CHAPTER 116C

ENVIRONMENTAL QUALITY BOARD

GENERAL

116C.01 FINDINGS.

The legislature of the state of Minnesota finds that problems related to the environment often encompass the responsibilities of several state agencies and that solutions to these environmental problems require the interaction of these agencies. The legislature also finds that further debate concerning population, economic and technological growth should be encouraged so that the consequences and causes of alternative decisions can be better known and understood by the public and its government.

History: *1973 c 342 s 1*

116C.02 DEFINITIONS.

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

Subd. 2. "Board" means the Minnesota environmental quality board.

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

116C.03 CREATION OF THE ENVIRONMENTAL QUALITY BOARD; MEMBERSHIP; CHAIR; STAFF.

Subdivision 1. An environmental quality board, designated as the Minnesota environmental quality board, is hereby created.

Subd. 2. **Membership.** The members of the board are the director of the office of strategic and long-range planning, the commissioner of public service, the commissioner of the pollution control agency, the commissioner of natural resources, the director of the office of environmental assistance, the commissioner of agriculture, the commissioner of health, the commissioner of transportation, the chair of the board of water and soil resources, and a representative of the governor's office designated by the governor. The governor shall appoint five members from the general public to the board, subject to the advice and consent of the senate. At least two of the five public members must have knowledge of and be conversant in water management issues in the state. Notwithstanding the provisions of section 15.06, subdivision 6, members of the board may not delegate their powers and responsibilities as board members to any other person.

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

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 [Repealed, 1982 c 524 s 9]

Subd. 3a. The representative of the governor's office shall serve as chair of the board.

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

Subd. 5. The board shall contract with the office of strategic and long-range planning for administrative services necessary to the board's activities. The services shall include personnel, budget, payroll and contract administration.

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

History: *1973 c 342 s 3; 1974 c 307 s 16; 1975 c 271 s 6; 1976 c 134 s 28,29; 1976 c 166 s 7; 1981 c 356 s 122-124; 1982 c 524 s 1-6; 1983 c 289 s 115 subd 1; 1983 c 301 s 119; 1984 c 558 art 2 s 2,3; 1986 c 444; 1987 c 186 s 15; 1987 c 312 art 1 s 6; 1987 c 358 s 105; 1988 c 501 s 1; 1988 c 685 s 25; 1989 c 335 art 1 s 134; 1991 c 345 art 2 s 20-22; 1994 c 639 art 5 s 3*

116C.04 POWERS AND DUTIES.

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

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

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

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

(d) State agencies shall submit to the board all proposed legislation of major significance relating to the environment and the board shall submit a report to the governor and the legislature with comments on such major environmental proposals of state agencies.

Subd. 3. The board shall cooperate with regional development commissions in appropriate matters of environmental concern.

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

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

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

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

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

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

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

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

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

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

116C.06 HEARINGS.

Subdivision 1. The board shall hold public hearings on matters that it determines to be of major environmental impact. The board shall prescribe by rule in conformity to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62, the procedures for the conduct of all hearings and review procedures.

Subd. 2. The board may delegate its authority to conduct a hearing to a hearings

officer. The hearings officer shall have the same power as the board to compel the attendance of witnesses to examine them under oath, to require the production of books, papers, and other evidence, and to issue subpoenas and cause the same to be served and executed in any part of the state. The hearings officer shall be knowledgeable in matters of law and the environment.

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

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

History: *1973 c 342 s 6; 1975 c 271 s 6; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444*

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

116C.08 FEDERAL FUNDS; DONATIONS.

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

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

ENVIRONMENTAL COORDINATION PROCEDURES

116C.22 CITATION.

Sections 116C.22 to 116C.34 may be cited as the Minnesota environmental coordination procedures act.

History: *1976 c 303 s 1*

116C.23 PURPOSE.

It shall be the purpose of sections 116C.22 to 116C.34:

(a) to provide an optional procedure to assist those who, in the course of satisfying the requirements of state government prior to undertaking a project which contemplates the use of the state's air, land, or water resources, must obtain more than one state permit, by establishing a mechanism in state government which will coordinate administrative decision-making procedures, and related quasi-judicial and judicial review, pertaining to these permits;

(b) to provide to the members of the public a better and easier opportunity to present their views comprehensively on proposed uses of natural resources and related environmental matters prior to the making of decisions on these uses by state or local agencies;

(c) to provide to the members of the public a greater degree of certainty in terms of permit requirements of state and local government;

(d) to provide better coordination and understanding between state and local agencies in the administration of the various programs relating to air, water, and land resources; and

(e) to establish the opportunity for members of the public to obtain information pertaining to requirements of federal and state law which must be satisfied prior to undertaking a project in this state.

