CHAPTER 116C

ENVIRONMENTAL QUALITY BOARD

GENERAL

116C.01 FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic

and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

History: *1973 c 342 s 1*

116C.02 DEFINITIONS.

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

Subd. 2. **Board.** "Board" means the Minnesota Environmental Quality Board.

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

116C.03 ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIR; STAFF.

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

Subd. 2. **Membership.** The members of the board are the commissioner of administration, the commissioner of commerce, the commissioner of the Pollution Control Agency, the commissioner of natural resources, the commissioner of agriculture, the commissioner of health, the commissioner of employment and economic development, the commissioner of transportation, and the chair of the Board of Water and Soil Resources. The governor shall appoint members from the general public to the board, one from each congressional district, subject to the advice and consent of the senate. At least four public members must have knowledge of and be conversant in environmental review or permitting. The governor must appoint the chair of the board. Notwithstanding the provisions of section 15.06, subdivision 6, members of the board may not delegate their powers and responsibilities as board members to any other person. Members appointed under this subdivision must not be registered lobbyists or legislators.

Subd. 2a. **Public members.** The membership terms, compensation, removal, and filling of vacancies of public members of the board shall be as provided in section 15.0575, except that a public member may be compensated at the rate of up to $125 a day.

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 [Repealed, 1982 c 524 s 9]

Subd. 3a. [Repealed, 2017 c 93 art 2 s 166]

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

Subd. 5. **Administration.** The board shall contract with the Pollution Control Agency for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

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

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

335 art 1 s 134; 1991 c 345 art 2 s 20-22; 1994 c 639 art 5 s 3; 1997 c 53 s 1; 1Sp2001 c 4 art 6 s 77; 1Sp2003 c 4 s 1; 1Sp2005 c 1 art 2 s 161; 2013 c 114 art 4 s 88-90; 2017 c 93 art 2 s 135; 2023 c 60 art 3 s 22

116C.04 POWERS AND DUTIES.

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

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

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

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

Subd. 3. [Repealed, 2017 c 93 art 2 s 166]

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

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

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

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

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

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

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

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

History: *1973 c 342 s 4; 1975 c 271 s 6; 1985 c 248 s 70; 1988 c 501 s 2; 1991 c 292 art 9 s 1; 2017 c 93 art 2 s 136*

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

116C.06 HEARINGS.

Subdivision 1. **Process.** The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule in conformity to the provisions of chapter 14, the procedures for the conduct of all hearings and review procedures.

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

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

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

History: *1973 c 342 s 6; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444; 1995 c 233 art 2 s 56; 1997 c 187 art 5 s 15*

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

116C.08 FEDERAL FUNDS; DONATIONS.

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

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

ENVIRONMENTAL COORDINATION PROCEDURES

116C.22 [Repealed, 2014 c 271 art 1 s 3]

116C.23 [Repealed, 2014 c 271 art 1 s 3]

116C.24 [Repealed, 2014 c 271 art 1 s 3]

116C.25 [Repealed, 2014 c 271 art 1 s 3]

116C.26 [Repealed, 2014 c 271 art 1 s 3]

116C.261 [Repealed, 2014 c 271 art 1 s 3]

116C.27 [Repealed, 2014 c 271 art 1 s 3]

116C.28 [Repealed, 2014 c 271 art 1 s 3]

116C.29 [Repealed, 2014 c 271 art 1 s 3]

116C.30 [Repealed, 2014 c 271 art 1 s 3]

116C.31 [Repealed, 2014 c 271 art 1 s 3]

116C.32 [Repealed, 2014 c 271 art 1 s 3]

116C.33 [Repealed, 2014 c 271 art 1 s 3]

116C.34 BUREAU OF BUSINESS LICENSES.

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

Subd. 2. **Duties.** The bureau shall:

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

(2) standardize permit titles and assign designation codes to all such permits which would thereafter be imprinted on all permit forms;

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

(4) identify the public information procedures currently associated with each permit program;

(5) identify the data monitored or acquired through each permit and ascertain current users of that data;

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

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

Subd. 3. **County responsibility.** The auditor of each county shall post in a conspicuous place in the auditor's office the telephone numbers of the Bureau of Business Licenses and the permit information center in the office of the applicable regional development commission and copies of any information published by the bureau or an information center pursuant to subdivision 1.

History: *1975 c 271 s 6; 1976 c 303 s 13; 1983 c 289 s 39; 1985 c 248 s 70; 1986 c 444; 2014 c 271 art 2 s 2*

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

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

116C.51 [Renumbered 216E.001]

116C.52 Subdivision 1. [Renumbered 216E.01, subdivision 1]

Subd. 2. [Renumbered 216E.01, subd 2]

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. MS 2004 [Renumbered 216E.01, subd 3]

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. MS 2004 [Renumbered 216E.01, subd 4]

Subd. 5. MS 1990 [Renumbered subd 7]

Subd. 5. MS 2004 [Renumbered 216E.01, subd 5]

Subd. 6. MS 1990 [Renumbered subd 10]

Subd. 6. MS 2004 [Renumbered 216E.01, subd 6]

Subd. 7. MS 1990 [Renumbered subd 3]

Subd. 7. MS 2004 [Renumbered 216E.01, subd 7]

Subd. 8. [Renumbered 216E.01, subd 8]

Subd. 9. [Renumbered 216E.01, subd 9]

Subd. 10. MS 1990 [Renumbered subd 6]

Subd. 10. MS 2004 [Renumbered 216E.01, subd 10]

116C.53 [Renumbered 216E.02]

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

116C.55 Subdivision 1. [Repealed, 1977 c 439 s 27]

Subd. 2. [Repealed, 2001 c 212 art 7 s 36]

Subd. 3. [Repealed, 2001 c 212 art 7 s 36]

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

116C.57 Subdivision 1. [Renumbered 216E.03, subdivision 1]

Subd. 2. [Renumbered 216E.03, subd 2]

Subd. 2a. [Renumbered 216E.03, subd 3]

Subd. 2b. [Renumbered 216E.03, subd 4]

Subd. 2c. [Renumbered 216E.03, subd 5]

Subd. 2d. [Renumbered 216E.03, subd 6]

Subd. 3. [Repealed, 2001 c 212 art 7 s 36]

Subd. 4. [Renumbered 216E.03, subd 7]

Subd. 5. [Repealed, 2001 c 212 art 7 s 36]

Subd. 5a. [Repealed, 2001 c 212 art 7 s 36]

