A bill for an act

relating to environment; clarifying that agency interpretive statements may not be treated as if they are properly adopted rules; clarifying that certain fee increases require legislative approval; modifying effluent limitation requirements; modifying definition of pipeline for certain purposes; modifying requirements for Pollution Control Agency permitting efficiency reports; requiring analysis of Wisconsin's Green Tier Program; requiring Pollution Control Agency to seek approval of certain modifications to state implementation plan; amending Minnesota Statutes 2018, sections 14.05, by adding a subdivision; 115.03, subdivision 1; 115.455; 115.77, subdivision 1; 115.84, subdivisions 2, 3; 116.03, subdivision 2b; 116.07, subdivision 4d; 216G.01, subdivision 3.

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

Section 1. Minnesota Statutes 2018, section 14.05, is amended by adding a subdivision to read:

Subd. 1a. Limitation regarding certain policies, guidelines, and other interpretive statements. An agency must not seek to impose or require in a permit or contract or to enforce against any person through monetary or nonmonetary penalty a policy, guideline, bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement that has not been properly adopted under this chapter.

Sec. 2. Minnesota Statutes 2018, section 115.03, subdivision 1, is amended to read:

Subdivision 1. Generally. (a) The agency is hereby given and charged with the following powers and duties:

(1) to administer and enforce all laws relating to the pollution of any of the waters of the state;
2.1 (b) (2) to investigate the extent, character, and effect of the pollution of the waters of
this state and to gather data and information necessary or desirable in the administration or
enforcement of pollution laws, and to make such classification of the waters of the state as
it may deem advisable;

(b) (3) to establish and alter such reasonable pollution standards for any waters of the
state in relation to the public use to which they are or may be put as it shall deem necessary
for the purposes of this chapter and, with respect to the pollution of waters of the state,
chapter 116;

(b) (4) to encourage waste treatment, including advanced waste treatment, instead of
stream low-flow augmentation for dilution purposes to control and prevent pollution;

(b) (5) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable
orders, permits, variances, standards, rules, schedules of compliance, and stipulation
agreements, under such conditions as it may prescribe, in order to prevent, control or abate
water pollution, or for the installation or operation of disposal systems or parts thereof, or
for other equipment and facilities:

(1) requiring the discontinuance of the discharge of sewage, industrial waste or other
wastes into any waters of the state resulting in pollution in excess of the applicable pollution
standard established under this chapter;

(2) prohibiting or directing the abatement of any discharge of sewage, industrial
waste, or other wastes, into any waters of the state or the deposit thereof or the discharge
into any municipal disposal system where the same is likely to get into any waters of the
state in violation of this chapter and, with respect to the pollution of waters of the state,
chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and
specifying the schedule of compliance within which such prohibition or abatement must be
accomplished;

(3) prohibiting the storage of any liquid or solid substance or other pollutant in a
manner which does not reasonably assure proper retention against entry into any waters of
the state that would be likely to pollute any waters of the state;

(4) requiring the construction, installation, maintenance, and operation by any person
of any disposal system or any part thereof, or other equipment and facilities, or the
reconstruction, alteration, or enlargement of its existing disposal system or any part thereof,
or the adoption of other remedial measures to prevent, control or abate any discharge or
deposit of sewage, industrial waste or other wastes by any person;
establishing, and from time to time revising, standards of performance for new sources taking into consideration, among other things, classes, types, sizes, and categories of sources, processes, pollution control technology, cost of achieving such effluent reduction, and any nonwater quality environmental impact and energy requirements. Said standards of performance for new sources shall encompass those standards for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the agency determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants. New sources shall encompass buildings, structures, facilities, or installations from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication by the agency of proposed rules prescribing a standard of performance which will be applicable to such source. Notwithstanding any other provision of the law of this state, any point source the construction of which is commenced after May 20, 1973, and which is so constructed as to meet all applicable standards of performance for new sources shall, consistent with and subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution Control Act, not be subject to any more stringent standard of performance for new sources during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period ends first. Construction shall encompass any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

establishing and revising pretreatment standards to prevent or abate the discharge of any pollutant into any publicly owned disposal system, which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system;

requiring the owner or operator of any disposal system or any point source to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including where appropriate biological monitoring methods, sample such effluents in accordance with such methods, at such locations, at such intervals, and in such a manner as the agency shall prescribe, and providing such other information as the agency may reasonably require;

