CHAPTER 114D

CLEAN WATER LEGACY ACT

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114D.05 CITATION.

This chapter may be cited as the "Clean Water Legacy Act."

History: *2006 c 251 s 2*

114D.10 LEGISLATIVE PURPOSE AND FINDINGS.

Subdivision 1. **Purpose.** The purpose of the Clean Water Legacy Act is to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, by providing authority, direction, and resources to achieve and maintain water quality standards for groundwater and surface waters, including the standards required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d), and other applicable state and federal regulations.

Subd. 2. **Findings.** The legislature finds that:

(1) there is a close link between protecting, enhancing, and restoring the quality of Minnesota's groundwater and surface waters and the ability to develop the state's economy, enhance its quality of life, and protect its human and natural resources;

(2) achieving the state's water quality goals will require long-term commitment and cooperation by all state and local agencies, and other public and private organizations and individuals, with responsibility and authority for water management, planning, and protection; and

(3) all persons and organizations whose activities affect the quality of waters, including point and nonpoint sources of pollution, have a responsibility to participate in and support efforts to achieve the state's water quality goals.

History: *2006 c 251 s 3; 1Sp2011 c 6 art 2 s 13*

114D.15 DEFINITIONS.

Subdivision 1. **Application.** The definitions provided in this section apply to the terms used in this chapter.

Subd. 2. **Citizen monitoring.** "Citizen monitoring" means monitoring of surface water quality by individuals and nongovernmental organizations that is consistent with section 115.06, subdivision 4, and Pollution Control Agency guidance on monitoring procedures, quality assurance protocols, and data management.

Subd. 3. **Clean Water Council or council.** "Clean Water Council" or "council" means the Clean Water Council created pursuant to section 114D.30, subdivision 1.

Subd. 3a. **Comprehensive local water management plan.** "Comprehensive local water management plan" has the meaning given under section 103B.3363, subdivision 3.

Subd. 3b. **Comprehensive watershed management plan.** "Comprehensive watershed management plan" has the meaning given under section 103B.3363, subdivision 3a.

Subd. 4. **Federal TMDL requirements.** "Federal TMDL requirements" means the requirements of section 303(d) of the Clean Water Act, United States Code, title 33, section 1313(d), and associated regulations and guidance.

Subd. 5. **Impaired water.** "Impaired water" means surface water that does not meet applicable water quality standards.

Subd. 6. **Public agencies.** "Public agencies" means all state agencies, political subdivisions, joint powers organizations, and special purpose units of government with authority, responsibility, or expertise in protecting, restoring, or preserving the quality of surface waters, managing or planning for surface waters and related lands, or financing waters-related projects. Public agencies includes the University of Minnesota and other public education institutions.

Subd. 7. **Restoration.** "Restoration" means actions taken to pursue, achieve, and maintain water quality standards for impaired waters.

Subd. 8. **Surface waters.** "Surface waters" means waters of the state as defined in section 115.01, subdivision 22, excluding groundwater as defined in section 115.01, subdivision 6.

Subd. 9. **Third-party TMDL.** "Third-party TMDL" means a TMDL by the Pollution Control Agency that is developed in whole or in part by a qualified public agency other than the Pollution Control Agency consistent with the goals, policies, and priorities in section 114D.20.

Subd. 10. **Total maximum daily load or TMDL.** "Total maximum daily load" or "TMDL" means a scientific study that contains a calculation of the maximum amount of a pollutant that may be introduced into a surface water and still ensure that applicable water quality standards for that water are restored and maintained. A TMDL also is the sum of the pollutant load allocations for all sources of the pollutant, including a wasteload allocation for point sources, a load allocation for nonpoint sources and natural background, an allocation for future growth of point and nonpoint sources, and a margin of safety to account for uncertainty about the relationship between pollutant loads and the quality of the receiving surface water. "Natural background" means characteristics of the water body resulting from the multiplicity of factors in nature, including climate and ecosystem dynamics, that affect the physical, chemical, or biological conditions in a water body, but does not include measurable and distinguishable pollution that is attributable to human activity or influence. A TMDL must take into account seasonal variations.

Subd. 11. **TMDL implementation plan.** "TMDL implementation plan" means a document detailing restoration strategies or activities needed to meet approved TMDL pollutant load allocations for point and nonpoint sources. This could include a WRAPS, a comprehensive watershed management plan, a comprehensive local water management plan, or another document or strategy that the commissioner of the Pollution Control Agency determines to be, in whole or in part, sufficient to provide reasonable assurance of achieving applicable water quality standards.