Subd. 6. [Renumbered 216E.03, subd 8]

Subd. 7. [Renumbered 216E.03, subd 9]

Subd. 8. [Renumbered 216E.03, subd 10]

Subd. 9. [Renumbered 216E.03, subd 11]

116C.575 [Renumbered 216E.04]

116C.576 [Renumbered 216E.05]

116C.577 [Renumbered 216E.06]

116C.58 [Renumbered 216E.07]

116C.59 [Renumbered 216E.08]

116C.60 [Renumbered 216E.09]

116C.61 [Renumbered 216E.10]

116C.62 [Renumbered 216E.11]

116C.63 [Renumbered 216E.12]

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

116C.64 [Renumbered 216E.13]

116C.645 [Renumbered 216E.14]

116C.65 [Renumbered 216E.15]

116C.66 [Renumbered 216E.16]

116C.67 [Repealed, 2001 c 212 art 7 s 36]

116C.68 [Renumbered 216E.17]

116C.69 [Renumbered 216E.18]

116C.691 [Renumbered 216F.01]

116C.692 [Renumbered 216F.02]

116C.693 [Renumbered 216F.03]

116C.694 [Renumbered 216F.04]

116C.695 [Renumbered 216F.05]

116C.696 [Renumbered 216F.06]

116C.697 [Renumbered 216F.07]

RADIOACTIVE WASTE MANAGEMENT

116C.705 FINDINGS.

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

History: *1984 c 453 s 1*

116C.71 DEFINITIONS.

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

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

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

Subd. 1c. **Board.** "Board" means the Minnesota Environmental Quality Board.

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

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

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

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

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

Subd. 2c. **Council.** "Council" means the governor's Nuclear Waste Council.

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

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

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

(1) irradiated reactor fuel;

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

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

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

(5) any other highly radioactive materials that the Nuclear Regulatory Commission or Department of Energy determines by law to require permanent isolation; or

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

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

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

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

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

Subd. 6. **Radioactive waste.** (a) "Radioactive waste" means:

(1) useless or unwanted capturable radioactive residues produced incidental to the use of radioactive material; or

(2) useless or unwanted radioactive material; or

(3) otherwise nonradioactive material made radioactive by contamination with radioactive material.

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

Subd. 7. **Radioactive waste management facility.** "Radioactive waste management facility" means a geographic site, including buildings, structures, and equipment in or upon which radioactive waste is retrievably or irretrievably disposed by burial in soil or permanently stored. An independent spent-fuel storage installation located on the site of a Minnesota nuclear generation facility for dry cask storage of spent nuclear fuel generated solely by that facility is not a radioactive waste management facility.

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

(1) uranium or thorium or any combination thereof, in any physical or chemical form; or

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

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

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

(2) any material artificially enriched by any of the materials described in clause (1). Special nuclear material does not include source nuclear material.

Subd. 10. [Renumbered subd 1a]

Subd. 11. [Renumbered subd 1b]

Subd. 12. [Renumbered subd 1c]

Subd. 13. [Renumbered subd 2a]

Subd. 14. [Renumbered subd 2b]

Subd. 14a. [Renumbered subd 2c]

Subd. 15. [Renumbered subd 2d]

Subd. 16. [Renumbered subd 2e]

Subd. 17. [Renumbered subd 2f]

Subd. 18. [Renumbered subd 3a]

History: *1977 c 416 s 1; 1984 c 453 s 2-10; 1Sp1985 c 13 s 241; 1986 c 444; 1Sp2003 c 11 art 1 s 1*

116C.711 NUCLEAR WASTE COUNCIL.

Subdivision 1. **Establishment.** The governor's Nuclear Waste Council is established.

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

(1) the commissioners of health, transportation, and natural resources, and the commissioner of the Pollution Control Agency;

(2) four citizen members appointed by the governor;

(3) the director of the Minnesota Geological Survey;

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

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

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

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

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

Subd. 5. **Membership regulation.** Section 15.059 governs terms, compensation, removal, and filling of vacancies of members appointed by the governor.

History: *1Sp1985 c 13 s 242; 1986 c 444; 1987 c 186 s 15; 2014 c 286 art 8 s 39*

116C.712 [Repealed, 2014 c 248 s 19]

116C.72 RADIOACTIVE WASTE MANAGEMENT FACILITY.

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

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

116C.721 PUBLIC PARTICIPATION.

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

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

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

History: *1984 c 453 s 11*

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

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

History: *1984 c 453 s 12*

116C.723 CONSULTATION AND COOPERATION AGREEMENT.

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

Subd. 2. **Disposal studies.** Unless the state has executed a consultation and cooperation agreement, a person may not make a study or test of a specific area or site related to disposal including an exploratory

drilling, a land survey, an aerial mapping, a field mapping, a waste suitability study, or other surface or subsurface geologic, hydrologic, or environmental testing or mapping.

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

116C.724 DRILLING PERMITS; ACCESS TO TEST DATA; PUBLIC MEETINGS; NEGOTIATIONS.

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

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

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

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

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

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

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

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

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

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

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

History: *1984 c 453 s 14; 1Sp1985 c 13 s 245; 1985 c 248 s 70; 1986 c 444; 1987 c 186 s 15; 1987 c 309 s 24; 1995 c 186 s 32; 2015 c 21 art 1 s 109*

116C.73 TRANSPORTING RADIOACTIVE WASTES INTO STATE.

Notwithstanding any provision of sections 216C.05 to 216C.381 to the contrary, no person shall transport radioactive wastes into the state of Minnesota for the purpose of disposal by burial in soil or permanent storage within Minnesota unless expressly authorized by the Minnesota legislature, except that radioactive wastes may be transported into the state for temporary storage in accordance with applicable federal and state law for up to 12 months pending transportation out of the state.

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

116C.731 TRANSPORTING HIGH-LEVEL RADIOACTIVE WASTE.

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

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

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

Subd. 4. **Emergency response plan.** The commissioner of public safety shall consult with the commissioners of health and transportation, the commissioner of the Pollution Control Agency, and representatives of the federal Nuclear Regulatory Commission, the federal Emergency Management Agency, and the United States Department of Transportation and before December 1, 1984, shall prepare a plan for emergency response to a high-level radioactive waste transportation accident, including plans for evacuation and cleanup. The commissioner of public safety shall report by January 1 of each year to the legislature on the status of the plan and the ability of the state to respond adequately to an accident.

