

## CHAPTER 115

## WATER POLLUTION CONTROL; SANITARY DISTRICTS

## WATER POLLUTION CONTROL ACT

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## WATER POLLUTION CONTROL ACT

## 115.01 DEFINITIONS.

Subdivision 1. **Applicability.** The following words and phrases when used in this chapter and, with respect to the pollution of the waters of the state, in chapter 116, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

Subd. 2. MS 1990 [Renumbered subd 17]

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

Subd. 3. MS 1990 [Renumbered subd 8]

Subd. 3. **Depository.** "Depository" means: (a) a disposal facility or stabilization and containment facility for hazardous waste as defined in section 115A.03; and (b) a radioactive waste management facility as defined in section 116C.71, subdivision 7.

Subd. 4. MS 1990 [Renumbered subd 9]

Subd. 4. **Discharge.** "Discharge" means the addition of any pollutant to the waters of the state or to any disposal system.

Subd. 5. MS 1990 [Renumbered subd 13]

Subd. 5. **Disposal system.** "Disposal system" means a system for disposing of sewage, industrial waste and other wastes, and includes sewer systems and treatment works.

Subd. 6. MS 1990 [Renumbered subd 18]

Subd. 6. **Groundwater.** "Groundwater" means 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. 7. MS 1990 [Renumbered subd 21]

Subd. 7. **Hazardous waste.** "Hazardous waste" means waste as defined in section 116.06, subdivision 11.

Subd. 8. MS 1990 [Renumbered subd 5]

Subd. 8. **Industrial waste.** "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from the development of any natural resource.

Subd. 9. MS 1990 [Renumbered subd 22]

Subd. 9. **Other wastes.** "Other wastes" mean garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar, chemicals, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, cellar dirt or municipal or agricultural waste, and all other substances not included within the definitions of sewage and industrial waste set forth in this chapter which may pollute or tend to pollute the waters of the state.

Subd. 10. **Person.** "Person" means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity, including, but not limited to, association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation, or other entity.

Subd. 11. MS 1990 [Renumbered subd 2]

Subd. 11. **Point source.** "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

Subd. 12. MS 1990 [Renumbered subd 4]

Subd. 12. **Pollutant.** "Pollutant" means any "sewage," "industrial waste," or "other wastes," as defined in this chapter, discharged into a disposal system or to waters of the state.

Subd. 13. MS 1990 [Renumbered subd 12]

Subd. 13. **Pollution of water, water pollution, pollute the water.** "Pollution of water," "water pollution," or "pollute the water" means: (a) the discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or (b) the alteration made or induced by human activity of the chemical, physical, biological, or radiological integrity of waters of the state.

Subd. 14. MS 1990 [Renumbered subd 20]

Subd. 14. **Potable water.** "Potable water" means water which is or may be used as a source of supply for human consumption including drinking, culinary use, food processing, and other similar purposes, and which is suitable for such uses in its untreated state or when treated using generally recognized treatment methods.

Subd. 15. MS 1990 [Renumbered subd 11]

Subd. 15. **Radioactive waste.** "Radioactive waste" means high-level radioactive waste as defined in section 116C.71, subdivision 2f, and low-level radioactive waste as defined in article II of the Midwest Interstate Low-Level Radioactive Waste Compact, as enacted by section 116C.831.

Subd. 16. MS 1990 [Renumbered subd 19]

Subd. 16. **Schedule of compliance.** "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

Subd. 17. MS 1990 [Renumbered subd 16]

Subd. 17. **Sewage.** "Sewage" means the water-carried waste products from residences, public buildings, institutions or other buildings, or any mobile source, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.

Subd. 18. MS 1990 [Renumbered subd 7]

Subd. 18. **Sewer system.** "Sewer system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

Subd. 19. MS 1990 [Renumbered subd 15]

Subd. 19. **Standards.** "Standards" means effluent standards, effluent limitations, standards of performance for new sources, water quality standards, pretreatment standards, and prohibitions.

Subd. 20. MS 1990 [Renumbered subd 14]

Subd. 20. **Toxic pollutants.** "Toxic pollutants" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the agency, cause death, disease, behavioral abnormalities; cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

Subd. 21. MS 1990 [Renumbered subd 6]

Subd. 21. **Treatment works.** "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing or disposing of sewage, industrial waste, or other wastes.

Subd. 22. MS 1990 [Renumbered subd 3]

Subd. 22. **Waters of the state.** "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

**History:** 1945 c 395 s 1; 1963 c 874 s 2,3; 1969 c 9 s 16; 1973 c 374 s 1-6; 1986 c 425 s 1-5; 1986 c 444

**115.02** [Repealed, 1967 c 882 s 11]

### **115.03 POWERS AND DUTIES.**

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

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

(b) To investigate the extent, character, and effect of the pollution of the waters of this state and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the waters of the state as it may deem advisable;

(c) To establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter and, with respect to the pollution of waters of the state, chapter 116;

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

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

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

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

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

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

(5) Establishing, and from time to time revising, standards of performance for new sources taking into consideration, among other things, classes, types, sizes, and categories of sources, processes, pollution control technology, cost of achieving such effluent reduction, and any nonwater quality environmental impact and energy requirements. Said standards of performance for new sources shall encompass those standards for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the agency determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants. New sources shall encompass buildings, structures, facilities, or installations from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication by the agency of proposed rules prescribing a standard of performance which will be applicable to such source. Notwithstanding any other provision of the law of this state, any point source the construction of which is commenced after May 20, 1973, and which is so constructed as to meet all applicable standards of performance for new sources shall, consistent with and subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution Control Act, not be subject to any more stringent standard of performance for new sources during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period ends first. Construction shall encompass any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(6) Establishing and revising pretreatment standards to prevent or abate the discharge of any pollutant into any publicly owned disposal system, which pollutant interferes with, passes through, or otherwise is incompatible with such disposal system;

(7) Requiring the owner or operator of any disposal system or any point source to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, including where appropriate biological monitoring methods, sample

such effluents in accordance with such methods, at such locations, at such intervals, and in such a manner as the agency shall prescribe, and providing such other information as the agency may reasonably require;

(8) Notwithstanding any other provision of this chapter, and with respect to the pollution of waters of the state, chapter 116, requiring the achievement of more stringent limitations than otherwise imposed by effluent limitations in order to meet any applicable water quality standard by establishing new effluent limitations, based upon section 115.01, subdivision 13, clause (b), including alternative effluent control strategies for any point source or group of point sources to insure the integrity of water quality classifications, whenever the agency determines that discharges of pollutants from such point source or sources, with the application of effluent limitations required to comply with any standard of best available technology, would interfere with the attainment or maintenance of the water quality classification in a specific portion of the waters of the state. Prior to establishment of any such effluent limitation, the agency shall hold a public hearing to determine the relationship of the economic and social costs of achieving such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained and to determine whether or not such effluent limitation can be implemented with available technology or other alternative control strategies. If a person affected by such limitation demonstrates at such hearing that, whether or not such technology or other alternative control strategies are available, there is no reasonable relationship between the economic and social costs and the benefits to be obtained, such limitation shall not become effective and shall be adjusted as it applies to such person;

(9) Modifying, in its discretion, any requirement or limitation based upon best available technology with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the agency that such modified requirements will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants; and

(10) Requiring that applicants for wastewater discharge permits evaluate in their applications the potential reuses of the discharged wastewater,

(f) To require to be submitted and to approve plans and specifications for disposal systems or point sources, or any part thereof and to inspect the construction thereof for compliance with the approved plans and specifications thereof;

(g) To prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of state;

(h) To conduct such investigations, issue such notices, public and otherwise, and hold such hearings as are necessary or which it may deem advisable for the discharge of its duties under this chapter and, with respect to the pollution of waters of the state, under chapter 116, including, but not limited to, the issuance of permits, and to authorize any member, employee, or agent appointed by it to conduct such investigations or, issue such notices and hold such hearings;

(i) For the purpose of water pollution control planning by the state and pursuant to the Federal Water Pollution Control Act, as amended, to establish and revise planning areas, adopt plans and programs and continuing planning processes, including, but not limited to, basin plans and areawide waste treatment management plans, and to provide for the implementation of any such plans by means of, including, but not limited to, standards, plan elements, procedures for revision, intergovernmental cooperation, residual treatment process waste controls, and needs inventory and ranking for construction of disposal systems;

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

(k) To impose as additional conditions in permits to publicly owned disposal systems appropriate measures to insure compliance by industrial and other users with any pretreat-

ment standard, including, but not limited to, those related to toxic pollutants, and any system of user charges ratably as is hereby required under state law or said Federal Water Pollution Control Act, as amended, or any regulations or guidelines promulgated thereunder;

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

(m) To require each governmental subdivision identified as a permittee for a wastewater treatment works to annually evaluate the condition of its existing system and identify future capital improvements that will be needed to attain or maintain compliance with a national pollutant discharge elimination system or state disposal system permit; and

(n) To train individual sewage treatment system personnel, including persons who design, construct, install, inspect, service, and operate individual sewage treatment systems; and charge fees as necessary to pay the agency's costs. All fees received must be paid into the state treasury and credited to the agency's training account. Money in the account is appropriated to the agency to pay expenses related to training.

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

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

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

**Subd. 3. Contempt of court.** In case of contumacy or refusal to obey a subpoena issued under this section, the district court of the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found or resides, shall have jurisdiction upon application of the agency or its authorized member, employee or agent to issue to such person an order requiring the person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

**Subd. 4. Building permits.** It is unlawful for any person to issue or grant a building permit for, or otherwise permit, the construction, enlargement, or relocation of a commercial or industrial building to be used as the place of employment of more than 12 persons, or any other commercial or industrial building to house a process producing industrial or other wastes, unless the sewage or industrial or other waste originating in such buildings is or will be discharged into a disposal system for which a permit has first been granted by the agency unless the agency has cause not to apply this requirement, provided that this subdivision shall not apply to building permits issued for buildings, which have an estimated value of less than \$500,000, located or to be located within an incorporated municipality. After January 1, 1975, such permits shall be acted upon by the agency within 90 days after submitted, provided that the agency, for good cause, may order said 90 day period to be extended for a reasonable time.

**Subd. 4a. Section 401 certifications.** (a) The following definitions apply to this subdivision:

(1) "section 401 certification" means a water quality certification required under section 401 of the federal Clean Water Act, United States Code, title 33, section 1341; and

(2) "nationwide permit" means a nationwide general permit issued by the United States Army Corps of Engineers and listed in Code of Federal Regulations, title 40, part 330, appendix A.

(b) The agency is responsible for providing section 401 certifications for nationwide permits.

(c) Before making a final decision on a section 401 certification for regional conditions on a nationwide permit, the agency shall hold at least one public meeting outside the seven-county metropolitan area.

(d) In addition to other notice required by law, the agency shall provide written notice of a meeting at which the agency will be considering a section 401 certification for regional conditions on a nationwide permit at least 21 days before the date of the meeting to the members of the senate and house of representatives environment and natural resources committees, the senate agriculture and rural development committee, and the house of representatives agriculture committee.

**Subd. 5. Agency authority; National Pollutant Discharge Elimination System.** Notwithstanding any other provisions prescribed in or pursuant to this chapter and, with respect to the pollution of waters of the state, in chapter 116, or otherwise, the agency shall have the authority to perform any and all acts minimally necessary including, but not limited to, the establishment and application of standards, procedures, rules, orders, variances, stipulation agreements, schedules of compliance, and permit conditions; consistent with and, therefore not less stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the state of Minnesota in the National Pollutant Discharge Elimination System (NPDES); provided that this provision shall not be construed as a limitation on any powers or duties otherwise residing with the agency pursuant to any provision of law.

**Subd. 5a. Public notice for National Pollutant Discharge Elimination System permit application.** The commissioner must give public notice of a completed National Pollutant Discharge Elimination System permit application for new municipal discharges in the official county newspaper of the county where the discharge is proposed.

**Subd. 6. Certification statement; pollution control equipment loan.** (a) In addition to its other powers and duties, the agency shall prepare the certification statement required to be submitted by an applicant for a pollution control equipment loan under the provisions of section 7(g) of the Small Business Act and section 8 of the Federal Water Pollution Control Act, as amended.

(b) The agency certification shall state whether the loan applicant's proposed additions to, or alterations in, equipment facilities or methods of operation are necessary and adequate to comply with the requirements established under the Federal Water Pollution Control Act, as amended. The agency's certification statement shall comply with the requirements of Code of Federal Regulations, title 40, part 21.

(c) The agency may identify small businesses eligible for loans under section 7(g) of the Small Business Act and section 8 of the Federal Water Pollution Control Act, as amended and assist in the preparation of loan application.

(d) No fee shall be required of an applicant for any assistance provided under this subdivision.

**Subd. 7. Pollution control facility revenue bonds.** In addition to its other powers and duties, the agency shall disseminate information and provide assistance regarding the small business administration program to guarantee payments or rentals on pollution control facility revenue bonds pursuant to Public Law Number 94-305 (June 4, 1976). The agency shall also encourage and assist governmental units to coordinate the joint or cooperative issuance of bonds guaranteed under this program to the end that the total amount of the bonds is sufficient in size to allow convenient sale.

**Subd. 8. Exemptions for aboveground storage tanks.** The commissioner may not adopt rules under this section that regulate the use of the following aboveground storage tanks:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(3) tanks used for storing liquids that are gaseous at atmospheric temperature and pressure; or

(4) tanks used for storing agricultural chemicals regulated under chapter 18B, 18C, or 18D.

**Subd. 9. Future costs of wastewater treatment; update of 1995 report.** The commissioner shall, by January 15, 1998, and each even-numbered year thereafter, provide the

chairs of the house and senate committees with primary jurisdiction over the agency's budget with the following information:

- (1) an updated list of all wastewater treatment upgrade and construction projects the agency has identified to meet existing and proposed water quality standards and regulations;
- (2) an estimate of the total costs associated with the projects listed in clause (1), and the projects' priority ranking under Minnesota Rules, chapter 7077. The costs of projects necessary to meet existing standards must be identified separately from the costs of projects necessary to meet proposed standards;
- (3) the commissioner's best estimate, developed in consultation with the commissioner of trade and economic development and affected permittees, of the increase in sewer service rates to the residents in the municipalities required to construct the projects listed in clause (1) resulting from the cost of these projects; and
- (4) a list of existing and proposed state water quality standards which are more stringent than is necessary to comply with federal law, either because the standard has no applicable federal water quality criteria, or because the standard is more stringent than the applicable federal water quality criteria.

**History:** 1945 c 395 s 3; 1969 c 9 s 21; 1969 c 931 s 6; 1973 c 374 s 7-9; 1973 c 412 s 12; 1976 c 76 s 1; 1979 c 147 s 1; 1984 c 597 s 41; 1985 c 248 s 70; 1Sp1985 c 13 s 229; 1986 c 444; 1987 c 186 s 15; 1989 c 335 art 1 s 127; art 4 s 33; 1992 c 601 s 2; 1993 c 87 s 1; 1993 c 186 s 8; 1996 c 437 s 9,10; 1996 c 462 s 38; 1997 c 216 s 93

#### 115.04 DISPOSAL SYSTEMS AND POINT SOURCES.

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

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

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

**History:** 1945 c 395 s 4; 1969 c 9 s 21; 1973 c 374 s 10; 1986 c 444; 1996 c 437 s

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#### 115.05 JUDICIAL REVIEW.

Subdivision 1. [Repealed, 1976 c 76 s 8]

Subd. 2. [Repealed, 1973 c 374 s 22]

Subd. 3. [Repealed, 1976 c 76 s 8]

Subd. 4. [Repealed, 1976 c 76 s 8]

Subd. 5. [Repealed, 1976 c 76 s 8]

Subd. 6. [Repealed, 1976 c 76 s 8]

Subd. 7. [Repealed, 1976 c 76 s 8]

Subd. 8. [Repealed, 1976 c 76 s 8]

Subd. 9. [Repealed, 1976 c 76 s 8]

Subd. 10. [Repealed, 1976 c 76 s 8]



Subd. 11. **Judicial review.** Any person aggrieved by any final decision for which judicial review is not provided in chapter 14 may obtain judicial review thereof pursuant to sections 14.63 to 14.69.

