CHAPTER 116C

ENVIRONMENTAL QUALITY BOARD

GENERAL

116C.01 FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these envi-

ronmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

History: *1973 c 342 s 1*

116C.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 116C.01 to 116C.08, the following terms have the meaning given them.

Subd. 2. "Board" means the Minnesota environmental quality board.

History: *1973 c 342 s 2; 1975 c 271 s 6*

116C.03 CREATION OF THE ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIR; STAFF.

Subdivision 1. **Creation.** An environmental quality board, designated as the Minnesota environmental quality board, is hereby created.

Subd. 2. **Membership.** The members of the board are the director of the office of strategic and long–range planning, the commissioner of public service, the commissioner of the pollution control agency, the commissioner of natural resources, the director of the office of environmental assistance, the commissioner of agriculture, the commissioner of health, the commissioner of transportation, the chair of the board of water and soil resources, and a representative of the governor's office designated by the governor. The governor shall appoint five members from the general public to the board, subject to the advice and consent of the senate. At least two of the five public members must have knowledge of and be conversant in water management issues in the state. Notwithstanding the provisions of section 15.06, subdivision 6, members of the board may not delegate their powers and responsibilities as board members to any other person.

Subd. 2a. **Public members.** The membership terms, compensation, removal, and filling of vacancies of public members of the board shall be as provided in section 15.0575.

Subd. 3. [Repealed, 1982 c 524 s 9]

Subd. 3a. **Chair.** The representative of the governor's office shall serve as chair of the board.

Subd. 4. **Support.** Staff and consultant support for board activities shall be provided by the office of strategic and long–range planning. This support shall be provided based upon an annual budget and work program developed by the board and certified to the commissioner by the chair of the board. The board shall have the authority to request and require staff support from all other agencies of state government as needed for the execution of the responsibilities of the board.

Subd. 5. **Administration.** The board shall contract with the office of strategic and long–range planning for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

Subd. 6. **Annual budget and work program.** The board shall adopt an annual budget and work program.

History: *1973 c 342 s 3; 1974 c 307 s 16; 1975 c 271 s 6; 1976 c 134 s 28,29; 1976 c 166 s 7; 1981 c 356 s 122–124; 1982 c 524 s 1–6; 1983 c 289 s 115 subd 1; 1983 c 301 s 119; 1984 c 558 art 2 s 2,3; 1986 c 444; 1987 c 186 s 15; 1987 c 312 art 1 s 6; 1987 c 358 s 105; 1988 c 501 s 1; 1988 c 685 s 25; 1989 c 335 art 1 s 134; 1991 c 345 art 2 s 20–22; 1994 c 639 art 5 s 3*

116C.04 POWERS AND DUTIES.

Subdivision 1. The powers and duties of the Minnesota environmental quality board shall be as provided in this section and as otherwise provided by law or executive order. Actions of the board shall be taken only at an open meeting upon a majority vote of all the permanent members of the board.

Subd. 2. (a) The board shall determine which environmental problems of interdepartmental concern to state government shall be considered by the board. The board shall initiate interdepartmental investigations into those matters that it determines are in need of study. Topics for investigation may include but need not be limited to future population and settlement patterns, air and water resources and quality, solid waste management, transportation and utility corridors, economically productive open space, energy policy and need, growth and development, and land use planning.

(b) The board shall review programs of state agencies that significantly affect the environment and coordinate those it determines are interdepartmental in nature, and insure agency compliance with state environmental policy.

(c) The board may review environmental rules and criteria for granting and denying permits by state agencies and may resolve conflicts involving state agencies with regard to programs, rules, permits and procedures significantly affecting the environment, provided that such resolution of conflicts is consistent with state environmental policy.

(d) State agencies shall submit to the board all proposed legislation of major significance relating to the environment and the board shall submit a report to the governor and the legislature with comments on such major environmental proposals of state agencies.

Subd. 3. The board shall cooperate with regional development commissions in appropriate matters of environmental concern.

Subd. 4. The board may establish interdepartmental or citizen task forces or subcommittees to study particular problems.

Subd. 5. [Repealed, 1984 c 558 art 2 s 4]

Subd. 6. [Repealed, 1984 c 558 art 2 s 4]

Subd. 7. At its discretion, the board shall convene an annual environmental quality board congress including, but not limited to, representatives of state, federal and regional agencies, citizen organizations, associations, industries, colleges and universities, and private enterprises who are active in or have a major impact on environmental quality. The purpose of the congress shall be to receive reports and exchange information on progress and activities related to environmental improvement.

Subd. 8. [Repealed, 1982 c 524 s 9]

Subd. 9. [Repealed, 1982 c 524 s 9]

Subd. 10. The board may enter into and enforce stipulation agreements made to enforce statutes and rules administered by the board.

Subd. 11. The environmental quality board shall coordinate the implementation of an interagency compliance with existing state and federal lead regulations and report to the legislature by January 31, 1992, on the changes in programs needed to comply.

History: *1973 c 342 s 4; 1975 c 271 s 6; 1985 c 248 s 70; 1988 c 501 s 2; 1991 c 292 art 9 s 1*

116C.05 [Repealed, 1982 c 524 s 9]

116C.06 HEARINGS.

Subdivision 1. The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule in conformity to the provisions of sections 14.02, 14.04 to 14.28, 14.38, 14.44 to 14.45, and 14.57 to 14.62, the procedures for the conduct of all hearings and review procedures.

Subd. 2. The board may delegate its authority to conduct a hearing to a hearings officer. The hearings officer shall have the same power as the board to compel the attendance of witnesses to examine them under oath, to require the production of books, papers, and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state. The hearings officer shall be knowledgeable in matters of law and the environment.

If a hearings officer conducts a hearing, the officer shall make findings of fact and submit them to the board. The transcript of testimony and exhibits shall constitute the exclusive record upon which such findings are made. The findings shall be available for public inspection.

Subd. 3. After receipt of the findings of fact of the hearings officer, the board shall make recommendations to the governor and legislature as to administrative and legislative actions to be considered in regard to the matter.

History: *1973 c 342 s 6; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444; 1995 c 233 art 2 s 56*

116C.07 [Repealed, 1982 c 524 s 9]

116C.08 FEDERAL FUNDS; DONATIONS.

The board may apply for, receive, and disburse federal funds made available to the state by federal law or rules promulgated thereunder for any purpose related to the powers and duties of the board. The board shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder in order to apply for, receive, and disburse such funds. The board is authorized to accept any donations or grants from any public or private concern. All such moneys received by the board shall be deposited in the state treasury and are hereby appropriated to it for the purpose for which they are received. None of such moneys in the state treasury shall cancel.

History: *1973 c 342 s 8; 1975 c 271 s 6*

ENVIRONMENTAL COORDINATION PROCEDURES

116C.22 CITATION.

Sections 116C.22 to 116C.34 may be cited as the Minnesota environmental coordination procedures act.

History: *1976 c 303 s 1*

116C.23 PURPOSE.

It shall be the purpose of sections 116C.22 to 116C.34:

(a) to provide an optional procedure to assist those who, in the course of satisfying the requirements of state government prior to undertaking a project which contemplates the use of the state's air, land, or water resources, must obtain more than one state permit, by establishing a mechanism in state government which will coordinate administrative decision–making procedures, and related quasi–judicial and judicial review, pertaining to these permits;

(b) to provide to the members of the public a better and easier opportunity to present their views comprehensively on proposed uses of natural resources and related environmental matters prior to the making of decisions on these uses by state or local agencies;

(c) to provide to the members of the public a greater degree of certainty in terms of permit requirements of state and local government;

(d) to provide better coordination and understanding between state and local agencies in the administration of the various programs relating to air, water, and land resources; and

(e) to establish the opportunity for members of the public to obtain information pertaining to requirements of federal and state law which must be satisfied prior to undertaking a project in this state.

History: *1976 c 303 s 2*

116C.24 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.22 to 116C.34, the terms defined in this section have the meanings given them.

Subd. 1a. **Agency.** "Agency" means a state department, commission, board or other agency of the state however titled or a local governmental unit or instrumentality, only when that unit or instrumentality is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

Subd. 2. **Board.** "Board" means the Minnesota environmental quality board.

Subd. 2a. **Commissioner.** "Commissioner" means the commissioner of trade and economic development.

Subd. 3. **Coordination unit.** "Coordination unit" means the bureau of business licenses established pursuant to sections 116J.73 to 116J.76.

Subd. 4. **Local governmental unit.** "Local governmental unit" means a county, city, town, or special district with legal authority to issue a permit.

Subd. 5. **Permit.** "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of, or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state.

Nothing in sections 116C.22 to 116C.34 shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

Subd. 6. **Person.** "Person" means an individual, an association or partnership, or a cooperative, or a municipal, public or private corporation, including but not limited to a state agency and a county.

Subd. 7. **Project.** "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and for which permits are required from an agency prior to construction or operation, including but not limited to industrial and commercial operations and developments. Sections 116C.22 to 116C.34 shall not apply to projects which are:

(a) Covered by chapter 93, sections 116C.51 to 116C.69 or 216B.243; or

(b) Initiated for the purpose of taconite tailings disposal or mining, or the producing or beneficiating of copper, nickel or copper–nickel.

Subd. 8. MS 1990 [Renumbered subd 1a]

History: *1975 c 271 s 6; 1976 c 303 s 3; 1981 c 356 s 248; 1983 c 289 s 34,35,115 subd 2; 1984 c 558 art 4 s 10; 1987 c 312 art 1 s 26 subd 2*

116C.25 ENVIRONMENTAL PERMITS COORDINATION UNIT.

The commissioner of trade and economic development shall direct the bureau of business licenses to act as the coordination unit to implement and administer the provisions of sections 116C.22 to 116C.34. The commissioner shall employ necessary staff to work for the coordination unit on a continuous basis.

History: *1975 c 271 s 6; 1976 c 303 s 4; 1983 c 289 s 36; 1987 c 312 art 1 s 26 subd 2*

116C.26 APPLICATION PROCEDURE.

Subdivision 1. A person proposing a project which may require more than one permit may, prior to the initial construction of the project or prior to the initial operation of the project if construction of the project required no state permits, submit a master application to the coordination unit requesting the issuance of all state permits necessary for construction and operation of the project. The master application shall be on a form furnished by the coordination unit and shall contain precise information as to the location of the project, and shall describe the nature of the project including any contemplated discharges of wastes therefrom and any uses of, or interferences with, natural resources. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by the certifications issued not more than 120 days prior to the date of the master application as required by section 116C.31. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by a certification from the board that either an environmental impact statement concerning the project has been completed or that an environmental impact statement is not required concerning the project.

Subd. 2. Upon receipt of a completed master application, the coordination unit shall immediately notify in writing each agency having a possible interest in the master application

arising from requirements pertaining to a permit program under its jurisdiction. The notification from the coordination unit shall be accompanied by a copy of the master application together with the date by which the agency shall respond to the notice. Each notified agency shall respond in writing to the coordination unit within the specified date, not exceeding 20 days from receipt, as determined by the coordination unit, advising whether the agency does or does not have an interest in the master application. If an agency timely responds that it has an interest in the master application, the response shall include information concerning the specific permit programs under its jurisdiction which are pertinent to the project described in the master application. The agency response shall also advise the coordination unit whether a public hearing concerning the master application as provided in section 116C.28 would or would not be required or of value considering the overall public interest.

Subd. 3. Each notified agency which responds within the specified date that it does not have an interest in the master application or which does not respond as required by subdivision 2 within the specified date, shall not subsequently require a permit of the applicant for the project described in the master application; provided the bar to requiring a permit subsequently shall not be applicable if:

(a) The master application provided to the notified agency contained false, misleading, or deceptive information, or lacked information, which would reasonably lead an agency to misjudge its interest in a master application; or

(b) Subsequent laws or rules require additional permits; or

(c) Unusual circumstances prevented the agency from notifying the coordination unit and the agency can establish that failure to require a permit would result in substantial harm to the public health or welfare, in which case the board may order that the permit be required.

Subd. 4. The coordination unit shall submit application forms concerning the permit programs identified in the affirmative responses under subdivision 2 to the applicant with a direction to complete and return them to the coordination unit within 90 days.

Subd. 5. Within ten days of receipt of the full set of completed application forms by the coordination unit, each application shall be transmitted to the appropriate agency for the performance of its responsibilities of decision making in accordance with the procedures of sections 116C.22 to 116C.33.

Subd. 6. If an agency has a procedure for setting priorities in issuing a permit according to the date of the application for the permit, the date used shall be the date upon which a master application is received by the coordination unit.

History: *1975 c 271 s 6; 1976 c 303 s 5*

116C.27 NOTICE.

Subdivision 1. The coordination unit immediately after transmittal of the completed applications to the appropriate agency shall cause a notice to be published at the applicant's expense once each week on the same day of the week for three consecutive weeks in a newspaper of general circulation within each county in which the project is proposed to be constructed or operated. The notice shall describe the nature of the master application including, with reasonable specificity, the project proposed, its location, the various permits applied for, and the agency having jurisdiction over each permit. Except as provided in subdivision 2, the notice shall also state the time and place of the public hearing, to be held not less than 20 days after the date of last publication of the notice. It shall further state that a copy of the master application and a copy of all permit applications for the project are available for public inspection in the office of the county auditor of each county in which the project is proposed to be constructed or operated, as well as in other locations which the coordination unit may designate.

Subd. 2. If the responses to the master application received by the coordination unit from the state agencies unanimously state the position that a public hearing in relation to a master application would not be of value in consideration of the overall public interest and are not required by any other law or rule, the provisions of subdivision 1 pertaining to the time and place of a public hearing shall not be included in the notice. In place thereof the notice shall state that members of the public may present relevant views and supporting ma-

terials in writing to the coordination unit concerning any of the permits applied for within 30 days after the last date of publication of the notice in a newspaper.

History: *1976 c 303 s 6*

116C.28 PUBLIC HEARING.

