

- (1) when overtaking and passing another vehicle proceeding in the same direction;
 (2) when preparing for a left turn at an intersection or into a private road or driveway;

or

(3) when reasonably necessary to avoid conditions, including fixed or moving objects, vehicles, pedestrians, animals, surface hazards, or narrow width lanes, that make it unsafe to continue along the right-hand curb or edge.

(b) Persons operating motorized bicycles on a roadway may not ride more than two abreast and may not impede the normal and reasonable movement of traffic. On a laned roadway, a person operating a motorized bicycle shall ride within a single lane.

(c) This section does not permit the operation of a motorized bicycle on a bicycle path or bicycle lane that is reserved for the exclusive use of nonmotorized traffic.

(d) Subject to the provisions of section 160.263, subdivision 3, a person may operate an electric-assisted bicycle on a bicycle lane. A person may operate an electric-assisted bicycle on the shoulder of a roadway if the electric-assisted bicycle is traveling in the same direction as the adjacent vehicular traffic.

Sec. 17. Minnesota Statutes 1994, section 171.01, subdivision 20, is amended to read:

Subd. 20. **MOTORIZED BICYCLE.** "Motorized bicycle" means a bicycle that is propelled by a motor of a piston displacement capacity of 50 cubic centimeters or less, and a maximum of two brake horsepower, which is capable of a maximum speed of not more than 30 miles per hour on a flat surface with not more than one percent grade in any direction when the motor is engaged. "Motorized bicycle" includes an electric-assisted bicycle as defined in section 169.01, subdivision 4b.

Sec. 18. **REPEALER.**

Minnesota Statutes 1994, section 168.33, subdivisions 4 and 5, are repealed.

Presented to the governor April 1, 1996

Signed by the governor April 3, 1996, 3:55 p.m.

CHAPTER 436—S.F.No. 302

VETOED

CHAPTER 437—S.F.No. 1956

An act relating to the environment; providing for an environmental permitting project; providing penalties; amending Minnesota Statutes 1994, sections 115.03, subdivisions 1 and 2; 115.04; 115.071, subdivisions 1, 2, 3, 4, and 5; 115.072; 115.075; 115.076, subdivision 1; 116.07, subdivi-

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sion 9; and 116.091, subdivisions 1 and 3; Minnesota Statutes 1995 Supplement, section 116.072, subdivision 1; proposing coding for new law as Minnesota Statutes, chapter 114C.

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

ENVIRONMENTAL REGULATORY INNOVATIONS ACT

Section 1. **[114C.01] POLICY.**

The legislature recognizes that Minnesota's existing environmental laws play a critical role in protecting the environment. However, the legislature finds that environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods. It is the policy of the legislature that Minnesota should develop environmental regulatory methods that:

(1) encourage facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land;

(2) encourage facility owners and operators to innovate, set measurable and verifiable goals, and implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;

(3) encourage superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges;

(4) reward facility owners and operators that reduce pollution to levels below what is required by applicable law;

(5) consolidate into one permit environmental requirements that are currently included in different permits, sometimes issued by different state or local agencies;

(6) reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment;

(7) increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this chapter;

(8) encourage groups of facilities and communities to work together to reduce pollution to levels below what is required by applicable law;

(9) provide reasonable technical assistance to facilitate meaningful stakeholder participation; and

(10) increase levels of trust and communication among agencies, regulated parties, and the public.

Sec. 2. **[114C.02] DEFINITIONS.**

Subdivision 1. SCOPE. For the purposes of this chapter, the definitions in this section have the meanings given them.

Subd. 2. POLLUTION PREVENTION. "Pollution prevention" has the meaning given in section 115D.03.

Subd. 3. SOURCE REDUCTION. "Source reduction" has the meaning given in section 115A.03.

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Subd. 4. **STAKEHOLDERS.** “Stakeholders” means citizens in the communities near the project site, facility workers, government representatives, business groups, educational groups, environmental groups, or other Minnesota citizens or public interest groups.

