CHAPTER 116

POLLUTION CONTROL AGENCY

GENERAL

116.01 POLICY.

To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state, it is in the public interest that there be established a pollution control agency.

History: *1967 c 882 s 1; 1969 c 1046 s 1*

116.02 POLLUTION CONTROL AGENCY, CREATION.

Subdivision 1. A pollution control agency, designated as the Minnesota pollution control agency, is hereby created. The agency shall consist of nine members appointed by the governor, by and with the advice and consent of the senate. One of such members shall be a person knowledgeable in the field of agriculture.

Subd. 2. The membership terms, compensation, removal of members, and filling of vacancies on the agency shall be as provided in section 15.0575.

Subd. 3. The membership of the pollution control agency shall be broadly representative of the skills and experience necessary to effectuate the policy of sections 116.01 to 116.075, except that no member appointed shall be an officer or employee of the state or federal government. Only two members at one time may be officials or employees of a municipality or any governmental subdivision, but neither may be a member ex officio or otherwise on the management board of a municipal sanitary sewage disposal system.

Subd. 4. The agency shall elect a chair and such other officers as it deems necessary.

Subd. 5. The pollution control agency is the successor of the water pollution control commission, and all powers and duties now vested in or imposed upon said commission by chapter 115, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota pollution control agency, except as to those matters pending before the commission in which hearings have been held and evidence has been adduced. The water pollution commission shall complete its action in such pending matters not later than six months from May 26, 1967. The water pollution control commission, as heretofore constituted, is hereby abolished, (a) effective upon completion of its action in the pending cases, as hereinbefore provided for; or (b) six months from May 26, 1967, whichever is the earlier.

History: *1967 c 882 s 2; 1969 c 1038 s 1,2; 1973 c 35 s 27; 1976 c 134 s 25-27; 1980 c 509 s 26; 1Sp1981 c 4 art 1 s 73; 1986 c 444*

116.03 COMMISSIONER.

Subdivision 1. (a) The office of commissioner of the pollution control agency is created and is under the supervision and control of the commissioner, who is appointed by the governor under the provisions of section 15.06.

(b) The commissioner may appoint a deputy director and an assistant commissioner who shall be in the unclassified service.

Subd. 2. The commissioner shall organize the agency and employ such assistants and other officers, employees and agents as the commissioner may deem necessary to discharge the functions of the commissioner's office, define the duties of such officers, employees and agents, and delegate to them any of the commissioner's powers, duties, and responsibilities, subject to the commissioner's control and under such conditions as the commissioner may prescribe. The commissioner may also contract with persons, firms, corporations, the federal government and any agency or instrumentality thereof,

the water research center of the University of Minnesota or any other instrumentality of such university, for doing any of the work of the commissioner's office, and none of the provisions of chapter 16, relating to bids, shall apply to such contracts. All personnel employed and all contracts entered into pursuant to this subdivision shall be subject to the approval of the pollution control agency. Agreements to exercise delegated powers shall be by written order filed with the secretary of state. An employee of the state commissioner of health engaged in environmental sanitation work may transfer to the pollution control agency with the approval of the commissioner. Under such a transfer the employee shall be assigned to a position of similar responsibility and pay without loss of seniority, vacation, sick leave, or other benefits under the state civil service act.

Subd. 3. The commissioner of the pollution control agency is the state agent to apply for, receive, and disburse federal funds made available to the state by federal law or rules and regulations promulgated thereunder for any purpose related to the powers and duties of the pollution control agency or the commissioner. The commissioner shall comply with any and all requirements of such federal law or such rules and regulations promulgated thereunder to facilitate application for, receipt, and disbursement of such funds. All such moneys received by the commissioner shall be deposited in the state treasury and are hereby annually appropriated to the commissioner for the purposes for which they are received. None of such moneys in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.

The provisions of section 3.3005 shall not apply to money available under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, United States Code, title 42, sections 9601 to 9657, for which a state match is not required or for which a state match is available under the Environmental Response and Liability Act or from a political subdivision. The receipt of the money shall be reported to the legislative advisory commission.

Subd. 4. Before entering upon the duties of the office the commissioner of the pollution control agency shall take and subscribe an oath.

Subd. 5. The salary of the commissioner of the pollution control agency shall be prescribed by the governor, unless otherwise fixed by law.

Subd. 6. The term of the first director of the pollution control agency shall expire with the term of the governor expiring in January, 1971. Thereafter, the term of the commissioner shall be in conformity with the provisions of this section.

History: *1967 c 882 s 3; 1974 c 406 s 9; 1974 c 483 s 2; 1977 c 305 s 19,45; 1982 c 458 s 1; 1983 c 301 s 111; 1986 c 444; 1987 c 186 s 15; 1991 c 326 s 6*

116.04 EXECUTIVE SECRETARY.

The commissioner of the pollution control agency is the executive secretary and chief executive officer of the Minnesota pollution control agency and is responsible for performing the executive duties of such agency prescribed by law.

History: *1967 c 882 s 4; 1987 c 186 s 15*

116.05 COOPERATION.

Subdivision 1. All state departments and agencies are hereby directed to cooperate with the pollution control agency and its commissioner and assist them in the performance of their duties, and are authorized to enter into necessary agreements with the agency, and the pollution control agency is authorized to cooperate and to enter into necessary agreements with other departments and agencies of the state, with municipalities, with other states, with the federal government and its agencies and instrumentalities, in the public interest and in order to control pollution under this chapter and chapter 115.

Subd. 2. Upon the request of the pollution control agency the governor may, by order, require any department or agency of the state to furnish such assistance to the agency or its commissioner in the performance of its duties or in the exercise of the

commissioner's powers imposed by law, as the governor may, in the order, designate or specify; and with the consent of the department or agency concerned, the governor may direct all or part of the cost or expense for the amount of such assistance to be paid from the general fund or appropriation in such amount as the governor may deem just and proper.

Subd. 3. The pollution control agency through its commissioner may designate air quality control regions which shall as far as practical follow regional boundaries designated by state statutes or executive order, and consider other jurisdictional boundaries, urban-industrial concentrations and other factors including atmospheric conditions and necessary procedures to provide adequate implementation of air quality standards. Within a designated air quality control region the pollution control agency may by contract delegate its administrative powers to local governmental authorities to be exercised by such authorities within the region and within their own jurisdictional boundaries.

Local governmental authorities which are delegated administrative powers shall have legal authority to conduct such activities, and, in conducting such activities, may enter into contracts, employ personnel, expend funds, acquire property and adopt ordinances for such purposes. Such ordinances may include provisions establishing permit or license requirements and fees therefor.

With the approval of the pollution control agency, local governmental authorities with jurisdiction wholly or in part within a designated region may enter into an agreement as provided by chapter 471 to exercise jointly all or some of the powers delegated by agreement with the pollution control agency. The term "local governmental authorities" as used herein includes every city, county, town or other political subdivision and any agency of the state of Minnesota, or subdivision thereof, having less than statewide jurisdiction.

History: *1967 c 882 s 5; 1969 c 1046 s 2; Ex1971 c 14 s 1; 1973 c 123 art 5 s 7; 1973 c 374 s 19; 1986 c 444; 1987 c 186 s 15; 1989 c 335 art 4 s 106*

116.06 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions given in this section shall obtain for the purposes of sections 116.01 to 116.075 except as otherwise expressly provided or indicated by the context.

Subd. 2. **Air contaminant, air contamination.** "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, or other gaseous, fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Air contaminant treatment facility, treatment facility.** "Air contaminant treatment facility" or "treatment facility" means any structure, work, equipment, machinery, device, apparatus, or other means for treatment of an air contaminant or combination thereof to prevent, abate, or control air pollution.

Subd. 4. MS 1990 [Renumbered subd 9]

Subd. 4. **Air pollution.** "Air pollution" means the presence in the outdoor atmosphere of any air contaminant or combination thereof in such quantity, of such nature and duration, and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

Subd. 5. MS 1990 [Renumbered subd 10]

Subd. 5. **Assistant commissioner.** "Assistant commissioner" means the assistant commissioner of the Minnesota pollution control agency.

Subd. 6. MS 1990 [Renumbered subd 3]

Subd. 6. **Collection.** "Collection" of waste has the meaning given it in section 115A.03.

Subd. 7. MS 1990 [Renumbered subd 18]

Subd. 7. **Deputy commissioner.** "Deputy commissioner" means the deputy commissioner of the Minnesota pollution control agency.

Subd. 8. MS 1990 [Renumbered subd 17]

Subd. 8. **Disposal.** "Disposal" of waste has the meaning given it in section 115A.03.

Subd. 9. MS 1990 [Renumbered subd 14]

Subd. 9. **Emission.** "Emission" means a release or discharge into the outdoor atmosphere of any air contaminant or combination thereof.

Subd. 9a. MS 1990 [Renumbered subd 23]

Subd. 9b. MS 1990 [Renumbered subd 24]

Subd. 9c. MS 1990 [Renumbered subd 6]

Subd. 9d. MS 1990 [Renumbered subd 19]

Subd. 9e. MS 1990 [Renumbered subd 8]

Subd. 9f. MS 1990 [Renumbered subd 12]

Subd. 9g. MS 1990 [Renumbered subd 13]

Subd. 9h. MS 1990 [Renumbered subd 20]

Subd. 9i. MS 1990 [Renumbered subd 21]

Subd. 10. MS 1990 [Renumbered subd 22]

Subd. 10. **Emission facility.** "Emission facility" means any structure, work, equipment, machinery, device, apparatus, or other means whereby an emission is caused to occur.

Subd. 11. MS 1990 [Renumbered subd 15]

Subd. 11. **Hazardous waste.** "Hazardous waste" means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Subd. 12. MS 1990 [Renumbered subd 16]

Subd. 12. **Intrinsic hazard.** "Intrinsic hazard" of a waste has the meaning given it in section 115A.03.

Subd. 13. MS 1990 [Renumbered subd 11]

Subd. 13. **Intrinsic suitability.** "Intrinsic suitability" of a land area or site has the meaning given it in section 115A.03.

Subd. 14. MS 1990 [Renumbered subd 7]

Subd. 14. **Land pollution.** "Land pollution" means the presence in or on the land of any waste in such quantity, of such nature and duration, and under such condition as would affect injuriously any waters of the state, create air contaminants or cause air pollution.

Subd. 15. MS 1990 [Renumbered subd 5]

Subd. 15. **Noise.** "Noise" means any sound not occurring in the natural environment, including, but not limited to, sounds emanating from aircraft and highways, and industrial, commercial, and residential sources.

Subd. 16. **Noise pollution.** "Noise pollution" means the presence in the outdoor atmosphere of any noise or combination of noises in such quantity, at such levels, of such nature and duration or under such conditions as could potentially be injurious to

human health or welfare, to animal or plant life, or to property, or could interfere unreasonably with the enjoyment of life or property.

Subd. 17. **Person.** "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the pollution control agency.

Subd. 18. **Potential air contaminant storage facility, storage facility.** "Potential air contaminant storage facility" or "storage facility" means any structure, work, equipment, device, apparatus, tank, container, or other means for the storage or confinement, either stationary or in transit, of any substance which, if released or discharged into the outdoor atmosphere, might cause air contamination or air pollution.

Subd. 19. **Processing.** "Processing" of waste has the meaning given it in section 115A.03.

Subd. 20. **Sewage sludge.** "Sewage sludge" has the meaning given it in section 115A.03.

Subd. 21. **Sludge.** "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air contaminant treatment facility, or any other waste having similar characteristics and effects.

Subd. 22. **Solid waste.** "Solid waste" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material as defined by The Atomic Energy Act of 1954, as amended.

Subd. 23. **Waste.** "Waste" has the meaning given it in section 115A.03.

Subd. 24. **Waste management.** "Waste management" has the meaning given it in section 115A.03.

History: *1967 c 882 s 6; 1969 c 1046 s 3,4; 1971 c 727 s 1,2; 1973 c 35 s 29; 1974 c 346 s 1; 1974 c 483 s 3,4; 1980 c 564 art 11 s 1-4; 1Sp1981 c 4 art 1 s 74; 1983 c 373 s 42,43; 1987 c 186 s 15*

116.061 AIR POLLUTION EMISSIONS AND ABATEMENT.

Subdivision 1. **Emission notification required.** (a) A person who controls the source of an emission must notify the agency immediately of excessive or abnormal unpermitted emissions that:

(1) may cause air pollution endangering human health;

(2) may cause air pollution damaging property; or

(3) cause obnoxious odors constituting a public nuisance.

(b) If a person who controls the source of an emission has knowledge of an event that has occurred and that will subsequently cause an emission described in paragraph (a), the person must notify the agency when the event occurs.

Subd. 2. **Abatement required.** A person who is required to notify the agency under subdivision 1 must take immediate and reasonable steps to minimize the emissions or abate the air pollution and obnoxious odors caused by the emissions.

Subd. 3. **Exemption.** The following are exempt from the requirements of subdivisions 1 and 2:

(1) emissions resulting from the activities of public fire services or law enforcement services;

(2) emissions from motor vehicles, as defined in section 169.01, subdivision 3;

(3) emissions from an agricultural operation deemed not a nuisance under section 561.19, subdivision 2; or

(4) emissions from agency regulated sources that are routine or authorized by the agency.

Subd. 4. **Penalty exception.** A person who notifies the agency of emissions under subdivision 1 and who complies with subdivision 2 shall not be subject to criminal prosecution under section 115.071, subdivision 2.

Subd. 5. **Use of notification.** Any notice submitted under subdivision 1 is not admissible in any proceeding as an admission of causation.

History: *1988 c 600 s 1*

116.07 POWERS AND DUTIES.

Subdivision 1. **Generally.** In addition to any powers or duties otherwise prescribed by law and without limiting the same, the pollution control agency shall have the powers and duties hereinafter specified.

Subd. 2. **Adoption of standards.** The pollution control agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods which produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards the pollution control agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set standards of air quality which are more stringent than those set by the pollution control agency.

The pollution control agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the pollution control agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

The pollution control agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards shall give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious

to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the pollution control agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the pollution control agency.

The pollution control agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the pollution control agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the pollution control agency.

A person who generates less than 100 kilograms of hazardous waste per month is exempt from the agency hazardous waste rules relating to transportation, manifesting, storage, and labeling for photographic fixer and X-ray negative wastes that are hazardous solely because of silver content. Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

Subd. 2a. **Exemptions from standards.** No standards adopted by any state agency for limiting levels of noise in terms of sound pressure which may occur in the outdoor atmosphere shall apply to (1) segments of trunk highways constructed with federal interstate substitution money, provided that all reasonably available noise mitigation measures are employed to abate noise, (2) skeet, trap or shooting sports clubs, or (3) the holding of motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1983. Nothing herein shall prohibit a local unit of government or a public corporation with the power to make rules for the government of its real property from regulating the location and operation of skeet, trap or shooting sports clubs, or the holding of motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1983.

Subd. 3. **Administrative rules.** Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Subd. 4. **Rules and standards.** Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate

to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. The agency shall promulgate emergency rules for sewage sludge pursuant to sections 14.29 to 14.36. Notwithstanding the provisions of sections 14.29 to 14.36, the emergency rules shall be effective until permanent rules are promulgated or March 1, 1982, whichever is earlier. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the pollution control agency.

Pursuant to chapter 14, the pollution control agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the pollution control agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

The pollution control agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

In addition to the provisions under section 14.115, before the pollution control agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change and a statement of the effect of the rule change on farming operations to the commissioner of agriculture for review and comment and hold public meetings in agricultural areas of the state.

Subd. 4a. **Permits.** The pollution control agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.

The pollution control agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.

The pollution control agency may revoke or modify any permit issued under this subdivision and section 116.081 whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

Subd. 4b. **Permits; hazardous waste facilities.** (a) The agency shall provide to the office of waste management established in section 115A.055, copies of each permit application for a hazardous waste facility immediately upon its submittal to the agency. The agency shall request recommendations on each permit application from the office and shall consult with the office on the agency's intended disposition of the recommendations. Except as otherwise provided in sections 115A.18 to 115A.30, the agency shall commence any environmental review required under chapter 116D within 120 days of its acceptance of a completed permit application. The agency shall respond to a permit application for a hazardous waste facility within 120 days following a decision not to prepare environmental documents or following the acceptance of a negative declaration notice or an environmental impact statement. Except as otherwise provided in sections 115A.18 to 115A.30, within 60 days following the submission of a final permit application for a hazardous waste facility, unless a time extension is agreed to by the applicant, the agency shall issue or deny all permits needed for the construction of the proposed facility.

(b) The agency shall promulgate rules pursuant to chapter 14 for all hazardous waste facilities. After the report of the office of waste management required by section 115A.08, subdivision 5a, has been submitted to the legislature, the agency shall review its rules for hazardous waste facilities and shall consider whether any of the rules should be modified or if new rules should be adopted based on the recommendations in the report. The rules shall require:

(1) contingency plans for all hazardous waste facilities which provide for effective containment and control in any emergency condition;

(2) the establishment of a mechanism to assure that money to cover the costs of closure and postclosure monitoring and maintenance of hazardous waste facilities will be available;

(3) the maintenance of liability insurance by the owner or operator of hazardous waste facilities during the operating life of the facility.

Subd. 4c. [Repealed, 1983 c 373 s 72]

Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of reviewing and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The agency shall adopt rules under section 16A.128 establishing the amounts and methods of collection of any permit fees collected under this subdivision. The fee schedule must reflect reasonable and routine permitting, implementation, and enforcement

costs. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the special revenue account.

(b) Notwithstanding paragraph (a), and section 16A.128, subdivision 1, the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to the requirement to obtain a permit under Title V of the federal Clean Air Act Amendments of 1990, Public Law Number 101-549, Statutes at Large, volume 104, pages 2399 et seq., or section 116.081. The annual fee shall be used to pay for all direct and indirect reasonable costs, including attorney general costs, required to develop and administer the permit program requirements of Title V of the federal Clean Air Act Amendments of 1990, Public Law Number 101-549, Statutes at Large, volume 104, pages 2399 et seq., and sections of this chapter and the rules adopted under this chapter related to air contamination and noise. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and demonstrations; preparing inventories and tracking emissions; providing information to the public about these activities; and, after June 30, 1992, the costs of acid deposition monitoring currently assessed under section 116C.69, subdivision 3.

(c) The agency shall adopt fee rules in accordance with the procedures in section 16A.128, subdivisions 1a and 2a, that will result in the collection, in the aggregate, from the sources listed in paragraph (b), of the following amounts:

(1) in fiscal years 1992 and 1993, the amount appropriated by the legislature from the air quality account in the environmental fund for the agency's air quality program;

(2) for fiscal year 1994 and thereafter, an amount not less than $25 per ton of each volatile organic compound; pollutant regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national primary ambient air quality standard has been promulgated; and

(3) for fiscal year 1994 and thereafter, the agency fee rules may also result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than $25 per ton of each pollutant not listed in clause (2) that is regulated under Minnesota Rules, chapter 7005, or for which a state primary ambient air quality standard has been adopted.

The agency must not include in the calculation of the aggregate amount to be collected under the fee rules any amount in excess of 4,000 tons per year of each air pollutant from a source.

(d) To cover the reasonable costs described in paragraph (b), the agency shall provide in the rules promulgated under paragraph (c) for an increase in the fee collected in each year beginning after fiscal year 1993 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year the fee is collected exceeds the Consumer Price Index for the calendar year 1989. For purposes of this paragraph the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(e) Any money collected under paragraphs (b) to (d) must be deposited in an air quality account in the environmental fund and must be used solely for the activities listed in paragraph (b).