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

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

116C.74 PENALTIES.

Subdivision 1. **Penalties.** Any person who violates section 116C.72 or who causes radioactive wastes to be shipped in violation of section 116C.73 shall be guilty of a gross misdemeanor and subject to a fine of not more than $20,000 or a sentence of imprisonment of not more than 364 days, or both.

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

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

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

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

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

History: *1977 c 416 s 4; 1984 c 453 s 16; 1984 c 628 art 3 s 11; 1987 c 384 art 2 s 1; 2023 c 52 art 6 s 16*

116C.75 DEFINITIONS.

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

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

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

History: *1986 c 425 s 10*

116C.76 NUCLEAR WASTE DEPOSITORY; RELEASE INTO GROUNDWATER.

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

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

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

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

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

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

History: *1986 c 425 s 11*

RADIOACTIVE WASTE MANAGEMENT FACILITY; AUTHORIZATION

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

(a) The legislature recognizes that:

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

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

(3) the Public Utilities Commission in Docket No. E002/CN-91-91 reviewed the facility and approved a limited certificate of need approving the use of casks.

(b) The Minnesota legislature in compliance with section 116C.72, hereby ratifies and approves the EIS and the limited certificate of need and authorizes the use of casks at Prairie Island in accordance with the terms and conditions of the certificate of need as modified by Laws 1994, chapter 641, and without further environmental review under chapter 116D or further administrative review under section 216B.243.

History: *1994 c 641 art 1 s 1*

116C.771 ADDITIONAL CASK LIMITATIONS.

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

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

(c)(1) An additional eight casks may be filled and placed at Prairie Island if the legislature has not revoked the authorization under clause (2) or the public utility has satisfied the wind power and biomass mandate requirements in sections 216B.2423, subdivision 1, paragraph (a), clause (1), and 216B.2424, subdivision 5, paragraph (a), clause (1), and the alternative site in Goodhue County is operational or under construction.

(2) If the site is not under construction or operational or the wind mandates are not satisfied, the legislature may revoke the authorization for the additional eight casks by a law enacted prior to June 1, 1999.

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

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

History: *1994 c 641 art 1 s 2*

116C.772 PUBLIC UTILITY RESPONSIBILITIES.

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

Subd. 2. **Dry cask alternatives study.** The public utility must submit to the Legislative Electric Energy Task Force a reevaluation of all alternatives and combinations of those alternatives to dry cask storage.

Subd. 3. **Worker transition plan.** The public utility must submit to the Department of Employment and Economic Development a worker transition plan if there is a shutdown of the Prairie Island nuclear generating plant for longer than six months.

Subd. 4. **Nuclear power phase-out plan.** The public utility must submit to the Electric Energy Task Force a detailed plan for the phase-out of all nuclear power generated by the utility.

Subd. 5. **Decommissioning plan.** The public utility must submit to the Electric Energy Task Force a decommissioning plan for TN-40 storage casks after the casks are emptied of spent fuel.

History: *1994 c 483 s 1; 1994 c 641 art 1 s 3; 2004 c 206 s 52*

116C.773 CONTRACTUAL AGREEMENT.

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

History: *1994 c 641 art 1 s 4*

116C.774 AUTHORIZATION.

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

History: *1994 c 641 art 1 s 5*

116C.775 SHIPMENT PRIORITIES; NUCLEAR PLANTS.

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

History: *1994 c 641 art 1 s 6; 2007 c 57 art 2 s 7*

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

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

History: *1994 c 641 art 1 s 7*

116C.777 SITE.

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

History: *1994 c 641 art 1 s 8; 2007 c 57 art 2 s 8*

116C.778 RERACKING.

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

History: *1994 c 641 art 1 s 9*

116C.779 FUNDING FOR RENEWABLE DEVELOPMENT.

Subdivision 1. **Renewable development account.** (a) The renewable development account is established as a separate account in the special revenue fund in the state treasury. Appropriations and transfers to the account shall be credited to the account. Earnings, such as interest, dividends, and any other earnings arising from assets of the account, shall be credited to the account. Funds remaining in the account at the end of a fiscal year are not canceled to the general fund but remain in the account until expended. The account shall be administered by the commissioner of management and budget as provided under this section.

(b) On July 1, 2017, the public utility that owns the Prairie Island nuclear generating plant must transfer all funds in the renewable development account previously established under this subdivision and managed by the public utility to the renewable development account established in paragraph (a). Funds awarded to grantees in previous grant cycles that have not yet been expended and unencumbered funds required to be paid in calendar year 2017 under paragraphs (f) and (g), and sections 116C.7792 and 216C.41, are not subject to transfer under this paragraph.

(c) Except as provided in subdivision 1a, beginning January 15, 2018, and continuing each January 15 thereafter, the public utility that owns the Prairie Island nuclear generating plant must transfer to the renewable development account $500,000 each year for each dry cask containing spent fuel that is located at the Prairie Island power plant for each year the plant is in operation, and $7,500,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph (i). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Prairie Island for any part of a year. The total amount transferred annually under this paragraph must be reduced by $3,750,000.

(d) Except as provided in subdivision 1a, beginning January 15, 2018, and continuing each January 15 thereafter, the public utility that owns the Monticello nuclear generating plant must transfer to the renewable development account $350,000 each year for each dry cask containing spent fuel that is located at the Monticello nuclear power plant for each year the plant is in operation, and $5,250,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph (i). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Monticello for any part of a year.

(e) Each year, the public utility shall withhold from the funds transferred to the renewable development account under paragraphs (c) and (d) the amount necessary to pay its obligations under paragraphs (f) and (g), and sections 116C.7792 and 216C.41, for that calendar year.

(f) If the commission approves a new or amended power purchase agreement, the termination of a power purchase agreement, or the purchase and closure of a facility under section 216B.2424, subdivision 9, with an entity that uses poultry litter to generate electricity, the public utility subject to this section shall enter into a contract with the city in which the poultry litter plant is located to provide grants to the city for the purposes of economic development on the following schedule: $4,000,000 in fiscal year 2018; $6,500,000 each fiscal year in 2019 and 2020; and $3,000,000 in fiscal year 2021. The grants shall be paid by the public utility from funds withheld from the transfer to the renewable development account, as provided in paragraphs (b) and (e).