**History:** 1945 c 395 s 5; 1959 c 461 s 1; 1969 c 9 s 21; 1969 c 931 s 1,2; 1973 c 374 s 11; 1976 c 76 s 2; 1982 c 424 s 130; 1987 c 384 art 2 s 1.

## 115.06 COOPERATION.

Subdivision 1. **With other sovereign states.** The agency, so far as it is not inconsistent with its duties under the laws of this state, may assist and cooperate with any agency of another state, of the United States of America or of the Dominion of Canada or any province thereof in any matter relating to water pollution control.

Subd. 2. **Funds received from persons or agencies.** The agency may receive and accept money, property, or services from any person or from any agency described in subdivision 1 or from any other source for any purpose within the scope of its functions under this chapter, chapter 116, or 116F, and all money so received are hereby appropriated for such purposes in like manner and subject to like provisions of law as the corresponding appropriations of state funds.

Subd. 3. **By governmental subdivisions.** It shall be the duty of each city, county, town, sanitary district, public corporation, or other governmental subdivision to cooperate with the agency in obtaining compliance with the provisions of this chapter and to enforce within its jurisdiction all standards, orders, rules, or permit requirements adopted by the agency thereunder.

**History:** 1945 c 395 s 6; 1969 c 9 s 21; 1969 c 931 s 3; 1973 c 123 art 5 s 7; 1978 c 568 s 1; 1985 c 248 s 70.

### 115.061 DUTY TO NOTIFY AND AVOID WATER POLLUTION.

(a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

(b) Notification is not required under paragraph (a) for a discharge of five gallons or less of petroleum, as defined in section 115C.02, subdivision 10. This paragraph does not affect the other requirements of paragraph (a).

**History:** 1969 c 931 s 4; 1993 c 341 art 1 s 1

### 115.063 HAZARDOUS AND RADIOACTIVE WASTE; STATE POTABLE WATER PROTECTION POLICY.

The legislature finds that:

(1) the waters of the state, because of their abundant quantity and high natural quality, constitute a unique natural resource of immeasurable value which must be protected and conserved for the benefit of the health, safety, welfare, and economic well-being of present and future generations of the people of the state;

(2) the actual or potential use of the waters of the state for potable water supply is the highest priority use of that water and deserves maximum protection by the state; and

(3) the disposal of hazardous waste and radioactive waste in Minnesota may pose a serious risk of pollution of the waters of the state, particularly potable water.

It is therefore the policy of the state of Minnesota, consistent with the state's primary responsibility and rights to prevent, reduce, and eliminate water pollution and to plan for the preservation of water resources, that depositories for hazardous waste or radioactive waste should not be located in any place or be constructed or operated in any manner that can reasonably be expected to cause pollution of potable water.

**History:** 1986 c 425 s 6

**115.065 PROHIBITION OF DISPOSAL.**

The location, construction, or operation of any depository for hazardous waste or radioactive waste, whether generated within or outside of the state, in any place or in any manner that can reasonably be expected to cause the pollution of potable water is prohibited.

**History:** 1986 c 425 s 7

**115.067 BELOW GRADE DISPOSAL SYSTEMS; PROHIBITION; EXCEPTION.**

The construction or operation of a depository for hazardous waste or radioactive waste in whole or in part below the natural grade of the land where it is located is prohibited unless the person proposing to construct or operate the depository demonstrates that the depository cannot reasonably be expected to cause the pollution of potable water.

**History:** 1986 c 425 s 8

**115.069 RADIONUCLIDE POLLUTION; HIGH-LEVEL NUCLEAR WASTE DEPOSITORY.**

The determination of whether the location, construction, or operation of a depository for spent nuclear fuel or high-level radioactive waste can reasonably be expected to cause radionuclide pollution of potable groundwater in violation of section 115.065 shall be made in accordance with the provisions of section 116C.76.

**History:** 1986 c 425 s 9

**115.07 VIOLATIONS AND PROHIBITIONS.**

Subdivision 1. **Obtain permit.** It shall be unlawful for any person to construct, install or operate a disposal system, or any part thereof, until plans therefor shall have been submitted to the agency unless the agency shall have waived the submission thereof to it and a written permit therefor shall have been granted by the agency.

For disposal systems operated on streams with extreme seasonal flows, the agency must allow seasonal permit limits based on a fixed or variable effluent limit when the municipality operating the disposal system requests them and is in compliance with agency water quality standards.

Subd. 2. [Repealed, 1973 c 374 s 22]

Subd. 3. **Permission for extension.** It shall be unlawful for any person to make any change in, addition to or extension of any existing disposal system or point source, or part thereof, to effect any facility expansion, production increase, or process modification which results in new or increased discharges of pollutants, or to operate such system or point source, or part thereof as so changed, added to, or extended until plans and specifications therefor shall have been submitted to the agency unless the agency shall have waived the submission thereof to it and a written permit therefor shall have been granted by the agency.

Subd. 4. [Repealed, 1973 c 374 s 22]

Subd. 5. [Repealed, 1963 c 798 s 16]

Subd. 6. [Repealed, 1973 c 374 s 22]

**History:** 1945 c 395 s 8-10; 1969 c 9 s 21; 1969 c 931 s 5; 1973 c 374 s 12; 1986 c 465 art 3 s 1

**115.071 ENFORCEMENT.**

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

Subd. 2. **Criminal penalties.** (a) **Violations of laws; orders; permits.** Except as provided in section 609.671, any person who willfully or negligently violates any provision of

this chapter or chapter 114C or 116, or any standard, rule, variance, order, stipulation agreement, schedule of compliance or permit issued or adopted by the agency thereunder shall upon conviction be guilty of a misdemeanor.

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

Subd. 2a. [Repealed, 1987 c 267 s 5]

Subd. 2b. [Repealed, 1987 c 267 s 5]

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

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

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

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

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

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

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

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

Subd. 6. **Administrative penalties.** A provision of law that may be enforced under this section may also be enforced under section 116.072.

Subd. 7. **Underground storage tanks; red tags.** (a) The commissioner may issue a red tag for failure to have the regulated underground tank system protected from corrosion, failure to have spill and overflow protection, or failure to have a leak detection method in place. A red tag may also be issued for underground storage tank system violations if an enforcement action, including, but not limited to, a citation as defined in section 116.073, subdivision 1, has been issued and the violations are not corrected. Upon discovery of a violation at a facility with an underground storage tank system, the commissioner shall affix a red tag, in plain view, to the fill pipe cap of the tank system that provides notice that delivery of petroleum products to the tank system is prohibited. When the red tag is issued, agency staff must determine the product level in the tank.

(b) No owner or operator of a facility having an underground storage tank system shall fill or allow the filling of a tank with a petroleum product while a red tag is affixed to the fill pipe cap of the tank system.

(c) A person shall not remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(d) A red tag may not be removed until the commissioner has inspected the underground storage tank system and established that it is no longer in violation. After making that determination, the commissioner shall remove the red tag within 24 hours or as soon as reasonably possible. Upon agreement by the commissioner, the red tag may also be removed by an agency-certified installer who provides documentation to the commissioner that the violation for which the system was red-tagged has been corrected.

(e) The issuance of a red tag may be appealed under section 116.072, subdivision 6, paragraphs (a) to (e), except that the person subject to the order must request a hearing within 15 days after issuance of a red tag and, if a hearing is not requested within the 15-day period, the red tag becomes a final order not subject to further review.

**History:** 1973 c 374 s 13; 1976 c 76 s 3; 1983 c 373 s 1-4; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 18; 1985 c 248 s 70; 1986 c 444; 1987 c 267 s 1; 1988 c 553 s 1; 1990 c 391 art 10 s 3; 1991 c 347 art 1 s 2; 1993 c 249 s 6; 1996 c 437 s 12-16; 1998 c 379 s 1

## **115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.**

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

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

**History:** 1973 c 374 s 14; 1991 c 347 art 1 s 3; 1996 c 437 s 17

## **115.073 ENFORCEMENT FUNDING.**

Except as provided in sections 115B.20, subdivision 4, clause (2); 115C.05; and 473.845, subdivision 8, all money recovered by the state under this chapter and chapters 115A and 116, including civil penalties and money paid under an agreement, stipulation, or settlement, excluding money paid for past due fees or taxes, up to the amount appropriated for implementation of Laws 1991, chapter 347, must be deposited in the state treasury and credited to the environmental fund.

**History:** 1991 c 347 art 1 s 4

## **115.075 INFORMATION AND MONITORING.**

A person may not:

(1) make a false material statement, representation, or certification in; omit material information from; or alter, conceal, or fail to file or maintain a notice, application, record, re-

port, plan, manifest, or other document required under section 103F.701 or this chapter or chapter 114C, 115A, or 116; or

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

**History:** 1991 c 347 art 1 s 5; 1996 c 437 s 18

### 115.076 BACKGROUND OF PERMIT APPLICANTS.

Subdivision 1. **Authority of commissioner.** (a) The agency may refuse to issue or to authorize the transfer of:

(1) a hazardous waste facility permit or a solid waste facility permit to construct or operate a commercial waste facility as defined in section 115A.03, subdivision 6, if the agency determines that the permit applicant does not possess sufficient expertise and competence to operate the facility in conformance with the requirements of this chapter and chapters 114C and 116, or if other circumstances exist that demonstrate that the permit applicant may not operate the facility in conformance with the requirements of this chapter and chapters 114C and 116; or

(2) an animal feedlot facility permit, under section 116.07, subdivision 7, to construct or operate an animal feedlot facility, if the agency determines that the permit applicant does not possess sufficient expertise and competence to operate the feedlot facility in conformance with the requirements of this chapter and chapter 116 or if other circumstances exist that demonstrate that the permit applicant may not operate the feedlot facility in conformance with the requirements of this chapter and chapter 116.

(b) In making a determination under paragraph (a), the agency may consider:

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

(2) the expertise of the permit applicant;

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

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

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

Subd. 2. **Permit applicant.** For purposes of this section, a permit applicant includes a natural person, a partnership and its owners, and a corporation and its parent.

Subd. 3. **Investigation.** The commissioner may conduct an investigation to assist in making determinations under subdivision 1. The reasonable costs of any investigation must be paid by the permit applicant.

Subd. 4. **Notice of permit denial.** The agency may not refuse to issue or transfer a permit under this section without first providing the permit applicant with the relevant information and with an opportunity to respond by commenting on the information and submitting additional information regarding the circumstances surrounding the conviction, corrective measures to prevent recurrence, the applicant's rehabilitation, and technical and managerial experience. In making a final decision on the permit, the agency shall consider the permit applicant's response prior to making a final decision on the permit.

Subd. 5. **Hearing.** If the agency proposes to deny a permit under this section, the permit applicant may request a hearing under chapter 14. The permit applicant may request that the hearing be held under Minnesota Rules, parts 1400.8510 to 1400.8612.

**History:** 1991 c 347 art 1 s 6; 1996 c 437 s 19; 1998 c 401 s 39

**115.08 INTERPRETATION.**

Sections 115.01 to 115.09 shall not be construed as repealing any of the provisions of law relating to the pollution of any waters of the state, but shall be held and construed as supplementing the same and in addition to the laws now in force, except as the same may be in direct conflict herewith.

**History:** 1945 c 395 s 7

**115.09 CITATION, WATER POLLUTION CONTROL ACT.**

Sections 115.01 to 115.09 may be cited as the State Water Pollution Control Act.

**History:** 1945 c 395 s 11

**115.091** [Repealed, 1990 c 391 art 10 s 4]

**115.092** [Repealed, 1990 c 391 art 10 s 4]

**115.093** [Repealed, 1990 c 391 art 10 s 4]

**115.094** [Repealed, 1990 c 391 art 10 s 4]

**115.095** [Repealed, 1990 c 391 art 10 s 4]

**115.096** [Repealed, 1990 c 391 art 10 s 4]

**115.097** [Repealed, 1990 c 391 art 10 s 4]

**115.098** [Repealed, 1990 c 391 art 10 s 4]

**115.099** [Repealed, 1990 c 391 art 10 s 4]

**115.10** [Repealed, 1990 c 391 art 10 s 4]

**115.101** [Repealed, 1990 c 391 art 10 s 4]

**115.102** [Repealed, 1990 c 391 art 10 s 4]

**115.103** [Repealed, 1990 c 391 art 10 s 4]

**115.15** Subdivision 1. [Repealed, 1Sp1981 c 4 art 1 s 188]

Subd. 2. [Repealed, 1969 c 9 s 20; 1Sp 1981 c 4 art 1 s 188]

Subd. 3. [Repealed, 1Sp1981 c 4 art 1 s 188]

Subd. 4. [Repealed, 1Sp1981 c 4 art 1 s 188]

Subd. 5. [Repealed, 1Sp1981 c 4 art 1 s 188]

**115.16** [Repealed, 1Sp1981 c 4 art 1 s 188]

**115.17** [Repealed, 1975 c 61 s 26]

**SANITARY DISTRICTS****115.18 SANITARY DISTRICTS; DEFINITIONS.**

Subdivision 1. **Applicability.** As used in sections 115.18 to 115.37, the terms defined in this section have the meanings given them except as otherwise provided or indicated by the context.

Subd. 2. [Repealed, 1969 c 9 s 20]

Subd. 3. MS 1990 [Renumbered subd 6]

Subd. 3. **Additional terms.** The terms defined in section 115.01, as now in force or hereafter amended, have the meanings given them therein.

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. **Agency.** "Agency" means the Minnesota pollution control agency.

Subd. 5. MS 1990 [Renumbered subd 10]

Subd. 5. **Board.** "Board" means the board of managers of a sanitary district.

Subd. 6. MS 1990 [Renumbered subd 8]

Subd. 6. **District.** "District" means a sanitary district created under the provisions of sections 115.18 to 115.37.

Subd. 7. MS 1990 [Renumbered subd 9]

Subd. 7. **Municipality.** "Municipality" means a city, however organized.

Subd. 8. MS 1990 [Renumbered subd 7]

Subd. 8. **Related governmental subdivision or body.** "Related governmental subdivision" means a municipality or organized town wherein there is a territorial unit of a district, or, in the case of an unorganized area, the county. "Related governing body" means the governing body of a related governmental subdivision, and, in the case of an organized town, means the town board.

Subd. 9. MS 1990 [Renumbered subd 3]

Subd. 9. **Statutory city.** "Statutory city" means a city organized as provided by chapter 412, under the plan other than optional.

Subd. 10. MS 1990 [Renumbered subd 4]

Subd. 10. **Territorial unit.** "Territorial unit" means all that part of the territory of a district situated within a single municipality, a single organized town outside of any municipality, or, in the case of an unorganized area, within a single county.

**History:** *Ex1961 c 20 s 4; 1969 c 9 s 18; 1973 c 123 art 5 s 7*

## 115.19 CREATION; PURPOSE; EXCEPTIONS.

A sanitary district may be created under the provisions of sections 115.18 to 115.37 for any territory embracing an area or a group of two or more adjacent areas, whether contiguous or separate, but not situated entirely within the limits of a single municipality, for the purpose of promoting the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and garbage and industrial wastes within the district, in any case where the agency finds that there is need throughout the territory for the accomplishment of these purposes, that these purposes can be effectively accomplished on an equitable basis by a district if created, and that the creation and maintenance of such a district will be administratively feasible and in furtherance of the public health, safety, and welfare; but subject to the following exceptions:

No district shall be created within 25 miles of the boundary of any city of the first class without the approval of the governing body thereof and the approval of the governing body of each and every municipality in the proposed district by resolution filed with the agency.

