zero releases and transfers but not exceeding 25,000 pounds annually, and $800 for releases and transfers exceeding 25,000 pounds annually. This fee is in addition to fees collected under section 115D.12.

(c) All fees collected under this section must be deposited in the general fund.

History: *1992 c 593 art 2 s 8*

299K.10 ENFORCEMENT.

Subdivision 1. **Commission's enforcement powers.** (a) To carry out its duties, the commission may:

(1) enforce the federal act;

(2) issue, enter into, or enforce orders, schedules of compliance, and stipulation agreements;

(3) conduct investigations, issue notices, and hold hearings that are necessary or useful to discharge its duties;

(4) examine and copy any books, papers, records, memoranda, or data of a person that is related to data required to be submitted to the commission;

(5) enter public or private property to take an action authorized by this section including obtaining information from a person who has a duty to provide information to the commission; and

(6) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to matters involved in a hearing or investigation.

(b) An employee or agent of the commission may examine witnesses and administer oaths in connection with a subpoena. Witnesses must receive the same fees and mileage as in civil actions.

(c) The commission may delegate its authority under this subdivision to state or local

governmental agencies or organizations to conduct investigations, examine and copy records, and enter property.

Subd. 2. **Civil action; commission.** The commission may enforce the federal act through a civil action brought in federal district court under the federal act or in state district court by the attorney general on request of the commission.

Subd. 3. **Civil action; citizen.** A person may commence a civil action against an owner or operator of a facility in state district court that may be brought in federal district court under the federal act.

Subd. 4. **Civil action; regional or local committee.** A regional review committee or a local emergency planning committee may commence an action against an owner or operator of a facility in state district court for a violation of the federal act that the local emergency planning committee is authorized to commence in federal district court under the federal act.

Subd. 5. **Injunctive relief.** In addition to other relief granted, the court may grant injunctive relief to restrain violations of the federal act.

Subd. 6. **Civil penalties.** (a) A violation of the federal act is a violation of state law.

(b) An owner or operator of a facility is liable to the state for civil penalties in the same manner and amount as the owner or operator is liable to the United States under section 11045, subpart (a), subpart (b), paragraphs (1), (2), and (3), and subpart (c), paragraphs (1) and (2), of the federal act.

(c) The commission may enforce the penalties in state district court in the same manner as the administrator of the United States Environmental Protection Agency may enforce the civil penalties in federal district court under the federal act.

(d) For purposes of this subdivision, each day of continued violation constitutes a separate violation.

Subd. 7. **Costs and attorney fees.** On the motion of a party prevailing in an action under this section, the court may award costs, disbursements, and reasonable attorney and witness fees to the prevailing party.

Subd. 8. **Venue.** A civil action authorized by this section may be brought in the District Court in Ramsey County, in the district court where the alleged violation occurred, or in the district court where the defendant is located.

Subd. 9. **Administrative penalty order.** The commission may issue an order requiring a violation of the federal act to be corrected and administratively assessing monetary penalties. Except in the case of serious or repeated violations, the penalty assessed in the order must be forgiven if the person who is subject to the order corrects the violation before the 31st day after receiving the order. The procedures in section 116.072 must be followed when issuing administrative penalty orders under this subdivision. The maximum amount of an administrative penalty order under this subdivision is $10,000 for all violations identified in an inspection or a review of compliance.

History: *1989 c 315 s 10; 1990 c 388 s 2; 1993 c 282 s 1*

368.01 Subd. 14. **Health.** (a) The town board may by ordinance:

(1) prohibit or regulate slaughterhouses;

(2) prevent the bringing, depositing, or leaving within the town of any unwholesome substance or deposit of solid waste within the town not otherwise authorized by law;

(3) require the owners or occupants of lands to remove unwholesome substances or the unauthorized deposit of solid waste and, if not removed, provide for their removal at the expense of the owner or

occupant, which expense shall be a lien upon the property and may be collected as a special assessment;

(4) provide for or regulate the disposal of sewage, garbage, and other refuse; and

(5) provide for the cleaning of, and removal of obstructions from waters in the town and prevent their obstruction or pollution.

(b) The town board may establish a board of health under section 145A.07, subdivision 2, with all the powers of a board of health under the general laws.

375.18 Subd. 14. **Unauthorized deposit of solid waste.** Each county board may by ordinance:

(1) prohibit the deposit of solid waste within the county not otherwise authorized by law;

(2) require the owners or occupants of property to remove the unauthorized deposit of solid waste;

(3) if it is not removed, provide for removal of the solid waste at the owner's or occupant's expense; and

(4) provide for the expense to be a lien on the property and collected as a special assessment.

A county board may also seek civil penalties and damages from persons responsible for unauthorized deposit of solid waste under section 115A.99, which, if unpaid, may be imposed as a lien on property owned by the responsible persons and collected as a special assessment.

325E.03 SALE OF BEVERAGE CONTAINERS HAVING DETACHABLE PARTS.

Subdivision 1.**Restriction.**

No person shall sell or offer for sale in this state a carbonated soft drink, beer, other malt beverage, or tea in liquid form and intended for human consumption contained in an individual sealed metal container designed and constructed so that a part of the container is detached in the process of opening the container.

Subd. 2.**Criminal penalty.**

A violation of subdivision 1 is a misdemeanor and each day of violation is a separate offense.

History:

1975 c 308 s 1,2; 1977 c 226 s 1

325E.042 PROHIBITING SALE OF CERTAIN PLASTICS.

Subdivision 1.**Plastic can.**

(a) A person may not sell, offer for sale, or give to consumers in this state a beverage packaged in a plastic can.

(b) A plastic can subject to this subdivision is a single serving beverage container composed of plastic and metal excluding the closure mechanism.

Subd. 2.**Nondegradable plastic.**

A person may not sell, offer for sale, or give to consumers beverages or motor oil containers held together by connected rings made of nondegradable plastic material.

Subd. 3.**Penalty.**

A person who violates subdivision 1 or 2 is guilty of a misdemeanor.

History: *1988 c 685 s 26; 1991 c 337 s 57*

325E.044 PLASTIC CONTAINER LABELING.

Subdivision 1.**Definitions.**

The definitions in this subdivision apply to this section.

(a) "Distributor" means a person engaged in business that ships or transports products to retailers in this state to be sold by those retailers.

(b) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(c) "Manufacturer" means any manufacturer offering for sale and distribution a product packaged in a container.

(d) "Plastic container" means an individual, separate, plastic bottle, can, or jar with a capacity of 16 ounces or more.

Subd. 2.**Labeling rules required.**

By March 31, 1989, the board shall adopt rules requiring labeling of plastic containers. The rules adopted under this subdivision must allow a manufacturer of plastic containers, a person who places products in plastic containers, and a person who sells products in plastic containers to choose an appropriate method of labeling plastic containers. The board shall adopt rules as consistent as practicable with national industrywide

plastic container coding systems. The rules may exempt plastic containers of a capacity of less than a specified minimum size from the labeling requirements.

Subd. 3.**Prohibition.**

A person may not manufacture or bring into the state for sale in this state a plastic container that does not comply with the labeling rules adopted under subdivision 2.

Subd. 4.**Enforcement; civil penalty; injunctive relief.**

(a) After being notified that a plastic container does not comply with the rules under subdivision 2, any manufacturer or distributor who violates subdivision 3 is subject to a civil penalty of $50 for each violation up to a maximum of $500 and may be enjoined from such violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 3 in the manner provided in section 8.31, subdivision 2b.

History: *1988 c 685 s 27*

325E.046 STANDARDS FOR LABELING PLASTIC BAGS.

Subdivision 1.**"Biodegradable" label.**

A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "biodegradable," "degradable," or any form of those terms, or in any way imply that the bag will chemically decompose into innocuous elements in a reasonably short period of time in a landfill, composting, or other terrestrial environment unless a scientifically based standard for biodegradability is developed and the bags are certified as meeting the standard.

Subd. 2.**"Compostable" label.**

A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "compostable" unless, at the time of sale, the bag meets the ASTM Standard Specification for Compostable Plastics (D6400). Each bag must be labeled to reflect that it meets the standard. For purposes of this subdivision, "ASTM" has the meaning given in section 296A.01, subdivision 6.

Subd. 3.**Enforcement; civil penalty; injunctive relief.**

(a) A manufacturer, distributor, or wholesaler who violates subdivision 1 or 2 is subject to a civil penalty of $100 for each prepackaged saleable unit offered for sale up to a maximum of $5,000 and may be enjoined from those violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 1 or 2 in the manner provided in section 8.31, subdivision 2b.

History: *2009 c 37 art 1 s 57*

325E.0951 MOTOR VEHICLE AIR POLLUTION CONTROL SYSTEMS.

Subdivision 1.**Definitions.**

The definitions in this subdivision apply to this section.

(a) **Motor vehicle.** "Motor vehicle" means any self-propelled vehicle powered by an internal combustion engine and designed for use on the public highways, such as automobiles, trucks, and buses.

(b) **Person.** "Person" means an individual, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

(c) **Air pollution control system.** "Air pollution control system" means any device or element of design installed on or in a motor vehicle or motor vehicle engine in order to comply with pollutant emission restrictions established for the motor vehicle or motor vehicle engine by federal statute or regulation.

Subd. 2.**Prohibited acts.**

(a) A person may not knowingly tamper with, adjust, alter, change, or disconnect any air pollution control system on a motor vehicle or on a motor vehicle engine.

(b) A person may not manufacture, advertise, offer for sale, sell, use, or install a device that causes any air pollution control system not to be functional as designed.

(c) A person may not sell or transfer a motor vehicle with knowledge that any air pollution control system is either not in place or is not functional.

Subd. 3.**Repairs.**

This section does not prevent the service, repair, or replacement of any air pollution control system.

Subd. 3a.

[Repealed, 2008 c 287 art 1 s 126]

Subd. 4.**Penalty.**

A person who violates this section is guilty of a misdemeanor.

Subd. 5.

[Repealed, 1995 c 220 s 141]

Subd. 6.**Nonapplication.**

This section does not apply to a sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying it.

History:

1Sp1985 c 14 art 19 s 36; 1988 c 487 s 1; 1988 c 634 s 11; 1990 c 446 s 4; 1995 c 247 art 1 s 44

325E.10 DEFINITIONS.

Subdivision 1.**Scope.**

For the purposes of sections 325E.11 to 325E.112 and this section, the terms defined in this section have the meanings given them.

Subd. 2.**Motor oil.**

"Motor oil" means oil used as a lubricant or hydraulics in a transmission or internal combustion engine motor vehicle as defined in section 168.002, subdivision 18.

Subd. 2a.**Motor oil filter.**

"Motor oil filter" means any filter used in combination with motor oil.

Subd. 3.**Used motor oil.**

"Used motor oil" means motor oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Subd. 4.**Person.**

"Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, or other entity.

Subd. 5.**Used motor oil filter.**

"Used motor oil filter" means a motor oil filter which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History:

1977 c 68 s 1; 1995 c 220 s 118; 1997 c 216 s 130-132; 2003 c 128 art 2 s 44

325E.11 COLLECTION FACILITIES; NOTICE.

(a) Any person selling at retail or offering motor oil or motor oil filters for retail sale in this state shall:

(1) post a notice indicating the nearest location where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse, post a toll-free telephone number that may be called by the public to determine a convenient location, or post a listing of locations where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse; or

(2) if the person is subject to section 325E.112, subdivision 1, paragraph (b), post a notice informing customers purchasing motor oil or motor oil filters of the location of the used motor oil and used motor oil filter collection site established by the retailer in accordance with section 325E.112, subdivision 1, paragraph (b), where used motor oil and used motor oil filters may be returned at no cost.

(b) A notice under paragraph (a) shall be posted on or adjacent to the motor oil and motor oil filter displays, be at least 8-1/2 inches by 11 inches in size, contain the universal recycling symbol with the following language:

(1) "It is illegal to put used oil and used motor oil filters in the garbage.";

(2) "Recycle your used oil and used motor oil filters."; and

(3)(i) "There is a free collection site here for your used oil and used motor oil filters.";

(ii) "There is a free collection site for used oil and used motor oil filters located at (name of business and street address).";

(iii) "For the location of a free collection site for used oil and used motor oil filters call (toll-free phone number)."; or

(iv) "Here is a list of free collection sites for used oil and used motor oil filters."

(c) The Division of Weights and Measures in the Department of Commerce shall enforce compliance with this section as provided in section 239.54. The Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072 in coordination with the Division of Weights and Measures.

History: *1977 c 68 s 2; 1987 c 348 s 37; 1995 c 220 s 119; 1997 c 216 s 133; 1999 c 231 s 182; 1Sp2001 c 4 art 6 s 72*

325E.112 USED MOTOR OIL AND USED MOTOR OIL FILTER COLLECTION.

Subdivision 1.**Collection.**

(a) Motor oil and motor oil filter manufacturers and retailers shall seek to provide by May 31, 2001:

(1) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a five-mile radius of any resident in the seven-county metropolitan area; and

(2) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a city or town with a population of greater than 1,500 outside the seven-county metropolitan area. The commissioner of the Pollution Control Agency shall determine by June 30, 2001, whether these goals have been met.

(b) If the commissioner of the Pollution Control Agency determines that motor oil and motor oil filter manufacturers and retailers have not met the goals in paragraph (a) by May 31, 2001, then beginning July 1, 2001, all retailers that sell at an individual location more than 1,000 motor oil filters per calendar year at retail for off-site installation must provide for collection of used motor oil and used motor oil filters from the public. Retailers who do not collect the used motor oil and used motor oil filters at their individual locations may meet the requirement by entering into a written agreement with another party whose location is:

(1) within two miles of the retailer's location if the retailer is located:

(i) within the Interstate Highway 494/694 beltway;

(ii) in a home rule charter or statutory city or a town contiguous to the Interstate Highway 494/694 beltway; or

(iii) in a home rule charter or statutory city of over 30,000 population within the metropolitan area as defined in section 473.121; or

(2) within five miles of the retailer's location if the retailer is not in an area described in clause (1).

(c) The written agreement under paragraph (b) must specify that the other party will accept from the public up to ten gallons of used motor oil and ten used motor oil filters per person per month during normal hours of operation unless:

(1) the used motor oil is known to be contaminated with antifreeze, other hazardous waste, or other materials which may increase the cost of used motor oil management and disposal;

(2) the storage equipment for that particular waste is temporarily filled to capacity; or

(3) the used motor oil or used motor oil filters are from a business.

(d) Persons accepting used motor oil from the public in accordance with this subdivision shall presume that the used motor oil is not contaminated with hazardous waste, provided the person offering the used motor oil is acting in good faith and the person accepting the used motor oil does not have evidence to the contrary. Persons collecting used motor oil from the public must take precautions to prevent contamination of used motor oil storage equipment. Precautions may include, but are not limited to, keeping a log of persons dropping off used motor oil, securing access to used motor oil storage equipment, or posting signage at the site indicating the proper use of the equipment.

(e) Persons accepting used motor oil and used motor oil filters under paragraph (b), including persons accepting the oil and filters on behalf of the retailer, may not charge a fee when accepting ten gallons or less of used motor oil or ten or fewer used motor oil filters per person per month.

(f) Persons that receive contaminated used motor oil may manage the used motor oil as household hazardous waste through publicly administered household hazardous waste collection programs, with approval from the household hazardous waste program. Used motor oil contaminated with hazardous waste from the public that cannot be managed through a household hazardous waste collection program must be managed as a hazardous waste in accordance with rules adopted by the Pollution Control Agency.

Subd. 2.**Reimbursement program.**

A contaminated used motor oil reimbursement program is established to provide reimbursement of the costs of disposing of contaminated used motor oil. In order to receive reimbursement, persons who accept used motor oil from the public or parties that they have contracted with to accept used motor oil must provide to the commissioner of the Pollution Control Agency proof of contamination, information on methods the person used to prevent the contamination of used motor oil at the site, a copy of the billing for disposal costs incurred because of the contamination and proof of payment, and a copy of the hazardous waste manifest or shipping paper used to transport the waste. The commissioner shall reimburse a recipient of contaminated used motor oil 100 percent of the costs of properly disposing of the contaminated used motor oil. The commissioner may not reimburse persons who intentionally place contaminants or do not take precautions to prevent contaminants from being placed in used motor oil, or operate a private collection site that:

(1) is not publicly promotable or listed with the agency;

(2) does not accept up to five gallons of used motor oil and five used motor oil filters per person per day without charging a fee; or

(3) does not control access to the site during times when the site is closed.

A person operating a collection site may refuse to accept any used motor oil or used motor oil filter:

(1) that is from a business;

(2) that appears to be contaminated with antifreeze, hazardous waste, or other materials that may increase the cost of used motor oil management and disposal; or

(3) when the storage equipment for that particular waste is temporarily filled.

Persons operating government collection sites are eligible for reimbursement of the costs of disposing of contaminated used motor oil. Reimbursements made under this subdivision are limited to the money available in the contaminated used motor oil reimbursement account.

Subd. 2a.

[Repealed, 1Sp2003 c 21 art 8 s 20]

Subd. 3.

[Repealed, 2003 c 128 art 2 s 56]

Subd. 4.**Liability exemption.**

Persons who accept used motor oil and used motor oil filters from the public and retailers and manufacturers who contract with such persons for purposes of subdivision 1 are exempt from liability under chapter 115B for the used motor oil, contaminated used motor oil, and used motor oil filters accepted at facilities that accept used motor oil or used motor oil filters from the public free of charge, after the used motor oil, contaminated used motor oil, and used motor oil filters are sent off-site in compliance with rules adopted by the Pollution Control Agency.

Subd. 5.**Enforcement.**

The commissioner of the Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072.

History:

1995 c 220 s 120; 1997 c 216 s 134; 1998 c 389 art 16 s 16; 1999 c 231 s 183-185

325E.115 LEAD ACID BATTERIES; COLLECTION FOR RECYCLING.

Subdivision 1.**Surcharge; collection; notice.**

(a) A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in this state shall:

(1) accept, at the point of transfer, lead acid batteries from customers;

(2) charge a fee of at least $10 per battery sold unless the customer returns a used battery to the retailer; and

(3) post written notice in accordance with section 325E.1151.

(b) Any person selling lead acid batteries at wholesale or offering lead acid batteries for sale at wholesale must accept, at the point of transfer, lead acid batteries from customers.