notwithstanding any other provision of this chapter, and with respect to the pollution of waters of the state, chapter 116, requiring the achievement of more stringent
limitations than otherwise imposed by effluent limitations in order to meet any applicable
water quality standard by establishing new effluent limitations, based upon section 115.01,
subdivision 13, clause (b), including alternative effluent control strategies for any point
source or group of point sources to insure the integrity of water quality classifications,
whenever the agency determines that discharges of pollutants from such point source or
sources, with the application of effluent limitations required to comply with any standard
of best available technology, would interfere with the attainment or maintenance of the
water quality classification in a specific portion of the waters of the state. Prior to
establishment of any such effluent limitation, the agency shall hold a public hearing to
determine the relationship of the economic and social costs of achieving such limitation or
limitations, including any economic or social dislocation in the affected community or
communities, to the social and economic benefits to be obtained and to determine whether
or not such effluent limitation can be implemented with available technology or other
alternative control strategies. If a person affected by such limitation demonstrates at such
hearing that, whether or not such technology or other alternative control strategies are
available, there is no reasonable relationship between the economic and social costs and
the benefits to be obtained, such limitation shall not become effective and shall be adjusted
as it applies to such person;

(ix) modifying, in its discretion, any requirement or limitation based upon best
available technology with respect to any point source for which a permit application is filed
after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory
to the agency that such modified requirements will represent the maximum use of technology
within the economic capability of the owner or operator and will result in reasonable further
progress toward the elimination of the discharge of pollutants; and

(x) requiring that applicants for wastewater discharge permits evaluate in their
applications the potential reuses of the discharged wastewater;

(6) to require to be submitted and to approve plans and specifications for disposal
systems or point sources, or any part thereof and to inspect the construction thereof for
compliance with the approved plans and specifications thereof;

(7) to prescribe and alter rules, not inconsistent with law, for the conduct of the
agency and other matters within the scope of the powers granted to and imposed upon it by
this chapter and, with respect to pollution of waters of the state, in chapter 116, provided
that every rule affecting any other department or agency of the state or any person other
than a member or employee of the agency shall be filed with the secretary of state;
to conduct such investigations, issue such notices, public and otherwise, and hold such hearings as are necessary or which it may deem advisable for the discharge of its duties under this chapter and, with respect to the pollution of waters of the state, under chapter 116, including, but not limited to, the issuance of permits, and to authorize any member, employee, or agent appointed by it to conduct such investigations or, issue such notices and hold such hearings;

for the purpose of water pollution control planning by the state and pursuant to the Federal Water Pollution Control Act, as amended, to establish and revise planning areas, adopt plans and programs and continuing planning processes, including, but not limited to, basin plans and areawide waste treatment management plans, and to provide for the implementation of any such plans by means of, including, but not limited to, standards, plan elements, procedures for revision, intergovernmental cooperation, residual treatment process waste controls, and needs inventory and ranking for construction of disposal systems;

to train water pollution control personnel, and charge such fees therefor as are necessary to cover the agency's costs. The fees under this clause are subject to legislative approval under section 16A.1283. All such fees received shall be paid into the state treasury and credited to the Pollution Control Agency training account;

impose as additional conditions in permits to publicly owned disposal systems appropriate measures to insure compliance by industrial and other users with any pretreatment standard, including, but not limited to, those related to toxic pollutants, and any system of user charges ratably as is hereby required under state law or said Federal Water Pollution Control Act, as amended, or any regulations or guidelines promulgated thereunder;

to set a period not to exceed five years for the duration of any national pollutant discharge elimination system permit or not to exceed ten years for any permit issued as a state disposal system permit only;

to require each governmental subdivision identified as a permittee for a wastewater treatment works to evaluate in every odd-numbered year the condition of its existing system and identify future capital improvements that will be needed to attain or maintain compliance with a national pollutant discharge elimination system or state disposal system permit; and

to train subsurface sewage treatment system personnel, including persons who design, construct, install, inspect, service, and operate subsurface sewage treatment systems, and charge fees for the training as necessary to pay the agency's costs. The fees under this clause are subject to legislative approval under section 16A.1283. All fees received must
be paid into the state treasury and credited to the agency's training account. Money in the
account is appropriated to the agency to pay expenses related to training.

(b) The information required in paragraph (a), clause (m)(13), must be submitted in
every odd-numbered year to the commissioner on a form provided by the commissioner.
The commissioner shall provide technical assistance if requested by the governmental
 subdivision.

(c) The powers and duties given the agency in this subdivision also apply to permits
issued under chapter 114C.

