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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4286

03/09/2020 Authored by Persell, Lee, Wazlawik, Dehn and Fischer
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy
04/14/2020 Adoption of Report: Re-referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to environment; modifying enforcement authority; amending Minnesota
1.3 Statutes 2018, sections 115.03, subdivision 1; 115.071, subdivisions 1, 4, by adding
1.4 subdivisions; 116.07, subdivision 9, by adding subdivisions; 116.11.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 115.03, subdivision 1, is amended to read:

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

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

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

1.15 (c) to establish and alter such reasonable pollution standards for any waters of the state
1.16 in relation to the public use to which they are or may be put as it shall deem necessary for
1.17 the purposes of this chapter and, with respect to the pollution of waters of the state, chapter
1.18 116;

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

1.21 (e) to adopt, issue, reissue, modify, deny, ~~or~~ revoke, reopen, enter into, or enforce
1.22 reasonable orders, permits, variances, standards, rules, schedules of compliance, and

2.1 stipulation agreements, under such conditions as it may prescribe, in order to prevent, control
2.2 or abate water pollution, or for the installation or operation of disposal systems or parts
2.3 thereof, or for other equipment and facilities:

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

2.7 (2) prohibiting or directing the abatement of any discharge of sewage, industrial waste,
2.8 or other wastes, into any waters of the state or the deposit thereof or the discharge into any
2.9 municipal disposal system where the same is likely to get into any waters of the state in
2.10 violation of this chapter and, with respect to the pollution of waters of the state, chapter
2.11 116, or standards or rules promulgated or permits issued pursuant thereto, and specifying
2.12 the schedule of compliance within which such prohibition or abatement must be
2.13 accomplished;

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

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

2.22 (5) establishing, and from time to time revising, standards of performance for new sources
2.23 taking into consideration, among other things, classes, types, sizes, and categories of sources,
2.24 processes, pollution control technology, cost of achieving such effluent reduction, and any
2.25 nonwater quality environmental impact and energy requirements. Said standards of
2.26 performance for new sources shall encompass those standards for the control of the discharge
2.27 of pollutants which reflect the greatest degree of effluent reduction which the agency
2.28 determines to be achievable through application of the best available demonstrated control
2.29 technology, processes, operating methods, or other alternatives, including, where practicable,
2.30 a standard permitting no discharge of pollutants. New sources shall encompass buildings,
2.31 structures, facilities, or installations from which there is or may be the discharge of pollutants,
2.32 the construction of which is commenced after the publication by the agency of proposed
2.33 rules prescribing a standard of performance which will be applicable to such source.
2.34 Notwithstanding any other provision of the law of this state, any point source the construction

3.1 of which is commenced after May 20, 1973, and which is so constructed as to meet all
3.2 applicable standards of performance for new sources shall, consistent with and subject to
3.3 the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution
3.4 Control Act, not be subject to any more stringent standard of performance for new sources
3.5 during a ten-year period beginning on the date of completion of such construction or during
3.6 the period of depreciation or amortization of such facility for the purposes of section 167
3.7 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period ends first.
3.8 Construction shall encompass any placement, assembly, or installation of facilities or
3.9 equipment, including contractual obligations to purchase such facilities or equipment, at
3.10 the premises where such equipment will be used, including preparation work at such
3.11 premises;

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

3.15 (7) requiring the owner or operator of any disposal system or any point source to establish
3.16 and maintain such records, make such reports, install, use, and maintain such monitoring
3.17 equipment or methods, including where appropriate biological monitoring methods, sample
3.18 such effluents in accordance with such methods, at such locations, at such intervals, and in
3.19 such a manner as the agency shall prescribe, and providing such other information as the
3.20 agency may reasonably require;

3.21 (8) notwithstanding any other provision of this chapter, and with respect to the pollution
3.22 of waters of the state, chapter 116, requiring the achievement of more stringent limitations
3.23 than otherwise imposed by effluent limitations in order to meet any applicable water quality
3.24 standard by establishing new effluent limitations, based upon section 115.01, subdivision
3.25 13, clause (b), including alternative effluent control strategies for any point source or group
3.26 of point sources to insure the integrity of water quality classifications, whenever the agency
3.27 determines that discharges of pollutants from such point source or sources, with the
3.28 application of effluent limitations required to comply with any standard of best available
3.29 technology, would interfere with the attainment or maintenance of the water quality
3.30 classification in a specific portion of the waters of the state. Prior to establishment of any
3.31 such effluent limitation, the agency shall hold a public hearing to determine the relationship
3.32 of the economic and social costs of achieving such limitation or limitations, including any
3.33 economic or social dislocation in the affected community or communities, to the social and
3.34 economic benefits to be obtained and to determine whether or not such effluent limitation
3.35 can be implemented with available technology or other alternative control strategies. If a

