

CHAPTER 116

POLLUTION CONTROL AGENCY

116.01	Policy.	116.22	Definitions.
116.02	Pollution control agency, creation.	116.23	Prohibition.
116.03	Director.	116.24	Rules.
116.04	Executive secretary.	116.25	Seizure.
116.05	Cooperation.	116.26	Restoration.
116.06	Definitions.	116.27	Additional prohibition.
116.07	Powers and duties.	116.28	Lists required.
116.075	Hearings and records public.	116.29	Forfeiture.
116.081	Prohibitions.	116.32	Order to refrain.
116.082	Open burning of leaves; local ordinances.	116.33	Proof of offense.
116.091	Systems and facilities.	116.34	Time limited for proceedings.
116.10	Policy; long-range plan; purpose.	116.35	Trial of offenses.
116.101	Hazardous waste control and spill contingency plan.	116.36	Definitions.
116.11	Emergency powers.	116.37	PCB; prohibited use.
116.12	Hazardous waste administration fees.	116.39	Ozone layer preservation.
116.16	Minnesota state water pollution control fund.	116.41	Waste and waste facilities classification; training and certification.
116.162	State financial assistance program for combined sewer overflow.	116.42	Acid deposition; legislative intent.
116.163	Agency funding application review.	116.43	Acid deposition defined.
116.165	Inspection responsibility.	116.44	Sensitive areas; standards.
116.167	Revolving loan account.	116.45	Reports to the legislature.
116.17	Minnesota state water pollution control bonds.	116.46	Definitions.
116.18	Water pollution control funds; appropriations and bonds.	116.47	Exemptions.
116.19	Municipal powers.	116.48	Notification requirements.
116.21	Nutrients in cleaning agents and water conditioners, control; statement of policy.	116.49	Environmental protection requirements.
		116.50	Preemption.
		116.51	Definitions.
		116.52	Identification of lead contaminated soil sites.
		116.53	Rules.
		116.54	Injection of certain materials.

116.01 POLICY.

To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state, it is in the public interest that there be established a pollution control agency.

History: 1967 c 882 s 1; 1969 c 1046 s 1

116.02 POLLUTION CONTROL AGENCY, CREATION.

Subdivision 1. A pollution control agency, designated as the Minnesota pollution control agency, is hereby created. The agency shall consist of nine members appointed by the governor, by and with the advice and consent of the senate. One of such members shall be a person knowledgeable in the field of agriculture.

Subd. 2. The membership terms, compensation, removal of members, and filling of vacancies on the agency shall be as provided in section 15.0575.

Subd. 3. The membership of the pollution control agency shall be broadly representative of the skills and experience necessary to effectuate the policy of sections 116.01 to 116.075, except that no member appointed shall be an officer or employee of the state or federal government. Only two members at one time may be officials or employees of a municipality or any governmental subdivision, but neither may be a member ex officio or otherwise on the management board of a municipal sanitary sewage disposal system.

Subd. 4. The agency shall elect a chair and such other officers as it deems necessary.

Subd. 5. The pollution control agency is the successor of the water pollution

control commission, and all powers and duties now vested in or imposed upon said commission by chapter 115, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota pollution control agency, except as to those matters pending before the commission in which hearings have been held and evidence has been adduced. The water pollution commission shall complete its action in such pending matters not later than six months from May 26, 1967. The water pollution control commission, as heretofore constituted, is hereby abolished, (a) effective upon completion of its action in the pending cases, as hereinbefore provided for; or (b) six months from May 26, 1967, whichever is the earlier.

History: 1967 c 882 s 2; 1969 c 1038 s 1,2; 1973 c 35 s 27; 1976 c 134 s 25-27; 1980 c 509 s 26; 1Sp1981 c 4 art 1 s 73; 1986 c 444

116.03 DIRECTOR.

Subdivision 1. (a) The office of director of the pollution control agency is created and is under the supervision and control of the director, who is appointed by the governor under the provisions of section 15.06.

(b) The director may appoint a deputy director and an assistant director who shall be in the unclassified service.

Subd. 2. The director shall organize the agency and employ such assistants and other officers, employees and agents as the director may deem necessary to discharge the functions of the director's office, define the duties of such officers, employees and agents, and delegate to them any of the director's powers, duties, and responsibilities, subject to the director's control and under such conditions as the director may prescribe. The director may also contract with persons, firms, corporations, the federal government and any agency or instrumentality thereof, the water research center of the university of Minnesota or any other instrumentality of such university, for doing any of the work of the director's office, and none of the provisions of chapter 16, relating to bids, shall apply to such contracts. All personnel employed and all contracts entered into pursuant to this subdivision shall be subject to the approval of the pollution control agency. Agreements to exercise delegated powers shall be by written order filed with the secretary of state. An employee of the state commissioner of health engaged in environmental sanitation work may transfer to the pollution control agency with the approval of the director. Under such a transfer the employee shall be assigned to a position of similar responsibility and pay without loss of seniority, vacation, sick leave, or other benefits under the state civil service act.

Subd. 3. The director of the pollution control agency is the state agent to apply for, receive, and disburse federal funds made available to the state by federal law or rules and regulations promulgated thereunder for any purpose related to the powers and duties of the pollution control agency or the director. The director shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder to facilitate application for, receipt, and disbursement of such funds. All such moneys received by the director shall be deposited in the state treasury and are hereby annually appropriated to the director for the purposes for which they are received. None of such moneys in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.

The provisions of section 3.3005 shall not apply to money available under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, United States Code, title 42, sections 9601 to 9657, for which a state match is not required or for which a state match is available under the Environmental Response and Liability Act or from a political subdivision. The receipt of the money shall be reported to the legislative advisory commission.

Subd. 4. Before entering upon the duties of the office the director of the pollution control agency shall take and subscribe an oath and give a bond to the state of Minnesota, to be approved by the governor and filed with the secretary of state, in the sum of \$25,000, conditioned for the faithful performance of the director's duties.

Subd. 5. The salary of the director of the pollution control agency shall be prescribed by the governor, unless otherwise fixed by law.

Subd. 6. The term of the first director of the pollution control agency shall expire with the term of the governor expiring in January, 1971. Thereafter, the term of the director shall be in conformity with the provisions of this section.

History: 1967 c 882 s 3; 1974 c 406 s 9; 1974 c 483 s 2; 1977 c 305 s 19,45; 1982 c 458 s 1; 1983 c 301 s 111; 1986 c 444

116.04 EXECUTIVE SECRETARY.

The director of the pollution control agency is the executive secretary and chief executive officer of the Minnesota pollution control agency and is responsible for performing the executive duties of such agency prescribed by law.

History: 1967 c 882 s 4

116.05 COOPERATION.

Subdivision 1. All state departments and agencies are hereby directed to cooperate with the pollution control agency and its director and assist them in the performance of their duties, and are authorized to enter into necessary agreements with the agency, and the pollution control agency is authorized to cooperate and to enter into necessary agreements with other departments and agencies of the state, with municipalities, with other states, with the federal government and its agencies and instrumentalities, in the public interest and in order to control pollution under this chapter and chapter 115.

Subd. 2. Upon the request of the pollution control agency the governor may, by order, require any department or agency of the state to furnish such assistance to the agency or its director in the performance of its duties or in the exercise of the director's powers imposed by law, as the governor may, in the order, designate or specify; and with the consent of the department or agency concerned, the governor may direct all or part of the cost or expense for the amount of such assistance to be paid from the pollution control agency fund or appropriation in such amount as the governor may deem just and proper.

Subd. 3. The pollution control agency through its director may designate air quality control regions which shall as far as practical follow regional boundaries designated by state statutes or executive order, and consider other jurisdictional boundaries, urban-industrial concentrations and other factors including atmospheric conditions and necessary procedures to provide adequate implementation of air quality standards. Within a designated air quality control region the pollution control agency may by contract delegate its administrative powers to local governmental authorities to be exercised by such authorities within the region and within their own jurisdictional boundaries.

Local governmental authorities which are delegated administrative powers shall have legal authority to conduct such activities, and, in conducting such activities, may enter into contracts, employ personnel, expend funds, acquire property and adopt ordinances for such purposes. Such ordinances may include provisions establishing permit or license requirements and fees therefor.

With the approval of the pollution control agency, local governmental authorities with jurisdiction wholly or in part within a designated region may enter into an agreement as provided by chapter 471 to exercise jointly all or some of the powers delegated by agreement with the pollution control agency. The term "local governmental authorities" as used herein includes every city, county, town or other political subdivision and any agency of the state of Minnesota, or subdivision thereof, having less than statewide jurisdiction.

History: 1967 c 882 s 5; 1969 c 1046 s 2; Ex1971 c 14 s 1; 1973 c 123 art 5 s 7; 1973 c 374 s 19; 1986 c 444

116.06 DEFINITIONS.

Subdivision 1. The definitions given in this section shall obtain for the purposes of sections 116.01 to 116.075 except as otherwise expressly provided or indicated by the context.

Subd. 2. "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

Subd. 3. "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

Subd. 4. "Emission" means a release or discharge into the outdoor atmosphere of any air contaminant or combination thereof.

Subd. 5. "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.

Subd. 6. "Air contaminant treatment facility" or "treatment facility" means any structure, work, equipment, machinery, device, apparatus, or other means for treatment of an air contaminant or combination thereof to prevent, abate, or control air pollution.

Subd. 7. "Potential air contaminant storage facility" or "storage facility" means any structure, work, equipment, device, apparatus, tank, container, or other means for the storage or confinement, either stationary or in transit, of any substance which, if released or discharged into the outdoor atmosphere, might cause air contamination or air pollution.