Sec. 3. Minnesota Statutes 2018, section 115.455, is amended to read:

115.455 EFFLUENT LIMITATIONS; COMPLIANCE.

To the extent allowable under federal law, for a municipality that constructs a publicly
owned treatment works or for an industrial national pollutant discharge elimination system
and state disposal system permit holder that constructs a treatment works to comply with a
new or modified effluent limitation, compliance with any new or modified effluent limitation
adopted after construction begins that would require additional capital investment is required
no sooner than 16 years after the date the facility begins operating.

Sec. 4. Minnesota Statutes 2018, section 115.77, subdivision 1, is amended to read:

Subdivision 1. Fees. The agency shall collect fees in amounts necessary, but no greater
than the amounts necessary, to cover the reasonable costs of reviewing applications and
issuing certifications. The fees under this subdivision are subject to legislative approval
under section 16A.1283.

Sec. 5. Minnesota Statutes 2018, section 115.84, subdivision 2, is amended to read:

Subd. 2. Rules. The agency may adopt rules to govern certification of laboratories
according to this section. Notwithstanding section 16A.1283, the agency may adopt rules
establishing fees.

Sec. 6. Minnesota Statutes 2018, section 115.84, subdivision 3, is amended to read:

Subd. 3. Fees. (a) Until the agency adopts a rule establishing fees for certification, the
agency shall collect fees from laboratories registering with the agency, but not accredited
by the commissioner of health under sections 144.97 to 144.99, in amounts necessary to
cover the reasonable costs of the certification program, including reviewing applications,
issuing certifications, and conducting audits and compliance assistance. The fees under this paragraph are subject to legislative approval under section 16A.1283.

(b) Fees under this section must be based on the number, type, and complexity of analytical methods that laboratories are certified to perform.

(c) Revenue from fees charged by the agency for certification shall must be credited to the environmental fund.

Sec. 7. Minnesota Statutes 2018, section 116.03, subdivision 2b, is amended to read:

Subd. 2b. Permitting efficiency. (a) It is the goal of the state that environmental and resource management permits be issued or denied within 90 days for tier 1 permits or 150 days for tier 2 permits following submission of a permit application. The commissioner of the Pollution Control Agency shall establish management systems designed to achieve the goal. For the purposes of this section, "tier 1 permits" are permits that do not require individualized actions or public comment periods, and "tier 2 permits" are permits that require individualized actions or public comment periods.

(b) The commissioner shall must prepare an annual semiannual permitting efficiency report reports that include include statistics on meeting the tier 2 goal in paragraph (a) and the criteria for tier 2 by permit categories. The report reports are due on February 1 and August 1 each year. For permit applications that have not met the goal, the each report must state the reasons for not meeting the goal. In stating the reasons for not meeting the goal, the commissioner shall must separately identify delays caused by the responsiveness of the proposer, lack of staff, scientific or technical disagreements, or the level of public engagement. The Each report must specify the number of days from initial submission of the application to the day of determination that the application is complete. The Each report must aggregate the data for the year reporting period and assess whether program or system changes are necessary to achieve the goal, in which case the commissioner must implement those changes. Whenever a report required by this subdivision states the number of permits completed within a particular period, the report must, immediately after the number and in parentheses, state the percentage of total applications received for that permit category that the number represents. Whenever a report required by this subdivision states the number of permits completed within a particular period, the report must separately state completion data for industrial and municipal permits. The report reports must be posted on the agency's website and submitted to the governor and the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over environment policy and finance.
(c) The commissioner shall allow electronic submission of environmental review and permit documents to the agency.

(d) Within 30 business days of application for a permit subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify the permit applicant, in writing, whether the application is complete or incomplete. If the commissioner determines that an application is incomplete, the notice to the applicant must enumerate all deficiencies, citing specific provisions of the applicable rules and statutes, and advise the applicant on how the deficiencies can be remedied. If the commissioner determines that the application is complete, the notice must confirm the application's tier 1 or tier 2 permit status. If the commissioner believes that a complete application for a tier 2 construction permit cannot be issued within the 150-day goal, the commissioner must provide notice to the applicant with the commissioner's notice that the application is complete and, upon request of the applicant, provide the permit applicant with a schedule estimating when the agency will begin drafting the permit and issue the public notice of the draft permit. This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

(e) For purposes of this subdivision, "permit professional" means an individual not employed by the Pollution Control Agency who:

1. has a professional license issued by the state of Minnesota in the subject area of the permit;

2. has at least ten years of experience in the subject area of the permit; and

3. abides by the duty of candor applicable to employees of the Pollution Control Agency under agency rules and complies with all applicable requirements under chapter 326.