(g) If the commission approves a new or amended power purchase agreement, or the termination of a power purchase agreement under section 216B.2424, subdivision 9, with an entity owned or controlled, directly or indirectly, by two municipal utilities located north of Constitutional Route No. 8, that was previously used to meet the biomass mandate in section 216B.2424, the public utility that owns a nuclear generating plant shall enter into a grant contract with such entity to provide $6,800,000 per year for five years, commencing 30 days after the commission approves the new or amended power purchase agreement, or the termination of the power purchase agreement, and on each June 1 thereafter through 2021, to assist the transition required by the new, amended, or terminated power purchase agreement. The grant shall be paid by the public utility from funds withheld from the transfer to the renewable development account as provided in paragraphs (b) and (e).

(h) The collective amount paid under the grant contracts awarded under paragraphs (f) and (g) is limited to the amount deposited into the renewable development account, and its predecessor, the renewable development account, established under this section, that was not required to be deposited into the account under Laws 1994, chapter 641, article 1, section 10.

(i) After discontinuation of operation of the Prairie Island nuclear plant or the Monticello nuclear plant and each year spent nuclear fuel is stored in dry cask at the discontinued facility, the commission shall require the public utility to pay $7,500,000 for the discontinued Prairie Island facility and $5,250,000 for the discontinued Monticello facility for any year in which the commission finds, by the preponderance of the evidence, that the public utility did not make a good faith effort to remove the spent nuclear fuel stored at the facility to a permanent or interim storage site out of the state. This determination shall be made at least every two years.

(j) Funds in the account may be expended only for any of the following purposes:

(1) to stimulate research and development of renewable electric energy technologies;

(2) to encourage grid modernization, including, but not limited to, projects that implement electricity storage, load control, and smart meter technology; and

(3) to stimulate other innovative energy projects that reduce demand and increase system efficiency and flexibility.

Expenditures from the fund must benefit Minnesota ratepayers receiving electric service from the utility that owns a nuclear-powered electric generating plant in this state or the Prairie Island Indian community or its members.

The utility that owns a nuclear generating plant is eligible to apply for grants under this subdivision.

(k) For the purposes of paragraph (j), the following terms have the meanings given:

(1) "renewable" has the meaning given in section 216B.2422, subdivision 1, paragraph (c), clauses (1), (2), (4), and (5); and

(2) "grid modernization" means:

(i) enhancing the reliability of the electrical grid;

(ii) improving the security of the electrical grid against cyberthreats and physical threats; and

(iii) increasing energy conservation opportunities by facilitating communication between the utility and its customers through the use of two-way meters, control technologies, energy storage and microgrids, technologies to enable demand response, and other innovative technologies.

(l) A renewable development account advisory group that includes, among others, representatives of the public utility and its ratepayers, and includes at least one representative of the Prairie Island Indian community appointed by that community's tribal council, shall develop recommendations on account expenditures. The advisory group must design a request for proposal and evaluate projects submitted in response to a request for proposals. The advisory group must utilize an independent third-party expert to evaluate proposals submitted in response to a request for proposal, including all proposals made by the public utility. A request for proposal for research and development under paragraph (j), clause (1), may be limited to or include a request to higher education institutions located in Minnesota for multiple projects authorized under paragraph (j), clause (1). The request for multiple projects may include a provision that exempts the projects from the third-party expert review and instead provides for project evaluation and selection by a merit peer review grant system. In the process of determining request for proposal scope and subject and in evaluating responses to request for proposals, the advisory group must strongly consider, where reasonable:

(1) potential benefit to Minnesota citizens and businesses and the utility's ratepayers; and

(2) the proposer's commitment to increasing the diversity of the proposer's workforce and vendors.

(m) The advisory group shall submit funding recommendations to the public utility, which has full and sole authority to determine which expenditures shall be submitted by the advisory group to the legislature. The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds not to be in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission shall, by order, submit its funding recommendations to the legislature as provided under paragraph (n).

(n) The commission shall present its recommended appropriations from the account to the senate and house of representatives committees with jurisdiction over energy policy and finance annually by February 15. Expenditures from the account must be appropriated by law. In enacting appropriations from the account, the legislature:

(1) may approve or disapprove, but may not modify, the amount of an appropriation for a project recommended by the commission; and

(2) may not appropriate money for a project the commission has not recommended funding.

(o) A request for proposal for renewable energy generation projects must, when feasible and reasonable, give preference to projects that are most cost-effective for a particular energy source.

(p) The advisory group must annually, by February 15, report to the chairs and ranking minority members of the legislative committees with jurisdiction over energy policy on projects funded by the account for the prior year and all previous years. The report must, to the extent possible and reasonable, itemize the actual and projected financial benefit to the public utility's ratepayers of each project.

(q) A project receiving funds from the account must produce a written final report that includes sufficient detail for technical readers and a clearly written summary for nontechnical readers. The report must include an evaluation of the project's financial, environmental, and other benefits to the state and the public utility's ratepayers. A project receiving funds from the account must submit a report that meets the requirements of section 216C.51, subdivisions 3 and 4, each year the project funded by the account is in progress.

(r) Final reports, any mid-project status reports, and renewable development account financial reports must be posted online on a public website designated by the commissioner of commerce.

(s) All final reports must acknowledge that the project was made possible in whole or part by the Minnesota renewable development account, noting that the account is financed by the public utility's ratepayers.

(t) Of the amount in the renewable development account, priority must be given to making the payments required under section 216C.417.

(u) Construction projects receiving funds from this account are subject to the requirement to pay the prevailing wage rate, as defined in section 177.42 and the requirements and enforcement provisions in sections 177.27, 177.30, 177.32, 177.41 to 177.435, and 177.45.

Subd. 2. **Renewable energy production incentive.** (a) Until January 1, 2021, $10,900,000 annually must be allocated from available funds in the account to fund renewable energy production incentives. $9,400,000 of this annual amount is for incentives for electricity generated by wind energy conversion systems that are eligible for the incentives under section 216C.41 or Laws 2005, chapter 40.

(b) The balance of this amount, up to $1,500,000 annually, may be used for production incentives for on-farm biogas recovery facilities and hydroelectric facilities that are eligible for the incentive under section 216C.41 or for production incentives for other renewables, to be provided in the same manner as under section 216C.41.

(c) Any portion of the $10,900,000 not expended in any calendar year for the incentive is available for other spending purposes under subdivision 1. This subdivision does not create an obligation to contribute funds to the account.