Subd. 8. "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the pollution control agency.

Subd. 9. "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration, and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.

Subd. 9a. "Waste" has the meaning given it in section 115A.03.

Subd. 9b. "Waste management" has the meaning given it in section 115A.03.

Subd. 9c. "Collection" of waste has the meaning given it in section 115A.03.

Subd. 9d. "Processing" of waste has the meaning given it in section 115A.03.

Subd. 9e. "Disposal" of waste has the meaning given it in section 115A.03.

Subd. 9f. "Intrinsic hazard" of a waste has the meaning given it in section 115A.03.

Subd. 9g. "Intrinsic suitability" of a land area or site has the meaning given it in section 115A.03.

Subd. 9h. "Sewage sludge" has the meaning given it in section 115A.03.

Subd. 9i. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.

Subd. 10. "Solid waste" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer;

earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.

Subd. 11. "Noise" means any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources.

Subd. 12. "Noise pollution" means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under such conditions as could potentially be injurious to human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.

Subd. 13. "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Subd. 14. "Deputy director" means the deputy director of the Minnesota pollution control agency.

Subd. 15. "Assistant director" means the assistant director of the Minnesota pollution control agency.

History: 1967 c 882 s 6; 1969 c 1046 s 3,4; 1971 c 727 s 1,2; 1973 c 35 s 29; 1974 c 346 s 1; 1974 c 483 s 3,4; 1980 c 564 art 11 s 1-4; 1Sp1981 c 4 art 1 s 74; 1983 c 373 s 42,43

116.07 POWERS AND DUTIES.

Subdivision 1. **Generally.** In addition to any powers or duties otherwise prescribed by law and without limiting the same, the pollution control agency shall have the powers and duties hereinafter specified.

Subd. 2. **Adoption of standards.** The pollution control agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods which produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards the pollution control agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set stan-

dards of air quality which are more stringent than those set by the pollution control agency.

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

The pollution control agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards shall give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the pollution control agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the pollution control agency.

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

Subd. 2a. Exemptions from standards. No standards adopted by any state agency for limiting levels of noise in terms of sound pressure which may occur in the outdoor atmosphere shall apply to (1) segments of trunk highways constructed with federal interstate substitution money, provided that all reasonably available noise mitigation measures are employed to abate noise, (2) skeet, trap or shooting sports clubs, or (3) the holding of motor vehicle race events conducted at a facility specifically designed

for that purpose that was in operation on or before July 1, 1983. Nothing herein shall prohibit a local unit of government or a public corporation with the power to make rules for the government of its real property from regulating the location and operation of skeet, trap or shooting sports clubs, or the holding of motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1983.

Subd. 3. Administrative rules. Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Subd. 4. Rules and standards. Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. The agency shall promulgate emergency rules for sewage sludge pursuant to sections 14.29 to 14.36. Notwithstanding the provisions of sections 14.29 to 14.36, the emergency rules shall be effective until permanent rules are promulgated or March 1, 1982, whichever is earlier. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 17.716.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

As to any matters subject to this chapter, local units of government may set

emission regulations with respect to stationary sources which are more stringent than those set by the pollution control agency.

Pursuant to chapter 14, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the pollution control agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

The pollution control agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

Subd. 4a. Permits. The pollution control agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.

The pollution control agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.

The pollution control agency may revoke or modify any permit issued under this subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

Subd. 4b. Permits; hazardous waste facilities. The agency shall provide to the waste management board established in section 115A.04, copies of each preliminary and final permit application for a hazardous waste facility immediately upon its submittal to the agency. The agency shall request recommendations on each permit application from the board and shall consult with the board on the agency's intended disposition of the recommendations. Except as otherwise provided in sections 115A.18 to 115A.30, the agency shall commence any environmental review required under chapter 116D within 120 days of its acceptance of a completed preliminary permit application. The agency shall respond to a preliminary permit application for a hazardous waste facility within 120 days following a decision not to prepare environmental documents or following the acceptance of a negative declaration notice or an environmental impact statement. Except as otherwise provided in sections 115A.18 to 115A.30, within 60 days following the submission of a final permit application for a hazardous waste facility, unless a time extension is agreed to by the applicant, the agency shall issue or deny all permits needed for the construction of the proposed facility. The agency shall promulgate rules pursuant to chapter 14 for all hazardous waste facilities, except those addressed in subdivision 4c. After the report of the waste management board required by section 115A.08, subdivision 5a has been submitted to the legislature, the agency shall review its rules for hazardous waste facilities and shall consider whether any of the rules should be modified or if new rules should be adopted based on the recommendations in the report. The rules shall require:

(1) contingency plans for all hazardous waste facilities which provide for effective containment and control in any emergency condition;

(2) the establishment of a mechanism to assure that money to cover the costs of

closure and postclosure monitoring and maintenance of hazardous waste facilities will be available;

(3) the maintenance of liability insurance by the owner or operator of hazardous waste facilities during the operating life of the facility.

Subd. 4c. [Repealed, 1983 c 373 s 72]

Subd. 4d. **Permit fees.** The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of reviewing and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The agency shall adopt rules under section 16A.128 establishing the amounts and methods of collection of any permit fees collected under this subdivision. Any money collected under this subdivision shall be deposited in the special revenue fund.

Subd. 4e. **Hazardous waste processing facilities; agreements; financial responsibility.** When the agency issues a permit for a facility for the processing of hazardous waste, the agency may approve as a condition of the permit an agreement by which the permittee indemnifies the generators of hazardous waste accepted by the facility for part or all of any liability which may accrue to the generators as a result of a release or threatened release of a hazardous waste from the facility. The agency may approve an agreement under this subdivision only if the agency determines that the permittee has demonstrated financial responsibility to carry out the agreement during the term of the permit. If a generator of hazardous waste accepted by a permitted processing facility is held liable for costs or damages arising out of a release of a hazardous waste from the facility, and the permittee is subject to an agreement approved under this subdivision, the generator is liable to the extent that the costs or damages were not paid under this agreement.

Subd. 4f. **Closure and postclosure responsibility and liability.** An operator or owner of a facility is responsible for closure of the facility and postclosure care relating to the facility. If an owner or operator has failed to provide the required closure or postclosure care of the facility the agency may take the actions. The owner or operator is liable for the costs of the required closure and postclosure care taken by the agency.

Subd. 4g. **Closure and postclosure rules.** The agency shall adopt rules establishing requirements for the closure of solid waste disposal facilities and for the postclosure care of closed facilities. The rules apply to all solid waste disposal facilities in operation at the time the rules are effective. The rules must provide standards and procedures for closing disposal facilities and for the care, maintenance, and monitoring of the facilities after closure that will prevent, mitigate, or minimize the threat to public health and the environment posed by closed disposal facilities.

Subd. 4h. **Financial responsibility rules.** The agency shall adopt rules requiring the operator or owner of a solid waste disposal facility to submit to the agency proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for 20 years after closure, and to provide for the closure of the facility and postclosure care required under agency rules. Proof of financial responsibility is required of the operator or owner of a facility receiving an original permit or a permit for expansion after adoption of the rules. Within 180 days of the effective date of the rules or by July 1, 1987, whichever is later, proof of financial responsibility is required of an operator or owner of a facility with a remaining capacity of more than five years or 500,000 cubic yards that is in operation at the time the rules are adopted. Compliance with the rules is a condition of obtaining or retaining a permit to operate the facility.

Subd. 4i. **Civil penalties.** The civil penalties of section 115.071 apply to any person in violation of the rules adopted under subdivision 4g or 4h.

Subd. 5. **Variances.** The pollution control agency may grant variances from its rules as provided in section 14.05, subdivision 4, in order to avoid undue hardship and to promote the effective and reasonable application and enforcement of laws, rules, and standards for prevention, abatement and control of water, air, noise, and land pollu-

tion. The variance rules shall provide for notice and opportunity for hearing before a variance is granted.

A local government unit authorized by contract with the pollution control agency pursuant to section 116.05 to exercise administrative powers under this chapter may grant variances after notice and public hearing from any ordinance, rule, or standard for prevention, abatement, or control of water, air, noise and land pollution, adopted pursuant to said administrative powers and under the provisions of this chapter.

Subd. 6. Pollution control agency; exercise of powers. In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicality of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

Subd. 7. Counties; processing of applications for animal lot permits. Any Minnesota county board may, by resolution, with approval of the pollution control agency, assume responsibility for processing applications for permits required by the pollution control agency under this section for livestock feedlots, poultry lots or other animal lots. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to any appropriate county officer or employee.

For the purposes of this subdivision, the term "processing" includes:

(a) the distribution to applicants of forms provided by the pollution control agency;

(b) the receipt and examination of completed application forms, and the certification, in writing, to the pollution control agency either that the animal lot facility for which a permit is sought by an applicant will comply with applicable rules and standards, or, if the facility will not comply, the respects in which a variance would be required for the issuance of a permit; and

(c) rendering to applicants, upon request, assistance necessary for the proper completion of an application.

For the purposes of this subdivision, the term "processing" may include, at the option of the county board:

(d) issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the pollution control agency. The pollution control agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14.

The pollution control agency shall adopt rules governing the issuance and denial of permits for livestock feedlots, poultry lots or other animal lots pursuant to this section. These rules apply both to permits issued by counties and to permits issued by the pollution control agency directly.

The pollution control agency shall exercise supervising authority with respect to the processing of animal lot permit applications by a county.

Subd. 8. Public information. The agency may publish, broadcast, or distribute information pertaining to agency activities, laws, rules, and standards.

