

A bill for an act

relating to solid waste; modifying the Waste Management Act; modifying definitions; establishing principles of product stewardship; requiring recycling of construction and demolition waste; setting standards for compost containers; regulating compostable material; allowing residents to decline to receive local telephone directories; requiring a model ordinance; providing civil penalties; requiring a study; amending Minnesota Statutes 2006, section 115A.03, subdivisions 21, 32a, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 115A; 325E; repealing Minnesota Statutes 2006, sections 115A.175; 115A.18; 115A.19; 115A.191; 115A.192; 115A.194; 115A.195; 115A.20; 115A.24; 115A.28, subdivision 3; 115A.30; 115A.301; 115A.55, subdivision 4; 115A.5501, subdivision 1; 115A.551, subdivision 7; Minnesota Statutes 2007 Supplement, sections 115A.193; 115A.28, subdivision 2.

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

Section 1. Minnesota Statutes 2006, section 115A.03, subdivision 21, is amended to read:

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, ~~but does include source-separated compostable materials.~~

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

Sec. 2. Minnesota Statutes 2006, section 115A.03, is amended by adding a subdivision to read:

Subd. 28c. **Reuse.** "Reuse" means:

(1) using materials for the purpose for which they were originally intended or for another purpose that does not cause their destruction in a manner that precludes their further use;

(2) using food manufactured for human consumption for human consumption by humans for whom it was not originally intended; and

(3) diverting food manufactured for human consumption to consumption by animals.

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

Sec. 3. Minnesota Statutes 2006, section 115A.03, subdivision 32a, is amended to read:

Subd. 32a. **Source-separated compostable materials.** "Source-separated compostable materials" means ~~mixed municipal solid waste materials~~ that:

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

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

(3) ~~is~~ 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; and

(4) ~~is~~ 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.

Sec. 4. **[115A.0712] PRODUCT STEWARDSHIP.**

Subdivision 1. **Principles.** Consistent with Minnesota Statutes, section 115A.02, it is the goal of this state to promote resource conservation and protect public health and the environment through product stewardship. Product stewardship is a preferred method the state may implement to conserve resources, prevent waste, and reduce the toxicity of product constituents. The principles of product stewardship are:

(a) All parties who have a role in designing, producing, or selling a product or product component assume responsibility for achieving the following goals:

(1) ensuring that the principles of design for the environment govern product design so that toxic and hazardous constituents of products are reduced or eliminated, and product reuse and recycling are facilitated;

(2) reducing the toxicity and amount of waste resulting from the manufacture, use and disposal of products; and

(3) using materials, energy and water efficiently at every stage of a product's life cycle, including manufacture, distribution, sale, use and recovery.

(b) Purchasers and users play an important role in selecting products that reflect design for the environment practices and managing the products appropriately at the end of the product's life.

(c) The more influence a party has over a product's life-cycle impacts, the greater the party's responsibility to address those impacts.

(d) Product stewardship programs should be flexible, transparent, and sustainable.

(e) End-of-life costs to recover resources and manage products are, to the extent practicable, internalized into product costs, so they are not transferred to government and taxpayers.

(f) Product stewardship programs are designed to maximize economic efficiency, promote market competition, stimulate innovation, reduce costs, and provide convenient collection opportunities.

(g) Government provides leadership in product stewardship in all its activities, including, but not limited to, purchasing products and services, promoting stewardship programs, and, if appropriate, facilitating collection and recycling options for products in conjunction with other parties.

Subd. 2. **Recommendations.** By January 15, 2009, the commissioner must present to the chairs and ranking minority members of the senate and house committees with primary jurisdiction over environmental policy and environmental finance, recommendations for establishing a comprehensive product stewardship approach to reducing environmental and health risks posed by the use or disposal of certain products in this state.

The recommendations must include, at a minimum:

(1) a set of criteria to be used to evaluate products proposed for product stewardship solutions;

(2) a process for designating products for product stewardship solutions, and the role the legislature would play in that process;

(3) typical components of product stewardship plans;

(4) options to facilitate the creation of industry-managed stewardship management organizations;

(5) methods to identify and monitor progress towards stewardship performance goals for specific products; and

(6) strategies to implement the use of standards, certifications, and eco-labels to promote environmentally preferable products.