Subd. 5. **STATE OR LOCAL AGENCY.** “State or local agency” means any agency, department, board, bureau, office or other instrumentality of the state, any political subdivision of the state, any public corporation, any municipality, and any other local unit of government.

PERMIT PROJECT

Sec. 3. **[114C.10] ESTABLISHMENT OF MINNESOTA XL PERMIT PROJECT.**

Subdivision 1. **PROJECT.** The pollution control agency is authorized to establish and implement a permit project under sections 114C.10 to 114C.14. The purpose of the project is to work toward the policy goals listed in section 114C.01 by issuing and studying the effect of permits that require permittees to reduce overall levels of pollution below what is required by applicable law, but which grant greater operational flexibility than current law would otherwise allow. Permits issued under this project shall be called Minnesota XL permits.

Subd. 2. **REPORT TO LEGISLATURE.** By January 15, 1998, the commissioner of the pollution control agency shall report to the legislature on implementation of the project, the environmental results of the project, and recommendations for future legislation to further the policy of this chapter.

Sec. 4. **[114C.11] MINNESOTA XL PERMITS.**

Subdivision 1. **PARTICIPATION IN PROJECT.** (a) The commissioner of the pollution control agency may solicit requests for participation and shall select the participants in the project based on the policy set forth in section 114C.01 and to satisfy the criteria of subdivisions 2 and 3. In addition, the commissioner shall select participants that collectively represent a variety of facility types and projects that are expected to reduce air, water, and land pollution. A power generation facility may not be selected to participate in the project or be issued a Minnesota XL permit unless its proposal includes a plan for significantly reducing mercury emissions.

(b) The prospective permittees must be regulated by the agency under chapter 115, chapter 116, or both, and voluntarily submit a proposal for a Minnesota XL permit. The proposal must address the major pollution impact from the facility or facilities included in the proposal.

(c) If, in the course of preparing a Minnesota XL permit for a prospective permittee, the commissioner concludes that the Minnesota XL permit will not sufficiently promote the policy of section 114C.01 or meet the issuance criteria in this section, the commissioner may remove the prospective permittee from the project. In that event, the commissioner shall provide the prospective permittee with a reasonable amount of time to obtain alternative permits made necessary by removal from the project.

Subd. 2. **MINIMUM CRITERIA FOR MINNESOTA XL PERMIT ISSUANCE.** The pollution control agency may issue and amend a Minnesota XL permit if the agency finds that the following minimum criteria are met:

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(1) the permit will facilitate pollution prevention and source reduction activities by the facility and result in significantly lower overall levels of pollution from the facility, its customers, or suppliers than would otherwise be required by applicable laws, without: (i) increasing the negative impact on the environment, the local community, or worker health and safety; or (ii) transferring pollution impacts into the product;

(2) the pollution prevention, source reduction, or other pollution reduction goals are verifiable;

(3) the pollution limits contained in the permit are verifiable and enforceable;

(4) the stakeholder group has been involved through a decision-making process that seeks consensus in the design of the permit and will have the opportunity for continued involvement in the implementation and evaluation of it;

(5) the permittee agrees to make available information that it gives the agency about the XL project, except information that is nonpublic under chapter 13 or confidential under section 116.075, to the stakeholder group in a format that is easily understood;

(6) the permittee agrees to provide an assessment of the success of the project in reducing the time and money spent at the facility on paperwork and other administrative tasks that do not directly benefit the environment;

(7) the permittee, the pollution control agency, and other state and local agencies are likely to expend less time and resources over the long term to administer the Minnesota XL permit than other types of permits; and

(8) the project is not inconsistent with the federal government's Project XL guidance or any federal laws governing the Project XL program.