Subd. 9. Orders; investigations. The agency shall have the following powers and duties for the enforcement of any provision of this chapter, 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, 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.

History: 1967 c 882 s 7; 1969 c 1046 s 5-7; 1971 c 727 s 3-5; 1971 c 904 s 1; 1973 c 412 s 13; 1973 c 573 s 1; 1973 c 733 s 1; 1974 c 346 s 2-4; 1974 c 483 s 5-7; 1976 c 76 s 4; 1977 c 90 s 10; 1979 c 304 s 1; 1980 c 564 art 11 s 5-10; 1980 c 614 s 123; 1980 c 615 s 60; 1981 c 352 s 27,28; 1982 c 424 s 130; 1982 c 425 s 17; 1982 c 458 s 2; 1982 c 569 s 19; 1983 c 247 s 51; 1983 c 301 s 112-114; 1983 c 373 s 44,45; 1984 c 640 s 32; 1984 c 644 s 49; 1985 c 274 s 14; 1985 c 248 s 70; 1Sp1985 c 13 s 233; 1986 c 425 s 28

116.075 HEARINGS AND RECORDS PUBLIC.

Subdivision 1. All hearings conducted by the pollution control agency pursuant to chapters 115 and 116 shall be open to the public, and the transcripts thereof are public records. All final records, studies, reports, orders, and other documents prepared in final form by order of, or for the consideration of, the agency, are public records. Any documents designated as public records by this section may be inspected by members of the public at all reasonable hours and places under such rules as the agency shall promulgate.

Subd. 2. Any records or other information obtained by the pollution control agency or furnished to the agency by the owner or operator of one or more air contaminant or water or land pollution sources which are certified by said owner or operator, and said certification, as it applies to water pollution sources, is approved in writing by the director, to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner or operator, shall be only for the confidential use of the agency in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air and land resources so long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the agency may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to comply with federal law and regulations, to the extent and for the purpose of such federally required disclosure.

History: 1971 c 887 s 1; 1973 c 374 s 20; 1985 c 248 s 70

116.08 [Repealed, 1973 c 374 s 22]

116.081 PROHIBITIONS.

Subdivision 1. **Obtain permit.** It shall be unlawful for any person to construct, install or operate an emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, storage facility, or system or facility related to the collection, transportation, storage, processing, or disposal of waste, or any part thereof unless otherwise exempted by any agency rule now in force or hereinafter adopted, until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency. The requirements of this section shall not be applied to motor vehicles.

Subd. 2. **Permits now issued.** Any permit authorized by section 116.07, subdivision 4a issued prior to June 8, 1971, and any rule which required said prior

permit, shall be valid and remain enforceable subject, however, to the right of the agency to modify or revoke said permit or amend said rule in the same manner as other permits and rules.

Subd. 3. Permission for alteration. It shall be unlawful for any person to make any change in, addition to or extension of any existing system or facility specified in subdivision 1, or part thereof, that would materially alter the method or the effect of treating or disposing of any air contaminant or solid waste, or to operate said system or facility, or part thereof, so changed, added to, or extended until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency.

History: 1971 c 904 s 2; 1974 c 483 s 8; 1980 c 564 art 11 s 11; 1985 c 248 s 70

116.082 OPEN BURNING OF LEAVES; LOCAL ORDINANCES.

Subject to sections 88.16, 88.17 and 88.22, but notwithstanding any law or rule to the contrary, a town or home rule charter or statutory city located outside the metropolitan area as defined in section 473.121, subdivision 2, by adoption of an ordinance, may permit the open burning of dried leaves within the boundaries of the town or city. The ordinance shall limit leaf burning to the period between September 15 and December 1 and shall set forth limits and conditions on leaf burning to minimize air pollution and fire danger and any other hazards or nuisance conditions. No open burning of leaves shall take place during an air pollution alert, warning or emergency declared by the agency. Any town or city adopting an ordinance pursuant to this section shall submit a copy of the ordinance to the agency and the department of natural resources.

History: 1982 c 569 s 37

116.09 [Repealed, 1969 c 1046 s 12]

116.091 SYSTEMS AND FACILITIES.

Subdivision 1. Information. Any person operating any emission system or facility specified in 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.

Subd. 2. Examination of records. The agency or any employee or agent thereof, when authorized by it, may examine any books, papers, records or memoranda pertaining to the operation of any system or facility specified in subdivision 1.

Subd. 3. Access to premises. Whenever the agency deems it necessary for the purposes of this chapter, 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.

History: 1971 c 904 s 3; 1985 c 248 s 70; 1986 c 444

116.10 POLICY; LONG-RANGE PLAN; PURPOSE.

Consistent with the policy announced herein and the purposes of Laws 1963, chapter 874, the pollution control agency shall, before November 15 of each even-numbered year, prepare a long-range plan and program for the effectuation of said policy, and shall make a report also of progress on abatement and control of air and land pollution during each biennium to the legislature with recommendations for action in furtherance of the air and land pollution and waste programs.

History: 1969 c 1046 s 10; 1Sp1981 c 4 art 2 s 12

116.101 HAZARDOUS WASTE CONTROL AND SPILL CONTINGENCY PLAN.

The pollution control agency shall study and investigate the problems of hazardous waste control and shall develop a statewide hazardous waste spill contingency plan detailing the location of hazardous waste facilities and storage sites throughout the state and the needs relative to the interstate transportation of hazardous waste.

The statewide hazardous waste spill contingency plan shall be incorporated into the statewide hazardous waste management plans of the waste management board established by section 115A.04. The pollution control agency shall develop an informational reporting system of hazardous waste quantities generated, processed, and disposed of in the state.

History: 1974 c 346 s 5; 1980 c 564 art 11 s 12

116.11 EMERGENCY POWERS.

If there is imminent and substantial danger to the health and welfare of the people of the state, or of any of them, as a result of the pollution of air, land, or water, the agency may by emergency order direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. The agency order or temporary restraining order shall remain effective until notice, hearing, and determination pursuant to other provisions of law, or, in the interim, as otherwise ordered. A final order of the agency in these cases shall be appealable in accordance with chapter 14.

History: 1969 c 1046 s 11; 1973 c 374 s 21; 1982 c 424 s 130; 1983 c 247 s 52

116.12 HAZARDOUS WASTE ADMINISTRATION FEES.

Subdivision 1. Fee schedules. The agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue fund to the agency for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the agency.

The legislature may appropriate additional amounts from the general fund that need not be covered by fees, in order to assure adequate funding for the regulatory and enforcement functions of the agency related to hazardous waste. All fees collected by the agency under this section shall be deposited in the special revenue fund.

Subd. 2. Hazardous waste generator fee. Each generator of hazardous waste shall pay a fee on the hazardous waste generated by that generator. The agency shall compute the amount of the fee due based on the hazardous waste disclosures submitted by the generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the date of the statement.

The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

Subd. 3. Facility fees. The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental

review required under chapter 116D in the original permit fee for any hazardous waste facility.

History: 1983 c 121 s 25; 1Sp1985 c 13 s 234; 1986 c 444

116.15 [Repealed, 1973 c 423 s 10]

116.16 MINNESOTA STATE WATER POLLUTION CONTROL FUND.

Subdivision 1. Purpose. A Minnesota state water pollution control fund is created as a separate bookkeeping account in the general books of account of the state, to record receipts of the proceeds of state bonds and other money appropriated to the fund and disbursements of money appropriated or loaned from the fund to agencies and subdivisions of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the long-range state policy, plan, and program established in sections 115.41 to 115.63, and in accordance with standards adopted pursuant to law by the Minnesota pollution control agency. It is determined that state financial assistance for the construction of water pollution prevention and abatement facilities for municipal disposal systems and combined sewer overflow is a public purpose and a proper function of state government, in that the state is trustee of the waters of the state and such financial assistance is necessary to protect the purity of state waters, and to protect the public health of the citizens of the state, which is endangered whenever pollution enters state waters at one point and flows to other points in the state.

Subd. 2. Definitions. In this section and sections 116.17 and 116.18:

- (1) Agency means the Minnesota pollution control agency created by this chapter;
- (2) Municipality means any county, city, and town, the metropolitan waste control commission established in chapter 473 and the metropolitan council when acting under the provisions of that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state;
- (3) Pollution control fund means the Minnesota state water pollution control fund created by subdivision 1;
- (4) Bond account means the Minnesota state water pollution control bond account created in the state bond fund by section 116.17, subdivision 4;
- (5) Terms defined in section 115.01 have the meanings therein given them;
- (6) The eligible cost of any municipal project, except as otherwise provided in clauses (7) and (8), includes (a) preliminary planning to determine the economic, engineering, and environmental feasibility of the project; (b) engineering, architectural, legal, fiscal, economic, sociological, project administrative costs of the agency and the municipality, and other investigations and studies; (c) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the planning, design, and construction of the project; (d) erection, building, acquisition, alteration, remodeling, improvement, and extension of disposal systems; (e) inspection and supervision of construction; and (f) all other expenses of the kinds enumerated in section 475.65.
- (7) For state independent grant and matching grant purposes hereunder, the eligible cost for grant applicants shall be the eligible cost as determined by the United States environmental protection agency under the Federal Water Pollution Control Act, as amended, United States Code, title 33, section 1314, et seq.
- (8) Notwithstanding clause (7), for state grants under the state independent grants program, the eligible cost includes the acquisition of land for stabilization ponds, the construction of collector sewers for totally unsewered statutory and home rule charter cities and towns described under section 368.01, subdivision 1 or 1a, that are in existence on January 1, 1985, and the provision of reserve capacity sufficient to serve the reasonable needs of the municipality for 20 years in the case of treatment works

and 40 years in the case of sewer systems. Notwithstanding clause (7), for state grants under the state independent grants program, the eligible cost does not include the provision of service to seasonal homes, or cost increases from contingencies that exceed three percent of as-bid costs or cost increases from unanticipated site conditions that exceed an additional two percent of as-bid costs.

