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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2409

03/08/2016 Authored by Hansen, Bly, Fischer and Slocum

The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to waters; requiring reporting of fish kills and development of protocol
1.3 for state response; appropriating money; proposing coding for new law in
1.4 Minnesota Statutes, chapter 103G.

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

1.6 Section 1. **[103G.216] REPORTING FISH KILLS IN PUBLIC WATERS.**

1.7 Subdivision 1. **Definition.** For the purposes of this section, "fish kill" means an
1.8 incident resulting in the death of 100 or more fish within an area one-half square mile
1.9 or less in public waters.

1.10 Subd. 2. **Reporting requirement.** A person who observes a fish kill in public
1.11 waters must report the location of the fish kill to the Office of Emergency Response in
1.12 the Department of Public Safety within four hours of first observing the fish kill. The
1.13 Office of Emergency Response must alert the Departments of Natural Resources and
1.14 Health and the Pollution Control Agency of the location of the fish kill within one hour
1.15 of being notified of the fish kill.

1.16 Sec. 2. **DEVELOPMENT OF FISH KILL RESPONSE PROTOCOL.**

1.17 Subdivision 1. **Development of protocol.** The commissioner of health, in
1.18 consultation with the commissioners of the Pollution Control Agency, natural resources,
1.19 and agriculture and the head of the University of Minnesota's Department of Fisheries,
1.20 Wildlife, and Conservation Biology Department, shall, by October 1, 2016, develop a
1.21 protocol consisting of steps that state agencies responding to notification of a fish kill,
1.22 as defined in Minnesota Statutes, section 103G.216, must take to ascertain on the basis

2.1 of sound scientific evidence the factors contributing to the fish kill. The protocol must
2.2 address the following factors:

2.3 (1) the number and species of fish and other aquatic creatures sampled from the body
2.4 of water in which the fish kill occurred;

2.5 (2) the locations from which samples described in clause (1) should be taken;

2.6 (3) the number and location of water samples taken from the body of water in which
2.7 the fish kill occurred;

2.8 (4) the number and location of soil samples taken to ascertain whether contaminants
2.9 traveled overland to reach the body of water in which the fish kill occurred;

2.10 (5) sampling other materials located near the area of the fish kill, including, but not
2.11 limited to, vegetation and manure, that may indicate the presence of contaminants that
2.12 may have contributed to the fish kill;

2.13 (6) developing a comprehensive list of contaminants, including degradation
2.14 products, for which the materials sampled in clauses (3) to (5) should be tested;

2.15 (7) the appropriate concentration limits to be used in testing samples for the presence
2.16 of contaminants, allowing for the possibility that the fish kill may have resulted from
2.17 the interaction of two or more contaminants present at concentrations below the level
2.18 associated with toxic effects resulting from exposure to each individual chemical;

2.19 (8) proper handling, storage, and treatment necessary to preserve the integrity of the
2.20 samples described in this subdivision in order to maximize the information the samples
2.21 can yield regarding the cause of the fish kill;

2.22 (9) the organs and other parts of the fish and other aquatic creatures that should be
2.23 analyzed to maximize the information the samples can yield regarding the cause of the
2.24 fish kill;

2.25 (10) the need to take the samples described in this subdivision as soon as possible
2.26 after the fish kill occurs; and

2.27 (11) any other factors the parties deem relevant in determining the cause of the
2.28 fish kill.

2.29 Subd. 2. **Review of protocol.** (a) The commissioner shall submit the protocol
2.30 developed under subdivision 1 to an administrative law judge for review upon its
2.31 completion. The parties that developed the protocol shall also separately submit comments
2.32 to the administrative law judge addressing the reasonableness of the protocol, the level
2.33 and certainty of the scientific support underlying the elements of the protocol, and any
2.34 portions of the protocol with which the parties disagree or would prefer to see modified.

2.35 (b) The administrative law judge shall review the protocol and the accompanying
2.36 comments and shall determine whether the protocol adequately provides a scientifically

3.1 sound basis for ascertaining the cause of a fish kill. The administrative law judge shall,
3.2 within 90 days of receiving the protocol for review, issue a report stating findings of
3.3 fact, conclusions, and recommendations. The administrative law judge may reject all or
3.4 portions of the protocol and must submit the reasons for the rejection in writing to the
3.5 parties who developed the protocol. The parties must, within 45 days of receipt of the
3.6 administrative law judge's rejection of all or part of the protocol, submit a revised protocol
3.7 to the administrative law judge for review and approval.

3.8 Subd. 3. **Implementation.** Once the protocol has been approved by an administrative
3.9 law judge, state agencies must follow the protocol when responding to a fish kill.

3.10 Subd. 4. **Updating protocol.** The parties named in subdivision 1 shall review
3.11 and update the protocol every five years. The updated protocol must be reviewed and
3.12 approved by an administrative law judge according to the procedures in this section.

3.13 Sec. 3. **APPROPRIATION.**

3.14 §..... in fiscal year 2017 is appropriated from the clean water fund to the Board of
3.15 Regents of the University of Minnesota for the Department of Fisheries, Wildlife, and
3.16 Conservation Biology to develop a protocol for the state response to fish kills according to
3.17 section 2.