Subd. 12. **Water quality standards.** "Water quality standards" for Minnesota surface waters are found in Minnesota Rules, chapters 7050 and 7052.

Subd. 13. **Watershed restoration and protection strategy or WRAPS.** "Watershed restoration and protection strategy" or "WRAPS" means a document summarizing scientific studies of a major watershed at approximately a hydrologic unit code 8 scale with strategies designed to achieve and maintain water quality standards and goals.

History: *2006 c 251 s 4; 2013 c 137 art 2 s 12; 1Sp2019 c 4 art 5 s 6-10*

114D.20 IMPLEMENTATION; COORDINATION; GOALS; POLICIES; PRIORITIES.

Subdivision 1. **Coordination and cooperation.** In implementing this chapter, public agencies and private entities shall take into consideration the relevant provisions of local and other applicable water management, conservation, land use, land management, and development plans and programs. Public agencies with authority for local water management, conservation, land use, land management, and development plans shall take into consideration the manner in which their plans affect the implementation of this chapter. Public agencies shall identify opportunities to participate and assist in the successful implementation of this chapter, including the funding or technical assistance needs, if any, that may be necessary. In implementing this chapter, public agencies shall endeavor to engage the cooperation of organizations and individuals whose activities affect the quality of groundwater or surface waters, including point and nonpoint sources of pollution, and who have authority and responsibility for water management, planning, and protection. To the extent practicable, public agencies shall endeavor to enter into formal and informal agreements and arrangements with federal agencies and departments to jointly utilize staff and educational, technical, and financial resources to deliver programs or conduct activities to achieve the intent of this chapter, including efforts under the federal Clean Water Act and other federal farm and soil and water conservation programs. Nothing in this chapter affects the application of silvicultural exemptions under any federal, state, or local law or requires silvicultural practices more stringent than those recommended in the timber harvesting and forest management guidelines adopted by the Minnesota Forest Resources Council under section 89A.05.

Subd. 2. **Goals for implementation.** The following goals must guide the implementation of this chapter:

(1) to identify impaired waters in accordance with federal TMDL requirements and to ensure continuing evaluation of surface waters for impairments;

(2) to submit TMDLs to the United States Environmental Protection Agency in a timely manner in accordance with federal TMDL requirements;

(3) to inform and support strategies for implementing restoration and protection activities with the goal that all waters will have achieved the designated uses applicable to those waters by 2050;

(4) to systematically evaluate waters, to provide assistance and incentives to prevent waters from becoming impaired, and to improve the quality of waters that are listed as impaired;

(5) to promptly seek the delisting of waters from the impaired waters list when those waters are shown to achieve the designated uses applicable to the waters;

(6) to achieve compliance with federal Clean Water Act requirements in Minnesota;

(7) to support effective measures to prevent the degradation of groundwater according to the groundwater degradation prevention goal under section 103H.001; and

(8) to support effective measures to restore degraded groundwater.

Subd. 3. **Implementation policies.** The following policies must guide the implementation of this chapter:

(1) develop regional, multiple pollutant, or watershed TMDLs or WRAPSs, where reasonable and feasible;

(2) maximize use of available organizational, technical, and financial resources to perform sampling, monitoring, and other activities to identify degraded groundwater and impaired waters, including use of citizen monitoring and citizen monitoring data used by the Pollution Control Agency in assessing water quality that meets the requirements established by the commissioner of the Pollution Control Agency;

(3) maximize opportunities for restoration of degraded groundwater and impaired waters, by prioritizing and targeting of available programmatic, financial, and technical resources and by providing additional state resources to complement and leverage available resources;

(4) use existing regulatory authorities to achieve restoration for point and nonpoint sources of pollution where applicable, and promote the development and use of effective nonregulatory measures to address pollution sources for which regulations are not applicable;

(5) use restoration methods that have a demonstrated effectiveness in reducing impairments and provide the greatest long-term positive impact on water quality protection and improvement and related conservation benefits while incorporating innovative approaches on a case-by-case basis;

(6) identify for the legislature any innovative approaches that may strengthen or complement existing programs;

(7) identify and encourage implementation of measures to prevent surface waters from becoming impaired and to improve the quality of waters that are listed as impaired but have no approved TMDL addressing the impairment using the best available data and technology, and establish and report outcome-based performance measures that monitor the progress and effectiveness of protection and restoration measures;

(8) monitor and enforce cost-sharing contracts and impose monetary damages in an amount up to 150 percent of the financial assistance received for failure to comply; and

(9) identify and encourage implementation of measures to prevent groundwater from becoming degraded and measures that restore groundwater resources.