Subd. 3. Receipts. The commissioner of finance and treasurer shall deposit in the fund as received (a) all proceeds of Minnesota water pollution control bonds, except accrued interest and premiums received upon the sale thereof, (b) all other money appropriated by law for purposes stated in subdivision 1, and (c) all money granted to the state for such purposes by the federal government or any agency thereof. All such receipts are annually appropriated for the permanent construction and improvement purposes of the fund, and shall be and remain available for expenditure in accordance with this section and federal law until the purposes for which such appropriations were made have been accomplished or abandoned.

Subd. 4. Disbursements. Disbursements from the fund shall be made by the state treasurer upon order of the commissioner of finance at the times and in the amounts requested by the agency in accordance with the applicable state and federal law governing such disbursements; except that no appropriation or loan of state funds for any project shall be disbursed to any municipality until and unless the agency has by resolution determined the total estimated cost of the project, and ascertained that financing of the project is assured by:

(1) A grant to the municipality 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; or

(2) A grant of funds appropriated by state law; or

(3) A loan authorized by state law; or

(4) The appropriation of proceeds of bonds or other funds of the municipality to a fund for the construction of the project; or

(5) Any or all of the means referred to in paragraphs (1) to (4); and

(6) An irrevocable undertaking, by resolution of the governing body of the municipality, to use all funds so made available exclusively for the construction of the project, and to pay any additional amount by which the cost of the project exceeds the estimate, by the appropriation to the construction fund of additional municipal funds or the proceeds of additional bonds to be issued by the municipality; and

(7) Conformity of the project and of the loan or grant application with the state water pollution control plan as certified to the federal government and with all other conditions under applicable state and federal law for a grant of state or federal funds of the nature and in the amount involved.

Subd. 5. Rules. (a) The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of grants and loans authorized to be made from the fund or from federal funds under the Federal Water Pollution Control Act, as amended, which rules, however, shall not be applicable to the issuance of bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:

(1) procedures for application by municipalities;

(2) conditions for the administration of the grant or loan;

(3) criteria for the ranking of projects in order of priority for grants or loans, based on factors including the extent and nature of pollution, technological feasibility, assurance of proper operation, maintenance and replacement, and participation in multimunicipal systems; and

(4) such other matters as the agency and the director find necessary to the proper administration of the grant program.

(b) Except as otherwise provided in sections 116.16 to 116.18, the rules for the administration of state independent grants must comply, to the extent practicable, with

provisions relating directly to protection of the environment contained in the Federal Water Pollution Control Act, as amended, and regulations and guidelines of the United States environmental protection agency promulgated under the act, except provisions regarding allocation contained in section 205 of the act and regulations and guidelines promulgated under section 205 of the act. This provision does not require approval from federal agencies for the issuance of grants or for the construction of projects under the state independent grants program.

Subd. 6. [Repealed, 1984 c 597 s 55]

Subd. 7. [Repealed, 1984 c 597 s 55]

Subd. 8. **Loans.** Each loan made to a municipality from the proceeds of state bonds, when authorized by law, shall be evidenced by resolutions adopted by the agency and by the governing body of the municipality, obligating the municipality to repay the loan to the state treasurer, for credit to the water pollution control bond account in the state bond fund, in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within such period as may be provided by the agency in accordance with the law authorizing the loan, with interest on the declining balance thereof at a rate not less than the average annual interest rate on state bonds of the issue from the proceeds of which the loan was made, and obligating the municipality to provide money for such repayment from user charges, taxes, special assessments, or other funds available to it. For the purpose of repaying such loans the municipality by resolution of its governing body may undertake to fix rates and charges for disposal system service and enter into contracts for the payment by others of costs of construction, maintenance, and use of the project in accordance with section 444.075, and may pledge the revenues derived therefrom, and the agency may condition any such loans upon the establishment of rates and charges or the execution of contracts sufficient to produce the revenues pledged.

Subd. 9. **Applications.** Applications by municipalities for grants or loans from the fund shall be made to the director of the agency on forms requiring information prescribed by rules of the agency. The director shall certify to the agency those applications which appear to meet the criteria set forth in sections 116.16 to 116.18 and the rules promulgated hereunder, and the agency shall award grants or loans on the basis of the criteria and priorities established in its rules and in sections 116.16 to 116.18. A municipality that is designated under agency rules to receive state or federal funding for a project and that does not make a timely application for or that refuses the funding is not eligible for either state or federal funding for that project in that fiscal year or the subsequent year.

Subd. 9a. **Subsequent grants.** A municipality awarded a final grant of funding for a project under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program is not eligible for additional funding to replace that project under the federal program or the state program, unless the funding is necessary as a result of subsequent changes in state water quality standards, effluent limits, or technical design requirements, or for a municipality awarded the final grant before October 1, 1984, if the funding is necessary for the provision of increased capacity.

Subd. 10. **Costs.** To the extent the agency administers or engages in activities necessary for administering any aspects of the federal water pollution control act as amended, United States Code, title 33, section 1251 et seq., the agency may assess the costs of such administrative activities, in an amount not to exceed that allowed by federal law, against the federal construction grant funds allotted to the state.

History: *Ex 1971 c 20 s 1; 1973 c 123 art 5 s 7; 1973 c 423 s 1-6; 1973 c 492 s 14; 1976 c 2 s 53; 1976 c 76 s 5; 1977 c 418 s 1; 1980 c 397 s 1; 1980 c 509 s 27; 1983 c 301 s 115; 1984 c 597 s 42-46; 1984 c 640 s 32; 1Sp1985 c 14 art 19 s 1,2*

116.162 STATE FINANCIAL ASSISTANCE PROGRAM FOR COMBINED SEWER OVERFLOW.

Subdivision 1. **Definitions.** (a) Except as otherwise provided in this section, the terms used in this section have the meanings given in section 116.16, subdivision 2.

(b) "Combined sewer" means a sewer that is designed and intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

(c) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly into the waters of the state, occurring when the volume of wastewater flow exceeds the conveyance or storage capacity of a combined sewer system.

Subd. 2. **Program purpose.** The agency shall administer a state financial assistance program to assist eligible recipients to abate combined sewer overflow to the Mississippi river from its confluence with the Rum river to its confluence with the St. Croix river.

Subd. 3. **Eligible recipients.** A statutory or home rule charter city is eligible for financial assistance under the program if the city has a permit, stipulation agreement, consent decree, or order issued by the agency requiring construction to abate combined sewer overflow and if the city adopts an approved plan to abate combined sewer overflow.

Subd. 4. **Eligible costs.** The eligible costs under this section include the costs listed in section 116.16, subdivision 2, paragraph (6), as determined by the agency, using as guidelines the regulations promulgated by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, United States Code, title 33, sections 1314 to 1328, except that the eligible costs include easements necessary for implementing the combined sewer overflow abatement plan and do not include:

- (1) the preparation of combined sewer overflow abatement plans;
- (2) acquisition of interests in real property other than easements;
- (3) storm water treatment facilities;
- (4) costs for a program to disconnect any structures or devices, excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer;
- (5) costs incurred before July 1, 1985; and
- (6) costs incurred after July 1, 1985 but without prior written approval of the agency.

Subd. 5. **Financial assistance program.** The agency shall annually provide financial assistance to eligible recipients for combined sewer overflow projects. The agency shall determine eligible costs for each eligible recipient and compare those individual costs to the total eligible cost required to abate combined sewer overflows. This comparison determines each eligible recipient's proportionate share of the costs, and the appropriation for the program must be distributed among eligible recipients according to their proportionate share.

Subd. 6. **Repayments.** A city of the first class that receives assistance under this section shall repay one-half of each assistance payment ten years after the date when the recipient received the assistance payment. The repayment must be deposited in the Minnesota state water pollution control fund.

Subd. 7. **Conditions; administration.** (a) A recipient of financial assistance under this section shall construct the combined sewer overflow abatement facilities in accordance with the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency. The agency shall require that, with federal, state, and local funds, the construction schedule would complete abatement of combined sewer overflow within ten years of the issuance of the permit, agreement, decree, or order. As a condition of receiving financial assistance, the recipient shall implement a program approved by the agency to disconnect any structures or devices,

excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer. The deadlines for submittance of facilities plans, plans and specifications, and other documents to the agency for financial assistance are governed by the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency requiring combined sewer overflow abatement construction.

(b) A recipient of financial assistance under this section is not eligible to receive a grant to abate combined sewer overflow under the state independent grants program.

Subd. 8. Rules. The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the financial assistance program established by this section. The rules must contain as a minimum:

- (1) procedures for application;
- (2) criteria for eligibility of combined sewer overflow abatement projects;
- (3) conditions for use of the financial assistance;
- (4) procedures for the administration of financial assistance; and
- (5) other matters that the agency finds necessary for the proper administration of the program.

History: 1Sp1985 c 14 art 19 s 3

116.163 AGENCY FUNDING APPLICATION REVIEW.

Subdivision 1. Construction grant and loan applications. The agency shall, pursuant to agency rules and within 90 days of receipt of a completed application for a wastewater treatment facility construction grant or loan, grant or deny the application and notify the municipality of the agency's decision. The time for consideration of the application by the agency may be extended up to 180 days if the municipality and the agency agree it is necessary.

