

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 423

(SENATE AUTHORS: HAWJ, Sieben and Hayden)

DATE	D-PG	OFFICIAL STATUS
02/13/2013	215	Introduction and first reading Referred to Environment and Energy
03/06/2013	582a	Comm report: To pass as amended and re-refer to Judiciary
03/13/2013	946a	Comm report: To pass as amended and re-refer to State and Local Government
03/14/2013		Comm report: To pass and re-referred to Finance

1.1

A bill for an act

1.2

relating to environment; authorizing certain expenditures from clean water fund;

1.3

modifying reporting requirements; modifying Petroleum Tank Release Cleanup

1.4

Act; repealing obsolete rules; appropriating money; amending Minnesota

1.5

Statutes 2012, sections 114D.50, subdivision 4; 115A.1320, subdivision 1;

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115B.20, subdivision 6; 115B.28, subdivision 1; 115C.02, subdivision 4, by

1.7

adding a subdivision; 115C.08, subdivision 4, by adding a subdivision; 115D.10;

1.8

116.48, subdivision 6; 473.846; repealing Minnesota Rules, parts 7021.0010,

1.9

subparts 1, 2, 4, 5; 7021.0020; 7021.0030; 7021.0040; 7021.0050, subpart

1.10

5; 9210.0300; 9210.0310; 9210.0320; 9210.0330; 9210.0340; 9210.0350;

1.11

9210.0360; 9210.0370; 9210.0380; 9220.0530, subpart 6.

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

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Section 1. Minnesota Statutes 2012, section 114D.50, subdivision 4, is amended to read:

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Subd. 4. **Expenditures; accountability.** (a) A project receiving funding from the

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clean water fund must meet or exceed the constitutional requirements to protect, enhance,

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and restore water quality in lakes, rivers, and streams and to protect groundwater and

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drinking water from degradation. Priority may be given to projects that meet more than

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one of these requirements. A project receiving funding from the clean water fund shall

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include measurable outcomes, as defined in section 3.303, subdivision 10, and a plan for

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measuring and evaluating the results. A project must be consistent with current science

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and incorporate state-of-the-art technology.

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(b) Money from the clean water fund shall be expended to balance the benefits

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across all regions and residents of the state.

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(c) A state agency or other recipient of a direct appropriation from the clean

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water fund must compile and submit all information for proposed and funded projects

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or programs, including the proposed measurable outcomes and all other items required

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under section 3.303, subdivision 10, to the Legislative Coordinating Commission as soon

as practicable or by January 15 of the applicable fiscal year, whichever comes first. The Legislative Coordinating Commission must post submitted information on the Web site required under section 3.303, subdivision 10, as soon as it becomes available. Information classified as not public under section 13D.05, subdivision 3, paragraph (d), is not required to be placed on the Web site.

(d) Grants funded by the clean water fund must be implemented according to section 16B.98 and must account for all expenditures. Proposals must specify a process for any regrantee envisioned. Priority for grant proposals must be given to proposals involving grants that will be competitively awarded.

(e) Money from the clean water fund may only be spent on projects that benefit Minnesota waters.

(f) When practicable, a direct recipient of an appropriation from the clean water fund shall prominently display on the recipient's Web site home page the legacy logo required under Laws 2009, chapter 172, article 5, section 10, as amended by Laws 2010, chapter 361, article 3, section 5, accompanied by the phrase "Click here for more information." When a person clicks on the legacy logo image, the Web site must direct the person to a Web page that includes both the contact information that a person may use to obtain additional information, as well as a link to the Legislative Coordinating Commission Web site required under section 3.303, subdivision 10.

(g) Future eligibility for money from the clean water fund is contingent upon a state agency or other recipient satisfying all applicable requirements in this section, as well as any additional requirements contained in applicable session law.

(h) Money from the clean water fund may be used to leverage federal funds through execution of formal project partnership agreements with federal agencies consistent with respective federal agency partnership agreement requirements.

Sec. 2. Minnesota Statutes 2012, section 115A.1320, subdivision 1, is amended to read:

Subdivision 1. **Duties of the agency.** (a) The agency shall administer sections 115A.1310 to 115A.1330.