(d) The Department of Commerce shall determine eligibility of projects under section 216C.41 for the purposes of this subdivision. At least quarterly, the Department of Commerce shall notify the public utility of the name and address of each eligible project owner and the amount due to each project under section 216C.41. The public utility shall make payments within 15 working days after receipt of notification of payments due.

Subd. 3. [Repealed, 2017 c 94 art 10 s 30]

History: *1994 c 641 art 1 s 10; 1999 c 200 s 1; 1Sp2003 c 11 art 2 s 1; 1Sp2005 c 1 art 4 s 14; 2007 c 57 art 2 s 9; 2009 c 110 s 1,2; 2010 c 361 art 5 s 2; 2011 c 97 s 2,3; 2012 c 196 s 1,2; 2017 c 94 art 10 s 3; 2023 c 60 art 12 s 5; 2024 c 126 art 6 s 3; 2024 c 127 art 42 s 3*

116C.7791 REBATES FOR SOLAR PHOTOVOLTAIC MODULES.

Subdivision 1. **Definitions.** For the purpose of this section, the following terms have the meanings given.

(a) "Installation" means an array of solar photovoltaic modules attached to a building that will use the electricity generated by the solar photovoltaic modules or placed on a facility or property proximate to that building.

(b) "Manufactured" means:

(1) the material production of solar photovoltaic modules, including the tabbing, stringing, and lamination processes; or

(2) the production of interconnections of low-voltage photoactive elements that produce the final useful photovoltaic output by a manufacturer operating in this state on May 18, 2010.

(c) "Qualified owner" means an owner of a qualified property, but does not include an entity engaged in the business of generating or selling electricity at retail, or an unregulated subsidiary of such an entity.

(d) "Qualified property" means a residence, multifamily residence, business, or publicly owned building located in the assigned service area of the utility subject to section 116C.779.

(e) "Solar photovoltaic module" means the smallest, nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current of electrical output.

Subd. 2. **Establishment.** The utility subject to section 116C.779 shall establish a program to provide rebates to an owner of a qualified property for installing solar photovoltaic modules manufactured in Minnesota after December 31, 2009. Any solar photovoltaic modules installed under this program and any expenses incurred by the utility operating the program shall be treated the same as solar installations and related expenses under section 216B.241.

Subd. 3. **Rebate eligibility.** (a) To be eligible for a rebate under this section, a solar photovoltaic module:

(1) must be manufactured in Minnesota;

(2) must be installed on a qualified property as part of a system whose generating capacity does not exceed 40 kilowatts;

(3) must be certified by Underwriters Laboratory, must have received the ETL listed mark from Intertek, or must have an equivalent certification from an independent testing agency;

(4) may or may not be connected to a utility grid;

(5) must be installed, or reviewed and approved, by a person certified as a solar photovoltaic installer by the North American Board of Certified Energy Practitioners; and

(6) may not be used to sell, transmit, or distribute the electrical energy at retail, nor to provide end-use electricity to an offsite facility of the electrical energy generator. On-site generation is allowed to the extent provided for in section 216B.1611.

(b) To be eligible for a rebate under this section, an applicant must have applied for and been awarded a rebate or other form of financial assistance available exclusively to owners of properties on which solar photovoltaic modules are installed that is offered by:

(1) the utility serving the property on which the solar photovoltaic modules are to be installed; or

(2) this state, under an authority other than this section.

(c) An applicant who is otherwise ineligible for a rebate under paragraph (b) is eligible if the applicant's failure to secure a rebate or other form of financial assistance is due solely to a lack of available funds on the part of a utility or this state.

Subd. 4. **Rebate amount and payment.** (a) The amount of a rebate under this section is the difference between the sum of all rebates described in subdivision 3, paragraph (b), awarded to the applicant and $5 per watt of installed generating capacity.

(b) Notwithstanding paragraph (a), the amount of all rebates or other forms of financial assistance awarded to an applicant by a utility and the state, including any rebate paid under this section, net of applicable federal income taxes applied at the highest applicable income tax rates, must not exceed 60 percent of the total installed cost of the solar photovoltaic modules.

(c) Rebates must be awarded to eligible applicants beginning July 1, 2010.

(d) The rebate must be paid out proportionately in five consecutive annual installments.

Subd. 5. **Rebate program funding.** (a) The following amounts must be allocated from the renewable development account established in section 116C.779 to a separate account for the purpose of providing the rebates for solar photovoltaic modules specified in this section:

(1) $2,000,000 in fiscal year 2011;

(2) $4,000,000 in fiscal year 2012;

(3) $5,000,000 in fiscal year 2013;

(4) $5,000,000 in fiscal year 2014; and

(5) $5,000,000 in fiscal year 2015.

(b) If, by the end of fiscal year 2015, insufficient qualified owners have applied for and met the requirements for rebates under this section to exhaust the funds available, any remaining balance shall be returned to the account established under section 116C.779.

History: *2010 c 361 art 5 s 3*

116C.7792 SOLAR ENERGY PRODUCTION INCENTIVE PROGRAM.

(a) The utility subject to section 116C.779 shall operate a program to provide solar energy production incentives for solar energy systems of no more than a total aggregate nameplate capacity of 40 kilowatts alternating current per premise. The owner of a solar energy system installed before June 1, 2018, is eligible to receive a production incentive under this section for any additional solar energy systems constructed at the same customer location, provided that the aggregate capacity of all systems at the customer location does not exceed 40 kilowatts.

(b) The program is funded by money withheld from transfer to the renewable development account under section 116C.779, subdivision 1, paragraphs (b) and (e). Program funds must be placed in a separate account for the purpose of the solar energy production incentive program operated by the utility and not for any other program or purpose.

(c) Funds allocated to the solar energy production incentive program in 2019 and 2020 remain available to the solar energy production incentive program.

(d) The following amounts are allocated to the solar energy production incentive program:

(1) $10,000,000 in 2021;

(2) $10,000,000 in 2022;

(3) $5,000,000 in 2023;

(4) $11,250,000 in 2024;

(5) $6,250,000 in 2025; and

(6) $5,000,000 each year, beginning in 2026 through 2035.

(e) Notwithstanding the Department of Commerce's November 14, 2018, decision in Docket No. E002/M-13-1015 regarding operation of the utility's solar energy production incentive program, half of the amounts allocated each year under paragraph (d), clauses (3), (4), (5), and (6), must be reserved for solar energy systems whose installation meets the eligibility standards for the low-income program established in the November 14, 2018, decision or successor decisions of the department. All other program operations of the solar energy production incentive program are governed by the provisions of the November 14, 2018, decision or successor decisions of the department.