To the extent possible, the recommendations must be consistent with existing product stewardship programs in North America. In developing the recommendations, the commissioner must consult with manufacturers, retailers, recyclers, environmental advocacy organizations, local units of government and other interested parties.

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

Sec. 5. **[115A.413] SOLID WASTE CHARACTERIZATION STUDY.**

Beginning in 2010, and at least every ten years thereafter, the agency must conduct a solid waste characterization study of waste generated by households and industrial, commercial and institutional generators both inside and outside the seven-county metropolitan area. The study must conduct field sorting events at multiple locations under a sampling and sorting plan that insures that the data collected allows for an accurate estimate of the composition of the waste stream by type of material, which estimate must have a statistical margin of error at least as reliable as that in the agency's Statewide Municipal Solid Waste Composition Study published in March 2000.

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

Sec. 6. **[115A.5591] CONSTRUCTION AND DEMOLITION WASTE RECYCLING REQUIREMENT.**

Subdivision 1. **Requirement.** A contractor constructing or demolishing a building of more than 4,000 square feet located in the seven-county metropolitan area must recycle or reuse or arrange for the recycling or reuse of 40 percent of the waste, by weight, from the project. The waste must be recycled on-site or delivered to recycling facilities but may not be buried on-site.

Subd. 2. **Records.** A contractor to whom subdivision 1 applies must maintain records, including delivery receipts, documenting the disposition of all waste generated by the project. The contractor must maintain the records for three years. If the contractor is unable to achieve the 40 percent recycling goal established in subdivision 1, the records must include an explanation of why the goal was unable to be met.

5.1 **EFFECTIVE DATE.** This section is effective July 1, 2009.

5.2 Sec. 7. **[115A.933] MATERIALS USED FOR COMPOSTING.**

5.3 After January 1, 2009, any plastic bag or container containing yard waste or food  
5.4 waste collected in the seven-county metropolitan area and delivered by a person to a  
5.5 compost facility and not removed from the compost facility by the person must meet all  
5.6 the specifications in ASTM Standard Specification for Compostable Plastics (D6400). For  
5.7 purposes of this section "ASTM" has the meaning given in section 296A.01, subdivision 6.

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

5.9 Sec. 8. **[115A.947] COMPOSTABLE MATERIALS.**

5.10 (a) Source-separated compostable materials may be delivered to a mixed municipal  
5.11 solid waste processing facility or a recycling facility only for the purpose of composting.

5.12 (b) Source-separated compostable materials may be delivered to a transfer station  
5.13 only for transfer to a facility for the purpose of composting.

5.14 (c) Paragraphs (a) and (b) do not apply if the commissioner has determined that no  
5.15 other person is willing to accept the source-separated compostable materials.

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

5.17 Sec. 9. **[325E.319] LOCAL TELEPHONE DIRECTORIES; OPTION TO**  
5.18 **DECLINE DELIVERY.**

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

5.21 (a) "Deliver" means to physically bring to a resident by personal delivery, but  
5.22 does not include actions by the United States Postal Service, a commercial courier, or  
5.23 a commercial package delivery service that allows a customer to track the status of a  
5.24 shipment by destination, date and time of delivery.

5.25 (b) "'Do Not Receive' registry" means a list established and maintained by a person  
5.26 who publishes and delivers local telephone directories to residents that contains the names  
5.27 and addresses of residents who have notified the person that they do not wish to receive a  
5.28 local telephone directory.

5.29 (c) "Local telephone directory" means a publication listing the names, addresses, and  
5.30 telephone numbers of local businesses by type and containing advertisements promoting  
5.31 those businesses or the products they sell.

(d) "Resident" means a person that has a mailing address in Minnesota that is not a post office box.

Subd. 2. **Option to decline delivery.** (a) A person publishing and delivering local telephone directories in this state must print in boldfaced type in 12-point font or larger on the outside front cover of each directory the following information:

(1) a statement that reads: "IF YOU NO LONGER WISH TO RECEIVE THIS DIRECTORY, PLEASE CALL THE FOLLOWING NUMBER, WRITE TO THE FOLLOWING ADDRESS, OR E-MAIL THE FOLLOWING E-MAIL ADDRESS:"

(2) a toll-free telephone number, mailing address, and an e-mail address and Internet web site that a resident may use to contact the person delivering the local telephone directory to provide notice that the resident no longer wishes to receive the local directory and wishes to be entered into the "Do Not Receive" registry. The telephone number, mailing address, and e-mail address must remain active for at least three years.