(b) The agency shall establish procedures for:

(1) receipt and maintenance of the registration statements and certifications filed with the agency under section 115A.1312; and

(2) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(c) The agency shall annually review the value of the following variables that are part of the formula used to calculate a manufacturer's annual registration fee under section 115A.1314, subdivision 1:

(1) the proportion of sales of video display devices sold to households that manufacturers are required to recycle;

(2) the estimated per-pound price of recycling covered electronic devices sold to households;

(3) the base registration fee; and

(4) the multiplier established for the weight of covered electronic devices collected in section 115A.1314, subdivision 1, paragraph (d). If the agency determines that any of these values must be changed in order to improve the efficiency or effectiveness of the activities regulated under sections 115A.1312 to 115A.1330, the agency shall submit recommended changes and the reasons for them to the chairs of the senate and house of representatives committees with jurisdiction over solid waste policy.

(d) By January 15 each year, beginning in 2008, the agency shall calculate estimated sales of video display devices sold to households by each manufacturer during the preceding program year, based on national sales data, and forward the estimates to the department.

(e) The agency shall provide a report to the governor and the legislature on the implementation of sections 115A.1310 to 115A.1330. For each program year, the report must discuss the total weight of covered electronic devices recycled and a summary of information in the reports submitted by manufacturers and recyclers under section 115A.1316. The report must also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report must include a description of enforcement actions under sections 115A.1310 to 115A.1330. The agency may include in its report other information received by the agency regarding the implementation of sections 115A.1312 to 115A.1330. The report must be done in conjunction with the report required under section ~~115D.10~~ 115A.121.

(f) The agency shall promote public participation in the activities regulated under sections 115A.1312 to 115A.1330 through public education and outreach efforts.

(g) The agency shall enforce sections 115A.1310 to 115A.1330 in the manner provided by sections 115.071, subdivisions 1, 3, 4, 5, and 6; and 116.072, except for those provisions enforced by the department, as provided in subdivision 2. The agency may

revoke a registration of a collector or recycler found to have violated sections 115A.1310 to 115A.1330.

(h) The agency shall facilitate communication between counties, collection and recycling centers, and manufacturers to ensure that manufacturers are aware of video display devices available for recycling.

(i) The agency shall develop a form retailers must use to report information to manufacturers under section 115A.1318 and post it on the agency's Web site.

(j) The agency shall post on its Web site the contact information provided by each manufacturer under section 115A.1318, paragraph (e).

Sec. 3. Minnesota Statutes 2012, section 115B.20, subdivision 6, is amended to read:

Subd. 6. **Report to legislature.** ~~Each year~~ By January 31 of each odd-numbered year, the commissioner of agriculture and the agency shall submit to the senate Finance Committee, the house of representatives Ways and Means Committee, the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance, and the Environmental Quality Board a report detailing the activities for which money has been spent pursuant to this section during the previous fiscal year.

EFFECTIVE DATE. This section is effective July 1, 2013.

Sec. 4. Minnesota Statutes 2012, section 115B.28, subdivision 1, is amended to read:

Subdivision 1. **Duties.** In addition to performing duties specified in sections 115B.25 to 115B.37 or in other law, and subject to the limitations on disclosure contained in section 115B.35, the agency shall:

(1) adopt rules, including rules governing practice and procedure before the agency, the form and procedure for applications for compensation, and procedures for claims investigations;

(2) publicize the availability of compensation and application procedures on a statewide basis with special emphasis on geographical areas surrounding sites identified by the agency as having releases from a facility where a harmful substance was placed or came to be located prior to July 1, 1983;

(3) collect, analyze, and make available to the public, in consultation with the Department of Health, the Pollution Control Agency, the University of Minnesota Medical and Public Health Schools, and the medical community, data regarding injuries relating to exposure to harmful substances; and

(4) prepare and transmit ~~by December 31 of each year to the governor and the legislature an annual~~ legislative report required under section 115B.20, subdivision 6, to include (i) a summary of agency activity under clause (3); (ii) data determined by the agency from actual cases, including but not limited to number of cases, actual compensation received by each claimant, types of cases, and types of injuries compensated, as they relate to types of harmful substances as well as length of exposure, but excluding identification of the claimants; (iii) all administrative costs associated with the business of the agency; and (iv) agency recommendations for legislative changes, further study, or any other recommendation aimed at improving the system of compensation.