(f) Funds allocated to the solar energy production incentive program that have not been committed to a specific project at the end of a program year remain available to the solar energy production incentive program.

(g) Any unspent amount remaining on January 1, 2038, must be transferred to the renewable development account.

(h) A solar energy system receiving a production incentive under this section must be sized to less than 120 percent of the customer's on-site annual energy consumption when combined with other distributed generation resources and subscriptions provided under section 216B.1641 associated with the premise. The production incentive must be paid for ten years commencing with the commissioning of the system.

(i) The utility must file a plan to operate the program with the commissioner of commerce. The utility may not operate the program until it is approved by the commissioner. A change to the program to include projects up to a nameplate capacity of 40 kilowatts or less does not require the utility to file a plan with the commissioner. Any plan approved by the commissioner of commerce must not provide an increased incentive scale over prior years unless the commissioner demonstrates that changes in the market for solar energy facilities require an increase.

History: *2013 c 85 art 10 s 1; 2017 c 94 art 10 s 4; 2018 c 193 s 1; 1Sp2019 c 7 art 11 s 1; 2020 c 118 s 1; 1Sp2021 c 4 art 8 s 5; 2023 c 60 art 12 s 6; 2024 c 126 art 6 s 4; 2024 c 127 art 42 s 4; 1Sp2025 c 7 art 3 s 1*

116C.80 [Repealed, 1Sp2003 c 11 art 3 s 16]

116C.81 [Renumbered 116C.40]

116C.82 [Renumbered 116C.41]

116C.83 AUTHORIZATION FOR ADDITIONAL DRY CASK STORAGE.

Subdivision 1. **Authorization to end of current Prairie Island license.** Subject to the dry cask storage limits of the federal license for the independent spent-fuel storage installation at Prairie Island, the public utility that owns the Prairie Island nuclear generation plant has authorization for sufficient dry cask storage capacity at that installation to allow:

(1) the unit 1 reactor at Prairie Island to operate until the end of its current license in 2013; and

(2) the unit 2 reactor at Prairie Island to operate until the end of its current license in 2014.

Subd. 2. **Commission process for future additional authorization.** Authorization of any additional dry cask storage other than that provided for in subdivision 1, or expansion or establishment of an independent spent-fuel storage facility at a nuclear generation facility in this state, is subject to approval of a certificate of need by the Public Utilities Commission pursuant to section 216B.243. In any proceeding under this subdivision, the commission may make a decision that could result in a shutdown of a nuclear generating facility. In considering an application for a certificate of need pursuant to this subdivision, the commission may consider whether the public utility that owns the nuclear generation facility in the state is in compliance with section 216B.1691 and the utility's past performance under that section.

Subd. 3. **Legislative review.** (a) To allow opportunity for review by the legislature, a decision by the commission on an application for a certificate of need pursuant to subdivision 2 is stayed until the June 1 following the next regular annual session of the legislature that begins after the date of the commission decision. By January 15 of the year of that legislative session, the commission shall issue a report to the chairs of the house of representatives and senate committees with jurisdiction over energy and environmental policy issues, providing a summary of the commission's decision and the grounds for that decision, the alternatives considered and rejected by the commission, and the reasons for rejecting those alternatives. If the legislature does not modify or reject the commission's decision by law enacted during that regular legislative session, the commission's decision shall become effective on the expiration of the stay.

(b) The stay of a commission decision to approve an application for a certificate of need for additional dry cask storage under subdivision 2 does not apply to the fabrication of the spent-fuel storage casks. However, if the utility proceeds with the fabrication of casks, it does so bearing the risk of an adverse legislative decision.

Subd. 4. **Other conditions.** (a) The storage of spent nuclear fuel in the pool and in dry casks at a nuclear generating plant must be managed to facilitate the shipment of waste out of state to a permanent or interim storage facility as soon as feasible in a manner that allows the continued operation of the plant consistent with sections 116C.71 to 116C.83 and 216B.1645, subdivision 4.

(b) The authorization for storage capacity pursuant to this section is limited to the storage of spent nuclear fuel generated by a Minnesota nuclear generation facility and stored on the site of that facility.

Subd. 5. **Water standards.** The standards established in section 116C.76, subdivision 1, clauses (1) to (3), apply to an independent spent-fuel installation. Such an installation must be operated in accordance with those standards.

Subd. 6. **Environmental review and protection.** (a) The siting, construction, and operation of an independent spent-fuel storage installation located on the site of a Minnesota generation facility for dry cask storage of spent nuclear fuel generated solely by that facility is subject to all environmental review and protection provisions of this chapter and chapters 115, 115B, 116, 116B, 116D, and 216B, and rules associated with those chapters, except those statutes and rules that apply specifically to a radioactive waste management facility as defined in section 116C.71, subdivision 7.

(b) An environmental impact statement is required under chapter 116D for a proposal to construct and operate a new or expanded independent spent-fuel storage installation. The Public Utilities Commission is the responsible governmental unit for the environmental impact statement. Prior to finding the statement adequate, the commission must find that the applicant has demonstrated that the facility is designed to provide a reasonable expectation that the operation of the facility will not result in groundwater contamination in excess of the standards established in section 116C.76, subdivision 1, clauses (1) to (3).

History: *1Sp2003 c 11 art 1 s 2; 2005 c 97 art 3 s 19; 2024 c 126 art 9 s 2; 2024 c 127 art 45 s 2*

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

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

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

ARTICLE I. POLICY AND PURPOSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III. THE COMMISSION

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

b. Each Commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the Commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the Commission how to vote or not vote on matters before the Commission.

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

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

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

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

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

shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

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

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

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

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

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

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

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

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

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

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

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

i. The Commission shall do all of the following:

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

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

3. Adopt an annual budget.

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

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

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

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

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

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

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

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

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

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

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

a. Cover the annual budget of the Commission;

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

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

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

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

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

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

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

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

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

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

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

a. Imposes financial penalties on a party state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV. REGIONAL DISPOSAL PLAN

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

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

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

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

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

3. The minimization of waste transportation;

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

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

6. The economic impacts on the party states.

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

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

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

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

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

pursuant to article III.h.6. of this compact, subject to the provisions of articles VI.l., VI.s., VIII.d., and X of this compact.