Subd. 4e. **Hazardous waste processing facilities; agreements; financial responsibility.** When the agency issues a permit for a facility for the processing of hazardous waste,

the agency may approve as a condition of the permit an agreement by which the permittee indemnifies the generators of hazardous waste accepted by the facility for part or all of any liability which may accrue to the generators as a result of a release or threatened release of a hazardous waste from the facility. The agency may approve an agreement under this subdivision only if the agency determines that the permittee has demonstrated financial responsibility to carry out the agreement during the term of the permit. If a generator of hazardous waste accepted by a permitted processing facility is held liable for costs or damages arising out of a release of a hazardous waste from the facility, and the permittee is subject to an agreement approved under this subdivision, the generator is liable to the extent that the costs or damages were not paid under this agreement.

Subd. 4f. **Closure and postclosure responsibility and liability.** An operator or owner of a facility is responsible for closure of the facility and postclosure care relating to the facility. If an owner or operator has failed to provide the required closure or postclosure care of the facility the agency may take the actions. The owner or operator is liable for the costs of the required closure and postclosure care taken by the agency.

Subd. 4g. **Closure and postclosure rules.** The agency shall adopt rules establishing requirements for the closure of solid waste disposal facilities and for the postclosure care of closed facilities. The rules apply to all solid waste disposal facilities in operation at the time the rules are effective. The rules must provide standards and procedures for closing disposal facilities and for the care, maintenance, and monitoring of the facilities after closure that will prevent, mitigate, or minimize the threat to public health and the environment posed by closed disposal facilities.

Subd. 4h. **Financial responsibility rules.** (a) The agency shall adopt rules requiring the operator or owner of a solid waste disposal facility to submit to the agency proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for 20 years after closure, and to provide for the closure of the facility and postclosure care required under agency rules. Proof of financial responsibility is required of the operator or owner of a facility receiving an original permit or a permit for expansion after adoption of the rules. Within 180 days of the effective date of the rules or by July 1, 1987, whichever is later, proof of financial responsibility is required of an operator or owner of a facility with a remaining capacity of more than five years or 500,000 cubic yards that is in operation at the time the rules are adopted. Compliance with the rules and the requirements of paragraph (b) is a condition of obtaining or retaining a permit to operate the facility.

(b) A municipality, as defined in section 475.51, subdivision 2, including a sanitary district, that owns or operates a solid waste disposal facility that was in operation on May 15, 1989, may meet its financial responsibility for all or a portion of the contingency action portion of the reasonable and necessary response costs at the facility by pledging its full faith and credit to meet its responsibility.

The pledge must be made in accordance with the requirements in chapter 475 for issuing bonds of the municipality, and the following additional requirements:

(1) The governing body of the municipality shall enact an ordinance that clearly accepts responsibility for the costs of contingency action at the facility and that reserves, during the operating life of the facility and for 20 years after closure, a portion of the debt limit of the municipality, as established under section 475.53 or other law, that is equal to the total contingency action costs.

(2) The municipality shall require that all collectors that haul to the facility implement a plan for reducing solid waste by using volume-based pricing, recycling incentives, or other means.

(3) When a municipality opts to meet a portion of its financial responsibility by relying on its authority to issue bonds, it shall also begin setting aside in a dedicated long-term care trust fund money that will cover a portion of the potential contingency action costs at the facility, the amount to be determined by the agency for each facility based on at least the amount of waste deposited in the disposal facility each year, and the likelihood and potential timing of conditions arising at the facility that will necessi-

tate response action. The agency may not require a municipality to set aside more than five percent of the total cost in a single year.

(4) A municipality shall have and consistently maintain an investment grade bond rating as a condition of using bonding authority to meet financial responsibility under this section.

(5) The municipality shall file with the commissioner of revenue its consent to have the amount of its contingency action costs deducted from state aid payments otherwise due the municipality and paid instead to the environmental response, compensation, and compliance account created in section 115B.20, if the municipality fails to conduct the contingency action at the facility when ordered by the agency. If the agency notifies the commissioner that the municipality has failed to conduct contingency action when ordered by the agency, the commissioner shall deduct the amounts indicated by the agency from the state aids in accordance with the consent filed with the commissioner.

(6) The municipality shall file with the agency written proof that it has complied with the requirements of paragraph (b).

(c) The method for proving financial responsibility under paragraph (b) may not be applied to a new solid waste disposal facility or to expansion of an existing facility, unless the expansion is a vertical expansion. Vertical expansions of qualifying existing facilities cannot be permitted for a duration of longer than three years.

Subd. 4i. **Civil penalties.** The civil penalties of sections 115.071 and 116.072 apply to any person in violation of the rules adopted under subdivision 4g or 4h.

Subd. 4j. **Permits; solid waste facilities.** (a) The agency may not issue a permit for new or additional capacity for a mixed municipal solid waste resource recovery or disposal facility as defined in section 115A.03 unless each county using or projected in the permit to use the facility has in place a solid waste management plan approved under section 115A.46 or 473.803 and amended as required by section 115A.96, subdivision 6. The agency shall issue the permit only if the capacity of the facility is consistent with the needs for resource recovery or disposal capacity identified in the approved plan or plans. Consistency must be determined by the metropolitan council for counties in the metropolitan area and by the agency for counties outside the metropolitan area. Plans approved before January 1, 1990, need not be revised if the capacity sought in the permit is consistent with the approved plan or plans.

(b) The agency shall require as part of the permit application for a waste incineration facility identification of preliminary plans for ash management and ash leachate treatment or ash utilization. The permit issued by the agency must include requirements for ash management and ash leachate treatment.

(c) Within 30 days of receipt by the agency of a permit application for a solid waste facility, the commissioner shall notify the applicant in writing whether the application is complete and if not, what items are needed to make it complete, and shall give an estimate of the time it will take to process the application. Within 180 days of receipt of a completed application, the agency shall approve, disapprove, or delay decision on the application, with reasons for the delay, in writing.

Subd. 4k. **Household hazardous waste and other problem materials management.** (a) The agency shall adopt rules to require the owner or operator of a solid waste disposal facility or resource recovery facility to submit to the agency and to each county using or projected to use the facility a management plan for the separation of household hazardous waste and other problem materials from solid waste prior to disposal or processing and for the proper management of the waste. The rules must require that the plan be developed in coordination with each county using, or projected to use, the facility. The plan must not be inconsistent with the plan developed under section 115A.956, subdivision 2, and must include:

(1) identification of materials that are problem materials, as defined in section 115A.03, subdivision 24a, for the facility;

(2) participation in public education activities on management of household hazardous waste and other problem materials in the facility's service area;

(3) a strategy for reduction of household hazardous waste and other problem materials entering the facility; and

(4) a plan for the storage and proper management of separated household hazardous waste and other problem materials.

(b) By September 30, 1992, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to household hazardous waste management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to household hazardous waste management;

(2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

(c) By September 30, 1993, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to problem materials management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to problem materials management;

(2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

Subd. 5. **Variances.** The pollution control agency may grant variances from its rules as provided in section 14.05, subdivision 4, in order to avoid undue hardship and to promote the effective and reasonable application and enforcement of laws, rules, and standards for prevention, abatement and control of water, air, noise, and land pollution. The variance rules shall provide for notice and opportunity for hearing before a variance is granted.

A local government unit authorized by contract with the pollution control agency pursuant to section 116.05 to exercise administrative powers under this chapter may grant variances after notice and public hearing from any ordinance, rule, or standard for prevention, abatement, or control of water, air, noise and land pollution, adopted pursuant to said administrative powers and under the provisions of this chapter.

Subd. 6. **Pollution control agency; exercise of powers.** In exercising all its powers the pollution control agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

Subd. 7. **Counties; processing of applications for animal lot permits.** Any Minnesota county board may, by resolution, with approval of the pollution control agency, assume responsibility for processing applications for permits required by the pollution control agency under this section for livestock feedlots, poultry lots or other animal lots. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to any appropriate county officer or employee.

For the purposes of this subdivision, the term "processing" includes:

(a) the distribution to applicants of forms provided by the pollution control agency;

(b) the receipt and examination of completed application forms, and the certification, in writing, to the pollution control agency either that the animal lot facility for which a permit is sought by an applicant will comply with applicable rules and stan-

dards, or, if the facility will not comply, the respects in which a variance would be required for the issuance of a permit; and

(c) rendering to applicants, upon request, assistance necessary for the proper completion of an application.

For the purposes of this subdivision, the term "processing" may include, at the option of the county board:

(d) issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the pollution control agency. The pollution control agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14.

The pollution control agency shall adopt rules governing the issuance and denial of permits for livestock feedlots, poultry lots or other animal lots pursuant to this section. These rules apply both to permits issued by counties and to permits issued by the pollution control agency directly.

The pollution control agency shall exercise supervising authority with respect to the processing of animal lot permit applications by a county.

Subd. 8. **Public information.** The agency may publish, broadcast, or distribute information pertaining to agency activities, laws, rules, and standards.

Subd. 9. **Orders; investigations.** The agency shall have the following powers and duties for the enforcement of any provision of this chapter, relating to air contamination or waste:

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

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

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

History: *1967 c 882 s 7; 1969 c 1046 s 5-7; 1971 c 727 s 3-5; 1971 c 904 s 1; 1973 c 412 s 13; 1973 c 573 s 1; 1973 c 733 s 1; 1974 c 346 s 2-4; 1974 c 483 s 5-7; 1976 c 76 s 4; 1977 c 90 s 10; 1979 c 304 s 1; 1980 c 564 art 11 s 5-10; 1980 c 614 s 123; 1980 c 615 s 60; 1981 c 352 s 27,28; 1982 c 424 s 130; 1982 c 425 s 17; 1982 c 458 s 2; 1982 c 569 s 19; 1983 c 247 s 51; 1983 c 301 s 112-114; 1983 c 373 s 44,45; 1984 c 640 s 32; 1984 c 644 s 49; 1985 c 274 s 14; 1985 c 248 s 70; 1Sp1985 c 13 s 233; 1986 c 425 s 28; 1987 c 348 s 30; 1989 c 131 s 7; 1989 c 276 s 1; 1989 c 325 s 48; 1989 c 335 art 1 s 269; 1Sp1989 c 1 art 20 s 19; 1990 c 426 art 2 s 1; 1990 c 604 art 10 s 6; 1991 c 199 art 2 s 1; 1991 c 254 art 2 s 37; 1991 c 291 art 21 s 3; 1991 c 303 s 4,5; 1991 c 337 s 55; 1991 c 347 art 1 s 8,18; 1992 c 546 s 2; 1992 c 593 art 1 s 31*

116.072 ADMINISTRATIVE PENALTIES FOR HAZARDOUS WASTE VIOLATIONS.

Subdivision 1. **Authority to issue penalty orders.** The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of this chapter and chapters 115, 115A, 115D, and 115E, any rules adopted under those chapters, and any standards, limitations, or conditions established

in an agency permit; and for failure to respond to a request for information under section 115B.17, subdivision 3. The order must be issued as provided in this section.

Subd. 2. **Amount of penalty; considerations.** (a) The commissioner may issue an order assessing a penalty up to $10,000 for all violations identified during an inspection or other compliance review.

(b) In determining the amount of a penalty the commissioner may consider:

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person by allowing or committing the violation; and

(6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

(c) For a violation after an initial violation, the commissioner shall, in determining the amount of a penalty, consider the factors in paragraph (b) and the:

(1) similarity of the most recent previous violation and the violation to be penalized;

(2) time elapsed since the last violation;

(3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

Subd. 3. **Contents of order.** An order assessing an administrative penalty under this section shall include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, variance, order, stipulation agreement, or term or condition of a permit that has been violated;

(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 4. **Corrective order.** (a) The commissioner may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.

(b) The person to whom the order was issued shall provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that appropriate steps toward correcting the violation have been taken. The commissioner shall determine whether the violation has been corrected and notify the person subject to the order of the commissioner's determination.

Subd. 5. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner determines that the violation has been corrected or appropriate steps have been taken to correct the action, the penalty must be forgiven. Unless the person requests review of the order under subdivision 6 or 7 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the person receives the commissioner's determination under subdivision 4, paragraph (b), if the person subject to the order has provided information to the commissioner that the commissioner determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For a repeated or serious violation, the commissioner may issue an order with a penalty that will not be forgiven after the corrective action is taken. The penalty is

due by 31 days after the order was received unless review of the order under subdivision 6, 7, or 8 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 6. **Expedited administrative hearing.** (a) Within 30 days after receiving an order or within 20 days after receiving notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing, utilizing the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, to review the commissioner's action. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order is directed and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order is directed of the time and place of the hearing at least 20 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The office of administrative hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision 2, the amount of the penalty is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the agency by the office of administrative hearings for the hearing.

(e) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom an order is issued may, within those five days, comment to the commissioner on the recommendations and the commissioner will consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

(f) If a hearing has been held and a final order issued by the commissioner, the penalty shall be paid by 30 days after the date the final order is received unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Subd. 7. **District court hearing.** (a) Within 30 days after the receipt of an order or within 20 days of receipt of notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may file a petition in district court for review of the order in lieu of requesting an administrative hearing under subdivision 6. The petition shall be filed with the court administrator with proof of service on the commissioner. The petition shall be captioned in the name of the person making the petition as petitioner and the director as respondent. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order, including the facts upon which each claim is based.

(b) At trial, the commissioner must establish by a preponderance of the evidence that a violation subject to this section occurred, the petitioner is responsible for the violation, a penalty immediately assessed as provided for under subdivision 5, paragraph (b) or (c), is justified by the violation, and the factors listed in subdivision 2 were considered when the penalty amount was determined and the penalty amount is justified by those factors.

Subd. 8. **Mediation.** In addition to review under subdivision 6 or 7, the commissioner is authorized to enter into mediation concerning an order issued under this section if the commissioner and the person to whom the order is issued both agree to mediation.

Subd. 9. **Enforcement.** (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 10. **Revocation and suspension of permit.** If a person fails to pay a penalty owed under this section, the agency has grounds to revoke or refuse to reissue or renew a permit issued by the agency.

Subd. 11. **Cumulative remedy.** The authority of the agency to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law, except that the state may not seek civil penalties under any other provision of law for the violations covered by the administrative penalty order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

History: *1987 c 174 s 1; 1987 c 186 s 15; 1991 c 347 art 1 s 9-13; 1992 c 464 art 1 s 54*

116.074 NOTICE OF PERMIT CONDITIONS TO LOCAL GOVERNMENTS.

Before the agency grants a permit for a solid waste facility, allows a significant alteration of permit conditions or facility operation, or allows the change of a facility permittee, the commissioner must notify the county and town where the facility is located, contiguous counties and towns, and all home rule charter and statutory cities within the contiguous townships. If a local government unit requests a public meeting within 30 days after being notified, the agency must hold at least one public meeting in the area near the facility before granting the permit, allowing the alterations in the permit conditions or facility operation, or allowing the change of the facility permittee.

History: *1988 c 685 s 24*

116.075 HEARINGS AND RECORDS PUBLIC.

Subdivision 1. All hearings conducted by the pollution control agency pursuant to sections 103F.701 to 103F.761 and chapters 115 and 116 shall be open to the public, and the transcripts thereof are public records. All final records, studies, reports, orders, and other documents prepared in final form by order of, or for the consideration of, the agency, are public records. Any documents designated as public records by this section may be inspected by members of the public at all reasonable hours and places under such rules as the agency shall promulgate.

Subd. 2. Any records or other information obtained by the pollution control agency or furnished to the agency by the owner or operator of one or more air contaminant or water or land pollution sources which are certified by said owner or operator, and said certification, as it applies to water pollution sources, is approved in writing by the commissioner, to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner or operator, shall be only for the confidential use of the agency in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such

information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air and land resources so long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the agency may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to comply with federal law and regulations, to the extent and for the purpose of such federally required disclosure.

History: *1971 c 887 s 1; 1973 c 374 s 20; 1985 c 248 s 70; 1987 c 186 s 15; 1990 c 391 art 10 s 3*

116.08 [Repealed, 1973 c 374 s 22]

116.081 PROHIBITIONS.

Subdivision 1. **Obtain permit.** It shall be unlawful for any person to construct, install or operate an emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, storage facility, or system or facility related to the collection, transportation, storage, processing, or disposal of waste, or any part thereof unless otherwise exempted by any agency rule now in force or hereinafter adopted, until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency. The requirements of this section shall not be applied to motor vehicles.

Subd. 2. **Permits now issued.** Any permit authorized by section 116.07, subdivision 4a issued prior to June 8, 1971, and any rule which required said prior permit, shall be valid and remain enforceable subject, however, to the right of the agency to modify or revoke said permit or amend said rule in the same manner as other permits and rules.

Subd. 3. **Permission for alteration.** It shall be unlawful for any person to make any change in, addition to or extension of any existing system or facility specified in subdivision 1, or part thereof, that would materially alter the method or the effect of treating or disposing of any air contaminant or solid waste, or to operate said system or facility, or part thereof, so changed, added to, or extended until plans therefor shall have been submitted to the agency, and a written permit therefor shall have been granted by the agency.

History: *1971 c 904 s 2; 1974 c 483 s 8; 1980 c 564 art 11 s 11; 1985 c 248 s 70*

116.082 OPEN BURNING OF LEAVES; LOCAL ORDINANCES.

Subject to sections 88.16, 88.17 and 88.22, but notwithstanding any law or rule to the contrary, a town or home rule charter or statutory city located outside the metropolitan area as defined in section 473.121, subdivision 2, by adoption of an ordinance, may permit the open burning of dried leaves within the boundaries of the town or city. The ordinance shall limit leaf burning to the period between September 15 and December 1 and shall set forth limits and conditions on leaf burning to minimize air pollution and fire danger and any other hazards or nuisance conditions. No open burning of leaves shall take place during an air pollution alert, warning or emergency declared by the agency. Any town or city adopting an ordinance pursuant to this section shall submit a copy of the ordinance to the agency and the department of natural resources.

History: *1982 c 569 s 37*

116.09 [Repealed, 1969 c 1046 s 12]

116.091 SYSTEMS AND FACILITIES.

Subdivision 1. **Information.** Any person operating any emission system or facility specified in section 116.081, subdivision 1, when requested by the pollution control agency, shall furnish to it any information which that person may have which is relevant to pollution or the rules or provisions of this chapter.

Subd. 2. **Examination of records.** The agency or any employee or agent thereof,

when authorized by it, may examine any books, papers, records or memoranda pertaining to the operation of any system or facility specified in subdivision 1.

Subd. 3. **Access to premises.** Whenever the agency deems it necessary for the purposes of this chapter, the agency or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations.

History: *1971 c 904 s 3; 1985 c 248 s 70; 1986 c 444*

116.10 POLICY; LONG-RANGE PLAN; PURPOSE.

Consistent with the policy announced herein and the purposes of Laws 1963, chapter 874, the pollution control agency shall, before November 15 of each even-numbered year, prepare a long-range plan and program for the effectuation of said policy, and shall make a report also of progress on abatement and control of air and land pollution during each biennium to the legislature with recommendations for action in furtherance of the air and land pollution and waste programs.

History: *1969 c 1046 s 10; 1Sp1981 c 4 art 2 s 12*

116.101 HAZARDOUS WASTE CONTROL AND SPILL CONTINGENCY PLAN.

The pollution control agency shall study and investigate the problems of hazardous waste control and shall develop a statewide hazardous waste spill contingency plan detailing the location of hazardous waste facilities and storage sites throughout the state and the needs relative to the interstate transportation of hazardous waste.

The statewide hazardous waste spill contingency plan shall be incorporated into the statewide hazardous waste management plans of the office of waste management established by section 115A.055. The pollution control agency shall develop an informational reporting system of hazardous waste quantities generated, processed, and disposed of in the state.