Sec. 5. Minnesota Statutes 2012, section 115C.02, subdivision 4, is amended to read:

Subd. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes institutional controls.

Sec. 6. Minnesota Statutes 2012, section 115C.02, is amended by adding a subdivision to read:

Subd. 6b. **Institutional controls.** "Institutional controls" means legally enforceable restrictions, conditions, or controls that are placed on the use of real property, groundwater, or surface water located at or adjacent to property where a corrective action is taken and that are necessary to conduct a corrective action or reasonably required to ensure that the corrective action protects the public health and welfare and the environment. Institutional controls include but are not limited to restrictions, conditions, or controls enforceable by contract, easement, restrictive covenant, statute, ordinance, or rule, including official controls such as zoning, building codes, and official maps. Institutional controls include an affidavit required under section 116.48, subdivision 6, or similar notice of a release recorded with real property records.

Sec. 7. Minnesota Statutes 2012, section 115C.08, subdivision 4, is amended to read:

Subd. 4. **Expenditures.** (a) Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in this chapter;

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

(3) for costs of recovering expenses of corrective actions under section 115C.04;

(4) for training, certification, and rulemaking under sections 116.46 to 116.50;

(5) for agency administrative costs of enforcing rules governing the construction, installation, operation, and closure of aboveground and underground petroleum storage tanks;

(6) for reimbursement of the environmental response, compensation, and compliance account under subdivision 5 and section 115B.26, subdivision 4;

(7) for administrative and staff costs as set by the board to administer the petroleum tank release program established in this chapter;

(8) for corrective action performance audits under section 115C.093;

(9) for contamination cleanup grants, as provided in paragraph (c);

(10) to assess and remove abandoned underground storage tanks under section 115C.094 and, if a release is discovered, to pay for the specific consultant and contractor services costs necessary to complete the tank removal project, including, but not limited to, excavation soil sampling, groundwater sampling, soil disposal, and completion of an excavation report; and

(11) ~~for property acquisition by the agency when the agency has determined that purchasing a property where a release has occurred is the most appropriate corrective action. The~~ to acquire interests in real or personal property, including easements, environmental covenants under chapter 114E, and leases, that the agency determines are necessary for corrective actions or to ensure the protectiveness of corrective actions. The agency may require an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. Chapter 117 governs condemnation proceedings by the agency under this clause. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this clause. Agency approval of an environmental covenant under chapter 114E is sufficient evidence of acceptance of an interest in real property when the agency is expressly identified as a holder in the covenant. Acquisition of all properties real property under this clause, except environmental covenants under chapter 114E, is subject to approval by the board.

(b) Except as provided in paragraph (c), money in the fund is appropriated to the board to make reimbursements or payments under this section.

(c) In fiscal years 2010 and 2011, \$3,700,000 is annually appropriated from the fund to the commissioner of employment and economic development for contamination cleanup grants under section 116J.554. Beginning in fiscal year 2012 and each year thereafter, \$6,200,000 is annually appropriated from the fund to the commissioner of employment

and economic development for contamination cleanup grants under section 116J.554. Of this amount, the commissioner may spend up to \$225,000 annually for administration of the contamination cleanup grant program. The appropriation does not cancel and is available until expended. The appropriation shall not be withdrawn from the fund nor the fund balance reduced until the funds are requested by the commissioner of employment and economic development. The commissioner shall schedule requests for withdrawals from the fund to minimize the necessity to impose the fee authorized by subdivision 2. Unless otherwise provided, the appropriation in this paragraph may be used for:

(1) project costs at a qualifying site if a portion of the cleanup costs are attributable to petroleum contamination or new and used tar and tar-like substances, including but not limited to bitumen and asphalt, but excluding bituminous or asphalt pavement, that consist primarily of hydrocarbons and are found in natural deposits in the earth or are distillates, fractions, or residues from the processing of petroleum crude or petroleum products as defined in section 296A.01; and

(2) the costs of performing contamination investigation if there is a reasonable basis to suspect the contamination is attributable to petroleum or new and used tar and tar-like substances, including but not limited to bitumen and asphalt, but excluding bituminous or asphalt pavement, that consist primarily of hydrocarbons and are found in natural deposits in the earth or are distillates, fractions, or residues from the processing of petroleum crude or petroleum products as defined in section 296A.01.