Subdivision 1. When one or more agencies notifies the coordination unit that a public hearing is required or appropriate on matters relating to the project described in the master application, the coordination unit shall set the time and place for a hearing in which each of the affected agencies shall participate. The hearing shall be held pursuant to the contested case provisions of chapter 14 and section 116C.27.

Subd. 2. Each participating state agency shall be represented at the public hearing by its chief administrative officer or a designee. The representative of any state agency within whose jurisdiction a specific application lies shall participate in the portion of the hearing pertaining to submission of information, views, and supporting materials which are relevant to its application. The administrative law judge may, when appropriate, continue a hearing from time to time and place to place. The hearing shall be recorded in any manner suitable for transcription pursuant to chapter 14.

Subd. 3. Within 60 days of receipt of the administrative law judge's report, each state agency which is a party to the hearing shall forward its final decision on permit applications within its jurisdiction to the coordination unit, provided that this date may be extended by the chair of the board for reasonable cause. Every final decision shall set forth the basis for the decision together with a final order denying the permit or granting the permit including the specifying of any conditions under which the permit is issued.

Subd. 4. If notice has been published pursuant to section 116C.27, subdivision 2, and no public hearing is conducted, the coordination unit shall, not less than 30 days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency having jurisdiction concerning any permit application described in the notice. Concurrently therewith, the coordination unit shall notify each state agency, in writing, of the date not to exceed 60 days by which final decisions on applications shall be forwarded to the coordination unit; provided that this date may be extended by the chair of the board for reasonable cause. Each final decision shall set forth the information required by subdivision 3.

Subd. 5. As soon as all final decisions are received by the coordination unit from the various participating state agencies, the coordination unit shall immediately incorporate them, without modification, into one document and shall transmit the document to the applicant either personally or by certified mail.

History: *1975 c 271 s 6; 1976 c 303 s 7; 1978 c 674 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444*

116C.29 WITHDRAWAL OF AGENCY PARTICIPATION.

After an agency has responded that it has an interest in the master application, it may withdraw from further participation in the processing of that master application at any time by written notification to the coordination unit, if it subsequently appears to the agency that it has no permit programs under its jurisdiction which are applicable to the project.

History: *1976 c 303 s 8*

116C.30 APPLICATION.

Subdivision 1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by chapter 14, or any other statute authorizing either judicial or administrative review of an agency decision.

Subd. 2. Each state agency having jurisdiction to approve or deny an application for a permit shall have continuing power as vested in it prior to February 15, 1977, to make such determinations. Nothing in sections 116C.22 to 116C.34 shall lessen or reduce such powers, and such sections shall modify only the procedures to be followed in the carrying out of such powers.

Subd. 3. A state agency may in the performance of its responsibilities of decision making under sections 116C.22 to 116C.33, request or receive additional information from an applicant.

Subd. 4. Fee schedules authorized by statute for an application or permit shall continue to be applicable even though the application or permit is processed under the provisions set forth in sections 116C.22 to 116C.33. The coordination unit shall not charge the applicant or participating agencies a fee for its services.

Subd. 5. Sections 116C.22 to 116C.33 shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under sections 116C.27 to 116C.29, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of a state agency.

Subd. 6. Nothing in sections 116C.22 to 116C.34 shall modify in any manner whatsoever the applicability or inapplicability of any land use rule, statute or local zoning ordinance to the lands of any state agency.

History: *1976 c 303 s 9; 1982 c 424 s 130; 1985 c 248 s 70*

116C.31 LOCAL CERTIFICATION.

Subdivision 1. No master application shall be processed pursuant to sections 116C.22 to 116C.33 unless it is accompanied by a certification issued not more than 120 days prior to the date the master application is first received by the coordination unit, from the local governmental units in whose jurisdiction the proposed project is located, certifying that the project is in compliance with all zoning ordinances, subdivision regulations, and environmental regulations administered by the local governmental unit and certifying that the preparation of any environmental impact statement which the local governmental unit is authorized to require pursuant to local ordinance, state statute, or board rule, has been completed or deemed not necessary. If the local governmental unit has required any environmental impact statement concerning the project, a copy of the completed environmental impact statement shall be attached to the local governmental unit's certification. If the local governmental unit has no zoning ordinances, subdivision regulations, or environmental regulations, the certification from the local governmental unit shall so state. A local governmental unit may accept applications for certifications as provided in this section and shall rule upon the same expeditiously to insure that the purposes of sections 116C.22 to 116C.33 are accomplished fully. After issuing a certification for the purposes of this section, no local government shall rescind it even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under sections 116C.22 to 116C.33. Upon certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of sections 116C.22 to 116C.33, including any administrative or judicial reviews, are completed.

Subd. 2. A ruling by a local governmental unit denying an application for certification shall not be appealable under sections 116C.22 to 116C.34. The denial of an application for certification by a local governmental unit shall not preclude the applicant from filing a permit application under any other available statute or procedure.

History: *1975 c 271 s 6; 1976 c 303 s 10*

116C.32 RULES; COOPERATION.

The commissioner shall as soon as practicable adopt rules, not inconsistent with rules of procedure established by the office of administrative hearings, to implement the provisions of sections 116C.22 to 116C.34, including master application procedures, notice procedures, and public hearing procedures and costs.

History: *1975 c 271 s 6; 1976 c 303 s 11; 1980 c 615 s 60; 1983 c 289 s 37*

116C.33 CONFLICT WITH FEDERAL REQUIREMENTS.

Subdivision 1. If in a final order of a court of competent jurisdiction, any part of sections 116C.22 to 116C.34 as enacted or administered is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds authorized to this state, the conflicting part of sections 116C.22 to 116C.34 shall be void to the limited extent necessary to remove the conflict and the remainder of sections 116C.22 to 116C.34 shall remain effective.

Subd. 2. The commissioner, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing, and related procedural matters provided in sections 116C.22 to 116C.34.

History: *1975 c 271 s 6; 1976 c 303 s 12; 1983 c 289 s 38*

116C.34 BUREAU OF BUSINESS LICENSES.

Subdivision 1. The bureau of business licenses shall establish and maintain an information and referral system to assist the public in the understanding and compliance with the requirements of state and local governmental rules concerning the use of natural resources and protection of the environment. The system shall provide a telephone information service and disseminate printed materials. The bureau shall provide assistance to regional development commissions desiring to create a permit information center.

Subd. 2. The bureau shall:

(a) Identify all existing state licenses, permit certifications, approvals, compliance schedules, or other programs which pertain to the use of natural resources and to protection of the environment.

(b) Standardize permit titles and assign designation codes to all such permits which would thereafter be imprinted on all permit forms.

(c) Develop permit profiles including applicable rules copies of all appropriate permit forms, statutory mandate and legislative history, names of individuals administering the program, permit processing procedures, documentation of the magnitude of the program and of geographic and seasonal distribution of the workload, and estimated application processing time.

(d) Identify the public information procedures currently associated with each permit program.

(e) Identify the data monitored or acquired through each permit and ascertain current users of that data.

(f) Recommend revisions to the list of natural resource management and development permits contained in Minnesota Statutes 1974, section 116D.04, subdivision 5.

(g) Recommend legislative or administrative modifications of existing permit programs to increase their efficiency and utility.

Subd. 3. The auditor of each county shall post in a conspicuous place in the auditor's office the telephone numbers of the bureau of business licenses and the permit information center in the office of the applicable regional development commission; copies of any master applications or permit applications forwarded to the auditor pursuant to section 116C.27, subdivision 1; and copies of any information published by the bureau or an information center pursuant to subdivision 1.

History: *1975 c 271 s 6; 1976 c 303 s 13; 1983 c 289 s 39; 1985 c 248 s 70; 1986 c 444*

116C.40 [Repealed, 1990 c 391 art 10 s 4]

116C.41 [Repealed, 1990 c 391 art 10 s 4]

POWER PLANT SITES

116C.51 CITATION.

Sections 116C.51 to 116C.69 shall be known as the Minnesota power plant siting act.

History: *1973 c 591 s 1*

116C.52 DEFINITIONS.

Subdivision 1. **Applicability.** As used in sections 116C.51 to 116C.68, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. **Board.** "Board" shall mean the Minnesota environmental quality board.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Construction.** "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. **High voltage transmission line.** "High voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more, except that the board, by rule, may exempt lines pursuant to section 116C.57, subdivision 5.

Subd. 5. MS 1990 [Renumbered subd 7]

Subd. 5. **Large electric power generating plant.** "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 6. MS 1990 [Renumbered subd 10]

Subd. 6. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subd. 7. MS 1990 [Renumbered subd 3]

Subd. 7. **Person.** "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 8. **Route.** "Route" means the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Subd. 9. **Site.** "Site" means the location of a large electric power generating plant.

Subd. 10. MS 1990 [Renumbered subd 6]

Subd. 10. **Utility.** "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally owned utility.

History: *1973 c 591 s 2; 1975 c 271 s 6; 1977 c 439 s 1–5*

116C.53 SITING AUTHORITY.

Subdivision 1. **Policy.** The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

Subd. 2. **Jurisdiction.** The board is hereby given the authority to provide for site and route selection.

Subd. 3. **Interstate routes.** If a route is proposed in two or more states, the board shall attempt to reach agreement with affected states on the entry and exit points prior to authorizing the construction of the route. The board, in discharge of its duties pursuant to sections 116C.51 to 116C.69 may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The board may negotiate and enter into any agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation, and maintenance of large elec-

tric power facilities in accord with the purposes of sections 116C.51 to 116C.69 and for the enforcement of the respective state laws regarding such facilities.

History: *1973 c 591 s 3; 1975 c 271 s 6; 1977 c 439 s 6*

116C.54 [Repealed, 1994 c 644 s 7]

116C.55 DEVELOPMENT OF POWER PLANT STUDY AREAS CRITERIA; PUBLIC HEARINGS; INVENTORY.

Subdivision 1. [Repealed, 1977 c 439 s 27]

Subd. 2. **Inventory criteria; public hearings.** The board shall promptly initiate a public planning process where all interested persons can participate in developing the criteria and standards to be used by the board in preparing an inventory of large electric power generating plant study areas and to guide the site and route suitability evaluation and selection process. The participatory process shall include, but should not be limited to public hearings. Before substantial modifications of the initial criteria and standards are adopted, additional public hearings shall be held. All hearings conducted under this subdivision shall be conducted pursuant to the rulemaking provisions of chapter 14.

Subd. 3. **Inventory of large electric power generating plant study areas.** On or before January 1, 1979, the board shall adopt an inventory of large electric power generating plant study areas and publish an inventory report. The inventory report shall specify the planning policies, criteria and standards used in developing the inventory. After completion of its initial inventory the board shall have a continuing responsibility to evaluate, update and publish its inventory.

History: *1973 c 591 s 5; 1975 c 271 s 6; 1977 c 439 s 8,9; 1982 c 424 s 130*

116C.56 [Repealed, 1977 c 439 s 27]

116C.57 DESIGNATION OF SITES AND ROUTES; PROCEDURES; CONSIDERATIONS; EMERGENCY CERTIFICATION; EXEMPTION.

Subdivision 1. **Designation of sites suitable for specific facilities; reports.** A utility must apply to the board in a form and manner prescribed by the board for designation of a specific site for a specific size and type of facility. The application shall contain at least two proposed sites. In the event a utility proposes a site not included in the board's inventory of study areas, the utility shall specify the reasons for the proposal and shall make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory. Pursuant to sections 116C.57 to 116C.60, the board shall study and evaluate any site proposed by a utility and any other site the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate sites. No site designation shall be made in violation of the site selection standards established in section 116C.55. The board shall indicate the reasons for any refusal and indicate changes in size or type of facility necessary to allow site designation. Within a year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria specified in section 116C.55, subdivision 2, the responsibilities, procedures and considerations specified in section 116C.57, subdivision 4, and the considerations in chapter 116D which proposed site is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed six months. When the board designates a site, it shall issue a certificate of site compatibility to the utility with any appropriate conditions. The board shall publish a notice of its decision in the State Register within 30 days of site designation. No large electric power generating plant shall be constructed except on a site designated by the board.

Subd. 2. **Designation of routes; procedure.** A utility shall apply to the board in a form and manner prescribed by the board for a permit for the construction of a high voltage transmission line. The application shall contain at least two proposed routes. Pursuant to sections 116C.57 to 116C.60, the board shall study, and evaluate the type, design, routing, right–of–way preparation and facility construction of any route proposed in a utility's application and any other route the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for al-

ternate routes provided, however, that the board shall identify the alternative routes prior to the commencement of public hearings thereon pursuant to section 116C.58. Within one year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria and standards specified in section 116C.55, subdivision 2, and the considerations specified in section 116C.57, subdivision 4, which proposed route is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed 90 days. When the board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right–of–way preparation and facility construction it deems necessary and with any other appropriate conditions. The board may order the construction of high voltage transmission line facilities which are capable of expansion in transmission capacity through multiple circuiting or design modifications. The board shall publish a notice of its decision in the state register within 30 days of issuance of the permit. No high voltage transmission line shall be constructed except on a route designated by the board, unless it was exempted pursuant to subdivision 5.

Subd. 3. **Emergency certification.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line may make application to the board for an emergency certificate of site compatibility or permit for the construction of high voltage transmission lines, which certificate or permit shall be issued in a timely manner no later than 195 days after the board's acceptance of the application and upon a finding by the board that a demonstrable emergency exists which requires immediate construction, and that adherence to the procedures and time schedules specified in this section would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner. A public hearing to determine if an emergency exists shall be held within 90 days of the application. The board shall, after notice and hearing, promulgate rules specifying the criteria for emergency certification.