History: *1974 c 346 s 5; 1980 c 564 art 11 s 12; 1989 c 335 art 1 s 269; 1991 c 199 art 2 s 1*

116.11 EMERGENCY POWERS.

If there is imminent and substantial danger to the health and welfare of the people of the state, or of any of them, as a result of the pollution of air, land, or water, the agency may by emergency order direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. The agency order or temporary restraining order shall remain effective until notice, hearing, and determination pursuant to other provisions of law, or, in the interim, as otherwise ordered. A final order of the agency in these cases shall be appealable in accordance with chapter 14.

History: *1969 c 1046 s 11; 1973 c 374 s 21; 1982 c 424 s 130; 1983 c 247 s 52*

116.12 HAZARDOUS WASTE ADMINISTRATION FEES.

Subdivision 1. **Fee schedules.** The agency shall establish the fees provided in subdivisions 2 and 3 in the manner provided in section 16A.128 to cover the amount appropriated from the special revenue account to the agency for permitting, monitoring, inspection and enforcement expenses of the hazardous waste activities of the agency.

The legislature may appropriate additional amounts from the general fund that need not be covered by fees, in order to assure adequate funding for the regulatory and enforcement functions of the agency related to hazardous waste. All fees collected by the agency under this section shall be deposited in the special revenue account.

Subd. 2. **Hazardous waste generator fee.** (a) Each generator of hazardous waste shall pay a fee on the hazardous waste generated by that generator. The agency shall

compute the amount of the fee due based on the hazardous waste disclosures submitted by the generators and other information available to the agency. The agency shall annually prepare a statement of the amount of the fee due from each generator. The fee shall be paid annually commencing with the first day of the calendar quarter after the date of the statement.

(b) The agency may exempt generators of small quantities of hazardous wastes otherwise subject to the fee if it finds that the cost of administering a fee on those generators is excessive relative to the proceeds of the fee. The fee shall consist of a minimum fee for each generator not exempted by the agency and an additional fee based on the quantity of wastes generated by the generator.

(c) If any metropolitan counties recover the costs of administering county hazardous waste regulations by charging fees, the fees charged by the agency outside of those counties shall not exceed the fees charged by those counties. The agency shall not charge a fee in any metropolitan county which charges such a fee. The agency shall impose a fee calculated as a surcharge on the fees charged by the metropolitan counties and by the agency to reflect the agency's expenses in carrying out its statewide hazardous waste regulatory responsibilities. The surcharge imposed on the fees charged by the metropolitan counties shall be collected by the metropolitan counties in the manner in which the counties collect their generator fees. Metropolitan counties shall remit the proceeds of the surcharge to the agency by the last day of the month following the month in which they were collected.

(d) The agency may not impose a fee under this subdivision on material that is reused at the facility where the material is generated in a manner that the facility owner or operator can demonstrate does not increase the toxicity of, or the level of hazardous substances or pollutants or contaminants in, products that leave the facility.

Subd. 3. **Facility fees.** The agency shall charge an original permit fee, a reissuance fee and an annual operator's fee for any hazardous waste facility regulated by the agency. The agency may include reasonable and necessary costs of any environmental review required under chapter 116D in the original permit fee for any hazardous waste facility.

History: *1983 c 121 s 25; 1Sp1985 c 13 s 234; 1986 c 444; 1989 c 335 art 4 s 106; 1992 c 593 art 1 s 32*

116.14 HAZARDOUS WASTE FACILITIES; LIABILITY OF GUARANTOR.

If the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be solvent at the time of judgment, a person having a claim arising from conduct for which evidence of financial responsibility must be provided under the rules adopted under section 116.07, subdivision 4b, may bring the claim directly against the guarantor providing the evidence of financial responsibility. For the purposes of this section, "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for that owner or operator. In an action against a guarantor under this section, the guarantor is entitled to invoke the rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator and that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator. In an action under this section, the total liability of a guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the owner or operator under the rules. Nothing in this section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section shall be construed to diminish the liability of any person under chapter 115B or the federal Superfund Act, United States Code, title 42, section 9601 et seq., or other applicable law.

History: *1987 c 391 s 1*

116.15 [Repealed, 1973 c 423 s 10]

WATER POLLUTION CONTROL PROGRAM

116.16 MINNESOTA STATE WATER POLLUTION CONTROL PROGRAM.

Subdivision 1. **Purpose.** A Minnesota state water pollution control program is created to provide money to be granted or loaned to agencies and subdivisions of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the long-range state policy, plan, and program established in sections 115.41 to 115.63, and in accordance with standards adopted pursuant to law by the Minnesota pollution control agency. It is determined that state financial assistance for the construction of water pollution prevention and abatement facilities for municipal disposal systems and combined sewer overflow is a public purpose and a proper function of state government, in that the state is trustee of the waters of the state and such financial assistance is necessary to protect the purity of state waters, and to protect the public health of the citizens of the state, which is endangered whenever pollution enters state waters at one point and flows to other points in the state.

Subd. 2. **Definitions.** In this section and sections 116.17 and 116.18:

(1) Agency means the Minnesota pollution control agency created by this chapter;

(2) Municipality means any county, city, and town, the metropolitan waste control commission established in chapter 473 and the metropolitan council when acting under the provisions of that chapter or an Indian tribe or an authorized Indian tribal organization, and any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state;

(3) Water pollution control program means the Minnesota state water pollution control program created by subdivision 1;

(4) Bond account means the Minnesota state water pollution control bond account created in the state bond fund by section 116.17, subdivision 4;

(5) Terms defined in section 115.01 have the meanings therein given them;

(6) The eligible cost of any municipal project, except as otherwise provided in clause (7), includes (a) preliminary planning to determine the economic, engineering, and environmental feasibility of the project; (b) engineering, architectural, legal, fiscal, economic, sociological, project administrative costs of the agency and the municipality, and other investigations and studies; (c) surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the planning, design, and construction of the project; (d) erection, building, acquisition, alteration, remodeling, improvement, and extension of disposal systems; (e) inspection and supervision of construction; and (f) all other expenses of the kinds enumerated in section 475.65;

(7) For state grants under the state independent grants program, the eligible cost includes the acquisition of land for stabilization ponds, the construction of collector sewers for totally unsewered statutory and home rule charter cities and towns described under section 368.01, subdivision 1 or 1a, that are in existence on January 1, 1985, and the provision of reserve capacity sufficient to serve the reasonable needs of the municipality for 20 years in the case of treatment works and 40 years in the case of sewer systems. For state grants under the state independent grants program, the eligible cost does not include the provision of service to seasonal homes, or cost increases from contingencies that exceed three percent of as-bid costs or cost increases from unanticipated site conditions that exceed an additional two percent of as-bid costs;

(8) Authority means the Minnesota public facilities authority established in section 446A.03.

Subd. 3. **Receipts.** The commissioner of finance and treasurer shall deposit in the state treasury and credit to a separate account in the bond proceeds fund as received all proceeds of Minnesota water pollution control bonds, except accrued interest and premiums received upon the sale thereof. All money granted to the state for such pur-

poses by the federal government or any agency thereof must be credited to a separate account in the federal fund. All such receipts are annually appropriated for the permanent construction and improvement purposes of the water pollution control program, and shall be and remain available for expenditure in accordance with this section and federal law until the purposes for which such appropriations were made have been accomplished or abandoned.

Subd. 4. **Disbursements.** Disbursements for the water pollution control program shall be made by the state treasurer upon order of the commissioner of finance at the times and in the amounts requested by the agency or the Minnesota public facilities authority in accordance with the applicable state and federal law governing such disbursements; except that no appropriation or loan of state funds for any project shall be disbursed to any municipality until and unless the agency has by resolution determined the total estimated cost of the project, and ascertained that financing of the project is assured by:

(1) a grant to the municipality by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state; or

(2) a grant of funds appropriated by state law; or

(3) a loan authorized by state law; or

(4) the appropriation of proceeds of bonds or other funds of the municipality to a fund for the construction of the project; or

(5) any or all of the means referred to in clauses (1) to (4); and

(6) an irrevocable undertaking, by resolution of the governing body of the municipality, to use all funds so made available exclusively for the construction of the project, and to pay any additional amount by which the cost of the project exceeds the estimate, by the appropriation to the construction fund of additional municipal funds or the proceeds of additional bonds to be issued by the municipality; and

(7) conformity of the project and of the loan or grant application with the state water pollution control plan as certified to the federal government and with all other conditions under applicable state and federal law for a grant of state or federal funds of the nature and in the amount involved.

Subd. 5. **Rules.** (a) The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of grants and loans authorized to be made under the water pollution control program, which rules, however, shall not be applicable to the issuance of bonds by the commissioner of finance as provided in section 116.17. The rules shall contain as a minimum:

(1) procedures for application by municipalities;

(2) conditions for the administration of the grant or loan;

(3) criteria for the ranking of projects in order of priority for grants or loans, based on factors including the extent and nature of pollution, technological feasibility, assurance of proper operation, maintenance and replacement, and participation in multimunicipal systems; and

(4) such other matters as the agency and the commissioner find necessary to the proper administration of the grant program.

(b) For purposes of awarding independent state grants, the agency may by rule waive the federal 20-year planning requirement for municipalities with a population of less than 1,500.

Subd. 6. [Repealed, 1984 c 597 s 55]

Subd. 7. [Repealed, 1984 c 597 s 55]

Subd. 8. **Loans.** Each loan made to a municipality from the proceeds of state bonds, when authorized by law, shall be evidenced by resolutions adopted by the agency and by the governing body of the municipality, obligating the municipality to repay the loan to the state treasurer, for credit to the water pollution control bond account in the state bond fund, in annual installments including both principal and

interest, each in an amount sufficient to pay the principal amount within such period as may be provided by the agency in accordance with the law authorizing the loan, with interest on the declining balance thereof at a rate not less than the average annual interest rate on state bonds of the issue from the proceeds of which the loan was made, and obligating the municipality to provide money for such repayment from user charges, taxes, special assessments, or other funds available to it. For the purpose of repaying such loans the municipality by resolution of its governing body may undertake to fix rates and charges for disposal system service and enter into contracts for the payment by others of costs of construction, maintenance, and use of the project in accordance with section 444.075, and may pledge the revenues derived therefrom, and the agency may condition any such loans upon the establishment of rates and charges or the execution of contracts sufficient to produce the revenues pledged.

Subd. 9. **Applications.** Applications by municipalities for grants or loans under the water pollution control program shall be made to the authority on forms requiring information prescribed by rules of the agency. The authority shall send the application to the agency within ten days of receipt. The commissioner shall certify to the authority those applications which appear to meet the criteria set forth in sections 116.16 to 116.18 and the rules promulgated hereunder, and the authority shall award the grants or loans on the basis of the criteria and priorities established by the agency in its rules and in sections 116.16 to 116.18. A municipality that is designated under agency rules to receive state or federal funding for a project and that does not make a timely application for or that refuses the funding is not eligible for either state or federal funding for that project in that fiscal year or the subsequent year.

Subd. 9a. **Subsequent grants.** A municipality awarded a final grant of funding for a project under the program established by the 1972 Federal Water Pollution Control Act amendments or the state independent grants program is not eligible for additional funding to replace that project under the federal program or the state program, unless the funding is necessary as a result of subsequent changes in state water quality standards, effluent limits, or technical design requirements, or for a municipality awarded the final grant before October 1, 1984, if the funding is necessary for the provision of increased capacity.

Subd. 10. **Costs.** To the extent the agency administers or engages in activities necessary for administering any aspects of the Federal Water Pollution Control Act as amended, United States Code, title 33, section 1251 et seq., the agency may assess the costs of such administrative activities, in an amount not to exceed that allowed by federal law, against the federal construction grant funds allotted to the state.

Subd. 11. **Awards of grants and loans.** Upon certification by the commissioner of the pollution control agency, the authority shall notify a municipality that is to receive a grant or loan and advise the municipality of the grant agreement or loan form or other document that must be executed to complete the grant or loan. Upon certification from the commissioner that the work has been completed and that payment is proper, the authority shall pay to the municipality the periodic grant or loan payment.

Subd. 12. **Amendments.** A municipality that seeks an amendment to a previously awarded grant or loan shall follow the procedure in subdivision 9 for applying to the authority. The request for a grant or loan amendment must be forwarded by the authority to the commissioner of the pollution control agency for consideration, and the authority shall process a grant or loan amendment that is approved by the commissioner.

History: *Ex1971 c 20 s 1; 1973 c 123 art 5 s 7; 1973 c 423 s 1-6; 1973 c 492 s 14; 1976 c 2 s 53; 1976 c 76 s 5; 1977 c 418 s 1; 1980 c 397 s 1; 1980 c 509 s 27; 1983 c 301 s 115; 1984 c 597 s 42-46; 1984 c 640 s 32; 1Sp1985 c 14 art 19 s 1,2; 1987 c 186 s 15; 1987 c 386 art 3 s 1-6; 1989 c 271 s 16-21; 1990 c 564 s 1,2*

116.162 STATE FINANCIAL ASSISTANCE PROGRAM FOR COMBINED SEWER OVERFLOW.

Subdivision 1. **Definitions.** (a) Except as otherwise provided in this section, the terms used in this section have the meanings given in section 116.16, subdivision 2.

(b) "Combined sewer" means a sewer that is designed and intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

(c) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly into the waters of the state, occurring when the volume of wastewater flow exceeds the conveyance or storage capacity of a combined sewer system.

Subd. 2. **Program purpose.** The agency shall administer a state financial assistance program to assist eligible recipients to abate combined sewer overflow to the Mississippi river from its confluence with the Rum river to its confluence with the St. Croix river.

Subd. 3. **Eligible recipients.** A statutory or home rule charter city is eligible for financial assistance under the program if the city has a permit, stipulation agreement, consent decree, or order issued by the agency requiring construction to abate combined sewer overflow and if the city adopts an approved plan to abate combined sewer overflow.

Subd. 4. **Eligible costs.** The eligible costs under this section include the costs listed in section 116.16, subdivision 2, paragraph (6), as determined by the agency, using as guidelines the regulations promulgated by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, United States Code, title 33, sections 1314 to 1328, except that the eligible costs include easements necessary for implementing the combined sewer overflow abatement plan and do not include:

(1) the preparation of combined sewer overflow abatement plans;

(2) acquisition of interests in real property other than easements;

(3) storm water treatment facilities;

(4) costs for a program to disconnect any structures or devices, excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer;

(5) costs incurred before July 1, 1985; and

(6) costs incurred after July 1, 1985 but without prior written approval of the agency.

Subd. 5. **Financial assistance program.** The agency shall annually provide financial assistance to eligible recipients for combined sewer overflow projects. The agency shall determine eligible costs for each eligible recipient and compare those individual costs to the total eligible cost required to abate combined sewer overflows. This comparison determines each eligible recipient's proportionate share of the costs, and the appropriation for the program must be distributed among eligible recipients according to their proportionate share.

Subd. 6. **Repayments.** A city of the first class that receives assistance under this section shall repay one-half of each assistance payment ten years after the date when the recipient received the assistance payment. The repayment must be deposited in the Minnesota state water pollution control fund.

Subd. 7. **Conditions; administration.** (a) A recipient of financial assistance under this section shall construct the combined sewer overflow abatement facilities in accordance with the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency. The agency shall require that, with federal, state, and local funds, the construction schedule would complete abatement of combined sewer overflow within ten years of the issuance of the permit, agreement, decree, or order. As a condition of receiving financial assistance, the recipient shall implement a program approved by the agency to disconnect any structures or devices, excluding catch basins on public property, constructed to direct or convey storm water, snow melt, or surface water from private or public property into a public sanitary or combined sewer. The deadlines for submittance of facilities plans, plans and specifications, and other documents to the agency for financial assistance are governed by the construction schedule contained in the permit, stipulation agreement, consent decree, or order issued by the agency requiring combined sewer overflow abatement construction.

(b) A recipient of financial assistance under this section is not eligible to receive a grant to abate combined sewer overflow under the state independent grants program.

Subd. 8. **Rules.** The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the financial assistance program established by this section. The rules must contain as a minimum:

(1) procedures for application;

(2) criteria for eligibility of combined sewer overflow abatement projects;

(3) conditions for use of the financial assistance;

(4) procedures for the administration of financial assistance; and

(5) other matters that the agency finds necessary for the proper administration of the program.

History: *1Sp1985 c 14 art 19 s 3*

116.163 AGENCY FUNDING APPLICATION REVIEW.

Subdivision 1. **Construction grant and loan applications.** The agency shall, pursuant to agency rules and within 90 days of receipt of a completed application for a wastewater treatment facility construction grant or loan, grant or deny the application and notify the municipality of the agency's decision. The time for consideration of the application by the agency may be extended up to 180 days if the municipality and the agency agree it is necessary.

Subd. 2. **Limitation on municipal planning time.** A municipality shall complete all planning work required by the agency for award of a grant or loan, and be ready to advertise for bids for construction, within two years of receipt of grant or loan funds under subdivision 1. The planning time may be extended automatically by the amount of time the agency exceeds its 90-day review under subdivision 1.

Subd. 3. **Bid review.** After a municipality has accepted bids for construction of a wastewater treatment project, the agency must review the bids within 30 days of receipt.

History: *1986 c 465 art 3 s 4*

116.165 INSPECTION RESPONSIBILITY.

When a wastewater treatment plant is constructed with federal funds and a federal agency conducts inspections of the plant, the owner of the plant or the owner's designee must conduct inspections and forward all inspection documents required by the agency to the agency for its review.

History: *1986 c 465 art 3 s 5*

116.167 [Repealed, 1987 c 386 art 3 s 30]

116.17 MINNESOTA STATE WATER POLLUTION CONTROL BONDS.

Subdivision 1. **Purpose and appropriation.** For the purpose of providing money to be appropriated or loaned to municipalities under the Minnesota state water pollution control program for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution in accordance with the provisions of section 116.16, when such appropriations or loans are authorized by law and funds therefor are requested by the agency, the commissioner of finance shall sell and issue bonds of the state of Minnesota for the prompt and full payment of which, with interest thereon, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be issued pursuant to this section only as authorized by a law specifying the purpose thereof and the maximum amount of the proceeds authorized to be expended for this purpose. Any act authorizing the issuance of bonds for this purpose, together with this section, constitutes complete authority for such issue, and such bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by resolution of the agency and upon authorization as provided in subdivision 1 the commissioner of finance shall sell and issue Minnesota state water pollution control bonds in the aggregate amount requested, upon sealed bids and upon such notice, at such price, in such form and denominations, bearing interest at a rate or rates, maturing in amounts and on dates, with or without option of prepayment upon notice and at specified times and prices, payable at a bank or banks within or outside the state, with provisions, if any, for registration, conversion, and exchange and for the issuance of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds, and in accordance with further provisions, as the commissioner of finance shall determine, subject to the approval of the attorney general, but not subject to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62. The bonds shall be executed by the commissioner of finance and attested by the state treasurer under their official seals. The signatures of the officers on the bonds and any appurtenant interest coupons and their seals may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of one of the officers or of an authorized representative of a bank designated by the commissioner as registrar or other authenticating agent. The commissioner of finance shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. **Expenses.** All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for such purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the bond proceeds fund, and the amounts necessary therefor are appropriated from that fund; provided that if any amount is specifically appropriated for this purpose in an act authorizing the issuance of bonds pursuant to this section, such expenses shall be limited to the amount so appropriated.

Subd. 4. **State water pollution control bond account in the state bond fund.** The commissioner of finance shall maintain in the state bond fund a separate bookkeeping account which shall be designated as the state water pollution control bond account, to record receipts and disbursements of money transferred to the fund to pay Minnesota state water pollution control bonds and income from the investment of such money, which income shall be credited to the account in each fiscal year in an amount equal to the approximate average return that year on all funds invested by the state treasurer, as determined by the treasurer, times the average balance in the account that year.