Subd. 2. Limitation on municipal planning time. A municipality shall complete all planning work required by the agency for award of a grant or loan, and be ready to advertise for bids for construction, within two years of receipt of grant or loan funds under subdivision 1. The planning time may be extended automatically by the amount of time the agency exceeds its 90-day review under subdivision 1.

Subd. 3. Bid review. After a municipality has accepted bids for construction of a wastewater treatment project, the agency must review the bids within 30 days of receipt.

History: 1986 c 465 art 3 s 4

116.165 INSPECTION RESPONSIBILITY.

When a wastewater treatment plant is constructed with federal funds and a federal agency conducts inspections of the plant, the owner of the plant or the owner's designee must conduct inspections and forward all inspection documents required by the agency to the agency for its review.

History: 1986 c 465 art 3 s 5

116.167 REVOLVING LOAN ACCOUNT.

Subdivision 1. Application. This section is effective only if the federal government requires revolving loan accounts to be established under the authority of the federal Water Pollution Control Act.

Subd. 2. State water pollution control revolving loan account. The commissioner of finance shall maintain in the state bond fund a separate bookkeeping account which shall be designated as the state water pollution control revolving loan account to receive any federal money authorized for loans under the federal Water Pollution Control Act, and other money appropriated by law, for the purpose of providing financial assistance to municipalities for wastewater treatment.

Subd. 3. **Loans.** A loan made to a municipality under this section shall be made only after resolutions have been adopted by the agency and the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments, including both principal and interest. Each installment shall be in an amount sufficient to pay the principal amount within 20 years or a shorter time interval if the amount of the annual payment will not justify the administrative expenses of processing the payment, and shall be paid from user charges, taxes, special assessments, or other funds available to the municipality. Interest on loans made to municipalities shall be established at a rate the commissioner of revenue reasonably determines sufficient to pay interest rates on state bonds issued under section 116.17, subdivision 2. Loan repayments must be deposited in the revolving loan account created by this section. Each participating municipality shall provide the agency with a financial health report compiled by the state auditor and the agency shall review the report before approving a loan. Municipalities receiving a loan under this section may still be eligible for a wastewater treatment grant from the agency.

Subd. 4. **Rules application.** The disbursement of loans under this section must comply with rules adopted by the agency for loans for wastewater treatment facilities under this chapter.

History: 1986 c 465 art 3 s 6

116.17 MINNESOTA STATE WATER POLLUTION CONTROL BONDS.

Subdivision 1. **Purpose and appropriation.** For the purpose of providing money to be appropriated or loaned to municipalities from the Minnesota state water pollution control fund for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the provisions of section 116.16, when such appropriations or loans are authorized by law and funds therefor are requested by the agency, the commissioner of finance shall sell and issue bonds of the state of Minnesota for the prompt and full payment of which, with interest thereon, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be issued pursuant to this section only as authorized by a law specifying the purpose thereof and the maximum amount of the proceeds authorized to be expended for this purpose. Any act authorizing the issuance of bonds for this purpose, together with this section, constitutes complete authority for such issue, and such bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by resolution of the agency and upon authorization as provided in subdivision 1 the commissioner of finance shall sell and issue Minnesota state water pollution control bonds in the aggregate amount requested, upon sealed bids and upon such notice, at such price, in such form and denominations, bearing interest at a rate or rates, maturing in amounts and on dates, with or without option of prepayment upon notice and at specified times and prices, payable at a bank or banks within or outside the state, with provisions, if any, for registration, conversion, and exchange and for the issuance of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds, and in accordance with further provisions, as the commissioner of finance shall determine, subject to the approval of the attorney general, but not subject to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62. The bonds shall be executed by the commissioner of finance and attested by the state treasurer under their official seals. The signatures of the officers on the bonds and any appurtenant interest coupons and their seals may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of one of the officers or of an authorized representative of a bank designated by the commissioner as registrar or other authenticating agent. The commissioner of finance shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. Expenses. All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for such purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the pollution control fund, and the amounts necessary therefor are appropriated from that fund; provided that if any amount is specifically appropriated for this purpose in an act authorizing the issuance of bonds pursuant to this section, such expenses shall be limited to the amount so appropriated.

Subd. 4. State water pollution control bond account in the state bond fund. The commissioner of finance shall maintain in the state bond fund a separate bookkeeping account which shall be designated as the state water pollution control bond account, to record receipts and disbursements of money transferred to the fund to pay Minnesota state water pollution control bonds and income from the investment of such money, which income shall be credited to the account in each fiscal year in an amount equal to the approximate average return that year on all funds invested by the state treasurer, as determined by the treasurer, times the average balance in the account that year.

Subd. 5. Appropriations to bond account. The premium and accrued interest received on each issue of Minnesota state water pollution control bonds, and all loan payments received under the provisions of section 116.16, subdivision 5, shall be credited to the bond account. All income from the investment of the Minnesota state water pollution control fund, shall be credited to the bond account identified in Minnesota Statutes 1971, section 116.16. In order to reduce the amount of taxes otherwise required to be levied, there shall also be credited to the bond account therein from the general fund in the state treasury, on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand therein, to pay all Minnesota water pollution control bonds and interest thereon due and to become due to and including July 1 in the second ensuing year. All money so credited and all income from the investment thereof is annually appropriated to the bond account for the payment of such bonds and interest thereon, and shall be available in the bond account prior to the levy of the tax in any year required by the Constitution, article XI, section 7. The commissioner of finance and treasurer are directed to make the appropriate entries in the accounts of the respective funds.

Subd. 6. Tax levy. On or before December 1 in each year the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money then and theretofore credited to the bond account, to pay the entire amount of principal and interest then and theretofore due and principal and interest to become due on or before July 1 in the second year thereafter on Minnesota water pollution control bonds. This tax shall be subject to no limitation of rate or amount until all such bonds and interest thereon are fully paid. The proceeds of this tax are appropriated and shall be credited to the state bond fund, and the principal of and interest on the bonds are payable from such proceeds, and the whole thereof, or so much as may be necessary, is appropriated for such payments. If at any time there is insufficient money from the proceeds of such taxes to pay the principal and interest when due on Minnesota water pollution control bonds, such principal and interest shall be paid out of the general fund in the state treasury, and the amount necessary therefor is hereby appropriated.

History: *Ex1971 c 20 s 2; 1973 c 423 s 7; 1973 c 492 s 14; 1976 c 2 s 172; 1982 c 424 s 130; 1983 c 301 s 116; 1Sp1985 c 14 art 4 s 14*

116.18 WATER POLLUTION CONTROL FUNDS; APPROPRIATIONS AND BONDS.

Subdivision 1. Appropriation from the fund. The sum of \$167,000,000, or so much thereof as may be necessary, is appropriated from the Minnesota state water pollution control fund in the state treasury to the pollution control agency, for the period commencing on July 23, 1971, to be granted and disbursed to municipalities and agencies of the state in aid of the construction of projects conforming to section 116.16, in accordance with the rules, priorities, and criteria therein described.

Subd. 2. [Repealed, 1Sp1985 c 14 art 19 s 38]

Subd. 2a. **State matching grants program beginning October 1, 1984.** For projects tendered, on or after October 1, 1984, a grant of federal money under section 201(g), section 202, 203, or 206(f) of the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1251 to 1376, at 55 percent or more of the eligible cost for construction of the treatment works, state money appropriated under subdivision 1 must be expended for up to 30 percent of the eligible cost of construction for municipalities for which the construction would otherwise impose significant financial hardship; provided, that not less than ten percent of the eligible cost must be paid by the municipality or agency constructing the project. If a municipality is tendered federal and state grants in a percentage cumulatively exceeding 90 percent of the eligible cost of construction, the state pollution control agency shall reduce the grant to the municipality under this chapter to the extent necessary to ensure that not less than ten percent of the eligible cost will be paid by the municipality. The amounts of the matching grants must be based on per connection capital cost, median household income, and per capita adjusted assessed valuation.

Subd. 3. [Repealed, 1973 c 423 s 10]

Subd. 3a. **State independent grants program.** (a) The agency may award independent grants for projects for 50 percent or, if the agency requires advanced treatment, 65 percent of the eligible cost of construction. The agency may award independent grants for up to an additional 30 percent or, if the agency requires advanced treatment, up to an additional 25 percent of the eligible cost of construction to municipalities for which the construction would otherwise impose significant financial hardship; the amounts of the additional grants shall be based on per connection capital cost, median household income, and per capita adjusted assessed valuation. These grants may be awarded in separate steps for planning and design in addition to actual construction. Until December 31, 1990, not more than 20 percent of the total amount of grants awarded under this subdivision in any single fiscal year may be awarded to a single grantee.

(b) Up to ten percent of the money to be awarded as grants under this subdivision in any single fiscal year shall be set aside for municipalities having substantial economic development projects that cannot come to fruition without municipal wastewater treatment improvements. The agency shall forward its municipal needs list to the commissioner of energy and economic development at the beginning of each fiscal year, and the commissioner shall review the list and identify those municipalities having substantial economic development projects. After the first 90 percent of the total available money is allocated to municipalities in accordance with agency priorities, the set-aside shall be used by the agency to award grants to remaining municipalities that have been identified.

(c) Grants may also be awarded under this subdivision to reimburse municipalities willing to proceed with projects and be reimbursed in a subsequent year conditioned upon appropriation of sufficient money under subdivision 1 for that year. The maximum amount of the reimbursement the agency may commit in any single fiscal year is equal to the amount newly appropriated to the state grants programs for that year.