(f) Upon the agency's request, an applicant relying on a permit professional must participate in a meeting with the agency before submitting an application:

1. at least two weeks prior to the preapplication meeting, the applicant must submit at least the following:

   i. project description, including, but not limited to, scope of work, primary emissions points, discharge outfalls, and water intake points;

   ii. location of the project, including county, municipality, and location on the site;

   iii. business schedule for project completion; and

   iv. other information requested by the agency at least four weeks prior to the scheduled meeting; and
During the preapplication meeting, the agency shall provide for the applicant at least the following:

(i) an overview of the permit review program;

(ii) a determination of which specific application or applications will be necessary to complete the project;

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

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

(v) a determination of what information must be included in the application, including a description of any required modeling or testing.

The applicant may select a permit professional to undertake the preparation of the permit application and draft permit.

If a preapplication meeting was held, the agency shall, within seven business days of receipt of an application, notify the applicant and submitting permit professional that the application is complete or is denied, specifying the deficiencies of the application.

Upon receipt of notice that the application is complete, the permit professional shall submit to the agency a timetable for submitting a draft permit. The permit professional shall submit a draft permit on or before the date provided in the timetable. Within 60 days after the close of the public comment period, the commissioner shall notify the applicant whether the permit can be issued.

Nothing in this section shall be construed to modify:

(1) any requirement of law that is necessary to retain federal delegation to or assumption by the state; or

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

The permit application and draft permit shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the permit application and draft permit. The commissioner shall request additional studies, if needed, and the permit applicant shall submit all additional studies and information necessary for the commissioner to perform the commissioner's responsibility to review, modify, and determine the completeness of the application and approve the draft permit.
If an environmental or resource management permit is not issued or denied within the applicable period described in paragraph (a), the commissioner must immediately begin review of the application and must take all steps necessary to issue the final permit, deny the permit, or issue the public notice for the draft permit within 150 days of the expiration of the applicable period described in paragraph (a). The commissioner may extend the period for up to 60 days by issuing a written notice to the applicant stating the length of and reason for the extension. Except as prohibited by federal law, after the applicable period expires, any person may seek an order of the district court requiring the commissioner to immediately take action on the permit application. A time limit under this paragraph may be extended through written agreement between the commissioner and the applicant.

Sec. 8. Minnesota Statutes 2018, section 116.07, subdivision 4d, is amended to read:

Subd. 4d. Permit fees. (a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees must not include the costs of litigation. The fee schedule must reflect reasonable and routine direct and indirect costs associated with permitting, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Water fees under this paragraph are subject to legislative approval under section 16A.1283. Any money collected under this paragraph must be deposited in the environmental fund.

(b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to a notification, permit, or license requirement under this chapter, subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules adopted thereunder. The annual fee must be used to pay for all direct and indirect reasonable costs, including legal costs, required to develop and administer the notification, permit, or license program requirements of this chapter, subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules adopted thereunder. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and
demonstrations; preparing inventories and tracking emissions; and providing information

to the public about these activities.

(c) The agency shall set fees that:

(1) will result in the collection, in the aggregate, from the sources listed in paragraph

(b), of an amount not less than $25 per ton of each volatile organic compound; pollutant

regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of

the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national

primary ambient air quality standard has been promulgated;

(2) may result in the collection, in the aggregate, from the sources listed in paragraph

(b), of an amount not less than $25 per ton of each pollutant not listed in clause (1) that is

regulated under this chapter or air quality rules adopted under this chapter; and

(3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount

needed to match grant funds received by the state under United States Code, title 42, section

7405 (section 105 of the federal Clean Air Act).

The agency must not include in the calculation of the aggregate amount to be collected
under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant
from a source. The increase in air permit fees to match federal grant funds shall be a
surcharge on existing fees. The commissioner may not collect the surcharge after the grant
funds become unavailable. In addition, the commissioner shall use nonfee funds to the extent
practical to match the grant funds so that the fee surcharge is minimized.

(d) To cover the reasonable costs described in paragraph (b), the agency shall provide
in the rules promulgated under paragraph (c) for an increase in the fee collected in each
year by the percentage, if any, by which the Consumer Price Index for the most recent
calendar year ending before the beginning of the year the fee is collected exceeds the
Consumer Price Index for the calendar year 1989. For purposes of this paragraph, the
Consumer Price Index for any calendar year is the average of the Consumer Price Index for
all-urban consumers published by the United States Department of Labor, as of the close
of the 12-month period ending on August 31 of each calendar year. The revision of the
Consumer Price Index that is most consistent with the Consumer Price Index for calendar
year 1989 shall must be used.