Subd. 2.**Compliance; management.**

The Division of Weights and Measures in the Department of Commerce shall enforce compliance of subdivision 1 as provided in section 239.54. The commissioner of the Pollution Control Agency shall inform persons governed by subdivision 1 of requirements for managing lead acid batteries.

History:

1987 c 186 s 15; 1987 c 348 s 38; 1Sp1989 c 1 art 20 s 21; 1991 c 337 s 58; 1Sp2001 c 4 art 6 s 73; 2010 c 258 s 1

325E.1151 LEAD ACID BATTERY PURCHASE AND RETURN.

Subdivision 1.**Purchasers must return battery or pay surcharge.**

(a) A person who purchases a lead acid battery at retail, except a lead acid battery that is designed to provide power for a boat motor that is purchased at the same time as the battery, must:

(1) return a lead acid battery to the retailer; or

(2) pay the retailer a surcharge of at least $10.

(b) A person who has paid a surcharge under paragraph (a) must receive a refund of the surcharge from the retailer if the person returns a lead acid battery with a receipt for the purchase of a new battery from that retailer within 30 days after purchasing a new lead acid battery.

(c) A retailer may keep the unrefunded surcharges for lead acid batteries not returned within 30 days.

Subd. 2.**Retailers must accept batteries.**

(a) A person who sells lead acid batteries at retail must accept lead acid batteries from consumers and may not charge to receive the lead acid batteries. A consumer may not deliver more than five lead acid batteries to a retailer at one time.

(b) A retailer of lead acid batteries must recycle the lead acid batteries received from consumers.

(c) A retailer who violates paragraph (b) is guilty of a misdemeanor. Each lead acid battery that is not recycled is a separate violation.

Subd. 3.**Retailers must post notices.**

(a) A person who sells lead acid batteries at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least 8-1/2 inches by 11 inches and contain the universal recycling symbol and state:

"NOTICE: USED BATTERIES

This retailer is required to accept your used lead acid batteries, EVEN IF YOU DO NOT PURCHASE A BATTERY. When you purchase a new battery, you will be charged an additional amount of at least $10 unless you return a used battery within 30 days.

It is a crime to put a motor vehicle battery in the garbage."

Subd. 4.**Notices required in newspaper advertisements.**

(a) An advertisement for sale of new lead acid batteries at retail in newspapers published in this state must contain the notice in paragraph (b).

(b) The notice must state:

"At least $10 additional charge unless a used lead acid battery is returned. Improper disposal of a lead acid battery is a crime."

History:

1Sp1989 c 1 art 20 s 22; 1991 c 337 s 59; 1993 c 249 s 32; 2010 c 258 s 2-4

325E.12 PENALTY.

Violation of sections 325E.10 to 325E.1151 is a petty misdemeanor. Sections 325E.10 to 325E.1151 may be enforced under section 115.071.

History:

1977 c 68 s 3; 1993 c 249 s 33

325E.125 GENERAL AND SPECIAL PURPOSE BATTERY REQUIREMENTS.

Subdivision 1.**Labeling.**

(a) The manufacturer of a button cell battery that is to be sold in this state shall ensure that each battery contains no intentionally introduced mercury or is labeled to clearly identify for the final consumer of the battery the type of electrode used in the battery.

(b) The manufacturer of a rechargeable battery that is to be sold in this state shall ensure that each rechargeable battery is labeled to clearly identify for the final consumer of the battery the type of electrode and the name of the manufacturer. The manufacturer of a rechargeable battery shall also provide clear instructions for properly recharging the battery.

Subd. 2.**Mercury content.**

(a) Except as provided in paragraph (c), a manufacturer may not sell, distribute, or offer for sale in this state an alkaline manganese battery that contains more than 0.025 percent mercury by weight.

(b) On application, the commissioner of the Pollution Control Agency may exempt a specific type of battery from the requirements of paragraph (a) or (d) if there is no battery meeting the requirements that can be reasonably substituted for the battery for which the exemption is sought. A battery exempted by the commissioner under this paragraph is subject to the requirements of section 115A.9155, subdivision 2.

(c) Notwithstanding paragraph (a), a manufacturer may not sell, distribute, or offer for sale in this state a button cell nonrechargeable battery not subject to paragraph (a) that contains more than 25 milligrams of mercury.

(d) A manufacturer may not sell, distribute, or offer for sale in this state a dry cell battery containing a mercuric oxide electrode.

(e) After January 1, 1996, a manufacturer may not sell, distribute, or offer for sale in this state an alkaline manganese battery, except an alkaline manganese button cell, that contains mercury unless the commissioner of the Pollution Control Agency determines that compliance with this requirement is not technically and commercially feasible.

Subd. 2a.**Approval of new batteries.**

A manufacturer may not sell, distribute, or offer for sale in this state a nonrechargeable battery other than a zinc air, zinc carbon, silver oxide, lithium, or alkaline manganese battery, without first having received approval of the battery from the commissioner of the Pollution Control Agency. The commissioner shall approve only batteries that comply with subdivision 1 and do not pose an undue hazard when disposed of. This subdivision is intended to ensure that new types of batteries do not add additional hazardous or toxic materials to the state's mixed municipal waste stream.

Subd. 3.**Rechargeable tools and appliances.**

(a) A manufacturer may not sell, distribute, or offer for sale in this state a rechargeable consumer product unless:

(1) the battery can be easily removed by the consumer or is contained in a battery pack that is separate from the product and can be easily removed; and

(2) the product and the battery are both labeled in a manner that is clearly visible to the consumer indicating that the battery must be recycled or disposed of properly and the battery must be clearly identifiable as to the type of electrode used in the battery.

(b) "Rechargeable consumer product" as used in this subdivision means any product that contains a rechargeable battery and is primarily used or purchased to be used for personal, family, or household purposes.

(c) On application by a manufacturer, the commissioner of the Pollution Control Agency may exempt a rechargeable consumer product from the requirements of paragraph (a) if:

(1) the product cannot be reasonably redesigned and manufactured to comply with the requirements prior to the effective date of Laws 1990, chapter 409, section 2;

(2) the redesign of the product to comply with the requirements would result in significant danger to public health and safety; or

(3) the type of electrode used in the battery poses no unreasonable hazards when placed in and processed or disposed of as part of mixed municipal solid waste.

(d) An exemption granted by the commissioner of the Pollution Control Agency under paragraph (c), clause (1), must be limited to a maximum of two years and may be renewed.

Subd. 4.**Rechargeable batteries and products; notice.**

(a) A person who sells rechargeable batteries or products powered by rechargeable batteries governed by section 115A.9157 at retail shall post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least four inches by six inches and state:

"ATTENTION USERS OF RECHARGEABLE BATTERIES AND CORDLESS PRODUCTS:

Under Minnesota law, manufacturers of rechargeable batteries, rechargeable battery packs, and products powered by nonremovable rechargeable batteries will provide a special collection system for these items by April 15, 1994. It is illegal to put rechargeable batteries in the garbage. Use the special collection system that will be provided in your area. Take care of our environment.

DO NOT PUT RECHARGEABLE BATTERIES OR PRODUCTS POWERED BY NONREMOVABLE RECHARGEABLE BATTERIES IN THE GARBAGE."

(c) Notice is not required for home solicitation sales, as defined in section 325G.06, or for catalogue sales.

Subd. 5.**Prohibitions.**

A manufacturer of rechargeable batteries or products powered by rechargeable batteries that does not participate in the pilot projects and programs required in section 115A.9157 may not sell, distribute, or offer for sale in this state rechargeable batteries or products powered by rechargeable batteries after January 1, 1992.

After January 1, 1992, a person who first purchases rechargeable batteries or products powered by rechargeable batteries for importation into the state for resale may not purchase rechargeable batteries or products powered by rechargeable batteries made by any person other than a manufacturer that participates in the projects and programs required under section 115A.9157.

History: *1990 c 409 s 2; 1991 c 257 s 3-6; 1992 c 593 art 1 s 35; 1993 c 249 s 34*

325E.1251 PENALTY ENFORCEMENT.

Subdivision 1.**Penalty.**

Violation of section 325E.125 is a misdemeanor. A manufacturer who violates section 325E.125 is also subject to a minimum fine of $100 per violation.

Subd. 2.**Recovery of costs.**

Section 325E.125 may be enforced under section 115.071. In an enforcement action under this section in which the state prevails, the state may recover reasonable administrative expenses, court costs, and attorney fees incurred to take the enforcement action, in an amount to be determined by the court.

History:

1990 c 409 s 3; 1991 c 257 s 7; 1993 c 249 s 35

325E.127 NOTICE FOR FLUORESCENT LAMPS CONTAINING MERCURY.

(a) A person who sells fluorescent lamps at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer examining fluorescent lamps offered for sale.

(b) The notice must be in 36-point type or larger and state:

"Fluorescent bulbs save energy and reduce environmental pollution. Note: Fluorescent bulbs contain a small amount of mercury and must be recycled at the end of their use. Contact your county or utility for recycling options."

(c) A retailer may include additional language in the notice in order to promote the sale of fluorescent lamps, provided that the language in paragraph (b) is present.

History: *2007 c 109 s 17*

368.01 POWERS OF CERTAIN METROPOLITAN AREA TOWNS.

Subd. 14.**Health.**

(a) The town board may by ordinance:

(1) prohibit or regulate slaughterhouses;

(2) prevent the bringing, depositing, or leaving within the town of any unwholesome substance or deposit of solid waste within the town not otherwise authorized by law;

(3) require the owners or occupants of lands to remove unwholesome substances or the unauthorized deposit of solid waste and, if not removed, provide for their removal at the expense of the owner or occupant, which expense shall be a lien upon the property and may be collected as a special assessment;

(4) provide for or regulate the disposal of sewage, garbage, and other refuse; and

(5) provide for the cleaning of, and removal of obstructions from waters in the town and prevent their obstruction or pollution.

(b) The town board may establish a board of health under section 145A.07, subdivision 2, with all the powers of a board of health under the general laws.

375.18 GENERAL POWERS.

Subd. 14.**Unauthorized deposit of solid waste.**

Each county board may by ordinance:

(1) prohibit the deposit of solid waste within the county not otherwise authorized by law;

(2) require the owners or occupants of property to remove the unauthorized deposit of solid waste;

(3) if it is not removed, provide for removal of the solid waste at the owner's or occupant's expense; and

(4) provide for the expense to be a lien on the property and collected as a special assessment.

A county board may also seek civil penalties and damages from persons responsible for unauthorized deposit of solid waste under section 115A.99, which, if unpaid, may be imposed as a lien on property owned by the responsible persons and collected as a special assessment.

400.01 POLICY AND AUTHORIZATION.

In order to protect the state's water, air, and land resources so as to promote the public safety, health, welfare, and productive capacity of its population, it is in the public interest that counties conduct solid waste management programs.

History: *1971 c 403 s 1*

400.02 APPLICABILITY.

Sections 400.01 to 400.17 apply to all counties other than the counties of Hennepin, Ramsey, Washington, Anoka, Dakota, Scott, and Carver.

History: *1971 c 403 s 2*

400.03 Subdivision 1. MS 2002 [Renumbered 400.03]

Subd. 2. [Repealed, 1980 c 564 art 13 s 2] Subd. 3. [Repealed, 1980 c 564 art 13 s 2] Subd. 4. [Repealed, 1980 c 564 art 13 s 2] Subd. 5. [Repealed, 1980 c 564 art 13 s 2] Subd. 6. [Repealed, 1980 c 564 art 13 s 2] Subd. 7. [Repealed, 1980 c 564 art 13 s 2]

400.03 DEFINITIONS IN CHAPTER 116, SECTION 115A.03 APPLY.

The terms defined in chapter 116 and section 115A.03 also apply to the terms used in sections 400.01 to 400.17.

History: *1971 c 403 s 3; 1973 c 153 s 1; 1974 c 346 s 6; 1980 c 564 art 9 s 1; 1991 c 199 art 1 s 75*

400.04 SOLID WASTE MANAGEMENT PROGRAM.

Subdivision 1. **General.** Any county may conduct a solid waste management program which may include activities authorized by sections 400.01 to 400.17 and such other activities as are necessary and convenient to effectively carry out the purposes of sections 400.01 to 400.17. A county that enters into a joint powers agreement under section 471.59 with a metropolitan county as defined in section 473.121, subdivision 4, to accomplish a solid waste management purpose may exercise the powers of the metropolitan county for the purpose of solid waste management under the joint powers agreement.

Subd. 2. **Acquisition of real property.** A county may acquire by gift, lease, purchase, or eminent domain as provided by law any land or interest in land upon such terms and conditions as it shall determine, including the use of contracts for deed, within or outside of the county, which the board deems suitable for these purposes; provided that no such land or interest in land situated in any other county shall be acquired without the approval by resolution of the county board thereof.

Subd. 3. **Acquisition, construction, and operation of property and facilities.** A county may acquire, construct, enlarge, improve, repair, supervise, control, maintain, and operate any and all solid waste facilities and other property and facilities needed, used, or useful for solid waste management purposes. Notwithstanding any other law to the contrary, a county may purchase and lease materials, equipment, machinery, and such other personal property as is necessary for such purposes including recycling upon terms and conditions determined by the board, with or without advertisement for bids including the use of conditional sales contracts and lease-purchase agreements. If a county contract is let by negotiation, without advertising for bids, the county shall conduct such negotiation and award the contract using a fair and open procedure and in full compliance with chapter 13D. If a county contract is to be awarded by bid, the county may, after notice to the public and prospective bidders, conduct a fair and open process of prequalification of bidders prior to advertisement for bids. A county may employ such personnel as are reasonably necessary for the care, maintenance and operation of such property and facilities. A county shall contract with private persons for the construction, maintenance, and operation of solid waste facilities where the facilities are adequate and available for use and competitive with other means of providing the same service.

Subd. 4. **Management and service contracts.** Notwithstanding sections 375.21 and 471.345, a county may enter into contracts for the construction, installation, maintenance, and operation of property and facilities on private or public lands and may contract for the furnishing of solid waste management services upon terms and conditions determined by the board, with or without advertisement for bids, including the use of conditional sales contracts and lease-purchase agreements. If a county contract is let by negotiation, without advertising for bids, the county shall conduct negotiations and award the contract using a fair and open procedure and in full compliance with chapter 13D. If an agency permit is required for a solid waste service, a contract entered into under this subdivision is not binding until the permit is issued.

Subd. 5. **Plans.** The county may provide for surveys and plans to determine locations available, appropriate, and suitable for property and facilities needed for the program, and plans for the improvement of property and facilities.

Subd. 6. **Expenditure of funds.** A county is authorized to expend funds for the purposes enumerated in this section and for any other activities necessary to an efficient solid waste management program.

History: *1971 c 403 s 4; 1980 c 564 art 9 s 2; 1984 c 644 s 56; 1985 c 274 s 15; 1989 c 325 s 49; 1993 c 249 s 36,37; 1994 c 585 s 39*

400.05 [Repealed, 1986 c 425 s 46]

400.06 INSPECTION; COOPERATION WITH AGENCY.

All counties shall provide for the periodic inspection of mixed municipal solid waste facilities and mixed municipal solid waste management property and facilities located and being operated within their respective boundaries to determine whether the property and facilities are being maintained and operated in compliance with applicable county ordinances and rules, regulations, standards, orders, permits, and requirements of the agency. In the event that the property and facilities are not so in compliance, the county board shall take actions necessary to assure future compliance with all applicable ordinances, rules, regulations, standards, and requirements, according to law, and shall cooperate with the agency in obtaining and maintaining compliance. All inspectors provided or used by the county under this section shall be certified by the agency in accordance with section 116.41.

History: *1971 c 403 s 6; 1980 c 564 art 9 s 3*

400.07 DEVELOPMENT OF RESOURCE RECOVERY SYSTEMS.

All counties shall cooperate with the agency in the planning, development, and implementation of resource recovery systems, and toward that end, shall modify applicable county ordinances consistent with rules and standards of the agency.

History: *1971 c 403 s 7; 1980 c 564 art 9 s 4*

400.08 SERVICE AREAS AND CHARGES.

Subdivision 1. **Definition.** For purposes of this section, "solid waste management services" includes recycling and waste reduction services, collection, processing, and disposal of solid waste, closure and postclosure care of a solid waste facility, and response, as defined in section 115B.02, to releases from a solid waste facility or closed solid waste facility.

Subd. 2. **Service areas.** In addition to the power that the county may exercise under other law, and in order to provide solid waste management services to those areas needing services, the county board by resolution may establish and determine the boundaries of solid waste management service areas in the county. Before the adoption of the resolution the county board shall hold a public hearing on the question. If a service area is established, the county board may impose service charges for solid waste management services for the area and may levy a tax on all the property in the area, or any combination of charges and taxes. The county board may enlarge any existing service area following the procedures specified in this section. Upon the petition of the landowner, land may be added to the service area without a public hearing on the enlargement.

Subd. 3. **Service charges.** The county may establish by ordinance, revise when deemed advisable, and collect just and reasonable rates and charges for solid waste management services provided by the county or by others under contract with the county. The ordinance may obligate the owners, lessees, or occupants of property, or any or all of them, to pay charges for solid waste management services to their properties, including properties owned, leased, or used by the state or a political subdivision of the state, the Metropolitan Airports Commission established in section 473.603, the State Agricultural Society established in section 37.01, a local government unit, and any other political subdivision, and may obligate the user of any facility to pay a reasonable charge for the use of the facility. Rates and charges may take into account the character, kind, and quality of the service and of the solid waste, the method of disposition, the number of people served at each place of collection, and all other factors that enter into the cost of the service, including but not limited to depreciation and payment of principal and interest on money borrowed by the county for the acquisition or betterment of facilities. A notice of intention to enact an ordinance, published pursuant to section 375.51, subdivision 2, shall provide for a public hearing prior to the meeting at which the ordinance is to be considered.

Subd. 4. **Collection.** (a) The rates and charges may be billed and collected in a manner the board shall determine.