Sec. 8. Minnesota Statutes 2012, section 115C.08, is amended by adding a subdivision to read:

Subd. 6. Disposition of property acquired for corrective action. (a) If the commissioner determines that real or personal property acquired by the agency for a corrective action is no longer needed for corrective action purposes, the commissioner may:

(1) transfer the property to the commissioner of administration to be disposed of in the manner required for other surplus property, subject to conditions the commissioner of the Pollution Control Agency determines necessary to protect the public health and welfare and the environment or to comply with federal law;

(2) transfer the property to another state agency, a political subdivision, or a special purpose district as provided in paragraph (b); or

(3) if required by federal law, take actions and dispose of the property according to federal law.

(b) If the commissioner determines that real or personal property acquired by the agency for a corrective action must be operated, maintained, or monitored after

completion of other phases of the corrective action, the commissioner may transfer ownership of the property to another state agency, a political subdivision, or a special purpose district that agrees to accept the property. A state agency, political subdivision, or special purpose district may accept and implement terms and conditions of a transfer under this paragraph. The commissioner may set terms and conditions for the transfer that the commissioner considers reasonable and necessary to ensure proper operation, maintenance, and monitoring of corrective actions; protect the public health and welfare and the environment; and comply with applicable federal and state laws and regulations. The state agency, political subdivision, or special purpose district to which the property is transferred is not liable under this chapter solely as a result of acquiring the property or acting in accordance with the terms and conditions of transfer.

(c) The proceeds of a sale or other transfer of property under this subdivision by the commissioner or by the commissioner of administration shall be deposited in the petroleum tank fund or other appropriate fund. Any share of the proceeds that the agency is required by federal law or regulation to reimburse to the federal government is appropriated from the fund to the agency for the purpose. Section 16B.287, subdivision 1, does not apply to real property that is sold by the commissioner of administration and that was acquired under subdivision 4, clause (11).

Sec. 9. Minnesota Statutes 2012, section 115D.10, is amended to read:

115D.10 TOXIC POLLUTION PREVENTION EVALUATION REPORT.

The commissioner, in cooperation with the commission, shall report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance on progress being made in achieving the objectives of sections 115D.01 to 115D.12. The report must be submitted by February 1 of each even-numbered year done in conjunction with the report required under section 115A.121.

Sec. 10. Minnesota Statutes 2012, section 116.48, subdivision 6, is amended to read:

Subd. 6. **Affidavit.** (a) Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank or contained an underground or aboveground storage tank that had a release for which no corrective action was taken or if required by the agency as a condition of a corrective action under chapter 115C, the owner shall record with the county recorder or registrar of titles of the county in which the property is located an affidavit containing:

- (1) a legal description of the property where the tank is located;
- (2) a description of the tank, of the location of the tank, and of any known release from the tank of a regulated substance to the full extent known or reasonably ascertainable;
- (3) a description of any restrictions currently in force on the use of the property resulting from any release; and
- (4) the name of the owner.
- (b) The county recorder shall record the affidavits in a manner that will insure their disclosure in the ordinary course of a title search of the subject property. Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank, the owner shall deliver to the purchaser a copy of the affidavit and any additional information necessary to make the facts in the affidavit accurate as of the date of transfer of ownership.
- (c) Failure to record an affidavit as provided in this subdivision does not affect or prevent any transfer of ownership of the property.