Subd. 5. **Appropriations to bond account.** The premium and accrued interest received on each issue of Minnesota state water pollution control bonds, and all loan payments received under the provisions of section 116.16, subdivision 5, shall be credited to the bond account. All income from the investment of Minnesota state water pollution control bond proceeds, shall also be credited to the bond account. In order to reduce the amount of taxes otherwise required to be levied, there shall also be credited to the bond account therein from the general fund in the state treasury, on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand therein, to pay all Minnesota water pollution control bonds and interest thereon due and to become due to and including July 1 in the second ensuing year. All money so credited and all income from the investment thereof is annually appropriated to the bond account for the payment of such bonds and interest thereon, and shall be available in the bond account prior to the levy of the tax in any year required by the constitution, article XI, section 7. The commissioner of finance and treasurer are directed to make the appropriate entries in the accounts of the respective funds.

Subd. 6. **Tax levy.** On or before December 1 in each year the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money then and theretofore credited to the bond account,

to pay the entire amount of principal and interest then and theretofore due and principal and interest to become due on or before July 1 in the second year thereafter on Minnesota water pollution control bonds. This tax shall be subject to no limitation of rate or amount until all such bonds and interest thereon are fully paid. The proceeds of this tax are appropriated and shall be credited to the state bond fund, and the principal of and interest on the bonds are payable from such proceeds, and the whole thereof, or so much as may be necessary, is appropriated for such payments. If at any time there is insufficient money from the proceeds of such taxes to pay the principal and interest when due on Minnesota water pollution control bonds, such principal and interest shall be paid out of the general fund in the state treasury, and the amount necessary therefor is hereby appropriated.

History: *Ex1971 c 20 s 2; 1973 c 423 s 7; 1973 c 492 s 14; 1976 c 2 s 172; 1982 c 424 s 130; 1983 c 301 s 116; 1Sp1985 c 14 art 4 s 14; 1989 c 271 s 22-24*

116.18 WATER POLLUTION CONTROL FUNDS; APPROPRIATIONS AND BONDS.

Subdivision 1. **Appropriation from the bond proceeds fund.** The sum of $167,000,000, or so much thereof as may be necessary, is appropriated from the bond proceeds fund in the state treasury to the pollution control agency, for the period commencing on July 23, 1971, to be granted and disbursed to municipalities and agencies of the state in aid of the construction of projects conforming to section 116.16, in accordance with the rules, priorities, and criteria therein described.

Subd. 2. [Repealed, 1Sp1985 c 14 art 19 s 38]

Subd. 2a. **State matching grants program beginning October 1, 1987.** For projects tendered, on or after October 1, 1987, a grant of federal money under section 201(g), section 202, 203, or 206(f) of the Federal Water Pollution Control Act, as amended, United States Code, title 33, sections 1251 to 1376, at 55 percent or more of the eligible cost for construction of the treatment works, state money appropriated under subdivision 1 must be expended for 50 percent of the nonfederal share of the eligible cost of construction for municipalities with populations of 25,000 or less.

Subd. 3. [Repealed, 1973 c 423 s 10]

Subd. 3a. **State independent grants program.** (a) The public facilities authority must adopt the objective of maintaining financial assistance to municipalities that the agency has listed on its annual municipal project list of approximately 50 percent of the eligible cost of construction for municipalities with populations over 25,000 and 80 percent of the eligible cost for municipalities with populations of 25,000 or less. Financial assistance may be provided by the public facilities authority through a combination of low interest loans under the state revolving fund under chapter 446A, independent state grants, and other financial assistance available to the municipality. The public facilities authority may award independent grants for projects certified by the state pollution control commissioner for 35 percent or, if the population of the municipality is 25,000 or less, 65 percent of the eligible cost of construction. These grants may be awarded in separate steps for planning and design in addition to actual construction. Not more than $2,000,000 of the total amount of grants awarded under this subdivision in any single fiscal year may be awarded to a single grantee.

(b) Up to $1,000,000 of the money to be awarded as grants under this subdivision in any single fiscal year shall be set aside for municipalities having substantial economic development projects that cannot come to fruition without municipal wastewater treatment improvements. The agency shall forward its municipal needs list to the authority at the beginning of each fiscal year, and the authority shall review the list and identify those municipalities having substantial economic development projects. After the available money is allocated to municipalities in accordance with agency priorities, the set-aside shall be used by the authority to award grants to remaining municipalities that have been identified.

(c) Grants may also be awarded under this subdivision to reimburse municipali-

ties willing to proceed with projects and be reimbursed in a subsequent year at the grant percentage determined in paragraph (a).

(d) Municipalities that entered into an intent to award agreement with the agency under paragraph (c), in the state fiscal years 1985 to 1988, will be reimbursed at 55 percent or, if the population of the municipality is 25,000 or less, 85 percent of the eligible cost of construction.

Subd. 3b. **Capital cost component grant.** (a) The definitions of "capital cost component," "capital cost component grant," "service fee," "service contract," and "private vendor" in section 471A.02 apply to this subdivision.

(b) Beginning in fiscal year 1989, up to $1,500,000 of the money to be awarded as grants under subdivision 3a in any single fiscal year may be set aside for the award of capital cost component grants to municipalities on the municipal needs list for part of the capital cost component of the service fee under a service contract for a term of at least 20 years with a private vendor for the purpose of constructing and operating wastewater treatment facilities.

(c) The amount granted to a municipality shall be 50 percent of the average total eligible costs of municipalities of similar size recently awarded state and federal grants under the provisions of subdivisions 2a and 3a and the Federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299. Federal and state eligibility requirements for determining the amount of grant dollars to be awarded to a municipality are not applicable to municipalities awarded capital cost component grants. Federal and state eligibility requirements for determining which cities qualify for state and federal grants are applicable, except as provided in this subdivision.

(d) Except as provided in this subdivision, municipalities receiving capital cost component grants shall not be required to comply with federal and state regulations regarding facilities planning and procurement contained in sections 116.16 to 116.18, except those necessary to issue a National Pollutant Discharge Elimination System permit or state disposal system permit and those necessary to assure that the proposed facilities are reasonably capable of meeting the conditions of the permit over 20 years. The municipality and the private vendor shall be parties to the permit. Municipalities receiving capital cost component grants may also be exempted by rules of the agency from other state and federal regulations relating to the award of state and federal grants for wastewater treatment facilities, except those necessary to protect the state from fraud or misuse of state funds.

(e) Funds shall be distributed from the set-aside to municipalities that apply for the funds in accordance with these provisions in the order of their ranking on the municipal needs list.

(f) The authority shall award capital cost component grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' projects and applications have been reviewed and approved in accordance with this subdivision and agency rules adopted under paragraph (g).

(g) The agency shall adopt permanent rules to provide for the administration of grants awarded under this subdivision.

(h) The commissioner of trade and economic development may adopt rules containing procedures for administration of the authority's duties as set forth in paragraph (f).

Subd. 3c. **Individual on-site treatment systems program.** (a) Beginning in fiscal year 1989, up to ten percent of the money to be awarded as grants under subdivision 3a in any single fiscal year, up to a maximum of $1,000,000, may be set aside for the award of grants by the authority to municipalities to reimburse owners of individual on-site wastewater treatment systems for a part of the costs of upgrading or replacing the systems.

(b) An individual on-site treatment system is a wastewater treatment system, or part thereof, serving less than six dwellings or other establishments, which utilizes subsurface soil treatment and disposal.

(c) Municipalities may apply yearly for grants of up to 50 percent of the cost of replacing or upgrading individual on-site treatment systems within their jurisdiction. Before agency approval of the grant application, a municipality must certify that:

(1) it has adopted and is enforcing the requirements of Minnesota Rules governing individual sewage treatment systems;

(2) the existing systems for which application is made do not conform to those rules, were constructed prior to January 1, 1977, do not serve seasonal residences, and were not constructed with state or federal funds; and

(3) the costs requested do not include administrative costs, costs for improvements or replacements made before the application is submitted to the authority unless it pertains to the plan finally adopted, and planning and engineering costs other than those for the individual site evaluations and system design.

(d) The federal and state regulations regarding the award of state and federal wastewater treatment grants do not apply to municipalities or systems funded under this subdivision, except as provided in this subdivision.

(e) The authority shall award individual on-site wastewater treatment grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' applications have been reviewed and approved in accordance with this subdivision and agency rules adopted under paragraph (f).

(f) The agency shall adopt permanent rules regarding priorities, distribution of funds, payments, inspections, the maximum number of dwellings or other establishments that may be served by an individual on-site treatment system, and other matters that the agency finds necessary for proper administration of grants awarded under this subdivision.

(g) The commissioner of trade and economic development may adopt rules containing procedures for administration of the authority's duties as set forth in paragraph (e).

Subd. 3d. **Adjustments to matching grants and state independent grants.** A municipality with a population of 25,000 or less that was tendered a state matching grant under subdivision 2a, or a state independent grant under subdivision 3a, or a federal grant under the federal Water Pollution Control Act, United States Code, title 33, sections 1281 to 1299, from October 1, 1984, through September 30, 1987, shall, after the municipality has awarded bids for construction of the treatment works, and upon request, receive a grant increase of 2.5 percent of the total eligible costs of construction, up to the maximum entitlement for grants awarded on or after October 1, 1987, under subdivisions 2a and 3a. The municipality must inform other entities that are providing funding for construction of the treatment works of the grant increase, and repay any funds to which it is not entitled. A municipality must not receive funding for more than 100 percent of the total costs of the treatment works. Documentation of money received from other sources must be submitted with the request for the grant increase. Money remaining after all grants have been awarded under this subdivision may be used for the award of grants under subdivisions 2a and 3a. An adjustment grant awarded after July 1, 1989, that is a continuation of a previously awarded adjustment grant must be awarded through a letter from the agency to the municipality stating the grant amount. A formal grant agreement is not required.

Subd. 4. **Bond authorization.** For the purpose of providing money appropriated in subdivision 1 for grants to municipalities and agencies of the state for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control, and abatement of water pollution, the commissioner of finance is authorized upon request of the pollution control agency to sell and issue Minnesota state water pollution control bonds in the amount of $156,000,000, in the manner and upon the conditions prescribed in section 116.17 and in the constitution, article XI, sections 4 to 7. The proceeds of the bonds, except as provided in section 116.17, subdivision 5, are appropriated and shall be credited to a Minnesota state water pollu-

tion control account in the bond proceeds fund. The amount of bonds issued pursuant to this authorization shall not exceed at any time the amount needed to produce a balance in the water pollution control account equal to the aggregate amount of grants then approved and not previously disbursed, plus the amount of grants to be approved in the current and the following fiscal year, as estimated by the pollution control agency.

Subd. 5. **Federal and other funds.** All federal and other funds made available for any purpose of the water pollution control program are also appropriated for the program.

Subd. 6. **Continuance of appropriations.** None of the appropriations made in this section shall lapse until the purpose for which it is made has been accomplished or abandoned. The amount of each grant approved for the water pollution control program shall be and remain appropriated for that purpose until the grant is fully disbursed or part or all thereof is revoked by the pollution control agency.

History: *Ex1971 c 20 s 3; 1973 c 423 s 8,9; 1973 c 492 s 14; 1973 c 771 s 1,2; 1975 c 354 s 1,2; 1976 c 2 s 172; 1977 c 418 s 2,3; 1979 c 285 s 1,2; 1981 c 361 s 14,15; 1983 c 301 s 117; 1984 c 597 s 47; 1Sp1985 c 14 art 19 s 4-6; 1987 c 186 s 15; 1987 c 277 s 1,2; 1987 c 312 art 1 s 26 subd 2; 1987 c 386 art 3 s 7,8; 1988 c 686 art 1 s 59; 1989 c 271 s 25-28; 1989 c 300 art 1 s 28; 1989 c 354 s 1,2; 1990 c 564 s 3*

116.181 CORRECTIVE ACTION GRANTS.

Subdivision 1. **Definitions.** (a) The definitions in section 116.16, subdivision 2, apply to this section.

(b) "Corrective action" means action taken to upgrade or correct wastewater treatment facilities, funded under the Federal Water Pollution Control Act or the independent state grants program, that have failed to meet performance standards, and includes engineering, design, construction, legal assistance, and other action as the agency may allow.

Subd. 2. **Set aside.** In any fiscal year, up to ten percent of the money available for independent state grants, up to a maximum of $1,000,000, may be set aside for the award of grants to municipalities for corrective action.

Subd. 3. **Grant limitations.** The amount of a corrective action grant awarded to a municipality shall not exceed $500,000. In no event shall the grant amount exceed the cost of the corrective action. Construction costs that were not eligible under the original grant are not eligible under a corrective action grant.

Subd. 4. **Repayment.** Any municipality that is awarded a corrective action grant shall seek recovery from any person who is responsible for the failure of the facility to perform. The municipality shall reimburse the state in the event the municipality recovers any funds from responsible persons. Any repayments must be deposited in the Minnesota state water pollution control fund.

Subd. 5. **Award of grants.** Until June 30, 1988, the agency shall award corrective action grants. On July 1, 1988, the authority shall award corrective action grants to municipalities selected by the state pollution control commissioner upon certification by the state pollution control commissioner that the municipalities' projects and applications have been reviewed and approved in accordance with this section and agency rules adopted under subdivision 6.

Subd. 6. **Rules of the agency.** The agency shall promulgate permanent rules and may promulgate emergency rules for the administration of the corrective action grant program. The rules must contain at a minimum:

(1) the method for determining the amount of the corrective action grant;

(2) application requirements;

(3) criteria for determining which municipalities will be awarded grants when there are more applicants than money;

(4) conditions for use of the grant funds;

(5) identification of eligible costs;

(6) the amount that must be reimbursed to the authority in the event funds are recovered by the municipality from the responsible person; and

(7) other matters that the agency finds necessary for proper administration of the program.

Subd. 7. **Rules of the authority.** The commissioner of trade and economic development may adopt rules containing procedures for administration of the authority's duties as set forth in subdivision 5.

History: *1987 c 186 s 15; 1987 c 277 s 3; 1987 c 312 art 1 s 26 subd 2*

116.182 FINANCIAL ASSISTANCE PROGRAM.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Agency" means the pollution control agency.

(c) "Authority" means the public facilities authority established in section 446A.03.

(d) "Commissioner" means the commissioner of the pollution control agency.

(e) "Essential project components" means those components of a wastewater disposal system that are necessary to convey or treat a municipality's existing wastewater flows and loadings, and future wastewater flows and loadings based on the projected residential growth of the municipality for a 20-year period.

(f) "Municipality" means a county, home rule charter or statutory city, or town; the metropolitan waste control commission established in chapter 473; the metropolitan council when acting under the provisions of chapter 473; an Indian tribe or an authorized Indian tribal organization; or any other governmental subdivision of the state responsible by law for the prevention, control, and abatement of water pollution in any area of the state.

Subd. 2. **Applicability.** This section governs the commissioner's certification of applications for financial assistance under section 446A.07 or 446A.071.

Subd. 3. **Project review.** The commissioner shall review a municipality's proposed project and financial assistance application to determine whether they meet the criteria in this section and the rules adopted under this section. The review must include a determination of the essential project components.

Subd. 4. **Certification of approved projects.** The commissioner shall certify to the authority each approved application, including a statement of the essential project components and associated costs.

Subd. 5. **Rules.** The agency shall adopt rules for the administration of the financial assistance program. The rules must include:

(1) application requirements;

(2) criteria for the ranking of projects in order of priority based on factors including the type of project and the degree of environmental impact, and scenic and wild river standards; and

(3) criteria for determining essential project components.

Subd. 6. **Transfer of funds.** As the projects in the programs specified under section 116.18, except the program under subdivision 3c of that section, are completed, any amounts remaining from appropriations for the programs are appropriated to the authority for the wastewater infrastructure funding program in section 446A.071, provided this use of the funds does not violate applicable provisions of any bond or note resolutions, indentures, or other instruments, contracts, or agreements associated with the source of the funds.

History: *1992 c 601 s 10*

116.19 MUNICIPAL POWERS.

Subdivision 1. **Purpose.** Notwithstanding a statute or home rule charter to the con-

trary, a recipient of financial assistance from the agency under section 116.162 may exercise the authority provided in this section to abate combined sewer overflow or provide money to pay all or part of the costs of the abatement and of making improvements to any utility required to effect the abatement.

Subd. 2. **General.** A recipient may acquire real or personal property by purchase, including installment purchase, lease, including a financing lease, condemnation, gift, or grant, or may sell real or personal property at its fair market value determined by the recipient and simultaneously enter into an installment purchase or lease, including a financing lease, for purposes of reacquiring real or personal property. A recipient may construct, enlarge, improve, replace, repair, maintain, and operate a public sewer system, including storm sewers, sanitary sewers, and facilities for separating storm sewers from combined storm and sanitary sewers, or any other public utilities combined with the public sewer system as provided in this section. To accomplish these purposes, a recipient may exercise the powers granted a municipality by chapters 115, 117, 412, 429, 435, 444, 471, and 475, and may combine the public sewer system, for purposes of operation or revenue collection or both or for other purposes the city council determines, with one or more other public utilities. Charges for the services provided by a combined utility may be determined in any reasonable manner.

Subd. 3. **Debt.** A recipient may incur indebtedness and may issue and sell bonds or other obligations, including notes, an installment purchase contract, or obligations to make payments under a financing lease, and pledge the full faith and credit of the city to its payment for storm and sanitary sewers and systems without submitting the question of issuing the bonds, or otherwise incurring the obligations, to the electors. The bonds or other obligations may be issued in one or more series, may bear interest at the rate or rates, including floating rates, and may be sold at public or private sale and at the price the recipient determines. A recipient may, in addition to or in substitution for the pledge of its full faith and credit, pledge the revenues or net revenues of its public sewer system or a combined utility or a part of it, or mortgage the assets of the system or combined utility. A recipient may vest in a trustee or trustees, located within or outside the state, the right to enforce any covenants made to secure or to pay the bonds or other obligations, and may determine the powers and duties of the trustee or trustees. Except as provided in this section, the bonds or other obligations must be issued and sold according to chapter 475.

Subd. 4. **Property tax.** In addition and supplemental to the grants of authority in subdivisions 2 and 3, the governing body may establish a special taxing district or districts within the corporate limits of the city that include some or all of the real or personal property served by a combined sewer separated after the effective date of this section, and may levy and collect ad valorem taxes in the district or districts for the purposes of this section. The taxes must be collected by the county and paid over to the city as are other taxes. The taxes are not restricted by any other tax levy limitations imposed upon the city by any other law or charter provision.

Subd. 5. **Assessments.** The governing body of the city may divide the city into drainage districts or areas, and may levy and collect assessments based on benefit to property, and the assessments so levied may be based upon the existing or highest and best land usage, square footage, front footage or area. The assessments may be levied in accordance with the procedures set forth in the city's home rule charter, if any, or chapter 429, as the council determines. The assessments may be levied and collected from all property whether public or private, and in the case of public property the agency of government responsible for the property must provide the necessary money in its budget request.

Subd. 6. **Private finance.** To secure financing for the purposes of this section, the governing body of the city may use private financing methods, such as private ownership and construction by any means available to the owner of new facilities to benefit the city under a lease, financing lease, installment purchase agreement or service contract, or the sale or mortgaging of all or part of the city's existing public sewer system, combined utility including the public sewer system, or water utility, to benefit the city

under a lease, financing lease, installment purchase agreement or service contract. The private financing methods are not subject to any limitations imposed by a home rule charter, if any, or by chapter 475. Any property benefiting the city under the private financing methods is exempt from taxation and the payment of amounts in lieu of taxes to the same extent as property owned by the city.