(b) On or before October 15 in each year, the county board may certify to the county auditor all unpaid outstanding charges, and a description of the lands against which the charges arose. It shall be the duty of the county auditor, upon order of the county board, to extend the assessments, with interest not to exceed the interest rate provided for in section 279.03, subdivision 1, upon the tax rolls of the county for the taxes of the year in which the assessment is filed. For each year ending October 15 the assessment with interest shall be carried into the tax becoming due and payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes in accordance with the provisions of the laws of the state. The charges, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes under the general laws of the state.

(c) In addition to any other manner of collection that may be established under paragraph

(a), a county may:

(1) require as a condition of a license issued under section 115A.93 that the licensee collect service charges established under subdivision 3 from solid waste generators for remittal to the county; and

(2) audit a licensed collector's records of the charges collected under clause (1) and the amount of waste collected only to the extent necessary to ensure that all charges required to be collected are remitted to the county.

Data received under clause (2) are private or nonpublic data as defined in section 13.02, subdivision 9 or 12.

Subd. 5. **Financial incentives to recycle.** A county may:

(1) charge or may require any person who collects solid waste in the county to charge solid waste generators rates for solid waste management services that increase as the weight or volume of waste increases;

(2) require collectors to provide financial incentives to solid waste generators who separate recyclable materials from their waste; or

(3) require use of any other mechanism to provide encouragement or rewards to solid waste generators who reduce their waste generation or who separate recyclable materials from their waste.

History: *1971 c 403 s 8; 1979 c 164 s 1; 1986 c 425 s 30; 1Sp1989 c 1 art 20 s 25; 1991 c 337 s 60; 1992 c 593 art 1 s 37,38; 1993 c 249 s 38; 1994 c 628 art 3 s 32*

400.09 REVENUE BONDS.

The county may issue revenue bonds, payable solely from net revenues derived from rates and charges established as provided in section 400.08 in excess of current, reasonable, and necessary costs of the operation and maintenance of the county solid waste management program, for the acquisition or betterment of facilities for the program, or for refunding outstanding revenue bonds. It may irrevocably pledge and appropriate for the payment of the revenue bonds and interest thereof the net revenues from the operation of all or any defined portion of the solid waste management program, and by resolution of the board or by an indenture executed under its authority may make any and all covenants with the bondholders, or with a trustee for the bondholders, which are determined by it to be necessary or proper to assure the marketability of the bonds, the completion of the facilities financed thereby, the segregation of the revenues pledged in a special account in the solid waste management fund, and the establishment, maintenance, and collection of rates and charges sufficient to produce net revenues adequate to pay the bonds and interest thereon when due and to create and maintain a reserve for that purpose, and may mortgage the site and facilities to the trustee. The bonds shall be authorized, issued, and sold as provided in chapter 475.

History: *1971 c 403 s 9*

400.10 [Repealed, 1986 c 425 s 46] **400.101 BONDS.**

The county, by resolution, may authorize the issuance of bonds to provide funds for the acquisition or betterment of solid waste facilities, closure, postclosure, and contingency costs, related transmission facilities, or property or property rights for the facilities, for responses, as defined in section 115B.02, to releases from closed solid waste facilities, or for refunding any outstanding bonds issued for any such purpose, and may pledge to the payment of the bonds and the interest thereon, its full faith, credit, and taxing powers, or the proceeds of any designated tax levies, or the gross or net revenues or charges to be derived from any facility operated by or for the county, or any

combination thereof. The proceeds of bonds issued under this section for closure, postclosure, and contingency costs and noncapital responses to releases may be used only for solid waste facilities in existence on May 15, 1989. Except as otherwise provided in this section, the bonds must be issued and sold in accordance with the provisions of chapter 475.

The proceeds of the bonds may be used in part to establish a reserve as further security for the payment of the principal and interest of the bonds when due. Bonds issued under this section may be sold at public or private sale upon conditions that the county board determines. No election is required to authorize the issuance of bonds under this section.

History: *1986 c 425 s 31; 1989 c 355 s 2; 1991 c 342 s 7*

400.11 TAX LEVIES; ADVANCE FUNDING.

The county may levy taxes for solid waste management purposes upon all taxable property within the county. The county may levy a tax in anticipation of need for solid waste management purposes as specified in the resolution levying the tax, appropriating the proceeds of the tax to a special fund to be used only for those purposes and, until used, to be invested in securities authorized in section 118A.04.

History: *1971 c 403 s 11; 1973 c 583 s 32; 1986 c 425 s 32; 1996 c 399 art 2 s 12*

400.12 [Repealed, 1973 c 583 s 37]

400.13 SOLID WASTE MANAGEMENT FUND.

Any county owning or operating solid waste management property or facilities pursuant to section 400.04, subdivision 3, and establishing fees for the provision of services by the county pursuant to section 400.08, shall continuously maintain a special account on its official books and records designated as the solid waste management fund, to which it shall credit all receipts from the rates and charges authorized in section 400.08 and from the sale of real or personal property pertaining to solid waste management purposes, and the proceeds of all gifts, grants, loans, and issues of bonds for such purposes, and to which it shall charge all costs of the acquisition, construction, enlargement, improvement, repair, supervision, control, maintenance, and operation of property, facilities, and services. Separate accounts may be established within this fund for the segregation of revenues pledged for the payment of bonds or loans, or money granted or borrowed for use for a specific purpose.

History: *1971 c 403 s 12; 1980 c 564 art 9 s 5*

400.14 DISPOSITION OF PROPERTY.

The county board may sell, lease, convey, or otherwise dispose of any real or personal property held for solid waste management purposes, upon determination that it is no longer needed for such purposes, or may provide for its use for other lawful county purposes. Real or personal property shall be sold, leased, and conveyed upon advertisement for bids in accordance with section 373.01.

History: *1971 c 403 s 13*

400.15 GIFTS, GRANTS, OR LOANS.

The county may by resolution of the board accept gifts, grants, or loans of other property from the United States of America, the state of Minnesota, or any agency or subdivision thereof, or from any other source, for any solid waste management purpose; may enter into any agreement required in connection therewith, for repayment or otherwise, and may hold, use, and dispose of such money or property in accordance with the terms of the gifts, grant, loan, or agreement.

History: *1971 c 403 s 14*

400.16 SOLID WASTE AND SEWAGE SLUDGE MANAGEMENT REGULATIONS.

The county may by ordinance establish and revise rules, regulations, and standards for solid waste and sewage sludge management and land pollution, relating to (a) the location, sanitary operation, and maintenance of solid waste facilities and sewage sludge disposal facilities by the county and any municipality or other public agency and by private operators; (b) the collection, processing, and disposal of solid waste and sewage sludge; (c) the amount and type of equipment required in relation to the amount and type of material received at any solid waste facility or sewage sludge disposal facility; (d) the control of salvage operations, water or air or land pollution, and rodents at such facilities; (e) the termination or abandonment of the facilities or activities; and (f) other matters relating to the facilities as may be determined necessary for the public health, welfare, and safety. The county may issue permits or licenses for solid waste facilities and may require that the facilities be registered with an appropriate county office. The county shall adopt the ordinances for mixed municipal solid waste management. The county shall make provision for issuing permits or licenses for mixed municipal solid waste facilities and shall require that the facilities be registered with an appropriate county office. No permit or license shall be issued for a mixed municipal solid waste facility unless the applicant has demonstrated to the satisfaction of the county board the availability of revenues necessary to operate the facility in accordance with applicable state and local laws, ordinances, and rules. No permit shall be issued for a solid waste facility used primarily for resource recovery or a transfer station serving such a facility, if the facility or station is owned or operated by a public agency or if the acquisition or betterment of the facility or station is secured by public funds or obligations issued by a public agency, unless the county finds and determines that adequate markets exist for the products recovered and that any displacement of existing resource recovery facilities and transfer stationsserving such facilities that may result from the establishment of the new facility is required in order to achieve the waste management objectives of the county. The county ordinance shall require appropriate procedures for termination or abandonment of any mixed municipal solid waste facilities or services, which shall include provision for long-term monitoring for possible land pollution, and for the payment by the owners or operators thereof, or both, of any costs incurred by the county in completing the procedures. The county may require the procedures and payments with respect to any facilities or services regulated pursuant to this section. In the event the operators or owners fail to complete the procedures in accordance with the ordinance, the county may recover the costs of completion in a civil action in any court of competent jurisdiction or, in the discretion of the board, the costs may be certified to the county auditor as a special tax against the land to be collected as other taxes are collected. The ordinance may be enforced by injunction, action to compel performance, other appropriate action in the district court, or administrative penalty order authorized under section 116.072. Any ordinance enacted under this section shall embody minimum standards and requirements established by rule of the agency.

History: *1971 c 403 s 15; 1980 c 564 art 9 s 6; 1982 c 569 s 20; 1995 c 247 art 1 s 45*

400.161 HAZARDOUS WASTE REGULATIONS.

(a) The county may by ordinance establish and revise rules, regulations, and standards relating to (1) identification of hazardous waste, (2) the labeling and classification of hazardous waste, (3) the collection, transportation, processing, disposal, and storage of hazardous waste, and (4) other matters as may be determined necessary for the public health, welfare, and safety. The county may issue permits or licenses for hazardous waste generation and may require the generators be registered with a county office. The ordinance may require appropriate procedures for the payment by the generator of any costs incurred by the county in completing such procedures. If the generator fails to complete such procedures, the county may recover the costs of completion in a civil action in any court of competent jurisdiction or, in the discretion of the board, the costs may be certified to the county auditor as a special tax against the land

as other taxes are collected. The ordinance may be enforced by injunction, action to compel performance, other action in district court, or administrative penalty order authorized under section 116.072. County hazardous waste ordinances shall embody and be consistent with agency hazardous waste rules. Counties shall submit adopted ordinances to the agency for review. In the event that agency rules are modified, each county shall modify its ordinances accordingly and shall submit the modification to the agency for review within 120 days. Issuing, denying, modifying, imposing conditions upon, or revoking permits or licenses and county hazardous waste regulations and ordinances shall be subject to review, denial, suspension, modification, and reversal by the Pollution Control Agency. The Pollution Control Agency shall after written notification have 15 days in the case of hazardous waste permits and licenses and 30 days in the case of hazardous waste ordinances to review, deny, suspend, modify, or reverse the action of the county. After this period, the action of the county board shall be final subject to appeal to the district court as provided in section 115.05.

(b) A county may not impose a fee under this section on material that is reused at the facility where the material is generated in a manner that the facility owner or operator can demonstrate does not increase the toxicity of, or the level of hazardous substances or pollutants or contaminants in, products that leave the facility.

History: *1974 c 346 s 7; 1980 c 564 art 9 s 7; 1981 c 352 s 30; 1992 c 593 art 1 s 39; 1995 c 247 art 1 s 46*

400.162 COUNTY DESIGNATION OF RESOURCE RECOVERY FACILITY.

A qualifying county may be authorized to designate a resource recovery facility under sections 115A.80 to 115A.89.

History: *1980 c 564 art 9 s 8; 1982 c 569 s 21; 1984 c 644 s 57*

400.17 CITATION.

Sections 400.01 to 400.17 may be cited as the County Solid Waste Management Act of 1971. **History:** *1971 c 403 s 16*

Every contract, conveyance, license, or other written instrument shall be executed on behalf of the city by the mayor and clerk, with the corporate seal affixed, and only pursuant to authority from the council.

History: *1949 c 119 s 27; 1973 c 123 art 2 s 1 subd 2*

412.221 SPECIFIC POWERS OF COUNCIL.

Subd. 22. **Health.** (a) The council shall have power by ordinance:

(1) to prohibit or regulate slaughterhouses;

(2) to prevent the bringing, depositing, or leaving within the city of any unwholesome substance or deposit of solid waste within the city not otherwise authorized by law, to require the owners or occupants of lands to remove unwholesome substances or the unauthorized deposit of solid waste and if it is not removed to provide for its removal at the expense of the owner or occupant, which expense shall be a lien upon the property and may be collected as a special assessment;

(3) to provide for or regulate the disposal of sewage, garbage, and other refuse; and

(4) to provide for the cleaning of, and removal of obstructions from, any waters in the city and to prevent their obstruction or pollution.

CHAPTER 473

METROPOLITAN GOVERNMENT

473.149 SOLID WASTE COMPREHENSIVE PLANNING.

Subdivision 1. **Policy plan; general requirements.** The commissioner of the Pollution Control Agency shall revise the metropolitan long range policy plan for solid waste management adopted in 2011 by December 31, 2016, and every sixth year thereafter. The plan shall be followed in the metropolitan area. The plan shall address the state policies and purposes expressed in section 115A.02. In revising the plan the commissioner shall follow the procedures in subdivision 3. The plan shall include goals and policies for solid waste management, including recycling consistent with section 115A.551, and household hazardous waste management consistent with section 115A.96, subdivision 6, in the metropolitan area.

The plan shall include criteria and standards for solid waste facilities and solid waste facility sites respecting the following matters: general location; capacity; operation; processing techniques; environmental impact; effect on existing, planned, or proposed collection services and waste facilities; and economic viability. The plan shall, to the extent practicable and consistent with the achievement of other public policies and purposes, encourage ownership and operation of solid waste facilities by private industry. For solid waste facilities owned or operated by public agencies or supported primarily by public funds or obligations issued by a public agency, the plan shall include additional criteria and standards to protect comparable private and public facilities already existing in the area from displacement unless the displacement is required in order to achieve the waste management objectives identified in the plan. In revising the plan, the commissioner shall consider the orderly and economic development, public and private, of the metropolitan area; the preservation and best and most economical use of land and water resources in the metropolitan area; the protection and enhancement of environmental quality; the conservation and reuse of resources and energy; the preservation and promotion of conditions conducive to efficient, competitive, and adaptable systems of waste management; and the orderly resolution of questions concerning changes in systems of waste management. Criteria and standards for solid waste facilities shall be consistent with rules adopted by the Pollution Control Agency pursuant to chapter 116 and shall be at least as stringent as the guidelines, regulations, and standards of the federal Environmental Protection Agency.

Subd. 2. [Repealed, 1995 c 247 art 1 s 67] Subd. 2a. [Repealed, 1995 c 247 art 1 s 67]

Subd. 2b. [Repealed, 1991 c 337 s 90]

Subd. 2c. [Repealed, 1995 c 247 art 1 s 67]

Subd. 2d. **Land disposal abatement plan.** (a) The commissioner shall include in the policy plan specific and quantifiable metropolitan objectives for abating to the greatest feasible and prudent extent the need for and practice of land disposal of mixed municipal solid waste and of specific components of the solid waste stream, including residuals and ash, either by type of waste or class of generator.

(b) The objectives must be stated in six-year increments for a period of at least 20 years from the date of adoption of policy plan revisions. The plan must include a reduced estimate of the capacity, based on the abatement objectives, needed for the disposal of various types of waste in each six-year increment.

(c) The plan must include objectives for waste reduction and measurable objectives for local abatement of solid waste through resource recovery, recycling, and source separation programs for each metropolitan county stated in six-year increments for a period of at least 20 years from the date of adoption of policy plan revisions.

(d) The standards must be based upon and implement the metropolitan abatement objectives. The plan must include standards and procedures to be used by the commissioner in determining whether a metropolitan county has implemented the metropolitan land disposal abatement plan and has achieved the objectives for local abatement.

Subd. 2e. **Disposal capacity needs.** After requesting and considering recommendations from the counties, cities, and towns, the commissioner as part of the policy plan shall determine the capacity needed to serve the metropolitan area for disposal of solid waste, including residuals and ash, in six-year increments for a period of at least 20 years from adoption of policy plan revisions. In making the capacity determination, the commissioner must take into account the reduced estimate of disposal capacity needed because of the land disposal abatement plan.

The commissioner's determination must include standards and procedures for certification of need pursuant to section 473.823.

Subd. 2f. [Repealed, 1995 c 247 art 1 s 67]

Subd. 3. **Preparation; adoption; and revision.** (a) The solid waste policy plan shall be prepared, adopted, and revised as necessary in accordance with paragraphs (c) to (e), after consultation with the metropolitan counties.

(b) Revisions to the policy plan are exempt from the rulemaking provisions of chapter 14.

(c) Before beginning preparation of revisions to the policy plan, the commissioner shall publish a predrafting notice in the State Register that includes a statement of the subjects expected to be covered by the revisions, including a summary of the important problems and issues. The notice must solicit comments from the public and state that the comments must be received by the commissioner within 45 days of publication of the notice. The commissioner shall consider the comments in preparing the revisions.

(d) After publication of the predrafting notice and before adopting revisions to the policy plan, the commissioner shall publish a notice in the State Register that:

(1) contains a summary of the proposed revisions;

(2) invites public comment;

(3) lists locations where the proposed revised policy plan can be reviewed and states that copies of the proposed revised policy plan can also be obtained from the Pollution Control Agency;

(4) states a location for a public meeting on the revisions at a time no earlier than 30 days from the date of publication; and

(5) advises the public that they have 30 days from the date of the public meeting in clause (4) to submit comments on the revisions to the commissioner.

(e) At the meeting described in paragraph (d), clause (4), the public shall be given an opportunity to present their views on the policy plan revisions. The commissioner shall incorporate any amendments to the proposed revisions that, in the commissioner's view, will help to carry out the requirements of subdivisions 1, 2d, and 2e. At or before the time that policy plan revisions are finally adopted, the commissioner shall issue a report that addresses issues raised in the public comments. The report shall be made available to the public and mailed to interested persons who have

submitted their names and addresses to the commissioner.

(f) The criteria and standards adopted in the policy plan for review of solid waste facility permits pursuant to section 473.823, subdivision 3; for issuance of certificates of need pursuant to section 473.823, subdivision 6; and for review of solid waste contracts pursuant to section 473.813 may be appealed to the Court of Appeals within 30 days after final adoption of the policy plan. The court may declare the challenged portion of the policy plan invalid if it violates constitutional provisions, is in excess of statutory authority of the commissioner, or was adopted without compliance with the procedures in this subdivision. The review shall be on the record created during the adoption of the policy plan, except that additional evidence may be included in the record if the court finds that the additional evidence is material and there were good reasons for failure to present it in the proceedings described in paragraphs (c) to (e).

(g) The Metropolitan Council or a metropolitan county, local government unit, commission, or person shall not acquire, construct, improve or operate any solid waste facility in the metropolitan area except in accordance with the plan and section 473.823, provided that no solid waste facility in use when a plan is adopted shall be discontinued solely because it is not located in an area designated in the plan as acceptable for the location of such facilities.