Sec. 11. Minnesota Statutes 2012, section 473.846, is amended to read:

473.846 REPORTS REPORT TO LEGISLATURE.

The agency shall submit to the senate and house of representatives committees having jurisdiction over environment and natural resources ~~separate reports~~ a report describing the activities for which money for landfill abatement has been spent under ~~sections~~ section 473.844 and 473.845. The report for section 473.844 expenditures shall be included in the report required by section 115A.411, and shall include recommendations on the future management and use of the metropolitan landfill abatement account. ~~By December 31 of each year, the commissioner shall submit the report for section 473.845 on contingency action trust fund activities.~~

Sec. 12. **REPEALER.**

Minnesota Rules, parts 7021.0010, subparts 1, 2, 4, and 5; 7021.0020; 7021.0030; 7021.0040; 7021.0050, subpart 5; 9210.0300; 9210.0310; 9210.0320; 9210.0330; 9210.0340; 9210.0350; 9210.0360; 9210.0370; 9210.0380; and 9220.0530, subpart 6, are repealed.

7021.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in part 7005.0100 apply to the terms used in parts 7021.0010 to 7021.0050 unless the terms are defined in this part.

7021.0010 DEFINITIONS.

Subp. 2. **Electric utility.** "Electric utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers operating, maintaining, or controlling in Minnesota facilities used for the generation of electricity.

7021.0010 DEFINITIONS.

Subp. 4. **Reasonably available control technology (RACT).** "Reasonably available control technology (RACT)" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

7021.0010 DEFINITIONS.

Subp. 5. **Sensitive areas.** "Sensitive areas" means the areas listed by the agency pursuant to Minnesota Statutes, section 116.44 because the agency has determined these areas contain natural resources sensitive to the impacts of acid deposition.

7021.0020 APPLICABILITY.

The acid deposition standard established in part 7021.0030 applies only in sensitive areas.

7021.0030 ACID DEPOSITION STANDARD.

The acid deposition standard is an annual average of 11 kilograms of wet sulfate deposition per hectare.

7021.0040 MEASUREMENT METHODOLOGY FOR SULFATE.

Subpart 1. **Incorporation by reference.** Quality Assurance Handbook for Air Pollution Measurement Systems (EPA-600/4-82-042 a & b), as amended, is incorporated by reference. This publication is available from the United States Environmental Protection Agency, Office of Research and Development, 26 West St. Clair, Cincinnati, Ohio 45268 and can be found at the offices of the agency, 1935 West County Road B-2, Roseville, Minnesota 55113, the Government Documents Section, Room 409, Wilson Library, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55454, and the State of Minnesota Law Library, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155. This document is not subject to frequent change.

Subp. 2. **Measurement procedure.** For sulfate, measurements made to determine compliance with the standard contained in part 7021.0030 shall be performed in accordance with the Quality Assurance Handbook for Air Pollution Measurement Systems: Volume V, Manual for Precipitation Measurement Systems (EPA-600/4-82-042 a & b). A person seeking to make measurements to determine compliance with the acid deposition standard shall develop and submit to the commissioner for approval a quality assurance plan containing equipment specifications and procedures for operation, maintenance, and internal quality control of the measurement system.

7021.0050 ACID DEPOSITION CONTROL REQUIREMENTS IN MINNESOTA.

Subp. 5. **Requirement for application of reasonably available control technology.** On and after January 1, 1990, the owner or operator of any electric generating facility that contains indirect heating equipment with a rated heat input of greater than 5,000 million BTU per hour shall reduce sulfur dioxide emissions at the facility to a level consistent with RACT.

9210.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9210.0300 to 9210.0380, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

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Subp. 4. **Cities.** "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared under Minnesota Statutes, section 115A.46.

Subp. 6. **Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

Subp. 7. **Final design and engineering/architectural plans.** "Final design and engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 8. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more than one local government unit.

Subp. 9. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

Subp. 10. **On-site utilities.** "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility.

Subp. 11. **Preliminary design and engineering/architectural plans.** "Preliminary design and engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

Subp. 12. **Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. 13. **Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

Subp. 14. **Recipient.** "Recipient" means an applicant who has received a grant or loan under the solid waste processing facilities demonstration program.

Subp. 15. **Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

Subp. 16. **Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 17. **Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

Subp. 18. **Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Subp. 19. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 22.

Subp. 20. **Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

Subp. 21. **Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

Subp. 22. **Special waste stream.** "Special waste stream" means materials that are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include waste tires, wood wastes, and agricultural wastes.