Subd. 4. **Priorities for identifying impaired waters.** The Pollution Control Agency, in accordance with federal TMDL requirements, shall set priorities for identifying impaired waters, giving consideration to:

(1) waters where impairments would pose the greatest potential risk to human or aquatic health; and

(2) waters where data developed through public agency or citizen monitoring or other means, provides scientific evidence that an impaired condition exists.

Subd. 5. **Priorities for scheduling and preparing WRAPSs and TMDLs.** The commissioner of the Pollution Control Agency must seek recommendations from the Clean Water Council; the commissioners of natural resources, health, and agriculture; and the Board of Water and Soil Resources regarding priorities for scheduling and preparing WRAPSs and TMDLs. Recommendations must consider the causes of impairments, the designated uses of the waters, applicable federal TMDL requirements, surface water and groundwater interactions, protection of high-quality waters, waters and watersheds with declining water quality trends, and waters used as drinking water sources. Furthermore, consideration must be given to waters and watersheds:

(1) that have the greatest potential risk to human health;

(2) that have the greatest potential risk to threatened or endangered species;

(3) that have the greatest potential risk to aquatic health;

(4) where other public agencies and participating organizations and individuals, especially local, basin-wide, watershed, or regional agencies or organizations, have demonstrated readiness to assist in carrying out the responsibilities, including availability and organization of human, technical, and financial resources necessary to undertake the work; and

(5) where there is demonstrated coordination and cooperation among cities, counties, watershed districts, and soil and water conservation districts in planning and implementation of activities that will assist in carrying out the responsibilities.

Subd. 6. **Priorities for restoring impaired waters.** In implementing restoration of impaired waters, in addition to the priority considerations in subdivision 5, the Clean Water Council shall give priority in its recommendations for restoration funding from the clean water fund to restoration projects that:

(1) coordinate with and utilize existing local authorities and infrastructure for implementation;

(2) can be implemented in whole or in part by providing support for existing or ongoing restoration efforts;

(3) most effectively leverage other sources of restoration funding, including federal, state, local, and private sources of funds;

(4) show a high potential for early restoration and delisting based upon scientific data developed through public agency or citizen monitoring or other means; and

(5) show a high potential for long-term water quality and related conservation benefits.

Subd. 7. **Priorities for funding prevention actions.** The Clean Water Council shall apply the priorities applicable under subdivision 6, as far as practicable, when recommending priorities for funding actions to prevent groundwater and surface waters from becoming degraded or impaired and to improve the quality of surface waters that are listed as impaired.

Subd. 8. **Alternatives; TMDL, TMDL implementation plan, or WRAPS.** (a) If the commissioner of the Pollution Control Agency determines that a comprehensive watershed management plan or comprehensive local water management plan contains information that is sufficient and consistent with guidance from the United States Environmental Protection Agency under section 303(d) of the federal Clean Water Act, the commissioner may submit the plan to the Environmental Protection Agency according to federal TMDL requirements as an alternative to developing a TMDL after consultation with affected national pollutant discharge elimination system (NPDES) permit holders.

(b) A TMDL implementation plan or a WRAPS, or portions thereof, are not needed for waters or watersheds when the commissioner of the Pollution Control Agency determines that a comprehensive watershed management plan, a comprehensive local water management plan, or a statewide or regional strategy published by the Pollution Control Agency meets the definition in section 114D.15, subdivision 11 or 13.

(c) The commissioner of the Pollution Control Agency may request that the Board of Water and Soil Resources conduct an evaluation of the implementation efforts under a comprehensive watershed management plan or comprehensive local water management plan when the commissioner makes a determination under paragraph (b). The board must conduct the evaluation in accordance with section 103B.102.

(d) The commissioner of the Pollution Control Agency may amend or revoke a determination made under paragraph (a) or (b) after considering the evaluation conducted under paragraph (c).

Subd. 9. **Coordinating municipal and local water quality activities.** A project, practice, or program for water quality improvement or protection that is conducted by a watershed management organization or a local government unit with a comprehensive watershed management plan or other water management plan approved according to chapter 103B, 103C, or 103D may be considered by the commissioner of the Pollution Control Agency as contributing to the requirements of a stormwater pollution prevention program (SWPPP) for a municipal separate storm sewer systems (MS4) permit unless the project, practice, or program was previously documented as contributing to a different SWPPP for an MS4 permit. The commissioner of health may determine that a comprehensive watershed management plan or a comprehensive local water management plan, in whole or in part, is sufficient to fulfill the requirements of wellhead protection plans.