Subd. 4. [Repealed, 1997 c 45 s 3]

Subd. 5. [Repealed, 1995 c 247 art 2 s 55]

Subd. 6. **Report to legislature.** The commissioner shall report on abatement to the senate and house of representatives committees having jurisdiction over ways and means, finance, environment and natural resources policy, and environment and natural resources finance. The report must include an assessment of whether the objectives of the metropolitan abatement plan have been met and whether each county and each class of city within each county have achieved the objectives set for it in the plan. The report must recommend any legislation that may be required to implement the plan. The report shall be included in the report required by section 115A.411. If in any year the commissioner reports that the objectives of the abatement plan have not been met, the commissioner shall evaluate and report on the need to reassign governmental responsibilities among cities, counties, and metropolitan agencies to assure implementation and achievement of the metropolitan and local abatement plans and objectives.

The report must include a report on the operating, capital, and debt service costs of solid waste facilities in the metropolitan area; changes in the costs; the methods used to pay the costs; and the resultant allocation of costs among users of the facilities and the general public. The facility costs report must present the cost and financing analysis in the aggregate and broken down by county and by major facility.

History: *1975 c 13 s 11; 1976 c 179 s 7-9; 1980 c 564 art 10 s 2; 1981 c 352 s 31-34; 1982 c 569 s 22; 1983 c 373 s 46-50; 1984 c 644 s 58,59; 1985 c 248 s 70; 1985 c 274 s 16; 1986 c 460 s 16; 1987 c 348 s 39,40; 1987 c 384 art 2 s 101; 1988 c 685 s 29; 1989 c 325 s 51-53; 1989 c 335 art 1 s 269; 1Sp1989 c 1 art 20 s 27; 1991 c 199 art 2 s 1; 1991 c 337 s 63,64; 1993 c 249 s 39; 1994 c 585 s 40; 1994 c 628 art 3 s 44; 1995 c 186 s 83; 1995 c 247 art 1 s 47-51; art 2 s 24; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161; 2012 c 272 s 81,82*

473.151 DISCLOSURE.

For the purpose of the rules, plans, and reports required or authorized by sections 473.149, 473.516, 473.801 to 473.823 and this section, each generator of hazardous waste and each owner or operator of a collection service or waste facility annually shall make the following information available to the agency, council, Pollution Control Agency, and metropolitan counties: a schedule of rates and charges in effect or proposed for a collection service or the processing of waste delivered to a waste facility and a description, in aggregate amounts indicating the general

character of the solid and hazardous waste collection and processing system, of the types and the quantity, by types, of waste generated, collected, or processed. The county, council, office, and agency shall act in accordance with the provisions of section 116.075, subdivision 2, with respect to information for which confidentiality is claimed.

History: *1976 c 179 s 18; 1985 c 248 s 70; 1995 c 247 art 2 s 25; 1Sp2005 c 1 art 2 s 161*

information regarding market valuation in any county is not transmitted to the commissioner in a timely manner, the commissioner may estimate the current market valuation within that county for purposes of making the calculation.

History: *1975 c 13 s 132; 1982 c 579 s 8; 1983 c 129 s 5; 1986 c 444; 1986 c 460 s 53; 1987 c 384 art 2 s 1; 1988 c 675 s 21,22; 1988 c 719 art 5 s 84; 1989 c 146 s 3; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 9 s 69; 1992 c 511 art 2 s 37; art 5 s 15; 1993 c 375 art 7 s 20; 1994 c 416 art 1 s 56; 1994 c 505 art 6 s 5; 1995 c 255 art 2 s 9; 1995 c 264 art 16 s 20; 1996 c 399 art 2 s 12; 1997 c 7 art 1 s 156; 2003 c 127 art 13 s 6*

SOLID AND HAZARDOUS WASTE

473.801 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 473.801 to 473.849, the terms defined in this section have the meanings given them.

Subd. 2. **Local government unit.** "Local government unit" means any municipal corporation or governmental subdivision other than a metropolitan county located in whole or part in the metropolitan area, authorized by law to provide for the processing of solid waste.

Subd. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subd. 4. **Application.** Unless otherwise provided the definitions of terms in section 115A.03 shall apply to sections 473.801 to 473.845.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 6. [Repealed, 1Sp2005 c 1 art 2 s 162]

History: *1975 c 13 s 138; 1976 c 179 s 11,12; 1980 c 564 art 10 s 6; 1981 c 352 s 40; 1984 c 644 s 61,62; 1985 c 274 s 22; 1995 c 247 art 2 s 27-29; 1Sp2005 c 1 art 2 s 161*

473.8011 METROPOLITAN AGENCY RECYCLING GOAL.

By December 31, 1993, the Metropolitan Council, each metropolitan agency as defined in section 473.121, and the Metropolitan Mosquito Control District established in section 473.702 shall recycle at least 40 percent by weight of the solid waste generated by their offices or other operations. The commissioner shall provide information and technical assistance to the council, agencies, and the district to implement effective recycling programs.

By August 1 of each year, the council, each agency, and the district shall submit to the Pollution Control Agency a report for the previous fiscal year describing recycling rates, specified by the county in which the council, agency, or operation is located, and progress toward meeting the recycling goal. The Pollution Control Agency shall incorporate the recycling rates reported in the respective county's recycling rates for the previous fiscal year.

If the goal is not met, the council, agency, or district must include in its 1994 report reasons for not meeting the goal and a plan for meeting it in the future.

History: *1991 c 337 s 65; 1995 c 247 art 2 s 30; 1Sp2005 c 1 art 2 s 161*

473.802 [Repealed, 1986 c 460 s 59]

473.803 METROPOLITAN COUNTY PLANNING.

Subdivision 1. **County master plans; general requirements.** Each metropolitan county, following adoption or revision of the metropolitan policy plan and in accordance with the dates specified therein, and after consultation with all affected local government units, shall prepare and submit to the commissioner for approval, a county solid waste master plan to implement the policy plan. The master plan shall be revised and resubmitted at such times as the metropolitan policy plan may require. The master plan shall describe county solid waste activities, functions, and facilities; the existing system of solid waste generation, collection, and processing, and disposal within the county; proposed mechanisms for complying with the recycling requirements of section 115A.551, and the household hazardous waste management requirements of section 115A.96, subdivision 6; existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste facilities and solid waste generation, collection, and processing, and disposal; existing or proposed municipal, county, or private solid waste facilities and collection services within the county together with schedules of existing rates and charges to users and statements as to the extent to which such facilities and services will or may be used to implement the policy plan; and any solid waste facility which the county owns or plans to acquire, construct, or improve together with statements as to the planned method, estimated cost and time of acquisition, proposed procedures for operation and maintenance of each facility; an estimate of the annual cost of operation and maintenance of each facility; an estimate of the annual gross revenues which will be received from the operation of each facility; and a proposal for the use of each facility after it is no longer needed or usable as a waste facility. The master plan shall, to the extent practicable and consistent with the achievement of other public policies and purposes, encourage ownership and operation of solid waste facilities by private industry. For solid waste facilities owned or operated by public agencies or supported primarily by public funds or obligations issued by a public agency, the master plan shall contain criteria and standards to protect comparable private and public facilities already existing in the area from displacement unless the displacement is required in order to achieve the waste management objectives identified in the plan.

Subd. 1a. [Repealed, 1991 c 337 s 90]

Subd. 1b. [Repealed, 1995 c 247 art 1 s 67]

Subd. 1c. **County abatement plan.** Each county shall revise its master plan to include a land disposal abatement element to implement the metropolitan land disposal abatement plan adopted under section 473.149, subdivision 2d, and shall submit the revised master plan to the commissioner for review under subdivision 2 within nine months after the adoption of the metropolitan abatement plan. The county plan must implement the local abatement objectives for the county and cities within the county as stated in the metropolitan abatement plan. The county abatement plan must include specific and quantifiable county objectives, based on the objectives in the metropolitan abatement plan, for abating to the greatest feasible and prudent extent the need for and practice of land disposal of mixed municipal solid waste and of specific components of the solid waste stream generated in the county, stated in six-year increments for a period of at least 20 years from the date of metropolitan policy plan revisions. The plan must include measurable performance standards for local abatement of solid waste through resource recovery and waste reduction and separation programs and activities for the county as a whole and for statutory or home rule charter cities of the first, second, and third class, respectively, in the county, stated in six-year increments for a period of at least 20 years from the date of metropolitan policy plan revisions. The performance standards must implement the metropolitan and county abatement objectives. The plan must include standards and procedures to be used by the county in determining annually under subdivision 3 whether a city within the county has implemented the

plan and has satisfied the performance standards for local abatement. The master plan revision required by this subdivision must be prepared in consultation with the advisory committee established pursuant to subdivision 4.

Subd. 1d. **Plans for required use of resource recovery facilities.** Plans proposing designation of resource recovery facilities pursuant to section 473.811, subdivision 10, shall evaluate the benefits of the proposal, including the public purposes achieved by the conservation and recovery of resources, the furtherance of local, district, or regional waste management plans and policies, and the furtherance of the state policies and purposes expressed in section 115A.02, and also the costs of the proposal, including not only the direct capital and operating costs of the facility but also any indirect costs and adverse long-term effects of the designation. In particular the plan shall evaluate:

(a) whether the required use will result in the recovery of resources or energy from materials which would otherwise be wasted;

(b) whether the required use will lessen the demand for and use of land disposal; (c) whether the required use is necessary for the financial support of the facility;

(d) whether less restrictive methods for ensuring an adequate solid waste supply are available;

(e) all other feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed designation, the direct and indirect costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.

Subd. 1e. [Repealed, 1995 c 247 art 1 s 67]

Subd. 2. **Commissioner review.** The commissioner shall review each master plan or revision thereof to determine whether it is consistent with the metropolitan policy plan. If it is not consistent, the commissioner shall disapprove and return the plan with its comments to the county for revision and resubmittal. The county shall have 90 days to revise and resubmit the plan for the commissioner's approval. Any county solid waste plan or report approved by the council prior to July 1, 1994, shall remain in effect until a new master plan is submitted to and approved by the commissioner in accordance with this section.

The commissioner shall review the household hazardous waste management portion of each county's plan.

Subd. 2a. **Waste abatement.** The commissioner may require any county that fails to meet the waste abatement objectives contained in the metropolitan policy plan to amend its master plan to address methods to achieve the objectives. The master plan amendment is subject to review and approval as provided in subdivision 2 and must consider at least:

(1) minimum recycling service levels for solid waste generators;

(2) mandatory generator participation in recycling programs including separation of recyclable material from mixed municipal solid waste;

(3) use of organized solid waste collection under section 115A.94; and

(4) waste abatement participation incentives including provision of storage bins, weekly collection of recyclable material, expansion of the types of recyclable material for collection, collection of recyclable material on the same day as collection of solid waste, and financial incentives such as basing charges to generators for waste collection services on the volume of waste generated and discounting collection charges for generators who separate recyclable material for collection separate from their solid waste.

Subd. 3. **Annual report.** By April 1 of each year, each metropolitan county shall prepare and submit to the commissioner for approval a report containing information, as prescribed in the metropolitan policy plan, concerning solid waste generation and management within the county. The report shall include a statement of progress in achieving the land disposal abatement objectives for the county and classes of cities in the county as stated in the metropolitan policy plan and county master plan. The report must list cities that have not satisfied the county performance standards for local abatement required by subdivision 1c. The report must include a schedule of rates and charges in effect or proposed for the use of any solid waste facility owned or operated by or on its behalf, together with a statement of the basis for such charges.

The report shall contain the recycling development grant report required by section 473.8441 and the annual certification report required by section 473.848.

Subd. 4. **Advisory committee.** Each county shall establish a solid waste management advisory committee to aid in the preparation of the county master plan, any revisions thereof, and such additional matters as the county deems appropriate. The committee must consist of citizen representatives, representatives from towns and cities within the county, and representatives from private waste management firms. The committee must include residents of towns or cities within the county containing solid waste disposal facilities. The commissioner or the commissioner's appointee is a nonvoting ex officio member of the committee.

Subd. 5. **Role of private sector; county oversight.** A county may include in its solid waste management master plan and in its plan for county land disposal abatement a determination that the private sector will achieve, either in part or in whole, the goals and requirements of sections 473.149 and 473.803, as long as the county:

(1) retains active oversight over the efforts of the private sector and monitors performance to ensure compliance with the law and the goals and standards in the metropolitan policy plan and the county master plan;

(2) continues to meet its responsibilities under the law for ensuring proper waste management, including, at a minimum, enforcing waste management law, providing waste education, promoting waste reduction, and providing its residents the opportunity to recycle waste materials; and

(3) continues to provide all required reports on the county's progress in meeting the waste management goals and standards of this chapter and chapter 115A.

History: *1975 c 13 s 140; 1976 c 179 s 14; 1980 c 564 art 10 s 8; 1981 c 352 s 41; 1982 c 424 s 130; 1982 c 569 s 26-28; 1983 c 373 s 57,58; 1984 c 455 s 1; 1984 c 640 s 32; 1984 c 644 s 63-65; 1985 c 274 s 23,24; 1987 c 348 s 41; 1988 c 685 s 30; 1989 c 325 s 54; 1Sp1989 c 1 art 20 s 28; 1991 c 337 s 66,67; 1993 c 249 s 40; 1994 c 585 s 41; 1995 c 247 art 1 s 52-54; art 2 s 31-34; 1997 c 45 s 2; 1Sp2005 c 1 art 2 s 161*

473.804 HOUSEHOLD HAZARDOUS WASTE MANAGEMENT.

By June 30, 1992, each metropolitan county shall develop and implement a permanent program to manage household hazardous waste. Each program must include at least quarterly collection of wastes. Each program must be consistent with the metropolitan policy plan and must be described as part of each county's solid waste master plan revision as required under section 473.803, subdivision 1.

History: *1Sp1989 c 1 art 20 s 29; 1995 c 247 art 2 s 35* **473.806** [Repealed, 1991 c 337 s 90]

473.811 WASTE MANAGEMENT BY COUNTIES, DEFINED LOCAL UNITS.

Subdivision 1. **County acquisition of facilities.** To accomplish the purpose specified in section 473.803, each metropolitan county may acquire by purchase, lease, gift or condemnation as provided by law, upon such terms and conditions as it shall determine, including contracts for deed and conditional sales contracts, solid waste facilities or properties or easements for solid waste facilities which are in accordance with rules adopted by the agency, the policy plan and the approved county master plan, and may improve or construct improvements on any property or facility so acquired. No metropolitan city, county or town shall own or operate a hazardous waste facility, except a facility to manage household hazardous waste. Each metropolitan county is authorized to levy a tax in anticipation of need for expenditure for the acquisition and betterment of solid waste facilities. If a tax is levied in anticipation of need, the purpose must be specified in a resolution of the county directing that the levy and the proceeds of the tax may be used only for that purpose. Until so used, the proceeds shall be retained in a separate fund or invested in the same manner as surplus in a sinking fund may be invested under section 118A.04. The right of condemnation shall be exercised in accordance with chapter 117.

For the purposes of this section "solid waste facility" includes a facility to manage household hazardous waste.

Subd. 1a. **Right of access.** Whenever the county deems it necessary to the evaluation of a waste facility for enforcement purposes or for the accomplishment of any purpose under sections 473.149 and 473.801 to 473.834, the county, or any employee or agent thereof when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.

Subd. 2. **County financing of facilities.** Each metropolitan county may by resolution authorize the issuance of bonds to provide funds for the acquisition or betterment of solid waste facilities, closure, postclosure, and contingency costs, related transmission facilities, or property or property rights for the facilities, for responses, as defined in section 115B.02, to releases from closed solid waste facilities, or for refunding any outstanding bonds issued for any such purpose.

The proceeds of bonds issued under this section for closure, postclosure, and contingency costs and noncapital responses to releases may be used only for solid waste facilities in existence on May 15, 1989. The county may pledge to the payment of the bonds and the interest thereon, its full faith, credit, and taxing powers, or the proceeds of any designated tax levies, or the gross or net revenues or charges to be derived from any facility operated by or for the county, or any combination thereof. Taxes levied for the payment of the bonds and interest shall not reduce the amounts of other taxes which the county is authorized by law to levy. The proceeds of the bonds may be used in part to establish a reserve as further security for the payment of the principal and interest of the bonds when due. Bonds issued pursuant to this section may be sold at public or private sale upon such conditions as the county board shall determine. No election shall be

required to authorize the issuance of the bonds. Except as otherwise provided, the bonds shall be issued and sold in accordance with the provisions of chapter 475.

Subd. 2a. **County solid waste industrial development revenue bonds.** A metropolitan county may issue revenue bonds to finance solid waste and related facilities projects located inside or outside the boundaries of cities or towns described in section 368.01 under and pursuant to the provisions of chapter 474.

Subd. 3. **County operation of facilities.** Each metropolitan county may operate and maintain solid waste facilities, and for this purpose may employ all necessary personnel, may adopt regulations governing operation, and may establish and collect reasonable, nondiscriminatory rates and charges, except as authorized under section 115A.919, for the use of the facilities by any local government unit or person, estimated to be sufficient, with any other moneys appropriated for the purpose, to pay all costs of acquisition, operation and maintenance. Each metropolitan county may use itself or sell all or any part of materials or energy recovered from solid waste to private interests or public agencies for consumption or reuse by them. Section 471.345 and Laws 1951, chapter 556, as amended shall not apply to the sale of the materials or energy.

Subd. 3a. **Service areas.** Metropolitan counties have the authority provided in section 400.08.

Subd. 4. **County contracts.** Each metropolitan county may contract for the acquisition or use of existing public or private solid waste facilities or any facilities deemed necessary or useful for resource recovery from solid waste and may contract with any person for the operation or maintenance, or both, of any solid waste facility owned by the county. The contract shall provide for the operation or maintenance, or both, of the facility in accordance with any regulations, criteria, and standards of the agency, the Metropolitan Council and the county relating thereto. Any contract for the operation or maintenance of a solid waste facility may provide for the sale of solid waste, materials, electric energy, steam or other product to the operator or for a fee payable to the operator, which may be a fixed fee, or a fee based on tonnage or a percentage of income or other measure, or any combination thereof. A metropolitan county may warrant to the operator of a solid waste facility or contract purchaser of any solid waste, materials, electric energy, steam or other product the quality, composition and available quantity of the solid waste, materials, electric energy, steam or other product to be sold or delivered. A metropolitan county may enter into an agreement with any local government unit or the University of Minnesota for the purpose of compensating for the local risks, costs, or other effects of a waste processing facility.