4.1 person affected by such limitation demonstrates at such hearing that, whether or not such
4.2 technology or other alternative control strategies are available, there is no reasonable
4.3 relationship between the economic and social costs and the benefits to be obtained, such
4.4 limitation shall not become effective and shall be adjusted as it applies to such person;

4.5 (9) modifying, in its discretion, any requirement or limitation based upon best available
4.6 technology with respect to any point source for which a permit application is filed after July
4.7 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the
4.8 agency that such modified requirements will represent the maximum use of technology
4.9 within the economic capability of the owner or operator and will result in reasonable further
4.10 progress toward the elimination of the discharge of pollutants; and

4.11 (10) requiring that applicants for wastewater discharge permits evaluate in their
4.12 applications the potential reuses of the discharged wastewater;

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

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

4.21 (h) to conduct such investigations, issue such notices, public and otherwise, and hold
4.22 such hearings as are necessary or which it may deem advisable for the discharge of its duties
4.23 under this chapter and, with respect to the pollution of waters of the state, under chapter
4.24 116, including, but not limited to, the issuance of permits, and to authorize any member,
4.25 employee, or agent appointed by it to conduct such investigations or, issue such notices and
4.26 hold such hearings;

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

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

5.4 (k) to impose as additional conditions in permits to publicly owned disposal systems
5.5 appropriate measures to insure compliance by industrial and other users with any pretreatment
5.6 standard, including, but not limited to, those related to toxic pollutants, and any system of
5.7 user charges ratably as is hereby required under state law or said Federal Water Pollution
5.8 Control Act, as amended, or any regulations or guidelines promulgated thereunder;

5.9 (l) to set a period not to exceed five years for the duration of any national pollutant
5.10 discharge elimination system permit or not to exceed ten years for any permit issued as a
5.11 state disposal system permit only;

5.12 (m) to require each governmental subdivision identified as a permittee for a wastewater
5.13 treatment works to evaluate in every odd-numbered year the condition of its existing system
5.14 and identify future capital improvements that will be needed to attain or maintain compliance
5.15 with a national pollutant discharge elimination system or state disposal system permit; and

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

5.21 The information required in clause (m) must be submitted in every odd-numbered year to
5.22 the commissioner on a form provided by the commissioner. The commissioner shall provide
5.23 technical assistance if requested by the governmental subdivision.

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

5.26 Sec. 2. Minnesota Statutes 2018, section 115.071, subdivision 1, is amended to read:

5.27 Subdivision 1. **Remedies available.** The provisions of sections 103F.701 to 103F.755,
5.28 this chapter and chapters 114C, 115A, and 116, and sections 325E.10 to 325E.1251 and
5.29 325E.32 and all rules, standards, orders, stipulation agreements, schedules of compliance,
5.30 and permits adopted or issued by the agency thereunder or under any other law now in force
5.31 or hereafter enacted for the prevention, control, or abatement of pollution may be enforced
5.32 by any one or any combination of the following: criminal prosecution; action to recover

6.1 civil penalties; injunction; action to compel or cease performance; or other appropriate
6.2 action, in accordance with the provisions of said chapters and this section.

6.3 Sec. 3. Minnesota Statutes 2018, section 115.071, subdivision 4, is amended to read:

6.4 Subd. 4. **Injunctions.** Any violation of the provisions, rules, standards, orders, stipulation
6.5 agreements, variances, schedules of compliance, or permits specified in this chapter and
6.6 chapters 114C and 116 ~~shall constitute~~ constitutes a public nuisance and may be enjoined
6.7 as provided by law in an action, in the name of the state, brought by the attorney general.
6.8 An injunction may include a requirement for a facility or person to immediately cease
6.9 operation or activities until the commissioner has reasonable assurance that renewed operation
6.10 or activities will not violate state pollution requirements, cause harm to human health, or
6.11 result in a serious violation of an applicable permit.

6.12 Sec. 4. Minnesota Statutes 2018, section 115.071, is amended by adding a subdivision to
6.13 read:

6.14 Subd. 8. **Stipulation agreements.** In exercising enforcement powers over a term of a
6.15 stipulation agreement when a party asserts a good cause or force majeure claim for an
6.16 extension of time to comply with a stipulated term, the commissioner must not grant the
6.17 extension if the assertion is based solely on increased costs.