Subd. 4. **Considerations in designating sites and routes.** To facilitate the study, research, evaluation and designation of sites and routes, the board shall be guided by, but not limited to, the following responsibilities, procedures, and considerations:

(1) Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line routes and the effects of water and air discharges and electric fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling, and monitoring of the water and air mass at proposed and operating sites and routes, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) Environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) Evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) Analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) Evaluation of adverse direct and indirect environmental effects which cannot be avoided should the proposed site and route be accepted;

(7) Evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivisions 1 and 2;

(8) Evaluation of potential routes which would use or parallel existing railroad and highway rights–of–way;

(9) Evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;

(10) Evaluation of the future needs for additional high voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of

structures capable of expansion in transmission capacity through multiple circuiting or design modifications;

(11) Evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) Where appropriate, consideration of problems raised by other state and federal agencies and local entities.

(13) If the board's rules are substantially similar to existing rules and regulations of a federal agency to which the utility in the state is subject, the federal rules and regulations shall be applied by the board.

(14) No site or route shall be designated which violates state agency rules.

Subd. 5. **Exemption of certain routes.** A utility may apply to the board in a form and manner prescribed by the board to exempt the construction of any proposed high voltage transmission line from sections 116C.51 to 116C.69. Within 15 days of the board's receipt of the exemption application, the utility shall publish a notice and description of the exemption application in a legal newspaper of general circulation in each county in which the route is proposed and send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in which the route is proposed and shall send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should that owner desire to object. For the purpose of giving mailed notice under this subdivision, owners shall be those shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Except as to the owners of tax exempt property or property taxes on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived such mailed notice unless that owner has requested in writing that the county auditor or county treasurer, as the case may be, include the owner's name on the records for such purpose. The failure to give mailed notice to a property owner, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made. If any person who owns real property crossed by the proposed route, or any person owning property adjacent to property crossed by the proposed route, or any affected political subdivision files an objection with the board within 60 days after the board's receipt of the exemption application, the board shall either deny the exemption application or conduct a public hearing. If the board determines that the proposed high voltage transmission line will not create significant human or environmental impact, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special purpose government in which the route is proposed. The board may by rule require a fee to pay expenses incurred in processing exemptions. Any fee charged is subject to the conditions of section 116C.69, subdivision 2a.

Subd. 5a. **Exemption of certain sites.** (a) A utility or person may apply to the board in a form and manner prescribed by the board to exempt the construction at a proposed site of a proposed electric power generating plant with a capacity between 50 and 80 megawatts from the requirements of sections 116C.51 to 116C.69. Within 15 days of the board's receipt of an exemption application, the utility or person shall:

(1) publish a notice and description of the exemption application in a legal newspaper of general circulation in the county of the proposed site;

(2) send a copy of the exemption application by certified mail to the chief executive of counties, home rule charter and statutory cities, and organized towns within ten miles of the proposed site; and

(3) mail to each owner whose property is part of or contiguous to the proposed site a notice and description of the exemption application, together with an understandable description of the procedures the owner must follow should the owner desire to object.

(b) For the purpose of giving mailed notice under this subdivision, owners are the persons or entities shown on the tax records of the county auditor or, in a county where tax state-

ments are mailed by the county treasurer, on the records of the county treasurer, but other appropriate records may be used to identify owners. Except for owners of tax–exempt property or property taxed on a gross earnings basis, a property owner whose name does not appear on the records of the county auditor or the county treasurer is deemed to have waived the mailed notice unless the owner has requested in writing that the county auditor or county treasurer, as the case may be, include the owner's name on the records for that purpose. The failure to give mailed notice to a property owner or defects in the notice does not invalidate the proceedings, if a good faith effort is made to comply with this subdivision.

(c) If a person who owns real property that is part of or contiguous to the proposed site or an affected political subdivision files an objection with the board within 60 days after the board receives an exemption application, the board must either deny the exemption application or conduct a public hearing to determine if the proposed electric power generating plant at the proposed site will cause any significant human or environmental impact.

(d) The board shall require environmental review under chapter 116D to assist in making its determination regarding potential significant human and environmental impact.

(e) If the board determines that the proposed plant has an electric power production capacity less than 80 megawatts and the proposed site will not have a significant human and environmental impact, the board may exempt the construction of the proposed plant at the proposed site from the requirements of sections 116C.51 to 116C.69 with any appropriate conditions.

(f) If an exemption is granted, the utility or person must comply with applicable state rules, local zoning, building, and land use rules, regulations, and ordinances of any regional, county, local, and special purpose governments in which the facility is to be located.

(g) The board may, by rule, require a fee to pay costs incurred in processing exemptions. An estimated cost for processing the exemption application must be discussed with the applicant and be approved by the board when an application is received. The applicant must remit 50 percent of the approved cost within 14 days of acceptance of the application. The balance is due within 30 days after receipt of an invoice from the board. Costs in excess of those approved must be certified by the board and charged to the applicant. Certification is prima facie evidence that the costs are reasonable and necessary. All money received pursuant to this subdivision must be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing the application and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 6. **Recording of survey points.** The permanent location of monuments or markers found or placed by a utility in a survey of right–of–way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

History: *1973 c 591 s 7; 1975 c 271 s 6; 1977 c 439 s 10; 1986 c 444; 1987 c 384 art 2 s 21; 1989 c 346 s 1; 1994 c 644 s 1*

116C.58 PUBLIC HEARINGS; NOTICE.

The board shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding its inventory of study areas and any other aspects of the board's activities and duties or policies specified in sections 116C.51 to 116C.69. The board shall hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 116C.57. Notice and agenda of public hearings and public meetings of the board held in each county shall be given by the board at least ten days in advance but no earlier than 45 days prior to such hearings or meetings. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing or public meeting is to be held and by certified mailed notice to chief executives of the regional development commissions, counties, organized towns and the incorporated municipalities in which a site or route is proposed. All hearings held for designating a site or route or for exempting a route shall be conducted by an administrative law judge from the office of administrative hearings pursuant to the contested case procedures of chapter 14. Any person may appear at the hearings and present testimony and

exhibits and may question witnesses without the necessity of intervening as a formal party to the proceedings.

History: *1973 c 591 s 8; 1975 c 271 s 6; 1977 c 439 s 11; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32*

116C.59 PUBLIC PARTICIPATION.

Subdivision 1. **Advisory task force.** The board may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the board, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located. No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6.

Subd. 2. **Other public participation.** The board shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the board's rules and guidelines as provided for in section 116C.66.

Subd. 3. **Public advisor.** The board shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. **Scientific advisory task force.** The board may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long–range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6.

History: *1973 c 591 s 9; 1975 c 271 s 6; 1977 c 439 s 12,13; 1985 c 248 s 70; 1988 c 629 s 19–21*

116C.60 PUBLIC MEETINGS; TRANSCRIPT OF PROCEEDINGS; WRITTEN RECORDS.

Meetings of the board, including hearings, shall be open to the public. Minutes shall be kept of board meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the board shall be available for public inspection at any reasonable time. The council shall also be subject to section 471.705.

History: *1973 c 591 s 10; 1975 c 271 s 6*

116C.61 LOCAL REGULATION; STATE PERMITS; STATE AGENCY PARTICIPATION.

Subdivision 1. **Regional, county and local ordinances, rules, regulations; primary responsibility and regulation of site designation, improvement and use.** To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county and local governments, and special purpose government districts, the issuance of a certificate of site compatibility or transmission line construction permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high voltage transmission line purposes shall be the sole site approval required to be obtained by the utility. Such certificate or permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. **Facility licensing.** Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the board, with respect to the site

or route designation, and with respect to other matters for which authority has been granted to the board by sections 116C.51 to 116C.69.

Subd. 3. **State agency participation.** State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high voltage transmission lines shall participate in and present the position of the agency at public hearings and all other activities of the board on specific site or route designations of the board, which position shall clearly state whether the site or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, rules or policies.

History: *1973 c 591 s 11; 1975 c 271 s 6; 1977 c 439 s 14,15; 1985 c 248 s 70*

116C.62 IMPROVEMENT OF SITES AND ROUTES.

Utilities which have acquired a site or route in accordance with sections 116C.51 to 116C.69 may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 116C.61, subdivision 2, provided that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued then the utility must certify to the board that the site or route continues to meet the conditions upon which the certificate of site compatibility or transmission line construction permit was issued.

History: *1973 c 591 s 12; 1975 c 271 s 6; 1977 c 439 s 16*

116C.63 EMINENT DOMAIN POWERS; RIGHT OF CONDEMNATION.

Subdivision 1. Nothing in this section shall invalidate the right of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The right of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of sections 116C.51 to 116C.69, including acquisition of the right to utilize existing high voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high voltage transmission line purposes for a period of five years.

Subd. 2. In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

Subd. 3. When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24,

respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a high voltage transmission line right-of-way shall automatically be converted into a fee taking.

Subd. 5. A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of Laws 1977, chapter 439, for the purpose of a site or route that the person may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

History: *1973 c 591 s 13; 1977 c 439 s 17; 1978 c 674 s 15; 1980 c 614 s 87; 1Sp1985 c 14 art 4 s 15; 1986 c 444; 1Sp1986 c 1 art 4 s 7; 1987 c 268 art 6 s 1*

116C.635 [Repealed, 1979 c 303 art 2 s 38]

116C.64 FAILURE TO ACT.

If the board fails to act within the times specified in section 116C.57, any affected utility may seek an order of the district court requiring the board to designate or refuse to designate a site or route.

History: *1973 c 591 s 14; 1975 c 271 s 6; 1977 c 439 s 19*

116C.645 REVOCATION OR SUSPENSION.

A site certificate or construction permit may be revoked or suspended by the board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the board of:

(1) Any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

(2) Failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) Any material violation of the provisions of sections 116C.51 to 116C.69, any rule promulgated pursuant thereto, or any order of the board.

History: *1977 c 439 s 20; 1978 c 658 s 1*

116C.65 JUDICIAL REVIEW.

Any utility, party or person aggrieved by the issuance of a certificate or emergency certificate of site compatibility or transmission line construction permit from the board or a certification of continuing suitability filed by a utility with the board or by a final order in accordance with any rules promulgated by the board, may appeal to the court of appeals in accordance with chapter 14. The appeal shall be filed within 60 days after the publication in the State Register of notice of the issuance of the certificate or permit by the board or certification filed with the board or the filing of any final order by the board.

History: *1973 c 591 s 15; 1975 c 271 s 6; 1977 c 439 s 21; 1980 c 509 s 28; 1982 c 424 s 130; 1983 c 247 s 54*

116C.66 RULES.

The board, in order to give effect to the purposes of sections 116C.51 to 116C.69, shall prior to July 1, 1978, adopt rules consistent with sections 116C.51 to 116C.69, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the

development, revision, and enforcement of any rule, plan or program established by the board, procedures for the revocation or suspension of a construction permit or a certificate of site compatibility, the procedure and timeliness for proposing alternative routes and sites, and route exemption criteria and procedures. No rule adopted by the board shall grant priority to state–owned wildlife management areas over agricultural lands in the designation of route avoidance areas. The provisions of chapter 14 shall apply to the appeal of rules adopted by the board to the same extent as it applies to review of rules adopted by any other agency of state government.

The chief administrative law judge shall, prior to January 1, 1978, adopt procedural rules for public hearings relating to the site and route designation process and to the route exemption process. The rules shall attempt to maximize citizen participation in these processes.

History: *1973 c 591 s 16; 1975 c 271 s 6; 1977 c 439 s 22; 1978 c 658 s 2; 1982 c 424 s 130; 1984 c 640 s 32*

116C.67 SAVINGS CLAUSE.

The provisions of sections 116C.51 to 116C.69 shall not apply to any site evaluated and recommended by the governor's environmental quality council prior to the date of enactment, and to any high voltage transmission lines, the construction of which will commence prior to July 1, 1974.

History: *1973 c 591 s 17; 1977 c 439 s 23*

116C.68 ENFORCEMENT, PENALTIES.

Subdivision 1. Any person who violates sections 116C.51 to 116C.69 or any rule promulgated hereunder, or knowingly submits false information in any report required by sections 116C.51 to 116C.69 is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116C.51 to 116C.69 or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the board.

Subd. 3. When the court finds that any person has violated sections 116C.51 to 116C.69, any rule hereunder, knowingly submitted false information in any report required by sections 116C.51 to 116C.69 or has violated any court order issued under sections 116C.51 to 116C.69, the court may impose a civil penalty of not more than $10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

History: *1973 c 591 s 18; 1975 c 271 s 6; 1977 c 439 s 24*

116C.69 BIENNIAL REPORT; APPLICATION FEES; APPROPRIATION; FUNDING.

Subdivision 1. **Biennial report.** Before November 15 of each even–numbered year the board shall prepare and submit to the legislature a report of its operations, activities, findings and recommendations concerning sections 116C.51 to 116C.69. The report shall also contain information on the board's biennial expenditures, its proposed budget for the following biennium, and the amounts paid in certificate and permit application fees pursuant to subdivisions 2 and 2a and in assessments pursuant to subdivision 3. The proposed budget for the following biennium shall be subject to legislative review.

Subd. 2. **Site application fee.** Every applicant for a site certificate shall pay to the board a fee in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation

and designation process by the board. In no event shall the total fees required of the applicant under this subdivision exceed an amount equal to 0.001 of said production plant investment ($1,000 for each $1,000,000). All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing applications for certificates in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 2a. **Route application fee.** Every applicant for a transmission line construction permit shall pay to the board a base fee of $35,000 plus a fee in an amount equal to $1,000 per mile length of the longest proposed route. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. In the event the actual cost of processing an application up to the board's final decision to designate a route exceeds the above fee schedule, the board may assess the applicant any additional fees necessary to cover the actual costs, not to exceed an amount equal to $500 per mile length of the longest proposed route. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing applications for construction permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 3. **Funding; assessment.** The board shall finance its base line studies, general environmental studies, development of criteria, inventory preparation, monitoring of conditions placed on site certificates and construction permits, and all other work, other than specific site and route designation, from an assessment made quarterly, at least 30 days before the start of each quarter, by the board against all utilities with annual retail kilowatt–hour sales greater than 4,000,000 kilowatt–hours in the previous calendar year.

Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt–hour sales in the state of each utility bears to the annual total retail kilowatt–hour sales in the state of all these utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt–hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt–hour sales in the state of all these utilities, multiplied by 0.333, as determined by the board. The assessment shall be credited to the special revenue fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the sum of the annual budget of the board for carrying out the purposes of this subdivision. The assessment for the second quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the board for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

History: *1973 c 591 s 19 subds 1–3; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s 313–315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 609 art 1 s 4; 1973 c 591 s 19 subds 1–3; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s 313–315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 609 art 1 s 1,4; 1989 c 335 art 1 s 269; 1990 c 597 s 56; 1995 c 220 s 110*

WIND ENERGY CONVERSION SYSTEMS

116C.691 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116C.691 to 116C.697, the terms defined in section 116C.52 and this section have the meanings given them, unless otherwise provided or indicated by the context or by this section.

Subd. 2. **Large wind energy conversion system or LWECS.** "Large wind energy conversion system" or "LWECS" means any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more.

Subd. 3. **Small wind energy conversion system or SWECS.** "Small wind energy conversion system" or "SWECS" means any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.

Subd. 4. **Wind energy conversion system or WECS.** "Wind energy conversion system" or "WECS" means any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy.

History: *1995 c 203 s 1*

116C.692 EXEMPTIONS.

(a) The requirements of sections 116C.51 to 116C.69 do not apply to the siting of LWECS, except for sections 116C.52; 116C.57, subdivision 4; 116C.59; 116C.62; 116C.63; 116C.645; 116C.65; 116C.68; and 116C.69, subdivision 3, which do apply.

(b) Any person may construct an SWECS without complying with sections 116C.51 to 116C.69 and 116C.691 to 116C.697.

(c) Nothing in sections 116C.691 to 116C.697 shall preclude a local governmental unit from establishing requirements for the siting and construction of SWECS.

History: *1995 c 203 s 2*

116C.693 SITING OF LWECS.

The legislature declares it to be the policy of the state to site LWECS in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

History: *1995 c 203 s 3*

116C.694 SITE PERMIT.

(a) No person may construct an LWECS without a site permit issued by the environmental quality board.

(b) Any person seeking to construct an LWECS shall submit an application to the board for a site permit in accordance with sections 116C.691 to 116C.697 and any rules adopted by the board. The permitted site need not be contiguous land.

(c) The board shall make a final decision on an application for a site permit for an LWECS within 180 days after acceptance of a complete application by the chair of the board. The board may extend this deadline for cause.

(d) The board may place conditions in a permit and may deny, modify, suspend, or revoke a permit.

History: *1995 c 203 s 4*

116C.695 RULES.

The board shall adopt rules governing the consideration of an application for a site permit for an LWECS that address the following:

(1) criteria that the board shall use to designate LWECS sites, which must include the impact of LWECS on humans and the environment;

(2) procedures that the board will follow in acting on an application for an LWECS;

(3) procedures for notification to the public of the application and for the conduct of a public information meeting and a public hearing on the proposed LWECS;

(4) requirements for environmental review of the LWECS;

(5) conditions in the site permit for turbine type and designs; site layout and construction; and operation and maintenance of the LWECS, including the requirement to restore, to the extent possible, the area affected by construction of the LWECS to the natural conditions that existed immediately before construction of the LWECS;

(6) revocation or suspension of a site permit when violations of the permit or other requirements occur; and

(7) payment of fees for the necessary and reasonable costs of the board in acting on a permit application and carrying out the requirements of sections 116C.691 to 116C.697.

History: *1995 c 203 s 5*

116C.696 MODEL ORDINANCE.

The board may assist local governmental units in adopting ordinances and other requirements to regulate the siting, construction, and operation of SWECS, including the development of a model ordinance.

History: *1995 c 203 s 6*

116C.697 PREEMPTION.

A permit under sections 116C.691 to 116C.697 is the only site approval required for the location of an LWECS. The site permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments.

History: *1995 c 203 s 7*

RADIOACTIVE WASTE MANAGEMENT

116C.705 FINDINGS.

The legislature finds that the disposal and transportation of high level radioactive waste is of vital concern to the health, safety, and welfare of the people of Minnesota, and to the economic and environmental resources of Minnesota. To ensure the health, safety, and welfare of the people, and to protect the air, land, water, and other natural resources in the state from pollution, impairment, or destruction, it is necessary for the state to regulate and control, under the laws of the United States, the exploration for high level radioactive waste disposal within the state of Minnesota. It is the intent of the legislature to exercise all legal authority for the purpose of regulating the disposal and transportation of high level radioactive waste.

History: *1984 c 453 s 1*

116C.71 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.71 to 116C.74, the terms defined in this section have the meaning given them.

Subd. 1a. **Area characterization plan.** "Area characterization plan" means the official plan prepared by the department of energy for a specific geographic area outlining the proposed laboratory or field activities to be undertaken to establish the geologic, environmental, social, and economic characteristics of the area.

Subd. 1b. **Area recommendation report.** "Area recommendation report" means the official report prepared by the department of energy identifying specific geographic areas within a state for further evaluation as a repository for radioactive waste.

Subd. 1c. **Board.** "Board" means the Minnesota environmental quality board.

Subd. 2. **By–product nuclear material.** "By–product nuclear material" means any material, except special nuclear material, yielded in or made radioactive by:

(a) Exposure to the radiation incident to the process of producing or utilizing special nuclear material; or

(b) Exposure to radiation produced or accelerated in an atomic or subatomic particle accelerating machine.

Subd. 2a. **Chair.** " Chair" means the chair of the board.

Subd. 2b. **Consultation and cooperation agreement.** "Consultation and cooperation agreement" means the formal agreement, as defined in the Nuclear Waste Policy Act, United States Code, title 42, section 10137(c), between a state and the federal government setting forth procedures for information exchanges, state consultation, and other matters related to repository siting and construction.

Subd. 2c. **Council.** "Council" means the governor's nuclear waste council.

Subd. 2d. **Department of Energy.** "Department of Energy" means the United States Department of Energy.

Subd. 2e. **Dispose, disposal.** "Dispose" or "disposal" means the permanent or temporary placement of high level radioactive waste at a site within the state other than a point of generation.

Subd. 2f. **High level radioactive waste.** "High level radioactive waste" means:

(1) irradiated reactor fuel;

(2) liquid wastes resulting from reprocessing irradiated reactor fuel;

(3) solids into which the liquid wastes have been converted;

(4) transuranic wastes, meaning any radioactive waste containing alpha emitting transuranic elements that is not acceptable for near–surface disposal as defined in the Code of Federal Regulations, title 10, section 61.55;

(5) any other highly radioactive materials that the nuclear regulatory commission or department of energy determines by law to require permanent isolation; or

(6) any by–product material as defined in section 11e (2) of the Atomic Energy Act of 1954, United States Code, title 42, section 2014, as amended.

Subd. 3. **Person.** "Person" means any individual, corporation, partnership or other unincorporated association or governmental agency.

Subd. 3a. **Potentially impacted area.** "Potentially impacted area" means the area designated or described in a draft or final area recommendation report or area characterization plan for study or consideration.

Subd. 4. **Radiation.** "Radiation" means any or all of the following: alpha rays, beta rays, gamma rays, high energy neutrons or protons or electrons, and other atomic particles; but not X–rays and electromagnetic radiations of wavelengths greater than 2,000 Angstrom units and sound waves.

Subd. 5. **Radioactive material.** "Radioactive material" means any matter which emits radiation. Radioactive material includes special nuclear material, source nuclear material, and by–product nuclear material.

Subd. 6. **Radioactive waste.** "Radioactive waste" means:

(a) Useless or unwanted capturable radioactive residues produced incidental to the use of radioactive material; or

(b) Useless or unwanted radioactive material; or

(c) Otherwise nonradioactive material made radioactive by contamination with radioactive material.

Radioactive waste does not include discharges of radioactive effluents to air or surface water when subject to applicable federal or state regulations or excreta from persons undergoing medical diagnosis or therapy with radioactive material or naturally occurring radioactive isotopes.

Subd. 7. **Radioactive waste management facility.** "Radioactive waste management facility" means a geographic site, including buildings, structures, and equipment in or upon which radioactive waste is retrievably or irretrievably disposed by burial in soil or permanently stored.

Subd. 8. **Source nuclear material.** "Source nuclear material" means:

(a) Uranium or thorium or any combination thereof, in any physical or chemical form; or

(b) Ores which contain by weight 1/20 of one percent or more of uranium, thorium, or any combination thereof. Source nuclear material does not include special nuclear material.

Subd. 9. **Special nuclear material.** "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Nuclear Regulatory Commission, pursuant to the Atomic Energy Act of 1954 as amended, determines to be special nuclear material; or

(b) Any material artificially enriched by any of the materials described in clause (a). Special nuclear material does not include source nuclear material.

Subd. 10. MS 1990 [Renumbered subd 1a]

Subd. 11. MS 1990 [Renumbered subd 1b]

Subd. 12. MS 1990 [Renumbered subd 1c]
Subd. 13. MS 1990 [Renumbered subd 2a]
Subd. 14. MS 1990 [Renumbered subd 2b]
Subd. 14a. MS 1990 [Renumbered subd 2c]
Subd. 15. MS 1990 [Renumbered subd 2d]
Subd. 16. MS 1990 [Renumbered subd 2e]
Subd. 17. MS 1990 [Renumbered subd 2f]
Subd. 18. MS 1990 [Renumbered subd 3a]

History: *1977 c 416 s 1; 1984 c 453 s 2–10; 1Sp1985 c 13 s 241; 1986 c 444*

116C.711 NUCLEAR WASTE COUNCIL.

Subdivision 1. **Establishment.** The governor's nuclear waste council is established.

Subd. 2. **Membership.** The council shall have at least nine members, consisting of:

(1) the commissioners of health, transportation, and natural resources, and the commissioner of the pollution control agency;

(2) four citizen members appointed by the governor;

(3) the director of the Minnesota geological survey;

(4) one additional citizen from each potentially impacted area may be appointed by the governor if potentially impacted areas are designated in Minnesota; and

(5) one Indian who is an enrolled member of a federally recognized Minnesota Indian tribe or band may be appointed by the governor if potentially impacted areas are designated in Minnesota and if those areas include Indian country as defined in United States Code, title 18, section 11.54.

At least two members of the council must have expertise in the earth sciences.

Subd. 3. **Chair.** A chair shall be appointed by the governor from the members of the council.

Subd. 4. **Advisory task force.** The council may create advisory task forces under section 15.014, as are necessary to carry out its responsibilities under this chapter.

Subd. 5. **Membership regulation.** Section 15.059 governs terms, compensation, removal, and filling of vacancies of members appointed by the governor. Section 15.059, subdivision 5, does not govern the expiration date of the council.

History: *1Sp1985 c 13 s 242; 1986 c 444; 1987 c 186 s 15*

116C.712 POWERS AND DUTIES.

Subdivision 1. **Duty.** The council's duty is to monitor the federal high–level radioactive waste disposal program under the Nuclear Waste Policy Act, Public Law Number 97–425 and advise the governor and the legislature on all policy issues relating to the federal high–level radioactive waste disposal program.

Subd. 2. **Expiration date.** The council terminates when the department of energy eliminates Minnesota from further siting consideration for disposal of high–level radioactive waste.

Subd. 3. **Council staff.** Staff support for council activities must be provided by the office of strategic and long–range planning. State departments and agencies must cooperate with the council in the performance of its duties. Upon the request of the chair of the council, the governor may, by order, require a state department or agency to furnish assistance necessary to carry out the council's functions under this chapter.

Subd. 4. **Federal and other funds.** The chair of the council may apply for, receive, and expend money made available from federal sources or other sources for the purpose of carrying out the council's responsibilities under this chapter.

Subd. 5. **Assessment.** (a) A person, firm, corporation, or association in the business of owning or operating a nuclear fission electrical generating plant in this state shall pay an assessment to cover the cost of:

(1) monitoring the federal high–level radioactive waste program under the Nuclear Waste Policy Act, United States Code, title 42, sections 10101 to 10226;

(2) advising the governor and the legislature on policy issues relating to the federal high–level radioactive waste disposal program;

(3) surveying existing literature and activity relating to radioactive waste management, including storage, transportation, and disposal, in the state;

(4) an advisory task force on low–level radioactive waste deregulation, created by a law enacted in 1990 until July 1, 1996; and

(5) other general studies necessary to carry out the purposes of this subdivision.

The assessment must not be more than the appropriation to the office of strategic and long–range planning for these purposes.

(b) The office shall bill the owner or operator of the plant for the assessment at least 30 days before the start of each quarter. The assessment for the second quarter of each fiscal year must be adjusted to compensate for the amount by which actual expenditures by the office for the preceding year were more or less than the estimated expenditures previously assessed. The billing may be made as an addition to the assessments made under section 116C.69. The owner or operator of the plant must pay the assessment within 30 days after receipt of the bill. The assessment must be deposited in the state treasury and credited to the special revenue fund.

(c) The authority for this assessment terminates when the department of energy eliminates Minnesota from further siting consideration for high–level radioactive waste by starting construction of a high–level radioactive waste disposal site in another state. The assessment required for any quarter must be reduced by the amount of federal grant money received by the office of strategic and long–range planning for the purposes listed in this section.

(d) The director of the office of strategic and long–range planning must report annually by July 1 to the environment and natural resources committees of the senate and house of representatives, the finance division of the senate committee on environment and natural resources, and the house of representatives committee on environment and natural resources finance on activities assessed under paragraph (a).

History: *1Sp1985 c 13 s 243; 1986 c 444; 1987 c 404 s 147; 1988 c 686 art 1 s 62; 1990 c 600 s 3; 1991 c 345 art 2 s 23,24; 1996 c 470 s 27*

116C.72 RADIOACTIVE WASTE MANAGEMENT FACILITY.

