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State of Minnesota
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH SESSION
H. F. No. 2095

02/08/2012 Authored by Fabian, Quam, Cornish, Nornes, Hancock and others

The bill was read for the first time and referred to the Committee on Environment, Energy and Natural Resources Policy and Finance

02/15/2012 Adoption of Report: Pass as Amended and re-referred to Jobs and Economic Development Finance

02/20/2012 Adoption of Report: Pass and re-referred to Ways and Means

1.1 A bill for an act
1.2 relating to environment; providing for permitting efficiency; modifying
1.3 environmental review requirements; appropriating money; amending Minnesota
1.4 Statutes 2010, sections 14.05, by adding a subdivision; 41A.10, subdivision
1.5 1; 84.027, by adding a subdivision; 115.03, by adding a subdivision; 116.07,
1.6 subdivision 4a; 116J.035, by adding a subdivision; Minnesota Statutes 2011
1.7 Supplement, sections 84.027, subdivision 14a; 116.03, subdivision 2b; 116D.04,
1.8 subdivision 2a.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 **ARTICLE 1**

1.11 **PERMITTING**

1.12 Section 1. Minnesota Statutes 2011 Supplement, section 84.027, subdivision 14a,
1.13 is amended to read:

1.14 Subd. 14a. **Permitting efficiency.** (a) It is the goal of the state that environmental
1.15 and resource management permits be issued or denied within 150 days of the submission
1.16 of a ~~substantially completed~~ permit application. The commissioner of natural resources
1.17 shall establish management systems designed to achieve the goal.

1.18 (b) The commissioner shall prepare semiannual permitting efficiency reports that
1.19 include statistics on meeting the goal in paragraph (a). The reports are due February 1
1.20 and August 1 each year. For permit applications that have not met the goal, the report
1.21 must state the reasons for not meeting the goal, ~~steps that will be taken to complete action~~
1.22 ~~on the application, and the expected timeline.~~ In stating the reasons for not meeting the
1.23 goal, the commissioner shall separately identify delays caused by the responsiveness of
1.24 the proposer, lack of staff, scientific or technical disagreements, or the level of public
1.25 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 department'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 natural resources policy and finance.

(c) The commissioner shall allow electronic submission of environmental review and permit documents to the department.

(d) Beginning July 1, 2011, within 30 business days of application for a permit subject to paragraph (a), the commissioner of natural resources shall notify the project proposer, in writing, ~~of whether or not the permit application is complete enough for processing. If the permit is incomplete, the commissioner must identify where 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 exist, citing specific provisions of the applicable rules and statutes, and advise the applicant on how they the deficiencies can be remedied. A resubmittal of the application begins a new 30-day review period. If the commissioner fails to notify the project proposer of completeness within 30 business days, the application is deemed to be substantially complete and subject to the 150-day permitting review period in paragraph (a) from the date it was submitted.~~ This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

Sec. 2. Minnesota Statutes 2010, section 84.027, is amended by adding a subdivision to read:

Subd. 14b. **Irrevocability or suspensions of permits.** If, by July 1 of an odd-numbered year, a biennial appropriation law has not been enacted to fund air, water, and land programs at the department, existing permits shall not be terminated or suspended, provided the terms and conditions of the permit and local, state, and federal laws and rules are met, regardless of the state's capability to receive, review, or process fees, reports, or other filings.

Sec. 3. Minnesota Statutes 2010, section 115.03, is amended by adding a subdivision to read:

Subd. 8b. **Permit duration; state disposal system permits; animal feedlots.** State disposal system permits that are issued without a national pollutant discharge elimination system permit to animal feedlots shall be issued for a term of ten years.

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

3.2 Sec. 4. Minnesota Statutes 2011 Supplement, section 116.03, subdivision 2b, is
3.3 amended to read:

3.4 Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and
3.5 resource management permits be issued or denied within 150 days of the submission of a
3.6 ~~substantially completed~~ permit application. The commissioner of the Pollution Control
3.7 Agency shall establish management systems designed to achieve the goal.