**History:** *Ex1961 c 20 s 5; 1969 c 9 s 21; 1992 c 601 s 3*

## 115.20 PROCEEDING TO CREATE DISTRICT.

Subdivision 1. (a) A proceeding for the creation of a district may be initiated by a petition to the agency, filed with its secretary, containing the following:

- (1) A request for creation of the proposed district;
- (2) The name proposed for the district, to include the words "sanitary district";
- (3) A description of the territory of the proposed district;
- (4) A statement showing the existence in such territory of the conditions requisite for creation of a district as prescribed in section 115.19;
- (5) A statement of the territorial units represented by and the qualifications of the respective signers;
- (6) The post office address of each signer, given under the signer's signature. A petition may consist of separate writings of like effect, each signed by one or more qualified persons, and all such writings, when filed, shall be considered together as a single petition.
- (b) A public meeting must be held to inform citizens of the proposed creation of the district. At the meeting, information must be provided, including a description of the district's proposed structure, bylaws, territory, ordinances, budget, and charges. Notice of the meeting must be published for two successive weeks in a qualified newspaper published within the

territory of the proposed district or, if there is no qualified newspaper published within the territory, in a qualified newspaper of general circulation in the territory, and by posting for two weeks in each territorial unit of the proposed district. A record of the meeting must be submitted to the agency with the petition.

Subd. 2. Every petition shall be signed as follows:

(1) For each municipality wherein there is a territorial unit of the proposed district, by an authorized officer or officers pursuant to a resolution of the municipal governing body;

(2) For each organized town wherein there is a territorial unit of the proposed district, by an authorized officer or officers pursuant to a resolution of the town board;

(3) For each county wherein there is a territorial unit of the proposed district consisting of an unorganized area, by an authorized officer or officers pursuant to a resolution of the county board, or by at least 20 percent of the voters residing and owning land within the unit.

Each resolution shall be published in the official newspaper of the governing body adopting it and shall become effective 40 days after publication, unless within said period there shall be filed with the governing body a petition signed by qualified electors of a territorial unit of the proposed district, equal in number to five percent of the number of such electors voting at the last preceding election of the governing body, requesting a referendum on the resolution, in which case the resolution may not become effective until approved by a majority of the qualified electors voting at a regular election or special election which the governing body may call. The notice of any election and the ballot to be used shall contain the text of the resolution followed by the question: "Shall the above resolution be approved?"

If any signer is alleged to be a landowner in a territorial unit, a statement as to the signer's landowner status as shown by the county auditor's tax assessment records, certified by the auditor, shall be attached to or endorsed upon the petition.

Subd. 3. At any time before publication of the public notice required in subdivision 4, or before the public hearing, if required under subdivision 4, additional signatures may be added to the petition or amendments of the petition may be made to correct or remedy any error or defect in signature or otherwise except a material error or defect in the description of the territory of the proposed district. No proceeding shall be invalidated on account of any error or defect in the petition unless questioned by an interested party before the reception of evidence begins at the hearing except a material error or defect in the description of the territory of the proposed district. If the qualifications of any signer of a petition are challenged, the agency or its agent shall determine the challenge forthwith on the allegations of the petition, the county auditor's certificate of land ownership, and such other evidence as may be received.

Subd. 4. (a) Upon receipt of a petition and the record of the public meeting required under subdivision 1, the agency shall publish a notice in the State Register and mail a copy to each property owner in the affected territory at the owner's address as given by the county auditor. The mailed copy must state the date that the notice will appear in the State Register. Copies need not be sent by registered mail. The notice must:

- (1) describe the petition for creation of the district;
- (2) describe the territory affected by the petition;
- (3) allow 30 days for submission of written comments on the petition;
- (4) state that a person who objects to the petition may submit a written request for hearing to the agency within 30 days of the publication of the notice in the State Register; and
- (5) state that if a timely request for hearing is not received, the agency may make a decision on the petition at a future meeting of the agency.

(b) If 25 or more timely requests for hearing are received, the agency must hold a hearing on the petition in accordance with the contested case provisions of chapter 14.

Subd. 5. After the public notice period or the public hearing, if required under subdivision 4; and based on the petition, any public comments received, and, if a hearing was held, the hearing record, the agency shall make findings of fact and conclusions determining whether or not the conditions requisite for the creation of a district exist in the territory described in the petition. If the agency finds that conditions exist, it may make an order creating a district for the territory described in the petition under the name proposed in the petition or such other name, including the words "sanitary district," as the agency deems appropriate.



Subd. 6. If the agency, after the conclusion of the public notice period or the holding of a hearing, if required, determines that the creation of a district in the territory described in the petition is not warranted, it shall make an order denying the petition. The secretary of the agency shall give notice of such denial by mail to each signer of the petition. No petition for the creation of a district consisting of the same territory shall be entertained within a year after the date of an order, but this shall not preclude action on a petition for the creation of a district embracing part of the territory with or without other territory.

Subd. 7. Notice of the making of every order of the agency creating a sanitary district, referring to the date of the order and describing the territory of the district, shall be given by the secretary in like manner as for notice of the hearing on the petition for creation of the district.

Subd. 8. An appeal may be taken from an order of the agency creating or dissolving a district, annexing territory to or detaching territory from a district, or denying a petition for any such action, as now or hereafter provided for appeals from other orders of the agency except that the giving of notice of the order as provided in subdivision 7 shall be deemed notice thereof to all interested parties, and the time for appeal by any party shall be limited to 30 days after completion of the mailing of copies of the order or after expiration of the prescribed period of posting or publication, whichever is latest. The validity of the creation of a district shall not be otherwise questioned.

Subd. 9. Upon expiration of the time for appeal from an order of the agency creating a district, or, in case of an appeal, upon the taking effect of a final judgment of a court of competent jurisdiction sustaining the order, the secretary of the agency shall deliver a certified copy of the order to the secretary of state for filing. Thereupon the creation of the district shall be deemed complete, and it shall be conclusively presumed that all requirements of law relating thereto have been complied with. The secretary of the agency shall also transmit a certified copy of the order for filing to the county auditor of each county and the clerk or recorder of each municipality and organized town wherein any part of the territory of the district is situated and to the secretary of the district board when elected.

**History:** *Ex1961 c 20 s 6; 1969 c 9 s 21; 1982 c 424 s 130; 1986 c 444; 1992 c 601, s 4-9*

## **115.21 ANNEXATION, DETACHMENT, AND DISSOLUTION.**

Subdivision 1. An area adjacent to an existing district may be annexed thereto upon a petition to the agency stating the grounds therefor as hereinafter provided, signed by an authorized officer or officers of the district pursuant to a resolution of the board, also signed with respect to the area proposed for annexation in like manner as provided for a petition for creation of a district. Except as otherwise provided, a proceeding for annexation shall be governed by the provisions now or hereafter in force relating to proceedings for the creation of districts, so far as applicable. For the purpose of giving the required notices the territory involved shall comprise the area proposed for annexation together with the entire territory of the district. If the agency determines that the requisite conditions exist in the area proposed for annexation together with the territory of the district, it may make an order for annexation accordingly. All taxable property within the annexed area shall be subject to taxation for any existing bonded indebtedness or other indebtedness of the district for the cost of acquisition, construction, or improvement of any disposal system or other works or facilities beneficial to the annexed area to such extent as the agency may determine to be just and equitable, to be specified in the order for annexation. The proper officers shall levy further taxes on such property accordingly.

Subd. 2. An area within a district may be detached therefrom upon a petition to the agency stating the grounds therefor as hereinafter provided, signed by an authorized officer or officers of the district pursuant to a resolution of the board, also signed with respect to the area proposed for detachment in like manner as provided for a petition for creation of a district. Except as otherwise provided, a proceeding for detachment shall be governed by the provisions now or hereafter in force relating to proceedings for the creation of districts, so far as applicable. For the purpose of giving the required notices the territory involved shall comprise the entire territory of the district. If the agency determines that the requisite conditions for inclusion in a district no longer exist in the area proposed for detachment, it may make an

order for detachment accordingly. All taxable property within the detached area shall remain subject to taxation for any existing bonded indebtedness of the district to such extent as it would have been subject thereto if not detached, and shall also remain subject to taxation for any other existing indebtedness of the district incurred for any purpose beneficial to such area to such extent as the agency may determine to be just and equitable, to be specified in the order for detachment. The proper officers shall levy further taxes on such property accordingly.

Subd. 3. Different areas may be annexed to and detached from a district in a single proceeding upon a joint petition therefor and upon compliance with the provisions of subdivisions 1 and 2 with respect to the area affected so far as applicable.

Subd. 4. A district may be dissolved upon a petition to the agency stating the grounds for dissolution as hereinafter provided, signed by an authorized officer or officers of the district pursuant to a resolution of the board, and containing a proposal for distribution of the remaining funds of the district, if any, among the related governmental subdivisions. Except as otherwise provided, a proceeding for dissolution shall be governed by the provisions now or hereafter in force relating to proceedings for the creation of districts, so far as applicable. If the commission determines that the conditions requisite for the creation of the district no longer exist therein, that all indebtedness of the district has been paid, and that all property of the district except funds has been disposed of, it may make an order dissolving the district and directing the distribution of its remaining funds, if any, among the related governmental subdivisions on such basis as the agency determines to be just and equitable, to be specified in the order. Certified copies of the order for dissolution shall be transmitted and filed as provided for an order creating a district. The secretary of the agency shall also transmit a certified copy of the order to the treasurer of the district, who shall thereupon distribute the remaining funds of the district as directed by the order, and shall be responsible for such funds until so distributed.

**History:** *Ex1961 c 20 s 7; 1969 c 9 s 21*

#### **115.22 PETITIONERS TO PAY EXPENSES.**

Expenses of the preparation and submission of petitions in proceedings under sections 115.19 to 115.21 shall be paid by the petitioners. Expenses of hearings therein shall be paid out of any available funds appropriated for the agency.

**History:** *Ex1961 c 20 s 8; 1969 c 9 s 21*

#### **115.23 BOARD OF MANAGERS OF DISTRICT.**

Subdivision 1. The governing body of each district shall be a board of managers of five members, who shall be voters residing in the district, and who may but need not be officers, members of governing bodies, or employees of the related governmental subdivisions, except that where there are more than five territorial units in a district there shall be one board member for each unit.

Subd. 2. The terms of the first board members elected after creation of a district shall be so arranged and determined by the electing body as to expire on the first business day in January as follows:

(1) The terms of two members in the second calendar year after the year in which they were elected;

(2) The terms of two other members in the third calendar year after the year in which they were elected;

(3) The term of the remaining member in the fourth calendar year after the year in which the member was elected. In case a board has more than five members the additional members shall be assigned to the groups hereinbefore provided for so as to equalize such groups as far as practicable. Thereafter board members shall be elected successively for regular terms beginning on expiration of the preceding terms and expiring on the first business day in January of the third calendar year thereafter. Each board member shall serve until a successor is elected and has qualified.

Subd. 3. In a district having only one territorial unit all the members of the board shall be elected by the related governing body. In a district having more than one territorial unit the

members of the board shall be elected by the members of the related governing bodies in joint session except as otherwise provided. The electing bodies concerned shall meet and elect the first board members of a new district as soon as practicable after creation of the district, and shall meet and elect board members for succeeding regular terms as soon as practicable after November 1 next preceding the beginning of the terms to be filled, respectively.

Subd. 4. Upon the creation of a district having more than one territorial unit the agency, on the basis of convenience for joint meeting purposes, shall designate one of the related governing bodies as the central related governing body in the order creating the district or in a subsequent special order, of which the secretary of the agency shall notify the clerks or recorders of all the related governing bodies. Upon receipt of such notification, the clerk or recorder of the central related governing body shall immediately transmit the same to the presiding officer of such body. Such officer shall thereupon call a joint meeting of the members of all the related governing bodies to elect board members, to be held at such time as the officer shall fix at the regular meeting place of the officer's governing body or at such other place in the district as the officer shall determine. At least ten days' notice of the meeting shall be given by mail by the clerk or recorder of such body to the clerks or recorders of all the other related governing bodies, who shall immediately transmit such notice to all the members of such bodies, respectively. Subsequent joint meetings to elect board members for regular terms shall be called and held in like manner. The presiding officer and the clerk or recorder of the central related governing body shall act respectively as chair and secretary of the joint electing body at any meeting thereof, but in case of the absence or disability of either of them such body may elect a temporary substitute. A majority of the members of each related governing body shall be required for a quorum at any meeting of the joint electing body.

Subd. 5. Nominations for board members may be made by petitions, each signed by ten or more voters residing and owning land in the district, filed with the clerk, recorder, or secretary of the electing body before the election meeting. No person shall sign more than one petition. The electing body shall give due consideration to all such nominations but shall not be limited thereto.

Subd. 6. In the case of an electing body consisting of a single related governing body, a majority vote of all the members shall be required for an election. In the case of a joint electing body, a majority vote of the members present shall be required for an election. In case of lack of a quorum or failure to elect, a meeting of an electing body may be adjourned to a stated time and place without further notice.

Subd. 7. In any district having more than one territorial unit the related governing bodies, instead of meeting in joint session, may elect a board member by resolutions adopted by all of them separately, concurring in the election of the same person. A majority vote of all the members of each related governing body shall be required for the adoption of any such resolution. The clerks or recorders of the other related governing bodies shall transmit certified copies of such resolutions to the clerk or recorder of the central related governing body. Upon receipt of concurring resolutions from all the related governing bodies, the presiding officer and clerk or recorder of the central related governing body shall certify the results and furnish certificates of election as provided for a joint meeting.

Subd. 8. Any vacancy in the membership of a board shall be filled for the unexpired term in like manner as provided for the regular election of board members.

Subd. 9. The presiding and recording officers of the electing body shall certify the results of each election to the secretary of the agency, to the county auditor of each county wherein any part of the district is situated, and to the clerk or recorder of each related governing body, and shall make and transmit to each board member elected a certificate of the board member's election. Upon electing the first board members of a district, the presiding officer of the electing body shall designate one of them to serve as temporary chair for the purposes of initial organization of the board, and the recording officer of the body shall include written notice thereof to all the board members with their certificates of election.

**History:** *Ex 1961 c 20 s 9; 1969 c 9 s 21; 1986 c 444*

## **115.24 ORGANIZATION AND PROCEDURE OF BOARD.**

Subdivision 1. As soon as practicable after the election of the first board members of a district they shall meet at the call of the temporary chair to elect officers and take other ap-

propriate action for organization and administration of the district. Each board shall hold a regular annual meeting at the call of the chair or otherwise as it shall prescribe on or as soon as practicable after the first business day in January of each year, and such other regular and special meetings as it shall prescribe.

Subd. 2. The officers of each district shall be a chair and a vice-chair, who shall be members of the board, and a secretary and a treasurer, who may but need not be members of the board. The board of a new district at its initial meeting or as soon thereafter as practicable shall elect the officers to serve until the first business day in January next following. Thereafter the board shall elect the officers at each regular annual meeting for terms expiring on the first business day in January next following. Each officer shall serve until a successor is elected and has qualified.

Subd. 3. The board at its initial meeting or as soon thereafter as practicable shall provide for suitable places for board meetings and for offices of the district officers, and may change the same thereafter as it deems advisable. Such meeting place and offices may be the same as those of any related governing body, with the approval of such body. The secretary of the board shall notify the secretary of state, the secretary of the agency, the county auditor of each county wherein any part of the district is situated, and the clerk or recorder of each related governing body of the locations and post office addresses of such meeting place and offices and any changes therein.

Subd. 4. At any time before the proceeds of the first tax levy in a district become available the district board may prepare a budget comprising an estimate of the expenses of organizing and administering the district until such proceeds are available, with a proposal for apportionment of the estimated amount among the related governmental subdivisions, and may request the governing bodies thereof to advance funds in accordance with the proposal. Such governing bodies may authorize advancement of the requested amounts, or such part thereof as they respectively deem proper, from any funds available in their respective treasuries. The board shall include in its first tax levy after receipt of any such advancements a sufficient sum to cover the same and shall cause the same to be repaid, without interest, from the proceeds of taxes as soon as received.