Subd. 4. **Bond authorization.** For the purpose of providing money appropriated in subdivision 1 for expenditure from the Minnesota state water pollution control fund through grants to municipalities and agencies of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution, the commissioner of finance is authorized upon request of the pollution control agency to sell and issue Minnesota state water pollution control bonds in the amount of \$156,000,000, in the manner and upon the conditions prescribed in section 116.17 and in the Constitution, article XI, sections 4 to 7. The proceeds of the bonds, except as provided in section 116.17, subdivision 5, are appropriated and shall be credited to the Minnesota state water pollution control fund. The amount of bonds issued pursuant to this authorization

shall not exceed at any time the amount needed to produce a balance in the water pollution control fund equal to the aggregate amount of grants then approved and not previously disbursed, plus the amount of grants to be approved in the current and the following fiscal year, as estimated by the pollution control agency.

Subd. 5. **Federal and other funds.** All federal and other funds made available for any purpose of the water pollution control fund are also appropriated to that fund.

Subd. 6. **Continuance of appropriations.** None of the appropriations made in this section shall lapse until the purpose for which it is made has been accomplished or abandoned. The amount of each grant approved for disbursement from the water pollution control fund shall be and remain appropriated for that purpose until the grant is fully disbursed or part or all thereof is revoked by the pollution control agency.

History: *Ex 1971 c 20 s 3; 1973 c 423 s 8,9; 1973 c 492 s 14; 1973 c 771 s 1,2; 1975 c 354 s 1,2; 1976 c 2 s 172; 1977 c 418 s 2,3; 1979 c 285 s 1,2; 1981 c 361 s 14,15; 1983 c 301 s 117; 1984 c 597 s 47; 1Sp1985 c 14 art 19 s 4-6*

116.19 MUNICIPAL POWERS.

Subdivision 1. **Purpose.** Notwithstanding a statute or home rule charter to the contrary, a recipient of financial assistance from the agency under section 116.162 may exercise the authority provided in this section to abate combined sewer overflow or provide money to pay all or part of the costs of the abatement and of making improvements to any utility required to effect the abatement.

Subd. 2. **General.** A recipient may acquire real or personal property by purchase, including installment purchase, lease, including a financing lease, condemnation, gift, or grant, or may sell real or personal property at its fair market value determined by the recipient and simultaneously enter into an installment purchase or lease, including a financing lease, for purposes of reacquiring real or personal property. A recipient may construct, enlarge, improve, replace, repair, maintain, and operate a public sewer system, including storm sewers, sanitary sewers, and facilities for separating storm sewers from combined storm and sanitary sewers, or any other public utilities combined with the public sewer system as provided in this section. To accomplish these purposes, a recipient may exercise the powers granted a municipality by chapters 115, 117, 412, 429, 435, 444, 471, and 475, and may combine the public sewer system, for purposes of operation or revenue collection or both or for other purposes the city council determines, with one or more other public utilities. Charges for the services provided by a combined utility may be determined in any reasonable manner.

Subd. 3. **Debt.** A recipient may incur indebtedness and may issue and sell bonds or other obligations, including notes, an installment purchase contract, or obligations to make payments under a financing lease, and pledge the full faith and credit of the city to its payment for storm and sanitary sewers and systems without submitting the question of issuing the bonds, or otherwise incurring the obligations, to the electors. The bonds or other obligations may be issued in one or more series, may bear interest at the rate or rates, including floating rates, and may be sold at public or private sale and at the price the recipient determines. A recipient may, in addition to or in substitution for the pledge of its full faith and credit, pledge the revenues or net revenues of its public sewer system or a combined utility or a part of it, or mortgage the assets of the system or combined utility. A recipient may vest in a trustee or trustees, located within or outside the state, the right to enforce any covenants made to secure or to pay the bonds or other obligations, and may determine the powers and duties of the trustee or trustees. Except as provided in this section, the bonds or other obligations must be issued and sold according to chapter 475.

Subd. 4. **Property tax.** In addition and supplemental to the grants of authority in subdivisions 2 and 3, the governing body may establish a special taxing district or districts within the corporate limits of the city that include some or all of the real or personal property served by a combined sewer separated after the effective date of this section, and may levy and collect ad valorem taxes in the district or districts for the purposes of this section. The taxes must be collected by the county and paid over to

the city as are other taxes. The taxes are not restricted by any other tax levy limitations imposed upon the city by any other law or charter provision.

Subd. 5. Assessments. The governing body of the city may divide the city into drainage districts or areas, and may levy and collect assessments based on benefit to property, and the assessments so levied may be based upon the existing or highest and best land usage, square footage, front footage or area. The assessments may be levied in accordance with the procedures set forth in the city's home rule charter, if any, or chapter 429, as the council determines. The assessments may be levied and collected from all property whether public or private, and in the case of public property the agency of government responsible for the property must provide the necessary money in its budget request.

Subd. 6. Private finance. To secure financing for the purposes of this section, the governing body of the city may use private financing methods, such as private ownership and construction by any means available to the owner of new facilities to benefit the city under a lease, financing lease, installment purchase agreement or service contract, or the sale or mortgaging of all or part of the city's existing public sewer system, combined utility including the public sewer system, or water utility, to benefit the city under a lease, financing lease, installment purchase agreement or service contract. The private financing methods are not subject to any limitations imposed by a home rule charter, if any, or by chapter 475. Any property benefiting the city under the private financing methods is exempt from taxation and the payment of amounts in lieu of taxes to the same extent as property owned by the city.

History: *1Sp1985 c 14 art 19 s 7*

116.21 NUTRIENTS IN CLEANING AGENTS AND WATER CONDITIONERS, CONTROL; STATEMENT OF POLICY.

The legislature seeks to encourage the Minnesota pollution control agency through the passage of sections 116.21 to 116.35, to set standards limiting the amount of nutrients in various cleaning agents and water conditioning agents. The legislature realizes that the nutrients contained in many of these products serve a valuable purpose in increasing their overall effectiveness, but we are also aware that they overstimulate the growth of aquatic life and eventually lead to an acceleration of the natural eutrophication process of our state's waters. Limitations imposed under sections 116.21 to 116.35 should, however, be made taking the following factors into consideration:

- (1) The availability of safe, nonpolluting, and effective substitutes.
- (2) The difference in the mineral content of water in various parts of the state.
- (3) The differing needs of industrial, commercial and household users of cleaning agents and chemical water conditioners.

History: *1971 c 896 s 1*

116.22 DEFINITIONS.

Subdivision 1. For purposes of sections 116.21 to 116.35, the terms defined in this section shall have the meanings given them.

Subd. 2. "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes.

Subd. 3. "Nutrient" means a substance or combination of substances which, if added to waters in sufficient quantities, provides nourishment that promotes growth of aquatic vegetation in densities which:

- (a) interfere with use of the waters by humans or by any animal, fish or plant useful to humans, or
- (b) contribute to degradation or alteration of the quality of the waters to an extent detrimental to their use by humans or by any animal, fish or plant that is useful to humans.

Subd. 4. "Chemical water conditioner" means a water softening chemical, anti-scale chemical, corrosion inhibitor or other substance intended to be used to treat water.

History: 1971 c 896 s 2; 1986 c 444

116.23 PROHIBITION.

No person shall manufacture for use or sale in Minnesota or import into Minnesota for resale any cleaning agent or chemical water conditioner which contains a prescribed nutrient in a concentration that is greater than the prescribed maximum permissible concentration of that nutrient in that cleaning agent or chemical water conditioner.

History: 1971 c 896 s 3

116.24 RULES.

The pollution control agency may make rules:

(a) prescribing for the purpose of section 116.23 nutrients and the maximum permissible concentration if any, of a prescribed nutrient in any cleaning agent or chemical water conditioner;

(b) respecting the manner in which the concentration of any prescribed nutrient in a cleaning agent or chemical water conditioner shall be determined; and

(c) requiring persons who manufacture in Minnesota any cleaning agent or chemical water conditioner to maintain books and records necessary for the proper enforcement of sections 116.21 to 116.35 and rules thereunder, and to submit samples of cleaning agents or water conditioners to the pollution control agency.

History: 1971 c 896 s 4; 1985 c 248 s 70

116.25 SEIZURE.

Subdivision 1. The pollution control agency may seize a cleaning agent or chemical water conditioner which it reasonably believes was manufactured or imported in violation of section 116.23.

Subd. 2. A cleaning agent or chemical water conditioner seized under sections 116.21 to 116.35, may be kept or stored in the building or place where it was seized or may be removed to any other proper place by or at the direction of the pollution control agency.

Subd. 3. Except with the authority of the pollution control agency, no person shall remove, alter or interfere with a cleaning agent or chemical water conditioner seized under sections 116.21 to 116.35, but the pollution control agency shall, at the request of a person from whom it was seized, furnish a sample thereof to the person for analysis.

History: 1971 c 896 s 5

116.26 RESTORATION.

Subdivision 1. When a cleaning agent or chemical water conditioner has been seized under sections 116.21 to 116.35, any person may within two months after the date of seizure, upon prior notice in accordance with subdivision 2 to the pollution control agency by certified mail, apply to the district court within whose jurisdiction the seizure was made for an order of restoration under subdivision 3.

Subd. 2. Notice under subdivision 1 shall be mailed at least 15 days prior to the day on which the application is to be made to the district court and shall specify:

(a) the district court to which the application is to be made;

(b) the place where and the time when the application is to be heard;

(c) the cleaning agent or chemical water conditioner in regard to which the application is to be made; and

(d) the evidence upon which the applicant relies to establish entitlement to possession of the cleaning agent or chemical water conditioner.