Notwithstanding any provision of sections 216C.05 to 216C.381 to the contrary, no person shall construct or operate a radioactive waste management facility within Minnesota unless expressly authorized by the Minnesota legislature.

History: *1977 c 416 s 2; 1984 c 655 art 1 s 19; 1987 c 312 art 1 s 10*

116C.721 PUBLIC PARTICIPATION.

Subdivision 1. **Information meetings.** The board shall conduct public information meetings within an area designated in a draft area recommendation report, final area recommendation report, draft area characterization plan, or final area characterization plan. Information meetings shall be held within 30 days after the board receives each of the reports.

Subd. 2. **Notice.** The board shall notify the public of information meetings and the availability of the area recommendation reports and the area characterization plans. Copies of the reports shall be made available for public review and distribution at the board office, the Minnesota geological survey office, regional development commission offices in regions that include a part of the potentially impacted areas, county courthouses in counties that include a part of a potentially impacted area, and other appropriate places determined by the board to provide public accessibility.

Subd. 3. **Transmittal of public concerns.** The board shall transmit public concerns expressed at public information meetings to the department of energy.

History: *1984 c 453 s 11*

116C.722 LEGAL AND TECHNICAL ASSISTANCE TO INDIAN TRIBES.

If an Indian tribal council that has jurisdiction over part of a potentially impacted area within the state requests legal or technical assistance, the board shall provide assistance.

History: *1984 c 453 s 12*

116C.723 CONSULTATION AND COOPERATION AGREEMENT.

Subdivision 1. **Requirement.** Upon notice from the department of energy that Minnesota contains a potentially impacted area, the chair of the council shall negotiate a consultation and cooperation agreement with the federal government.

Subd. 2. **Disposal studies.** Unless the state has executed a consultation and cooperation agreement, a person may not make a study or test of a specific area or site related to disposal including an exploratory drilling, a land survey, an aerial mapping, a field mapping, a waste suitability study, or other surface or subsurface geologic, hydrologic, or environmental testing or mapping.

History: *1984 c 453 s 13; 1Sp1985 c 13 s 244; 1986 c 444*

116C.724 FIELD INVESTIGATIONS, TESTS, AND STUDIES.

Subdivision 1. [Repealed, 1Sp1985 c 13 s 245]

Subd. 2. **Drilling.** A permit shall be obtained from the environmental quality board, in accordance with chapter 14, for any geologic and hydrologic drilling related to disposal. Conditions of obtaining and retaining the permit must be specified by rule and must include:

(1) compliance with state drilling and drill hole restoration rules as an exploratory boring under chapter 103I;

(2) proof that access to the test site has been obtained by a negotiated agreement or other legal process;

(3) payment by the permittee of a fee covering the costs of processing and monitoring drilling activities;

(4) unrestricted access by the commissioner of health, the commissioner of natural resources, the commissioner of the pollution control agency, the director of the Minnesota geological survey, the agent of a board of health as authorized under section 145A.04, and their employees and agents to the drilling sites to inspect and monitor the drill holes, drilling operations, and abandoned sites, and to sample air and water that may be affected by drilling;

(5) submission of splits or portions of a core sample, requested by the commissioner of natural resources or director of the Minnesota geological survey, except that the commissioner or director may accept certified data on the sample in lieu of a sample if certain samples are required in their entirety by the permittee; and

(6) that a sample submitted may become property of the state.

Subd. 3. **Other requirements.** (a) A person who conducts geologic, hydrologic, or geophysical testing or studies shall provide unrestricted access to both raw and interpretive data to the chair and the director of the Minnesota geological survey or their designated representatives. The raw and interpretive data includes core samples, well logs, water samples and chemical analyses, survey charts and graphs, and predecisional reports. Studies and data shall be made available within 30 days of a formal request by the chair.

(b) A person proposing to investigate shall hold at least one public meeting before a required permit is issued, and during the investigation at least once every three months, during the investigation within the potentially impacted area. The meetings shall provide the public with current information on the progress of the investigation. The person investigating shall respond in writing to the environmental quality board about concerns and issues raised at the public meetings.

(c) Before a person engages in negotiations regarding property interests in land or water, or permitting activities, the person shall notify the chair in writing. Copies of terms and agreements shall also be provided to the chair.

History: *1984 c 453 s 14; 1Sp1985 c 13 s 245; 1985 c 248 s 70; 1986 c 444; 1987 c 186 s 15; 1987 c 309 s 24; 1995 c 186 s 32*

116C.73 TRANSPORTATION OF RADIOACTIVE WASTES INTO STATE.

Notwithstanding any provision of sections 216C.05 to 216C.381 to the contrary, no person shall transport radioactive wastes into the state of Minnesota for the purpose of disposal by burial in soil or permanent storage within Minnesota unless expressly authorized by the

Minnesota legislature, except that radioactive wastes may be transported into the state for temporary storage in accordance with applicable federal and state law for up to 12 months pending transportation out of the state.

History: *1977 c 416 s 3; 1984 c 655 art 1 s 19; 1987 c 312 art 1 s 10*

116C.731 TRANSPORTATION OF HIGH LEVEL RADIOACTIVE WASTE.

Subdivision 1. **Notification.** Before a shipment of high level radioactive waste is transported in the state, the shipper shall notify the commissioner of public safety. The notice shall include the route, date, and time of the shipment in addition to information required under Code of Federal Regulations, title 10, sections 71.5a and 73.37(f).

Subd. 2. **Highway route determination.** Pursuant to Code of Federal Regulations, title 49, part 177, the commissioner may require preferred routes, dates, or times for transporting high level radioactive waste if the commissioner determines, in accordance with United States Department of Transportation "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials," that alternatives are safer than those proposed. On an annual basis the commissioner shall review federally approved highway routes for transporting high level radioactive waste in the state and select new state–designated routes in accordance with Code of Federal Regulations, title 49, part 177, if safety considerations indicate the alternate routes would be preferable. The state does not incur any liability by requiring the alternate routes, dates, or times to be used.

Subd. 3. **Transportation fee.** A person who intends to transport high level radioactive waste shall submit a transportation fee to the commissioner of public safety in the amount of $1,000 for each vehicle carrying high level radioactive waste in each shipment with the information required in subdivision 1. The fees shall be deposited by the commissioner into the general fund.

Subd. 4. **Emergency response plan.** The commissioner of public safety shall consult with the commissioners of health and transportation, the commissioner of the pollution control agency, and representatives of the federal nuclear regulatory commission, the federal emergency management agency, and the United States department of transportation and before December 1, 1984, shall prepare a plan for emergency response to a high level radioactive waste transportation accident, including plans for evacuation and cleanup. The commissioner of public safety shall report by January 1 of each year to the legislature on the status of the plan and the ability of the state to respond adequately to an accident.

Subd. 5. **Applicability.** This section does not apply to radioactive materials shipped by or for the United States government for military, national security, or national defense purposes. This section does not require disclosure of defense information or restricted data as defined in the Atomic Energy Act of 1954, United States Code, title 42, section 2014, as amended.

History: *1984 c 453 s 15; 1987 c 186 s 15*

116C.74 PENALTIES.

Subdivision 1. **Penalties.** Any person who violates section 116C.72 or who causes radioactive wastes to be shipped in violation of section 116C.73 shall be guilty of a gross misdemeanor and subject to a fine of not more than $20,000 or a sentence of imprisonment of not more than one year, or both.

Subd. 2. **Violations; penalties.** (a) A person who violates section 116C.723, 116C.724, or 116C.731 is:

(1) guilty of a misdemeanor and is subject to a fine of not more than $20,000; and

(2) subject to a civil penalty of not more than $10,000 for each day of violation, payable to the state, and may be ordered by the court to pay to the state an additional sum as compensation for cleanup and for pollution, destruction, or impairment of the environment, including but not limited to contamination of water supplies or water aquifers.

(b) A violation of section 116C.723, 116C.724, or 116C.731 may be enjoined as provided by law in an action in the name of the state brought by the attorney general.

(c) This subdivision does not limit other remedies otherwise available to either the state or private parties for violations of section 116C.723, 116C.724, or 116C.731.

History: *1977 c 416 s 4; 1984 c 453 s 16; 1984 c 628 art 3 s 11; 1987 c 384 art 2 s 1*

116C.75 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this section and section 116C.76.

Subd. 2. **Groundwater.** "Groundwater" means the water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground.

Subd. 3. **Undisturbed performance.** "Undisturbed performance" means the predicted behavior of a radioactive waste management facility, including consideration of the uncertainties in predicted behavior, if the radioactive waste management facility is not disrupted by human intrusion or unlikely natural events.

History: *1986 c 425 s 10*

116C.76 NUCLEAR WASTE DEPOSITORY RELEASE INTO GROUNDWATER.

Subdivision 1. **Radionuclide release levels.** Radioactive waste management facilities for spent nuclear fuel or high–level radioactive wastes must be designed to provide a reasonable expectation that the undisturbed performance of the radioactive waste management facility will not cause the radionuclide concentrations, averaged over any year, in groundwater to exceed:

(1) five picocuries per liter of radium–226 and radium–228;

(2) 15 picocuries per liter of alpha–emitting radionuclides including radium–226 and radium–228, but excluding radon; or

(3) the combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body of any internal organ greater than four millirems per year if an individual consumed two liters per day of drinking water from the groundwater.

Subd. 2. **Disposal restricted.** The location or construction of a radioactive waste management facility for high–level radioactive waste is prohibited where the average annual radionuclide concentrations in groundwater before construction of the facility exceed the limits in subdivision 1.

Subd. 3. **Protection against radionuclide release.** Radioactive waste management facilities must be selected, located, and designed to keep any allowable radionuclide releases to the groundwater as low as reasonably achievable.

History: *1986 c 425 s 11*

RADIOACTIVE WASTE MANAGEMENT FACILITY AUTHORIZATION

116C.77 LEGISLATIVE AUTHORIZATION FOR INDEPENDENT SPENT FUEL STORAGE INSTALLATION AT PRAIRIE ISLAND.

The legislature recognizes that:

(1) the Minnesota environmental quality board on May 16, 1991, reviewed and found adequate a final environmental impact statement ("EIS") on the proposal to construct and operate a dry cask storage facility for the temporary storage of spent nuclear fuel from the Prairie Island nuclear generating plant;

(2) the United States Nuclear Regulatory Commission reviewed and approved a safety analysis report on the facility and on October 19, 1993, granted a license for the facility; and

(3) the public utilities commission in docket no. E002/CN–91–91 reviewed the facility and approved a limited certificate of need approving the use of casks.

The Minnesota legislature in compliance with section 116C.72, hereby ratifies and approves the EIS and the limited certificate of need and authorizes the use of casks at Prairie Island in accordance with the terms and conditions of the certificate of need as modified by this act and without further environmental review under chapter 116D or further administrative review under section 216B.243.

History: *1994 c 641 art 1 s 1*

116C.771 ADDITIONAL CASK LIMITATIONS.

(a) Five casks may be filled and used at Prairie Island on May 11, 1994.

(b) An additional four casks may be filled and used at Prairie Island if the environmental quality board determines that, by December 31, 1996, the public utility operating the Prairie Island plant has filed a license application with the United States Nuclear Regulatory Commission for a spent nuclear fuel storage facility off of Prairie Island in Goodhue county, is continuing to make a good faith effort to implement the site, and has constructed, contracted for construction and operation, or purchased installed capacity of 100 megawatts of wind power in addition to wind power under construction or contract on May 11, 1994.

(c)(1) An additional eight casks may be filled and placed at Prairie Island if the legislature has not revoked the authorization under clause (2) or the public utility has satisfied the wind power and biomass mandate requirements in sections 216B.2423, subdivision 1, clause (1), and 216B.2424, clause (1), and the alternative site in Goodhue county is operational or under construction. (2) If the site is not under construction or operational or the wind mandates are not satisfied, the legislature may revoke the authorization for the additional eight casks by a law enacted prior to June 1, 1999.

(d) Except as provided under paragraph (e), dry cask storage capacity for high–level nuclear waste within the state may not be increased beyond the casks authorized by section 116C.77 or their equivalent storage capacity.

(e) This section does not prohibit a public utility from applying for or the public utilities commission from granting a certificate of need for dry cask storage to accommodate the decommissioning of a nuclear power plant within this state.

History: *1994 c 641 art 1 s 2*

116C.772 PUBLIC UTILITY RESPONSIBILITIES.

Subdivision 1. **Definition.** For the purpose of this section, "public utility" means the public utility operating the Prairie Island nuclear generating plant.

Subd. 2. **Dry cask alternatives study.** The public utility must submit to the legislative electric energy task force a reevaluation of all alternatives and combinations of those alternatives to dry cask storage.

Subd. 3. **Worker transition plan.** The public utility must submit to the department of economic security a worker transition plan if there is a shutdown of the Prairie Island nuclear generating plant for longer than six months.

Subd. 4. **Nuclear power phase–out plan.** The public utility must submit to the electric energy task force a detailed plan for the phase–out of all nuclear power generated by the utility.

Subd. 5. **Decommissioning plan.** The public utility must submit to the electric energy task force a decommissioning plan for TN–40 storage casks after the casks are emptied of spent fuel.

History: *1994 c 483 s 1; 1994 c 641 art 1 s 3*

116C.773 CONTRACTUAL AGREEMENT.

The authorization for dry casks contained in section 116C.77 is not effective until the governor, on behalf of the state, and the public utility operating the Prairie Island nuclear plant enter into an agreement binding the parties to the terms of sections 116C.771 and 116C.772 and the mandate for 200 megawatts of wind power and 75 megawatts of biomass required by December 31, 2002, in sections 216B.2423, subdivision 1, and 216B.2424. The

Mdewakanton Dakota Tribal Council at Prairie Island is an intended third–party beneficiary of this agreement and has standing to enforce the agreement.

History: *1994 c 641 art 1 s 4*

116C.774 AUTHORIZATION.