History: *2006 c 251 s 5; 1Sp2011 c 6 art 2 s 14-18; 1Sp2019 c 4 art 5 s 11-16; 2023 c 40 art 2 s 12*

114D.25 ADMINISTRATION; POLLUTION CONTROL AGENCY.

Subdivision 1. **General duties and authorities.** (a) The Pollution Control Agency, in accordance with federal TMDL requirements, shall:

(1) identify impaired waters and propose a list of the waters for review and approval by the United States Environmental Protection Agency;

(2) develop and approve TMDLs for listed impaired waters and submit the approved TMDLs to the United States Environmental Protection Agency for final approval; and

(3) propose to delist waters from the Environmental Protection Agency impaired waters list.

(b) A TMDL must include a statement of the facts and scientific data supporting the TMDL and a list of potential implementation options, including:

(1) a range of estimates of the cost of implementation of the TMDL; and

(2) for point sources, the individual wasteload data and the estimated cost of compliance addressed by the TMDL.

(c) The implementation information need not be sent to the United States Environmental Protection Agency for review and approval.

Subd. 2. **Administrative procedures for TMDL approval.** The approval of a TMDL by the Pollution Control Agency is a final decision of the agency for purposes of section 115.05, and is subject to the contested case procedures of sections 14.57 to 14.62 in accordance with agency procedural rules. The agency shall not submit an approved TMDL to the United States Environmental Protection Agency until the time for commencing judicial review has run or the judicial review process has been completed. A TMDL is not subject to the rulemaking requirements of chapter 14, including section 14.386.

Subd. 3. **TMDL submittal; requirement.** Before submitting a TMDL to the United States Environmental Protection Agency, the Pollution Control Agency shall comply with the notice and procedure requirements of this section. If a contested case proceeding is not required for a proposed TMDL, the agency may submit the TMDL to the United States Environmental Protection Agency no earlier than 30 days after the notice required in subdivision 4. If a contested case proceeding is required for a TMDL, the TMDL may be submitted to the United States Environmental Protection Agency after the contested case proceeding and appeal process is completed.

Subd. 4. **TMDL notice; contents.** The Pollution Control Agency shall give notice of its intention to submit a TMDL to the United States Environmental Protection Agency. The notice must be given by publication in the State Register and by United States mail to persons who have registered their names with the agency. The notice must include either a copy of the proposed TMDL or an easily readable and understandable description of its nature and effect and an announcement of how free access to the proposed TMDL can be obtained. In addition, the agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the TMDL by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice must include a statement informing the public:

(1) that the public has 30 days in which to submit comment in support of or in opposition to the proposed TMDL and that comment is encouraged;

(2) that each comment should identify the portion of the proposed TMDL addressed, the reason for the comment, and any change proposed;

(3) of the manner in which persons must request a contested case proceeding on the proposed TMDL;

(4) that the proposed TMDL may be modified if the modifications are supported by the data and facts; and

(5) the date on which the 30-day comment period ends.

Subd. 5. **Third-party TMDL development.** The Pollution Control Agency may enter into agreements with any qualified public agency setting forth the terms and conditions under which that agency is authorized to develop a third-party TMDL. In determining whether the public agency is qualified to develop a third-party TMDL, the Pollution Control Agency shall consider the technical and administrative qualifications of the public agency, cost, and shall avoid any potential organizational conflict of interest, as defined in section 16C.02, subdivision 10a, of the public agency with respect to the development of the third-party TMDL. A third-party TMDL is subject to modification and approval by the Pollution Control Agency, and must be approved by the Pollution Control Agency before it is submitted to the United States Environmental Protection Agency. The Pollution Control Agency shall only consider authorizing the development of third-party TMDLs consistent with the goals, policies, and priorities determined under section 114D.20.

Subd. 6. **Impaired waters list; public notice and process.** The commissioner of the Pollution Control Agency must allow at least 60 days for public comment after publishing the draft impaired waters list required under the federal Clean Water Act. In making impairment designations, the Pollution Control Agency must use available water-quality data that takes into consideration recent relevant pollutant reductions resulting from controls on municipal point sources and nonpoint sources.

History: *2006 c 251 s 6; 2017 c 93 art 2 s 122*

114D.26 WATERSHED RESTORATION AND PROTECTION STRATEGIES.