3.8 (b) The commissioner shall prepare semiannual permitting efficiency reports that
3.9 include statistics on meeting the goal in paragraph (a). The reports are due February 1
3.10 and August 1 each year. For permit applications that have not met the goal, the report
3.11 must state the reasons for not meeting the goal, ~~steps that will be taken to complete action~~
3.12 ~~on the application, and the expected timeline.~~ In stating the reasons for not meeting the
3.13 goal, the commissioner shall separately identify delays caused by the responsiveness of
3.14 the proposer, lack of staff, scientific or technical disagreements, or the level of public
3.15 engagement. The report must specify the number of days from initial submission of the
3.16 application to the day of determination that the application is complete. The report for
3.17 August 1 each year must aggregate the data for the year and assess whether program
3.18 or system changes are necessary to achieve the goal. The report must be posted on the
3.19 agency's Web site and submitted to the governor and the chairs and ranking minority
3.20 members of the house of representatives and senate committees having jurisdiction over
3.21 environment policy and finance.

3.22 (c) The commissioner shall allow electronic submission of environmental review
3.23 and permit documents to the agency.

3.24 (d) Beginning July 1, 2011, within 30 business days of application for a permit
3.25 subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify
3.26 the project proposer, in writing, ~~of whether or not the permit application is complete~~
3.27 ~~enough for processing. If the permit is incomplete, the commissioner must identify where~~
3.28 whether the application is complete or incomplete. If the commissioner determines that an
3.29 application is incomplete, the notice to the applicant must enumerate all deficiencies exist,
3.30 citing specific provisions of the applicable rules and statutes, and advise the applicant
3.31 on how they the deficiencies can be remedied. ~~A resubmittal of the application begins~~
3.32 ~~a new 30-day review period. If the commissioner fails to notify the project proposer~~
3.33 ~~of completeness within 30 business days, the application is deemed to be substantially~~
3.34 ~~complete and subject to the 150-day permitting review period in paragraph (a) from the~~

~~date it was submitted.~~ 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 applicant professional" means an individual not employed by the Pollution Control Agency who:

(1) has a professional engineer license issued by the state of Minnesota; and

(2) has at least ten years of experience in the subject area of the permit.

(f) An applicant utilizing a permit applicant professional must notify the commissioner of this use at least 60 days prior to submitting an application and submit at least a project description, including but not limited to scope of work, primary emissions points, discharge outfalls, and water intake points. The commissioner shall provide the applicant, within 30 days of the notice, the following:

(1) an overview of the permit review program;

(2) a determination of which specific application or applications will be required by the agency to complete the project;

(3) a statement notifying the applicant if the specific permit being sought requires a mandatory public hearing or comment period;

(4) a review of the timetable established in the permit review program for the specific permit being sought; and

(5) 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 applicant professional to undertake the preparation and review of the permit application and draft permit.

(h) A permit application and draft permit submitted by a permit applicant professional shall be deemed complete and approved unless the terms and conditions in the permit application and draft permit submitted by the permit applicant professional fail to comply with applicable statutes and rules. The commissioner shall, within 30 days of receipt of an application and draft permit:

(1) notify the applicant and submitting permit applicant professional that the application is complete and the draft permit is approved subject to all public comment periods and public hearings; or

(2) deny the application, specifying the deficiencies of the application.

(i) A person aggrieved by a final decision of the commissioner under this section may obtain judicial review thereof according to sections 14.63 to 14.69.

(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

5.1 (2) the authority to implement a federal law or program.

5.2 (k) The permit application and draft permit shall identify or include as an appendix
5.3 all studies and other sources of information used to substantiate the analysis contained in
5.4 the permit application and draft period. The commissioner shall request additional studies,
5.5 if needed, and the project proposer shall submit all additional studies and information
5.6 necessary for the commissioner to perform the commissioner's responsibility to review,
5.7 modify, and determine the completeness of the application and approve the draft permit.