Subd. 3. ADDITIONAL CRITERIA. In addition to the minimum criteria in subdivision 2, the commissioner in selecting participants and the agency in issuing or amending a Minnesota XL permit, must find that the permit meets one or more of the following criteria:

(1) the permit allows the facility owner or operator as much operational flexibility as can be reasonably provided consistent with the need to achieve the anticipated pollution reduction and ensure the verifiability and enforceability of the permit's pollution limits;

(2) the permit provides facility-wide pollution limits where practical, verifiable, and enforceable;

(3) the permit regulates air, water, and land pollution effects, direct and indirect;

(4) the permit encourages pollution prevention or source reduction;

(5) the permit encourages innovation in the design, production, distribution, use, reuse, recycling, or disposal of a product such that air, water, and land pollution impacts are minimized over the life cycle of a product;

(6) the permit reduces the emission of nontoxic pollutants regulated under applicable law;

(7) the permit reduces indoor chemical exposure, water use, or energy use;

(8) the permit minimizes transfer, direct and indirect, of pollution between the air, water, and land;

(9) the regulatory techniques employed in the permit have potential application to other permittees;

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(10) the permittee agrees to measure and demonstrate the success of the Minnesota XL permit in addition to the assessment in subdivision 2, clause (6), such as tracking pollution prevention incentives and initiatives or using surveys to measure any attitudinal changes by facility personnel or the public;

(11) the permit is multiagency, under subdivision 4.

Subd. 4. MULTIAGENCY MINNESOTA XL PERMITS. The pollution control agency may include or vary in a Minnesota XL permit the related requirements of other state or local agencies, if the pollution control agency, the prospective permittee, and the other state or local agency find that it is reasonable to do so. Notwithstanding conflicting procedural requirements, the other agencies may exercise their related permitting, licensing, or other approval responsibilities by including their requirements in the Minnesota XL permit. The pollution control agency may not include or vary the related requirements of other state or local agencies in a Minnesota XL permit unless the other agencies agree to sign the permit. The Minnesota XL permit shall identify any requirement, the source of which is not the pollution control agency, and identify the source agency. The commissioner of the pollution control agency and the other agencies may agree to share inspection or other responsibilities related to the Minnesota XL permit. For purposes of this subdivision, requirements are related if they have a direct or indirect bearing on environmental protection or indoor chemical exposure.

Subd. 5. ENVIRONMENTAL POLICY ACT. Sections 114C.10 to 114C.14 do not supersede the requirements of chapter 116D and the rules adopted under it.

Subd. 6. PLANS AND PROGRESS REPORTS UNDER CHAPTERS 115D AND 115E. A permittee complies with the plan content and timing requirements of sections 115D.07, 115E.04, and 115E.045 if the Minnesota XL permit requires the permittee to include in an overall environmental management plan satisfactory alternative information. A permittee complies with the progress report content and timing requirements of section 115D.08 if the Minnesota XL permit requires the permittee to include in its overall reporting requirements satisfactory alternative information, and specifies a schedule for submitting the information.

Sec. 5. [114C.12] ISSUANCE, AMENDMENT, AND REVOCATION PROCEDURE.

Subdivision 1. STAKEHOLDER GROUP. The commissioner of the pollution control agency shall:

(1) ensure that the stakeholder group for each Minnesota XL permit includes members that represent diversity of stakeholders that emphasizes participation by members from the local community but does not exclude other stakeholders;

(2) ensure that a decision-making process that seeks consensus is in place; and

(3) ensure that reasonable technical assistance is provided to facilitate stakeholder understanding of the design, implementation, and evaluation of each Minnesota XL permit.

Subd. 2. UNIFIED PERMIT ACTION AND VARIANCE PROCEDURE. The pollution control agency may issue, amend, or revoke Minnesota XL permits using the single permit and variance procedure in subdivision 4, notwithstanding conflicting state or local procedural requirements. If a Minnesota XL permit includes variances from applicable state rules or local ordinances or local regulations, the issuance or amendment of

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the permit constitutes adoption of a variance to such state rules or local ordinances or local regulations if the Minnesota XL permit identifies, in general terms, any state rules or local ordinances or local regulations being varied.