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

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

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

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

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

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

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

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

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

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

The obligation set forth in article VI.c. of this compact is contingent upon the discharge by the Commission of its obligation set forth in article III.i.5. of this compact.

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

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

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

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

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

i. A host state shall accept waste for disposal for a period of 20 years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the Commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by article VI.l.4. of this compact, the 20-year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the Commission.

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

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

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

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

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

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

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

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

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

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

4. If, 20 years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to articles VI.d. and VIII.d. of this compact. If, at the time the capacity of the then operating compact facility has been reached, or 20 years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, without the consent of any other party state or the Commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact. In addition, during such period, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under article VI.i. of this compact, shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of article VI.l.4. of this compact, shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the Commission as authorized in article VI.i. of this compact, or inconsistent with article VI.p. or q. of this compact.

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

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

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

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

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the Commission and the host state establishing

the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the Commission the amount to be collected through the fee system for deposit into the fund. If, 180 days after such proposal is made to the Commission, the host state and the Commission have not agreed, either the Commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in article VI.o. of this compact, and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the Commission determines the long-term care fund established with respect to that facility is not adequate to pay for all long-term care for that facility, the Commission shall collect and pay over to the host state of the closed facility, for deposit into the long-term care fund, an amount determined by the Commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the facility. If a long-term care fund is exhausted and long-term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in article VII.g. of this compact. Generators that provide indemnification shall have contribution rights as provided in article VII.g. of this compact.

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

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

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

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

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

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

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

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

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

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

3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to article III.h.6. of this compact, or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending any action for such damages. This indemnification shall not extend to liability based on any of the following:

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

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

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

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

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

upon the approval of the Commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the Commission.

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

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

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

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under article VI of this compact forthwith shall repay to the Commission the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long-term care of a compact facility that the Commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the Commission the amount the Commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the Commission shall be distributed by the Commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the Commission shall apply the funds to the purposes to which they would have

been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the Commission an amount the Commission determines to be necessary to cover all other costs and damages incurred by the Commission and the remaining party states as a result of the withdrawal or revocation. The intention of article VIII.e. of this compact is to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. Article VIII.e. of this compact shall be construed and applied so as to effectuate this intention.

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

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

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

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

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

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

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

ARTICLE IX. PENALTIES AND ENFORCEMENT

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

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

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

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

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

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

ARTICLE X. SEVERABILITY AND CONSTRUCTION

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

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

116C.832 DEFINITIONS.

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

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

Subd. 3. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 5. MS 1990 [Renumbered subd 4]

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

Subd. 5a. **Committee.** "Committee" means the Facility Siting Policy Development Committee established under section 116C.842.

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

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

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

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

116C.833 COMPACT COMMISSION MEMBER.

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

Subd. 2. [Repealed, 2014 c 248 s 19]

History: *1983 c 353 s 3; 1987 c 186 s 15; 1996 c 428 s 4; 2012 c 272 s 75*

116C.834 ASSESSMENT OF GENERATORS.

Subdivision 1. **Costs.** All costs incurred by the state to carry out its responsibilities under the compact and under sections 116C.833 to 116C.843 shall be paid by generators of low-level radioactive waste in this state through fees assessed by the Pollution Control Agency. Fees may be reasonably assessed on the basis of volume or degree of hazard of the waste produced by a generator. Costs for which fees may be assessed include, but are not limited to:

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

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

(3) regulatory costs.

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

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

History: *1983 c 353 s 4; 1987 c 311 s 4; 1996 c 305 art 3 s 19; 1996 c 428 s 5,6; 1997 c 216 s 119; 1999 c 250 art 3 s 20; 2003 c 128 art 2 s 41; 2009 c 37 art 1 s 53*

116C.835 ENFORCING COMPACT AND LAWS.

Subdivision 1. **Criminal penalties.** (a) Any person who willfully or negligently violates any provision of the compact upon conviction is guilty of a misdemeanor, and is subject to a fine of not more than $2,500 in the event of a willful violation or not more than $300 in the event of a negligent violation. A second

conviction of the same provision after a first conviction is punishable by a fine of not more than $50,000, or by imprisonment for not more than two years, or both.

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

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

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

Subd. 4. **Action to compel performance.** In any action to compel performance of an obligation created by the compact the court may require any person who is adjudged responsible to do and perform any and all acts and things within that person's power which are reasonably necessary to fulfill the obligation.

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

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

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

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

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

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

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

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

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

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

116C.838 EFFECT ON EXISTING STATE LAW.

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

History: *1983 c 353 s 8*

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

116C.840 DUTY TO PROVIDE INFORMATION.

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

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

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

History: *1983 c 353 s 10*

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

116C.842 CONTINGENT PROVISIONS.

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

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

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

Subd. 2a. **Administration.** The Environmental Quality Board shall provide administrative assistance to the committee.

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

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

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

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

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

116C.843 CONGRESSIONAL CONDITIONS ON COMPACT CONSENT.

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

History: *1983 c 353 s 13*

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

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

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

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

116C.849 SITING CRITERIA.

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

History: *1996 c 428 s 13*

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

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

GENETICALLY ENGINEERED ORGANISMS

116C.91 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116C.91 to 116C.97, the terms defined in this section have the meanings given them.

Subd. 2. **Board.** "Board" means the Environmental Quality Board.

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

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

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

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

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

History: *1989 c 346 s 2; 1991 c 250 s 28; 1994 c 454 s 9; 1997 c 7 art 1 s 38*

116C.92 COORDINATING ACTIVITIES.

Subdivision 1. **State coordinating organization.** The Environmental Quality Board is designated the state coordinating organization for state and federal regulatory activities relating to genetically engineered organisms.

Subd. 2. **Notice of nationwide action.** The board shall notify interested parties if a permit to release genetically engineered wild rice is issued anywhere in the United States. For purposes of this subdivision, "interested parties" means:

(1) the state's wild rice industry;

(2) the legislature;

(3) federally recognized tribes within Minnesota; and

(4) individuals who request to be notified.

History: *1989 c 346 s 3; 2007 c 57 art 1 s 140*

116C.93 [Repealed, 2007 c 133 art 2 s 13]

116C.94 RULES.

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

(b) The board shall adopt rules that require an environmental impact statement and otherwise comply with chapter 116D and rules adopted under it for a proposed release and a permit for a release of genetically engineered wild rice. The board may place conditions on the permit and may deny, modify, suspend, or revoke the permit.