5.8 (l) If, by July 1 of an odd-numbered year, a biennial appropriation law has not been
5.9 enacted to fund air, water, and land programs at the agency, existing permits shall not be
5.10 terminated or suspended, provided the terms and conditions of the permit and local, state,
5.11 and federal laws and rules are met, regardless of the state's capability to receive, review,
5.12 or process fees, reports, or other filings.

5.13 Sec. 5. Minnesota Statutes 2010, section 116.07, subdivision 4a, is amended to read:

5.14 Subd. 4a. **Permits.** (a) The Pollution Control Agency may issue, continue in
5.15 effect or deny permits, under such conditions as it may prescribe for the prevention of
5.16 pollution, for the emission of air contaminants, or for the installation or operation of
5.17 any emission facility, air contaminant treatment facility, treatment facility, potential air
5.18 contaminant storage facility, or storage facility, or any part thereof, or for the sources
5.19 or emissions of noise pollution.

5.20 The Pollution Control Agency may also issue, continue in effect or deny permits,
5.21 under such conditions as it may prescribe for the prevention of pollution, for the storage,
5.22 collection, transportation, processing, or disposal of waste, or for the installation or
5.23 operation of any system or facility, or any part thereof, related to the storage, collection,
5.24 transportation, processing, or disposal of waste.

5.25 The agency may not issue a permit to a facility without analyzing and considering
5.26 the cumulative levels and effects of past and current environmental pollution from all
5.27 sources on the environment and residents of the geographic area within which the facility's
5.28 emissions are likely to be deposited, provided that the facility is located in a community in
5.29 a city of the first class in Hennepin County that meets all of the following conditions:

5.30 (1) is within a half mile of a site designated by the federal government as an EPA
5.31 superfund site due to residential arsenic contamination;

5.32 (2) a majority of the population are low-income persons of color and American
5.33 Indians;

5.34 (3) a disproportionate percent of the children have childhood lead poisoning, asthma,
5.35 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.

Sec. 6. Minnesota Statutes 2010, section 116J.035, is amended by adding a subdivision to read:

Subd. 8. Environmental permits coordinator. (a) The commissioner is designated the environmental permits coordinator and shall coordinate the implementation and administration of state permits, including:

(1) establishing a mechanism in state government that will coordinate administrative decision-making procedures and related quasijudicial and judicial review pertaining to permits related to the state's air, land, and water resources;

(2) providing coordination and understanding between federal, state, and local governmental units in the administration of the various programs relating to air, water, and land resources;

(3) identifying all existing federal, state, and local permits and other approvals; compliance schedules; or other programs that pertain to the use of natural resources and protection of the environment; and

(4) recommending legislative or administrative modifications to existing permit programs to increase their efficiency and utility.

(b) A person proposing a project may apply to the environmental permits coordinator for assistance in obtaining necessary state permits and other approvals. Upon request, the environmental permits coordinator shall:

(1) provide a list of all federal, state, and local permits and other required approvals for the project;

(2) provide a plan that will coordinate federal, state, and local administrative decision-making practices, including monitoring, analysis and reporting, public comments and hearings, and issuances of permits and approvals;

(3) provide a timeline for the issuance of all federal, state, and local permits and other approvals required for the project;

(4) coordinate the execution of any memorandum of understanding between the person proposing a project and any federal, state, or local agency;

(5) coordinate all federal, state, or local public comment periods and hearings; and

(6) provide other assistance requested to facilitate final approval and issuance of all federal, state, and local permits and other approvals required for the project.

(c) As necessary, the environmental permits coordinator shall negotiate a schedule to assess the project proposer for reasonable costs that any state agency incurs in coordinating the implementation and administration of state permits, and the proposer shall pay the assessed costs to the environmental permits coordinator. Money received by the environmental permits coordinator must be credited to a special account and is appropriated to any state agency to cover the assessed costs incurred.