Subd. 3. **VARIANCE STANDARDS.** Although subdivision 2 establishes the procedure for granting variances in a Minnesota XL permit, the agency in deciding whether to grant a variance must apply the substantive standards for granting a variance applicable to the state rule, local ordinance, or local regulation being varied or find that the variance either:

(1) promotes reduction in overall levels of pollution beyond what is required by applicable law, consistent with the purposes of this chapter; or

(2) reduces the administrative burden on state or local agencies or the permittee, provided that alternative monitoring, testing, notification, recordkeeping, or reporting requirements will provide the information needed by the state or local agency to ensure compliance.

Subd. 4. **PROCEDURE.** (a) The pollution control agency must provide at least 30 days for public comment on the agency's proposed issuance, amendment, or revocation of a Minnesota XL permit. Before the start of the public comment period, the commissioner of the pollution control agency must prepare a draft permit, permit amendment, or notice of permit revocation and a fact sheet that:

(1) briefly describes the principal facts and the significant factual, legal, methodological, and policy questions considered by the commissioner and the commissioner's proposed determination;

(2) briefly describes how the permit action proposed by the commissioner meets the criteria of section 114C.11 and furthers the policy of section 114C.01; and

(3) identifies any rules that would be varied by the commissioner's proposed permit action.

(b) The commissioner shall prepare a public notice of the proposed permit action that:

(1) briefly describes the facility or activity that is the subject of the proposed permit action;

(2) states the commissioner's proposed permit action and whether it includes a variance of any state rules or local ordinances or local regulations;

(3) identifies an agency person to contact for additional information;

(4) states that the draft permit, permit amendment, or notice of revocation and the fact sheet are available upon request;

(5) states that comments may be submitted to the agency by the public during the comment period; and

(6) describes the procedures that the agency will use to make a final decision, including how persons may request public informational meetings, contested case hearings, and appearances at public meetings of the agency. The agency or the commissioner may order a public informational meeting if the comments received during the comment period demonstrate considerable public interest in the proposed permit action.

(c) The commissioner shall mail the public notice to the applicant, all persons who have registered with the agency to receive notice of permit actions, and to any interested

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person upon request. The commissioner shall make a copy of the public notice available at the agency's main office and the applicable regional office. The commissioner shall circulate the public notice in the geographic area of the facility or activity subject to the proposed permit action, either by posting in public buildings, by publication in local newspapers or periodicals, by publication in the State Register, or by an alternate method deemed by the commissioner to be more effective such as an electronic bulletin board or mail service.

(d) The commissioner shall have the discretion to issue, amend, or revoke a Minnesota XL permit if:

(1) the commissioner has included in the public notice information notifying persons of their right to request that the decision to issue, amend, or revoke the Minnesota XL permit be presented to the agency; and

(2) neither the permit applicant, a member of the stakeholders group, or any person commenting on the proposed issuance, amendment, or revocation of the Minnesota XL permit has requested, during the comment period, that the decision be made by the agency or requested a contested case hearing.

If the conditions in clauses (1) and (2) have not been met, or if, prior to the commissioner's decision, one or more members of the agency request that the decision to issue, amend, or revoke the Minnesota XL permit be made by the agency, then the agency shall have the sole authority to make that decision.

Subd. 5. PERMIT REVOCATION. (a) The pollution control agency may revoke a Minnesota XL permit if requested by the permittee or if the agency finds that:

(1) the permittee is in significant noncompliance with the Minnesota XL permit or with applicable law;

(2) the permittee is not able, or has shown a lack of willingness, to comply with future pollution reduction deadlines in the Minnesota XL permit;

(3) the permitted facility or activity endangers human health or the environment and the danger cannot be removed by an amendment to the Minnesota XL permit; or

(4) after proper notification and a reasonable amount of time has passed, the permittee has not satisfactorily addressed a substantive issue raised by a majority of members of the stakeholders group.