Subd. 4a. **Ordinances; general conditions; restrictions; application.** Ordinances of counties and local government units related to or affecting waste management shall embody plans, policies, rules, standards and requirements adopted by any state agency authorized to manage or plan for or regulate the management of waste and the waste management plans adopted under

section 473.149 and shall be consistent with approved county master plans. Except as provided in this subdivision, a county may establish and operate or contract for the establishment or operation of a solid waste disposal facility without complying with local ordinances if the commissioner certifies need under section 473.823, subdivision 6. With the approval of the commissioner, local government units may impose and enforce reasonable conditions respecting the construction, operation, inspection, monitoring, and maintenance of the disposal facilities. No local government unit shall prevent the establishment or operation of any solid waste facility in accordance with the commissioner's decision under section 473.823, subdivision 5, except that, with the approval of the commissioner, the local government unit may impose reasonable conditions respecting the construction, inspection, monitoring, and maintenance of a facility.

Subd. 4b. **Contracts; negotiation.** Notwithstanding any other law, a metropolitan county may contract for the acquisition, construction, improvement, maintenance or operation of solid waste facilities or property or property rights for solid waste facilities by any means available and in the manner determined by the county board, with or without advertisement for bids. A metropolitan county may select and employ a construction manager for construction and acquisition of solid waste facilities or property or property rights for solid waste facilities and negotiate and enter into a construction management agreement, which may but need not include a guaranteed maximum price. A construction manager shall give a bond to the county in accordance with section 574.26 if a construction management agreement provides for a guaranteed maximum price, provided that the amount of any bond furnished by any contractor or subcontractor for performance of and payment of labor and materials under a contract or subcontract for solid waste facilities or property or property rights for solid waste facilities included in the guaranteed maximum price may be substituted to the extent of the bond amount for the bond of the construction manager. A construction management agreement for acquisition and construction of solid waste facilities or property or property rights for solid waste facilities may be combined with a contract for maintenance or operation, or both, of the facilities and negotiated with the same person.

Subd. 5. **Ordinances; solid waste collection and transportation.** (a) Each metropolitan county may adopt ordinances governing the collection of solid waste. A county may adopt, but may not be required to adopt, an ordinance that requires the separation from mixed municipal waste, by generators before collection, of materials that can readily be separated for use or reuse as substitutes for raw materials or for transformation into a usable soil amendment.

(b) Each local unit of government within the metropolitan area shall adopt an ordinance governing the collection of solid waste within its boundaries. If the county within which it is located has adopted a collection ordinance, the local unit shall adopt either the county ordinance by reference or a more strict ordinance. If the county within which it is located has adopted a separation ordinance, the ordinance applies in all local units within the county that have failed to meet the local abatement performance standards, as stated in the most recent annual county report.

(c) Ordinances of counties and local government units may establish reasonable conditions respecting but shall not prevent the transportation of solid waste by a licensed collector through and between counties and local units, except as required for the enforcement of any designation of a facility by a county under chapter 115A or for enforcement of the prohibition on disposal of unprocessed mixed municipal solid waste under sections 473.848 and 473.849.

(d) A licensed collector or a metropolitan county or local government unit may request review by the commissioner of an ordinance adopted under this subdivision. The commissioner shall approve or disapprove the ordinance within 60 days of the submission of a request for review. The ordinance shall remain in effect unless it is disapproved.

(e) Ordinances of counties and local units of government:

(1) shall provide for the enforcement of any designation of facilities by the counties under chapter 115A;

(2) may require waste collectors and transporters to deliver unprocessed mixed municipal solid waste generated in the county to processing facilities; and

(3) may prohibit waste collectors and transporters from delivering unprocessed mixed municipal solid waste generated in the county to disposal facilities for final disposal.

(f) Nothing in this subdivision limits the authority of the local government unit to regulate and license collectors of solid waste or to require review or approval by the commissioner for ordinances regulating collection.

Subd. 5a. **Ordinances; solid waste facilities.** Each metropolitan county shall by ordinance establish and from time to time revise rules, regulations, and standards for solid waste facilities within the county, relating to location, sanitary operation, periodic inspection and monitoring, maintenance, termination and abandonment, and other pertinent matters. The county ordinance may require facilities accepting mixed municipal solid waste for disposal to install scales. The county ordinance may prohibit disposal facilities from accepting unprocessed mixed municipal solid waste for final disposal. The county ordinance shall require permits or licenses for solid waste facilities and shall require that such facilities be registered with a county office.

Subd. 5b. **Ordinances; hazardous waste management.** (a) Each metropolitan county shall by ordinance establish and revise rules, regulations, and standards relating to (1) the identification of hazardous waste, (2) the labeling and classification of hazardous waste, (3) the collection, storage, transportation, processing, and disposal of hazardous waste, and (4) other matters necessary for the public health, welfare and safety. The county shall require permits or licenses for the generation, collection, processing, and disposal of hazardous waste and shall require registration with a county office. County hazardous waste ordinances may not be inconsistent with, and must be at least as stringent as, the agency hazardous waste rules. Counties shall submit adopted ordinances to the agency for review. Counties may adopt ordinances for the issuance of permits or licenses for generators, collectors, or processors of hazardous waste that are more stringent than agency rules if the ordinances do not present an obstacle or impediment to implementation of the agency rules. In the event that agency rules are modified, each county shall modify its ordinances accordingly and shall submit the modification to the agency for review within 120 days. Issuing, denying, suspending, modifying, imposing conditions upon, or revoking hazardous waste permits or licenses, and county hazardous waste regulations and ordinances, shall be subject to review, denial, suspension, modification, and reversal by the agency. The agency shall after written notification have 15 days in the case of hazardous waste permits and licenses and 30 days in the case of hazardous waste ordinances to review, suspend, modify, or reverse the action of the county. After this period, the action of the county board shall be final subject to appeal to the district court in the manner provided in chapter 14.

(b) A metropolitan county may not impose a volume-based fee under this subdivision on material that is reused at the facility where the material is generated in a manner that the facility owner or operator can demonstrate does not increase the toxicity of, or the level of hazardous substances or pollutants or contaminants in, products that leave the facility. A metropolitan county may impose a flat annual fee on a facility that generates the type of material described in the preceding sentence, provided that the fee reflects the reasonable and necessary costs of inspections of the facility. A county imposing a fee under this paragraph must comply with section 373.41.

Subd. 5c. **County enforcement.** Each metropolitan county shall be responsible for insuring that waste facilities, solid waste collection operations licensed or regulated by the county and hazardous waste generation and collection operations are brought into conformance with, or terminated and abandoned in accordance with, applicable county ordinances; rules and requirements of the state; and the policy plan. Counties may provide by ordinance that operators or owners or both of such facilities or operations shall be responsible to the county for satisfactorily performing the procedures required. If operators or owners or both fail to perform, the county may recover the costs incurred by the county in completing the procedures in a civil action in any court of competent jurisdiction or, in the discretion of the board, the costs may be certified to the county auditor as a special tax against the land. The ordinances may be enforced by action in district court or administrative penalty order authorized under section 116.072. The county may prescribe a criminal penalty for the violation of any ordinance enacted under this section not exceeding the maximum which may be specified for a misdemeanor.

Subd. 6. **Grants and loans to counties.** Each metropolitan county may accept gifts, may apply for and accept grants or loans of money or other property from the United States, the state, the Metropolitan Council, any local government unit, or any person, to accomplish the purposes specified in sections 473.149, 473.151, 473.801 to 473.823, and 473.834, may enter into any agreement required in connection therewith, and may hold, use, and dispose of the money or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.

Subd. 7. **Joint action.** Any local governmental unit or metropolitan agency may act together with any county, city, or town within or without the metropolitan area, or with the Pollution Control Agency under the provisions of section 471.59 or any other appropriate law providing for joint or cooperative action between government units, to accomplish any purpose specified in sections 473.149, 473.151, 473.801 to 473.823, 473.834, 116.05 and 115A.06.

Any agreement regarding data processing services relating to the generation, management, identification, labeling, classification, storage, collection, treatment, transportation, processing or disposal of waste and entered into pursuant to section 471.59, or other law authorizing joint or cooperative action may provide that any party to the agreement may agree to defend, indemnify and hold harmless any other party to the agreement providing the services, including its employees, officers or volunteers, against any judgments, expenses, reasonable attorney's fees and amounts paid in settlement actually and reasonably incurred in connection with any third-party claim or demand arising out of an alleged act or omission by a party to the agreement, its employees, officers or volunteers occurring in connection with any exchange, retention, storage or processing of data, information or records required by the agreement. Any liability incurred by a party to an agreement under this subdivision shall be subject to the limitations set forth in section 3.736 or 466.04.

Subd. 8. **County sale or lease.** Each metropolitan county may sell or lease any facilities or property or property rights previously used or acquired to accomplish the purposes specified by sections 473.149, 473.151, 473.801 to 473.823, and 473.834. Such property may be sold in the manner provided by section 469.065, or may be sold in the manner and on the terms and conditions determined by the county board. Each metropolitan county may convey to or permit the use of any such property by a local government unit, with or without compensation, without submitting the matter to the voters of the county. No real property or property rights acquired pursuant to this section may be disposed of in any manner unless and until the county shall have submitted to the agency for review and comment the terms on and the use for which the property will be disposed of. The agency shall review and comment on the proposed disposition within 60 days after each has received the data relating thereto from the county.

Subd. 9. **Solid and hazardous waste fund.** All money received by any metropolitan county from any source specified in sections 473.149, 473.151, 473.801 to 473.823, and 473.834 shall be paid into the county treasury, placed in a special fund designated as the county solid and hazardous waste fund, and used only for the purposes authorized in those sections, as appropriated by the county board, subject to any lawful restrictions, conditions, or pledges applicable thereto.

Subd. 10. **County designation of resource recovery facilities.** A qualifying county may be authorized to designate a resource recovery facility under sections 115A.80 to 115A.89.

Subd. 11. [Repealed, 1986 c 425 s 46]

History: *1975 c 13 s 141; 1976 c 179 s 15; 1980 c 564 art 10 s 9; 1981 c 352 s 42-48; 1982 c 424 s 130; 1982 c 569 s 29,30; 1983 c 373 s 60; 1984 c 644 s 66; 1985 c 248 s 70; 1985 c 274 s 25-27; 1986 c 425 s 40,41; 1986 c 460 s 54; 1987 c 291 s 232; 1987 c 384 art 2 s 103-106; 1989 c 325 s 55; 1989 c 335 art 1 s 269; 1989 c 355 s 14; 1991 c 337 s 68-76; 1991 c 342 s 15; 1992 c 593 art 1 s 40; 1993 c 13 art 2 s 12-15; 1993 c 279 s 2; 1994 c 585 s 42,43; 1995 c 186 s 90,91; 1995 c 247 art 1 s 55; art 2 s 36-40; 1996 c 399 art 2 s 12; 1Sp2005 c 1 art 2 s 161*

473.812 RECORDS; INSPECTION.

For the purpose of enforcing section 473.811 or ordinances adopted under that section, a county has the responsibilities and authorities for record inspection under section 115A.882, regardless of whether the county has adopted a designation ordinance under sections 115A.80 to 115A.893.

History: *1994 c 585 s 44*

473.813 CITIES, COUNTIES, TOWNS; SOLID WASTE CONTRACTS.

Subdivision 1. **For up to 30 years.** Notwithstanding any contrary provision of law or charter, and in addition to the powers or authority granted by any other law or charter, a city, county, or town in the metropolitan area may directly negotiate and enter into contracts, for a term not to exceed 30 years, for the delivery of solid waste to a waste facility and the processing of solid waste. Contracts made by direct negotiations shall be approved by resolution adopted by the governing body of the city, county, or town.

Subd. 2. **Review by commissioner.** Before a city, county, or town enters into any contract pursuant to subdivision 1 for a period of more than five years, the city, county, or town shall submit the proposed contract and a description of the proposed activities under the contract to the commissioner for review and approval. The commissioner shall approve the proposed contract if the commissioner determines that the contract is consistent with the metropolitan policy plan, permits issued under section 473.823, and county reports or approved master plans. The commissioner may consolidate the review of contracts submitted under this section with the review of related permit applications submitted under section 473.823 and for this purpose may delay the review required by this section.

History: *1976 c 179 s 16; 1980 c 564 art 10 s 10; 1995 c 247 art 2 s 41; 1Sp2005 c 1 art 2 s 161*

473.815 [Repealed, 1976 c 179 s 20] **473.821** [Repealed, 1976 c 179 s 20]

473.823 RULES AND PERMITS.

Subdivision 1. [Repealed, 1980 c 564 art 13 s 2]

Subd. 2. [Repealed, 1980 c 564 art 13 s 2]

Subd. 3. **Solid waste facilities; review procedures.** (a) The agency shall request applicants for solid waste facility permits to submit all information deemed relevant by the commissioner for review, including without limitation information relating to the geographic areas and population served, the need, the effect on existing facilities and services, the effectiveness of proposed buffer areas to ensure, at a minimum, protection of surrounding land uses from adverse or incompatible impacts due to landfill operation and related activities, the anticipated public cost and benefit, the anticipated rates and charges, the manner of financing, the effect on metropolitan plans and development programs, the supply of waste, anticipated markets for any product, and alternative means of disposal or energy production.

(b) A permit may not be issued for the operation of a solid waste facility in the metropolitan area which is not in accordance with the metropolitan policy plan. The commissioner shall determine whether a permit is in accordance with the policy plan. In making this determination, the commissioner shall consider the areawide need and benefit of the applicant facility and the effectiveness of proposed buffer areas to adequately protect surrounding land uses in accordance with the policy plan, and may consider, without limitation, the effect of the applicant facility on existing and planned solid waste facilities.

(c) If the commissioner determines that a permit is in accordance with the policy plan, the commissioner shall approve the permit. If the commissioner determines that a permit is not in accordance with the policy plan, the commissioner shall disapprove the permit. Approval of permits may be subject to conditions the commissioner determines are necessary to satisfy criteria and standards in the policy plan, including conditions respecting the type, character, and quantities of waste to be processed at a solid waste facility used primarily for resource recovery and the geographic territory from which a resource recovery facility or transfer station serving such a facility may draw its waste.

(d) A permit may not be issued in the metropolitan area for a solid waste facility used primarily for resource recovery or a transfer station serving the facility, if the facility or station is owned or operated by a public agency or if the acquisition or betterment of the facility or station is secured by public funds or obligations issued by a public agency, unless the commissioner finds and determines that adequate markets exist for the products recovered and that establishment of the facility is consistent with the criteria and standards in the metropolitan and county plans respecting the protection of existing resource recovery facilities and transfer stations serving such facilities.

Subd. 4. [Repealed, 1980 c 564 art 13 s 2]

Subd. 5. **Review of waste processing facilities.** (a) A metropolitan county may establish a waste processing facility within the county without complying with local ordinances, if the action is approved by the commissioner in accordance with the review process established by this subdivision. A county requesting review shall show that:

(1) the required permits for the proposed facility have been or will be issued by the agency;

(2) the facility is consistent with the metropolitan policy plan and the approved county master plan; and

(3) a local government unit has refused to approve the establishment or operation of the facility, has failed to deny or approve establishment or operation of the facility within the time period required in section 115A.31, or has approved the application or request with conditions that are unreasonable or impossible for the

county to meet.

(b) The commissioner shall commence the review within 90 days of the submission of a request determined by the commissioner to satisfy the requirements for review under this subdivision. Upon commencing the review the commissioner shall establish a scope and procedure, including criteria, for the review and final decision on the proposed facility. The procedure shall require the commissioner to make a final decision on the proposed facility within 120 days following the commencement of review. For facilities other than waste incineration and mixed municipal solid waste composting facilities, the commissioner shall commence the review within 45 days of submission of the request and shall make a final decision within 75 days following commencement of review.

(c) The commissioner shall conduct at least one public hearing in the city or town within which the proposed facility would be located. Notice of the hearing shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The notice shall describe the proposed facility, its location, the proposed permits, and the scope, procedure, and criteria for review. The notice shall identify a location or locations within the local government unit and county where the permit applications and the scope, procedure, and criteria for review are available for review and where copies may be obtained.

(d) In the review and final decision on the proposed facility, the commissioner shall consider at least the following matters:

(1) the risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, and the degree to which the risk or effect may be alleviated;

(2) the consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(3) the adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate such adverse effects by additional stipulations, conditions, and requirements respecting the design and operation of the proposed facility at the proposed site;

(4) the need for the proposed facility and the availability of alternative sites;

(5) the consistency of the proposed facility with the county master plan adopted pursuant to section 473.803 and the policy plan adopted pursuant to section 473.149; and

(6) transportation facilities and distance to points of waste generation.

(e) The commissioner may either approve or disapprove the proposed facility at the proposed site. The approval shall embody all terms, conditions, and requirements of the permitting state agencies, provided that the commissioner may require more stringent permit terms, conditions, and requirements respecting the design, construction, operation, inspection, monitoring, and maintenance of the proposed facility at the proposed site.

Subd. 6. **Certification of need.** No new mixed municipal solid waste disposal facility or capacity shall be permitted in the metropolitan area without a certificate of need issued by the commissioner indicating a determination that the additional disposal capacity planned for the facility is needed in the metropolitan area. The commissioner shall amend the policy plan, adopted pursuant to section

473.149, to include standards and procedures for certifying need that conform to the certification standards stated in this subdivision. The standards and procedures shall be based on the metropolitan disposal abatement plan adopted pursuant to section 473.149, subdivision 2d, the solid waste disposal facilities development schedule adopted under section 473.149, subdivision 2e, and the provisions of any master plans of counties that have been approved under section 473.803, subdivision 2, and that are consistent with the abatement plan and development schedule. The commissioner shall certify need only to the extent that there are no feasible and prudent alternatives to the disposal facility, including waste reduction, source separation and resource recovery which would minimize adverse impact upon natural resources. Alternatives that are speculative or conjectural shall not be deemed to be feasible and prudent. Economic considerations alone shall not justify the certification of need or the rejection of alternatives.