6.18 Sec. 5. Minnesota Statutes 2018, section 115.071, is amended by adding a subdivision to
6.19 read:

6.20 Subd. 9. **Compliance requirements for unpermitted activity.** The commissioner may
6.21 require a person or facility that is required to have a permit and that fails to obtain a permit
6.22 to comply with any terms of a permit that would have been issued had the person or facility
6.23 obtained a permit, including but not limited to reporting, monitoring, controlling pollutant
6.24 discharge, and creating and implementing operations and maintenance plans. Beginning at
6.25 the time a permit should have been obtained, a person or facility may be subject to liability
6.26 and penalty, including criminal liability, for failing to operate in compliance with a permit
6.27 not obtained.

6.28 Sec. 6. Minnesota Statutes 2018, section 116.07, subdivision 9, is amended to read:

6.29 Subd. 9. **Orders; investigations.** ~~The agency shall have~~ commissioner has the following
6.30 powers and duties for ~~the enforcement of any provision of~~ enforcing this chapter and chapter
6.31 114C, relating to air contamination or waste:

7.1 (1) to adopt, issue, reissue, modify, deny, revoke, reopen, enter into, or enforce reasonable
7.2 orders, schedules of compliance and stipulation agreements;

7.3 (2) to require the owner or operator of any emission facility, air contaminant treatment
7.4 facility, potential air contaminant storage facility, or any system or facility related to the
7.5 storage, collection, transportation, processing, or disposal of waste to establish and maintain
7.6 records; to make reports; to install, use, and maintain monitoring equipment or methods;
7.7 and to make tests, including testing for odor where a nuisance may exist, in accordance with
7.8 methods, at locations, at intervals, and in a manner as the agency shall prescribe; and to
7.9 provide other information as the agency may reasonably require; and

7.10 (3) to conduct investigations, issue notices, public and otherwise, and order hearings as
7.11 it may deem necessary or advisable for the discharge of its duties under this chapter and
7.12 chapter 114C, including but not limited to the issuance of permits; and to authorize any
7.13 member, employee, or agent appointed by it to conduct the investigations and issue the
7.14 notices.

7.15 Sec. 7. Minnesota Statutes 2018, section 116.07, is amended by adding a subdivision to
7.16 read:

7.17 Subd. 13. **Stipulation agreements.** In exercising enforcement powers over a term of a
7.18 stipulation agreement when a party asserts a good cause or force majeure claim for an
7.19 extension of time to comply with a stipulated term, the commissioner must not grant the
7.20 extension if the assertion is based solely on increased costs.

7.21 Sec. 8. Minnesota Statutes 2018, section 116.07, is amended by adding a subdivision to
7.22 read:

7.23 Subd. 14. **Compliance requirements for unpermitted activity.** The commissioner
7.24 may require a person or facility that is required to have a permit and that fails to obtain a
7.25 permit to comply with any terms of a permit that would have been issued had the person or
7.26 facility obtained a permit, including but not limited to reporting, monitoring, controlling
7.27 pollutant discharge, and creating and implementing operations and maintenance plans.
7.28 Beginning at the time a permit should have been obtained, a person or facility may be subject
7.29 to liability and penalty, including criminal liability, for failing to operate in compliance with
7.30 a permit not obtained.

8.1 Sec. 9. Minnesota Statutes 2018, section 116.11, is amended to read:

8.2 **116.11 EMERGENCY POWERS.**

8.3 If there is imminent and substantial danger to the health and welfare of the people of
8.4 the state, or of any of them, as a result of the pollution of air, land, or water, the ~~agency~~
8.5 commissioner may by emergency order direct the immediate discontinuance or abatement
8.6 of the pollution without notice and without a hearing or, at the request of the ~~agency~~
8.7 commissioner, the attorney general may bring an action in the name of the state in the
8.8 appropriate district court for a temporary restraining order to immediately abate or prevent
8.9 the pollution. For purposes of this subdivision, the commissioner's order or temporary
8.10 restraining order may include a requirement for a facility or person to immediately cease
8.11 operation or activities until the commissioner has reasonable assurance that renewed operation
8.12 or activities will not result in imminent and substantial danger. The agency order or temporary
8.13 restraining order shall remain effective until notice, hearing, and determination pursuant to
8.14 other provisions of law, or, in the interim, as otherwise ordered. A final order of the agency
8.15 in these cases shall be appealable in accordance with chapter 14.