(b) If the agency revokes a Minnesota XL permit, it shall in its revocation order:

(1) delay any compliance deadlines that had been varied by the Minnesota XL permit if the agency finds it necessary to provide the permittee a reasonable amount of time to obtain alternative permits under chapters other than this chapter and under local ordinances and regulations, and to achieve compliance; and

(2) establish practical interim requirements to replace the requirements of the Minnesota XL permit that the agency finds the permittee will not be able to comply with between the time of permit revocation and issuance of the alternative permits, provided that such interim requirements shall not allow pollution from the facility in excess of that allowed by applicable law at the time the permit was issued.

(c) The permittee shall comply with the agency's order and with all requirements of the Minnesota XL permit for which alternative interim requirements have not been established in the agency's order, until the applicable alternative permits have been issued.

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Sec. 6. **[114C.13] FEES.**

Minnesota XL permittees shall continue to be subject to the same fee structures they would have been subject to if they had obtained the permits that the Minnesota XL permit replaces.

Sec. 7. **[114C.14] ENFORCEMENT AND JUDICIAL REVIEW.**

Subdivision 1. **ENFORCEMENT.** A Minnesota XL permit may be enforced in any manner provided by law for the enforcement of permits issued under chapter 115 or 116, except for requirements of other state or local agencies that are included in the permit and except that the defense in section 609.671, subdivision 14, also applies to any misdemeanor action taken under section 115.071, subdivision 2, paragraph (a). Requirements of other state or local agencies may be enforced using whatever authorities would be available if the requirements had been included in permits, licenses, or other approvals issued directly by the other agencies. The other agencies shall consult with the commissioner of the pollution control agency prior to taking any action enforcing a Minnesota XL permit.

Subd. 2. **JUDICIAL REVIEW.** Any person aggrieved by a final decision of the pollution control agency to issue, amend, or revoke a Minnesota XL permit may obtain judicial review pursuant to sections 14.63 to 14.69.

VARIANCES

Sec. 8. **[114C.15] VARIANCES THAT PROMOTE POLLUTION REDUCTIONS OR REDUCE UNNECESSARY ADMINISTRATIVE BURDEN.**

In addition to the grounds for granting a variance set forth in section 116.07, subdivision 5, the pollution control agency may grant variances from its rules in order to:

(1) promote reduction in overall levels of pollution beyond what is required by applicable law, consistent with the purposes of this chapter; or

(2) reduce the administrative burden on the agency or the permittee, provided that alternative monitoring, testing, notification, recordkeeping, or reporting requirements will provide the information needed by the agency to ensure compliance.

Sec. 9. Minnesota Statutes 1994, section 115.03, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** The agency is hereby given and charged with the following powers and duties:

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

(b) 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) 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;

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

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

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

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

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

(4) Requiring the construction, installation, maintenance, and operation by any person of any disposal system or any part thereof, or other equipment and facilities, or the reconstruction, alteration, or enlargement of its existing disposal system or any part thereof, or the adoption of other remedial measures to prevent, control or abate any discharge or deposit of sewage, industrial waste or other wastes by any person;

(5) 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 Fed-

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eral 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) 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) 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) 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) 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) Requiring that applicants for wastewater discharge permits evaluate in their applications the potential reuses of the discharged wastewater;

(f) 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) 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

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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) 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) 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) To train water pollution control personnel, and charge such fees therefor as are necessary to cover the agency's costs. All such fees received shall be paid into the state treasury and credited to the pollution control agency training account;

(k) 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) To set a period not to exceed five years for the duration of any National Pollutant Discharge Elimination System permit;

(m) To require each governmental subdivision identified as a permittee for a wastewater treatment works to annually evaluate 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) To train individual sewage treatment system personnel, including persons who design, construct, install, inspect, service, and operate individual sewage treatment systems, and charge fees as necessary to pay the agency's costs. 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.

The information required in clause (m) must be submitted annually to the commissioner on a form provided by the commissioner. The commissioner shall provide technical assistance if requested by the governmental subdivision.

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

Sec. 10. Minnesota Statutes 1994, section 115.03, subdivision 2, is amended to read:

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Subd. 2. **HEARING OR INVESTIGATION.** In any hearing or investigation conducted pursuant to this chapter and chapters 114C, 116, and 116F, any employee or agent thereto authorized by the agency, may administer oaths, examine witnesses and issue, in the name of the agency, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing or investigation. Witnesses shall receive the same fees and mileage as in civil actions.

