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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 994

02/28/2013 Authored by Mullery

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

1.1 A bill for an act
1.2 relating to environment; requiring an analysis of cumulative pollution impacts
1.3 before an environmental permit is issued and as part of environmental review;
1.4 amending Minnesota Statutes 2012, sections 116.07, subdivision 4a, by adding a
1.5 subdivision; 116D.04, subdivision 2a.

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

1.7 Section 1. Minnesota Statutes 2012, section 116.07, subdivision 4a, is amended to read:

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

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

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

1.24 ~~(1) is within a half mile of a site designated by the federal government as an EPA~~
1.25 ~~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.

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

Sec. 2. Minnesota Statutes 2012, section 116.07, is amended by adding a subdivision to read:

Subd. 13. Cumulative impacts. (a) The agency may not issue or modify 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 population of the geographic area within which the facility's emissions are likely to be deposited. The analysis, which must be contained in a written document, must:

(1) list the sources, amounts, and concentrations of pollution, including estimates of pollution from area and mobile sources, to which the population of the area is exposed;

(2) report any relevant air monitoring results from the area with respect to ambient air or an individual facility;

3.1 (3) discuss the potential health effects of the interaction of the pollutants to which
3.2 the population of the area has been exposed over time;

3.3 (4) report current health indicators among the population that may indicate the
3.4 population's heightened sensitivity to exposure to the incremental pollution emitted from
3.5 the facility seeking the permit or permit modification, including but not limited to:

3.6 (i) the incidence of and hospital admission rates among the population for
3.7 respiratory disease, pulmonary disease, cancer, diabetes, asthma, high levels of blood
3.8 lead concentrations, compromised immune systems, and other conditions that may be
3.9 exacerbated by exposure to pollution; and

3.10 (ii) biomonitoring data indicating body burdens of environmental pollutants;

3.11 (5) report demographic, social, and economic characteristics of the population that
3.12 may impair the population's ability to withstand, respond to, or recover from exposure to
3.13 additional pollution, including but not limited to:

3.14 (i) income and poverty levels;

3.15 (ii) the proportion of the population receiving public assistance and medical
3.16 assistance;

3.17 (iii) the proportion of the population without access to health insurance and medical
3.18 care;

3.19 (iv) the age distribution of the population;

3.20 (v) the birth rate;

3.21 (vi) the incidence of poor housing conditions;

3.22 (vii) poor nutrition;

3.23 (viii) education levels;

3.24 (ix) data on racial and ethnic characteristics of the population; and

3.25 (x) the presence of subpopulations who may be particularly sensitive to exposure to
3.26 additional pollutants, including workers exposed to toxic chemicals in the workplace and
3.27 subsistence fishers and hunters;

3.28 (6) discuss microclimate or topographical factors of the area that affect exposure
3.29 levels;

3.30 (7) describe other environmental stressors, including but not limited to noise, that
3.31 impact the area population; and

3.32 (8) discuss how the factors examined in clauses (1) to (7) may interact to increase
3.33 the likelihood of portions of the population sustaining an adverse effect from exposure to
3.34 the incremental pollution.

3.35 (b) If, as a result of the cumulative impacts analysis conducted under paragraph (a),
3.36 the agency determines that the population of the area to be affected by the incremental

pollution of the facility seeking the permit or permit modification bears a disproportionate burden of environmental exposure resulting from past or current exposures to pollution, the agency shall take action to reduce the total amount and toxicity of pollution to which the population is exposed by, at a minimum, a level equivalent to the incremental amount and toxicity of pollution to be contributed by the facility seeking the permit or permit modification.

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

Sec. 3. Minnesota Statutes 2012, 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.

(a) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section. A mandatory environmental assessment worksheet shall not be required for the expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.105, subdivision 1a, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared shall be the state agency with the greatest responsibility for supervising or approving the project as a whole.

A mandatory environmental impact statement shall not be required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, if the facility

or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.105, subdivision 1a, clause (1); or a cellulosic biofuel facility, as defined in section 41A.10, subdivision 1, paragraph (d).

(b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet by publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed, by posting the notice on a Web site that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed, or in any other manner determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.

(c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 100 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 shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the preparation of an environmental impact statement.

(g) The responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. When an environmental impact statement is prepared for a project requiring multiple permits for which two or more agencies' decision processes include either mandatory or discretionary hearings before a hearing officer prior to the agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the contrary, conduct the hearings in a single consolidated hearing process if requested by the proposer. All agencies having jurisdiction

over a permit that is included in the consolidated hearing shall participate. The responsible governmental unit shall establish appropriate procedures for the consolidated hearing process, including procedures to ensure that the consolidated hearing process is consistent with the applicable requirements for each permit regarding the rights and duties of parties to the hearing, and shall utilize the earliest applicable hearing procedure to initiate the hearing. The procedures of section 116C.28, subdivision 2, apply to the consolidated hearing.

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

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

(j) An environmental assessment worksheet and environmental impact statement must contain the same analysis of cumulative environmental impacts as required under section 116.07, subdivision 13.

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