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

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

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

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

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

History: *1989 c 346 s 5; 1991 c 250 s 29; 1994 c 454 s 10; 2007 c 57 art 1 s 141*

116C.95 LIABILITY.

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

History: *1989 c 346 s 6*

116C.96 COST REIMBURSEMENT.

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

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

116C.97 EXEMPTIONS.

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

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

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

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

(d) This subdivision does not apply to genetically engineered organisms for which an environmental impact statement is required under sections 116C.91 to 116C.96.

History: *1994 c 454 s 12; 2007 c 57 art 1 s 142*

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

SILICA SAND

116C.99 SILICA SAND MINING MODEL STANDARDS AND CRITERIA.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to sections 116C.99 to 116C.992.

(a) "Local unit of government" means a county, statutory or home rule charter city, or town.

(b) "Mining" means excavating silica sand by any process, including digging, excavating, drilling, blasting, tunneling, dredging, stripping, or by shaft.

(c) "Processing" means washing, cleaning, screening, crushing, filtering, sorting, processing, stockpiling, and storing silica sand, either at the mining site or at any other site.

(d) "Silica sand" means well-rounded, sand-sized grains of quartz (silicon dioxide), with very little impurities in terms of other minerals. Specifically, the silica sand for the purposes of this section is commercially valuable for use in the hydraulic fracturing of shale to obtain oil and natural gas. Silica sand does not include common rock, stone, aggregate, gravel, sand with a low quartz level, or silica compounds recovered as a by-product of metallic mining.

(e) "Silica sand project" means the excavation and mining and processing of silica sand; the washing, cleaning, screening, crushing, filtering, drying, sorting, stockpiling, and storing of silica sand, either at the mining site or at any other site; the hauling and transporting of silica sand; or a facility for transporting silica sand to destinations by rail, barge, truck, or other means of transportation.

(f) "Temporary storage" means the storage of stockpiles of silica sand that have been transported and await further transport.

(g) "Transporting" means hauling and transporting silica sand, by any carrier:

(1) from the mining site to a processing or transfer site; or

(2) from a processing or storage site to a rail, barge, or transfer site for transporting to destinations.

Subd. 2. **Standards and criteria.** By October 1, 2013, the Environmental Quality Board, in consultation with local units of government, shall develop model standards and criteria for mining, processing, and transporting silica sand. These standards and criteria may be used by local units of government in developing local ordinances. The standards and criteria shall be different for different geographic areas of the state. The unique karst conditions and landforms of southeastern Minnesota shall be considered unique when compared with the flat scoured river terraces and uniform hydrology of the Minnesota Valley. The standards and criteria developed shall reflect those differences in varying regions of the state. The standards and criteria must include:

(1) recommendations for setbacks or buffers for mining operation and processing, including:

(i) any residence or residential zoning district boundary;

(ii) any property line or right-of-way line of any existing or proposed street or highway;

(iii) ordinary high-water levels of public waters;

(iv) bluffs;

(v) designated trout streams, class 2A water as designated in the rules of the Pollution Control Agency, or any perennially flowing tributary of a designated trout stream or class 2A water;

(vi) calcareous fens;

(vii) wellhead protection areas as defined in section 103I.005;

(viii) critical natural habitat acquired by the commissioner of natural resources under section 84.944; and

(ix) a natural resource easement paid wholly or in part by public funds;

(2) standards for hours of operation;

(3) groundwater and surface water quality and quantity monitoring and mitigation plan requirements, including:

(i) applicable groundwater and surface water appropriation permit requirements;

(ii) well-sealing requirements;

(iii) annual submission of monitoring well data; and

(iv) stormwater runoff rate limits not to exceed two-, ten-, and 100-year storm events;

(4) air monitoring and data submission requirements;

(5) dust control requirements;

(6) noise testing and mitigation plan requirements;

(7) blast monitoring plan requirements;

(8) lighting requirements;

(9) inspection requirements;

(10) containment requirements for silica sand in temporary storage to protect air and water quality;

(11) containment requirements for chemicals used in processing;

(12) financial assurance requirements;

(13) road and bridge impacts and requirements; and

(14) reclamation plan requirements as required under the rules adopted by the commissioner of natural resources.

Subd. 3. **Silica sand technical assistance team.** By October 1, 2013, the Environmental Quality Board shall assemble a silica sand technical assistance team to provide local units of government, at their request, with assistance with ordinance development, zoning, environmental review and permitting, monitoring, or other issues arising from silica sand mining and processing operations. The technical assistance team may be chosen from representatives of the following entities: the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, the Department of Health, the Department of Transportation, the University of Minnesota, the Minnesota State Colleges and Universities, and federal agencies. A majority of the members must be from a state agency and all members must have expertise in one or more of the following areas: silica sand mining, hydrology, air quality, water quality, land use, or other areas related to silica sand mining.

Subd. 4. **Considering technical assistance team recommendations.** (a) When the technical assistance team, at the request of the local unit of government, assembles findings or makes a recommendation related to a proposed silica sand project for the protection of human health and the environment, a local government unit must consider the findings or recommendations of the technical assistance team in its approval or denial of a silica sand project. If the local government unit does not agree with the technical assistance team's findings and recommendations, the detailed reasons for the disagreement must be part of the local government unit's record of decision.

(b) Silica sand project proposers must cooperate in providing local government unit staff and members of the technical assistance team with information regarding the project.

(c) When a local unit of government requests assistance from the silica sand technical assistance team for environmental review or permitting of a silica sand project, the local unit of government may assess the project proposer for reasonable costs of the assistance and use the funds received to reimburse the entity providing that assistance.

History: *2013 c 114 art 4 s 91*

116C.991 ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.

(a) Until a final rule is adopted pursuant to Laws 2013, chapter 114, article 4, section 105, paragraph (d), an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(1) excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the responsible governmental unit; or

(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.

(b) In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:

(1) a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;

(2) for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;

(3) an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;

(4) a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;

(5) an assessment of compatibility of the project with other existing uses; and

(6) mitigation measures that could eliminate or minimize any adverse environmental effects for the project.

History: *2013 c 114 art 4 s 92; 1Sp2015 c 4 art 4 s 121*

116C.992 ORDINANCE AND PERMIT LIBRARY.

By October 1, 2013, the Environmental Quality Board, in consultation with local units of government, shall create and maintain a library on local government ordinances and local government permits that have been approved for regulation of silica sand projects for reference by local governments.

History: *2013 c 114 art 4 s 93*