(b) A person publishing and delivering local telephone directories in this state must prominently and conspicuously place on the homepage of its Internet web site instructions detailing how residents can enter their name, or verify that their name has been entered, into the "Do Not Receive" registry.

(c) A person publishing and delivering local telephone directories in this state must place into the "Do Not Receive" registry the name of a resident who requests to be entered on it under paragraph (b), and must not remove the name unless the person receives notice from the resident that the resident's name is to be removed from the "Do Not Receive" registry.

(d) A person publishing and delivering local telephone directories in this state must not deliver a local telephone directory to a resident whose name is in the "Do Not Receive" registry.

(e) A person publishing a telephone directory may ask a resident requesting to be entered into the "Do Not Receive" registry for only the resident's name, address, and telephone number.

(f) A resident may not be charged a fee to be entered into the "Do Not Receive" registry.

(g) This subdivision does not apply to an organization certified by the Internal Revenue Service as exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code.

Subd. 3. **Enforcement.** (a) The attorney general or the county attorney located in the county in which a violation occurs may enforce this section by commencing a civil

action in district court against a violator or to prevent a violation of this section. A civil penalty of \$500 may be assessed for each violation of this section.

(b) In any action pursuant to paragraph (a), it is a defense that the defendant delivered a local telephone directory to a resident in error.

**EFFECTIVE DATE.** This section is effective July 1, 2009.

Sec. 10. **MODEL ORDINANCE; CONSTRUCTION AND DEMOLITION WASTE.**

By January 1, 2009, the agency must arrange for the development of a model ordinance for counties requiring contractors to process and recycle waste from construction and demolition projects located in Minnesota. The model ordinance must include provisions specifying that the contractor and any subcontractor must divert a portion of construction waste and demolition waste from being deposited in a landfill and recycle those wastes.

For the purposes of this subdivision, "construction waste" and "demolition waste" have the meanings given in section 115A.1512, subdivision 1, paragraphs (b) and (c), respectively.

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

Sec. 11. **REPORT ON 2020 GOALS.**

By January 1, 2009, the commissioner shall, after obtaining input from counties inside and outside the seven-county metropolitan area, recycling and composting facilities, waste haulers, environmental organizations, and other interested parties, submit a report to the chairs and ranking minority members of the senate and house committees with primary jurisdiction over solid waste policy, that recommends options for achieving the following goals by 2020:

(1) an increase in county recycling rates to 60 percent of the weight of total solid waste generation; and

(2) the diversion, prior to delivery to landfills and waste-to-energy plants, and recycling and reuse of an amount of source-separated compostable materials equal to 15 percent of total solid waste generation.

The report must also contain estimates of the economic costs of implementing the strategies.

Sec. 12. **REVISOR'S INSTRUCTION.**

**H.F. No. 3540, 2nd Engrossment - 2007-2008th Legislative Session (2007-2008)**

8.1            In Minnesota Statutes, section 115A.03, the Revisor is instructed to renumber the  
8.2            subdivisions in alphabetical order.

8.3            Sec. 13. **REPEALER.**

8.4            Minnesota Statutes 2006, sections 115A.175; 115A.18; 115A.19; 115A.191;  
8.5            115A.192; 115A.194; 115A.195; 115A.20; 115A.24; 115A.28, subdivision 3; 115A.30;  
8.6            115A.301; 115A.55, subdivision 4; 115A.5501, subdivision 1; and 115A.551, subdivision  
8.7            7, and Minnesota Statutes 2007 Supplement, sections 115A.193; and 115A.28, subdivision  
8.8            2, are repealed.

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

**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.

**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.

**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

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pursuant to section 116.07 for stabilization and containment facilities at sites not reviewed under sections 115A.18 to 115A.30.

### **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

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(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.

### **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.

### **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;

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(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.

#### **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.

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

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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.

#### **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.

#### **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.

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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. 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.

### 115A.28 FINAL DECISION.

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.

### 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

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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.

### **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

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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 finance for credit to the state facility liability trust fund.

Subd. 6. **Administration.** (a) The commissioner of finance shall administer the state facility liability trust fund. Money in the fund is appropriated to the commissioner of finance 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.

### **115A.55 SOLID WASTE REDUCTION.**

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 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.

### **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.

### **115A.551 RECYCLING.**

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

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