(d) The coordination of implementation and administration of state permits is not governmental action under section 116D.04.

(e) For the purposes of this subdivision:

(1) "agency" means:

(i) a state department, commission, board, or other agency of the state, however titled; or

(ii) 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;

(2) "local governmental unit" means a county, city, town, or special district with legal authority to issue a permit;

(3) "permit" means a 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 that must be obtained from a state agency before constructing or operating a project in the state;

(4) "person" means an individual, an association or partnership, or a cooperative, municipal, public, or private corporation, including but not limited to a state agency and a county; and

(5) "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.

ARTICLE 2

ENVIRONMENTAL REVIEW

Section 1. Minnesota Statutes 2010, section 14.05, is amended by adding a subdivision to read:

Subd. 5a. **Review of environmental assessment worksheets and environmental impact statements.** By December 1, 2012, and every five years thereafter, the Environmental Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor and the chairs of the house of representatives and senate committees having jurisdiction over environment and natural resources a list of mandatory environmental assessment worksheet or mandatory environmental impact statement categories for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement category, a document including:

(1) intended outcomes of each worksheet or statement within each category;

(2) the cost to state and local government and the private sector; and

(3) an explanation of what information provided on the mandatory worksheet or statement within each category is not included in or provided for in an existing permit or other federal, state, or local law.

Sec. 2. Minnesota Statutes 2010, section 41A.10, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For the purposes of this section and section 103F.518, the terms defined in this subdivision have the meanings given them.

(a) "Cellulosic biofuel" means transportation fuel derived from cellulosic materials.

(b) "Cellulosic material" means an agricultural or wood feedstock primarily comprised of cellulose, hemicellulose, or lignin or a combination of those ingredients grown on agricultural lands or harvested timber lands.

(c) "Agricultural land" means land used for horticultural, row, close grown, pasture, and hayland crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of that land.

(d) "Cellulosic biofuel facility" means a facility at which cellulosic biofuel is produced.

(e) "Perennial crops" means agriculturally produced plants that have a life cycle of at least three years at the location where the plants are being cultivated.

(f) "Perennial cropping system" means an agricultural production system that utilizes a perennial crop.

(g) "Native species" means a plant species which was present in a defined area of Minnesota prior to European settlement (circa 1850). A defined area may be an ecological classification province. Wild-type varieties therefore are regional or local ecotypes that have not undergone a selection process.

(h) "Diverse native prairie" means a prairie planted from a mix of local Minnesota native prairie species. A selection from all available native prairie species may be made so as to match species appropriate to local site conditions.

(i) "Commissioner" means the commissioner of agriculture.

Sec. 3. Minnesota Statutes 2011 Supplement, section 116D.04, subdivision 2a, is amended to read:

Subd. 2a. **When prepared.** Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action. ~~No mandatory environmental impact statement may be required for an ethanol plant,~~

10.1 ~~as defined in section 41A.09, subdivision 2a, paragraph (b), that produces less than~~
10.2 ~~125,000,000 gallons of ethanol annually and is located outside of the seven-county~~
10.3 ~~metropolitan area.~~

10.4 (a) The board shall by rule establish categories of actions for which environmental
10.5 impact statements and for which environmental assessment worksheets shall be prepared
10.6 as well as categories of actions for which no environmental review is required under this
10.7 section. A mandatory environmental assessment worksheet shall not be required for the
10.8 expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph
10.9 (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a
10.10 biobutanol facility as defined in section 41A.105, subdivision 1a, based on the capacity
10.11 of the expanded or converted facility to produce alcohol fuel, but must be required if
10.12 the ethanol plant meets or exceeds thresholds of other categories of actions for which
10.13 environmental assessment worksheets must be prepared. The responsible governmental
10.14 unit for an ethanol plant project for which an environmental assessment worksheet is
10.15 prepared shall be the state agency with the greatest responsibility for supervising or
10.16 approving the project as a whole. A mandatory environmental impact statement shall
10.17 not be required for a facility or plant located outside the seven-county metropolitan
10.18 area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic
10.19 biofuel annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09,
10.20 subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.105,
10.21 subdivision 1a, clause (1); or a cellulosic biofuel facility as defined in section 41A.10,
10.22 subdivision 1, paragraph (d).