**History:** *Ex 1961 c 20 s 10; 1969 c 9 s 21; 1986 c 444*

## 115.25 STATUS AND POWERS OF DISTRICT.

Subdivision 1. Every district shall be a public corporation and a governmental subdivision of the state, and shall be deemed to be a municipality or municipal corporation for the purpose of obtaining federal or state grants or loans or otherwise complying with any provision of federal or state law or for any other purpose relating to the powers and purposes of the district for which such status is now or hereafter required by law.

Subd. 2. Every district shall have the powers and purposes prescribed by sections 115.18 to 115.37 and such others as may now or hereafter be prescribed by law. No express grant of power or enumeration of powers herein shall be deemed to limit the generality or scope of any grant of power.

Subd. 3. Except as otherwise provided, a power or duty vested in or imposed upon a district or any of its officers, agents, or employees shall not be deemed exclusive and shall not supersede or abridge any power or duty vested in or imposed upon any other agency of the state or any governmental subdivision thereof, but shall be supplementary thereto.

Subd. 4. All the powers of a district shall be exercised by its board of managers except so far as approval of any action by popular vote or by any other authority may be expressly required by law.

Subd. 5. A district may sue and be sued and may enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

Subd. 6. A district may acquire by purchase, gift, or condemnation or may lease or rent any real or personal property within or without the district which may be necessary for the exercise of its powers or the accomplishment of its purposes, may hold such property for such purposes, and may lease or rent out or sell or otherwise dispose of any such property so far as not needed for such purposes.

Subd. 7. A district may accept gifts, grants, or loans of money or other property from the United States, the state, or any person, corporation, or other entity for district purposes, may enter into any agreement required in connection therewith, and may hold, use, and dispose of such money or property in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

**History:** *Ex1961 c 20 s 11*

## 115.26 SPECIFIC PURPOSES AND POWERS.

Subdivision 1. A district may construct, install, improve, maintain, and operate any system, works, or facilities within or without the district required to control and prevent pollution of any waters of the state within its territory.

Subd. 2. A district may construct, install, improve, maintain, and operate any system, works, or facilities within or without the district required to provide for, regulate, and control the disposal of sewage, industrial waste and other waste originating within its territory. The district may require any person upon whose premises there is any source of sewage, industrial waste, or other waste within the district to connect the same with the disposal system, works, or facilities of the district whenever reasonable opportunity therefor is provided.

Subd. 3. A district may construct, install, improve, maintain, and operate any system, works, or facilities within or without the district required to provide for, regulate, and control the disposal of garbage or refuse originating within the district, and may require any person upon whose premises any garbage or refuse is produced or accumulated to dispose thereof through the system, works, or facilities of the district whenever reasonable opportunity therefor is provided.

Subd. 4. A district may procure supplies of water so far as necessary for any purpose under subdivisions 1, 2, and 3, and may construct, install, improve, maintain, and operate any system, works, or facilities required therefor within or without the district.

Subd. 5. (a) In order to maintain the integrity of and facilitate access to district systems, works, or facilities, the district may maintain and repair a road by agreement with the entity that was responsible for the performance of maintenance and repair immediately prior to the agreement. Maintenance and repair includes, but is not limited to, providing lighting, snow removal, and grass mowing.

(b) A district shall establish a taxing subdistrict of benefited property and shall levy special taxes, pursuant to section 115.33, subdivision 2, for the purposes of paying the cost of improvement or maintenance of a road under paragraph (a).

(c) For purposes of this subdivision, a district shall not be construed as a road authority under chapter 160.

(d) The district and its officers and employees are exempt from liability for any tort claim for injury to person or property arising from travel on a road maintained by the district and related to its maintenance or condition.

**History:** *Ex1961 c 20 s 12; 1996 c 471 art 13 s 2*

## 115.27 DISTRICT PROJECTS AND FACILITIES.

Subdivision 1. For the purpose of constructing, improving, maintaining, or operating any system, works, or facilities designed or used for any purpose under section 115.26, a district, its officers, agents, employees, and contractors may enter, occupy, excavate, and otherwise operate it, upon, under, through, or along any public highway, including a state trunk highway, or any street, park, or other public grounds so far as necessary for such work, with the approval of the governing body or other authority in charge of the public property affected and on such terms as may be agreed upon with such governing body or authority respecting interference with public use, restoration of previous conditions, compensation for damages, and other pertinent matters. If such an agreement cannot be reached after reasonable opportunity therefor, the district may acquire the necessary rights, easements, or other interests in such public property by condemnation, subject to all applicable provisions of law as in case of taking private property, upon condition that the court shall determine that there is paramount public necessity for such acquisition.

Subd. 2. A district may, upon such terms as may be agreed upon with the respective governing bodies or authorities concerned, provide for connecting with or using or may lease or acquire and take over any system, works, or facilities for any purpose under section 115.26 belonging to any other governmental subdivision or other public agency.

Subd. 3. A district may, upon such terms as may be agreed upon with the respective governing bodies or authorities concerned, authorize the use by any other governmental subdivision or other public agency of any system, works, or facilities of the district constructed for any purpose under section 115.26 so far as the capacity thereof is sufficient beyond the needs of the district. A district may extend any such system, works, or facilities and permit the use thereof by persons outside the district, so far as the capacity thereof is sufficient beyond the needs of the district, upon such terms as the board may prescribe.

Subd. 4. A district may be a party to a joint cooperative project, undertaking, or enterprise with any one or more other governmental subdivisions or other public agencies for any purpose under section 115.26 upon such terms as may be agreed upon between the governing bodies or authorities concerned. Without limiting the effect of the foregoing provision or any other provisions of sections 115.18 to 115.37, a district, with respect to any of said purposes, may act under and be subject to the provisions of section 471.59, as now in force or hereafter amended, or any other appropriate law now in force or hereafter enacted providing for joint or cooperative action between governmental subdivisions or other public agencies.

**History:** *Ex1961 c 20 s 13*

#### **115.28 CONTROL OF SANITARY FACILITIES.**

A district may regulate and control the construction, maintenance, and use of privies, cesspools, septic tanks, toilets, and other facilities and devices for the reception or disposal of human or animal excreta or other domestic wastes within its territory so far as necessary to prevent nuisances or pollution or to protect the public health, safety, and welfare, and may prohibit the use of any such facilities or devices not connected with a district disposal system, works, or facilities whenever reasonable opportunity for such connection is provided; provided, that the authority of a district under this section shall not extend or apply to the construction, maintenance, operation, or use by any person other than the district of any disposal system or part thereof within the district under and in accordance with a valid and existing permit heretofore or hereafter issued by the agency.

**History:** *Ex1961 c 20 s 14; 1969 c 9 s 21*

#### **115.29 DISTRICT PROGRAMS, SURVEYS, AND STUDIES.**

A district may develop general programs and particular projects within the scope of its powers and purposes, and may make all surveys, studies, and investigations necessary therefor.

**History:** *Ex1961 c 20 s 15*

#### **115.30 GENERAL AND STATUTORY CITY POWERS.**

A district may do and perform all other acts and things necessary or proper for the effectuation of its powers and the accomplishment of its purposes. Without limiting the effect of the foregoing provision or any other provision of sections 115.18 to 115.37, a district, with respect to each and all of said powers and purposes, shall have like powers as are vested in statutory cities with respect to any similar purposes, and the exercise of such powers by a district and all matters pertaining thereto shall be governed by the provisions of law relating to the exercise of similar powers by statutory cities and matters pertaining thereto, so far as applicable, with like force and effect, except as otherwise provided.

**History:** *Ex1961 c 20 s 16; 1973 c 123 art 5 s 7*

#### **115.31 ADVISORY COMMITTEE.**

The board may appoint an advisory committee with such membership and duties as it may prescribe.

**History:** *Ex1961 c 20 s 17*

**115.32 POWERS OF BOARD.**

Subdivision 1. **Generally.** The board of managers of every district shall have charge and control of all the funds, property, and affairs of the district. With respect thereto, the board shall have like powers and duties as are provided by law for a statutory city council with respect to similar statutory city matters, except as otherwise provided. Except as otherwise provided, the chair, vice-chair, secretary, and treasurer of the district shall have like powers and duties, respectively, as the mayor, acting mayor, clerk, and treasurer of a statutory city. Except as otherwise provided the exercise of the powers and the performance of the duties of the board and officers of the district and all other activities, transactions, and procedures of the district or any of its officers, agents, or employees, respectively, shall be governed by the provisions of law relating to similar matters in a statutory city, so far as applicable, with like force and effect.

Subd. 2. **Regulation of district.** The board may enact ordinances, prescribe regulations, adopt resolutions, and take other appropriate action relating to any matter within the powers and purposes of the district, and may do and perform all other acts and things necessary or proper for the effectuation of said powers and the accomplishment of said purposes. The board may provide that violation of any ordinance shall be a penal offense and may prescribe penalties therefor, not exceeding those prescribed by law for violation of statutory city ordinances.

Subd. 3. **Arrest; prosecution.** Violations of district ordinances may be prosecuted before any court having jurisdiction of misdemeanors. Any constable or other peace officer may make arrests for violations committed anywhere within the district in the same manner as for violations of city ordinances or for statutory misdemeanors.

All fines collected shall be deposited in the treasury of the district.

**History:** *Ex1961 c 20 s 18; 1973 c 123 art 5 s 7; 1983 c 359 s 6; 1986 c 444*

**115.33 TAX LEVIES, ASSESSMENTS, AND SERVICE CHARGES.**

Subdivision 1. The board may levy taxes for any district purpose on all property taxable within the district, and for a period of five years from June 5, 1971, the same shall not be subject to any limitation and shall be excluded in computing amounts subject to any limitation on tax levies.

Subd. 2. In the case where a particular area within the district, but not the entire district, is benefited by a system, works, or facilities of the district, the board, after holding a public hearing as provided by law for levying assessments on benefited property, shall by ordinance establish such area as a taxing subdistrict, to be designated by number, and shall levy special taxes on all the taxable property therein, to be accounted for separately and used only for the purpose of paying the cost of construction, improvement, acquisition, maintenance, or operation of such system, works, or facilities, or paying the principal and interest on bonds issued to provide funds therefor and expense incident thereto. Such hearing may be held jointly with a hearing for the purpose of levying assessments on benefited property within the proposed taxing subdistrict.

Subd. 3. The board shall levy assessments on benefited property to provide funds for payment of the cost of construction, improvement, or acquisition of any system, works, or facilities designed or used for any district purpose, or for payment of the principal of and interest on any bonds issued therefor and expenses incident thereto.

Subd. 4. The board shall prescribe service, use, or rental charges for persons or premises connecting with or making use of any system, works, or facilities of the district, prescribe the method of payment and collection of such charges, and provide for the collection thereof for the district by any related governmental subdivision or other public agency on such terms as may be agreed upon with the governing body or other authority thereof.

**History:** *Ex1961 c 20 s 19; 1971 c 826 s 1*

**115.34 BORROWING POWERS; BONDS.**

Subdivision 1. The board may authorize the borrowing of money for any district purpose and provide for the repayment thereof, subject to chapter 475. The taxes initially levied

by any district in accordance with section 475.61 for the payment of its bonds, upon property within each municipality included in the district, shall be included in computing the levy of such municipality.

Subd. 2. The board may authorize the issuance of bonds or obligations of the district to provide funds for the construction, improvement, or acquisition of any system, works, or facilities for any district purpose, or for refunding any prior bonds or obligations issued for any such purpose, and may pledge the full faith and credit of the district or the proceeds of tax levies or assessments or service, use, or rental charges, or any combination thereof, to the payment of such bonds or obligations and interest thereon or expenses incident thereto. An election or vote of the people of the district shall be required to authorize the issuance of any such bonds or obligations. Except as otherwise provided in sections 115.18 to 115.37, the forms and procedures for issuing and selling bonds and provisions for payment thereof shall comply with the provisions of chapter 475, as now in force or hereafter amended.

**History:** *Ex1961 c 20 s 20; 1Sp1981 c 4 art 1 s 72; 1Sp1989 c 1 art 5 s 4*

### 115.35 FUNDS; DISTRICT TREASURY.

The proceeds of all tax levies, assessments, service, use, or rental charges, and other income of the district shall be deposited in the district treasury and shall be held and disposed of as the board may direct for district purposes, subject to any pledges or dedications made by the board for the use of particular funds for the payment of bonds or interest thereon or expenses incident thereto or for other specific purposes.

**History:** *Ex1961 c 20 s 21*

### 115.36 EFFECT OF DISTRICT ORDINANCES AND FACILITIES.

In any case where an ordinance is enacted or a regulation adopted by a district board relating to the same subject matter and applicable in the same area as an existing ordinance or regulation of a related governmental subdivision for the district, the district ordinance or regulation, to the extent of its application, shall supersede the ordinance or regulation of the related governmental subdivision. In any case where an area within a district is served for any district purpose by a system, works, or facilities of the district, no system, works, or facilities shall be constructed, maintained, or operated for the same purpose in the same area by any related governmental subdivision or other public agency except as approved by the district board.

**History:** *Ex1961 c 20 s 22*

### 115.37 APPLICATION.

The provisions of sections 115.18 to 115.37 shall not abridge or supersede any provision of sections 115.01 to 115.09, or any authority of the Minnesota pollution control agency or the state commissioner of health, but shall be subject and supplementary thereto. Districts and members of district boards shall be subject to the authority of the agency and shall have no power or authority to abate or control pollution which is permitted by and in accord with any classification of waters, standards of water quality, or permit established, fixed, or issued by the agency.

**History:** *Ex1961 c 20 s 23; 1969 c 9 s 21; 1977 c 305 s 45; 1987 c 384 art 2 s 1*

## MUNICIPAL WATER POLLUTION CONTROL

### 115.41 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions given in this section shall obtain for the purposes of sections 115.41 to 115.54, except as otherwise expressly provided or indicated by the context.

Subd. 2. **Additional terms.** The definitions given in section 115.01 shall govern for the purposes of sections 115.41 to 115.54, except as otherwise expressly provided or indicated by the context.



Subd. 3. [Repealed, 1969 c 9 s 20]

Subd. 4. MS 1990 [Renumbered subd 6]

Subd. 4. **Agency.** "Agency" means the Minnesota pollution control agency.

Subd. 5. MS 1990 [Renumbered subd 2]

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of administration.

Subd. 6. MS 1990 [Renumbered subd 4]

Subd. 6. **Municipality.** "Municipality" means a city, sanitary district, or other governmental subdivision or public corporation.

**History:** 1963 c 874 s 1; 1969 c 9 s 19; 1973 c 123 art 5 s 7; 1994 c 465 art 1 s 5,6

#### 115.42 POLICY; LONG-RANGE PLAN; PURPOSE.

It is the policy of the state to provide for the prevention, control, and abatement of pollution of all waters of the state, so far as feasible and practical, in furtherance of conservation of such waters and protection of the public health and in furtherance of the development of the economic welfare of the state. The agency shall prepare a long-range plan and program for the effectuation of said policy, and shall make a report of progress thereon to the legislature by November 15 of each even numbered year, with recommendations for action in furtherance of such program during the ensuing biennium. It is the purpose of sections 115.41 to 115.54 to safeguard the waters of the state from pollution by: (a) preventing any new pollution; and (b) abating pollution existing when sections 115.41 to 115.54 become effective, under a program consistent with the declaration of policy above stated.

**History:** 1963 c 874 s 4; 1969 c 9 s 21; 1974 c 406 s 63; 1994 c 465 art 1 s 7

#### 115.43 POWERS.

Subdivision 1. In addition to the other powers prescribed by law, the agency shall have the powers and duties prescribed in this section. In exercising all such powers, the agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom and shall take or provide for such action as may be reasonable, feasible and practical under the circumstances.

Subd. 2. Acting within the scope of the policy and purposes of sections 115.41 to 115.54, the agency may adopt, promulgate, amend, or rescind rules in the manner provided by law, as may be necessary or proper to carry into effect the provisions of sections 115.41 to 115.54.