History: *1Sp1985 c 14 art 19 s 7*

NUTRIENTS IN CLEANING AGENTS AND WATER CONDITIONERS

116.21 NUTRIENTS IN CLEANING AGENTS AND WATER CONDITIONERS, CONTROL; STATEMENT OF POLICY.

The legislature seeks to encourage the Minnesota pollution control agency through the passage of sections 116.21 to 116.35, to set standards limiting the amount of nutrients in various cleaning agents and water conditioning agents. The legislature realizes that the nutrients contained in many of these products serve a valuable purpose in increasing their overall effectiveness, but we are also aware that they overstimulate the growth of aquatic life and eventually lead to an acceleration of the natural eutrophication process of our state's waters. Limitations imposed under sections 116.21 to 116.35 should, however, be made taking the following factors into consideration:

(1) The availability of safe, nonpolluting, and effective substitutes.

(2) The difference in the mineral content of water in various parts of the state.

(3) The differing needs of industrial, commercial and household users of cleaning agents and chemical water conditioners.

History: *1971 c 896 s 1*

116.22 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of sections 116.21 to 116.35, the terms defined in this section shall have the meanings given them.

Subd. 2. MS 1990 [Renumbered subd 3]

Subd. 2. **Chemical water conditioner.** "Chemical water conditioner" means a water softening chemical, antiscale chemical, corrosion inhibitor or other substance intended to be used to treat water.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Cleaning agent.** "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes.

Subd. 4. MS 1990 [Renumbered subd 2]

Subd. 4. **Nutrient.** "Nutrient" means a substance or combination of substances which, if added to waters in sufficient quantities, provides nourishment that promotes growth of aquatic vegetation in densities which:

(a) interfere with use of the waters by humans or by any animal, fish or plant useful to humans, or

(b) contribute to degradation or alteration of the quality of the waters to an extent detrimental to their use by humans or by any animal, fish or plant that is useful to humans.

History: *1971 c 896 s 2; 1986 c 444*

116.23 PROHIBITION.

No person shall manufacture for use or sale in Minnesota or import into Minnesota for resale any cleaning agent or chemical water conditioner which contains a prescribed nutrient in a concentration that is greater than the prescribed maximum permissible concentration of that nutrient in that cleaning agent or chemical water conditioner.

History: *1971 c 896 s 3*

116.24 RULES.

The pollution control agency may make rules:

(a) prescribing for the purpose of section 116.23 nutrients and the maximum permissible concentration if any, of a prescribed nutrient in any cleaning agent or chemical water conditioner;

(b) respecting the manner in which the concentration of any prescribed nutrient in a cleaning agent or chemical water conditioner shall be determined; and

(c) requiring persons who manufacture in Minnesota any cleaning agent or chemical water conditioner to maintain books and records necessary for the proper enforcement of sections 116.21 to 116.35 and rules thereunder, and to submit samples of cleaning agents or water conditioners to the pollution control agency.

History: *1971 c 896 s 4; 1985 c 248 s 70*

116.25 SEIZURE.

Subdivision 1. The pollution control agency may seize a cleaning agent or chemical water conditioner which it reasonably believes was manufactured or imported in violation of section 116.23.

Subd. 2. A cleaning agent or chemical water conditioner seized under sections 116.21 to 116.35, may be kept or stored in the building or place where it was seized or may be removed to any other proper place by or at the direction of the pollution control agency.

Subd. 3. Except with the authority of the pollution control agency, no person shall remove, alter or interfere with a cleaning agent or chemical water conditioner seized under sections 116.21 to 116.35, but the pollution control agency shall, at the request of a person from whom it was seized, furnish a sample thereof to the person for analysis.

History: *1971 c 896 s 5*

116.26 RESTORATION.

Subdivision 1. When a cleaning agent or chemical water conditioner has been seized under sections 116.21 to 116.35, any person may within two months after the date of seizure, upon prior notice in accordance with subdivision 2 to the pollution control agency by certified mail, apply to the district court within whose jurisdiction the seizure was made for an order of restoration under subdivision 3.

Subd. 2. Notice under subdivision 1 shall be mailed at least 15 days prior to the day on which the application is to be made to the district court and shall specify:

(a) the district court to which the application is to be made;

(b) the place where and the time when the application is to be heard;

(c) the cleaning agent or chemical water conditioner in regard to which the application is to be made; and

(d) the evidence upon which the applicant relies to establish entitlement to possession of the cleaning agent or chemical water conditioner.

Subd. 3. Subject to section 116.27 when upon hearing, the district court is satisfied (a) that the applicant is otherwise entitled to possession of the items seized, and (b) that the items seized are not and will not be required as evidence in proceedings under sections 116.21 to 116.35, the court shall order that the items seized be restored forthwith to the applicant. Where the court is satisfied that the applicant is otherwise entitled to possession but is not satisfied as to the necessity for retention as evidence, the court shall order restoration to the applicant (a) four months after the date of seizure if no proceedings under section 116.23 have been commenced before that time, or (b) upon the final conclusion of any such proceedings.

Subd. 4. When no application has been made under subdivision 1 within two months from the date of seizure, or when upon application no order of restoration is made, the items seized shall be delivered to the pollution control agency, which may dispose of them as it sees fit.

History: *1971 c 896 s 6; 1978 c 674 s 60; 1986 c 444*

116.27 ADDITIONAL PROHIBITION.

Subdivision 1. No manufacturer, wholesaler, or retailer shall sell, possess with intent to sell, or display for sale, a household laundry or dishwashing compound, including household detergents and presoaks, unless a verified or certified test result is filed with the pollution control agency stating the percentage content of phosphorous by weight contained in the product.

Subd. 2. Tests shall be conducted pursuant to the methods and procedures adopted by the federal water quality administration.

History: *1971 c 896 s 7*

116.28 LISTS REQUIRED.

Subdivision 1. No household laundry or dishwashing compound, including household detergents and presoaks, shall be sold or displayed for sale unless the product name is on a list prominently displayed near the product display stating the phosphorous content by percentage of weight to weight of the package contents. The products shall be listed in descending order and in letters and figures not less than one half inch high and proportionately wide. No list shall be required if the pollution control agency adopts and has in effect standards for maximum allowable phosphorus content of household laundry and dishwashing compounds.

Subd. 2. The pollution control agency shall supply any person upon request with a current listing of household laundry and dishwashing compounds and their phosphorus contents received pursuant to sections 116.21 to 116.35. This list shall be updated periodically.

History: *1971 c 896 s 8; 1974 c 275 s 1,2*

116.29 FORFEITURE.

Subdivision 1. When a person is convicted of an offense under section 116.28 any cleaning agent or chemical water conditioner seized in accordance with sections 116.21 to 116.35 is forfeited to the pollution control agency and shall be disposed of as it directs.

Subd. 2. When a cleaning agent or chemical water conditioner is seized under sections 116.21 to 116.35, the owner or the person in whose possession it was at the time of seizure consents in writing to its destruction, it is forfeited to the pollution control agency and shall be disposed of as it directs.

History: *1971 c 896 s 9*

116.30 [Repealed, 1973 c 374 s 22]

116.31 [Repealed, 1973 c 374 s 22]

116.32 ORDER TO REFRAIN.

If a person is convicted of an offense under sections 116.21 to 116.35, the court may, in addition to any punishment it may impose, order that person to refrain from any further violations of the provision of sections 116.21 to 116.35, or rules for the violation of which the offender has been convicted, or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in any further violation thereof.

History: *1971 c 896 s 12; 1985 c 248 s 70; 1986 c 444*

116.33 PROOF OF OFFENSE.

In a prosecution for an offense under sections 116.21 to 116.35, it is sufficient proof of the offense to establish that it was committed by an employee or agent of the accused whether or not the employee agent is identified or has been prosecuted for the offense, unless the accused establishes that the offense was committed without the accused's knowledge or consent and that the accused exercised all due diligence to prevent its commission.

History: *1971 c 896 s 13; 1986 c 444*

116.34 TIME LIMITED FOR PROCEEDINGS.

Proceedings in respect of an offense under sections 116.21 to 116.35, may be instituted at any time within two years after the time when the subject matter of the proceedings arose.

History: *1971 c 896 s 14*

116.35 TRIAL OF OFFENSES.

Any complaint or information in respect of an offense under sections 116.21 to 116.35, may be heard, tried or determined by a court if the accused is resident or carrying on business within the territorial jurisdiction of that court although the matter of the complaint or information did not arise in that territorial jurisdiction.

History: *1971 c 896 s 15*

PCB

116.36 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116.36 to 116.38, the following terms have the meanings given.

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

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the pollution control agency.

Subd. 4. **PCB.** "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.

Subd. 5. **Person.** "Person" has the meaning specified in section 115.01, subdivision 10.

History: *1976 c 344 s 1; 1977 c 347 s 16; 1987 c 186 s 15; 1990 c 594 art 1 s 51*

116.37 PCB; PROHIBITED USE.

Subdivision 1. **Certificate of exemption.** Beginning January 1, 1978, no person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is exempted by the agency. If the agency finds after there is opportunity for a public hearing on an application presented by any person, that no substitutes or feasible alternatives are reasonably available for PCB or a product containing PCB or class of products containing PCB, it shall grant a certificate of exemption which shall clearly set out the permitted use, possession, sale or purchase of PCB or a PCB product containing PCB. If the agency grants a certificate of exemption, it shall be valid for all subsequent uses of PCB or products containing PCB if the subsequent uses are consistent with the terms and conditions of the certificate of exemption. In granting certificates of exemption the agency shall at all times consider the public health and safety threatened by the use of PCB. In the consideration of certificates of exemption for the use or replacement of existing electrical transformers and capacitors the agency shall review, but not be limited to, considerations of the safety of proven alternatives, replacement costs and rules controlling the final disposal of PCB.

Subd. 2. **Exclusion.** In no event shall the certificate of exemption requirement or the labeling requirement of this section apply to any individual person who purchases or otherwise acquires a product containing PCB intended for consumer use in the home, provided that the use has previously been exempted by the agency and that the use is consistent with the terms and conditions of the certificate of exemption. Wastepaper, pulp, or other wood fiber materials purchased for use within this state in the manufacture of recycled paper products are exempt from the requirements of this section.

Subd. 3. **Labels required.** Beginning July 1, 1977, no person in this state shall add PCB in the manufacture of any new item, product or material, nor shall any person in this state sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.

Subd. 4. **Rules.** The agency shall promulgate rules by January 1, 1977, governing the granting of certificates of exemption and the requirements of labels specified in subdivision 3. The rules governing the requirement of labels specified in subdivision 3 may require other information relating to the public health and environmental effects of PCB and shall apply to persons holding certificates of exemption.

Subd. 5. **Penalties.** Violations of this section and sections 116.36 and 116D.045 shall be subject to the provisions of section 115.071.

History: *1976 c 344 s 2*

116.38 PCB BURNING.

Subdivision 1. **State policy.** The legislature finds that risks to human health must be adequately evaluated before a facility may burn PCBs. The legislature also finds that if there is a risk to human health, all human health must be treated with equal concern, and facilities that cause risks to human health must not be allowed to operate in sparsely populated areas if they would not be allowed to operate in heavily populated areas.

Subd. 2. **EIS required.** The pollution control agency may not allow burning of wastes containing 50 ppm or greater PCBs by permit or otherwise unless an environmental impact statement is completed. It may not renew a permit for burning wastes containing 50 ppm or greater PCBs until an environmental impact statement is completed. This section does not apply to experimental burning of small quantities of waste containing 50 ppm or greater PCBs.

History: *1990 c 594 art 1 s 52*

OZONE LAYER PRESERVATION

116.39 OZONE LAYER PRESERVATION.

Subdivision 1. Except as provided by subdivision 3, after July 1, 1979, no person shall sell or offer for sale in this state any pressurized container which contains as a propellant tricholromonofluoromethane, difluorodichloromethane, dichlorotetrafluoroethane, or any other saturated chlorofluorocarbon compound or other similar inert fluorocarbon compound that does not contain reactive carbon hydrogen bonds.

Subd. 2. Commencing October 31, 1977, no person shall sell or offer for sale at wholesale in this state a pressurized container using chlorofluorocarbon propellants unless the container has prominently displayed on the front panel this statement: "Warning: Contains a chlorofluorocarbon that may harm the public health and environment by reducing ozone in the upper atmosphere."

Subd. 3. Nothing in this section prohibits the sale or use of refrigeration equipment containing chlorofluorocarbon compounds, or the sale of chlorofluorocarbon compounds for use in such equipment. This section shall not apply to the sale of chlorofluorocarbon compounds for the following essential medical uses:

(a) metered-dose steroid human drugs for nasal inhalation;

(b) metered-dose steroid human drugs for oral inhalation;

(c) metered-dose adrenergic bronchodilator human drugs for oral inhalation;

(d) contraceptive vaginal foams for human use; or

(e) cytology fixatives; nor

for other medical uses by or under the supervision of a licensed physician, dentist or veterinarian, or a hospital, nursing home or other health care institution licensed by the department of health. This section shall also not apply to the sale of chlorofluorocar-

bon compounds for use in the cleaning, maintenance, testing and repair of electronic equipment.

Subd. 4. A violation of this section is a misdemeanor.

History: *1977 c 373 s 1*

WASTE FACILITY TRAINING AND CERTIFICATION

116.41 WASTE AND WASTE FACILITIES TRAINING AND CERTIFICATION.

Subdivision 1. [Repealed, 1983 c 373 s 72]

Subd. 1a. [Repealed, 1983 c 373 s 72]

Subd. 2. **Training and certification programs.** The agency shall develop standards of competence for persons operating and inspecting various classes of disposal facilities. The agency shall conduct training programs for persons operating facilities for the disposal of waste and for inspectors of such facilities, and may charge such fees as are necessary to cover the actual costs of the training programs. All fees received shall be paid into the state treasury and credited to the pollution control agency training account and are appropriated to the agency to pay expenses relating to the training of disposal facility personnel.

The agency shall require operators and inspectors of such facilities to obtain from the agency a certificate of competence. The agency shall conduct examinations to test the competence of applicants for certification, and shall require that certificates be renewed at reasonable intervals. The agency may charge such fees as are necessary to cover the actual costs of receiving and processing applications, conducting examinations, and issuing and renewing certificates. Certificates shall not be required for a private individual for landspreading and associated interim and temporary storage of sewage sludge on property owned or farmed by that individual.

Subd. 3. **Regulation and enforcement assistance.** The agency shall establish a program to provide technical and financial assistance for regulation and enforcement to counties which have certified operators and inspectors conforming to the requirements of the agency, chapters 400 and 473, and sections 115A.01 to 115A.72.

Subd. 4. **Rules.** The agency shall adopt, amend, and rescind rules as may be necessary to carry out the provisions of this section in accordance with chapter 14.

History: *1973 c 646 s 1; 1980 c 564 art 11 s 13; 1981 c 352 s 29; 1982 c 424 s 130; 1983 c 301 s 118; 1987 c 348 s 31; 1987 c 404 s 146; 1989 c 335 art 4 s 46*

TOXIC SUBSTANCES DEPOSITION

116.42 ACID DEPOSITION; LEGISLATIVE INTENT.

The legislature recognizes that acid deposition substantially resulting from the conduct of commercial and industrial operations, both within and without the state, poses a present and severe danger to the delicate balance of ecological systems within the state, and that the failure to act promptly and decisively to mitigate or eliminate this danger will soon result in untold and irreparable damage to the agricultural, water, forest, fish, and wildlife resources of the state. It is therefore the intent of the legislature in enacting sections 116.42 to 116.45 to mitigate or eliminate the acid deposition problem by curbing sources of acid deposition within the state and to support and encourage other states, the federal government, and the province of Ontario in recognizing the dangers of acid deposition and taking steps to mitigate or eliminate it within their own jurisdictions.

History: *1982 c 482 s 1*

116.43 ACID DEPOSITION DEFINED.

As used in sections 116.42 to 116.45, "acid deposition" means the wet or dry deposition from the atmosphere of chemical compounds, usually in the form of rain or snow,

having the potential to form an aqueous compound with a pH level lower than the level considered normal under natural conditions, or lower than 5.6.

History: *1982 c 482 s 2*

116.44 SENSITIVE AREAS; STANDARDS.

Subdivision 1. **List of areas.** By January 1, 1983, the pollution control agency shall publish a preliminary list of counties determined to contain natural resources sensitive to the impacts of acid deposition. Sensitive areas shall be designated on the basis of:

(a) the presence of plants and animal species which are sensitive to acid deposition;

(b) geological information identifying those areas which have insoluble bedrock which is incapable of adequately neutralizing acid deposition; and

(c) existing acid deposition reports and data prepared by the pollution control agency and the federal environmental protection agency. The pollution control agency shall conduct public meetings on the preliminary list of acid deposition sensitive areas. Meetings shall be concluded by March 1, 1983, and a final list published by May 1, 1983. The list shall not be subject to the rulemaking or contested case provisions of chapter 14.

Subd. 2. **Standards.** (a) By January 1, 1986, the agency shall adopt an acid deposition standard for wet plus dry acid deposition in the acid deposition sensitive areas listed pursuant to subdivision 1.

(b) By January 1, 1986, the agency shall adopt an acid deposition control plan to attain and maintain the acid deposition standard adopted under clause (a), addressing sources both inside and outside of the state which emit more than 100 tons of sulphur dioxide per year. The plan shall include an analysis of the estimated compliance costs for facilities emitting sulphur dioxide. Any emission reductions required inside of the state shall be based on the contribution of sources inside of the state to acid deposition in excess of the standard.

(c) By January 1, 1990, sources located inside the state shall be in compliance with the provisions of the acid deposition control plan.

History: *1982 c 482 s 3; 1984 c 519 s 1; 1989 c 209 art 1 s 11*

116.45 REPORTS TO THE LEGISLATURE.

By January 1, 1986, the agency shall submit its acid deposition control plan to the appropriate substantive committees of both houses of the legislature. By January 1, 1987, and each two years thereafter until January 1, 1991, the agency shall submit to the legislative committees a report detailing the reduction of sulphur dioxide needed to meet the requirements of section 116.44 and the progress which has been made to meet those requirements.

History: *1982 c 482 s 4*

116.454 MONITORING PROGRAM.

By July 1, 1993, the agency shall establish a statewide monitoring program for, and inventory of probable sources of, releases into the air, ambient concentrations in the air, and deposition from the air of toxic substances.

History: *1992 c 546 s 3*

STORAGE TANKS

116.46 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116.47 to 116.50, the terms defined in this section have the meanings given them.

Subd. 1a. **Aboveground storage tank.** "Aboveground storage tank" means any one

or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank.

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

Subd. 2a. **Installer.** "Installer" means a person who places, constructs, or repairs an aboveground or underground tank, or permanently takes an aboveground or underground tank out of service.

Subd. 3. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

Subd. 4. **Owner.** "Owner" means a person who owns an underground storage tank and a person who owned it immediately before discontinuation of its use.

Subd. 5. **Person.** "Person" has the meaning given it in section 116.06, subdivision 17.

Subd. 6. **Regulated substance.** "Regulated substance" means:

(1) a hazardous material listed in Code of Federal Regulations, title 49, section 172.101; or

(2) petroleum, including crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

Subd. 7. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into the environment. Release does not include designed venting consistent with the agency's air quality rules.

Subd. 8. **Underground storage tank.** "Underground storage tank" means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten percent or more beneath the surface of the ground.

Subd. 9. MS 1990 [Renumbered subd 1a]

History: *1Sp1985 c 13 s 235; 1987 c 389 s 11,12*

116.47 EXEMPTIONS.

Sections 116.48, 116.49, and 116.491 do not apply to:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29;

(3) surface impoundments, pits, ponds, or lagoons;

(4) storm water or waste water collection systems;

(5) flow-through process tanks;

(6) tanks located in an underground area, including basements, cellars, mineworkings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor; or

(7) septic tanks.

