State of Minnesota

# HOUSE OF REPRESENTATIVES

**NINETY-FIRST SESSION**

**H. F. No. 2074**

03/04/2019 Authored by Fabian, Heintzeman, Lueck, Torkelson and Anderson
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

A bill for an act

relating to natural resources; modifying certain natural resources fee and permit conditions; making technical corrections; amending Minnesota Statutes 2018, sections 103G.2242, subdivision 14; 115.03, subdivisions 1, 5; 115.035; 115.455; 115.77, subdivision 1; 115.84, subdivisions 2, 3; 116.07, subdivisions 2, 4d; 116D.04, subdivision 2a; 216G.01, subdivision 3.

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

Section 1. Minnesota Statutes 2018, section 103G.2242, subdivision 14, is amended to read:

Subd. 14. **Fees established.** (a) Fees must be assessed for managing wetland bank accounts and transactions as follows:

(1) account maintenance annual fee: one percent of the value of credits not to exceed $500;

(2) account establishment, deposit, or transfer: 6.5 percent of the value of credits not to exceed $1,000 per establishment, deposit, or transfer; and

(3) withdrawal fee: 6.5 percent of the value of credits withdrawn.

(b) The board ~~may~~ must establish fees ~~at or~~ based on costs to the agency below the amounts in paragraph (a) for single-user or other dedicated wetland banking accounts.

(c) Fees for single-user or other dedicated wetland banking accounts established pursuant to section 103G.005, subdivision 10i, clause (4), are limited to establishment of a wetland banking account and are assessed at the rate of 6.5 percent of the value of the credits not to exceed $1,000.

(d) The board may assess a fee to pay the costs associated with establishing conservation easements, or other long-term protection mechanisms prescribed in the rules adopted under subdivision 1, on property used for wetland replacement.

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:

~~(a)~~ (1) to administer and enforce all laws relating to the pollution of any of the waters of the state;

~~(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;

~~(c)~~ (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;

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

~~(e)~~ (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)~~ (i) 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)~~ (ii) 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)~~ (iii) 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)~~ (iv) 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;

~~(5)~~ (v) 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;

~~(6)~~ (vi) 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;

~~(7)~~ (vii) 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;

~~(8)~~ (viii) 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;

~~(9)~~ (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

~~(10)~~ (x) requiring that applicants for wastewater discharge permits evaluate in their applications the potential reuses of the discharged wastewater;

~~(f)~~ (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;

~~(g)~~ (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;

~~(h)~~ (8) 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;

~~(i)~~ (9) 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;

~~(j)~~ (10) to train water pollution control personnel~~,~~ and charge ~~such~~ fees ~~therefor as are~~ for the training as 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;

~~(k)~~ (11) to 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;

~~(l)~~ (12) 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;

~~(m)~~ (13) 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

~~(n)~~ (14) 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 115.03, subdivision 5, is amended to read:

Subd. 5. **Agency authority; national pollutant discharge elimination system.** (a) Notwithstanding any other provisions prescribed in or pursuant to this chapter and, with respect to the pollution of waters of the state, in chapter 116, or otherwise, the agency shall have the authority to perform any and all acts minimally necessary including, but not limited to, the establishment and application of standards, procedures, rules, orders, variances, stipulation agreements, schedules of compliance, and permit conditions, consistent with and, therefore not less stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the state of Minnesota in the national pollutant discharge elimination system (NPDES); provided that this provision shall not be construed as a limitation on any powers or duties otherwise residing with the agency pursuant to any provision of law.

(b) An activity that conveys or connects waters of the state without subjecting the transferred water to intervening industrial, municipal, or commercial use does not require a national pollutant discharge elimination system permit. This exemption does not apply to pollutants introduced by the activity itself to the water being transferred.

Sec. 4. Minnesota Statutes 2018, section 115.035, is amended to read:

**115.035 EXTERNAL PEER REVIEW OF WATER QUALITY STANDARDS.**

(a) ~~When the commissioner convenes an external peer review panel during the promulgation or amendment of water quality standards, the commissioner must provide notice and take public comment on the charge questions for the external peer review panel and must allow written and oral public comment as part of the external peer review panel process.~~ Every new or revised numeric water quality standard must be supported by a technical support document that provides the scientific basis for the proposed standard and that has undergone external, scientific peer review. Numeric water quality standards in which the agency is adopting, without change, a United States Environmental Protection Agency criterion that has been through peer review are not subject to this paragraph. Documentation of the external peer review panel, including the name or names of the peer reviewer or reviewers, must be included in the statement of need and reasonableness for the water quality standard. ~~If the commissioner does not convene an external peer review panel during the promulgation or amendment of water quality standards, the commissioner must state the reason an external peer review panel will not be convened in the statement of need and reasonableness.~~

(b) Every technical support document developed by the agency must be released in draft form for public comment before peer review and before finalizing the technical support document.