Subd. 3. [Repealed, 1973 c 374 s 22]

**History:** 1963 c 874 s 5; 1969 c 9 s 21; 1969 c 931 s 7; 1985 c 248 s 70; 1994 c 465 art 1 s 8

#### 115.44 CLASSIFICATION OF WATERS; STANDARDS OF QUALITY AND PURITY.

Subdivision 1. **Variable factors.** It is recognized that, due to variable factors, no single standard of quality and purity of the waters is applicable to all waters of the state or to different segments of the same waters.

Subd. 2. **Classification and standards.** In order to attain the objectives of sections 115.41 to 115.54, the agency after proper study, and after conducting public hearing upon due notice, shall, as soon as practicable, group the designated waters of the state into classes, and adopt classifications and standards of purity and quality therefor. Such classification shall be made in accordance with considerations of best usage in the interest of the public and with regard to the considerations mentioned in subdivision 3 hereof.

Subd. 3. **Adoption of classification.** In adopting the classification of waters and the standards of purity and quality above mentioned, the agency shall give consideration to:

(a) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(b) The character of the district bordering said waters and its peculiar suitability for the particular uses, and with a view to conserving the value of the same and encouraging the most appropriate use of lands bordering said waters, for residential, agricultural, industrial, or recreational purposes;

(c) The uses which have been made, are being made, or may be made of said waters for transportation, domestic and industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial wastes and other wastes or other uses within this state, and, at the discretion of the agency, any such uses in another state on interstate waters flowing through or originating in this state;

(d) The extent of present defilement or fouling of said waters which has already occurred or resulted from past discharges therein;

(e) The need for standards for effluent from disposal systems entering waters of the state;

(f) Such other considerations as the agency deems proper.

**Subd. 4. Standards.** The agency, after proper study, and in accordance with chapter 14, shall adopt and design standards of quality and purity for each classification necessary for the public use or benefit contemplated by the classification. The standards shall prescribe what qualities and properties of water indicate a polluted condition of the waters of the state which is actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare; to terrestrial or aquatic life or to its growth and propagation; or to the use of the waters for domestic, commercial and industrial, agricultural, recreational, or other reasonable purposes, with respect to the various classes established pursuant to subdivision 2. The standards may also contain other provisions that the agency deems proper. Wherever practicable and advisable, the agency shall establish standards for effluent of disposal systems entering classified waters.

**Subd. 5. Factors.** In establishing such standards, consideration should be given to the following factors:

(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water, may be permitted;

(c) The extent to which organism of the coliform group (intestinal bacilli) or any other bacteriological organisms may be permitted in the water;

(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) Such other chemical or biological properties necessary for the attainment of the objectives of this chapter and, with respect to pollution of the waters of the state, chapter 116.

(f) Wherever deemed practicable and advisable by the agency, standards specifying the quality and purity, or maximum permissible pollutional content, of effluent entering waters of the state may be established without respect to water quality standards; provided, however, that whenever the owner or operator of any point source, after opportunity for public hearing, can demonstrate to the satisfaction of the agency that any effluent limitation proposed for the control of the heat component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of fish and wildlife in and on the body of water into which the discharge is to be made, the agency may impose an effluent limitation for such plan, with respect to the heat component of such discharge, taking into account the interaction of such heat component with other pollutants, that will assure the protection and propagation of a balanced, indigenous population of fish and wildlife in and on that body of water; and provided further that notwithstanding any other provision of this chapter and, with respect to the pollution of the waters of the state, chapter 116, any point source of a discharge having a heat component, the modification of which point source is commenced after May 20, 1973, and which, as modified, meets applicable effluent limitations, and which effluent limitations will assure protection and propagation of a balanced, indigenous population of fish and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the heat component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreci-

ation or amortization of such facility for the purpose of section 167 or 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.

Subd. 6. **Modification of standards.** The adoption, alteration, or modification of the standards of quality and purity in subdivision 4 shall be made by the agency in accordance with chapter 14.

Subd. 7. **Rule notices.** For rules authorized under this section, the notices required to be mailed under sections 14.14, subdivision 1a, and 14.22 must also be mailed to the governing body of each municipality bordering or through which the waters for which standards are sought to be adopted flow.

Subd. 8. **Waiver.** If the agency finds in order to comply with the Federal Water Pollution Control Act or any other federal law or rule or regulation promulgated thereunder that it is impracticable to comply with the requirements of this section in classifying waters or adopting standards or in meeting any of the requirements thereof, compliance with the requirements of such section are waived to the extent necessary to enable the agency to comply with federal laws and rules and regulations promulgated thereunder. The agency may classify waters and adopt criteria and standards in such form and based upon such evidence as it may deem necessary and sufficient for the purposes of meeting requirements of such federal laws, notwithstanding any provisions in this chapter or any other state law to the contrary. In the event waters are classified and criteria and standards are adopted to meet the requirements of federal law, the agency shall thereafter proceed to otherwise comply with the provisions of this section which were waived as rapidly as is practicable. This authority shall extend to proceedings pending before the agency on May 20, 1973.

Notwithstanding the provisions of subdivision 4, wherever advisable and practicable the agency may establish standards for effluent or disposal systems discharging into waters of the state regardless of whether such waters are or are not classified.

**History:** 1963 c 874 s 6; 1967 c 203 s 1; 1969 c 9 s 21; 1969 c 931 s 8,9; 1973 c 374 s 15,16; 1993 c 180 s 1-3; 1994 c 465 art 1 s 9

## 115.45 VIOLATIONS.

Subdivision 1. It is the duty of every person affected to comply with the provisions of sections 115.01 to 115.09 and 115.41 to 115.54, comprising the State Water Pollution Control Act, as now in force or hereafter amended, and all rules, orders, and permits adopted or issued by the agency thereunder, and to do and perform all acts and things within that person's power required to effectuate, carry out, and accomplish the purposes of such provisions, rules, orders, and permits.

Subd. 2. [Repealed, 1973 c 374 s 22]

**History:** 1963 c 874 s 7; 1969 c 9 s 21; 1969 c 931 s 10; 1985 c 248 s 70; 1986 c 444; 1994 c 465 art 1 s 10

## 115.46 TAXATION BY MUNICIPALITY.

Subdivision 1. Any taxes, special assessments, levied or to be levied, and any bonds or other evidences of indebtedness issued or to be issued for the construction, installation, maintenance, or operation by a municipality of any disposal system or part thereof, shall not be subject to any limitation and shall be excluded in computing amounts subject to any limitation on tax levies, special assessments, bonded indebtedness or other indebtedness and the governing or managing body and the proper officers of the municipality concerned shall have the power and, to comply with any order of the agency, it shall be their duty to levy such taxes and special assessments and issue such bonds and take such other lawful actions as may be appropriate and necessary to provide funds to meet the cost of such construction or work, notwithstanding any such limit and without any election or referendum therefor. A recital in any bond, tax levy, or assessment that the same is issued or made for the purposes of a disposal system or any part thereof ordered by the agency and is not subject to any provisions of law prescribing limits or requiring an election or referendum therefor shall be prima facie evidence thereof and that all requirements of law relating thereto have been complied with. In any suit, action, or proceedings involving the validity or enforceability of any bonds of a municipality or the security therefor, any such bond reciting in substance that it has been issued

by the municipality to aid in financing a sewage disposal system or part thereof, shall be conclusively deemed to have been issued for such purpose, and in compliance with all requirements of the law relating thereto.

Subd. 2. For the same purposes as the purposes for which a tax may be levied under subdivision 1, a municipality may levy taxes in anticipation of need and the provision of subdivision 1 shall be applicable so far as appropriate to any such anticipatory levy. If such a tax is levied in anticipation of need, the purpose must be specified in the resolution of the governing body directing the levy, and proceeds of the tax must be used only for that purpose, and until used the proceeds shall be retained in a separate fund or invested as surplus in a sinking fund may be invested under section 118A 04.

**History:** 1963 c 874 s 8; 1969 c 9 s 21; 1996 c 399 art 2 s 12

**115.47** [Repealed, 1973 c 374 s 22]

#### **115.48 ASSUMPTION OF POWER BY AGENCY.**

Subdivision 1. In lieu of enforcement action as provided by section 115.071, the agency, in case of failure by any municipality or its governing or managing body or officers to comply with any order of the agency for the construction, installation, maintenance, or operation of a disposal system or part thereof, may by resolution assume the powers of the legislative authority of the municipality and confer on the commissioner the powers of the administrative officers of the municipality relating to the construction, installation, maintenance, or operation of a disposal system, or part thereof, or issuing bonds and levying taxes therefor, after holding a hearing on the case as provided by Minnesota Statutes 1961, sections 115.03 and 115.05, upon notice specifying the particulars of the alleged failure to comply with the order and the powers proposed to be assumed for the purpose of remedying such failure. The resolution shall include or have attached thereto a copy of the order, shall set forth the findings of the agency as to failure of compliance therewith after the hearing thereon, and shall set forth the powers assumed and determine the action to be taken. Certified copies of the resolution and order shall be transmitted by the secretary of the agency to the commissioner and to the clerk or other recording officer of the municipality concerned. The resolution and order and certified copies thereof shall be prima facie evidence that the order is reasonable and valid, that all requirements of law relating thereto and to the hearing thereon have been complied with by the agency, that the municipality and its governing or managing body and officers have failed to comply with the order as set forth in the resolution, and that the powers so assumed are vested in the agency and the commissioner as therein set forth. Thereupon the agency and the commissioner shall have charge of the case, and all other proceedings for enforcement of the order shall be suspended until the authority of the commissioner in the case has been terminated as hereinafter provided. At this stage of the case there is a right of judicial review, and the resolution and attached order shall be deemed a final order for the purpose of judicial review, but failure at this stage to seek judicial review does not preclude judicial relief at a subsequent stage where, and in a manner, otherwise appropriate.

Subd. 2. Upon the assumption of powers as provided in subdivision 1, all the powers of the municipality and its governing or managing body and officers with respect to the subject matter of the order shall thereby be forthwith transferred to and vested in the agency and the commissioner, and they shall thereafter exercise the same in the name of the municipality or its governing or managing body or officers, as the case may require, until terminated as hereinafter provided. Such powers shall include, without limitation, the power to levy taxes, to certify such taxes for collection, to levy assessments on benefited property, to prescribe service or use charges, to borrow money, to issue bonds, to employ necessary assistance, to acquire necessary real or personal property, to let contracts or otherwise provide for the doing of work or the construction, installation, maintenance, or operation of facilities, and to do and perform for the municipality or its governing or managing body or officers all other acts and things required to effectuate, carry out, and accomplish the purposes of the order and which might have been done or performed by the municipality or its governing or managing body or officers. The exercise of any and all such powers by the agency and the commissioner shall have like force and effect as if the same had been exercised by the municipality or by its governing or managing body or officers. All such acts or things done or performed by the agency

or the commissioner shall be prima facie lawful and valid, and it shall be presumed that all requirements of law or charter relating thereto have been complied with. Any bond pursuant to this section in the hands of a holder in good faith and for value reciting that such bond is issued for the purposes of a disposal system, or part thereof, pursuant to the order of the agency under this section shall be conclusively deemed to have been issued for such purpose and in compliance with all requirements of law relating thereto and shall be a valid and binding instrument enforceable against the municipality in accordance with its terms. The impact on a municipality of taxes or special assessments which are likely to result from compliance with an order made under section 115.43, subdivision 3, clause (1), weighed against the urgency of the need for compliance in the light of public health and the policy and purposes of sections 115.41 to 115.53 shall be a relevant consideration in any judicial inquiry into the reasonableness of the order.

Subd. 3. Except as otherwise provided herein, all proceedings of the agency or the commissioner under subdivision 2 shall be governed by the laws or charter provisions governing like proceedings of the governing or managing body or administrative officers of the municipality, so far as applicable, and they shall have like powers and duties with respect thereto as the governing or managing body, the mayor or other presiding officer, the clerk or other recording officer, and any other officer of the municipality having authority in the matter, respectively. In any case where the governing or managing body of the municipality is required to act by motion, resolution, or ordinance, the adoption thereof by resolution or order of the agency shall have like force and effect as adoption by the governing or managing body and approval by the mayor or other presiding officer of the municipality, if required.

Subd. 4. If at any time while the agency and the commissioner have charge of a case as provided in this section, the governing or managing body or the officers or the municipality concerned shall offer to exercise their powers and perform their duties with respect to the subject matter in accordance with the order of the agency, the agency may by order, of which certified copies shall be transmitted to the secretary of the agency and to the clerk or other recording officer of the municipality, reinstate such powers to the extent and subject to any conditions specified in the order, and the governing or managing body or officers of the municipality may thereupon exercise such powers accordingly. Such reinstatement may be revoked by the agency by order in like manner in case it shall determine that the affected powers have not been properly or effectively exercised by the governing or managing body or the officers of the municipality.

Subd. 5. If, at any time while the agency and the commissioner have charge of a case hereunder, the agency shall determine that the further exercise of the powers of the municipality assumed in the case will not be feasible or will not be the most effective procedure for accomplishing the purposes of the agency's order involved, it may by order so declare. Certified copies of the order shall be transmitted by the secretary of the agency to the commissioner and the clerk or other recording officer of the municipality concerned. Thereupon the powers assumed shall be revested in the municipality, and the agency may proceed with the enforcement of its order in such manner as may be authorized by law.

**History:** 1963 c 874 s 10; 1969 c 9 s 21; 1976 c 2 s 51

## **115.49 COOPERATION BETWEEN MUNICIPALITIES; CONTRACTS.**

Subdivision 1. **Generally.** If the agency determines after a hearing on the subject matter that cooperation between two or more municipalities is necessary to provide for areawide waste management and treatment, in accordance with the Federal Water Pollution Control Act, as amended, or to prevent, control, or abate pollution, it may adopt a resolution so declaring and determining whether it will be feasible to secure such cooperation by contract between the municipalities concerned.

Subd. 2. **Procedure by contract.** If the agency determines that procedure by contract will be feasible it may issue an order so declaring, setting forth the general purposes and terms of a proposed contract under any applicable law, determining, among other things, which of the municipalities concerned shall have charge of any facilities constructed, and directing the municipalities concerned to formulate and execute such contract within such time as the agency may specify in the order, but not less than 90 days from the date of mailing copies of the order to the clerks or other recording officers of such municipalities or service

thereof upon them. If a contract approved by the agency as sufficient for the purposes set forth in the order is not made within the time therein specified, the agency may refer the case to the commissioner as provided in section 115.48. Thereupon and thereby all the appropriate contractual powers of each municipality concerned and its governing or managing body and officers shall be transferred to and vested in the commissioner. The commissioner may then formulate a contract in accordance with the agency's order, with necessary counterparts, and execute the same in the name of each municipality concerned, with like force and effect as if executed by their officers as provided by law or charter. An executed counterpart of the contract shall be delivered or sent by certified mail by the commissioner to the clerk or other recording officer of each municipality concerned, and the contract shall thereupon take effect and be binding on such municipalities.

**Subd. 2a. Extension of service.** If a determination or order is made by the pollution control agency under this section that cooperation by contract is necessary and feasible between a municipality and an unincorporated area located outside the existing corporate limits of a municipality, the municipality being required to provide or extend through a contract a governmental service to an unincorporated area, during the statutory 90-day period provided in this section to formulate a contract, may in the alternative to formulating a service contract to provide or extend the service, declare the unincorporated area as described in the pollution control agency's determination letter or order annexed to the municipality under section 414.0335.

**Subd. 3. Contract may be changed.** Any contract for disposal of sewage, industrial wastes, or other wastes or for the construction, maintenance, or operation of any facilities therefor heretofore or hereafter executed between two or more municipalities may be renegotiated, reviewed, and revised or modified with respect to rates or charges or any other provision by agreement of the parties to the contract, any provision of law, charter, or the contract to the contrary notwithstanding.