History: *1Sp1985 c 13 s 236; 1987 c 389 s 13*

116.48 NOTIFICATION REQUIREMENTS.

Subdivision 1. **Tank status.** (a) An owner of an underground storage tank must notify the agency by June 1, 1986, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

(b) An owner of an aboveground storage tank must notify the agency by June 1, 1990, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

Subd. 2. **Abandoned tanks.** An owner of an underground or aboveground storage tank permanently taken out of service on or after January 1, 1974, must notify the agency by June 1, 1986, in the case of underground storage tanks; by June 1, 1990, in the case of aboveground storage tanks; or, in either case, within 30 days of discovery, whichever is later, of the existence of the tank and specify or estimate to the best of the owner's knowledge on forms prescribed by the agency, the date the tank was taken out of service, the age, size, type, and location of the tank, and the type and quantity of substance remaining in the tank.

Subd. 3. **Change in status.** An owner must notify the agency within 30 days of a permanent removal from service or a change in the reported uses, contents, or ownership of an underground or aboveground storage tank.

Subd. 4. **Deposit information.** Beginning on January 1, 1986, and until July 1, 1987, a person who transfers the title to regulated substances to be placed directly into an underground storage tank must inform the owner or operator in writing of the notification requirement of this section.

Subd. 5. **Seller's responsibility.** A person who sells a tank intended to be used as an underground or aboveground storage tank or property that the seller knows contains an underground or aboveground storage tank must inform the purchaser in writing of the owner's notification requirements of this section.

Subd. 6. **Affidavit.** Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank or contained an underground or aboveground storage tank that had a release for which no corrective action was taken, the owner shall record with the county recorder or registrar of titles of the county in which the property is located an affidavit containing:

(1) a legal description of the property where the tank is located;

(2) a description of the tank, of the location of the tank, and of any known release from the tank of a regulated substance;

(3) a description of any restrictions currently in force on the use of the property resulting from any release; and

(4) the name of the owner.

The county recorder shall record the affidavits in a manner that will insure their disclosure in the ordinary course of a title search of the subject property. Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank, the owner shall deliver to the purchaser a copy of the affidavit and any additional information necessary to make the facts in the affidavit accurate as of the date of transfer of ownership.

Subd. 7. **Recording of removal affidavit.** If an affidavit has been recorded under subdivision 6 and the tank and any regulated substance released from the tank have been removed from the property in accordance with applicable law, the owner or other interested party may file with the county recorder or registrar of titles an affidavit stating the name of the owner, the legal description of the property, the place and date of filing and document number of the affidavit filed under subdivision 6, and the approximate date of removal of the tank and regulated substance. Upon filing the affidavit described in this subdivision, the affidavit and the affidavit filed under subdivision 6, together with the information set forth in the affidavits, cease to constitute either actual or constructive notice.

Subd. 8. **Notice of tank installation or removal.** Before beginning installation or removal of an underground tank system, owners and operators must notify the commissioner. Notification must be in writing or by telephone at least ten days before the tank installation or removal. Owners and operators must renotify the commissioner if the date of the tank installation or removal changes by more than 48 hours. The notification must include the following information:

(1) the name, address, and telephone number of the site owner;

(2) the location of the site, if different from clause (1);

(3) the date of the tank installation or removal; and

(4) the name of the contractor or company that will install or remove the tank.

History: *1Sp1985 c 13 s 237; 1987 c 389 s 14; 1988 c 686 art 1 s 60,61; 1989 c 226 s 4; 1992 c 490 s 11*

116.49 ENVIRONMENTAL PROTECTION REQUIREMENTS.

Subdivision 1. **Rules.** The agency must adopt rules applicable to all owners and operators of underground storage tanks. The rules must establish the safeguards necessary to protect human health and the environment. The agency may delay adopting the rules until the United States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1). The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.

Subd. 1a. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not considered an owner or operator of a tank solely as a result of the forfeiture of title to the tank or real property where the tank is located for nonpayment of taxes, or solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where a tank is located under chapter 282 and other laws applicable to tax-forfeited lands. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 2. **Interim standards.** Until the rules required by subdivision 1 become effective, a person may not install an underground storage tank unless the tank:

(1) is installed according to requirements of the American Petroleum Institute Bulletin 1615 (November 1979) and all manufacturer's recommendations;

(2) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release of any stored substance; and

(3) is constructed to be compatible with the substance to be stored.

History: *1Sp1985 c 13 s 238; 1990 c 586 s 5*

116.491 TANK INSTALLERS TRAINING AND CERTIFICATION.

Subdivision 1. **Requirement.** (a) After the effective date of rules adopted under subdivision 3, a person may not install, repair, or take an aboveground or underground tank permanently out of service without first obtaining a certification of competence issued by the agency.

(b) The agency shall conduct examinations to test the competence of applicants for certification, issue documentation of certification, and require certification to be renewed at reasonable intervals. The agency may conduct training programs for installers.

Subd. 2. **Fees.** The agency may charge fees as are necessary to cover the actual costs of processing applications, conducting examinations, issuing and renewing certificates, and providing training programs. The fees received under this section must be credited to the petroleum tank release cleanup fund.

Subd. 3. **Rules.** The agency shall adopt rules containing standards of competence for installers and to implement this section.

History: *1987 c 389 s 15*

116.492 BASEMENT STORAGE TANKS; REMOVAL.

A person who removes a basement heating oil storage tank shall ensure that fill and vent pipes through the basement wall to the outside are also removed or permanently sealed.

History: *1992 c 597 s 3*

116.50 PREEMPTION.

Sections 116.46 to 116.49 preempt conflicting local and municipal rules or ordinances requiring notification or establishing environmental protection requirements for underground storage tanks.

History: *1Sp1985 c 13 s 239*

116.51 [Repealed, 1992 c 522 s 48;1992 c 595 s 29]

116.52 [Repealed, 1992 c 522 s 48;1992 c 595 s 29]

116.53 Subdivision 1. MS 1990 [Repealed, 1992 c 522 s 48; 1992 c 595 s 29]

Subd. 2. MS 1990 [Renumbered 144.878 subd 2a]

TESTING; INJECTION OF CERTAIN MATERIALS

116.54 INJECTION OF CERTAIN MATERIALS.

The pollution control agency shall authorize and may monitor not less than one or more than five projects to test the controlled injection of oxygen-bearing materials and appropriate microbiological systems into sites of water or soil contamination. An applicant for authority to conduct one of the tests shall describe to the agency plans for the test injection project including at least the following:

(1) the quantity and type of chemicals and microbes to be used in the injection project;

(2) the frequency and planned duration of the injections;

(3) test monitoring and evaluation equipment that will be maintained at the site; and

(4) procedures for recording, analyzing, and maintaining information on the injection project.

The applicant shall make available to the agency all significant test results from the injection project. Trade secret information, as defined in section 13.37, made available by an applicant is classified as nonpublic data, pursuant to section 13.02, subdivision 9, or private data on individuals, pursuant to section 13.02, subdivision 12.

History: *1986 c 398 art 26 s 1*

116.55 [Repealed, 1988 c 685 s 44]

MANDATORY MOTOR VEHICLE EMISSION CONTROL EQUIPMENT INSPECTION

116.60 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.60 to 116.65.

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

Subd. 3. **Certificate of compliance.** "Certificate of compliance" means a serially numbered written instrument or device indicating that a motor vehicle complies with the standards and criteria adopted by the agency under section 116.62.

Subd. 4. **Certificate of waiver.** "Certificate of waiver" means a serially numbered written instrument or device indicating that the requirement of compliance with the

standards and criteria of the agency has been waived for a motor vehicle under section 116.62.

Subd. 5. **Department.** "Department" means the department of public safety.

Subd. 5a. **Fleet inspection station.** "Fleet inspection station" means a facility for the inspection of motor vehicle fleets operated under license issued by the agency under section 116.62.

Subd. 6. **Metropolitan area.** "Metropolitan area" has the meaning given in section 473.121.

Subd. 7. **Motor vehicle.** "Motor vehicle" means a passenger automobile, pickup truck, or van, as defined in section 168.011, licensed for use on the public streets and highways.

Subd. 7a. **Owner.** "Owner" has the meaning given it in section 168.011.

Subd. 8. **Public inspection station.** "Public inspection station" means a facility for motor vehicle inspection operated under contract with the agency under section 116.62.

Subd. 9. MS 1990 [Renumbered subd 5a]

Subd. 10. MS 1990 [Renumbered subd 7a]

Subd. 11. **Registrar.** "Registrar" means the registrar of motor vehicles under section 168.33.

History: *1988 c 661 s 1; 1989 c 140 s 3*

116.61 INSPECTION REQUIRED.

Subdivision 1. **Requirement.** (a) Beginning no later than July 1, 1991, each motor vehicle registered to an owner residing in the metropolitan area and each motor vehicle customarily domiciled in the metropolitan area but exempt from registration under section 168.012 or 473.448 must be inspected annually for air pollution emissions as provided in sections 116.60 to 116.65.

(b) The inspections must take place at a public or fleet inspection station. The inspections must take place within 90 days prior to the registration deadline for the vehicle or, for vehicles that are exempt from license fees under section 168.012 or 473.448, at a time set by the agency.

(c) The registration on a motor vehicle subject to paragraph (a) may not be renewed unless the vehicle has been inspected for air pollution emissions as provided in sections 116.60 to 116.65 and received a certificate of compliance or a certificate of waiver.

Subd. 2. **Exempt vehicles.** The following motor vehicles are exempt from the requirements of this section:

(1) a motor vehicle manufactured before the 1976 model year or with an engine manufactured before the 1976 model year;

(2) a motor vehicle registered as classic, pioneer, collector, or street rod under section 168.10;

(3) a motor vehicle that is exempted in accordance with rules of the agency because the vehicle, although registered to an owner residing in the metropolitan area, is customarily domiciled outside of the metropolitan area; and

(4) any class of motor vehicle that is exempted by rule of the agency because the vehicles present prohibitive inspection problems or are inappropriate for inspection.

History: *1988 c 661 s 2*

116.62 MOTOR VEHICLE INSPECTION PROGRAM.

Subdivision 1. **Establishment.** The agency shall establish and administer a program to test and inspect for air pollution emissions the motor vehicles that are subject to the requirement of section 116.61.

Subd. 2. **Criteria and standards.** (a) The agency shall adopt rules for the program

under chapter 14 establishing standards and criteria governing the testing and inspection of motor vehicles for air pollution emissions.

(b) The rules must specify maximum pollutant emission levels for motor vehicles, giving consideration to the levels of emissions necessary to achieve applicable federal and state air quality standards. The standards may be different for different model years, sizes, and types of motor vehicles.

(c) The rules must establish testing procedures and standards for test equipment used for the inspection. The test procedures or procedures producing comparable results must be available to the automobile pollution equipment repair industry. The test equipment used for the inspection or comparable equipment must be available to the repair industry on the open market.

(d) The rules must establish standards and procedures for the issuance of licenses for fleet inspection stations.

(e) The rules must establish standards and procedures for the issuance of certificates of compliance and waiver.

Subd. 3. **Public inspection stations; contract.** (a) The program shall provide for the inspection of motor vehicles at public inspection stations. The number and location of the stations must provide convenient public access.

(b) The agency shall contract with a private entity for the design, construction, equipment, establishment, maintenance, and operation of the public inspection stations and the provision of related services and functions. The contractor and its officers and employees may not be engaged in the business of selling, maintaining, or repairing motor vehicles or selling motor vehicle replacement or repair parts, except that the contractor may repair any motor vehicle owned or operated by the contractor. The contractor's employees are not employees of the state for any purpose. In evaluating contractors, the agency shall consider the contractors' policies and standards on working conditions of employees. Contracts must require the contractor to operate the public inspection stations for a minimum of five years and may provide for equitable compensation, from the vehicle emission inspection account established by section 116.65, for capital costs and other appropriate expenditures to the contractor, as determined by the agency.

(c) A public inspection station shall inspect and reinspect motor vehicles in accordance with the agency rules and contract. The inspection station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the agency adopted under this section. If a certificate of compliance cannot be issued, the inspection station shall provide a written inspection report describing the reasons for rejection and, when appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with the standards and criteria.

(d) The agency shall develop a means of responding to inquiries from members of the public about the current status of a motor vehicle under the program, including the last date of inspection, certification of compliance, and the terms under which a certificate of waiver has been issued. The agency shall ensure in its public information program that the public is aware of this service. The agency may contract for the provision of this service.

Subd. 4. **Fleet inspection stations; license.** (a) The program shall provide for the licensing of fleet inspection stations by the agency. The license must be issued by the agency, upon payment of a licensing fee in a manner and an amount prescribed by the agency, when the agency determines that an applicant satisfies the requirements of this section and agency rules.

(b) Owners of a fleet of 50 or more motor vehicles may apply for a fleet inspection station license. Two or more persons each owning 25 or more motor vehicles may apply jointly for a fleet inspection station license.

(c) A licensee shall have the facilities, equipment, and personnel to competently perform the inspections required by sections 116.60 to 116.65 and the rules of the

agency. A licensee shall provide for the inspection of each fleet vehicle in accordance with the requirements of section 116.61 and before registration of the vehicle shall indicate in a manner prescribed by the agency whether the vehicle complies with the emission standards of the agency.

(d) A fleet inspection station license authorizes and obligates the licensee to perform inspections only on motor vehicles owned or operated exclusively by the fleet licensee.

(e) A licensee shall maintain records of all inspections in a manner prescribed by the agency and shall make the records available for inspection by authorized representatives of the agency during normal business hours.

(f) To ensure compliance, the agency may require fleet licensees to submit motor vehicles designated by the agency numbering five percent or five motor vehicles, whichever is larger, but no more than 25 vehicles, to annual inspection at public inspection stations.

Subd. 5. **Certificates of waiver.** (a) A certificate of waiver, valid for one year, must be issued for a motor vehicle following inspection if:

(1) a low emissions adjustment has been performed on the vehicle, following inspection and within 90 days prior to the renewal of registration, and

(2) either the estimated cost of repairs and adjustments necessary to bring the vehicle into compliance with emissions standards or the actual cost of repairs already performed on a vehicle in accordance with the inspection report under subdivision 3 exceeds the repair cost limit.

(b) The following costs may not be considered in determining eligibility for waiver under paragraph (a): costs for repairs made under warranty and costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative in violation of section 325E.0951.

(c) The repair cost limit is $75 for vehicles manufactured before the 1981 model year, and $200 for vehicles manufactured in the 1981 model year and after.

(d) A temporary certificate of waiver, valid for not more than 30 days, may be issued to a vehicle to allow time for inspection and necessary repairs and adjustments.

Subd. 6. **Federal grants.** The agency shall apply for and accept on behalf of the state any funds made available by the federal government or by any other sources for motor vehicle pollution control programs.

Subd. 7. **Studies; data collections; annual report.** The agency shall collect data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The agency shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters. The agency shall report on the operation of the motor vehicle inspection program to the legislature by January 1, 1992, and every two years thereafter.

Subd. 8. **Public information; training.** The agency shall design, prepare, and implement a public information program for the motor vehicle inspection program, in cooperation with the department and the contractor under section 116.62, subdivision 3. The program must include material for distribution, presentations, mass media releases, and other appropriate material.

History: *1988 c 661 s 3*

116.63 PROHIBITED ACTS.

Subdivision 1. **Wrongful certification.** No person may issue a certificate of compliance for a motor vehicle that has not been inspected in accordance with or is not in compliance with the rules of the agency.

Subd. 2. **Referral for parts or repair.** An employee, owner, or operator of a public inspection station may not furnish information, except information provided by the state, about the name or other description of a parts or repair facility or other place

where parts, repairs, or adjustments may be obtained to bring a motor vehicle into compliance with the rules of the agency.

Subd. 3. **Alteration.** A person may not materially alter or change any equipment or mechanism of a motor vehicle that has been certified to comply with the rules of the agency, so that the motor vehicle is no longer in compliance with those rules.

Subd. 4. **False repair costs.** A person may not provide false information to a public inspection station or the agency about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance with the standards of the agency. A person may not claim an amount spent for repair if the repairs were not made or the amount not spent.

History: *1988 c 661 s 4*

116.64 INSPECTION FEE.

Subdivision 1. **Amount.** Beginning January 1, 1991, an annual fee established in accordance with the rules of the agency, not to exceed $10, is imposed for the cost of the inspection of a motor vehicle at a public inspection station and such reinspections as the rules of the agency allow, the cost of the contract entered under section 116.62, subdivision 3, and the administrative costs of the agency and the department.

Subd. 2. **Application.** The fee must be paid for each motor vehicle inspected at a public inspection station, including a motor vehicle that is exempt from license fees under section 168.012 or 473.448.

Subd. 3. **Payment.** The fee must be paid to the registrar at the time that the motor vehicle is reregistered or, for vehicles exempt from license fees under section 168.012 or 473.448, at a time set by the agency.

History: *1988 c 661 s 5; 1989 c 209 art 2 s 1*

116.65 VEHICLE EMISSION INSPECTION ACCOUNT.

Subdivision 1. **Establishment; purpose.** A vehicle emission inspection account is created in the state treasury and may be used only to pay the cost of the motor vehicle inspection program and the costs of the agency and department to administer sections 116.60 to 116.65.

Subd. 2. **Revenue source.** Revenue from the following sources must be deposited in the vehicle emission inspection account:

(1) money recovered by the state under section 116.63, and money paid under any agreement, stipulation, or settlement;

(2) money received by the agency in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purpose of the account;

(3) fleet inspection station licensing fees;

(4) interest attributable to investment of money deposited in the fund; and

(5) the proceeds of the inspection fee.

Subd. 3. **Appropriation.** The amount necessary to pay the inspection maintenance operator during the initial contract period for the contract entered into under section 116.62, subdivision 3, is appropriated from the vehicle emission inspection account to the agency. By the end of the initial contract entered by the agency under section 116.62, subdivision 3, the amounts appropriated from the motor vehicle transfer fund to the vehicle emission inspection account must be repaid to the transfer fund, and the amounts necessary for this repayment are appropriated from the vehicle emission inspection account.

History: *1988 c 661 s 6; 1990 c 594 art 1 s 53*

CHLOROFLUOROCARBON REGULATION

116.70 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.71 to 116.734.

Subd. 2. **CFC-processed.** "CFC-processed" means processing that uses chlorofluorocarbons.

Subd. 3. **Chlorofluorocarbons or CFCs.** "Chlorofluorocarbons" or "CFCs" means the substances identified as Class I or Class II substances under section 602 of the Clean Air Act, United States Code, title 42, section 7401 et seq., as amended by the Clean Air Act Amendments of 1990, Public Law Number 101-549.

Subd. 3a. **Local government.** "Local government" means a county, town, statutory or home rule charter city, or school district.

Subd. 4. **Packaging.** "Packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, packing, and lids used for packaging that are not intended for reuse.

Subd. 5. MS 1990 [Renumbered subd 3a]

History: *1988 c 671 s 1; 1990 c 560 art 2 s 3; 1992 c 546 s 4*

116.71 STATE AND LOCAL GOVERNMENT; PROHIBITED PACKAGING.

Except as provided in section 116.73, the state and local governments may not purchase, or otherwise obtain, CFC-processed packaging.

History: *1988 c 671 s 2*

116.72 CFC-PROCESSED PACKAGING.

Except as provided in section 116.73, a person may not purchase, manufacture, sell, or distribute packaging knowing that it is CFC-processed.

History: *1988 c 671 s 3*

116.73 EXEMPTIONS.

(a) The agency may adopt rules to exempt a type of packaging from the requirements of sections 116.71 and 116.72 after adopting findings that:

(1) the type of packaging does not have an acceptable non-CFC-processed equivalent and the adverse health effects of the CFC-processed packaging can be tolerated until an alternative packaging can be developed; and

(2) imposing the requirements of sections 116.71 and 116.72 on the type of packaging would cause undue hardship.