Subdivision 1. **Contents.** (a) The commissioner of the Pollution Control Agency shall develop watershed restoration and protection strategies for the purposes of:

(1) summarizing the physical, chemical, and biological assessment of the water quality of the watershed;

(2) quantifying impairments and risks to water quality;

(3) describing the causes of impairments and pollution sources;

(4) consolidating TMDLs in a major watershed; and

(5) informing comprehensive local water management plans and comprehensive watershed management plans.

(b) Each WRAPS must:

(1) identify impaired waters and waters in need of protection;

(2) identify biotic stressors causing impairments or threats to water quality;

(3) summarize TMDLs, watershed modeling outputs, and resulting pollution load allocations and identify areas with high pollutant-loading rates;

(4) in consultation with local governments and other state agencies, identify water quality monitoring needed to fill data gaps, determine changing conditions, or gauge implementation effectiveness; and

(5) contain strategies that are capable of cumulatively achieving needed pollution load reductions for point and nonpoint sources, including identifying:

(i) water quality parameters of concern;

(ii) current water quality conditions;

(iii) water quality goals, strategies, and targets by parameter of concern; and

(iv) strategies and an example of the scale of adoptions with a timeline to meet the water quality restoration or protection goals of this chapter.

Subd. 1a. **Coordination.** To ensure effectiveness, efficiency, and accountability in meeting the goals of this chapter, the commissioner of the Pollution Control Agency, in consultation with the Board of Water and Soil Resources and local government units, must coordinate the schedule, budget, scope, and use of a WRAPS and related documents and processes.

Subd. 2. **Reporting.** Beginning July 1, 2016, and every other year thereafter, the commissioner of the Pollution Control Agency must report on the agency's website the progress toward implementation milestones and water quality goals.

Subd. 3. **Timelines; administration.** (a) The commissioner of the Pollution Control Agency must complete watershed restoration and protection strategies for the state's major watersheds by June 30, 2023, unless the commissioner determines that a comprehensive watershed management plan or comprehensive local water management plan, in whole or in part, meets the definition in section 114D.15, subdivision 11 or 13. As needed, the commissioner must update the strategies, in whole or in part, after consulting with the Board of Water and Soil Resources and local government units.

(b) Watershed restoration and protection strategies are governed by the procedures for approval and notice in section 114D.25, subdivisions 2 and 4, except that the strategies need not be submitted to the United States Environmental Protection Agency.

History: *2013 c 137 art 2 s 13; 1Sp2019 c 4 art 5 s 17*

114D.30 CLEAN WATER COUNCIL.

Subdivision 1. **Creation; duties.** A Clean Water Council is created to advise on the administration and implementation of this chapter, and foster coordination and cooperation as described in section 114D.20,

subdivision 1. The council may also advise on the development of appropriate processes for expert scientific review as described in section 114D.35, subdivision 2. The Pollution Control Agency shall provide administrative support for the council with the support of other member agencies. The members of the council shall elect a chair from the voting members of the council.

Subd. 2. **Membership; appointment.** (a) The commissioners of natural resources, agriculture, health, and the Pollution Control Agency, the executive director of the Board of Water and Soil Resources, the Board of Regents of the University of Minnesota, and the Metropolitan Council shall each appoint one person from their respective entity to serve as a nonvoting member of the council. Two members of the house of representatives, including one member from the majority party and one member from the minority party, appointed by the speaker and two senators, including one member from the majority party and one member from the minority party, appointed according to the rules of the senate shall serve at the pleasure of the appointing authority as nonvoting members of the council. Members appointed under this paragraph serve as nonvoting members of the council.

(b) Seventeen voting members of the council shall be appointed by the governor as follows:

(1) two members representing statewide farm organizations;

(2) two members representing business organizations;

(3) two members representing environmental organizations;

(4) one member representing soil and water conservation districts;

(5) one member representing watershed districts;

(6) one member representing nonprofit organizations focused on improvement of Minnesota lakes or streams;

(7) two members representing organizations of county governments, one member representing the interests of rural counties and one member representing the interests of counties in the seven-county metropolitan area;

(8) two members representing organizations of city governments;

(9) one member representing township officers;

(10) one member representing the interests of Tribal governments;

(11) one member representing statewide hunting organizations; and

(12) one member representing statewide fishing organizations.

Members appointed under this paragraph must not be registered lobbyists or legislators. In making appointments, the governor must attempt to provide for geographic balance. The members of the council appointed by the governor are subject to the advice and consent of the senate.