**Subd. 4. New rates and charges.** Any municipality which is a party to a contract for any of the purposes specified in subdivision 3 and which operates a plant for the disposal of sewage, industrial wastes, or other wastes, or which is a city of the first class comprising a part of a sanitary district under chapter 445 may, upon written notice to the other party or parties, fix new rates and charges for the service performed under the contract, notwithstanding any provision of law, charter, or the contract to the contrary. Any other party or parties to such a contract with a municipality which operates such a plant, or with a city of the first class comprising a part of a sanitary district under chapter 445 may, upon written notice to such municipality, demand that new rates and charges be fixed for service performed under the contract, notwithstanding any provision of law, charter, or the contract to the contrary. Whenever notice is given as provided herein, it shall be the duty of the municipality operating the plant for the disposal of sewage, industrial wastes, or other wastes, or a city of the first class comprising a part of a sanitary district under chapter 445, to hold a hearing for the determination of proper rates and charges. A valid notice given under this subdivision of a demand to fix new rates and charges as to any contract precludes another such notice by any party as to that contract for a period of five years from the time of the notice, or the time of dismissal of proceedings under a notice, or the time of determination of rates and charges by the affected agencies or by judgment, as the case may be, whichever of these events is last, but there may always be a contract change under subdivision 3; provided there can be no such demand as of right within the first five years of a contract. A municipality which may be affected by determination of new rates and charges in such a proceeding may participate in the proceeding as an interested third party by filing a notice of its intention to so participate with the clerk of the municipality to which the original notice was directed. If any party to the contract involved in the proceeding initiated by notice of demand for new rates and charges is dissatisfied with the rates and charges as set in the proceeding it may within 30 days after such determination by written notice given to the other party or parties elect to submit the matters in dispute to a board of arbitration which shall be created as follows: The municipality making such written election shall in such written election appoint a referee; the other municipality shall within ten days after such election and appointment also appoint a referee; the two referees shall appoint a third referee, or if they fail for ten days to do so, unless the municipalities mutually extend the time for them to do so the district court of a judicial district which is mutually agreeable to the

municipalities shall make the appointment of the third referee. A decision of the majority of the board shall be a decision of the board. Each municipality shall pay the compensation of the referee appointed by it, and one-half of the compensation of the third referee, such compensation to be at the rate usually charged by such person for services in the person's profession or occupation. The hearing initiated by the notice of demand to fix new rates and charges and all proceedings in connection therewith shall be in conformity with sections 14.57 to 14.62 and the municipality conducting the hearing is an agency as such term is used in such sections. Any party to the contract aggrieved by the decision or order made in conformity with such provisions shall be entitled to judicial review in the district court in the county in which such decision or order was made and in the manner provided in subdivision 5. The new rates and charges established by the agency upon the initial demand will continue until the proper rates and charges are finally determined, notwithstanding submission to arbitration or judicial review, but the order or judgment which finally determines legality will provide for adjustment of overpayment or underpayment, if any, during the period after the new rates and charges were initially fixed.

All records of any municipality relating to such rates and charges shall be available at all reasonable times for examination by any municipality.

**Subd. 5. Appeals.** Any party to the contract aggrieved by a decision or order shall be entitled to judicial review by serving a petition for review upon the municipality making the decision or order, and filing it with proof of service in the office of the court administrator within 30 days after the decision or order has been made and the parties notified of it. The petition shall state the nature of the petitioner's interest, and the ground or grounds upon which the petitioner contends the decision or order should be reversed or modified. The petition may be amended by leave of court, though the time for serving it has expired.

Within 20 days after service of the petition for review, the municipality shall serve upon the petitioner an answer stating its position with reference to the reversal or modification of the order or decision under review. The answer, with proof of service, shall be filed with the clerk of the district court within ten days after service. No further pleadings shall be necessary. The review shall be noticed for trial as in the case of a civil action and shall take precedence over other civil cases for trial.

The institution of the proceeding for review shall not stay enforcement of the order or decision, but the court may order a stay upon such terms as it deems proper.

Within 30 days after service of the petition for review upon the municipality, or within such further time as the court may allow, the municipality shall transmit to the court the original or a certified copy of the entire record of the proceedings in which the order or decision under review was made. By stipulation of the parties to the review proceeding, the record may be shortened by eliminating any portion of it. The record may be typewritten or printed and the exhibits may be typewritten, photostated or otherwise reproduced, or upon motion of any party, or by order of the court, the original exhibits shall accompany the record. The court may require or permit substantial corrections or additions to the record when deemed desirable.

If, before the date set for trial, an application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material, the court may order that the additional evidence be taken upon terms the court deems proper.

The review shall be conducted by the court without a jury. The court may affirm, reverse or modify the order or decision if the substantial rights of the petitioner have been prejudiced as a result of the order or decision being:

- (1) contrary to constitutional rights or privileges;
- (2) in excess of the statutory authority or jurisdiction of the agency, or affected by other error of law;
- (3) made or promulgated upon unlawful procedure;
- (4) unsupported by substantial evidence in view of the entire record as submitted; or
- (5) arbitrary or capricious.

Any party may appeal from the final judgment of the district court as in other civil cases.

No party to the review in any court is entitled to recover costs, attorney's fees, witness fees, or any other disbursement.

**Subd. 6. Rates and charges to be reasonable.** All rates and charges shall be reasonable and shall be sufficient to compensate for all costs of devoting the sewage disposal plant, equipment, its collector system, and personnel to the accomplishment of the purpose of the service to be rendered but shall not include profit. When the sewer system of any municipality or any part thereof is devoted to the use of another municipality, all charges for such use shall be reasonable and shall be sufficient to compensate for all costs of such use, but shall not include profit.

**Subd. 7. Agreement by parties.** Nothing in subdivision 4 shall preclude the fixing of rates and charges by agreement of the parties under subdivision 3.

**Subd. 8. Remanding to agency.** Any case referred to the commissioner under this section may be remanded to the agency as provided in section 115.48, subdivision 5.

**Subd. 9. Reform or termination of contract.** Any contract ordered by the agency pursuant to this section may be reformed or terminated upon: (1) mutual agreement among all parties to the contract as exhibited by a joint written application to the agency, and approval thereof by the agency; or (2) unilateral application to the agency by certified mail by any party to such a contract, with a copy thereof served by certified mail upon all other parties to the contract, and subsequent order of reformation or termination of the agreement by the agency. The applicant may in its application for reformation or termination seek other relief in addition to said order of reformation or termination, including, but not limited to, an order directing the refund by the municipality operating the disposal system of overpayments made by the municipality being served during the life of the contract, or the further payment by the municipality being served to the municipality operating the disposal system made necessary by the inadequacy of payments made by the municipality being served to the municipality operating the disposal system during the life of the contract. In the event of a unilateral application to the agency, the agency may, after 30 days written notice, hold a public hearing for the purpose of hearing evidence relating to the application. Pursuant to an application under this subdivision, the agency may enter its order reforming or terminating the contract, ordering a refundment of overpayment or payment of underpayment, as aforesaid, or granting any further relief that is reasonable under the circumstances. Any party aggrieved by the agency's decision may thereafter appeal to district court from the agency's order.

**History:** 1963 c 874 s 11; 1969 c 9 s 21; 1973 c 374 s 17,18; 1978 c 674 s 60; 1982 c 424 s 130; 1983 c 247 s 50; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 426 art 1 s 14; 1997 c 202 art 5 s 1

## 115.50 TOWNS, POWERS TO ACT.

For the purposes of carrying out the policy and purposes of sections 115.01 to 115.09 and 115.41 to 115.54, there is hereby conferred upon all towns of this state the power and authority to construct, install, acquire, maintain and operate disposal systems and parts thereof, and to levy taxes, and special assessments, to issue bonds and to do all other things necessary or convenient for such construction, installation, acquisition, maintenance and operation in the same manner and extent and subject to the same limitations as statutory cities.

**History:** 1963 c 874 s 12; 1973 c 123 art 5 s 7; 1994 c 465 art 1 s 11

## 115.51 ENFORCEMENT OF CONTRACTS BETWEEN MUNICIPALITIES.

The provisions of any contract between two or more municipalities for any purpose relating to the prevention, control, or abatement of pollution, whether now in force or hereafter consummated as provided in section 115.49 or otherwise, may be enforced by action to compel performance brought by any municipality which is a party to the contract or by the attorney general in the name of the state at the request of the agency. In any such action the court shall have like powers as provided in section 115.071, subdivision 5, for enforcement of an order of the agency.

**History:** 1963 c 874 s 13; 1969 c 9 s 21; 1976 c 2 s 52



**115.52 SEVERABILITY.**

The provisions of sections 115.41 to 115.54 shall be severable and the invalidity of any section or subdivision or part thereof shall not make void any other section or subdivision or part thereof.

**History:** 1963 c 874 s 14; 1994 c 465 art 1 s 12

**115.53 MODIFICATION OF CLASSIFICATION OR STANDARDS.**

In any case where the agency has heretofore adopted and established a classification or standards for any waters as then provided by law, the agency, at any hearing held pursuant to the provisions of this section for the purpose of modification, alteration, or amendment of such classification or standards or the adoption and establishment of any classification or standards for the same waters or any part thereof as required by sections 115.41 to 115.54, may receive and consider for any such purpose any testimony received at such previous hearing, as reported in the stenographic transcript thereof, and any exhibits received at such previous hearing, which are relevant, with like force and effect and subject to like objections, if any, as if such testimony or exhibits had been produced at the hearing hereunder, together with any further testimony or exhibits which may be submitted and received at the hearing hereunder.

**History:** 1963 c 874 s 15; 1969 c 9 s 21; 1994 c 465 art 1 s 13

**115.54 TECHNICAL ADVISORY COMMITTEE.**

The agency shall adopt and revise rules governing waste water treatment control under this chapter or chapter 116 only with the advice of a technical advisory committee of seven members. One member of the committee shall be selected by each of the following: the state Consulting Engineers Council, the Minnesota chapter of the Central States Water Pollution Control Federation, the Association of Minnesota Counties, the state Wastewater Treatment Plant Operators Association, the metropolitan council, the state Association of Small Cities, and the League of Minnesota Cities. The technical advisory committee may review and advise the agency on any rule or technical requirements governing the wastewater treatment grant or loan program and may review the work of other professional persons working on a wastewater treatment project and make recommendations to those persons, the agency, and the concerned municipality, in order for the agency to ensure that water quality treatment standards will be met. The committee shall meet at least once a year, or at the call of the chair, and shall elect its chair. The agency must provide staff support for the committee, prepare committee minutes, and provide information to the committee it may request. A quorum is a simple majority and official action must be by a majority vote of the quorum. The committee expires as provided in section 15.059, subdivision 5.

**History:** 1986 c 444; 1986 c 465 art 3 s 2; 1988 c 629 s 17; 1993 c 180 s 4; 1994 c 628 art 3 s 7

**NOTE** See section 15.059, subdivision 5a, for expiration of wastewater treatment technical advisory committee

## INDIVIDUAL AND ALTERNATIVE DISCHARGING SEWAGE TREATMENT SYSTEMS

**115.55 INDIVIDUAL SEWAGE TREATMENT SYSTEMS.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section and section 115.56.

(b) "Advisory committee" means the advisory committee on individual sewage treatment systems established under the individual sewage treatment system rules. The advisory committee must be appointed to ensure geographic representation of the state and include elected public officials.

(c) "Applicable requirements" means:

- (1) local ordinances that comply with the individual sewage treatment system rules, as required in subdivision 2; or
- (2) in areas not subject to the ordinances described in clause (1), the individual sewage treatment system rules.

- (d) "City" means a statutory or home rule charter city.
  - (e) "Commissioner" means the commissioner of the pollution control agency.
  - (f) "Dwelling" means a building or place used or intended to be used by human occupants as a single-family or two-family unit.
  - (g) "Individual sewage treatment system" or "system" means a sewage treatment system, or part thereof, serving a dwelling, other establishment, or group thereof, that uses sub-surface soil treatment and disposal.
  - (h) "Individual sewage treatment system professional" means an inspector, installer, site evaluator or designer, or pumper.
  - (i) "Individual sewage treatment system rules" means rules adopted by the agency that establish minimum standards and criteria for the design, location, installation, use, and maintenance of individual sewage treatment systems.
  - (j) "Inspector" means a person who inspects individual sewage treatment systems for compliance with the applicable requirements.
  - (k) "Installer" means a person who constructs or repairs individual sewage treatment systems.
  - (l) "Local unit of government" means a township, city, or county.
  - (m) "Pumper" means a person who maintains components of individual sewage treatment systems including, but not limited to, septic, aerobic, and holding tanks.
  - (n) "Seasonal dwelling" means a dwelling that is occupied or used for less than 180 days per year and less than 120 consecutive days.
  - (o) "Site evaluator or designer" means a person who:
    - (1) investigates soils and site characteristics to determine suitability, limitations, and sizing requirements; and
    - (2) designs individual sewage treatment systems.
- Subd. 2. **Local ordinances.** (a) All counties that did not adopt ordinances by May 7, 1994, or that do not have ordinances, must adopt ordinances that comply with individual sewage treatment system rules by January 1, 1999, unless all towns and cities in the county have adopted such ordinances. County ordinances must apply to all areas of the county other than cities or towns that have adopted ordinances that comply with this section and are as strict as the applicable county ordinances. Any ordinance adopted by a local unit of government before May 7, 1994, to regulate individual sewage treatment systems must be in compliance with the individual sewage treatment system rules by January 1, 1998.
- (b) A copy of each ordinance adopted under this subdivision must be submitted to the commissioner upon adoption.
  - (c) A local unit of government must make available to the public upon request a written list of any differences between its ordinances and rules adopted under this section.
- Subd. 3. **Rules.** (a) The agency shall adopt rules containing minimum standards and criteria for the design, location, installation, use, and maintenance of individual sewage treatment systems. The rules must include:
- (1) how the agency will ensure compliance under subdivision 2;
  - (2) how local units of government shall enforce ordinances under subdivision 2, including requirements for permits and inspection programs;
  - (3) how the advisory committee will participate in review and implementation of the rules;
  - (4) provisions for alternative systems;
  - (5) provisions for handling and disposal of effluent;
  - (6) provisions for system abandonment;
  - (7) procedures for the commissioner to approve new individual sewage treatment system technologies; and
  - (8) procedures for variances, including the consideration of variances based on cost and variances that take into account proximity of a system to other systems.
- (b) The agency shall consult with the advisory committee before adopting rules under this subdivision.

Subd. 4. **Compliance with rules required; enforcement.** (a) A person who designs, installs, alters, repairs, maintains, pumps, or inspects all or part of an individual sewage treatment system shall comply with the applicable requirements.

(b) Local units of government may enforce, under section 115.071, subdivisions 3 and 4, ordinances that are applicable requirements.

Subd. 5. **Inspection.** (a) An inspection shall be required for all new construction or replacement of a system to determine compliance with agency rule or local standards. The manner and timing of inspection may be determined by the applicable local ordinance. The inspection requirement may be satisfied by a review by the designated local official of video, electronic, photographic, or other evidence of compliance provided by the installer.

(b) Except as provided in subdivision 5b, paragraph (b), a local unit of government may not issue a building permit or variance for the addition of a bedroom on property served by a system unless the system is in compliance with the applicable requirements, as evidenced by a certificate of compliance issued by a licensed inspector or site evaluator or designer. A local unit of government may temporarily waive the certificate of compliance requirement for a building permit or variance for which application is made during the period from November 1 to April 30, provided that an inspection of the system is performed by the following June 1 and the applicant submits a certificate of compliance by the following September 30. This paragraph does not apply if the local unit of government does not have an ordinance requiring a building permit to add a bedroom.

(c) A certificate of compliance for an existing system is valid for three years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

(d) A certificate of compliance for a new system is valid for five years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

(e) A licensed inspector who inspects an existing system may subsequently design and install a new system for that property, provided the inspector is licensed to install individual sewage treatment systems.