To the extent that the radioactive waste management act, section 116C.72, requires legislative authorization of the operation of certain facilities, this section expressly authorizes the continued operation of the Monticello nuclear generating plant spent nuclear fuel pool storage facility and the Prairie Island nuclear generating plant spent nuclear fuel pool storage facility.

History: *1994 c 641 art 1 s 5*

116C.775 SHIPMENT PRIORITIES; PRAIRIE ISLAND.

If a storage or disposal site becomes available outside of the state to accept high–level nuclear waste stored at Prairie Island, the waste contained in dry casks shall be shipped to that site before the shipment of any waste from the spent nuclear fuel storage pool. Once waste is shipped that was contained in a cask, the cask must be decommissioned and not used for further storage.

History: *1994 c 641 art 1 s 6*

116C.776 ALTERNATIVE CASK TECHNOLOGY FOR SPENT FUEL STORAGE.

If the public utilities commission determines that casks or other containers that allow for transportation as well as storage of spent nuclear fuel exist and are economically feasible for storage and transportation of spent nuclear fuel generated by the Prairie Island nuclear power generating plant, the commission shall order their use to replace use of the casks that are only usable for storage, but not transportation. If the commission orders use of dual–purpose casks under this section, it must authorize use of a number of dual–purpose casks that provides the same total storage capacity that is authorized under sections 116C.77 to 116C.779; provided, that the total cask storage capacity permitted under sections 116C.77 to 116C.779 may not exceed the capacity of the TN–40 casks authorized under section 116C.77.

History: *1994 c 641 art 1 s 7*

116C.777 SITE.

The spent fuel contents of dry casks located on Prairie Island must be moved immediately upon the availability of another site for storage of the spent fuel that is not located on Prairie Island.

History: *1994 c 641 art 1 s 8*

116C.778 RERACKING.

The spent fuel storage pool at Prairie Island may be reracked a third time. The reracking does not require legislative authorization but is subject to other applicable state review. The additional storage capacity added by the third reracking and utilized when added to the total storage capacity of dry cask storage utilized, cannot exceed the total capacity of 17 TN–40 casks.

History: *1994 c 641 art 1 s 9*

116C.779 FUNDING FOR RENEWABLE DEVELOPMENT.

The public utility that operates the Prairie Island nuclear generating plant must transfer to a renewable development account $500,000 each year for each dry cask containing spent fuel that is located at the independent spent fuel storage installation at Prairie Island after January 1, 1999. The fund transfer must be made if waste is stored in a cask for any part of a year. Funds in the account can only be expended for development of renewable energy sources.

History: *1994 c 641 art 1 s 10*

116C.80 HIGH-LEVEL RADIOACTIVE WASTE; SPENT NUCLEAR FUEL STORAGE; ALTERNATIVE SITE.

Subdivision 1. **Definition; dry cask storage facility.** For the purposes of this section, "dry cask storage facility" or "facility" means a high-level radioactive waste facility that is located in Goodhue county but not on Prairie Island for storage of spent nuclear fuel produced by a nuclear reactor at the Prairie Island nuclear power generating plant.

Subd. 2. **Certificate of site comparability.** Prior to construction of a dry cask storage facility, the public utility that operates the nuclear power generating power plant at Prairie Island shall obtain a certificate from the environmental quality board that the site for the facility is comparable to the independent spent fuel storage facility site located on Prairie Island for which the public utilities commission granted a certificate of need in docket number E002/CN-91-91.

Subd. 3. **Review by the board.** The board shall review the siting procedures and considerations for siting large energy electric generating plants under sections 116C.51 to 116C.69 and rules adopted under those sections and shall adopt, by resolution, after a public comment period, those procedures, considerations, and rules it determines are necessary to designate a site for a dry cask storage facility and to issue a certificate of site comparability. The siting procedures and considerations must provide for an opportunity for all interested persons to participate.

History: *1994 c 641 art 6 s 1*

116C.81 [Renumbered 116C.40]

116C.82 [Renumbered 116C.41]

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

116C.831 MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

The Midwest Interstate Low-Level Radioactive Waste Compact is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (United States Code, title 42, sections 2021b to 2021j), as amended through December 31, 1985, has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the Congress has declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste disposal compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;

2. Providing sufficient facilities for the proper disposal of low-level radioactive waste generated in the region;

3. Protecting the health and safety of the citizens of the region;

4. Limiting the number of facilities required to effectively and efficiently dispose of low-level radioactive waste generated in the region;

5. Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;

6. Ensuring that the costs, expenses, liabilities, and obligations of low–level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;

7. Ensuring that the obligations of low–level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;

8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low–level radioactive waste; and

9. Ensuring the environmentally sound, economical, and secure disposal of low–level radioactive wastes.

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws;

2. Imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Care" means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. "Close," "closed," or "closing" means that the compact facility with respect to which any of those terms is used has ceased to accept waste for disposal. "Permanently closed" means that the compact facility with respect to which the term is used has ceased to accept waste because it has operated for 20 years or a longer period of time as authorized by article VI.i. of this compact, its capacity has been reached, the Commission has authorized it to close pursuant to article III.h.7. of this compact, the host state of such facility has withdrawn from the compact or had its membership revoked, or this compact has been dissolved.

c. "Commission" means the Midwest Interstate Low–Level Radioactive Waste Commission.

d. "Compact facility" means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the Commission.

e. "Development" includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of such a facility to fulfill its obligations as a host state.

f. "Disposal," with regard to low–level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States Nuclear Regulatory Commission or the licensing agreement state.

g. "Disposal plan" means the plan adopted by the Commission for the disposal of waste within the region.

h. "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low–level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

i. "Final decision" means a final action of the Commission determining the legal rights, duties, or privileges of any person. "Final decision" does not include preliminary, procedural, or intermediate actions by the Commission, actions regulating the internal administration of the Commission, or actions of the Commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the Commission.

j. "Generator" means any person who first produces low–level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research, or other industrial or commercial activity. If the person who first produced an item or quantity of waste cannot be identified, "generator" means the person first possessing the waste who can be identified.

k. "Host state" means any state which is designated by the Commission to host a compact facility or has hosted a compact facility.

l. "Long–term care" means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

m. "Low–level radioactive waste" or "waste" means radioactive waste that is not classified as high–level radioactive waste and that is class A, B, or C low–level radioactive waste as defined in Code of Federal Regulations, title 10, section 61.55, as that section existed on January 26, 1983. Low–level radioactive waste or waste does not include any such radioactive waste that is owned or generated by the United States Department of Energy; by the United States Navy as a result of the decommissioning of its vessels; or as a result of any research, development, testing, or production of any atomic weapon.

n. "Operates," "operational," or "operating" means that the compact facility with respect to which any of those terms is used accepts waste for disposal.

o. "Party state" means any eligible state that enacts this compact into law, pays any eligibility fee established by the Commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked again becomes a party state if it is readmitted to membership in this compact pursuant to article VIII.a. of this compact. Party state includes any host state. Party state also includes any statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

p. "Person" means any individual, corporation, association, business enterprise or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. Person also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

q. "Region" means the area of the party states.

r. "Site" means the geographic location of a facility.

s. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

t. "Storage" means the temporary holding of waste.

u. "Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

v. "Waste management," "manage waste," "management of waste," "management," or "managed" means the storage, treatment, or disposal of waste.

ARTICLE III. THE COMMISSION

a. There is hereby created the Midwest Interstate Low–Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

b. Each Commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the Commission is binding if a majority of the total

membership casts its vote in the affirmative. A party state may direct its member or alternate member of the Commission how to vote or not vote on matters before the Commission.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws, and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under article VI.o. of this compact and procedures which substantially conform with the provisions of the federal Administrative Procedure Act compiled at United States Code, title 5, sections 500 to 559, in regard to notice, conduct, and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other Commission member.

e. All meetings of the Commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the Commission in its bylaws. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

h. The Commission may do any or all of the following:

1. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.

2. Review any emergency closing of a compact facility, determine the appropriateness of that closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

4. Approve the disposal of naturally occurring and accelerator produced radioactive material at a compact facility. The Commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the Commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may, at any time, rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator produced radioactive material that has been approved for disposal at a compact waste facility pursuant to article III.h.4. of this compact.

5. Enter into contracts in order to perform its duties and functions as provided in this compact.

6. When approved by the Commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

a. Import for disposal within the region, waste generated outside the region.

b. Export for disposal outside the region, waste generated inside the region.

c. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by article VI.i. of this compact. Such a closing requires the affirmative vote of a majority of the Commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

i. The Commission shall do all of the following:

1. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.

2. Adopt and amend, by a two–thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to article IV of this compact, a regional disposal plan which designates host states for the establishment of needed compact facilities.

3. Adopt an annual budget.

4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive characteristics, or both, of the waste to be disposed of at the facility during the period set forth in article VI.i. of this compact.

5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

6. Establish and implement procedures for making payments from the remedial action fund provided for in article III.p. of this compact.

7. Establish and implement procedures to investigate any complaint joined in by two or more party states regarding another party state's performance of its obligations under this compact.

8. Adopt policies promoting source reduction and the environmentally sound treatment of waste in order to minimize the amount of waste to be disposed of at compact facilities.

9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling, and treatment of waste.

10. Prepare annual reports regarding the volume and characteristics of waste projected to be disposed of at compact facilities.

j. Funding for the Commission shall be provided as follows:

1. When no compact facility is operating, the Commission may assess fees to be collected from generators of waste in the region. The fees shall be reasonable and equitable. The Commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

2. When a compact facility is operating, funding for the Commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in article VI.j. The surcharge to be collected by the host state shall be determined by the Commission and shall be reasonable and equitable.

3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

a. Cover the annual budget of the Commission;

b. Provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility;

c. Provide money for deposit in the remedial action fund established pursuant to article III.p. of this compact; and

d. Provide money to be added to an inadequately funded long–term care fund as provided in article VI.o. of this compact.

k. Financial statements of the Commission shall be prepared according to generally accepted accounting principles. The Commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by article III of this compact.

1. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount, and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

m. The Commission is a legal entity separate and distinct from the party states. Members of the Commission and its employees are not personally liable for actions taken by them in their official capacity. The Commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long–term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the Commission under article III.h.6. of this compact. Nothing in article III.m. of this compact relieves the Commission of its allegations under article III of this compact or under contracts to which it is a party. Any liabilities of the Commission are not liabilities of the party states.

n. Final decisions of the Commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the Commission. Before making a final decision, the Commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the Commission's reasons for making the decision.

2. Before making a final decision, the Commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the Commission's office is located not later than 60 days after issuance of the Commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the Commission. Within five days after receiving a copy of the petition, the Commission shall mail a copy of it to each party state and to all other persons who have notified the Commission of their desire to receive copies of such petitions. Any failure of the Commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in article III.n.3. of this compact, standing to obtain judicial review of final decisions of the Commission and the form and scope of the review are subject to and governed by United States Code, title 5, section 706.

4. If a party state seeks judicial review of a final decision of the Commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

a. Imposes financial penalties on a party state;

b. Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the Commission under article III.h.6. of this compact;

c. Terminates the designation of a party state as a host state;

d. Revokes the membership of a party state in this compact; or

e. Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under article VIII.e. of this compact.

Any such trial de novo of the facts shall be governed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

5. Preliminary, procedural, or intermediate actions by the Commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in article III.n.5. of this compact, actions of the Commission that are not final decisions are not subject to judicial review.

o. Unless approved by a majority of the Commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import waste generated outside the region for management within the region;

2. Export waste generated within the region for disposal outside the region;

3. Manage waste generated outside the region at a facility within the region;

4. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

p. The Commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long–term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the Commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to so notify the Commission does not limit the rights of the party state under article III.p. of this compact.

If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under article VII.g. of this compact. Generators who provide the required indemnification have the rights of contribution provided in article VII.g. of this compact. Article III.p. of this compact applies to any remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

q. If the Commission makes payment from the remedial action fund provided for in article III.p. of this compact, the Commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Such reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

r. If this compact is dissolved, all moneys held by the Commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Any remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long–term care funds maintained by those party states.

ARTICLE IV. REGIONAL DISPOSAL PLAN

The Commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of waste generated within the region. In adopting a regional waste disposal plan, the Commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which are projected to be necessary to dispose of waste generated within the region;

b. Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the Commission shall consider all of the following:

1. The health, safety, and welfare of the citizens of the party states;

2. The existence of compact facilities within each party state;

3. The minimization of waste transportation;

4. The volumes and types of wastes projected to be generated within each party state;

5. The environmental impacts on the air, land and water resources of the party states;

6. The economic impacts on the party states.

c. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility;

d. Prepare a draft disposal plan and any update thereof, including procedures, criteria, and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the commission's response to public and party state comment.

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Except for waste attributable to radioactive material or waste imported into the region in order to render the material or waste amenable to transportation, storage, disposal, or recovery, or in order to convert the waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under article VI.j. of this compact and to the provisions contained in articles VI.l., VI.s., VIII.d., IX.d., and X of this compact. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, subject to the provisions of articles VI.l., VI.s., VIII.d., and X of this compact.

c. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the Commission under article III.h.6. of this compact, is suspended, no waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be construed to require a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

f. If, notwithstanding the sovereign immunity provision in article VII.f.1. of this compact and the indemnification provided for in articles III.p., VI.o., and VII.g. of this compact, a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long–term care fund, or incurs a liability as a result of an action described in article VII.f.1. of this compact and not described in article VII.f.2. of this compact, the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The Commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

The pro rata obligations provided for in article V.f. of this compact do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the Commission or an affected party state.

g. If the party states make payment pursuant to article V.f. of this compact, the surcharge or fee provided for in article III.j. of this compact shall be used to collect the funds necessary to reimburse the party states for those payments. The Commission shall determine the time period over which reimbursement shall take place.