Subd. 3. **Conflict of interest.** A Clean Water Council member may not participate in or vote on a decision of the council relating to an organization in which the member has either a direct or indirect personal financial interest. While serving on the Clean Water Council, a member shall avoid any potential conflict of interest.

Subd. 4. **Terms; compensation; removal.** The terms of members representing the state agencies and the Metropolitan Council are four years and are coterminous with the governor. The terms of other

nonlegislative members of the council shall be as provided in section 15.059, subdivision 2. Members may serve until their successors are appointed and qualify. Compensation and removal of nonlegislative council members is as provided in section 15.059, subdivisions 3 and 4, except that a nonlegislative member may be compensated at the rate of up to $125 a day. Compensation of legislative members is as determined by the appointing authority. The Pollution Control Agency may reimburse legislative members for expenses. A vacancy on the council may be filled by the appointing authority provided in subdivision 1 for the remainder of the unexpired term.

Subd. 5. **Implementation plan.** The Clean Water Council shall recommend a plan for implementation of this chapter and the provisions of article XI, section 15, of the Minnesota Constitution relating to clean water. The recommended plan shall address general procedures and time frames for implementing this chapter, and shall include a more specific implementation work plan for the next fiscal biennium and a framework for setting priorities to address impaired waters consistent with section 114D.20, subdivisions 2 to 7. The council shall issue a revised plan by December 1 of each even-numbered year.

Subd. 6. **Recommended appropriations.** (a) The Clean Water Council must submit recommendations to the governor and the legislature on how money from the clean water fund should be appropriated for the purposes stated in article XI, section 15, of the Minnesota Constitution and section 114D.50.

(b) The council's recommendations must:

(1) be to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation and ensure that at least five percent of the clean water fund is spent only to protect drinking water sources;

(2) be consistent with the purposes, policies, goals, and priorities in this chapter; and

(3) allocate adequate support and resources to identify degraded groundwater and impaired waters, develop TMDLs, implement restoration of groundwater and impaired waters, and provide assistance and incentives to prevent groundwater and surface waters from becoming degraded or impaired and improve the quality of surface waters which are listed as impaired but have no approved TMDL.

(c) The council must recommend methods of ensuring that awards of grants, loans, or other funds from the clean water fund specify the outcomes to be achieved as a result of the funding and specify standards to hold the recipient accountable for achieving the desired outcomes. Expenditures from the fund must be appropriated by law.

Subd. 7. **Reports to legislature.** By January 15 each odd-numbered year, the council must submit a report to the legislature that includes:

(1) a summary of the activities for which money has been or will be spent in the current biennium;

(2) the recommendations required under subdivision 6 for how money in the clean water fund should be spent in the next biennium, broken out by fiscal year and including recommended legislative bill language; and

(3) the impact on economic development of the implementation of efforts to protect and restore groundwater and the impaired waters program.

History: *2006 c 251 s 7; 2006 c 282 art 10 s 7; 1Sp2011 c 6 art 2 s 19; 2012 c 264 art 2 s 1; 1Sp2015 c 2 art 2 s 16; 2022 c 77 art 2 s 1; 2023 c 40 art 2 s 13-15; 2025 c 36 art 2 s 12*

114D.35 PUBLIC AND STAKEHOLDER PARTICIPATION; SCIENTIFIC REVIEW; EDUCATION.

Subdivision 1. **Public and stakeholder participation.** (a) Public agencies and private entities involved in implementing this chapter must encourage participation by the public and stakeholders, including local citizens, landowners, land managers, and public and private organizations.

(b) In particular, the commissioner of the Pollution Control Agency must make reasonable efforts to provide timely information to the public and to stakeholders about impaired waters that have been identified by the agency and to inform and consult with the public and stakeholders in developing a WRAPS or TMDL.

(c) Public agencies and private entities using public funds that are involved in implementing restoration and protection identified in a comprehensive watershed management plan or comprehensive local water management plan must make efforts to inform, consult, and involve the public and stakeholders.

(d) The commissioner of the Pollution Control Agency and the Board of Water and Soil Resources must coordinate public and stakeholder participation in consultation with local government units. To the extent practicable, implementation of this chapter must be accomplished in cooperation with local, state, federal, and Tribal governments and private-sector organizations.

Subd. 2. **Expert scientific advice.** The Clean Water Council and public agencies and private entities shall make use of available public and private expertise from educational, research, and technical organizations, including the University of Minnesota and other higher education institutions, to provide appropriate independent expert advice on models, methods, and approaches used in identifying degraded groundwater and impaired waters, developing TMDLs, and implementing prevention and restoration.