Sec. 11. Minnesota Statutes 1994, section 115.04, is amended to read:

115.04 DISPOSAL SYSTEMS AND POINT SOURCES.

Subdivision 1. **INFORMATION.** Any person operating or installing a disposal system or other point source, or portion thereof, when requested by the agency, or any member, employee or agent thereof, when authorized by it, shall furnish to it any information which that person may have or which is relevant to the subject of this chapter, chapter 114C, and, with respect to the pollution of waters of the state, of chapter 116.

Subd. 2. **EXAMINATION OF RECORDS.** The agency or any member, employee or agent thereof, when authorized by it, upon presentation of credentials, may examine and copy any books, papers, records or memoranda pertaining to the installation, maintenance, or operation or discharge, including, but not limited to, monitoring data, of disposal systems or other point sources, in accordance with the purposes of this chapter, chapter 114C, and, with respect to the pollution of waters of the state, chapter 116.

Subd. 3. **ACCESS TO PREMISES.** Whenever it shall be necessary for the purposes of this chapter, chapter 114C, and, with respect to pollution of waters of the state, chapter 116, the agency or any member, employee, or agent thereof, when authorized by it, upon presentation of credentials, may enter upon any property, public or private, for the purpose of obtaining information or examination of records or conducting surveys or investigations.

Sec. 12. Minnesota Statutes 1994, section 115.071, subdivision 1, is amended to read:

Subdivision 1. **REMEDIES AVAILABLE.** The provisions of sections 103F.701 to 103F.761, this chapter and chapters 114C, 115A, and 116, and sections 325E.10 to 325E.1251 and 325E.32 and all rules, standards, orders, stipulation agreements, schedules of compliance, and permits adopted or issued by the agency thereunder or under any other law now in force or hereafter enacted for the prevention, control, or abatement of pollution may be enforced by any one or any combination of the following: criminal prosecution; action to recover civil penalties; injunction; action to compel performance; or other appropriate action, in accordance with the provisions of said chapters and this section.

Sec. 13. Minnesota Statutes 1994, section 115.071, subdivision 2, is amended to read:

Subd. 2. **CRIMINAL PENALTIES.** (a) **VIOLATIONS OF LAWS; ORDERS; PERMITS.** Except as provided in section 609.671, any person who willfully or negligently violates any provision of this chapter or chapter 114C or 116, or any standard, rule, variance, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency thereunder shall upon conviction be guilty of a misdemeanor.

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(b) **DUTY OF LAW ENFORCEMENT OFFICIALS.** It shall be the duty of all county attorneys, sheriffs and other peace officers, and other officers having authority in the enforcement of the general criminal laws to take all action to the extent of their authority, respectively, that may be necessary or proper for the enforcement of said provisions, rules, standards, orders, stipulation agreements, variances, schedule of compliance, or permits.

Sec. 14. Minnesota Statutes 1994, section 115.071, subdivision 3, is amended to read:

Subd. 3. **CIVIL PENALTIES.** Any person who violates any provision of this chapter or chapter 114C or 116, except any provisions of chapter 116 relating to air and land pollution caused by agricultural operations which do not involve National Pollutant Discharge Elimination System permits, or of (1) any effluent standards and limitations or water quality standards, (2) any permit or term or condition thereof, (3) any National Pollutant Discharge Elimination System filing requirements, (4) any duty to permit or carry out inspection, entry or monitoring activities, or (5) any rules, stipulation agreements, variances, schedules of compliance, or orders issued by the agency, shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$10,000 per day of violation except that if the violation relates to hazardous waste the person shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$25,000 per day of violation.

In addition, in the discretion of the court, the defendant may be required to:

(a) forfeit and pay to the state a sum which will adequately compensate the state for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental;

(b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants.