History: *1975 c 13 s 144; 1976 c 179 s 17; 1976 c 239 s 117; 1980 c 564 art 10 s 11-13; 1982 c 569 s 31; 1983 c 373 s 61; 1984 c 644 s 67; 1985 c 274 s 28; 1986 c 444; 1986 c 460 s 55; 1989 c 325 s 56; 1991 c 337 s 77,78; 1994 c 628 art 3 s 204; 1995 c 247 art 2 s 42-44; 1Sp2005 c 1 art 2 s 161*

473.827 Subdivision 1. [Repealed, 1984 c 644 s 82]

Subd. 2. [Repealed, 1982 c 569 s 39; 1984 c 644 s 82] Subd. 3. [Repealed, 1982 c 569 s 39; 1984 c 644 s 82] Subd. 4. [Repealed, 1982 c 569 s 39; 1984 c 644 s 82] Subd. 5. [Repealed, 1982 c 569 s 39; 1984 c 644 s 82] Subd. 6. [Repealed, 1982 c 569 s 39; 1984 c 644 s 82]

Subd. 7. [Repealed, 1984 c 644 s 82]

473.831 [Repealed, 1991 c 337 s 90] **473.833** [Repealed, 1991 c 337 s 90]

473.834 DEBT SERVICE; SOLID WASTE BONDS.

Subdivision 1. **Certain cities and towns; exemption.** Each city or town in which a solid waste disposal facility is operating after January 1, 1980, shall be permanently exempt from the payments required by this section, if the facility is a commercial facility disposing of mixed municipal solid waste under an agency permit.

Subd. 2. **Allocation of debt service.** The annual debt service on the council's solid waste bonds, issued under Minnesota Statutes 1990, section 473.831, shall be annually apportioned and certified by the council to each county in the metropolitan area, in the proportion that the net tax capacity of all taxable property within each county bears to the net tax capacity of the taxable property in all the counties, except that the apportionment to each county shall first be adjusted to reflect exemptions from payment required by subdivision 1.

Subd. 3. [Repealed, 1987 c 348 s 52] Subd. 4. [Repealed, 1981 c 352 s 53] Subd. 5. [Repealed, 1981 c 352 s 53]

History: *1980 c 564 art 10 s 17; 1981 c 352 s 51; 1987 c 348 s 42; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1995 c 186 s 92*

473.840 [Repealed, 1991 c 337 s 90]

LANDFILL ABATEMENT

473.841 CITATION.

Sections 473.842 to 473.847 may be cited as the "Metropolitan Landfill Abatement Act."

History: *1984 c 644 s 71*

473.842 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 473.842 to 473.847, the terms defined in this section have the meanings given them.

Subd. 1a. **Closure.** "Closure" means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed solid waste disposal facility including application of final cover; grading and seeding of final cover; installation of an adequate monitoring system, if necessary; and construction of ground and surface water diversion structures.

Subd. 2. **Market development.** "Market development" means the location and facilitation of markets for materials, substances, energy, or other products contained within or derived from waste.

Subd. 3. **Mixed municipal solid waste disposal facility.** "Mixed municipal solid waste disposal facility" means a waste facility used for the disposal of mixed municipal solid waste.

Subd. 4. **Operator.** "Operator" means:

(1) the permittee of a mixed municipal solid waste disposal facility that has an agency permit; or

(2) the person in control of a mixed municipal solid waste disposal facility that does not have an agency permit.

Subd. 4a. **Postclosure, postclosure care.** "Postclosure" and "postclosure care" mean actions taken for the care, maintenance, and monitoring of a solid waste disposal facility after closure that will prevent, mitigate, or minimize the threat to public health and environment posed by the closed facility.

Subd. 5. **Response.** "Response" has the meaning given it in section 115B.02, subdivision 18. Subd. 6. **Solid waste disposal facility.** "Solid waste disposal facility" means a waste facility which is used for the disposal of solid waste.

History: *1984 c 644 s 72; 1985 c 274 s 31,32; 1987 c 348 s 43*

473.843 METROPOLITAN SOLID WASTE LANDFILL FEE.

Subdivision 1. **Amount of fee; application.** The operator of a mixed municipal solid waste disposal facility in the metropolitan area shall pay a fee on solid waste accepted and disposed at the facility as follows:

(a) A facility that weighs the waste that it accepts must pay a fee of $6.66 per ton of waste accepted at the entrance of the facility.

(b) A facility that does not weigh the waste but that measures the volume of the waste that it accepts must pay a fee of $2 per cubic yard of waste accepted at the entrance of the facility. This fee and the tipping fee must be calculated on the same basis.

(c) Waste residue, from recycling facilities at which recyclable materials are separated or processed for the purposes of recycling, or from energy and resource recovery facilities at which solid waste is processed for the purpose of extracting, reducing, converting to energy, or otherwise separating and preparing solid waste

for reuse, is exempt from the fee imposed by this subdivision if there is at least an 85 percent weight reduction in the solid waste processed. To qualify for exemption under this clause, waste residue must be brought to a disposal facility separately. The commissioner of revenue, with the advice and assistance of the agency, shall prescribe procedures for determining the amount of waste residue qualifying for exemption.

Subd. 2. **Disposition of proceeds.** The proceeds of the fees imposed under this section, including interest and penalties, must be deposited as follows:

(1) three-fourths of the proceeds must be deposited in the environmental fund for metropolitan landfill abatement for the purposes described in section 473.844; and

(2) one-fourth of the proceeds must be deposited in the metropolitan landfill contingency action trust account in the remediation fund established in sections 116.155 and 473.845.

Subd. 3. **Payment of fee.** On or before the 20th day of each month each operator shall pay the fee due under this section for the previous month, using a form provided by the commissioner of revenue.

An operator having a fee of $10,000 or more during a fiscal year ending June 30 must pay all fees in the subsequent calendar year by electronic means.

Subd. 4. **Exchange of information.** Notwithstanding the provisions of section 116.075, the agency may provide the commissioner of revenue with the information necessary for the enforcement of this section. Information disclosed in a return filed under this section is public information. Information exchanged between the commissioner and the agency is public unless the information is of the type determined to be for the confidential use of the agency under section 116.075 or is trade secret information classified under section 13.37. Information obtained in the course of an audit by the Department of Revenue is private or nonpublic data to the extent that it would not be directly divulged in a return.

Subd. 5. **Penalties; enforcement.** The audit, penalty, and enforcement provisions applicable to corporate franchise taxes imposed under chapter 290 apply to the fees imposed under this section. The commissioner of revenue shall administer the provisions.

Subd. 6. **Rules.** The commissioner of revenue may adopt rules necessary to implement

this section. Subd. 7. [Repealed, 1985 c 274 s 47]

History: *1984 c 644 s 73; 1988 c 719 art 19 s 24; 1989 c 277 art 1 s 31; 1989 c 325 s 60,61; 1989 c 335 art 4 s 94; 1991 c 291 art 17 s 12; 1993 c 375 art 10 s 50; 1994 c 585 s 45; 1995 c 247 art 1 s 56; 1Sp2001 c 5 art 17 s 21; 2003 c 128 art 2 s 46; 2005 c 151 art 8 s 19; 1Sp2005 c 1 art 2 s 161; 2009 c 88 art 9 s 16*

473.844 METROPOLITAN LANDFILL ABATEMENT FUND.

Subdivision 1. **Purposes.** The money in the environmental fund for landfill abatement must be used to reduce to the greatest extent feasible and prudent the need for and practice of land disposal of mixed municipal solid waste in the metropolitan area. This money consists of revenue deposited in the environmental fund under section 473.843, subdivision 2, clause (1), and interest earned on investment of this money. All repayments to loans made under this section must be credited to the environmental fund. The landfill abatement money in the environmental fund may be spent only for purposes of metropolitan landfill abatement as provided in subdivision 1a and only upon appropriation by the legislature.

Subd. 1a. **Use of funds.** (a) The money in the account may be spent only for the following purposes:

(1) assistance to any person for resource recovery projects funded under subdivision 4 or projects to develop and coordinate markets for reusable or recyclable waste materials, including related public education, planning, and technical assistance;

(2) grants to counties under section 473.8441;

(3) program administration;

(4) public education on solid waste reduction and recycling;

(5) solid waste research; and

(6) grants to multicounty groups for regionwide planning for solid waste management system operations and use of management capacity.

(b) The commissioner shall allocate at least 50 percent of the annual revenue received by the account for grants to counties under section 473.8441.

Subd. 2. [Repealed, 1987 c 348 s 52] Subd. 3. [Repealed, 1991 c 337 s 90]

Subd. 4. **Resource recovery grants and loans.** The grant and loan program under this subdivision is administered by the commissioner. Grants and loans may be made to any person for resource recovery projects. The grants and loans may include the cost of planning, acquisition of land and equipment, and capital improvements. Grants and loans for planning may not exceed 50 percent of the planning costs. Grants and loans for acquisition of land and equipment and for capital improvements may not exceed 50 percent of the cost of the project. Grants and loans may be made for public education on the need for the resource recovery projects. A grant or loan for land, equipment, or capital improvements may not be made until the director has determined the total estimated capital cost of the project and ascertained that full financing of the project is assured. Grants and loans made to cities, counties, or solid waste management districts must be for projects that are in conformance with approved master plans. A grant or loan to a city or town must be reviewed and approved by the county for conformance with the county master plan. The commissioner shall require, where practical, cooperative purchase between cities, counties, and districts of capital equipment.

Subd. 5. [Repealed, 1987 c 348 s 52]

History: *1984 c 644 s 74; 1985 c 274 s 33,34; 1987 c 348 s 44,45; 1989 c 325 s 62; 1989 c 335 art 4 s 95,106; 1991 c 199 art 1 s 76; 1992 c 593 art 1 s 41; 1994 c 585 s 46; 1995 c 247 art 2 s 45,46; 2003 c 128 art 2 s 47; 1Sp2005 c 1 art 2 s 161*

473.8441 LOCAL RECYCLING DEVELOPMENT PROGRAM.

Subdivision 1. **Definitions.** "Number of households" has the meaning given in section 477A.011, subdivision 3a.

Subd. 2. **Program.** The commissioner shall encourage the development of permanent local recycling programs throughout the metropolitan area. The commissioner shall make grants to qualifying metropolitan counties as provided in this section.

Subd. 3. **Grants; eligible costs.** Grants may be used to pay for planning, developing, and operating yard waste composting and recycling programs.

Subd. 4. **Grant conditions.** The commissioner shall administer grants so that the following conditions are met:

(a) A county must apply for a grant in the manner determined by the commissioner. The application must describe the activities for which the grant will be used.

(b) The activities funded must be consistent with the metropolitan policy plan and the county master plan.

(c) A grant must be matched by equal county expenditures for the activities for which the grant is made.

(d) All grant funds must be used for new activities or to enhance or increase the effectiveness of existing activities in the county.

(e) Counties shall provide support to maintain effective municipal recycling where it is already established.

Subd. 5. **Grant allocation procedure.** (a) The commissioner shall distribute the funds annually so that each qualifying county receives an equal share of 50 percent of the allocation to the program described in this section, plus a proportionate share of the remaining funds available for the program. A county's proportionate share is an amount that has the same proportion to the total remaining funds as the number of households in the county has to the total number of households in all metropolitan counties.

(b) To qualify for distribution of funds, a county, by April 1 of each year, must submit to the commissioner for approval a report on expenditures and activities under the program during the preceding fiscal year and any proposed changes in its recycling implementation strategy or performance funding system. The report shall be included in the county report required by section 473.803, subdivision 3.

History: *1987 c 348 s 46; 1989 c 325 s 63; 1993 c 249 s 41; 1995 c 247 art 2 s 47-49; 1Sp2005 c 1 art 2 s 161*

473.845 METROPOLITAN LANDFILL CONTINGENCY ACTION ACCOUNT.

Subdivision 1. **Establishment.** The metropolitan landfill contingency action trust account is an expendable trust account in the remediation fund. The account consists of revenue deposited in the account under section 473.843, subdivision 2, clause (2); amounts recovered under subdivision 7; and interest earned on investment of money in the account.

Subd. 2. [Repealed, 1999 c 231 s 207]

Subd. 3. **Contingency actions and reimbursement.** Money in the account is appropriated to the agency for expenditure for any of the following:

(1) to take reasonable and necessary actions for closure and postclosure care of a mixed municipal solid waste disposal facility in the metropolitan area for a 30-year period after closure, if the agency determines that the operator or owner will not take the necessary actions requested by the agency for closure and postclosure in the manner and within the time requested;

(2) to take reasonable and necessary response actions and postclosure care actions at a mixed municipal solid waste disposal facility in the metropolitan area that has been closed for 30 years in compliance with the closure and postclosure rules of the agency;

(3) to reimburse a local government unit for costs incurred over $400,000 under a work plan approved by the commissioner of the agency to remediate methane at a closed disposal facility owned by the local government unit; or

(4) reasonable and necessary response costs at an unpermitted facility for mixed municipal solid waste disposal in the metropolitan area that was permitted by the agency for disposal of sludge ash from a wastewater treatment facility.

Subd. 4. [Repealed, 2003 c 128 art 2 s 56]

Subd. 5. **Duty to provide information.** The operator or owner of a mixed municipal solid waste disposal facility or a solid waste disposal facility shall provide the necessary information to the agency required by sections 473.842 to 473.847 or by agency rules.

Subd. 6. **Access to information and property.** The agency or any member, employee, or agent thereof authorized by the agency, upon presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda, or data of any person who has a duty to provide information to the agency under sections 473.842 to 473.847; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized by this section including obtaining information from any person who has a duty to provide the information, conducting surveys or investigations, and taking response action.

Subd. 7. **Recovery of expenses.** When the agency incurs expenses for response actions at a facility, the agency is subrogated to any right of action which the operator or owner of the facility may have against any other person for the recovery of the expenses. The attorney general may bring an action to recover amounts spent by the agency under this section from persons who may be liable for them. Amounts recovered, including money paid under any agreement, stipulation, or settlement must be deposited in the metropolitan landfill contingency action account in the remediation fund created under section 116.155.

Subd. 8. **Civil penalties.** The civil penalties of sections 115.071 and 116.072 apply to any person in violation of this section.

History: *1984 c 644 s 75; 1985 c 198 s 1; 1988 c 685 s 34; 1989 c 209 art 1 s 38; 1989 c 325 s 64,65; 1989 c 335 art 4 s 96; 1990 c 604 art 10 s 20; 1991 c 182 s 1; 1991 c 199 art 1 s 77; 1991 c 337 s 79,80; 1991 c 347 art 1 s 18; 1992 c 464 art 1 s 52; 1994 c 585 s 47; 1995 c 220 s 124; 1995 c 247 art 2 s 50; 1996 c 470 s 27; 1Sp2001 c 2 s 147; 2003 c 128 art 2 s 48-51; 2005 c 10 art 1 s 72*

473.846 REPORTS TO LEGISLATURE.

The agency shall submit to the senate and house of representatives committees having jurisdiction over environment and natural resources separate reports describing the activities for which money for landfill abatement has been spent under sections 473.844 and 473.845. The report for section 473.844 expenditures shall be included in the report required by section 115A.411, and shall include recommendations on the future management and use of the metropolitan landfill abatement account. By December 31 of each year, the commissioner shall submit the report for section 473.845 on contingency action trust fund activities.

History: *1984 c 644 s 76; 1987 c 348 s 47; 1993 c 4 s 33; 1993 c 249 s 42; 1994 c 585 s 48; 1995 c 247 art 1 s 57; 1996 c 470 s 27; 2003 c 128 art 2 s 52; 1Sp2005 c 1 art 2 s 161; 2012 c 272 s 83*

473.847 OPERATOR OR OWNER LIABILITY FOR RESPONSE EXPENSES.

The operator or owner of a mixed municipal solid waste disposal facility in the metropolitan area is not liable under any other law for response costs incurred by the agency at that facility under section 473.845, if the facility has been closed for 20 years in compliance with the closure and postclosure rules of the agency. Any provision of this section which relieves the operator or owner of a facility from liability for the payment of the agency's response costs must not be construed to affect the liability of any other person who may be liable for those costs.

History: *1984 c 644 s 77*

473.848 RESTRICTION ON DISPOSAL.

Subdivision 1. **Restriction.** (a) For the purposes of implementing the waste management policies in section 115A.02 and metropolitan area goals related to landfill abatement established under this chapter, a person may not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at a waste disposal facility unless the waste disposal facility meets the standards in section 473.849 and:

(1) the waste has been certified as unprocessible by a county under subdivision 2; or

(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility;

(ii) no other resource recovery facility serving the metropolitan area is capable of processing the waste; and

(iii) the waste has been certified as unprocessible by the operator of the resource recovery facility under subdivision 3.

(b) For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not capable of being processed by resource recovery as determined by the council.

Subd. 2. **County certification; office approval.** (a) By April 1 of each year, each county shall submit an annual certification report to the office detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the year preceding the report;

(2) the reasons the waste was not processed;

(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and

(4) any progress made by the county in reducing the amount of unprocessed waste.

The report shall be included in the county report required by section 473.803, subdivision 3.

(b) The Pollution Control Agency shall approve a county's certification report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the Pollution Control Agency does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the Pollution Control Agency does not approve two or more consecutive reports from any one county, the Pollution Control Agency shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the Pollution Control Agency.

Subd. 3. **Facility certification.** The operator of each resource recovery facility that receives waste from counties in the metropolitan area shall certify as unprocessible each load of mixed municipal solid waste it does not process. Certification must be made to each county that sends its waste to the facility at intervals specified by the county. Certification must include at least the

number and size of loads certified as unprocessible and the reasons the waste is unprocessible. Loads certified as unprocessible must include the loads that would otherwise have been processed but were not processed because the facility was not in operation, but nothing in this section relieves the operator of its contractual obligations to process mixed municipal solid waste.

Subd. 4. **Pollution Control Agency report.** The Pollution Control Agency shall include, as part of its report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance required under section 473.149, an accounting of the quantity of unprocessed waste transferred to disposal facilities, the reasons the waste was not processed, a strategy for reducing the amount of unprocessed waste, and progress made by counties to reduce the amount of unprocessed waste. The Pollution Control Agency may adopt standards for determining when waste is unprocessible and procedures for expediting certification and reporting of unprocessed waste.