Subd. 3. **Education.** The Clean Water Council must develop strategies for informing, educating, and encouraging the participation of citizens, stakeholders, and others regarding this chapter. Public agencies are responsible for implementing the strategies.

History: *2006 c 251 s 8; 1Sp2011 c 6 art 2 s 20; 1Sp2019 c 4 art 5 s 18,19*

114D.45 MS 2010 [Repealed, 1Sp2011 c 6 art 2 s 26]

114D.47 NONPOINT FUNDING ALTERNATIVE.

Notwithstanding section 114D.50, subdivision 3a, the Board of Water and Soil Resources may, by board order, establish alternative timelines or content for the priority funding plan for nonpoint sources under section 114D.50, subdivision 3a, and may use information from comprehensive watershed management plans or comprehensive local water management plans to estimate or summarize costs.

History: *1Sp2019 c 4 art 5 s 20*

114D.50 CLEAN WATER FUND.

Subdivision 1. **Establishment.** The clean water fund is established in the Minnesota Constitution, article XI, section 15. All money earned by the fund must be credited to the fund.

Subd. 2. **Sustainable drinking water account.** The sustainable drinking water account is established as an account in the clean water fund.

Subd. 3. **Purpose.** (a) The clean water fund may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams, to protect groundwater from degradation, and to protect drinking water sources by:

(1) providing grants, loans, and technical assistance to public agencies and others testing waters, identifying impaired waters, developing total maximum daily loads, implementing restoration plans for impaired waters, and evaluating the effectiveness of restoration;

(2) supporting measures to prevent surface waters from becoming impaired and to improve the quality of waters that are listed as impaired, but do not have an approved total maximum daily load addressing the impairment;

(3) providing grants and loans for wastewater and stormwater treatment projects through the Public Facilities Authority;

(4) supporting measures to prevent the degradation of groundwater in accordance with the groundwater degradation prevention goal under section 103H.001; and

(5) providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement.

(b) Funds from the clean water fund must supplement traditional sources of funding for these purposes and may not be used as a substitute.

Subd. 3a. **Nonpoint priority funding plan.** (a) Beginning July 1, 2014, and every other year thereafter, the Board of Water and Soil Resources shall prepare and post on its website a priority funding plan to prioritize potential nonpoint restoration and protection actions based on available WRAPSs, TMDLs, and local water plans. The plan must take into account the following factors: water quality outcomes, cost-effectiveness, landowner financial need, and leverage of nonstate funding sources. The plan shall include an estimated range of costs for the prioritized actions.

(b) Consistent with the priorities listed in section 114D.20, state agencies allocating money from the clean water fund for nonpoint restoration and protection strategies shall target the money according to the priorities identified on the nonpoint priority funding plan. The allocation of money from the clean water fund to projects eligible for financial assistance under section 116.182 is not governed by the nonpoint priority funding plan.

Subd. 4. **Expenditures; accountability.** (a) A project receiving funding from the clean water fund must meet or exceed the constitutional requirements to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater and drinking water from degradation. Priority may be given to projects that meet more than one of these requirements. A project receiving funding from the clean water fund shall include measurable outcomes, as defined in section 3.303, subdivision 10; a plan for measuring and evaluating the results; and an assessment of whether the funding celebrates cultural diversity or reaches diverse communities in Minnesota, including reaching low- and moderate-income households. A project must be consistent with current science and incorporate state-of-the-art technology.

(b) Money from the clean water fund shall be expended to balance the benefits across all regions and residents of the state.

(c) A state agency or other recipient of a direct appropriation from the clean water fund must compile and submit all information for proposed and funded projects or programs, including the proposed measurable outcomes and all other items required under section 3.303, subdivision 10, to the Legislative Coordinating Commission as soon as practicable or by January 15 of the applicable fiscal year, whichever comes first. The Legislative Coordinating Commission must post submitted information on the website required under section 3.303, subdivision 10, as soon as it becomes available. Information classified as not public under section 13D.05, subdivision 3, paragraph (d), is not required to be placed on the website.

(d) Grants funded by the clean water fund must be implemented according to section 16B.98 and must account for all expenditures. Proposals must specify a process for any regranting envisioned. Priority for grant proposals must be given to proposals involving grants that will be competitively awarded.

(e) Money from the clean water fund may only be spent on projects that benefit Minnesota waters.