ARTICLE VI. DEVELOPMENT, OPERATION, AND CLOSING OF COMPACT FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state.

b. If not all compact facilities required by the regional disposal plan are developed pursuant to article VI.a. of this compact, the Commission may designate a host state.

c. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in article VI.c. of this compact. The obligation set forth in article VI.c. of this compact is contingent upon the discharge by the Commission of its obligation set forth in article III.i.5. of this compact.

d. If a party state designated as a host state fails to discharge the obligations imposed upon it by article VI.c. of this compact, its host state designation may be terminated by a two–thirds vote of the Commission with the member from the host state of any then operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of article VIII.d. of this compact.

e. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. Except as set forth in article VI.d. of this compact, the Commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the Commission that are consistent with any applicable federal criteria, no feasible potential compact facility site exists within its borders. A party state relieved of its host state responsibility shall repay to the Commission any funds provided to that state by the Commission for the development of a compact facility, and also shall pay to the Commission the amount the Commission determines is necessary to ensure that the Commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the Commission with respect to the financial loss of the other party states shall be distributed forthwith by the Commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay to the Commission, for deposit in the remedial action fund, an amount the Commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

f. The host state shall select the technology for the compact facility. If requested by the Commission, information regarding the technology selected by the host state shall be submitted to the Commission for its review. The Commission may require the host state to make changes in the technology selected by the host state if the Commission demonstrates that the changes do not decrease the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility. If requested by the host state, any Commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the Commission shall have the burden of proof.

g. A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close, or provide long–term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the contractor for any costs, liabilities, and expenses incurred by the host state resulting from the development, construction, operation, closing, or long–term care of a compact facility.

h. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the long–term care of that facility.

i. A host state shall accept waste for disposal for a period of 20 years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the Commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by article VI.l.4. of this compact, the 20–year period shall not be ex-

tended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the Commission.

j. A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the Commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility, including, but not limited to, the operation, closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. The fee system also shall be used to collect the surcharge provided in article III.j.2. of this compact. The fee system shall include incentives for source reduction and shall be based on the hazard of the waste as well as the volume.

k. A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

l. The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the Commission designates the host state of the next compact facility.

2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

a. Within three years, enact legislation providing for the development of the next compact facility;

b. Within seven years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility; and

c. Within 11 years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

If a host state fails to take any of these actions within the specified time, all waste generated by any person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, until the action is taken. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of articles VI.d. and VIII.d. of this compact.

3. Within 14 years after any compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to articles VI.d. and VIII.d. of this compact. In addition, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under article VI.i. of this compact, shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, until the license is obtained. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative.

4. If, 20 years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to articles VI.d. and VIII.d. of this compact. If, at the time the capacity of the then operating compact facility has been reached, or 20 years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, with-

out the consent of any other party state or the Commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact. In addition, during such period, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under article VI.i. of this compact, shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of article VI.l.4. of this compact, shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the Commission as authorized in article VI.i. of this compact, or inconsistent with article VI.p. or q. of this compact.

5. During any period that access is denied for waste disposal pursuant to article VI.l.2., 3., or 4. of this compact, the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the Commission determines is reasonably necessary to ensure that the host state, or any agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The Commission may modify any of the requirements contained in articles VI.l.2. and 3. of this compact, if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The Commission may adopt such a finding by a two–thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land and water resources and the health and safety of all people who may be affected by the facility. A host state that has an emergency closing of a compact facility shall notify the Commission in writing within three working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

n. A party state that has fully discharged its obligations under article VI.i. of this compact, shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations under article VI.i. of this compact, or has been relieved under article VI.e. of this compact, of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long–term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long–term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long–term care fund shall be used to collect moneys in amounts that are adequate to pay for all long–term care of the compact facility. The moneys shall be deposited into the long–term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the Commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the Commission the amount to be collected through the fee system for deposit into the fund. If, 180 days after such proposal is made to the Commission, the host state and the Commission have not agreed, either the Commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long–term care fund, provided that moneys in the fund shall be used only for the purposes set forth in article VI.o. of this compact, and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the Commission determines the long–term care fund established with respect to that facility is not adequate to pay for all long–term care for that facility, the Commission shall collect and pay over to the host state of the closed facility, for deposit into the long–term care fund, an amount determined by the

Commission to be necessary to make the amount in the fund adequate to pay for all long–term care of the facility. If a long–term care fund is exhausted and long–term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in article VII.g. of this compact. Generators that provide indemnification shall have contribution rights as provided in article VII.g. of this compact.

p. A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the Commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

q. If this compact is dissolved, the host state of any then operating compact facility shall immediately and permanently close the facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a non-compact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long–term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the facility, provided that a host state that has fully discharged its obligations under article VI.i. of this compact shall not be required to make such payment;

2. The host state shall physically segregate waste disposed of at the facility after this compact is dissolved from waste disposed of at the facility before this compact is dissolved;

3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities, and expenses, including reasonable attorneys' fees and expenses, caused by operating the facility after this compact is dissolved, provided that this indemnification and hold harmless obligation shall not apply to costs, liabilities, and expenses resulting from the activities of a host state as a generator of waste;

4. Moneys in the long–term care fund established by the host state that are attributable to the operation of the facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining, or repairing that portion of the facility used for the disposal of waste before this compact is dissolved. Such moneys and investment earnings, and any moneys added to the long–term care fund through a distribution authorized by article III.r. of this compact, also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

r. Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The Commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the Commission.

s. Waste may be accepted for disposal at a compact facility only if the generator of the waste has signed, and there is on file with the Commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

1. Any cost of a remedial action described in article III.p. of this compact, that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision;

2. Any expense for long–term care described in article VI.o. of this compact, that, due to exhaustion of the long–term care fund, is not paid as set forth in that provision;

3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long–term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in de-

fending any action for such damages. This indemnification shall not extend to liability based on any of the following:

a. The activities of the party states as generators of waste;

b. The obligations of the party states to each other and the Commission imposed by this compact or other contracts related to the disposal of waste under this compact; or

c. Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the Commission with the member from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no such contribution obligation. The Commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by article VII.g. of this compact.

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of the Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

3. Prohibits any generator from storing or treating, on its own premises, waste generated by it within the region;

4. Affects any administrative or judicial proceeding pending on the effective date of this compact;

5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

6. Affects the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or successor agencies or federal research and development activities as described in section 31 of the Atomic Energy Act of 1954 (United States Code, title 42, section 2051); or

7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders;

8. Requires a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission; or

9. Limits, expands, or otherwise affects the authority of a state to regulate low–level radioactive waste classified by any agency of the United States government as "below regulatory concern" or otherwise exempt from federal regulation.

b. If a court of the United States finally determines that a law of a party state conflicts with this compact, this compact shall prevail to the extent of the conflict. The Commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two–thirds vote of the membership of the Commission.

c. Except as authorized by this compact, no law, rule, or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in articles III.m. and VII.f. of this compact, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to persons, property, or the environment resulting from the development, construction, operation, closing, or long–term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, or any other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

e. Except as provided in United States Code, title 28, section 1251(a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. Article VII.e. of this compact does not apply to proceedings within the jurisdiction of state or federal regulatory agencies nor to judicial review of proceedings before state or federal regulatory agencies. Article VII.e. of this compact shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

f. For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property, or the environment resulting from the development, construction, operation, regulation, closing, or long–term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact. This applies whether the claimed liability of the party state or employee is based on common law, statute, rule, or regulation.

2. The sovereign immunity granted in article VII.f.1. of this compact, does not apply to any of the following:

a. Actions based upon the activities of the party states as generators of waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

b. Actions based on the obligations of the party states to each other and the Commission imposed by this compact, or other contracts related to the disposal of waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

c. Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

g. If in any action described in article VII.f.1., and not described in article VII.f.2. of this compact, it is determined that, notwithstanding article VII.f.1. of this compact, a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in article VI.s.3. of this compact, the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under article VII.g. of this compact, shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no contribution obligation under article VII.g. of this compact. Article VII.g. of this compact shall not be construed as a waiver of the sovereign immunity provided for in article VII.f.1. of this compact.

h. The sovereign immunity of a party state provided for in article VII.f.1. of this compact, shall not be extended to any private contractor assigned responsibilities as authorized in article VI.g. of this compact.

ARTICLE VIII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND TERMINATION

a. Any state may petition the Commission to be eligible for membership in the compact. The Commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the Commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the Commission.

b. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provisions of this compact.

c. A party state that has fully discharged its obligations under article VI.i. of this compact, or has been relieved under article VI.e. of this compact, of its responsibilities to serve as a host state, may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the Commission. Withdrawal takes effect on the date specified in the Commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in article VIII.e. of this compact, continue until they are fulfilled.

d. Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, the right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, suspended, or its membership in the compact revoked by a two–thirds vote of the Commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of any then operating compact facility votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in article VIII.e. of this compact, continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's waste disposal rights, or imposition of financial penalties immediately following the vote of the Commission to the governor of the affected party state, governors of all the other party states, and the Congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under article VI of this compact forthwith shall repay to the Commission the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long–term care of a compact facility that the Commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the Commission the

amount the Commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the Commission shall be distributed by the Commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the Commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the Commission an amount the Commission determines to be necessary to cover all other costs and damages incurred by the Commission and the remaining party states as a result of the withdrawal or revocation. The intention of article VIII.e. of this compact is to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. Article VIII.e. of this compact shall be construed and applied so as to effectuate this intention.

f. Any party state whose right to have waste generated within its borders disposed of at compact facilities is suspended by the Commission shall pay to the host state of the compact facility to which access has been suspended the amount the Commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by the Congress. The consent given to this compact by the Congress shall extend to any future admittance of new party states and to the power of the Commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator–produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the Congress. To the extent required by section (4)(d) of "The Low–Level Radioactive Waste Policy Amendments Act of 1985," every five years after this compact has taken effect, the Congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact, the suspension of waste disposal rights, the termination of a party state's designation as a host state, or the suspension or revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

i. This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation; or

2. Through withdrawal of consent to this compact by the Congress under Article I, Section 10, of the United States Constitution, in which case dissolution shall take place 120 days after the effective date of the withdrawal of consent.

Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of Congressional consent, the limitations of the investment and use of long–term care funds in articles VI.o. and VI.q.4. of this compact, the contractual obligations in article V.f. of this compact, the indemnification obligations and contribution rights in articles VI.o., VI.s., and VII.g. of this compact, and the operation rights and indemnification and hold harmless obligations in article VI.q. of this compact, shall remain in force notwithstanding dissolution of this compact.

ARTICLE IX. PENALTIES AND ENFORCEMENT

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

c. The Commission, an affected party state, or both, may obtain injunctive relief, recover damages, or both, to prevent or remedy violations of this compact.

d. Each party state acknowledges that the transport into a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter, or collector responsible for the violation, or suspension or revocation of access to the compact facility in the host state by any generator, transporter, or collector responsible for the violation.

e. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

f. This compact shall not be construed to create any cause of action for any person other than a party state or the Commission. Nothing in article IX.f. of this compact, shall limit the right of judicial review set forth in article III.n.3. of this compact, or the rights of contribution set forth in articles III.p., VI.o., VI.s., and VII.g. of this compact.

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, shall be suspended until the appropriation is obtained.

History: *1983 c 353 s 1; 1996 c 428 s 1*

116C.832 DEFINITIONS.

Subdivision 1. **Terms defined in compact.** The terms defined in article II of the Midwest Interstate Low–Level Radioactive Waste Compact have the meanings given them for the purposes of sections 116C.833 to 116C.849.

Subd. 2. [Repealed, 1996 c 428 s 14]

Subd. 3. **Agency.** "Agency" means the pollution control agency.

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the pollution control agency.

Subd. 5. MS 1990 [Renumbered subd 4]

Subd. 5. **Compact.** "Compact" means the Midwest Interstate Low–Level Radioactive Waste Compact.

Subd. 5a. **Committee.** "Committee" means the facility siting policy development committee established under section 116C.842.

Subd. 6. **Interstate Commission.** "Interstate Commission" means the Midwest Interstate Low–Level Radioactive Waste Commission.

Subd. 7. [Repealed, 1996 c 428 s 14]

Subd. 8. [Repealed, 1996 c 428 s 14]

History: *1983 c 353 s 2; 1987 c 186 s 15; 1987 c 311 s 1–3; 1996 c 428 s 2,3*

116C.833 COMPACT COMMISSION MEMBER.

Subdivision 1. **Commissioner.** The commissioner of the pollution control agency shall serve as Minnesota's voting member of the Interstate Commission. The commissioner shall tender the state's membership fee to the Interstate Commission by August 1, 1983, or, if the Commission has not come into existence by August 1, 1983, when the first meeting of the Commission is convened as provided in the compact.

Subd. 2. **Biennial report.** In addition to other duties specified in sections 116C.833 to 116C.843, the commissioner shall report by January 31, 1997, and biennially thereafter, to the governor and the legislature concerning the activities of the Interstate Commission. The report shall include any recommendations the commissioner deems necessary to assure the protection of the interest of the state in the proper functioning of the compact. The commissioner also shall report to the governor and the legislature any time there is a change in the status of a host state or other party states in the compact.

History: *1983 c 353 s 3; 1987 c 186 s 15; 1996 c 428 s 4*

116C.834 ASSESSMENT OF GENERATORS.

Subdivision 1. **Costs.** All costs incurred by the state to carry out its responsibilities under the compact and under sections 116C.833 to 116C.843 shall be paid by generators of low–level radioactive waste in this state through fees assessed by the pollution control agency. The agency shall assess the fees in the manner provided in section 16A.1285. Fees may be reasonably assessed on the basis of volume or degree of hazard of the waste produced by a generator. Costs for which fees may be assessed include, but are not limited to:

(a) the state contribution required to join the compact;

(b) the expenses of the Commission member and state agency costs incurred to support the work of the Interstate Commission; and

(c) regulatory costs.

Subd. 1a. **State liabilities.** Nothing in this section shall be construed to require generators of low–level radioactive waste to pay any financial obligation of the state arising under article V, section f.; article VI, section e. or l.5.; or article VIII, section d., e., or f. of the compact.