10.23 (b) The responsible governmental unit shall promptly publish notice of the
10.24 completion of an environmental assessment worksheet in a manner to be determined by
10.25 the board and shall provide copies of the environmental assessment worksheet to the board
10.26 and its member agencies. Comments on the need for an environmental impact statement
10.27 may be submitted to the responsible governmental unit during a 30-day period following
10.28 publication of the notice that an environmental assessment worksheet has been completed.
10.29 The responsible governmental unit's decision on the need for an environmental impact
10.30 statement shall be based on the environmental assessment worksheet and the comments
10.31 received during the comment period, and shall be made within 15 days after the close of
10.32 the comment period. The board's chair may extend the 15-day period by not more than 15
10.33 additional days upon the request of the responsible governmental unit.

10.34 (c) An environmental assessment worksheet shall also be prepared for a proposed
10.35 action whenever material evidence accompanying a petition by not less than 100
10.36 individuals who reside or own property in the state, submitted before the proposed

project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.

(d) Except in an environmentally sensitive location where Minnesota Rules, part 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental review under this chapter and rules of the board, if:

(1) the proposed action is:

(i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

(ii) an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 1,000 animal units;

(2) the application for the animal feedlot facility includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with Pollution Control Agency feedlot rules; and

(3) the county board holds a public meeting for citizen input at least ten business days prior to the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot facility unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted. The exemption in this paragraph is in addition to other exemptions provided under other law and rules of the board.

(e) The board may, prior to final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

(f) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement. In addition, the permits which will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board

12.1 shall provide in its rules for the expeditious completion of the scoping process. The
12.2 determinations reached in the process shall be incorporated into the order requiring the
12.3 preparation of an environmental impact statement.

12.4 (g) The responsible governmental unit shall, to the extent practicable, avoid
12.5 duplication and ensure coordination between state and federal environmental review
12.6 and between environmental review and environmental permitting. Whenever practical,
12.7 information needed by a governmental unit for making final decisions on permits or
12.8 other actions required for a proposed project shall be developed in conjunction with the
12.9 preparation of an environmental impact statement.

12.10 (h) An environmental impact statement shall be prepared and its adequacy
12.11 determined within 280 days after notice of its preparation unless the time is extended by
12.12 consent of the parties or by the governor for good cause. The responsible governmental
12.13 unit shall determine the adequacy of an environmental impact statement, unless within 60
12.14 days after notice is published that an environmental impact statement will be prepared,
12.15 the board chooses to determine the adequacy of an environmental impact statement. If an
12.16 environmental impact statement is found to be inadequate, the responsible governmental
12.17 unit shall have 60 days to prepare an adequate environmental impact statement.

12.18 (i) The proposer of a specific action may include in the information submitted to the
12.19 responsible governmental unit a preliminary draft environmental impact statement under
12.20 this section on that action for review, modification, and determination of completeness and
12.21 adequacy by the responsible governmental unit. A preliminary draft environmental impact
12.22 statement prepared by the project proposer and submitted to the responsible governmental
12.23 unit shall identify or include as an appendix all studies and other sources of information
12.24 used to substantiate the analysis contained in the preliminary draft environmental impact
12.25 statement. The responsible governmental unit shall require additional studies, if needed,
12.26 and obtain from the project proposer all additional studies and information necessary for
12.27 the responsible governmental unit to perform its responsibility to review, modify, and
12.28 determine the completeness and adequacy of the environmental impact statement.

APPENDIX
Article locations in H2095-1

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ARTICLE 2 ENVIRONMENTAL REVIEW Page.Ln 8.10