(b) A person may apply to the commissioner for determination of whether a type of packaging is exempt under this section or subject to section 116.71 or 116.72.

History: *1988 c 671 s 4*

116.731 REQUIREMENTS TO RECYCLE CFCS.

Subdivision 1. **Salvage automobiles.** A person who processes automobiles for salvage must remove CFCs for recycling prior to disposal or sale of the materials containing CFCs. This subdivision does not apply to crushed automobiles or automobiles that have been processed in a manner that makes removal and recovery of CFCs impossible.

Subd. 2. **Refrigeration equipment.** A person processing scrap refrigerators, central air conditioning units, or freezers must remove and recycle, destroy, or properly dispose of the CFCs.

Subd. 3. **Mobile air conditioning equipment.** A person servicing or removing mobile air conditioning equipment must:

(1) recapture CFCs, provide storage for recaptured CFCs, and transfer recaptured CFCs to a recycler; or

(2) recapture CFCs and recycle the CFCs to an allowed use.

Subd. 4. **Servicing of appliances.** (a) A person servicing refrigerators, central air conditioning units, or freezers must:

(1) recapture CFCs, provide storage for recaptured CFCs, and transfer recaptured CFCs to a recycler; or

(2) recapture CFCs and recycle the CFCs to an allowed use.

(b) The recovered CFCs may be properly disposed of or destroyed.

Subd. 5. **Foam not required to be recycled.** This section does not require recycling of rigid or flexible foam.

Subd. 6. **Rules.** The agency shall adopt rules for recycling CFCs and establish standards for CFC recycling equipment under this section.

History: *1990 c 560 art 2 s 4*

116.732 REQUIREMENT TO RECYCLE FIRE EXTINGUISHER HALONS.

A person who recharges, services, or retires fire extinguishers must recapture and recycle halons.

History: *1990 c 560 art 2 s 5*

116.733 MEDICAL DEVICE EXEMPTION.

Laws 1990, chapter 560, article 2, sections 1 and 2, and sections 116.70, 116.731, and 116.732, do not apply to processes using CFCs or halons on medical devices, in sterilization processes in health care facilities, or by a person or facility in manufacturing or selling of medical devices.

History: *1990 c 560 art 2 s 6; 1991 c 199 art 1 s 30*

116.734 UNIFORM CFC REGULATION.

It is the policy of this state to regulate and manage CFCs in a uniform manner throughout the state. Political subdivisions may not adopt, and are preempted from adopting or enforcing, requirements relating to CFCs that are different than state law.

History: *1990 c 560 art 2 s 7*

116.74 ENFORCEMENT; PENALTIES.

A person who violates section 116.71 or 116.72 is subject to a civil penalty of up to $500 for each violation. The attorney general shall enforce sections 116.71 and 116.72, and may bring an action for injunctive relief or an action to compel performance or may seek civil penalties. In an action brought under this section, the attorney general may also recover costs and disbursements, including reasonable attorney fees.

History: *1988 c 671 s 5*

INFECTIOUS WASTE CONTROL ACT

116.75 CITATION.

Sections 116.76 to 116.83 may be cited as the "infectious waste control act."

History: *1989 c 337 s 1*

116.76 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.76 to 116.83.

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

Subd. 3. **Blood.** "Blood" means waste human blood and blood products in containers, or solid waste saturated and dripping human blood or blood products. Human blood products include serum, plasma, and other blood components.

Subd. 4. **Commercial transporter.** "Commercial transporter" means a person who transports infectious or pathological waste for compensation.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the pollution control agency.

Subd. 6. **Decontamination.** "Decontamination" means rendering infectious waste safe for routine handling as a solid waste.

Subd. 7. **Department.** "Department" means the department of health.

Subd. 8. **Facility.** "Facility" means a site where infectious waste is generated, stored, decontaminated, incinerated, or disposed.

Subd. 9. **Generator.** "Generator" means a person whose activities produce infectious waste. "Generator" does not include a person who produces sharps as a result of administering medication to oneself. "Generator" does not include an ambulance service licensed under section 144.802, an eligible board of health, community health board, or public health nursing agency as defined in section 116.78, subdivision 10, or a program providing school health service under section 123.35, subdivision 17.

Subd. 10. **Household.** "Household" means a single detached dwelling unit or a single unit of a multiple dwelling.

Subd. 11. **Infectious agent.** "Infectious agent" means an organism that is capable of producing infection or infectious disease in humans.

Subd. 12. **Infectious waste.** "Infectious waste" means laboratory waste, blood, regulated body fluids, sharps, and research animal waste that have not been decontaminated.

Subd. 13. **Laboratory waste.** "Laboratory waste" means waste cultures and stocks of agents that are generated from a laboratory and are infectious to humans; discarded contaminated items used to inoculate, transfer, or otherwise manipulate cultures or stocks of agents that are infectious to humans; wastes from the production of biological agents that are infectious to humans; and discarded live or attenuated vaccines that are infectious to humans.

Subd. 14. **Pathological waste.** "Pathological waste" means human tissues and body parts removed accidentally or during surgery or autopsy intended for disposal. Pathological waste does not include teeth.

Subd. 15. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, the United States government, an interstate body, the state, and an agency, department, or political subdivision of the state.

Subd. 16. **Regulated human body fluids.** "Regulated human body fluids" means cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid that are in containers or that drip freely from body fluid soaked solid waste items.

Subd. 17. **Research animal waste.** "Research animal waste" means carcasses, body parts, and blood derived from animals knowingly and intentionally exposed to agents that are infectious to humans for the purpose of research, production of biologicals, or testing of pharmaceuticals.

Subd. 18. **Sharps.** "Sharps" means:

(1) discarded items that can induce subdermal inoculation of infectious agents, including needles, scalpel blades, pipettes, and other items derived from human or animal patient care, blood banks, laboratories, mortuaries, research facilities, and industrial operations; and

(2) discarded glass or rigid plastic vials containing infectious agents.

History: *1989 c 337 s 2; 1990 c 568 art 2 s 2*

116.77 COVERAGE.

Sections 116.75 to 116.83 and 609.671, subdivision 10, cover any person, including a veterinarian, who generates, treats, stores, transports, or disposes of infectious or pathological waste but not including infectious or pathological waste generated by

households, farm operations, or agricultural businesses. Except as specifically provided, sections 116.75 to 116.83 do not limit or alter treatment or disposal methods for infectious or pathological waste.

History: *1989 c 337 s 3; 1991 c 344 s 1*

116.78 WASTE MANAGEMENT.

Subdivision 1. **Segregation.** All untreated infectious waste must be segregated from other waste material at its point of generation and maintained in separate packaging throughout collection, storage, and transport. Infectious waste must be packaged, contained, and transported in a manner that prevents release of the waste material.

Subd. 2. **Labeling.** All bags, boxes, and other containers used to collect, transport, or store infectious waste must be clearly labeled with a biohazard symbol or with the words "infectious waste" written in letters no less than one inch in height.

Subd. 3. **Reusable containers.** Containers which have been in direct contact with infectious waste must be disinfected prior to reuse.

Subd. 4. **Sharps.** Sharps, except those generated from a household or from a farm operation or agricultural business:

(1) must be placed in puncture-resistant containers;

(2) may not be compacted or mixed with other waste material whether or not the sharps are decontaminated unless it is part of an infectious waste decontamination process approved by the commissioner of health or the commissioner of the pollution control agency that will prevent exposure during transportation and disposal; and

(3) may not be disposed of at refuse-derived fuel facilities or at other facilities where waste is hand sorted.

Subd. 5. **Pathological waste.** Pathological waste must be managed according to sanitary standards established by state and federal laws or regulations for the disposal of the waste.

Subd. 6. **Storage.** Infectious and pathological waste must be stored in a specially designated area that is designed to prevent the entry of vermin and that prevents access by unauthorized persons.

Subd. 7. **Compaction and mixture with other wastes.** Infectious waste may not be compacted or mixed with other waste materials prior to incineration or disposal. Compaction is acceptable if it is part of an infectious waste system, approved by the commissioner of health or the commissioner of the pollution control agency, that is designed to prevent exposure during storage, transportation, and disposal.

Subd. 8. **Disposal.** Except for disposal procedures specifically prescribed, this section and section 116.81 do not limit disposal methods for infectious and pathological waste.

Subd. 9. **Disposal of infectious waste by ambulance services.** Any infectious waste, as defined in section 116.76, subdivision 12, produced by an ambulance service in the transport or care of a patient must be properly packaged and disposed of at the destination hospital or at the nearest hospital if the patient is not transported. A hospital must accept the infectious waste if it is properly packaged according to the standards the hospital uses for packaging its own infectious wastes. The hospital may charge the ambulance service a reasonable fee for disposal of the infectious waste. Nothing in this subdivision shall require a hospital to accept infectious waste if the waste is of a type not generated by the hospital or if the hospital cannot safely store the waste. A hospital that accepts infectious waste under this subdivision is not subject to those provisions of section 116.79, subdivision 4, paragraph (a), that apply to the storage or decontamination of infectious or pathological waste generated at a site other than the hospital.

Subd. 10. **Disposal of infectious waste by public health agencies and programs providing school health services.** Any infectious waste, as defined in section 116.76, subdivision 12, produced by an eligible board of health, community health board, or public health nursing agency or a program providing school health services under section

123.35, subdivision 17, must be properly packaged and may be disposed of at a hospital. For purposes of this subdivision, an "eligible board of health, community health board, or public health nursing agency" is defined as a board of health, community health board, or public health nursing agency located in a county with a population of less than 40,000. A hospital must accept the infectious waste if it is properly packaged according to the standards the hospital uses for packaging its own infectious wastes. The hospital may charge an eligible board of health, community health board, or public health nursing agency or a program providing school health services a reasonable fee for disposal of the infectious waste. Nothing in this subdivision shall require a hospital to accept infectious waste if the waste is of a type not generated by the hospital or if the hospital cannot safely store the waste. A hospital that accepts infectious waste under this subdivision is not subject to those provisions of section 116.79, subdivision 4, paragraph (a), that apply to the storage or decontamination of infectious or pathological waste generated at a site other than the hospital.

History: *1989 c 337 s 4; 1990 c 568 art 2 s 3,4; 1991 c 344 s 2,3*

116.79 MANAGEMENT PLANS.

Subdivision 1. **Preparation of management plans.** (a) To the extent applicable to the facility, a person in charge of a facility that generates, stores, decontaminates, incinerates, or disposes of infectious or pathological waste must prepare a management plan for the infectious or pathological waste handled by the facility. A person may prepare a common management plan for all generating facilities owned and operated by the person. If a single plan is prepared to cover multiple facilities, the plan must identify common policy and procedures for the facilities and any management procedures that are facility specific. The plan must identify each generating facility covered by the plan. A management plan must list all physicians, dentists, chiropractors, podiatrists, veterinarians, certified nurse practitioners, certified nurse midwives, or physician assistants, employed by, under contract to, or working at the generating facilities, except hospitals or laboratories. A management plan from a hospital must list the number of licensed beds and from a laboratory must list the number of generating employees.

(b) The management plan must describe, to the extent the information is applicable to the facility:

(1) the type of infectious waste and pathological waste that the person generates or handles;

(2) the segregation, packaging, labeling, collection, storage, and transportation procedures for the infectious waste or pathological waste that will be followed;

(3) the decontamination or disposal methods for the infectious or pathological waste that will be used;

(4) the transporters and disposal facilities that will be used for the infectious waste;

(5) the steps that will be taken to minimize the exposure of employees to infectious agents throughout the process of disposing of infectious or pathological wastes; and

(6) the name of the individual responsible for the management of the infectious waste or pathological waste.

(c) The management plan must be kept at the facility.

(d) To the extent applicable to the facility, management plans must be accompanied by a statement of the quantity of infectious and pathological waste generated, decontaminated, stored, incinerated, or disposed of at the facility during the previous two-year period. Quantities shall be reported in gallons or pounds. The commissioner of health shall prepare a summary of the quantities of infectious and pathological waste generated, by facility type.

(e) A management plan must be updated and resubmitted at least once every two years.

Subd. 2. **Compliance with management plans.** A person who prepares a management plan must comply with the management plan.

Subd. 3. **Generators' plans.** (a) Management plans prepared by facilities that generate infectious or pathological waste must be submitted to the commissioner of health with a fee of $225 for facilities with 25 or more employees, or a fee of $40 for facilities with less than 25 employees. The fee must be deposited in the state treasury and credited to the general fund.

(b) A person shall submit for each generating facility the following fee with the generator's management plan:

(1) for a generating facility that is a private practice office with two or fewer physicians, dentists, chiropractors, podiatrists, veterinarians, certified nurse practitioners, certified nurse midwives, or physician assistants, employed by, under contract to, or working at the generating facility, a fee of $40;

(2) for a generating facility that is a private practice office with three or more physicians, dentists, chiropractors, podiatrists, veterinarians, certified nurse practitioners, certified nurse midwives, or physician assistants, employed by, under contract to, or working at the generating facility, in addition to the fee for two practitioners as prescribed under clause (1), a fee of $20 for each additional practitioner, up to a maximum total fee of $225;

(3) for a generating facility that is a health facility or agency other than a hospital or laboratory described in clause (5) or (6), a fee of $225. Long-term health care facilities, including nursing homes, boarding care facilities, or intermediate care facilities, with less than 25 licensed beds shall have a fee of $40. A corporate research and development laboratory with fewer than ten generating employees is also included in this category;

(4) for a generating facility that is not a health facility or agency, a fee of $40. Included in this category are a corporate occupational health clinic; or a college or university campus, including its research laboratories, and student health service, but not including a hospital;

(5) for a generating facility that is a laboratory, including a corporate research and development laboratory, with ten to 49 generating employees, or a hospital with 50 to 299 licensed beds, a fee of $450;

(6) for a generating facility that is a laboratory, including a corporate research and development laboratory, with 50 or more generating employees or a hospital with 300 or more licensed beds, a fee of $600;

(7) the following persons shall pay a fee of $225 to cover the generation at all its facilities:

(i) a community health board; or

(ii) Migrant Health Services, Inc.;

(8) for a generator with a generating satellite facility or mobile facility, that is used for an average of less than five hours per week on an annual basis, no additional fee is required;

(9) for a licensed home care agency with no more than two generating employees, a fee of $40;

(10) for a licensed home care agency with more than two generating employees, a fee of $20 for each generating employee, up to a maximum fee of $225; and

(11) the fees are waived for the Bureau of Indian Affairs, federal facilities, and state agencies.

(c) A person who begins the generation of infectious or pathological waste after January 1, 1990, must submit to the commissioner of health a copy of the person's management plan prior to initiating the handling of the infectious or pathological waste.

(d) If a hospital or nursing home that is a generator also incinerates infectious or pathological waste on site, the management plan must detail that incineration in the plan.

(e) The commissioner of health must establish a procedure for randomly reviewing the plans.

(f) The commissioner of health may require a management plan of a generator to be modified if the commissioner of health determines that the plan is not consistent with state or federal law or that the plan is not adequate to minimize exposure of persons to the infectious or pathological waste.

Subd. 4. **Plans for storage, decontamination, incineration, and disposal facilities.** (a) A person who stores or decontaminates infectious or pathological waste, other than at the facility where the waste was generated, or a person who incinerates or disposes of infectious or pathological waste, must submit a copy of the management plan to the commissioner of the pollution control agency with a fee of $225. The fee must be deposited in the state treasury and credited to the general fund. A person who incinerates on site must submit an attachment to the generator's management plan detailing the incineration operation.

(b) The commissioner shall review the plans and may require a plan to be modified within 180 days after the plan is submitted if the commissioner determines that the plan is not consistent with state or federal law or that the plan is not adequate to minimize exposure of persons to the waste.

History: *1989 c 337 s 5; 1991 c 344 s 4-6*

116.80 TRANSPORTATION OF INFECTIOUS WASTE.

Subdivision 1. **Transfer of infectious waste.** (a) A generator may not transfer infectious waste to a commercial transporter unless the transporter is registered with the commissioner.

(b) A transporter may not deliver infectious waste to a facility prohibited to accept the waste.

(c) A person who is registered to transport infectious waste may not refuse waste generated from a facility that is properly packaged and labeled as "infectious waste."

Subd. 2. **Preparation of management plans.** (a) A commercial transporter in charge of a business that transports infectious waste must prepare a management plan for the infectious waste handled by the commercial transporter.

(b) The management plan must describe, to the extent the information is applicable to the commercial transporter:

(1) the type of infectious waste that the commercial transporter handles;

(2) the transportation procedures for the infectious waste that will be followed;

(3) the disposal facilities that will be used for the infectious waste;

(4) the steps that will be taken to minimize the exposure of employees to infectious agents throughout the process of transporting and disposing of infectious waste; and

(5) the name of the individual responsible for the transportation and management of the infectious waste.

(c) The management plan must be kept at the commercial transporter's principal place of business.

(d) Management plans must be accompanied by a statement of the quantity of infectious waste transported during the previous two-year period. Quantities shall be reported in gallons or pounds.

(e) A management plan must be updated and resubmitted at least once every two years.

(f) The commissioner shall review the plans and may require a plan to be modified within 180 days after the plan is submitted if the commissioner determines that the plan is not consistent with state or federal law or that the plan is not adequate to minimize exposure of persons to the waste.

Subd. 3. **Registration required.** (a) A commercial transporter must register with the commissioner.

(b) To register, a commercial transporter must submit a copy of the management plan to the commissioner of the pollution control agency with a fee of $225. The fee must be deposited in the state treasury and credited to the general fund.

(c) The registration is valid for two years.

(d) The commissioner shall issue a registration card with a unique registration number to a person who has submitted a transporter's management plan unless the commissioner finds that registrant has outstanding unresolved violations of this section or a history of serious violations of chapter 115, 115A, 115B, or 116. The registration card must include the date the card expires.

Subd. 4. **Waste from other states.** A person may not transport infectious waste into the state for decontamination, storage, incineration, or disposal without complying with sections 116.76 to 116.82.

History: *1989 c 337 s 6; 1991 c 344 s 7*

116.801 INCINERATION OF INFECTIOUS WASTE; PERMIT REQUIRED.

(a) Except as provided in paragraph (b), a person may not construct, or expand the capacity of, a facility for the incineration of infectious waste, as defined in section 116.76, without having obtained an air emission permit from the agency.

(b) This section does not affect permit requirements under the rules of the agency for an incinerator that is upgraded to meet pollution control standards or an incinerator with a capacity of 350 pounds or less per hour that is planned to manage waste generated primarily by the owner or operator of the incinerator.

History: *1991 c 231 s 1*

116.802 INCINERATION OF INFECTIOUS WASTE; ENVIRONMENTAL IMPACT.

Until the pollution control agency adopts revisions to its air emission rules for incinerators, a new or expanded facility for the incineration of infectious waste that is subject to the permit requirement in section 116.801 may not receive a permit until an environmental impact statement for the facility has been prepared and approved. The pollution control agency is the governmental unit responsible for preparation of an environmental impact statement required under this section.

History: *1991 c 231 s 2*

116.81 RULES.

Subdivision 1. **Agency rules.** The agency, in consultation with the commissioner of health, may adopt rules to implement sections 116.76 to 116.82. The agency has primary responsibility for rules relating to transportation of infectious waste and facilities storing, transporting, decontaminating, incinerating, and disposing of infectious waste. The agency, before adopting rules affecting animals or research animal waste, must consult the commissioner of agriculture and the board of animal health.

Subd. 2. **Health rules.** The commissioner of health after consulting with the agency may adopt rules to implement sections 116.76 to 116.82. The commissioner of health has primary responsibility for rules relating to facilities generating infectious waste. The commissioner of health, before adopting rules affecting animals or research animal waste, must consult the commissioner of agriculture and the board of animal health.