(f) When practicable, a direct recipient of an appropriation from the clean water fund shall prominently display on the recipient's website home page the legacy logo required under Laws 2009, chapter 172, article 5, section 10, as amended by Laws 2010, chapter 361, article 3, section 5, accompanied by the phrase "Click here for more information." When a person clicks on the legacy logo image, the website must direct the person to a web page that includes both the contact information that a person may use to obtain additional information, as well as a link to the Legislative Coordinating Commission website required under section 3.303, subdivision 10.

(g) Future eligibility for money from the clean water fund is contingent upon a state agency or other recipient satisfying all applicable requirements in this section, as well as any additional requirements contained in applicable session law. If the Office of the Legislative Auditor, in the course of an audit or investigation, publicly reports that a recipient of money from the clean water fund has not complied with the laws, rules, or regulations in this section or other laws applicable to the recipient, the recipient must be listed in an annual report to the legislative committees with jurisdiction over the legacy funds. The list must be publicly available. The legislative auditor shall remove a recipient from the list upon determination that the recipient is in compliance. A recipient on the list is not eligible for future funding from the clean water fund until the recipient demonstrates compliance to the legislative auditor.

(h) Money from the clean water fund may be used to leverage federal funds through execution of formal project partnership agreements with federal agencies consistent with respective federal agency partnership agreement requirements.

(i) Any state agency or organization requesting a direct appropriation from the clean water fund must inform the Clean Water Council and the house of representatives and senate committees having jurisdiction over the clean water fund, at the time the request for funding is made, whether the request is supplanting or is a substitution for any previous funding that was not from a legacy fund and was used for the same purpose.

Subd. 4a. MS 2014 [Repealed, 1Sp2015 c 4 art 4 s 150]

Subd. 5. **Data availability.** Data collected by the projects funded with money from the clean water fund that have value for planning and management of natural resources, emergency preparedness, and infrastructure investments must conform to the enterprise information architecture developed by the Department of Information Technology Services. Spatial data must conform to geographic information system guidelines and standards outlined in that architecture and adopted by the Minnesota Geographic Data Clearinghouse at the Minnesota Geospatial Information Office. A description of these data that adheres to the Department of Information Technology Services geographic metadata standards must be submitted to the Minnesota Geospatial Information Office to be made available online through the clearinghouse and the data must be accessible and free to the public unless made private under chapter 13. To the extent practicable, summary data and results of projects funded with money from the clean water fund should be readily accessible on the Internet and identified as a clean water fund project.

Subd. 6. **Restoration evaluations.** (a) The Board of Water and Soil Resources may convene a technical evaluation panel comprised of five members, including one technical representative from the Board of Water and Soil Resources, one technical representative from the Department of Natural Resources, one technical expert from the University of Minnesota or the Minnesota State Colleges and Universities, and two

representatives with expertise related to the project being evaluated. The board may add a technical representative from a unit of federal or local government.

(b) The members of the technical evaluation panel may not be associated with the restoration, may vary depending upon the projects being reviewed, and shall avoid any potential conflicts of interest.

(c) Each year, the board may assign a coordinator to identify a sample of habitat restoration projects completed with clean water funding. The coordinator shall secure the restoration plans for the projects specified and direct the technical evaluation panel to evaluate the restorations relative to the law, current science, and the stated goals and standards in the restoration plan and, when applicable, to the Board of Water and Soil Resources' Native Vegetation Establishment and Enhancement Guidelines.

(d) The coordinator shall summarize the findings of the panel and provide a report to the chairs of the respective house of representatives and senate policy and finance committees with jurisdiction over natural resources and spending from the clean water fund. The report shall determine if the restorations are meeting planned goals, any problems with the implementation of restorations, and, if necessary, recommendations on improving restorations. The report shall be focused on improving future restorations.

(e) Up to one-tenth of one percent of forecasted receipts from the clean water fund may be used for restoration evaluations under this section.

Subd. 7. **Reserve requirement.** In any fiscal year, at least five percent of that year's projected tax receipts determined by the most recent forecast for the clean water fund must not be appropriated.

History: *2008 c 363 art 5 s 23; 2009 c 101 art 2 s 107; 2009 c 172 art 5 s 7; 2010 c 361 art 1 s 9; 1Sp2011 c 6 art 2 s 21; art 5 s 4; 2013 c 114 art 4 s 75; 2013 c 134 s 30; 2013 c 137 art 2 s 14-16; 2013 c 142 art 3 s 36; 1Sp2015 c 2 art 5 s 4; 2017 c 91 art 2 s 12,13; 2021 c 31 art 2 s 16; 2023 c 40 art 2 s 16*