Subd. 5a. **Inspection criteria for existing systems.** (a) An inspection of an existing system must evaluate the criteria in paragraphs (b) to (h).

(b) If the inspector finds one or more of the following conditions:

- (1) sewage discharge to surface water;
- (2) sewage discharge to ground surface;
- (3) sewage backup; or

(4) any other situation with the potential to immediately and adversely affect or threaten public health or safety,

then the system constitutes an imminent threat to public health or safety and, if not repaired, must be upgraded, replaced, or its use discontinued within ten months of receipt of the notice described in subdivision 5b, or within a shorter period of time if required by local ordinance.

(c) An existing system that has none of the conditions in paragraph (b), and has at least two feet of soil separation need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more restrictive.

(d) Paragraph (c) does not apply to systems in shoreland areas regulated under sections 103F.201 to 103F.221, wellhead protection areas as defined in section 103I.005, or those used in connection with food, beverage, and lodging establishments regulated under chapter 157.

(e) If the local unit of government with jurisdiction over the system has adopted an ordinance containing local standards pursuant to subdivision 7, the existing system must comply with the ordinance. If the system does not comply with the ordinance, it must be upgraded, replaced, or its use discontinued according to the ordinance.

(f) If a seepage pit, drywell, cesspool, or leaching pit exists and the local unit of government with jurisdiction over the system has not adopted local standards to the contrary, the

system is failing and must be upgraded, replaced, or its use discontinued within the time required by subdivision 3 or local ordinance.

(g) If the system fails to provide sufficient groundwater protection, then the local unit of government or its agent shall order that the system be upgraded, replaced, or its use discontinued within the time required by rule or the local ordinance.

(h) The authority to find a threat to public health under section 145A.04, subdivision 8, is in addition to the authority to make a finding under paragraphs (b) to (d).

**Subd. 5b. Compliance notice.** (a) If a system inspected under subdivision 5 is required to be upgraded, replaced, or its use discontinued under subdivision 5a, the inspector or site evaluator or designer must issue a notice of noncompliance to the property owner and must provide a copy of the notice to the unit of government with jurisdiction. The notice of noncompliance must specify why the system must be upgraded, replaced, or its use discontinued. A local unit of government must specify the upgrade time period in its ordinance.

(b) Except as provided in subdivision 5a, paragraphs (b) to (d), if a system installed between May 27, 1989, and January 23, 1996, does not comply with applicable requirements, the property owner has five years from the date of the bedroom building permit to bring the system into compliance.

**Subd. 6. Disclosure of individual sewage treatment system to buyer.** (a) Before signing an agreement to sell or transfer real property, the seller or transferor must disclose in writing to the buyer or transferee information on how sewage generated at the property is managed. The disclosure must be made by delivering a statement to the buyer or transferee that either:

(1) the sewage goes to a facility permitted by the agency; or

(2) the sewage does not go to a permitted facility, is therefore subject to applicable requirements, and describes the system in use, including the legal description of the property, the county in which the property is located, and a map drawn from available information showing the location of the system on the property to the extent practicable. If the seller or transferor has knowledge that an abandoned individual sewage treatment system exists on the property, the disclosure must include a map showing its location. In the disclosure statement the seller or transferor must indicate whether the individual sewage treatment system is in use and, to the seller's or transferor's knowledge, in compliance with applicable sewage treatment laws and rules.

(b) Unless the buyer or transferee and seller or transferor agree to the contrary in writing before the closing of the sale, a seller or transferor who fails to disclose the existence or known status of an individual sewage treatment system at the time of sale, and who knew or had reason to know of the existence or known status of the system, is liable to the buyer or transferee for costs relating to bringing the system into compliance with the individual sewage treatment system rules and for reasonable attorney fees for collection of costs from the seller or transferor. An action under this subdivision must be commenced within two years after the date on which the buyer or transferee closed the purchase or transfer of the real property where the system is located.

**Subd. 7. Local standards.** (a) **Existing systems.** Counties may adopt by ordinance local standards that are less restrictive than the agency's rules in order to define an acceptable existing system. The local standards may include soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, extent of area to be covered by local standards, groundwater flow patterns, and existing natural or artificial drainage systems. The local standards and criteria shall be submitted to the commissioner for comment prior to adoption to demonstrate that, based on local circumstances in that jurisdiction, they adequately protect public health and the environment.

(b) **New or replacement systems.** Counties, after providing documentation of conditions listed in this paragraph to the commissioner, may adopt by ordinance local standards that are less restrictive than the agency's rules for new system construction or replacement in areas of sustained and projected low population density where conditions render conformance to applicable requirements difficult or otherwise inappropriate. Documentation may include a map delineating the area of the county to be served by the local standards, a description of the hardship that would result from strict adherence to the agency's rules, and evi-

dence of sustained and projected low population density. The local standards must protect human health and the environment and be based on considerations that may include, but need not be limited to, soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, extent of area to be covered by local standards, groundwater flow patterns, and existing natural or artificial drainage systems. The local standards must provide cost-effective and long-term treatment alternatives. The draft ordinance incorporating the local standards must be submitted to the local water planning advisory committee, created under section 103B.321, subdivision 3, and then submitted with justification to the commissioner 30 days before adoption for review and comment.

(c) **New or replacement systems; local ordinances.** A local unit of government may adopt and enforce ordinances or rules affecting new or replacement individual sewage treatment systems that are more restrictive than the agency's rules.

(d) **Local standards; conflict with state law.** Local standards adopted under paragraph (a) or (b) must not conflict with any requirements under other state laws or rules or local ordinances, including, but not limited to, requirements for:

- (1) systems in shoreland areas, regulated under sections 103F.201 to 103F.221;
- (2) well construction and location, regulated under chapter 103I; and
- (3) systems used in connection with food, beverage, and lodging establishments, regulated under chapter 157.

The local standards must include references to applicable requirements under other state laws or rules or local ordinances.

Subd. 8. **New technologies.** New individual sewage treatment system technologies may be installed as warrantied systems if not specifically prohibited in local ordinance, provided however that the manufacturer or designer provides to the commissioner documentation of the following:

- (1) how the technology must be used and installed, how it is expected to perform under those conditions, the anticipated design life, and the period to be warrantied under clause (4);
- (2) pertinent existing data, including in-field testing data, that the system will perform as expected;
- (3) financial assurance or documentation of the manufacturer's or designer's financial ability to cover potential replacement and upgrades necessitated by the system failing to meet the performance expectations of clause (1) for the duration of the warranty period; and
- (4) a full warranty effective for the designated warranty period in clause (1), which must be at least five years from the time of installation, covering design, labor, and material costs to remedy failure to meet performance expectations in clause (1) for systems used and installed in accordance with the manufacturer's or designer's instructions.

The commissioner must make available a list of warrantied systems for which documentation has been provided to the commissioner under this subdivision.

**History:** 1994 c 617 s 1; 1995 c 233 art 1 s 5; 1996 c 427 s 1; 1997 c 235 s 1-7; 1997 c 251 s 17; 3Sp1997 c 3, s 12; 1998 c 401 s 40

## 115.56 MANDATORY LICENSING PROGRAM.

Subdivision 1. **Rules.** (a) Pursuant to section 115.03, subdivision 1, by January 1, 1996, the agency shall adopt rules containing standards of licensure applicable to all individual sewage treatment system professionals

The rules must include but are not limited to:

- (1) training requirements that include both classroom and fieldwork components;
- (2) examination content requirements and testing procedures;
- (3) continuing education requirements;
- (4) equivalent experience provisions;
- (5) bonding and insurance requirements;
- (6) schedules for submitting fees; and
- (7) license revocation and suspension and other enforcement requirements.

(b) The agency shall consult with the advisory committee before proposing any rules under this subdivision.

Subd. 2. **License required.** (a) Except as provided in paragraph (b), after March 31, 1996, a person may not design, install, maintain, pump, or inspect an individual sewage treatment system without a license issued by the commissioner.

(b) A license is not required for a person who complies with the applicable requirements if the person is:

(1) a qualified employee of state or local government who has passed the examination described in paragraph (d) or a similar examination;

(2) an individual who constructs an individual sewage treatment system on land that is owned or leased by the individual and functions solely as the individual's dwelling or seasonal dwelling;

(3) a farmer who pumps and disposes of sewage waste from individual sewage treatment systems, holding tanks, and privies on land that is owned or leased by the farmer; or

(4) an individual who performs labor or services for a person licensed under this section in connection with the design, installation, maintenance, pumping, or inspection of an individual sewage treatment system at the direction and under the personal supervision of a person licensed under this section.

A person constructing an individual sewage treatment system under clause (2) must consult with a site evaluator or designer before beginning construction. In addition, the system must be inspected before being covered and a compliance report must be provided to the local unit of government after the inspection.

(c) The commissioner, in conjunction with the University of Minnesota extension service or another higher education institution, shall ensure adequate training exists for individual sewage treatment system professionals.

(d) The commissioner shall conduct examinations to test the knowledge of applicants for licensing and shall issue documentation of licensing.

(e) Licenses may be issued only upon successful completion of the required examination and submission of proof of sufficient experience, proof of general liability insurance, and a corporate surety bond in the amount of at least \$10,000.

(f) Notwithstanding paragraph (e), the examination and proof of experience are not required for an individual sewage treatment system professional who, on the effective date of the rules adopted under subdivision 1, holds a certification attained by examination and experience under a voluntary certification program administered by the agency.

(g) Local units of government may not require additional local licenses for individual sewage treatment system professionals.

(h) A pumper whose annual gross revenue from pumping systems is \$9,000 or less and whose gross revenue from pumping systems during the year ending May 11, 1994, was at least \$1,000 is not subject to training requirements in rules adopted under subdivision 1, except for any training required for initial licensure.

Subd. 2a. **Temporary license.** The agency may issue, for a fee of \$100, a temporary license for an activity listed in subdivision 1, paragraph (a), to a person who:

(1) has submitted to the agency proof of sufficient experience, as determined by the agency, in the activity for which the license is sought; and

(2) has completed training under a voluntary certification program administered by the agency.

A temporary license issued under this subdivision is effective until August 15, 1996.

Subd. 3. **Enforcement.** (a) The commissioner may deny, suspend, or revoke a license, or use any lesser remedy against an individual sewage treatment system professional, for any of the following reasons:

(1) failure to meet the requirements for a license;

(2) incompetence, negligence, or inappropriate conduct in the performance of the duties of an individual sewage treatment system professional;

(3) failure to comply with applicable requirements; or

(4) submission of false or misleading information or credentials in order to obtain or renew a license.

(b) Upon receiving a signed written complaint that alleges the existence of a ground for enforcement action against a person under paragraph (a), the commissioner shall initiate an investigation. Revocation, suspension, or other enforcement action may not be taken before written notice is given to the person and an opportunity is provided for a contested case hearing complying with the provisions of chapter 14.

Subd. 4. **License fee.** The fee for a license required under subdivision 2 is \$100 per year. Revenue from the fees must be credited to the environmental fund.

**History:** 1994 c 617 s 2; 1995 c 233 art 1 s 6; 1996 c 427 s 2,3

## 115.57 INDIVIDUAL SEWAGE TREATMENT SYSTEM OR WATER WELL LOAN PROGRAM.

Subdivision 1. **Purpose.** The legislature finds that a need exists to provide for the creation of a public loan program that assists property owners to finance the site evaluation, design, installation, repair, and replacement of individual sewage treatment systems and to finance the sealing and replacement of wells on privately owned property. Such a public loan program promotes the public health and welfare by furthering the policy of the state of Minnesota to prevent, reduce, and eliminate water pollution. The legislature declares that the actions required to establish and implement a public loan program for the purposes stated in this section are a public purpose and that the execution and financing of such a program is a public purpose.

Subd. 2. **Definitions.** (a) The terms defined in this subdivision and section 115.55, subdivision 1, apply to this section.

(b) "Improvement" means the site evaluation, design, installation, repair, or replacement of an individual sewage treatment system or sealing or replacement of a well.

(c) "Municipality" means a township, city, county, or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

(d) "Property owner" means the owner or owners as recorded on the tax roll of the county where the real property on which the individual sewage treatment system or well is installed, repaired, or replaced is located.

(e) "Well" means a well as defined in section 103I.005, subdivision 21;

(1) that is required to be sealed under section 103I.301, subdivision 1; or

(2) the relocation of which is necessary for compliance with applicable requirements as defined in section 115.55, subdivision 1.

Subd. 3. **Authority.** A municipality may, individually or cooperatively with other municipalities, establish an individual sewage treatment system or well loan program, or both, for the purpose of providing loans to property owners for the site evaluation, design, installation, repair, or replacement of individual sewage treatment systems or for the sealing or replacement of wells on privately owned property. The governing body of a municipality shall provide for the operation and administration of the program by ordinance. A municipality may appoint an administrator to operate the program.

Subd. 4. **Limitations.** Loans may not be used to facilitate new building construction. As used in this subdivision, "facilitate new building construction" includes increasing capacity of an individual sewage treatment system beyond what is reasonably required to serve existing buildings and lots in existing recorded plats.

Subd. 5. **Financing.** A municipality may issue bonds in accordance with chapter 475 to finance the program, except that an election is not required and the obligations are not subject to the general limit on net debt for the municipality. Financing may also be provided by issuing certificates of indebtedness, securing loans, or transferring available funds that the municipality is not obligated by law to use for some other purpose. Funds procured for the individual sewage treatment system or well loan program shall be dedicated to the program.

Subd. 6. **Assessments.** (a) An amount loaned under the program, including accruing interest, shall be a lien against the real property for which the improvement was made and

shall be assessed against the property or properties benefited unless the amount is prepaid. An amount loaned under the program and assessed against the property shall be a priority lien only against subsequent liens.

(b) Upon issuing a loan, the municipality shall provide the property owner a notice that states the following information:

- (1) the amount to be specially assessed against the property;
- (2) the right of the property owner to prepay the entire assessment;
- (3) the public official to whom prepayment must be made;
- (4) the time within which prepayment must be made without the assessment of interest;
- (5) the rate of interest to be accrued if the assessment is not prepaid within the required time period; and
- (6) the period of the assessment.

(c) The municipality shall, by ordinance, provide for a right of property owners to prepay the assessment and may establish such other assessment procedures as determined necessary and consistent with the provisions of this section.

**Subd. 7. Ordinances; construction standards.** A municipality may not establish an individual sewage treatment system loan program unless ordinances in compliance with section 115.55 are in full force and effect. All repairs and improvements made to individual sewage treatment systems under this section shall be performed by a licensed individual sewage treatment system professional and shall comply with section 115.55 and other applicable requirements. All improvements to wells under this section must be made by a well contractor or a limited well contractor, as appropriate, licensed under chapter 103I.

**Subd. 8. Dissolution.** The governing body of a municipality may dissolve the program by ordinance. The ordinance shall provide for the collection of all outstanding assessments, repayment of any remaining indebtedness incurred to finance the program, and the final distribution of any money remaining in the loan fund.

**History:** 1996 c 427 s 4; 1997 c 235 s 8

## **115.58 ALTERNATIVE DISCHARGING SEWAGE SYSTEMS; GENERAL PERMITS.**

**Subdivision 1. Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Alternative discharging sewage system" means a sewage treatment system serving one or more dwellings and other establishments that discharges less than 10,000 gallons of water per day and uses any treatment and disposal methods other than subsurface soil treatment and disposal.

(c) "Permit" means a National Pollutant Discharge Elimination System permit or State Disposal System permit granted to any person for the installation, ownership, management, or control of alternative discharging sewage systems whose operations, emissions, activities, discharges, or facilities are the same or substantially similar.

(d) "Water quality cooperative" means an association of persons organized under chapter 308A to install, own, manage, and control individual sewage treatment systems or alternative discharging sewage systems and provide water quality treatment and management services for its members within a defined geographical area.