As a defense to any of said damages, the defendant may prove that the violation was caused solely by (1) an act of God, (2) an act of war, (3) negligence on the part of the state of Minnesota, or (4) an act or failure to act which constitutes sabotage or vandalism, or any combination of the foregoing clauses.

The civil penalties and damages provided for in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

Sec. 15. Minnesota Statutes 1994, section 115.071, subdivision 4, is amended to read:

Subd. 4. **INJUNCTIONS.** Any violation of the provisions, rules, standards, orders, stipulation agreements, variances, schedules of compliance, or permits specified in this chapter and ~~chapter~~ chapters 114C and 116 shall constitute a public nuisance and may be enjoined as provided by law in an action, in the name of the state, brought by the attorney general.

Sec. 16. Minnesota Statutes 1994, section 115.071, subdivision 5, is amended to read:

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Subd. 5. **ACTIONS TO COMPEL PERFORMANCE.** In any action to compel performance of an order of the agency for any purposes relating to the prevention, control or abatement of pollution under this chapter and ~~chapter~~ chapters 114C and 116, the court may require any defendant adjudged responsible to do and perform any and all acts and things within the defendant's power which are reasonably necessary to accomplish the purposes of the order. In case a municipality or its governing or managing body or any of its officers is a defendant, the court may require it to exercise its powers, without regard to any limitation of any requirement for an election or referendum imposed thereon by law and without restricting the powers of the agency to do any or all of the following, without limiting the generality hereof: to levy taxes, levy special assessments, prescribe service or use charges, borrow money, issue bonds, employ assistance, acquire real or personal property, let contracts or otherwise provide for the doing of work or the construction, installation, maintenance, or operation of facilities, and do all other acts and things reasonably necessary to accomplish the purposes of the order, but the court shall grant the municipality the opportunity to determine the appropriate financial alternatives to be utilized in complying with the court imposed requirements.

Sec. 17. Minnesota Statutes 1994, section 115.072, is amended to read:

115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of this chapter and ~~chapter~~ chapters 114C and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

Amounts recovered under the provisions of this section and section 115.071, subdivisions 3 to 5, shall be paid into the environmental fund in the state treasury to the extent provided in section 115.073.

Sec. 18. Minnesota Statutes 1994, section 115.075, is amended to read:

115.075 INFORMATION AND MONITORING.

A person may not:

(1) make a false material statement, representation, or certification in; omit material information from; or alter, conceal, or fail to file or maintain a notice, application, record, report, plan, manifest, or other document required under section 103F.701 or this chapter or chapter 114C, 115A, or 116; or

(2) falsify, tamper with, render inaccurate, or fail to install a monitoring device or method required to be maintained or followed for the purpose of compliance with sections 103F.701 to 103F.761 or this chapter or chapter 114C, 115A, or 116.

Sec. 19. Minnesota Statutes 1994, section 115.076, subdivision 1, is amended to read:

Subdivision 1. **AUTHORITY OF COMMISSIONER.** The agency may refuse to issue or to authorize the transfer of a hazardous waste facility permit or a solid waste facil-

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ity permit to construct or operate a commercial waste facility as defined in section 115A.03, subdivision 6, if the agency determines that the permit applicant does not possess sufficient expertise and competence to operate the facility in conformance with the requirements of this chapter and ~~chapter~~ chapters 114C and 116, or if other circumstances exist that demonstrate that the permit applicant may not operate the facility in conformance with the requirements of this chapter and ~~chapter~~ chapters 114C and 116. In making this determination, the agency may consider:

(1) the experience of the permit applicant in constructing or operating commercial waste facilities;

(2) the expertise of the permit applicant;

(3) the past record of the permit applicant in operating commercial waste facilities in Minnesota and other states;

(4) any criminal convictions of the permit applicant in state or federal court during the past five years that bear on the likelihood that the permit applicant will operate the facility in conformance with the requirements of this chapter and ~~chapter~~ chapters 114C and 116; and

(5) in the case of a corporation or business entity, any criminal convictions in state or federal court during the past five years of any of the permit applicant's officers, partners, or facility managers that bear on the likelihood that the facility will be operated in conformance with the requirements of this chapter and ~~chapter~~ chapters 114C and 116.