Subd. 5. **Definition.** For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

History: *1985 c 274 s 35; 1989 c 325 s 66; 1991 c 337 s 81,82; 1993 c 249 s 43,44; 1994 c 585 s 49,50; 1995 c 247 art 2 s 51,52; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161*

473.849 PROHIBITION; SOLID WASTE DISPOSAL.

No person may place, or transport for placement, solid waste that is generated in the metropolitan area in a portion of a disposal facility that does not comply with the minimum requirements for design, construction, and operation of a new disposal facility for the type of solid waste being disposed. Each metropolitan county shall, and each county in which is located a disposal facility may, enforce this prohibition and may impose penalties and recover attorney fees and court costs to the same extent as for enforcement of a designation ordinance under section 115A.86, subdivision 6. The commissioner of the Pollution Control Agency may enforce this section under section 115.071 or 116.072.

History: *1991 c 337 s 83; 1992 c 593 art 1 s 42*

480.0515 PAPERS TO BE SUBMITTED ON RECYCLED PAPER.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section. (b) "Attorney" means an attorney at law admitted to practice law in this state.

(c) "Document" means a document that is required or permitted to be filed with a court concerning an action that is to be commenced or is pending before the court.

Subd. 2. **Requirement.** (a) Except as provided in subdivision 3, a document submitted by an attorney to a court of this state, and all papers appended to the document, must be submitted on paper containing not less than ten percent postconsumer material, as defined in section 115A.03, subdivision 24b.

(b) A court may not refuse a document solely because the document was not submitted on recycled paper.

Subd. 3. **Exceptions.** (a) Subdivision 1 does not apply to:

(1) a photograph;

(2) an original document that was prepared or printed before January 1, 1996;

(3) a document that was not created at the direction or under the control of the submitting attorney;

(4) a facsimile copy otherwise permitted to be filed with the court in lieu of the original document, provided that if the original is also required to be filed, it must be submitted in compliance with this section; or

(5) nonrecycled paper and preprinted forms acquired or printed before January 1, 1996. (b) This section does not apply if recycled paper is not readily available.

History: *1995 c 247 art 1 s 58*

609.671 ENVIRONMENT; CRIMINAL PENALTIES.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Agency" means the Pollution Control Agency.

(c) "Deliver" or "delivery" means the transfer of possession of hazardous waste, with or without consideration.

(d) "Dispose" or "disposal" has the meaning given it in section 115A.03, subdivision 9.

(e) "Hazardous air pollutant" means an air pollutant listed under United States Code, title 42, section 7412(b).

(f) "Hazardous waste" means any waste identified as hazardous under the authority of section 116.07, subdivision 4, except for those wastes exempted under Minnesota Rules, part 7045.0120, wastes generated under Minnesota Rules, part 7045.0213, and household appliances.

(g) "Permit" means a permit issued by the Pollution Control Agency under chapter 115 or 116 or the rules promulgated under those chapters including interim status for hazardous waste facilities.

(h) "Solid waste" has the meaning given in section 116.06, subdivision 22.

(i) "Toxic pollutant" means a toxic pollutant on the list established under United States Code, title 33, section 1317.

Subd. 2. **Definition of knowing.** (a) For purposes of this section, an act is committed knowingly if it is done voluntarily and is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the defendant. Whether an act was knowing may be inferred from the person's conduct, from the person's familiarity with the subject matter in question, or from all of the facts and circumstances connected with the case. Knowledge may also be established by evidence that the person took affirmative steps to shield the person from relevant information. Proof of knowledge does not require that a person knew a particular act or failure to act was a violation of law or that the person had specific knowledge of the regulatory limits or testing procedures involved in a case.

(b) Knowledge of a corporate official may be established under paragraph (a) or by proof that the person is a responsible corporate official. To prove that a person is a responsible corporate official, it must be shown that:

(1) the person is an official of the corporation, not merely an employee;

(2) the person has direct control of or supervisory responsibility for the activities related to the alleged violation, but not solely that the person held a certain job or position in a corporation; and

(3) the person had information regarding the offense for which the defendant is charged that would lead a reasonable and prudent person in the defendant's position to learn the actual facts.

(c) Knowledge of a corporation may be established by showing that an illegal act was performed by an agent acting on behalf of the corporation within the scope of employment and in furtherance of the corporation's business interest, unless a high managerial person with direct supervisory authority over the agent demonstrated due diligence to prevent the crime's commission.

Subd. 3. **Knowing endangerment.** (a) A person is guilty of a felony if the person:

(1) commits an act described in subdivision 4, 5, 8, paragraph (a), or 12; and

(2) at the time of the violation knowingly places another person in imminent danger of death, great bodily harm, or substantial bodily harm.

(b) A person convicted under this subdivision may be sentenced to imprisonment for not more than ten years, or to payment of a fine of not more than $100,000, or both, except that a defendant that is an organization may be sentenced to payment of a fine of not more than $1,000,000.

Subd. 4. **Hazardous waste; unlawful disposal or abandonment.** A person who knowingly disposes of or abandons hazardous waste or arranges for the disposal of hazardous waste at a location other than one authorized by the Pollution Control Agency or the United States Environmental Protection Agency, or in violation of any material term or condition of a hazardous waste facility permit, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $50,000, or both.

Subd. 5. **Hazardous waste; unlawful treatment, storage, transportation, or delivery.** (a) A person is guilty of a felony who knowingly does any of the following:

(1) delivers hazardous waste to any person other than a person who is authorized to receive the waste under rules adopted under section 116.07, subdivision 4, or under United States Code, title 42, sections 6921 to 6938;

(2) treats or stores hazardous waste without a permit if a permit is required, or in violation of a material term or condition of a permit held by the person, unless:

(i) the person notifies the agency prior to the time a permit would be required that the person will be treating or storing waste without a permit; or

(ii) for a violation of a material term or condition of a permit, the person immediately notifies the agency issuing the permit of the circumstances of the violation as soon as the person becomes aware of the violation;

(3) transports hazardous waste to any location other than a facility that is authorized to receive, treat, store, or dispose of the hazardous waste under rules adopted under section 116.07, subdivision 4, or under United States Code, title 42, sections 6921 to 6938;

(4) transports hazardous waste without a manifest as required by the rules under section 116.07, subdivision 4; or

(5) transports hazardous waste without a license required for the transportation of hazardous waste by chapter 221.

(b) A person convicted under this subdivision may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than $25,000, or both. A person convicted for a second or subsequent offense may be sentenced to imprisonment for not more than five years, or to payment of a fine of not more than $50,000, or both.

Subd. 6. **Negligent violation as gross misdemeanor.** A person who commits any of the acts set forth in subdivision 4, 5, or 12 as a result of the person's gross negligence is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than $15,000, or both.

Subd. 7. **Prosecution.** When two or more offenses in violation of this section are committed by the same person in two or more counties within a two-year period, the accused may be prosecuted in any county in which one of the offenses was committed.

Subd. 8. **Water pollution.** (a) A person is guilty of a felony who knowingly:

(1) causes the violation of an effluent standard or limitation for a toxic pollutant in a national pollutant discharge elimination system permit or state disposal system permit;

(2) introduces into a sewer system or into a publicly owned treatment works a hazardous substance that the person knew or reasonably should have known is likely to cause personal injury or property damage; or

(3) except in compliance with all applicable federal, state, and local requirements and permits, introduces into a sewer system or into a publicly owned treatment works a hazardous substance that causes the treatment works to violate an effluent limitation or condition of the treatment works' national pollutant discharge elimination system permit.

(b) For purposes of paragraph (a), "hazardous substance" means a substance on the list established under United States Code, title 33, section 1321(b).

(c) A person convicted under paragraph (a) may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than $50,000 per day of violation, or both.

(d) A person is guilty of a crime who knowingly:

(1) violates any effluent standard or limitation, or any water quality standard adopted by the agency;

(2) violates any material term or condition of a national pollutant discharge elimination system permit or state disposal system permit;

(3) fails to carry out any recording, reporting, monitoring, sampling, or information gathering requirement provided for under chapter 115 or 116; or

(4) fails to file a discharge monitoring report or other document required for compliance with a national pollutant discharge elimination system or state disposal system permit.

(e) A person convicted under paragraph (d) may be sentenced to imprisonment for not more than one year, or to payment of a fine of not less than $2,500 and not more than $25,000 per day of violation, or both. A person convicted for a second or subsequent offense may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than $50,000 per day of violation, or both.

Subd. 9. **False statements; tampering.** (a) A person is guilty of a felony who knowingly:

(1) makes any false material statement, representation, or certification in; omits material information from; or alters, conceals, or fails to file or maintain a notice, application, record, report, plan, manifest, permit, license, or other document required under sections 103F.701 to 03F.755; chapter 115 or 116; the hazardous waste transportation requirements of chapter 221; or rules adopted under these laws; or

(2) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed for the purpose of compliance with sections 103F.701 to 103F.755, chapter 115 or 116, or rules adopted under these laws.

(b) Except as provided in paragraph (c), a person convicted under this subdivision may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than $10,000, or both.

(c) A person convicted under this subdivision for a violation related to a notice or report required by an air permit issued by the agency as provided in United States Code, title 42, section 7661a(a), as amended through January 1, 1991, may be sentenced to payment of a fine of not more than $10,000 per day of violation.

Subd. 10. **Failure to report release of hazardous substance or extremely hazardous substance.** (a) A person is, upon conviction, subject to a fine of up to $25,000 or imprisonment for up to two years, or both, who:

(1) is required to report the release of a hazardous substance under United States Code, title 42, section 9603, or the release of an extremely hazardous substance under United States Code, title 42, section 11004;

(2) knows that a hazardous substance or an extremely hazardous substance has been released; and

(3) fails to provide immediate notification of the release of a reportable quantity of a hazardous substance or an extremely hazardous substance to the state emergency response center, or a firefighting or law enforcement organization.

(b) For a second or subsequent conviction under this subdivision, the violator is subject to a fine of up to $50,000 or imprisonment for not more than five years, or both.

(c) For purposes of this subdivision, a "hazardous substance" means a substance on the list established under United States Code, title 42, section 9602.

(d) For purposes of this subdivision, an "extremely hazardous substance" means a substance on the list established under United States Code, title 42, section 11002.

(e) For purposes of this subdivision, a "reportable quantity" means a quantity that must be reported under United States Code, title 42, section 9602 or 11002.

Subd. 11. **Infectious waste.** A person who knowingly disposes of or arranges for the disposal of infectious waste as defined in section 116.76 at a location or in a manner that is prohibited by section 116.78 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than $10,000, or both. A person convicted a second or subsequent time under this subdivision is guilty of a felony and may be sentenced to imprisonment for not more than two years, or to payment of a fine of not more than $25,000, or both.

Subd. 12. **Air pollution.** (a) A person is guilty of a felony who knowingly:

(1) causes a violation of a national emission standard for a hazardous air pollutant adopted under United States Code, title 42, section 7412; or

(2) causes a violation of an emission standard, limitation, or operational limitation for a hazardous air pollutant established in a permit issued by the Pollution Control Agency.

A person convicted under this paragraph may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than $50,000 per day of violation, or both.

(b) A person is guilty of a misdemeanor who knowingly violates:

(1) a requirement of chapter 116, or a rule adopted under that chapter, that is an applicable requirement of the federal Clean Air Act, as defined in Federal Register, volume 57, page 32295;

(2) a condition of an air emission permit issued by the agency under chapter 116 or a rule

adopted under that chapter; or

(3) a requirement to pay a fee based on air emissions under chapter 116 or a rule adopted under that chapter.

A person convicted under this paragraph may be sentenced to imprisonment for not more than 90 days, or to payment of a fine of not more than $10,000 per day of violation, or both.

Subd. 13. **Solid waste disposal.** (a) A person is guilty of a gross misdemeanor who:

(1) knowingly disposes of solid waste at, transports solid waste to, or arranges for disposal of solid waste at a location that does not have a required permit for the disposal of solid waste; and

(2) does so in exchange for or in expectation of money or other consideration.

(b) A person convicted under this subdivision may be sentenced to imprisonment for not more than one year, or to payment of a fine of not more than $15,000, or both.

Subd. 14. **Defense.** Except for intentional violations, a person is not guilty of a crime for air quality violations under subdivision 6 or 12, or for water quality violations under subdivision 8, if the person notified the Pollution Control Agency of the violation as soon as the person discovered the violation and took steps to promptly remedy the violation.

History: *1987 c 267 s 3; 1988 c 553 s 2; 1989 c 315 s 11; 1989 c 337 s 12; 1990 c 391 art 10 s 3; 1991 c 347 art 3 s 4; 1993 c 365 s 1,2; 1999 c 238 art 2 s 77; 2006 c 212 art 3 s 40; 2011 c 107 s 107*

609.68 UNLAWFUL DEPOSIT OF GARBAGE, LITTER, OR LIKE.

Whoever unlawfully deposits garbage, rubbish, cigarette filters, debris from fireworks, offal, or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, shoreland areas adjacent to rivers or streams as defined by section 103F.205, public lands, or, without the consent of the owner, private lands or water or ice thereon, is guilty of a petty misdemeanor.

History:

1963 c 753 art 1 s 609.68; 1971 c 23 s 68; 1988 c 685 s 36; 1990 c 391 art 8 s 56; 2003 c 28 art 1 s 19; 1Sp2003 c 2 art 8 s 12

325E.03 SALE OF BEVERAGE CONTAINERS HAVING DETACHABLE PARTS.

Subdivision 1.**Restriction.**

No person shall sell or offer for sale in this state a carbonated soft drink, beer, other malt beverage, or tea in liquid form and intended for human consumption contained in an individual sealed metal container designed and constructed so that a part of the container is detached in the process of opening the container.

Subd. 2.**Criminal penalty.**

A violation of subdivision 1 is a misdemeanor and each day of violation is a separate offense.

History:

1975 c 308 s 1,2; 1977 c 226 s 1

325E.042 PROHIBITING SALE OF CERTAIN PLASTICS.

Subdivision 1.**Plastic can.**

(a) A person may not sell, offer for sale, or give to consumers in this state a beverage packaged in a plastic can.

(b) A plastic can subject to this subdivision is a single serving beverage container composed of plastic and metal excluding the closure mechanism.

Subd. 2.**Nondegradable plastic.**

A person may not sell, offer for sale, or give to consumers beverages or motor oil containers held together by connected rings made of nondegradable plastic material.

Subd. 3.**Penalty.**

A person who violates subdivision 1 or 2 is guilty of a misdemeanor.

History:

1988 c 685 s 26; 1991 c 337 s 57

325E.044 PLASTIC CONTAINER LABELING.

Subdivision 1.**Definitions.**

The definitions in this subdivision apply to this section.

(a) "Distributor" means a person engaged in business that ships or transports products to retailers in this state to be sold by those retailers.

(b) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(c) "Manufacturer" means any manufacturer offering for sale and distribution a product packaged in a container.

(d) "Plastic container" means an individual, separate, plastic bottle, can, or jar with a capacity of 16 ounces or more.

Subd. 2.**Labeling rules required.**

By March 31, 1989, the board shall adopt rules requiring labeling of plastic containers. The rules adopted under this subdivision must allow a manufacturer of plastic containers, a person who places products in plastic containers, and a person who sells products in plastic containers to choose an appropriate method of labeling plastic containers. The board shall adopt rules as consistent as practicable with national industrywide

plastic container coding systems. The rules may exempt plastic containers of a capacity of less than a specified minimum size from the labeling requirements.

Subd. 3.**Prohibition.**

A person may not manufacture or bring into the state for sale in this state a plastic container that does not comply with the labeling rules adopted under subdivision 2.

Subd. 4.**Enforcement; civil penalty; injunctive relief.**

(a) After being notified that a plastic container does not comply with the rules under subdivision 2, any manufacturer or distributor who violates subdivision 3 is subject to a civil penalty of $50 for each violation up to a maximum of $500 and may be enjoined from such violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 3 in the manner provided in section 8.31, subdivision 2b.

History:

1988 c 685 s 27

325E.046 STANDARDS FOR LABELING PLASTIC BAGS.

Subdivision 1.**"Biodegradable" label.**

A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "biodegradable," "degradable," or any form of those terms, or in any way imply that the bag will chemically decompose into innocuous elements in a reasonably short period of time in a landfill, composting, or other terrestrial environment unless a scientifically based standard for biodegradability is developed and the bags are certified as meeting the standard.

Subd. 2.**"Compostable" label.**

A manufacturer, distributor, or wholesaler may not offer for sale in this state a plastic bag labeled "compostable" unless, at the time of sale, the bag meets the ASTM Standard Specification for Compostable Plastics (D6400). Each bag must be labeled to reflect that it meets the standard. For purposes of this subdivision, "ASTM" has the meaning given in section 296A.01, subdivision 6.

Subd. 3.**Enforcement; civil penalty; injunctive relief.**

(a) A manufacturer, distributor, or wholesaler who violates subdivision 1 or 2 is subject to a civil penalty of $100 for each prepackaged saleable unit offered for sale up to a maximum of $5,000 and may be enjoined from those violations.

(b) The attorney general may bring an action in the name of the state in a court of competent jurisdiction for recovery of civil penalties or for injunctive relief as provided in this subdivision. The attorney general may accept an assurance of discontinuance of acts in violation of subdivision 1 or 2 in the manner provided in section 8.31, subdivision 2b.

History:

2009 c 37 art 1 s 57

325E.0951 MOTOR VEHICLE AIR POLLUTION CONTROL SYSTEMS.

Subdivision 1.**Definitions.**

The definitions in this subdivision apply to this section.

(a) **Motor vehicle.** "Motor vehicle" means any self-propelled vehicle powered by an internal combustion engine and designed for use on the public highways, such as automobiles, trucks, and buses.

(b) **Person.** "Person" means an individual, firm, partnership, incorporated and unincorporated association, or any other legal or commercial entity.

(c) **Air pollution control system.** "Air pollution control system" means any device or element of design installed on or in a motor vehicle or motor vehicle engine in order to comply with pollutant emission restrictions established for the motor vehicle or motor vehicle engine by federal statute or regulation.