(e) Any money collected under paragraphs (b) to (d) must be deposited in the
environmental fund and must be used solely for the activities listed in paragraph (b).
(f) Permit applicants who wish to construct, reconstruct, or modify a project may offer
to reimburse the agency for the costs of staff time or consultant services needed to expedite
the preapplication process and permit development process through the final decision on
the permit, including the analysis of environmental review documents. The reimbursement
shall be in addition to permit application fees imposed by law. When the agency determines
that it needs additional resources to develop the permit application in an expedited manner;
and that expediting the development is consistent with permitting program priorities, the
agency may accept the reimbursement. The commissioner must give the applicant an estimate
of costs to be incurred by the commissioner. The estimate must include a brief description
of the tasks to be performed, a schedule for completing the tasks, and the estimated cost for
each task. The applicant and the commissioner must enter into a written agreement detailing
the estimated costs for the expedited permit decision-making process to be incurred by the
agency. The agreement must also identify staff anticipated to be assigned to the project.
The commissioner must not issue a permit until the applicant has paid all fees in full. The
commissioner must refund any unobligated balance of fees paid. Reimbursements accepted
by the agency are appropriated to the agency for the purpose of developing the permit or
analyzing environmental review documents. Reimbursement by a permit applicant shall
precede and not be contingent upon issuance of a permit; shall not affect the
agency's decision on whether to issue or deny a permit, what conditions are included in a
permit, or the application of state and federal statutes and rules governing permit
determinations; and shall not affect final decisions regarding environmental review.

(g) The fees under this subdivision are exempt from section 16A.1285.

Sec. 9. Minnesota Statutes 2018, section 216G.01, subdivision 3, is amended to read:

Subd. 3. Pipeline. "Pipeline" means a pipeline owned or operated by a condemning
authority, as defined in section 117.025, subdivision 4, located in this state which is
used to transport natural or synthetic gas at a pressure of more than 90 pounds per square
inch, or to transport crude petroleum or petroleum fuels or oil or their derivatives, coal,
anhydrous ammonia or any mineral slurry to a distribution center or storage facility which
that is located within or outside of this state. "Pipeline" does not include a pipeline owned
or operated by a natural gas public utility as defined in section 216B.02, subdivision 4.

Sec. 10. ANALYSIS OF WISCONSIN'S GREEN TIER PROGRAM.

The commissioner of the Pollution Control Agency must conduct an analysis of the
Green Tier Program operated in Wisconsin under Wisconsin Statutes, section 299.83, which
recognizes and rewards environmental performance that voluntarily exceeds legal
requirements related to health, safety, and the environment resulting in continuous
improvement in Wisconsin's environment, economy, and quality of life. By February 1, 2021, the commissioner must report the results of the analysis to the chairs and ranking
minority members of the house of representatives and senate committees and divisions with
jurisdiction over environment and natural resources. The report must include:

(1) an overview of how the program operates in Wisconsin;

(2) an assessment of benefits and challenges that would likely accompany the adoption
of a similar program in Minnesota;

(3) a comparison of the program with the Minnesota XL permit project operated under
Minnesota Statutes, sections 114C.10 to 114C.19;

(4) an assessment of what policy changes, legal changes, and funding would be required
to successfully implement a similar program in Minnesota; and

(5) any other related matters deemed relevant by the commissioner.

Sec. 11. STATE IMPLEMENTATION PLAN REVISIONS.

(a) The commissioner of the Pollution Control Agency must seek approval from the
federal Environmental Protection Agency for revisions to the state's federal Clean Air Act
state implementation plan so that under the revised plan, the Pollution Control Agency is
prohibited from applying a national or state ambient air quality standard in a permit issued
solely to authorize operations to continue at an existing facility with unmodified emissions
levels. Nothing in this section shall be construed to require the commissioner to apply for
a revision that would prohibit the agency from applying a national or state ambient air
quality standard in a permit that authorizes an increase in emissions due to construction of
a new facility or in a permit that authorizes changes to existing facilities that result in a
significant net emissions increase of a regulated NSR pollutant, as defined in Code of Federal
Regulations, title 40, section 52.21(b)(50).

(b) The commissioner of the Pollution Control Agency must report quarterly to the chairs
and ranking minority members of the house of representatives and senate committees and
divisions with jurisdiction over environment and natural resources policy on the status of
efforts to implement paragraph (a) until the revisions required by paragraph (a) have been
either approved or denied.