Sec. 20. Minnesota Statutes 1994, section 116.07, subdivision 9, is amended to read:

Subd. 9. **ORDERS; INVESTIGATIONS.** The agency shall have the following powers and duties for the enforcement of any provision of this chapter and chapter 114C, relating to air contamination or waste:

(a) to adopt, issue, reissue, modify, deny, revoke, enter into or enforce reasonable orders, schedules of compliance and stipulation agreements;

(b) to require the owner or operator of any emission facility, air contaminant treatment facility, potential air contaminant storage facility, or any system or facility related to the storage, collection, transportation, processing, or disposal of waste to establish and maintain records; to make reports; to install, use, and maintain monitoring equipment or methods; and to make tests, including testing for odor where a nuisance may exist, in accordance with methods, at locations, at intervals, and in a manner as the agency shall prescribe; and to provide other information as the agency may reasonably require;

(c) to conduct investigations, issue notices, public and otherwise, and order hearings as it may deem necessary or advisable for the discharge of its duties under this chapter and chapter 114C, including but not limited to the issuance of permits; and to authorize any member, employee, or agent appointed by it to conduct the investigations and issue the notices.

Sec. 21. Minnesota Statutes 1995 Supplement, section 116.072, subdivision 1, is amended to read:

Subdivision 1. **AUTHORITY TO ISSUE PENALTY ORDERS.** (a) The commissioner may issue an order requiring violations to be corrected and administratively assess-

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sing monetary penalties for violations of this chapter and chapters 114C, 115, 115A, 115D, and 115E, any rules adopted under those chapters, and any standards, limitations, or conditions established in an agency permit; and for failure to respond to a request for information under section 115B.17, subdivision 3. The order must be issued as provided in this section.

(b) A county board may adopt an ordinance containing procedures for the issuance of administrative penalty orders and may issue orders beginning August 1, 1996. Before adopting ordinances, counties shall work cooperatively with the agency to develop an implementation plan for the orders that substantially conforms to a model ordinance developed by the counties and the agency. After adopting the ordinance, the county board may issue orders requiring violations to be corrected and administratively assessing monetary penalties for violations of county ordinances adopted under section 400.16, 400.161, or 473.811 or chapter 115A that regulate solid and hazardous waste and any standards, limitations, or conditions established in a county license issued pursuant to these ordinances. For violations of ordinances relating to hazardous waste, a county's penalty authority is described in subdivisions 2 to 5. For violations of ordinances relating to solid waste, a county's penalty authority is described in subdivision 5a. Subdivisions 6 to 11 apply to violations of ordinances relating to both solid and hazardous waste.

(c) Monetary penalties collected by a county must be used to manage solid and hazardous waste. A county board's authority is limited to violations described in paragraph (b). Its authority to issue orders under this section expires August 1, 1999.

Sec. 22. Minnesota Statutes 1994, section 116.091, subdivision 1, is amended to read:

Subdivision 1. **INFORMATION.** Any person operating any emission system or facility specified in chapter 114C or section 116.081, subdivision 1, when requested by the pollution control agency, shall furnish to it any information which that person may have which is relevant to pollution or the rules or provisions of this chapter.

Sec. 23. Minnesota Statutes 1994, section 116.091, subdivision 3, is amended to read:

Subd. 3. **ACCESS TO PREMISES.** Whenever the agency deems it necessary for the purposes of this chapter or chapter 114C, the agency or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

Sec. 24. **INSTRUCTION TO REVISOR.**

The revisor of statutes shall codify the environmental improvement pilot program, Laws 1995, chapter 168, sections 8 to 20, as Minnesota Statutes, sections 114C.20 to 114C.33.

Sec. 25. **EFFECTIVE DATE.**

Sections 1 to 23 are effective the day following final enactment.

Presented to the governor April 1, 1996

Signed by the governor April 3, 1996, 3:10 p.m.

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