History: *1989 c 337 s 7*

116.82 AUTHORITY OF LOCAL GOVERNMENT.

Subdivision 1. **Preemption of regulation.** A county, municipality, or other political subdivision of the state may not adopt a definition of infectious or pathological waste that differs from the definitions in section 116.76, or management requirements for infectious or pathological waste that differ from the requirements of sections 116.78 and 116.79.

Subd. 2. **Local solid waste authority.** (a) Sections 116.76 to 116.81 do not affect local implementation of collection, storage, or disposal of solid waste that does not contain infectious waste.

(b) Sections 116.76 to 116.81 do not affect county authority under other law to regulate and manage solid waste that does not contain infectious waste.

(c) A political subdivision, as defined in section 115A.03, subdivision 24, may not require a refuse-derived fuel facility to accept infectious waste.

Subd. 3. **Local enforcement.** Sections 116.76 to 116.81 may be enforced by a county by delegation of enforcement authority granted to the commissioner of health and the agency in section 116.83. Separate enforcement actions may not be brought by a state agency and a county for the same violations. The state or county may not bring an action that is being enforced by the federal Office of Safety and Health Administration.

History: *1989 c 337 s 8*

116.83 ENFORCEMENT.

Subdivision 1. **State responsibilities.** The agency or the commissioner of health may enforce sections 116.76 to 116.81. The commissioner of health is primarily responsible for enforcement involving generators. The agency is primarily responsible for enforcement involving other persons subject to sections 116.76 to 116.81.

Subd. 2. **Enforcement authority.** The commissioner of health has the authority of the agency to enforce sections 116.76 to 116.81 under sections 115.071 and 116.072.

Subd. 3. **Access to information and property.** Subject to section 144.651, the commissioner of the pollution control agency or the commissioner of health may on presentation of credentials, during regular business hours:

(1) examine and copy any books, records, memoranda, or data that is related to compliance with sections 116.76 to 116.81; and

(2) enter public or private property regulated by sections 116.76 to 116.81 for the purpose of taking an action authorized by this section including obtaining information and conducting investigations.

History: *1989 c 337 s 9; 1991 c 347 art 1 s 18*

MONITORS FOR INCINERATORS

116.84 MONITORS REQUIRED FOR INCINERATORS

Notwithstanding any other law to the contrary, an incinerator permit issued to a facility that allows burning of PCB's must, as a condition of the permit, require the installation of a continuous emission monitoring system approved by the commissioner. The monitoring system must provide continuous emission measurements to ensure optimum combustion efficiency of dioxin precursors. The system must also be capable of providing a permanent record of monitored emissions that will be available upon request to the commissioner and the general public. The commissioner shall provide periodic inspection of the monitoring system to determine its continued accuracy. Should, at any time, the permitted facility's emissions exceed permit requirements based on accurate and valid emissions data, the facility shall immediately commence shutdown of the incinerator until the appropriate modifications to the facility have been made to ensure its ability to meet permitted requirements.

History: *1989 c 335 art 1 s 132*

116.85 MONITORS REQUIRED FOR INCINERATORS.

Subdivision 1. **Emission monitors.** Notwithstanding any other law to the contrary, an incinerator permit that contains emission limits for dioxin, cadmium, chromium, lead, or mercury must, as a condition of the permit, require the installation of an air emission monitoring system approved by the commissioner. The monitoring system must provide continuous measurements to ensure optimum combustion efficiency for the purpose of ensuring optimum dioxin destruction. The system shall also be capable of providing a permanent record of monitored emissions that will be available upon

request to the commissioner and the general public. The commissioner shall provide periodic inspection of the monitoring system to determine its continued accuracy. The facility must conduct periodic stack testing for mercury at intervals not to exceed 90 days. Refuse-derived fuel facilities must conduct periodic stack testing for mercury at intervals not to exceed 15 months unless a previous test showed a permit exceedance after which the agency may require quarterly testing until permit requirements are satisfied.

Subd. 2. **Continuously monitored emissions.** Should, at any time after normal startup, the permitted facility's continuously monitored emissions exceed permit requirements, based on accurate and valid emissions data, the facility shall immediately report the exceedance to the commissioner and immediately either commence appropriate modifications to the facility to ensure its ability to meet permitted requirements or commence shutdown if the modifications cannot be completed within 72 hours. Compliance with permit requirements must then be demonstrated based on additional testing.

Subd. 3. **Periodically tested emissions.** Should, at any time after normal startup, the permitted facility's periodically tested emissions exceed permit requirements based on accurate and valid emissions data, the facility shall immediately report the exceedance to the commissioner, and the commissioner shall direct the facility to commence appropriate modifications to the facility to ensure its ability to meet permitted requirements within 30 days, or to commence appropriate testing for a maximum of 30 days to ensure compliance with applicable permit limits. If the commissioner determines that compliance has not been achieved after 30 days, then the facility shall shut down until compliance with permit requirements is demonstrated based on additional testing.

Subd. 4. **Other law.** This section shall not be construed to limit the authority of the agency to regulate incinerator operations under any other law.

History: *1989 c 335 art 1 s 133; 1990 c 594 art 1 s 54*

116.86 [Repealed, 1991 c 254 art 2 s 48]

REFUSE-DERIVED FUEL

116.90 REFUSE-DERIVED FUEL.

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

(b) "Agency" means the pollution control agency.

(c) "Minor modification" means a physical or operational change that does not increase the rated energy production capacity of a solid fuel fired boiler and which does not involve capital costs in excess of 20 percent of a new solid fuel fired boiler having the same rated capacity.

(d) "Refuse-derived fuel" means a product resulting from the processing of mixed municipal solid waste in a manner that reduces the quantity of noncombustible material present in the waste, reduces the size of waste components through shredding or other mechanical means, and produces a fuel suitable for combustion in existing or new solid fuel fired boilers.

(e) "Solid fuel fired boiler" means a device that is designed to combust solid fuel, including but not limited to: wood, coal, biomass, or lignite to produce steam or heat water.

Subd. 2. **Use of refuse-derived fuel.** (a) Existing or new solid fuel fired boilers may utilize refuse-derived fuel in an amount up to 30 percent by weight of the fuel feed stream under the following conditions:

(1) utilization of refuse-derived fuel involves no modification or only minor modification to the solid fuel fired boiler;

(2) utilization of refuse-derived fuel does not cause a violation of emissions limitations or ambient air quality standards applicable to the solid fuel fired boiler;

(3) the solid fuel fired boiler has a valid permit to operate;

(4) the refuse-derived fuel is manufactured and sold in compliance with permits issued by the agency and:

(i) is produced by a facility for which a permit was issued by the agency before June 1, 1991; or

(ii) is produced by an agency-permitted facility designed as part of a regional waste management system at which facility the waste is mechanically and hand sorted to avoid inclusion of items containing mercury or other heavy metals in the waste that is processed into refuse-derived fuel, and the refuse-derived fuel producer has contracted with an end user to combust the fuel; and

(5) the owner or operator of the solid fuel fired boiler gives prior written notice to the commissioner of the agency of the amount of refuse-derived fuel expected to be used and the date on which the use is expected to begin.

(b) A facility that produces refuse-derived fuel that is sold for use in a solid fuel fired boiler may accept waste for processing only from counties that provide for the removal of household hazardous waste from the waste.

(c) The agency may not require, as a condition of using refuse-derived fuel under this section, any additional monitoring or testing of a solid fuel fired boiler's air emissions beyond the monitoring or testing required by state or federal law or by the terms of the solid fuel fired boiler's permit issued by the agency.

History: *1991 c 337 s 56; 1992 c 593 art 1 s 33*

116.91 CITIZEN REPORTS OF ENVIRONMENTAL VIOLATIONS.

The agency shall maintain and publicize a toll-free number to enable citizens to report information about potential environmental violations. The agency may establish a program to pay awards from funds raised from private sources to persons who provide information that leads to the conviction for an environmental crime.

History: *1991 c 347 art 3 s 2*

MERCURY EMISSIONS REDUCTION

116.92 MERCURY EMISSIONS REDUCTION.

Subdivision 1. **Sales.** A person may not sell mercury to another person in this state without providing a material safety data sheet, as defined in United States Code, title 42, section 11049, and requiring the purchaser to sign a statement that the purchaser:

(1) will use the mercury only for a medical, dental, instructional, research, or manufacturing purpose; and

(2) understands the toxicity of mercury and will appropriately store and use it and will not place, or allow anyone under the purchaser's control to place, the mercury in the solid waste stream or in a wastewater disposal system, as defined in section 115.01, subdivision 4.

Subd. 2. **Use of mercury.** A person who uses mercury in any application may not place, or deliver the mercury to another person who places residues, particles, scrapings, or other materials that contain mercury in solid waste or wastewater, except for traces of materials that may inadvertently pass through a filtration system during a dental procedure.

Subd. 3. **Labeling; products containing mercury.** A manufacturer or wholesaler may not sell and a retailer may not knowingly sell any of the following items in this state that contain mercury unless the item is labeled in a manner to clearly inform a purchaser or consumer that mercury is present in the item and that the item may not be placed in the garbage until the mercury is removed and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater:

(1) a thermostat or thermometer;

(2) an electric switch, individually or as part of another product, other than a motor vehicle;

(3) an appliance; and

(4) a medical or scientific instrument.

Subd. 4. **Removal from service; products containing mercury.** (a) When an item listed in subdivision 3 is removed from service the mercury in the item must be reused, recycled, or otherwise managed to ensure compliance with section 115A.932.

(b) A person who is in the business of replacing or repairing an item listed in subdivision 3 in households shall ensure, or deliver the item to a facility that will ensure, that the mercury contained in an item that is replaced or repaired is reused or recycled or otherwise managed in compliance with section 115A.932.

Subd. 5. **Thermostats.** A manufacturer of thermostats that contain mercury or that may replace thermostats that contain mercury shall, in addition to the requirements of subdivision 3, provide incentives for and sufficient information to purchasers and consumers of the thermostats for the purchasers or consumers to ensure that mercury in thermostats being removed from service is reused or recycled or otherwise managed in compliance with section 115A.932. A manufacturer that has complied with this subdivision is not liable for improper disposal by purchasers or consumers of thermostats.

Subd. 6. **Thermometers.** A medical facility may not routinely distribute thermometers containing mercury.

Subd. 7. **Fluorescent and high intensity discharge lamps; large use applications.** (a) A person who sells fluorescent or high intensity discharge lamps that contain mercury to the owner or manager of an industrial, commercial, office, or multiunit residential building, or to any person who replaces or removes from service outdoor lamps that contain mercury, shall clearly inform the purchaser in writing on the invoice for the lamps, or in a separate writing, that the lamps contain mercury, a hazardous substance that is regulated by federal or state law. This paragraph does not apply to a person who incidentally sells fluorescent or high intensity discharge lamps at retail to the specified purchasers.

(b) A person who contracts with the owner or manager of an industrial, commercial, office, or multiunit residential building, or with a person responsible for outdoor lighting, to remove from service fluorescent or high intensity discharge lamps that contain mercury shall clearly inform, in writing, the person for whom the work is being done that the lamps being removed from service contain mercury and what the contractor's arrangements are for the management of the mercury in the removed lamps.

Subd. 8. **Ban; toys or games.** A person may not sell for resale or at retail in this state a toy or game that contains mercury.

Subd. 9. **Enforcement; generators of household hazardous waste.** (a) A violation of subdivision 2 or 4, paragraph (a), by a generator of household hazardous waste, as defined in section 115A.96, or a violation of subdivision 8 by a person selling at retail, is not subject to enforcement under section 115.071, subdivision 3.

(b) An administrative penalty imposed under section 116.072 for a violation of subdivision 2 or 4, paragraph (a), by a generator of household hazardous waste, as defined in section 115A.96, or for a violation of subdivision 8 by a person selling at retail, may not exceed $700.

History: *1992 c 560 s 3; 1992 c 603 s 37*

NOTE: Subdivision 4, paragraph (b), as added by Laws 1992, chapter 560, section 3, is effective July 1, 1993. See Laws 1992, chapter 560, section 5.

SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM

116.95 CITATION.

Sections 116.96 to 116.99 may be cited as the "small business air quality compliance assistance act."

History: *1992 c 546 s 5*

116.96 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to sections 116.96 to 116.99.

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

Subd. 3. **Clean Air Act.** "Clean Air Act" means the federal Clean Air Act, United States Code, title 42, section 7401 et seq., as amended.

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

Subd. 5. **Regulated pollutant.** "Regulated pollutant" means:

(1) a volatile organic compound that participates in atmospheric photochemical reactions;

(2) a pollutant for which a national ambient air quality standard has been promulgated;

(3) a pollutant that is addressed by a standard promulgated under section 7411 or 7412 of the Clean Air Act; or

(4) any pollutant that is regulated under Minnesota Rules, chapter 7005, or for which a state ambient air quality standard has been adopted.

Subd. 6. **Small business stationary source.** "Small business stationary source" means a business that:

(1) is owned or operated by a person that employs 100 or fewer individuals;

(2) is a small business concern as defined in the Small Business Act, United States Code, title 15, section 632(a);

(3) is not a major stationary source as defined in section 7661 of the Clean Air Act;

(4) does not emit 50 tons or more per year of any regulated pollutant; and

(5) emits less than 75 tons per year of all regulated pollutants.

History: *1992 c 546 s 6*

116.97 SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM.

Subdivision 1. **Creation.** The commissioner shall establish a small business air quality compliance assistance program that incorporates the small business stationary source technical and environmental compliance assistance program required by section 7661f of the Clean Air Act.

Subd. 2. **Requirements.** The commissioner shall ensure that the program provides at least the following:

(1) direct, timely, one-on-one information and technical assistance to small businesses that are stationary sources on matters including, but not limited to, their legal rights and obligations under federal and state air quality laws and regulations, applicable requirements and alternatives for achieving compliance, permit procedures, preparation of permit applications, sources of technical expertise, consequences of operating in violation, enforcement, fines, penalties, and appeals;

(2) a clearinghouse to provide information and referral to appropriate technical experts concerning Clean Air Act regulatory requirements, compliance methods, and control technologies;

(3) information and assistance on methods of pollution prevention and the prevention and detection of accidental releases;

(4) audits of the operations of small business stationary sources to determine compliance with federal and state air quality laws and regulations, or establishment of a procedure for referring sources to qualified auditors. Audits may include, but need not be limited to, an evaluation of work practices, compliance monitoring procedures, record keeping requirements, and technical assistance on pollution prevention opportunities and control options;

(5) to the extent permitted by federal and state air quality laws and regulations,

procedures for responding to requests from small business stationary sources for modification of work practices or methods compliance because of the financial or technological capability of the source; and

(6) coordination of efforts with trade associations, small business assistance providers, and federal, state, and local governmental agencies that provide information and technical assistance to small businesses, in order to maximize the information and assistance available to small businesses and to prevent duplication of effort and services.

History: *1992 c 546 s 7*

116.98 OMBUDSMAN FOR SMALL BUSINESS AIR QUALITY COMPLIANCE ASSISTANCE PROGRAM.

Subdivision 1. **Appointment.** The commissioner shall appoint an ombudsman for small business air quality compliance assistance in the classified service.

Subd. 2. **Duties.** The ombudsman shall provide direct oversight of the small business air quality compliance assistance program. The ombudsman's duties include, but are not limited to:

(1) conducting independent evaluations of all aspects of the program;

(2) monitoring, reviewing, and providing comments and recommendations to federal, state, and local air quality authorities on laws and regulations that impact small businesses;

(3) facilitating and promoting the participation of small businesses in the development of laws and regulations that affect them;

(4) providing reports to federal, state, and local air quality authorities and the public on the requirements of the Clean Air Act and their impact on small businesses;

(5) disseminating information concerning proposed air quality regulations, control technologies, and other information to small businesses and other interested parties;

(6) participating in and sponsoring meetings and conferences concerning air quality laws and regulations with state and local regulatory officials, industry groups, and small business representatives;

(7) investigating and assisting in the resolution of complaints and disputes from small businesses against state or local air quality authorities;

(8) periodically reviewing the work and services provided by the program with trade associations and small business representatives;

(9) operating a toll-free telephone line to provide free, confidential help on individual source problems and grievances;

(10) referring small businesses to appropriate technical specialists for information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(11) arranging for and assisting in the preparation of program guideline documents to ensure that the language is readily understandable by the lay person;

(12) establishing cooperative programs with trade associations and small businesses to promote and achieve voluntary compliance with federal and state air quality laws and regulations;

(13) establishing cooperative programs with federal, state, and local governmental entities and the private sector to assist small businesses in securing sources of funds to comply with federal, state, and local air quality laws and regulations;

(14) conducting studies to evaluate the impacts of federal and state air quality laws and regulations on the state's economy, local economies, and small businesses;

(15) serving as a voting member of the small business air quality compliance advisory council established by section 116.99; and

(16) performing the ombudsman's duties in cooperation and coordination with

governmental entities and private organizations as appropriate so as to eliminate overlap and duplication to the extent practicable.

Subd. 3. **Independence of action.** In carrying out the duties imposed by sections 116.96 to 116.99, the ombudsman may act independently of the agency in providing testimony to the legislature, contacting and making periodic reports to federal and state officials as necessary to carry out the duties imposed by sections 116.96 to 116.99, and addressing problems of concern to small businesses.

Subd. 4. **Qualifications.** The ombudsman must be knowledgeable about federal and state air quality laws and regulations, control technologies, and federal and state legislative and regulatory processes. The ombudsman must be experienced in dealing with both private enterprise and governmental entities, arbitration and negotiation, interpretation of laws and regulations, investigation, record keeping, report writing, public speaking, and management.

Subd. 5. **Office support.** The commissioner shall provide the ombudsman with the necessary office space, supplies, equipment, and clerical support to effectively perform the duties imposed by sections 116.96 to 116.99.

History: *1992 c 546 s 8*

116.99 SMALL BUSINESS AIR QUALITY COMPLIANCE ADVISORY COUNCIL.

Subdivision 1. **Creation.** A small business air quality compliance assistance advisory council is established within the agency.

Subd. 2. **Duties.** The council has the following duties:

(1) rendering advisory opinions on the effectiveness of the program, difficulties encountered, and degree and severity of enforcement;

(2) preparing periodic reports on matters relating to the program as requested by appropriate federal and state agencies;

(3) reviewing information for sources to ensure the information is complete, comprehensive, and understandable to the lay person; and

(4) other duties it finds appropriate to comply with applicable federal or state air quality laws and regulations.

Subd. 3. **Membership.** The council consists of the following members:

(1) two members appointed by the governor who represent the general public and are not owners or representatives of owners who are small business stationary sources;

(2) the commissioner or the commissioner's designee, who shall represent the agency;

(3) four members appointed by the legislature who are owners or representatives of owners of small business stationary sources;

(4) the director of the office of waste management or the director's designee; and

(5) the commissioner of trade and economic development or the commissioner's designee.

The majority and minority leaders of the house of representatives and the senate shall each appoint one of the members listed in clause (3).

Subd. 4. **Membership terms; compensation; removal.** The membership terms, compensation, and removal of council members are governed by section 15.0575, except that subdivision 5 does not apply.

Subd. 5. **Chair.** The council shall select its chair by a majority vote.

Subd. 6. **Program.** The council may set its own agenda and work program, consistent with the requirements of the Clean Air Act, after consultation with the commissioner and the small business ombudsman established by this chapter.

Subd. 7. **Funding.** The commissioner shall allocate and administer the funds reasonably necessary to cover the operational costs of the council.

Subd. 8. **Staff.** The commissioner shall provide staff services reasonably required by the council.

History: *1992 c 546 s 9*