Subp. 23. **Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

Subp. 24. **Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

Subp. 25. **Waste processing facility.** "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

9210.0310 SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM.

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Parts 9210.0300 to 9210.0380 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the agency may award grants and loans for capital costs of waste processing facilities.

9210.0320 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

Subp. 2. **Eligible projects.** Only projects that demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. Three types of projects are eligible for loans and grants: materials recovery; chemical, physical, or biological modifications; and special waste streams. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Subp. 3. **Eligible costs.** Except as provided in part 9210.0200, eligible costs under parts 9210.0300 to 9210.0380 shall be limited to the costs of land, waste processing equipment, structures necessary to house the waste processing equipment, appropriate and necessary on-site utilities, landscaping; on-site roads and parking; trailers, containers, and rolloff boxes necessary to transport products to market, or to transport residue from the processing facility to a solid waste land disposal facility, and final design and engineering/architectural plans.

Subp. 4. **Ineligible costs.** Except as provided in part 9210.0200, ineligible costs include any costs related to solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering/architectural plans.

9210.0330 INFORMATION REQUIRED ON APPLICATION.

Applications for grants, loans, or grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the agency:

- A. the name of each applicant making the application;
- B. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;
- C. the name, qualifications, and address of the project manager;
- D. the name and qualifications of the facility operator, if available;
- E. the total capital cost of the project;
- F. the total grant- or loan-eligible cost of the project;
- G. the amount of grant, loan, or grant and loan funding requested;
- H. the amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant;
- I. the type of assistance applied for (grant, loan, or grant and loan together); and
- J. the type of waste processing facility for which assistance is being requested: materials recovery; chemical, physical, or biological modification; or special waste stream.

9210.0340 SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH APPLICATION.

Applications for grants or loans for waste processing facilities shall include the following supporting documentation:

- A. a conceptual and technical feasibility report that includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility;
- B. a financial plan that contains:
 - (1) initial capital development costs and the method of financing those costs;
 - (2) annual operating and maintenance costs;
 - (3) projections of total facility costs and revenues over 20 years or for the term of the longest debt obligation, whichever is longer; and
 - (4) total capital costs per ton of installed daily capacity;
- C. a comprehensive solid waste management plan;

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D. preliminary design and engineering/architectural plans and equipment specifications of the proposed waste processing facility;

E. documentation that waste supplies will be committed to the project and that the applicant has the mechanism to commit the wastes;

F. a market analysis of recovered materials/energy, including documentation of market commitments such as letters of intent or contracts;

G. a report on the status of required permits from permitting agencies;

H. a report on time frames of project development;

I. resolutions that comply with Minnesota Statutes, section 115A.54, subdivision 3; and

J. if the applicant requests priority under Minnesota Statutes, section 115A.49, documentation:

(1) that the natural geologic and soil conditions are especially unsuitable for land disposal of solid waste;

(2) that the available capacity of existing solid waste disposal facilities is less than five years; or

(3) that the proposed project would serve more than one local government unit.

9210.0350 GRANT AND LOAN APPLICATION PROCEDURES.

Subpart 1. **Applications.** An application may be submitted to the agency when the applicant has met the information and documentation requirements in parts 9210.0330 and 9210.0340. The applicant is encouraged to contact the commissioner and request a preapplication review of the proposed project.

Subp. 2. **Review of applications.** Upon receipt of an application, the commissioner or a designee shall conduct an initial review of the application under part 9210.0360. The agency shall evaluate projects and award grants and loans.

Subp. 3. **Applications accepted.** The agency shall accept applications for funds under the solid waste processing facilities demonstration program until all funds for the program are awarded or until three months before the expiration of the agency pursuant to law, whichever occurs first.

Subp. 4. **Legislative priorities.** The agency shall give priority to projects located in cities, counties, or districts in which:

A. the natural geologic and soil conditions are especially unsuitable for land disposal of solid waste;

B. the capacity of existing solid waste disposal facilities is less than five years; or

C. the project serves more than one local government unit.

9210.0360 REVIEW AND EVALUATION OF APPLICATIONS.

Subpart 1. **Determination of eligibility and completeness.** Upon receipt of an application, the commissioner or a designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

Subp. 2. **Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the commissioner shall notify the applicant of the commissioner's determinations of eligibility and completeness. If the commissioner determines that the applicant or the project is ineligible, the commissioner shall reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. If the commissioner determines that any part of the project costs is ineligible or that the application is incomplete, the commissioner shall notify the applicant of the ineligible portion of the costs or of the deficiency. The applicant has 14 days after receiving the notice to correct inadequacies identified by the commissioner. If the inadequacies are corrected within the time allowed, the application will be further considered.