(e) "Water quality treatment and management services" means the monitoring and control of alternative discharging sewage systems to eliminate or reduce water pollution from point and nonpoint sources; the management, use, reuse, recycling, or reclamation of land, water, or wastewater for water supply; geothermal heating and cooling; fire protection; irrigation; drainage; open space or green belt preservation; storm water management and control; flood management and control or other purposes that are part of a comprehensive plan to reduce, prevent, or eliminate water pollution.

**Subd. 2. Areawide permit.** The agency may issue an areawide permit for alternative discharging sewage systems where:

- (1) the systems meet all applicable federal and state standards for treatment and discharge of sewage effluents by the agency;



(2) the systems are part of a water quality treatment and management plan to prevent, eliminate, or reduce water pollution within a defined geographic area;

(3) the systems are owned or controlled by a water quality cooperative; and

(4) the water quality cooperative has a service agreement with a local unit of government to provide water quality treatment and management services for the area under section 471A.03.

Subd. 3. **Local ordinance exemption.** Any system which is permitted under subdivision 2 is exempt from the requirements of any local ordinance adopted to conform with section 115.55 if the system complies with the applicable standards for discharges and treatment of sewage effluents.

**History:** 1997 c 216 s 94; 1998 c 254 art 1 s 23

## REGIONAL SANITARY SEWER DISTRICTS

### 115.61 AUTHORITY OF DISTRICT.

A sanitary sewer district, when created as contemplated by sections 115.61 to 115.67, shall be a municipal corporation and governmental subdivision of the state, responsible for acquiring, constructing, improving, extending, operating, and maintaining facilities for the collection, treatment, and disposal of sewage and industrial and other wastes received from the sewer systems of all municipalities within its corporate limits, for the purpose of preventing pollution of public waters in excess of such reasonable standards of purity and quality as may be established by state regulatory agencies pursuant to law. For this purpose it shall have perpetual succession, may sue and be sued; may acquire real and personal property, including easements, within or outside its corporate limits, by purchase, gift, devise, condemnation, lease, or otherwise, which property, while held, used, or occupied by it, shall be exempt from taxation; may manage, control, sell, convey, lease, and otherwise dispose of such property; may make contracts, borrow money, issue bonds, levy taxes and special assessments, and establish and collect charges for services furnished or made available; and may exercise all powers granted any municipality by chapters 117, 412, 429, and 475, sections 471.59, 444.075, and 115.46, and, without limitation by the foregoing, all municipal power necessary or expedient to accomplish said purpose, whether or not necessarily implied from any power herein expressly granted.

**History:** 1965 c 895 s 1

### 115.62 BOARD; MEMBERSHIP; TERM; QUORUM; OFFICERS; COMPENSATION.

All powers of the district shall be exercised by or under authority of resolutions of its board of directors, consisting of one member appointed by the governing body of each municipality situated wholly or partly within its corporate limits, who may but need not be a member of that governing body. The term of each member shall extend to January 1 in the year following appointment, or until a successor is appointed and qualified, or until the member's earlier death, disability, or absence of more than 90 days from the member's municipality. Any resolution may be passed by a majority of the votes cast thereon at a meeting attended by a majority of the members of the board, unless a larger majority or further notice is required by its bylaws, which shall be adopted or amended only by the vote of a majority of all members of the board. The board shall elect a president and vice-president at its first meeting in each year, to serve until the following January 1 or until their respective successors are selected and qualify. Each member of the board shall be reimbursed for actual and necessary expense in the performance of the member's duty and may receive compensation in an amount determined by the board to be reasonable, not exceeding \$25 per day or part thereof for each meeting and not exceeding \$1,000 in any one year.

**History:** 1965 c 895 s 2; 1986 c 444

### 115.63 MANAGER, AUTHORITY; EMPLOYEES.

The chief executive officer of the district shall be a manager who shall be chosen by the board of directors and hold office on the same basis, possess the same qualifications, and

have the same powers and duties with reference to the management of the affairs of the district, as the manager of a statutory city under sections 412.641 to 412.751, except that all appointments of subordinate officers and employees and all employment of professional consultants shall be subject to approval by the board. The district shall comply with the provisions of chapter 353 to permit membership of the manager and all employees in the public employees retirement association.

**History:** 1965 c 895 s 3; 1973 c 123 art 5 s 7

#### **115.64 ACQUISITION OF PROPERTY.**

The acquisition and use of real and personal property by a district created as herein contemplated shall not be subject to restriction or control by any other local government or authority, except by the exercise of police powers under section 169.04.

**History:** 1965 c 895 s 4

#### **115.65 PURPOSE; DUTIES OF DISTRICT; ANNEXATION OF TERRITORY.**

Sanitary sewer districts may be created by or under authority of laws referring to sections 115.61 to 115.67 and enumerating the cities or towns, or portions thereof, which are or may be included therein. The purpose of sections 115.61 to 115.67 is to provide a method by which municipalities in a drainage area designated by law may join together to prevent water pollution in excess of reasonable standards in that area. Each district created as contemplated herein shall be responsible for planning collection, treatment, and disposal facilities for all municipalities in its drainage area, whether or not initially included within its boundaries. Any municipality, by resolution adopted by a majority of all members of its governing body, may request the annexation of all or part of its territory to the district, and the annexation shall become effective when approved by resolution adopted by a majority of all members of the board of directors of the district with the approval of the Minnesota pollution control agency, or by order of the Minnesota pollution control agency made under authority of Laws 1963, chapter 874. Nothing in sections 115.61 to 115.67 shall be construed as abrogating any statutory authority or responsibility of the Minnesota pollution control agency. All territory annexed shall be subject to taxation by the district like other property within its boundaries for the support of its facilities and for the payment of principal and interest thereafter becoming due on its indebtedness, whether authorized or incurred before or after the annexation.

**History:** 1965 c 895 s 5; 1969 c 9 s 21; 1973 c 123 art 5 s 7

#### **115.66 SEVERABILITY.**

If any provision of sections 115.61 to 115.67 or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of sections 115.61 to 115.67 which can be given effect without the invalid provision or application, and to this end the provisions of sections 115.61 to 115.67 and the various applications thereof are declared to be severable.

**History:** 1965 c 895 s 6

#### **115.67 CITATION.**

Sections 115.61 to 115.67 may be cited as the "Regional Sanitary Sewer District Law."

**History:** 1965 c 895 s 7

### **CLASSIFICATION OF WATER FACILITIES AND CERTIFICATION OF OPERATORS**

#### **115.71 DEFINITIONS.**

Subdivision 1. **Applicability.** As used in sections 115.71 to 115.77, the terms defined in this section have the meanings given them.

Subd. 2. [Repealed, 1995 c 180 s 16]

Subd. 3. [Repealed, 1995 c 180 s 16]

Subd. 3a. [Repealed, 1995 c 180 s 16]

Subd. 4. **Council.** "Council" means the water and wastewater treatment operators advisory council established by section 115.741.

Subd. 4a. **Population equivalent.** "Population equivalent" means a number determined by dividing a daily pound load of five-day, 20-degree-centigrade carbonaceous biochemical oxygen demand (CBOD) of raw sewage by 0.17.

Subd. 5. MS 1990 [Renumbered subd 9]

Subd. 5. **Wastewater certificate.** "Wastewater certificate" means a certificate of competency issued by the commissioner of the pollution control agency stating that the wastewater treatment facility operator has met the requirements for the specified operator classification of the certification program.

Subd. 6. MS 1990 [Renumbered subd 5]

Subd. 6. **Wastewater treatment facility.** "Wastewater treatment facility" means any plant, disposal field, lagoon, or other works not specifically mentioned herein, installed for the purpose of collecting, pumping, treating, stabilizing or disposing of sewage, as defined in section 115.01, subdivision 17, which is actually used or intended for use by the public or by any considerable number of persons.

Subd. 7. MS 1990 [Repealed, 1991 c 202 s 42]

Subd. 8. MS 1990 [Renumbered subd 6]

Subd. 8. **Wastewater treatment facility operator.** "Wastewater treatment facility operator" means a person who has direct responsibility for the operation of or operates a wastewater treatment facility.

Subd. 9. MS 1991 SUPP [Renumbered subd 10]

Subd. 9. **Water certificate.** "Water certificate" means a certificate of competency issued by the commissioner of health stating that the water supply system operator has met the requirements for the specified operator classification of the certification program.

Subd. 9a. **Water supply system.** "Water supply system" means a public system providing pumped water for human consumption, if the system has at least 15 service connections or regularly serves at least 25 of the same persons over six months per year.

Subd. 10. MS 1990 [Renumbered subd 8]

Subd. 10. **Water supply system operator.** "Water supply system operator" means a person who has direct responsibility for the operation of or operates a community water supply system or such parts of the system as would affect the quality and safety of the water.

**History:** 1971 c 828 s 1; 1975 c 271 s 4; 1976 c 149 s 21; 1977 c 66 s 9; 1977 c 305 s 45; 1987 c 186 s 15; 1991 c 202 s 2,3; 1995 c 180 s 1-6

## 115.72 RULES.

Subdivision 1. **Classification.** (a) The commissioner of health shall jointly with the agency adopt rules relating to the classification of all water supply systems actually used or intended for use by the public.

(b) The pollution control agency shall jointly with the commissioner of health adopt rules relating to the classification of all wastewater treatment facilities actually used or intended for use by the public or by any considerable number of persons.

(c) The classes described in paragraphs (a) and (b) shall be based on the degree of hazard to public health, the type of unit process, the loading of the plant, and the population served or the population equivalent of the sewage handled.

Subd. 2. **Certification qualifications.** The commissioner of health and the agency shall jointly adopt rules relating to the certification qualifications for each classification of water supply system operators and wastewater facility operators, respectively. The rules must provide for at least one annual examination for each class of certificate and must include, but are not limited to:

- (1) education requirements;
- (2) education substitution provisions;
- (3) experience requirements;

- (4) experience substitution provisions;
- (5) examination content requirements, testing procedures, and criteria for passing;
- (6) certificate renewal requirements;
- (7) schedules for submitting applications and fees; and
- (8) reinstatement requirements for expired, suspended, or revoked certificates.

The advisory council must be consulted before any rules are proposed under this subdivision.

**History:** 1971 c 828 s 2; 1977 c 305 s 45; 1987 c 186 s 15; 1995 c 180 s 7

### 115.73 CERTIFICATION REQUIRED.

A person may not operate a water supply system or wastewater treatment facility unless the system or facility maintains at least one person that:

- (1) is certified in a class equal to or higher than the class of the system or facility; and
- (2) has full and active responsibility for the daily on-site operation of the system or facility, or of a portion of the system or facility if an additional operator or operators with appropriate certification are responsible for the remaining portions.

**History:** 1971 c 828 s 3; 1976 c 149 s 62 subd 6; 1977 c 305 s 45; 1987 c 186 s 15; 1995 c 180 s 8

### 115.74 [Repealed, 1995 c 180 s 16]

### 115.741 ADVISORY COUNCIL ON WATER SUPPLY SYSTEMS AND WASTEWATER TREATMENT FACILITIES.

Subdivision 1. **Purpose; membership.** The advisory council on water supply systems and wastewater treatment facilities shall advise the commissioners of health and the pollution control agency regarding classification of water supply systems and wastewater treatment facilities, qualifications and competency evaluation of water supply system operators and wastewater treatment facility operators, and additional laws, rules, and procedures that may be desirable for regulating the operation of water supply systems and of wastewater treatment facilities. The advisory council is composed of 11 voting members, of whom:

- (1) one member must be from the department of health, division of environmental health, appointed by the commissioner of health;
- (2) one member must be from the pollution control agency, water quality division, appointed by the commissioner of the pollution control agency;
- (3) three members must be certified water supply system operators, appointed by the commissioner of health;
- (4) three members must be certified wastewater treatment facility operators, appointed by the commissioner of the pollution control agency;
- (5) one member must be a representative from an organization representing municipalities, appointed by the commissioner of health with the concurrence of the commissioner of the pollution control agency; and
- (6) two members must be members of the public who are not associated with water supply systems or wastewater treatment facilities. One must be appointed by the commissioner of health and the other by the commissioner of the pollution control agency.

Subd. 2. **Geographic representation.** At least one of the water supply system operators and at least one of the wastewater treatment facility operators must be from outside the seven-county metropolitan area and one wastewater operator must come from the metropolitan council wastewater services.

Subd. 3. **Terms; compensation.** The terms of the appointed members and the compensation and removal of all members are governed by section 15.059. The council expires June 30, 1999.

Subd. 4. **Officers.** When new members are appointed to the council, a chair must be elected at the next council meeting. The department of health representative shall serve as secretary of the council.

**History:** 1995 c 180 s 9

**115.75 OPERATOR CERTIFICATES.**

Subdivision 1. **Issuance.** The commissioners of health and the pollution control agency shall issue certificates to water supply system operators and wastewater treatment facility operators, respectively, who meet the requirements of the rules adopted under section 115.72. Each certificate must indicate the classification of the system or facility which the operator is qualified to operate.

Subd. 2. **Display.** Certificates must be prominently displayed in the office of the operator or other appropriate place on the premises of the plant or treatment facility.

Subd. 3. **Validity.** Certificates are valid for a period of three years unless revoked or suspended by the commissioner of health or the commissioner of the pollution control agency prior to that time. Certificates may be renewed upon application to the appropriate commissioner.

Subd. 4. **Denial, refusal to renew, revocation, and suspension.** The commissioner of health and the commissioner of the pollution control agency may deny, refuse to renew, revoke, or suspend the certification of a water supply system operator or a wastewater treatment facility operator, respectively, in accordance with section 144.99, subdivisions 8 to 10.

Subd. 5. **Expiration.** The certificates of operators who terminate their employment at a water supply system or wastewater treatment facility will remain valid for the unexpired term of the certificate. Operators whose certificates expire under this section may be issued new certificates of a like classification provided appropriate proof of competency is submitted to the appropriate commissioner. Successful completion of an examination may be required.

Subd. 6. **Records.** The commissioner of health shall maintain records relating to certification of water supply system operators, and the commissioner of the pollution control agency shall maintain records relating to certification of wastewater treatment facility operators.

**History:** 1971 c 828 s 5; 1976 c 149 s 62 subd 6; 1977 c 305 s 45; 1986 c 444; 1987 c 186 s 15; 1995 c 180 s 10

**115.76 RECIPROCITY.**

The commissioner of health, in the case of water supply system operators, and the commissioner of the pollution control agency, in the case of wastewater treatment facility operators, upon application, may issue certificates without examination, in a comparable classification to any person who holds a certificate in any state, territory, or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of sections 115.71 to 115.77 and are of a standard not lower than that specified by rules adopted under sections 115.71 to 115.77.

**History:** 1971 c 828 s 6; 1976 c 149 s 62 subd 6; 1977 c 305 s 45; 1985 c 248 s 70; 1987 c 186 s 15; 1995 c 180 s 11

**115.77 FEES.**

Subdivision 1. **Fees established.** The following fees are established for the purposes indicated:

- (1) application for examination, \$32;
- (2) issuance of certificate, \$23;
- (3) reexamination resulting from failure to pass an examination, \$32;
- (4) renewal of certificate, \$23;
- (5) replacement certificate, \$10; and
- (6) reinstatement or reciprocity certificate, \$40.

Subd. 2. **Fees paid to state treasurer.** All fees established in subdivision 1 must be paid to the commissioner of health, in the case of water supply system operators, and to the commissioner of the pollution control agency, in the case of wastewater treatment facility operators. The fees received must be deposited in the state treasury and credited to the special revenue fund.

**History:** 1971 c 828 s 7; 1976 c 149 s 62 subd 6; 1995 c 180 s 12

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WATER POLLUTION CONTROL; SANITARY DISTRICTS

**115.78** [Repealed, 1995 c 180 s 16]

**115.79** [Repealed, 1995 c 180 s 16]

**115.80** [Repealed, 1995 c 180 s 16]

**115.81** [Repealed, 1973 c 374 s 22]

**115.82** [Repealed, 1995 c 180 s 16]

**115.83** [Expired]