Subd. 2. **Collection and deposit.** Fees assessed under subdivision 1 shall be collected by the commissioner of revenue. All money received pursuant to this subdivision shall be deposited in the special revenue fund.

History: *1983 c 353 s 4; 1987 c 311 s 4; 1996 c 305 art 3 s 19; 1996 c 428 s 5,6*

116C.835 ENFORCEMENT OF COMPACT AND LAWS.

Subdivision 1. **Criminal penalties.** Any person who willfully or negligently violates any provision of the compact upon conviction is guilty of a misdemeanor, and is subject to a fine of not more than $2,500 in the event of a willful violation or not more than $300 in the event of a negligent violation. A second conviction of the same provision after a first conviction is punishable by a fine of not more than $50,000, or by imprisonment for not more than two years, or both.

Any person who knowingly fails to provide information requested under section 116C.840 or who knowingly makes any false statement, representation, or certification of any information requested under section 116C.840 is subject to a fine of not more than $20,000, or imprisonment for not more than six months, or both.

Subd. 2. **Civil penalties.** Any person who violates any provision of the compact or of section 116C.834 or 116C.840 shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than $10,000 per day of violation. The civil penalties provided in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

Subd. 3. **Injunction.** Any violation of the provisions of the compact may be enjoined as provided by law in an action, in the name of the state, brought by the attorney general.

Subd. 4. **Action to compel performance.** In any action to compel performance of an obligation created by the compact the court may require any person who is adjudged respon-

sible to do and perform any and all acts and things within that person's power which are reasonably necessary to fulfill the obligation.

Subd. 5. **Recovery of litigation costs and expenses.** In any action brought by the attorney general, in the name of the state for civil penalties, injunctive relief, or in an action to compel compliance, if the state prevails and if the violation was willful, the state, in addition to other penalties provided in this section, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. All amounts recovered by the state under the provisions of subdivisions 1 to 5 shall be deposited in the general fund.

Subd. 6. **Effect on state.** Nothing in this section shall be construed to permit any action or remedy against the state for violation of any provision of the compact. The sole remedies for such a violation are those provided in the compact.

History: *1983 c 353 s 5; 1984 c 628 art 3 s 11; 1986 c 444; 1996 c 428 s 7*

116C.836 ACTIONS CONCERNING INTERSTATE COMMISSION AND PARTY STATES.

Subdivision 1. **Enforcement of Commission decisions.** A final decision of the Interstate Commission in any matter within its jurisdiction may be enforced by the attorney general in the name of the state in any court of competent jurisdiction.

Subd. 2. **Proceedings against party state or commission.** The attorney general, in the name of the state, may:

(a) initiate a proceeding against another party state as provided in article IX, section e. of the compact, and may appeal decisions of the Interstate Commission as provided in article III, section n.; or

(b) initiate a proceeding in any court of competent jurisdiction to review an action or decision of the Interstate Commission, or to require the Commission to act or refrain from acting under the terms of the compact in any matter affecting the interest of the state.

History: *1983 c 353 s 6; 1996 c 428 s 8*

116C.837 [Repealed, 1996 c 428 s 14]

116C.838 EFFECT ON EXISTING STATE LAW.

Except as otherwise provided in section 116C.842, subdivision 4, it is the intent of this state as a party to the compact to apply and enforce its laws and rules relating to environmental review, siting of facilities, and protection of the environment and public health with respect to the location, construction, and regulation of any regional low–level radioactive waste facility in this state.

History: *1983 c 353 s 8*

116C.839 [Repealed, 1996 c 428 s 14]

116C.840 DUTY TO PROVIDE INFORMATION.

Subdivision 1. **Required information.** Any generators of low–level radioactive waste and any person engaged in transporting or disposing of low–level radioactive waste, when requested by the agency or any member, employee, or agent thereof who is authorized by the agency, shall furnish information needed by the agency to carry out its responsibilities under the compact and under sections 116C.833 to 116C.843.

Subd. 2. **Classification.** Except as otherwise provided in this subdivision, data obtained from any person pursuant to subdivision 1 is public data as defined in section 13.02. Upon certification by the generator that the data relates to sales figures, processes, or methods of production unique to that person, or information which would tend to affect adversely the competitive position of that person, the agency shall classify the data as nonpublic data as defined in section 13.02. The agency may disclose data classified as nonpublic under this subdivision to the Interstate Commission, when relevant in any proceeding under section 116C.835, or when necessary to carry out its responsibilities under sections 116C.833 to 116C.843.

Subd. 3. [Repealed, 1996 c 428 s 14]

History: *1983 c 353 s 10*

116C.841 [Repealed, 1996 c 428 s 14]

116C.842 CONTINGENT PROVISIONS.

Subdivision 1. [Repealed, 1996 c 428 s 14]

Subd. 1a. **Facility siting policy development committee.** Following Minnesota's designation as a host state by the Interstate Commission, and within 60 days after a compact facility located in the host state immediately preceding Minnesota begins operation, the governor shall, in consultation with the commissioner, establish and appoint the membership of a facility siting policy development committee. The committee shall study the issues relevant to developing a facility and make recommendations concerning appropriate facility siting criteria and development requirements. The committee shall number no more than 12 voting members, at least eight of whom shall be individuals with expertise in a range of scientific disciplines relevant to site development. The committee shall include at least one representative each from local government and generators of low-level radioactive waste, and two representatives from public interest groups. In addition, the environmental quality board, the Minnesota geological survey, the departments of natural resources, transportation, and health, and the agency shall have nonvoting membership on the committee and shall provide information and technical assistance to the committee as needed. The committee shall report its findings and recommendations to the governor and the legislature no later than one year following the establishment of the committee.

Subd. 2. [Repealed, 1996 c 428 s 14]

Subd. 2a. **Administration.** The environmental quality board shall provide administrative assistance to the committee.

Subd. 3. [Repealed, 1996 c 428 s 14]

Subd. 3a. **Compensation.** The citizen members of the committee shall be compensated as provided in section 15.0575.

Subd. 3b. **Termination.** The committee is terminated upon reporting its recommendations to the governor and legislature in accordance with subdivision 1a.

Subd. 4. **Certain law not applicable.** In the event that Minnesota is designated by the Interstate Commission to be a host state for a regional low-level radioactive waste facility, the provisions of sections 116C.71 to 116C.74 shall not apply to the authorization or siting of that facility, or transportation of wastes to that facility.

History: *1983 c 353 s 12; 1987 c 186 s 15; 1987 c 311 s 5; 1996 c 428 s 9–12*

116C.843 CONGRESSIONAL CONDITIONS ON COMPACT CONSENT.

In the event that congressional consent to the compact carries with it conditions that materially change the provisions agreed to by the party states, the state reserves the option to terminate further participation in the compact.

History: *1983 c 353 s 13*

LOW-LEVEL RADIOACTIVE WASTE FACILITY SITE

116C.845 [Repealed, 1996 c 428 s 14]

116C.846 [Repealed, 1996 c 428 s 14]

116C.847 [Repealed, 1996 c 428 s 14]

116C.848 [Repealed, 1996 c 428 s 14]

116C.849 SITING CRITERIA.

In making its facility siting policy recommendations to the governor and the legislature, the committee shall consider health, safety, and environmental protection above all other siting criteria.

History: *1996 c 428 s 13*

116C.851 [Repealed, 1990 c 600 s 8]

116C.852 [Repealed, 1990 c 600 s 8]

GENETICALLY ENGINEERED ORGANISMS

116C.91 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116C.91 to 116C.98, the terms defined in this section have the meanings given them.

Subd. 2. **Board.** "Board" means the environmental quality board.

Subd. 3. **Genetic engineering.** "Genetic engineering" means the introduction of new genetic material to an organism or the regrouping of an organism's genes using techniques or technology designed by humans. This does not include selective breeding, hybridization, or nondirected mutagenesis.

Subd. 4. **Genetically engineered organism.** "Genetically engineered organism" means an organism derived from genetic engineering.

Subd. 5. **Organism.** "Organism" means any animal, plant, bacterium, cyanobacterium, fungus, protist, or virus.

Subd. 6. **Release.** "Release" means the placement or use of a genetically engineered organism outside a contained laboratory, greenhouse, building, structure, or other similar facility or under any other conditions not specifically determined by the board to be adequately contained.

Subd. 7. **Significant environmental permit.** "Significant environmental permit" means a permit issued by a state agency with the authority to deny, modify, revoke, or place conditions on the permit in compliance with the requirements of sections 116C.91 to 116C.96, chapter 116D, and the rules adopted under them.

History: *1989 c 346 s 2; 1991 c 250 s 28; 1994 c 454 s 9*

116C.92 COORDINATION OF ACTIVITIES.

The environmental quality board is designated the state coordinating organization for state and federal regulatory activities relating to genetically engineered organisms.

History: *1989 c 346 s 3*

116C.93 ADVISORY COMMITTEE.

The board shall establish an advisory committee on genetically engineered organisms to provide advice at the request of the board on general issues involving genetic engineering and on issues relating to specific proposals, including the identification of research needed for adequate regulation of field trials.

History: *1989 c 346 s 4*

116C.94 RULES.

Subdivision 1. **General authority.** The board shall adopt rules consistent with sections 116C.91 to 116C.96 that require an environmental assessment worksheet and otherwise comply with chapter 116D and rules adopted under it for a proposed release and a permit for a release. The board may place conditions on a permit and may deny, modify, suspend, or revoke a permit.

Subd. 2. **Significant environmental permit.** The rules shall provide that the board shall authorize an agency with a significant environmental permit to administer the regulatory oversight for the release of certain genetically engineered organisms.

Subd. 3. **Commercialization.** The board may adopt rules providing exemptions to the requirements to prepare an environmental assessment worksheet and obtain a permit for releases of genetically engineered organisms for which substantial evidence from past releases has shown to the board's satisfaction that the organism can be released without jeopardizing public health or the environment.

Subd. 4. **Alternative regulatory oversight.** The board may adopt rules providing alternative regulatory oversight to the requirements to prepare an environmental assessment worksheet and obtain a permit for releases of genetically engineered organisms for which substantial evidence from past experience, including releases and laboratory data, has shown to the board's satisfaction that the alternative oversight will protect public health and the environment.

Subd. 5. **Rules; federal oversight.** The board may adopt rules to implement the authorities granted to it in section 116C.97, subdivision 2.

Subd. 6. **Consultation.** The board shall consult with local units of government and with private citizens before adopting any rules.

History: *1989 c 346 s 5; 1991 c 250 s 29; 1994 c 454 s 10*

116C.95 LIABILITY.

Rules established by the board under section 116C.94 shall not affect liability under any other law or regulation for adverse effects resulting from activities relating to genetically engineered organisms.

History: *1989 c 346 s 6*

116C.96 COST REIMBURSEMENT.

The board shall assess the proposer of a release for the necessary and reasonable costs of processing exemptions from a release permit under rules authorized by sections 116C.94, subdivisions 1, 3, and 4, and 116C.97, subdivision 2, paragraph (c), or applications for a release permit. An estimated budget shall be prepared for each exemption or application by the chair of the board. The proposer must remit 25 percent of the estimated budget within 14 days of the receipt of the estimated budget from the chair. The unpaid balance shall be billed in periodic installments, due upon receipt of an invoice from the chair. Costs in excess of the estimated budget must be certified by the board and upon certification constitute prima facie evidence that the expenses are reasonable and necessary and shall be charged to the proposer. The proposer may review all actual costs and present objections to the board, which may modify the cost or determine that the cost assessed is reasonable. The assessment paid by the proposer shall not exceed the sum of the costs incurred. All money received under this section shall be deposited in the special account established under section 116D.045, subdivision 3, for the purpose of paying costs incurred in processing exemptions and applications.

History: *1991 c 250 s 30; 1994 c 454 s 11*

116C.97 EXEMPTIONS.

Subdivision 1. **Human gene therapy.** The requirements of sections 116C.91 to 116C.96 and of the rules of the board adopted pursuant to section 116C.94 do not apply to genetic engineering of human germ cells and human somatic cells intended for use in human gene therapy.

Subd. 2. **Federal oversight.** (a) If the board determines, upon its own volition or at the request of any person, that a federal program exists for regulating the release of certain genetically engineered organisms and the federal oversight under the program is adequate to protect human health or the environment, then any person may release such genetically engineered organisms after obtaining the necessary federal approval and without obtaining a state release permit or a significant environmental permit or complying with the other requirements of sections 116C.91 to 116C.96 and the rules of the board adopted pursuant to section 116C.94.

(b) If the board determines the federal program is adequate to meet only certain requirements of sections 116C.91 to 116C.96 and the rules of the board adopted pursuant to section 116C.94, the board may exempt such releases from those requirements.

(c) A person proposing a release for which a federal authorization is required may apply to the board for an exemption from the board's permit or to a state agency with a significant environmental permit for the proposed release for an exemption from the agency's permit. The proposer must file with the board or state agency a written request for exemption with a

copy of the federal application and the information necessary to determine if there is a potential for significant environmental effects under chapter 116D and rules adopted under it. The board or state agency shall give public notice of the request in the first available issue of the EQB Monitor and shall provide an opportunity for public comment on the environmental review process consistent with chapter 116D and rules adopted under it. The board or state agency may grant the exemption if the board or state agency finds that the federal authorization issued is adequate to meet the requirements of chapter 116D and rules adopted under it and any other requirement of the board's or state agency's authority regarding the release of genetically engineered organisms. The board or state agency must grant or deny the exemption within 45 days after the receipt of the written request and the information required by the board or state agency.

History: *1994 c 454 s 12*

116C.98 [Repealed, 1994 c 454 s 13; 20 SR 1037]

NOTE: This section was repealed when the commissioner of agriculture adopted rules under section 18F.13, paragraph (b). Laws 1994, chapter 454, section 13, subdivision 6. The rules were finally adopted at State Register, volume 20, number 1, pages 1037 to 1040, November 6, 1995.