Subd. 3. Subject to section 116.27 when upon hearing, the district court is

satisfied (a) that the applicant is otherwise entitled to possession of the items seized, and (b) that the items seized are not and will not be required as evidence in proceedings under sections 116.21 to 116.35, the court shall order that the items seized be restored forthwith to the applicant. Where the court is satisfied that the applicant is otherwise entitled to possession but is not satisfied as to the necessity for retention as evidence, the court shall order restoration to the applicant (a) four months after the date of seizure if no proceedings under section 116.23 have been commenced before that time, or (b) upon the final conclusion of any such proceedings.

Subd. 4. When no application has been made under subdivision 1 within two months from the date of seizure, or when upon application no order of restoration is made, the items seized shall be delivered to the pollution control agency, which may dispose of them as it sees fit.

History: 1971 c 896 s 6; 1978 c 674 s 60; 1986 c 444

116.27 ADDITIONAL PROHIBITION.

Subdivision 1. No manufacturer, wholesaler, or retailer shall sell, possess with intent to sell, or display for sale, a household laundry or dishwashing compound, including household detergents and presoaks, unless a verified or certified test result is filed with the pollution control agency stating the percentage content of phosphorous by weight contained in the product.

Subd. 2. Tests shall be conducted pursuant to the methods and procedures adopted by the federal water quality administration.

History: 1971 c 896 s 7

116.28 LISTS REQUIRED.

Subdivision 1. No household laundry or dishwashing compound, including household detergents and presoaks, shall be sold or displayed for sale unless the product name is on a list prominently displayed near the product display stating the phosphorous content by percentage of weight to weight of the package contents. The products shall be listed in descending order and in letters and figures not less than one half inch high and proportionately wide. No list shall be required if the pollution control agency adopts and has in effect standards for maximum allowable phosphorus content of household laundry and dishwashing compounds.

Subd. 2. The pollution control agency shall supply any person upon request with a current listing of household laundry and dishwashing compounds and their phosphorus contents received pursuant to sections 116.21 to 116.35. This list shall be updated periodically.

History: 1971 c 896 s 8; 1974 c 275 s 1,2

116.29 FORFEITURE.

Subdivision 1. When a person is convicted of an offense under section 116.28 any cleaning agent or chemical water conditioner seized in accordance with sections 116.21 to 116.35 is forfeited to the pollution control agency and shall be disposed of as it directs.

Subd. 2. When a cleaning agent or chemical water conditioner is seized under sections 116.21 to 116.35, the owner or the person in whose possession it was at the time of seizure consents in writing to its destruction, it is forfeited to the pollution control agency and shall be disposed of as it directs.

History: 1971 c 896 s 9

116.30 [Repealed, 1973 c 374 s 22]

116.31 [Repealed, 1973 c 374 s 22]

116.32 ORDER TO REFRAIN.

If a person is convicted of an offense under sections 116.21 to 116.35, the court may, in addition to any punishment it may impose, order that person to refrain from any further violations of the provision of sections 116.21 to 116.35, or rules for the violation of which the offender has been convicted, or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in any further violation thereof.

History: 1971 c 896 s 12; 1985 c 248 s 70; 1986 c 444

116.33 PROOF OF OFFENSE.

In a prosecution for an offense under sections 116.21 to 116.35, it is sufficient proof of the offense to establish that it was committed by an employee or agent of the accused whether or not the employee agent is identified or has been prosecuted for the offense, unless the accused establishes that the offense was committed without the accused's knowledge or consent and that the accused exercised all due diligence to prevent its commission.

History: 1971 c 896 s 13; 1986 c 444

116.34 TIME LIMITED FOR PROCEEDINGS.

Proceedings in respect of an offense under sections 116.21 to 116.35, may be instituted at any time within two years after the time when the subject matter of the proceedings arose.

History: 1971 c 896 s 14

116.35 TRIAL OF OFFENSES.

Any complaint or information in respect of an offense under sections 116.21 to 116.35, may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

History: 1971 c 896 s 15

116.36 DEFINITIONS.

Subdivision 1. For the purposes of this section and section 116.37 the following terms shall have the meanings given.

Subd. 2. "Agency" means the Minnesota pollution control agency.

Subd. 3. "Director" means the director of the pollution control agency.

Subd. 4. "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.

Subd. 5. "Person" has the meaning specified in section 115.01, subdivision 10.

History: 1976 c 344 s 1; 1977 c 347 s 16

116.37 PCB; PROHIBITED USE.

Subdivision 1. **Certificate of exemption.** Beginning January 1, 1978, no person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is exempted by the agency. If the agency finds after there is opportunity for a public hearing on an application presented by any person, that no substitutes or feasible alternatives are reasonably available for PCB or a product containing PCB or class of products containing PCB, it shall grant a certificate of exemption which shall clearly set out the permitted use, possession, sale or purchase of PCB or a PCB product containing PCB. If the agency grants a certificate of exemption, it shall be valid for all

subsequent uses of PCB or products containing PCB if the subsequent uses are consistent with the terms and conditions of the certificate of exemption. In granting certificates of exemption the agency shall at all times consider the public health and safety threatened by the use of PCB. In the consideration of certificates of exemption for the use or replacement of existing electrical transformers and capacitors the agency shall review, but not be limited to, considerations of the safety of proven alternatives, replacement costs and rules controlling the final disposal of PCB.

Subd. 2. Exclusion. In no event shall the certificate of exemption requirement or the labeling requirement of this section apply to any individual person who purchases or otherwise acquires a product containing PCB intended for consumer use in the home, provided that the use has previously been exempted by the agency and that the use is consistent with the terms and conditions of the certificate of exemption. Wastepaper, pulp, or other wood fiber materials purchased for use within this state in the manufacture of recycled paper products are exempt from the requirements of this section.

Subd. 3. Labels required. Beginning July 1, 1977, no person in this state shall add PCB in the manufacture of any new item, product or material, nor shall any person in this state sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.

Subd. 4. Rules. The agency shall promulgate rules by January 1, 1977, governing the granting of certificates of exemption and the requirements of labels specified in subdivision 3. The rules governing the requirement of labels specified in subdivision 3 may require other information relating to the public health and environmental effects of PCB and shall apply to persons holding certificates of exemption.

Subd. 5. Penalties. Violations of this section and sections 116.36 and 116D.045 shall be subject to the provisions of section 115.071.

History: 1976 c 344 s 2

116.39 OZONE LAYER PRESERVATION.

Subdivision 1. Except as provided by subdivision 3, after July 1, 1979 no person shall sell or offer for sale in this state any pressurized container which contains as a propellant trichloromonofluoromethane, difluorodichloromethane, dichlorotetrafluoroethane, or any other saturated chlorofluorocarbon compound or other similar inert fluorocarbon compound that does not contain reactive carbon hydrogen bonds.

Subd. 2. Commencing October 31, 1977, no person shall sell or offer for sale at wholesale in this state a pressurized container using chlorofluorocarbon propellants unless the container has prominently displayed on the front panel this statement: "Warning: Contains a chlorofluorocarbon that may harm the public health and environment by reducing ozone in the upper atmosphere."

Subd. 3. Nothing in this section prohibits the sale or use of refrigeration equipment containing chlorofluorocarbon compounds, or the sale of chlorofluorocarbon compounds for use in such equipment. This section shall not apply to the sale of chlorofluorocarbon compounds for the following essential medical uses:

- (a) metered-dose steroid human drugs for nasal inhalation;
- (b) metered-dose steroid human drugs for oral inhalation;
- (c) metered-dose adrenergic bronchodilator human drugs for oral inhalation;
- (d) contraceptive vaginal foams for human use; or
- (e) cytology fixatives; nor

for other medical uses by or under the supervision of a licensed physician, dentist or veterinarian, or a hospital, nursing home or other health care institution licensed by the department of health. This section shall also not apply to the sale of chlorofluorocarbon compounds for use in the cleaning, maintenance, testing and repair of electronic equipment.

Subd. 4. A violation of this section is a misdemeanor.

History: 1977 c 373 s 1

116.41 WASTE AND WASTE FACILITIES CLASSIFICATION; TRAINING AND CERTIFICATION.

Subdivision 1. [Repealed, 1983 c 373 s 72]

Subd. 1a. [Repealed, 1983 c 373 s 72]

Subd. 2. **Training and certification programs.** The agency shall develop standards of competence for persons operating and inspecting various classes of disposal facilities. The agency shall conduct training programs for persons operating facilities for the disposal of waste and for inspectors of such facilities, and may charge such fees as are necessary to cover the actual costs of the training programs. All fees received shall be paid into the state treasury and credited to the account created in section 115.03, subdivision 1, clause (j), for training water pollution control personnel, and are appropriated to the agency to pay expenses relating to the training of disposal facility personnel.

The agency shall require operators and inspectors of such facilities to obtain from the agency a certificate of competence. The agency shall conduct examinations to test the competence of applicants for certification, and shall require that certificates be renewed at reasonable intervals. The agency may charge such fees as are necessary to cover the actual costs of receiving and processing applications, conducting examinations, and issuing and renewing certificates. Certificates shall not be required for a private individual for landspreading and associated interim and temporary storage of sewage sludge on property owned or farmed by that individual.

Subd. 3. **Regulation and enforcement assistance.** The agency shall establish a program to provide technical and financial assistance for regulation and enforcement to counties which have certified operators and inspectors conforming to the requirements of the agency, chapters 400 and 473, and sections 115A.01 to 115A.72.

Subd. 4. **Rules.** The agency shall adopt, amend, and rescind rules as may be necessary to carry out the provisions of this section in accordance with chapter 14.