Subd. 2.**Prohibited acts.**

(a) A person may not knowingly tamper with, adjust, alter, change, or disconnect any air pollution control system on a motor vehicle or on a motor vehicle engine.

(b) A person may not manufacture, advertise, offer for sale, sell, use, or install a device that causes any air pollution control system not to be functional as designed.

(c) A person may not sell or transfer a motor vehicle with knowledge that any air pollution control system is either not in place or is not functional.

Subd. 3.**Repairs.**

This section does not prevent the service, repair, or replacement of any air pollution control system.

Subd. 3a.

[Repealed, 2008 c 287 art 1 s 126]

Subd. 4.**Penalty.**

A person who violates this section is guilty of a misdemeanor.

Subd. 5.

[Repealed, 1995 c 220 s 141]

Subd. 6.**Nonapplication.**

This section does not apply to a sale or transfer of a motor vehicle for the purpose of scrapping, dismantling, or destroying it.

History:

1Sp1985 c 14 art 19 s 36; 1988 c 487 s 1; 1988 c 634 s 11; 1990 c 446 s 4; 1995 c 247 art 1 s 44

325E.10 DEFINITIONS.

Subdivision 1.**Scope.**

For the purposes of sections 325E.11 to 325E.112 and this section, the terms defined in this section have the meanings given them.

Subd. 2.**Motor oil.**

"Motor oil" means oil used as a lubricant or hydraulics in a transmission or internal combustion engine motor vehicle as defined in section 168.002, subdivision 18.

Subd. 2a.**Motor oil filter.**

"Motor oil filter" means any filter used in combination with motor oil.

Subd. 3.**Used motor oil.**

"Used motor oil" means motor oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Subd. 4.**Person.**

"Person" means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, or other entity.

Subd. 5.**Used motor oil filter.**

"Used motor oil filter" means a motor oil filter which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History:

1977 c 68 s 1; 1995 c 220 s 118; 1997 c 216 s 130-132; 2003 c 128 art 2 s 44

325E.11 COLLECTION FACILITIES; NOTICE.

(a) Any person selling at retail or offering motor oil or motor oil filters for retail sale in this state shall:

(1) post a notice indicating the nearest location where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse, post a toll-free telephone number that may be called by the public to determine a convenient location, or post a listing of locations where used motor oil and used motor oil filters may be returned at no cost for recycling or reuse; or

(2) if the person is subject to section 325E.112, subdivision 1, paragraph (b), post a notice informing customers purchasing motor oil or motor oil filters of the location of the used motor oil and used motor oil filter collection site established by the retailer in accordance with section 325E.112, subdivision 1, paragraph (b), where used motor oil and used motor oil filters may be returned at no cost.

(b) A notice under paragraph (a) shall be posted on or adjacent to the motor oil and motor oil filter displays, be at least 8-1/2 inches by 11 inches in size, contain the universal recycling symbol with the following language:

(1) "It is illegal to put used oil and used motor oil filters in the garbage.";

(2) "Recycle your used oil and used motor oil filters."; and

(3)(i) "There is a free collection site here for your used oil and used motor oil filters.";

(ii) "There is a free collection site for used oil and used motor oil filters located at (name of business and street address).";

(iii) "For the location of a free collection site for used oil and used motor oil filters call (toll-free phone number)."; or

(iv) "Here is a list of free collection sites for used oil and used motor oil filters."

(c) The Division of Weights and Measures in the Department of Commerce shall enforce compliance with this section as provided in section 239.54. The Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072 in coordination with the Division of Weights and Measures.

History: *1977 c 68 s 2; 1987 c 348 s 37; 1995 c 220 s 119; 1997 c 216 s 133; 1999 c 231 s 182; 1Sp2001 c 4 art 6 s 72*

325E.112 USED MOTOR OIL AND USED MOTOR OIL FILTER COLLECTION.

Subdivision 1.**Collection.**

(a) Motor oil and motor oil filter manufacturers and retailers shall seek to provide by May 31, 2001:

(1) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a five-mile radius of any resident in the seven-county metropolitan area; and

(2) access to at least one nongovernmental site for collection of used motor oil and used motor oil filters from the public within a city or town with a population of greater than 1,500 outside the seven-county metropolitan area. The commissioner of the Pollution Control Agency shall determine by June 30, 2001, whether these goals have been met.

(b) If the commissioner of the Pollution Control Agency determines that motor oil and motor oil filter manufacturers and retailers have not met the goals in paragraph (a) by May 31, 2001, then beginning July 1, 2001, all retailers that sell at an individual location more than 1,000 motor oil filters per calendar year at retail for off-site installation must provide for collection of used motor oil and used motor oil filters from the public. Retailers who do not collect the used motor oil and used motor oil filters at their individual locations may meet the requirement by entering into a written agreement with another party whose location is:

(1) within two miles of the retailer's location if the retailer is located:

(i) within the Interstate Highway 494/694 beltway;

(ii) in a home rule charter or statutory city or a town contiguous to the Interstate Highway 494/694 beltway; or

(iii) in a home rule charter or statutory city of over 30,000 population within the metropolitan area as defined in section 473.121; or

(2) within five miles of the retailer's location if the retailer is not in an area described in clause (1).

(c) The written agreement under paragraph (b) must specify that the other party will accept from the public up to ten gallons of used motor oil and ten used motor oil filters per person per month during normal hours of operation unless:

(1) the used motor oil is known to be contaminated with antifreeze, other hazardous waste, or other materials which may increase the cost of used motor oil management and disposal;

(2) the storage equipment for that particular waste is temporarily filled to capacity; or

(3) the used motor oil or used motor oil filters are from a business.

(d) Persons accepting used motor oil from the public in accordance with this subdivision shall presume that the used motor oil is not contaminated with hazardous waste, provided the person offering the used motor oil is acting in good faith and the person accepting the used motor oil does not have evidence to the contrary. Persons collecting used motor oil from the public must take precautions to prevent contamination of used motor oil storage equipment. Precautions may include, but are not limited to, keeping a log of persons dropping off used motor oil, securing access to used motor oil storage equipment, or posting signage at the site indicating the proper use of the equipment.

(e) Persons accepting used motor oil and used motor oil filters under paragraph (b), including persons accepting the oil and filters on behalf of the retailer, may not charge a fee when accepting ten gallons or less of used motor oil or ten or fewer used motor oil filters per person per month.

(f) Persons that receive contaminated used motor oil may manage the used motor oil as household hazardous waste through publicly administered household hazardous waste collection programs, with approval from the household hazardous waste program. Used motor oil contaminated with hazardous waste from the public that cannot be managed through a household hazardous waste collection program must be managed as a hazardous waste in accordance with rules adopted by the Pollution Control Agency.

Subd. 2.**Reimbursement program.**

A contaminated used motor oil reimbursement program is established to provide reimbursement of the costs of disposing of contaminated used motor oil. In order to receive reimbursement, persons who accept used motor oil from the public or parties that they have contracted with to accept used motor oil must provide to the commissioner of the Pollution Control Agency proof of contamination, information on methods the person used to prevent the contamination of used motor oil at the site, a copy of the billing for disposal costs incurred because of the contamination and proof of payment, and a copy of the hazardous waste manifest or shipping paper used to transport the waste. The commissioner shall reimburse a recipient of contaminated used motor oil 100 percent of the costs of properly disposing of the contaminated used motor oil. The commissioner may not reimburse persons who intentionally place contaminants or do not take precautions to prevent contaminants from being placed in used motor oil, or operate a private collection site that:

(1) is not publicly promotable or listed with the agency;

(2) does not accept up to five gallons of used motor oil and five used motor oil filters per person per day without charging a fee; or

(3) does not control access to the site during times when the site is closed.

A person operating a collection site may refuse to accept any used motor oil or used motor oil filter:

(1) that is from a business;

(2) that appears to be contaminated with antifreeze, hazardous waste, or other materials that may increase the cost of used motor oil management and disposal; or

(3) when the storage equipment for that particular waste is temporarily filled.

Persons operating government collection sites are eligible for reimbursement of the costs of disposing of contaminated used motor oil. Reimbursements made under this subdivision are limited to the money available in the contaminated used motor oil reimbursement account.

Subd. 2a.

[Repealed, 1Sp2003 c 21 art 8 s 20]

Subd. 3.

[Repealed, 2003 c 128 art 2 s 56]

Subd. 4.**Liability exemption.**

Persons who accept used motor oil and used motor oil filters from the public and retailers and manufacturers who contract with such persons for purposes of subdivision 1 are exempt from liability under chapter 115B for the used motor oil, contaminated used motor oil, and used motor oil filters accepted at facilities that accept used motor oil or used motor oil filters from the public free of charge, after the used motor oil, contaminated used motor oil, and used motor oil filters are sent off-site in compliance with rules adopted by the Pollution Control Agency.

Subd. 5.**Enforcement.**

The commissioner of the Pollution Control Agency shall enforce compliance with this section under sections 115.071 and 116.072.

History:

1995 c 220 s 120; 1997 c 216 s 134; 1998 c 389 art 16 s 16; 1999 c 231 s 183-185

325E.115 LEAD ACID BATTERIES; COLLECTION FOR RECYCLING.

Subdivision 1.**Surcharge; collection; notice.**

(a) A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in this state shall:

(1) accept, at the point of transfer, lead acid batteries from customers;

(2) charge a fee of at least $10 per battery sold unless the customer returns a used battery to the retailer; and

(3) post written notice in accordance with section 325E.1151.

(b) Any person selling lead acid batteries at wholesale or offering lead acid batteries for sale at wholesale must accept, at the point of transfer, lead acid batteries from customers.

Subd. 2.**Compliance; management.**

The Division of Weights and Measures in the Department of Commerce shall enforce compliance of subdivision 1 as provided in section 239.54. The commissioner of the Pollution Control Agency shall inform persons governed by subdivision 1 of requirements for managing lead acid batteries.

History:

1987 c 186 s 15; 1987 c 348 s 38; 1Sp1989 c 1 art 20 s 21; 1991 c 337 s 58; 1Sp2001 c 4 art 6 s 73; 2010 c 258 s 1

325E.1151 LEAD ACID BATTERY PURCHASE AND RETURN.

Subdivision 1.**Purchasers must return battery or pay surcharge.**

(a) A person who purchases a lead acid battery at retail, except a lead acid battery that is designed to provide power for a boat motor that is purchased at the same time as the battery, must:

(1) return a lead acid battery to the retailer; or

(2) pay the retailer a surcharge of at least $10.

(b) A person who has paid a surcharge under paragraph (a) must receive a refund of the surcharge from the retailer if the person returns a lead acid battery with a receipt for the purchase of a new battery from that retailer within 30 days after purchasing a new lead acid battery.

(c) A retailer may keep the unrefunded surcharges for lead acid batteries not returned within 30 days.

Subd. 2.**Retailers must accept batteries.**

(a) A person who sells lead acid batteries at retail must accept lead acid batteries from consumers and may not charge to receive the lead acid batteries. A consumer may not deliver more than five lead acid batteries to a retailer at one time.

(b) A retailer of lead acid batteries must recycle the lead acid batteries received from consumers.

(c) A retailer who violates paragraph (b) is guilty of a misdemeanor. Each lead acid battery that is not recycled is a separate violation.

Subd. 3.**Retailers must post notices.**

(a) A person who sells lead acid batteries at retail must post the notice in paragraph (b) in a manner clearly visible to a consumer making purchasing decisions.

(b) The notice must be at least 8-1/2 inches by 11 inches and contain the universal recycling symbol and state:

"NOTICE: USED BATTERIES

This retailer is required to accept your used lead acid batteries, EVEN IF YOU DO NOT PURCHASE A BATTERY. When you purchase a new battery, you will be charged an additional amount of at least $10 unless you return a used battery within 30 days.

It is a crime to put a motor vehicle battery in the garbage."

Subd. 4.**Notices required in newspaper advertisements.**

(a) An advertisement for sale of new lead acid batteries at retail in newspapers published in this state must contain the notice in paragraph (b).

(b) The notice must state:

"At least $10 additional charge unless a used lead acid battery is returned. Improper disposal of a lead acid battery is a crime."

History:

1Sp1989 c 1 art 20 s 22; 1991 c 337 s 59; 1993 c 249 s 32; 2010 c 258 s 2-4

325E.12 PENALTY.

Violation of sections 325E.10 to 325E.1151 is a petty misdemeanor. Sections 325E.10 to 325E.1151 may be enforced under section 115.071.

History:

1977 c 68 s 3; 1993 c 249 s 33

115.071 ENFORCEMENT.

Subdivision 1. **Remedies available.** The provisions of sections 103F.701 to 103F.755, this chapter and chapters 114C, 115A, and 116, and sections 325E.10 to 325E.1251 and 325E.32 and all rules, standards, orders, stipulation agreements, schedules of compliance, and permits adopted or issued by the agency thereunder or under any other law now in force or hereafter enacted for the prevention, control, or abatement of pollution may be enforced by any one or any combination of the following: criminal prosecution; action to recover civil penalties; injunction; action to compel performance; or other appropriate action, in accordance with the provisions of said chapters and this section.

Subd. 2. **Criminal penalties.** (a) **Violations of laws; orders; permits.** Except as provided in section 609.671, any person who willfully or negligently violates any provision of this chapter or chapter 114C or 116, or any standard, rule, variance, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency thereunder shall upon conviction be guilty of a misdemeanor.

(b) **Duty of law enforcement officials.** It shall be the duty of all county attorneys, sheriffs and other peace officers, and other officers having authority in the enforcement of the general criminal laws to take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of said provisions, rules, standards, orders, stipulation agreements, variances, schedule of compliance, or permits.

Subd. 2a. [Repealed, 1987 c 267 s 5] Subd. 2b. [Repealed, 1987 c 267 s 5]

Subd. 3. **Civil penalties.** Any person who violates any provision of this chapter or chapter 114C or 116, except any provisions of chapter 116 relating to air and land pollution caused by agricultural operations which do not involve national pollutant discharge elimination system permits, or of (1) any effluent standards and limitations or water quality standards, (2) any permit

or term or condition thereof, (3) any national pollutant discharge elimination system filing requirements, (4) any duty to permit or carry out inspection, entry or monitoring activities, or (5) any rules, stipulation agreements, variances, schedules of compliance, or orders issued by the agency, shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than $10,000 per day of violation except that if the violation relates to hazardous waste the person shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than $25,000 per day of violation.

In addition, in the discretion of the court, the defendant may be required to:

(a) forfeit and pay to the state a sum which will adequately compensate the state for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental;

(b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants.

As a defense to any of said damages, the defendant may prove that the violation was caused solely by (1) an act of God, (2) an act of war, (3) negligence on the part of the state of Minnesota, or (4) an act or failure to act which constitutes sabotage or vandalism, or any combination of the foregoing clauses.

The civil penalties and damages provided for in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

Subd. 4.**Injunctions.**

Any violation of the provisions, rules, standards, orders, stipulation agreements, variances, schedules of compliance, or permits specified in this chapter and chapters 114C and 116 shall constitute a public nuisance and may be enjoined as provided by law in an action, in the name of the state, brought by the attorney general.

Subd. 5.**Actions to compel performance.**

In any action to compel performance of an order of the agency for any purposes relating to the prevention, control or abatement of pollution under this chapter and chapters 114C and 116, the court may require any defendant adjudged responsible to do and perform any and all acts and things within the defendant's power which are reasonably necessary to accomplish the purposes of the order. In case a municipality or its governing or managing body or any of its officers is a defendant, the court may require it to exercise its powers, without regard to any limitation of any requirement for an election or referendum imposed thereon by law and without restricting the powers of the agency to do any or all of the following, without limiting the generality hereof: to levy taxes, levy special assessments, prescribe service or use charges, borrow money, issue bonds, employ assistance, acquire real or personal property, let contracts or otherwise provide for the doing of work or the construction, installation, maintenance, or operation of facilities, and do all other acts and things reasonably necessary to accomplish the purposes of the order, but the court shall grant the municipality the opportunity to determine the appropriate financial alternatives to be utilized in complying with the court imposed requirements.

Subd. 6.**Administrative penalties.**

A provision of law that may be enforced under this section may also be enforced under section 116.072.

Subd. 7.**Underground and aboveground storage tanks; red tags.**

(a) The commissioner may issue a red tag for failure to have the regulated underground tank system or aboveground tank facility at a bulk plant, as defined in section 115C.09, subdivision 3h, paragraph (a), protected from corrosion, failure to have spill and overfill protection, or failure to have a leak detection method in place. A red tag may also be issued for underground storage tank system or aboveground tank facility at a bulk plant violations if an enforcement action, including, but not limited to, a citation as defined in section 116.073, subdivision 1, has been issued and the violations are not corrected. Upon discovery of a violation at a facility with an underground storage tank system or aboveground tank facility at a bulk plant, the commissioner shall affix a red tag, in plain view, to the fill pipe cap of the tank system that provides notice that delivery of petroleum products to the tank system is prohibited. When the red tag is issued, agency staff must determine the product level in the tank.

(b) No owner or operator of a facility having an underground storage tank system or aboveground tank facility at a bulk

plant shall fill or allow the filling of a tank with a petroleum product while a red tag is affixed to the fill pipe cap of the tank system.

(c) A person shall not remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(d) A red tag may not be removed until the commissioner has inspected the underground storage tank system or aboveground tank facility at a bulk plant and established that it is no longer in violation. After making that determination, the commissioner shall remove the red tag within 24 hours or as soon as reasonably possible. Upon agreement by the commissioner, the red tag may also be removed by an agency-certified installer who provides documentation to the commissioner that the violation for which the system was red-tagged has been corrected.

(e) The issuance of a red tag may be appealed under section 116.072, subdivision 6, paragraphs (a) to (e), except that the person subject to the order must request a hearing within 15 days after issuance of a red tag and, if a hearing is not requested within the 15-day period, the red tag becomes a final order not subject to further review.

History:

1973 c 374 s 13; 1976 c 76 s 3; 1983 c 373 s 1-4; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 18; 1985 c 248 s 70; 1986 c 444; 1987 c 267 s 1; 1988 c 553 s 1; 1990 c 391 art 10 s 3; 1991 c 347 art 1 s 2; 1993 c 249 s 6; 1996 c 437 s 12-16; 1998 c 379 s 1; 2004 c 169 s 1; 2011 c 107 s 107