Subp. 3. **Evaluation of applications.** If the applicant, the costs, and the project are determined to be eligible and the application is complete, the agency shall evaluate the application to determine whether the documentation demonstrates:

A. that the project is conceptually and technically feasible;

B. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;

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C. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project; and

D. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the project's service area.

Subp. 4. **Consultation with other agencies.** In its evaluation of the application, the agency shall consider any recommendations provided by the State Planning Agency and the appropriate regional development commission or the Metropolitan Council.

Subp. 5. **Agency determination.** If the agency determines that the application satisfies the requirements of subpart 3, the agency shall determine the amount of the grant, loan, or grant and loan award and the applicant shall be notified of the grant, loan, or grant and loan awarded. If the agency determines that the application fails to satisfy the requirements of subpart 3, the agency shall reject the application and the commissioner shall return the application to the applicant, together with a statement of the reasons for rejection.

9210.0370 AWARD OF GRANTS AND LOANS.

Subpart 1. **Maximum awards.** The maximum loan award shall be 50 percent of the eligible costs specified in the application or \$400,000, whichever is less. Except as provided in part 9210.0200, the maximum grant award shall be 50 percent of the eligible costs specified in the application or \$400,000, whichever is less. Except as provided in part 9210.0200, the maximum combined grant and loan award is \$400,000.

Subp. 2. **Limitations.** The amount of the agency's grant, loan, or grant and loan award shall be limited to an amount needed to complete the project considering all sources of funding presently available to the applicant.

Grants and loans shall not be awarded to cover any cost associated with tasks performed before the award of a grant, loan, or grant and loan or after the expiration of the grant, loan, or grant and loan agreement.

Subp. 3. **Limitations on disbursement of funds.** No funds shall be disbursed until the agency has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

9210.0380 GRANT, LOAN, OR GRANT AND LOAN AGREEMENT.

Subpart 1. **Requirements.** A grant, loan, or grant and loan agreement shall:

A. include as attachments the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

B. incorporate by reference the final application submitted to the agency in accordance with part 9210.0350;

C. establish the term of the grant, loan, or grant and loan. Grants awarded under parts 9210.0300 to 9210.0380 shall have a maximum term of two years. Loans awarded under parts 9210.0300 to 9210.0380 shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

D. in the case of a loan agreement, include schedules for the repayment of principal and interest;

E. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any agency approval that may be required in the agreement;

F. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;

G. provide that the agency will not accept amendments requesting that additional funds be awarded to the recipient except as provided in part 9210.0200;

H. require that the recipient provide periodic reports to the agency on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state;

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I. provide that if the recipient sells the facility to a private enterprise, all outstanding loan obligations to the agency shall become due and payable upon sale to the private enterprise;

J. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant that must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in item H to the private enterprise; and

K. require that the facility may only be sold to a private enterprise in accordance with the constitution of the state of Minnesota and any applicable Minnesota statutes and rules.

Subp. 2. **Rescission of grants and loans.** If projects are not completed and operational in accordance with the terms and conditions of the respective agreements, including time schedules, the grants and loans for those projects shall be rescinded, and the entire amount of grants and loans shall be repaid unless the agency determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

Subp. 3. **Disbursement.** The agency shall disburse grants in accordance with the payment schedule in the grant, loan, or grant and loan agreement.

Subp. 4. **Interest payments.** Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The agency shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

9220.0530 WASTE TIRE TRANSPORTATION.

Subp. 6. **Submittal of operating record.** Transporters shall submit to the commissioner an operating record that identifies the transporter by name and identification number, and that summarizes the information accumulated under subpart 5 for the three months preceding the month the record is to be submitted. This record must be submitted April 10, July 10, October 10, and January 10 of each year.