History: 1973 c 646 s 1; 1980 c 564 art 11 s 13; 1981 c 352 s 29; 1982 c 424 s 130; 1983 c 301 s 118

116.42 ACID DEPOSITION; LEGISLATIVE INTENT.

The legislature recognizes that acid deposition substantially resulting from the conduct of commercial and industrial operations, both within and without the state, poses a present and severe danger to the delicate balance of ecological systems within the state, and that the failure to act promptly and decisively to mitigate or eliminate this danger will soon result in untold and irreparable damage to the agricultural, water, forest, fish, and wildlife resources of the state. It is therefore the intent of the legislature in enacting sections 116.42 to 116.45 to mitigate or eliminate the acid deposition problem by curbing sources of acid deposition within the state and to support and encourage other states, the federal government, and the province of Ontario in recognizing the dangers of acid deposition and taking steps to mitigate or eliminate it within their own jurisdictions.

History: 1982 c 482 s 1

116.43 ACID DEPOSITION DEFINED.

As used in sections 116.42 to 116.45, "acid deposition" means the wet or dry deposition from the atmosphere of chemical compounds, usually in the form of rain or snow, having the potential to form an aqueous compound with a pH level lower than the level considered normal under natural conditions, or lower than 5.6.

History: 1982 c 482 s 2

116.44 SENSITIVE AREAS; STANDARDS.

Subdivision 1. **List of areas.** By January 1, 1983, the pollution control agency shall publish a preliminary list of counties determined to contain natural resources sensitive to the impacts of acid deposition. Sensitive areas shall be designated on the basis of:

(a) the presence of plants and animal species which are sensitive to acid deposition;

(b) geological information identifying those areas which have insoluble bedrock which is incapable of adequately neutralizing acid deposition; and

(c) existing acid deposition reports and data prepared by the pollution control agency and the federal environmental protection agency. The pollution control agency shall conduct public meetings on the preliminary list of acid deposition sensitive areas. Meetings shall be concluded by March 1, 1983, and a final list published by May 1, 1983. The list shall not be subject to the rulemaking or contested case provisions of chapter 15.

Subd. 2. **Standards.** (a) By January 1, 1986, the agency shall adopt an acid deposition standard for wet plus dry acid deposition in the acid deposition sensitive areas listed pursuant to subdivision 1.

(b) By January 1, 1986, the agency shall adopt an acid deposition control plan to attain and maintain the acid deposition standard adopted under clause (a), addressing sources both inside and outside of the state which emit more than 100 tons of sulphur dioxide per year. The plan shall include an analysis of the estimated compliance costs for facilities emitting sulphur dioxide. Any emission reductions required inside of the state shall be based on the contribution of sources inside of the state to acid deposition in excess of the standard.

(c) By January 1, 1990, sources located inside the state shall be in compliance with the provisions of the acid deposition control plan.

History: 1982 c 482 s 3; 1984 c 519 s 1

116.45 REPORTS TO THE LEGISLATURE.

By January 1, 1986, the agency shall submit its acid deposition control plan to the appropriate substantive committees of both houses of the legislature. By January 1, 1987, and each two years thereafter until January 1, 1991, the agency shall submit to the legislative committees a report detailing the reduction of sulphur dioxide needed to meet the requirements of section 116.44 and the progress which has been made to meet those requirements.

History: 1982 c 482 s 4

116.46 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116.47 to 116.50, the terms defined in this section have the meanings given them.

Subd. 2. **Agency.** "Agency" means the pollution control agency.

Subd. 3. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

Subd. 4. **Owner.** "Owner" means a person who owns an underground storage tank and a person who owned it immediately before discontinuation of its use.

Subd. 5. **Person.** "Person" has the meaning given it in section 116.06, subdivision 8.

Subd. 6. **Regulated substance.** "Regulated substance" means:

(1) a hazardous material listed in Code of Federal Regulations, title 49, section 172.101; or

(2) petroleum, including crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

Subd. 7. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment. Release does not include designed venting consistent with the agency's air quality rules.

Subd. 8. **Underground storage tank.** "Underground storage tank" means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground.

History: *1Sp1985 c 13 s 235*

116.47 EXEMPTIONS.

Sections 116.48 and 116.49 do not apply to:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29;

(3) surface impoundments, pits, ponds, or lagoons;

(4) storm water or waste water collection systems;

(5) flow-through process tanks;

(6) tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor; or

(7) septic tanks.

History: *1Sp1985 c 13 s 236*

116.48 NOTIFICATION REQUIREMENTS.

Subdivision 1. **Tank status.** An owner of an underground storage tank must notify the agency by June 1, 1986, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

Subd. 2. **Abandoned tanks.** An owner of an underground storage tank permanently taken out of service on or after January 1, 1974, must notify the agency by June 1, 1986, of the existence of the tank and specify or estimate to the best of the owner's knowledge on forms prescribed by the agency, the date the tank was taken out of service, the age, size, type, and location of the tank, and the type and quantity of substance remaining in the tank.

Subd. 3. **Change in status.** An owner must notify the agency within 30 days of a permanent removal from service or a change in the reported uses; contents, or ownership of the underground storage tank.

Subd. 4. **Deposit information.** Beginning January 1, 1986, and until July 1, 1987, a person who deposits regulated substances in an underground storage tank must inform the owner or operator in writing of the notification requirement of this section.

Subd. 5. **Seller's responsibility.** A person who sells a tank intended to be used as an underground storage tank or property that the seller knows contains an underground storage tank must inform the purchaser in writing of the owner's notification requirements of this section.

History: *1Sp1985 c 13 s 237*

116.49 ENVIRONMENTAL PROTECTION REQUIREMENTS.

Subdivision 1. **Rules.** The agency must adopt rules applicable to all owners and operators of underground storage tanks. The rules must establish the safeguards necessary to protect human health and the environment. The agency may delay adopting the rules until the United States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1). The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.

Subd. 2. **Interim standards.** Until the rules required by subdivision 1 become effective, a person may not install an underground storage tank unless the tank:

(1) is installed according to requirements of the American Petroleum Institute Bulletin 1615 (November 1979) and all manufacturer's recommendations;

(2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release of any stored substance; and

(3) is constructed to be compatible with the substance to be stored.

History: *ISp1985 c 13 s 238*

116.50 PREEMPTION.

Sections 116.46 to 116.49 preempt conflicting local and municipal rules or ordinances requiring notification or establishing environmental protection requirements for underground storage tanks.

History: *ISp1985 c 13 s 239*

116.51 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.51 to 116.53 and 144.491.

Subd. 2. **Agency.** "Agency" means the pollution control agency.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subd. 5. **Response action.** "Response action" means action to limit exposure to lead contaminated soil sites, including fencing, covering sites with vegetation, removal and replacement of contaminated soil, and other appropriate measures.

History: *ISp1985 c 14 art 19 s 8*

116.52 IDENTIFICATION OF LEAD CONTAMINATED SOIL SITES.

Subdivision 1. **Preliminary screening.** By January 1, 1986, the agency must identify and develop a preliminary list of sites in the state where significant concentrations of lead in soil are likely and where the probability exists for children's contact with the soil. In identifying these sites the agency must consider:

(1) both stationary and mobile lead emission sources;

(2) dispersion and depositional patterns of lead emissions; and

(3) the presence of populations susceptible to lead exposure or lead absorption, including children at day care centers, schools, parks, and playgrounds, children who have elevated levels of lead in their blood, and children whose socioeconomic status has given them a higher exposure to lead or increased lead absorption.

Subd. 2. **Soil testing.** By January 1, 1987, the agency must sample sites on the preliminary list to determine the concentration of lead in the soil. The agency must refer sites to the commissioner where lead in the soil exceeds the interim standard for lead in the soil of 1,000 parts per million. After adoption of the rules under section

116.53, subdivision 1, the agency shall refer to the commissioner all sites with concentrations above the standard for lead in soil.

Subd. 3. **Access to property.** The agency or a person authorized by the agency may, upon presentation of credentials, enter public or private property to conduct surveys or investigations.

Subd. 4. **Health screening.** For each site referred by the agency, the commissioner must review the existing health data on the resident population or collect data on the level of lead in the blood if the present data are inadequate. If the level of lead in the blood is elevated in a population at a site, the commissioner shall examine the site for all sources of lead exposure and report to the agency findings and recommendations to reduce the level of lead in the blood.

History: *1Sp1985 c 14 art 19 s 9*

116.53 RULES.

Subdivision 1. **Standard for lead in soil.** By January 1, 1988, the agency shall adopt rules that establish a standard of lead contamination in the soil that threatens the health or welfare of susceptible populations.

Subd. 2. **Priorities for response action.** By January 1, 1988, the agency must adopt rules establishing the priority for response actions. The rules must consider the potential for children's contact with the soil and the existing level of lead in the soil and may consider the relative risk to the public health, the size of the population at risk, and blood lead levels of resident populations.

History: *1Sp1985 c 14 art 19 s 10*

116.54 INJECTION OF CERTAIN MATERIALS.

The pollution control agency shall authorize and may monitor not less than one or more than five projects to test the controlled injection of oxygen-bearing materials and appropriate microbiological systems into sites of water or soil contamination. An applicant for authority to conduct one of the tests shall describe to the agency plans for the test injection project including at least the following:

- (1) the quantity and type of chemicals and microbes to be used in the injection project;
- (2) the frequency and planned duration of the injections;
- (3) test monitoring and evaluation equipment that will be maintained at the site; and
- (4) procedures for recording, analyzing, and maintaining information on the injection project.

The applicant shall make available to the agency all significant test results from the injection project. Trade secret information, as defined in section 13.37, made available by an applicant is classified as nonpublic data, pursuant to section 13.02, subdivision 9, or private data on individuals, pursuant to section 13.02, subdivision 12.

History: *1986 c 398 art 26 s 1*