(c) The commissioner must provide public notice and information about the external peer review through the request for comments published at the beginning of the rulemaking process for the numeric water quality standard, and:

(1) the request for comments must identify the draft technical support document and where the document can be found;

(2) the request for comments must include a proposed charge for the external peer review and request comments on the charge;

(3) all comments received during the public comment period must be made available to the external peer reviewers; and

(4) if the agency is not soliciting external peer review because the agency is adopting a United States Environmental Protection Agency criterion without change, that must be noted in the request for comments.

(d) The purpose of the external peer review is to evaluate whether the technical support document and proposed standard are based on sound scientific knowledge, methods, and practices. The external peer review must be conducted according to the guidance in the most recent edition of the United States Environmental Protection Agency's Peer Review Handbook. Peer reviewers must not have participated in developing the scientific basis of the standard. Peer reviewers must disclose any activities or circumstances that could pose a conflict of interest or create an appearance of a loss of impartiality that could interfere with an objective review.

(e) The type of review and the number of peer reviewers depends on the nature of the science underlying the standard. A panel review must be used when the agency is developing significant new science or science that expands significantly beyond current documented scientific practices or principles.

(f) In response to the findings of the external peer review, the agency must revise the draft technical support document as appropriate. The findings of the external peer review must be documented and attached to the final technical support document, which must be an exhibit as part of the statement of need and reasonableness in the rulemaking to adopt the new or revised water quality standard. The agency must note changes in the final technical support document made in response to the external peer review.

~~(b)~~ (g) By December 15 each year, the commissioner ~~shall~~ must post on the agency's website a report identifying the water quality standards development work in progress or completed in the past year, the lead agency scientist for each development effort, and opportunities for public input.

Sec. 5. 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 facility 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. 6. 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. 7. 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. 8. 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. 9. Minnesota Statutes 2018, section 116.07, subdivision 2, is amended to read:

Subd. 2. **Adopting standards.** (a) The Pollution Control Agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods ~~which~~ that produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that ~~due to~~ because of variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors,

including others ~~which~~ that it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality ~~which~~ that may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality ~~shall~~ must be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set standards of air quality ~~which~~ that are more stringent than those set by the Pollution Control Agency. Consistent with this recognition of the variability of air contamination levels and conditions across the state, the agency must not apply or enforce a national or state ambient air quality standard as an applicable standard for an individual source under an individual facility permit issued according to Code of Federal Regulations, title 40, part 70, unless the permittee is a temporary source issued a permit under United States Code, title 42, section 7661c, paragraph (e).

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that ~~due to~~ because of variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control ~~which~~ that may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others ~~which~~ that it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control ~~shall~~ must be premised on technical criteria and commonly accepted practices.

(c) The Pollution Control Agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level ~~which~~ that may occur in the outdoor atmosphere, recognizing that ~~due to~~ because of variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards ~~shall~~ must give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the Pollution

Control Agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others ~~which~~ that it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions, and the fact that a standard ~~which~~ that may be proper in an essentially residential area of the state~~,~~ may not be proper ~~as to~~ in a highly developed industrial area of the state. Such noise standards ~~shall~~ must be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure ~~which~~ that are more stringent than those set by the Pollution Control Agency.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that ~~due to~~ because of variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control ~~which~~ that may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils~~,~~ and geology, climate, transportation, and land use. Standards of hazardous waste control ~~shall~~ must be premised on technical knowledge~~,~~ and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control ~~which~~ that are in conflict or inconsistent with those set by the Pollution Control Agency.

(e) A person who generates less than 100 kilograms of hazardous waste per month is exempt from the following agency hazardous waste rules:

(1) rules relating to transportation, manifesting, storage, and labeling for photographic fixer and x-ray negative wastes that are hazardous solely because of silver content; and

(2) any rule requiring the generator to send to the agency or commissioner a copy of each manifest for the transportation of hazardous waste for off-site treatment, storage, or disposal, except that counties within the metropolitan area may require generators to provide manifests.

Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter~~,~~ or standards for water quality under chapter 115, the statement of need and reasonableness must include:

(1) an assessment of any differences between the proposed rule and:

(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);

(ii) similar standards in states bordering Minnesota; and

(iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

If the proposed standards in a rulemaking subject to this paragraph are more stringent than comparable federal standards, the statement of need and reasonableness must, in addition to the requirements of this paragraph, include documentation that the federal standard does not provide adequate protection for public health and the environment.

(g) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter or standards for water quality under chapter 115, each standard must be expressed in a standard measurement unit of milliliter (ml) for liquids and milligram (mg) for solids.

Sec. 10. 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 ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ 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~~ is 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~~ is 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~~ must precede and not be contingent upon issuance of a permit; ~~shall~~ must 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~~ must not affect final decisions regarding environmental review.

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

Sec. 11. Minnesota Statutes 2018, section 116D.04, subdivision 2a, is amended to read:

Subd. 2a. **When prepared.** (a) Where there is potential for significant environmental effects resulting from any major governmental action, the action ~~shall~~ must be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement ~~shall~~ must be an analytical rather than an encyclopedic document ~~which~~ that 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~~ must 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~~ must be prepared as early as practical in the formulation of an action.

(b) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets ~~shall~~ must be prepared as well as categories of actions for which no environmental review is required under this section. A mandatory environmental assessment worksheet is not 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.15, subdivision 2d, 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 is the state agency with the greatest responsibility for supervising or approving the project as a whole.

(c) A mandatory environmental impact statement is not 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, or produces less than 400,000 tons of chemicals 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.15, subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter.

(d) 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 website 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 30-day comment period may not be extended unless approved by the project's proposer. The responsible governmental unit's decision on the need for an environmental impact statement ~~shall~~ must be based on the environmental assessment worksheet and the comments received during the comment period, and ~~shall~~ must 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.

(e) An environmental assessment worksheet ~~shall~~ must 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~~ must 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~~ must 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.

(f) 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 before 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.

(g) The board may, before 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.

(h) An early and open process ~~shall~~ must be ~~utilized~~ used to limit the scope of the environmental impact statement to a discussion of those impacts that, because of the nature or location of the project, have the potential for significant environmental effects. The same process ~~shall~~ must be ~~utilized~~ used to determine the form, content, and level of detail of the statement as well as the alternatives that are appropriate for consideration in the statement. In addition, the permits that will be required for the proposed action ~~shall~~ must be identified during the scoping process. Further, the process ~~shall~~ must 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~~ must be incorporated into the order requiring the preparation of an environmental impact statement.

(i) 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~~ must 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 before 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~~ use the earliest applicable hearing procedure to initiate the hearing. All agencies having jurisdiction over a permit identified in the draft environmental assessment worksheet scoping document must begin reviewing any permit application upon publication of the notice of preparation of the environmental impact statement.

(j) An environmental impact statement ~~shall~~ must 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~~ has 60 days to prepare an adequate environmental impact statement.

(k) 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~~ must 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.

Sec. 12. 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~~ that 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. 13. **WETLAND REPLACEMENT; FRAMEWORKS FOR IN-LIEU FEE PROGRAM.**

The Board of Water and Soil Resources, in cooperation with the United States Army Corps of Engineers, may complete the planning frameworks and other program application requirements necessary for federal approval of an in-lieu fee program, as authorized under Minnesota Statutes, section 103G.2242, in the Red River basin and the greater than 80 percent area. The planning frameworks must contain a prioritization strategy for selecting and implementing mitigation activities based on a watershed approach that includes consideration of historic resource loss within watersheds and the extent to which mitigation can address priority watershed needs. The board must consider the recommendations of the report "Siting of Wetland Mitigation in Northeast Minnesota," dated March 7, 2014, and implementation of Minnesota Statutes, section 103B.3355, paragraphs (e) and (f), in developing proposed planning frameworks for applicable watersheds. When completing the work and pursuing approval of an in-lieu fee program, the board must do so consistent with the applicable requirements, stakeholder and agency review processes, and approval time frames in Code of Federal Regulations, title 33, part 332. Upon receiving federal approval, the board must submit any completed planning frameworks to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources.

Sec. 14. **REVISOR INSTRUCTION.**

The revisor of statutes must change the reference in Minnesota Statutes, section 446A.073, subdivision 1, from "section 115.03, subdivision 1, paragraph (e), clause (8)" to "section 115.03, subdivision 1, paragraph (a), clause (5), item (viii)" and in Minnesota Statutes, section 446A.073, subdivision 2, from "section 115.03, subdivision 1, paragraph (f)" to "section 115.03, subdivision 1, paragraph (a), clause (6)."