History: *1976 c 303 s 2*

116C.24 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 116C.22 to 116C.34, the terms defined in this section have the meanings given them.

Subd. 1a. **Agency.** "Agency" means a state department, commission, board or other agency of the state however titled or a local governmental unit or instrumentality, only when that unit or instrumentality is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

Subd. 2. **Board.** "Board" means the Minnesota environmental quality board.

Subd. 2a. **Commissioner.** "Commissioner" means the commissioner of trade and economic development.

Subd. 3. **Coordination unit.** "Coordination unit" means the bureau of business licenses established pursuant to sections 116J.73 to 116J.76.

Subd. 4. **Local governmental unit.** "Local governmental unit" means a county, city, town, or special district with legal authority to issue a permit.

Subd. 5. **Permit.** "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of, or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state.

Nothing in sections 116C.22 to 116C.34 shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

Subd. 6. **Person.** "Person" means an individual, an association or partnership, or a cooperative, or a municipal, public or private corporation, including but not limited to a state agency and a county.

Subd. 7. **Project.** "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and for which permits are required from an agency prior to construction or operation, including but not limited to industrial and commercial operations and developments. Sections 116C.22 to 116C.34 shall not apply to projects which are:

(a) Covered by chapter 93, sections 116C.51 to 116C.69 or 216B.243; or

(b) Initiated for the purpose of taconite tailings disposal or mining, or the producing or beneficiating of copper, nickel or copper-nickel.

Subd. 8. MS 1990 [Renumbered subd 1a]

History: *1975 c 271 s 6; 1976 c 303 s 3; 1981 c 356 s 248; 1983 c 289 s 34,35,115 subd 2; 1984 c 558 art 4 s 10; 1987 c 312 art 1 s 26 subd 2*

116C.25 ENVIRONMENTAL PERMITS COORDINATION UNIT.

The commissioner of trade and economic development shall direct the bureau of business licenses to act as the coordination unit to implement and administer the provisions of sections 116C.22 to 116C.34. The commissioner shall employ necessary staff to work for the coordination unit on a continuous basis.

History: *1975 c 271 s 6; 1976 c 303 s 4; 1983 c 289 s 36; 1987 c 312 art 1 s 26 subd 2*

116C.26 APPLICATION PROCEDURE.

Subdivision 1. A person proposing a project which may require more than one permit may, prior to the initial construction of the project or prior to the initial operation of the project if construction of the project required no state permits, submit a master application to the coordination unit requesting the issuance of all state permits necessary for construction and operation of the project. The master application shall be on a form furnished by the coordination unit and shall contain precise information as to the location of the project, and shall describe the nature of the project including any contemplated discharges of wastes therefrom and any uses of, or interferences with,

natural resources. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by the certifications issued not more than 120 days prior to the date of the master application as required by section 116C.31. No master application shall be accepted for processing by the coordination unit pursuant to sections 116C.22 to 116C.34, unless it is accompanied by a certification from the board that either an environmental impact statement concerning the project has been completed or that an environmental impact statement is not required concerning the project.

Subd. 2. Upon receipt of a completed master application, the coordination unit shall immediately notify in writing each agency having a possible interest in the master application arising from requirements pertaining to a permit program under its jurisdiction. The notification from the coordination unit shall be accompanied by a copy of the master application together with the date by which the agency shall respond to the notice. Each notified agency shall respond in writing to the coordination unit within the specified date, not exceeding 20 days from receipt, as determined by the coordination unit, advising whether the agency does or does not have an interest in the master application. If an agency timely responds that it has an interest in the master application, the response shall include information concerning the specific permit programs under its jurisdiction which are pertinent to the project described in the master application. The agency response shall also advise the coordination unit whether a public hearing concerning the master application as provided in section 116C.28 would or would not be required or of value considering the overall public interest.

Subd. 3. Each notified agency which responds within the specified date that it does not have an interest in the master application or which does not respond as required by subdivision 2 within the specified date, shall not subsequently require a permit of the applicant for the project described in the master application; provided the bar to requiring a permit subsequently shall not be applicable if:

(a) The master application provided to the notified agency contained false, misleading, or deceptive information, or lacked information, which would reasonably lead an agency to misjudge its interest in a master application; or

(b) Subsequent laws or rules require additional permits; or

(c) Unusual circumstances prevented the agency from notifying the coordination unit and the agency can establish that failure to require a permit would result in substantial harm to the public health or welfare, in which case the board may order that the permit be required.

Subd. 4. The coordination unit shall submit application forms concerning the permit programs identified in the affirmative responses under subdivision 2 to the applicant with a direction to complete and return them to the coordination unit within 90 days.

Subd. 5. Within ten days of receipt of the full set of completed application forms by the coordination unit, each application shall be transmitted to the appropriate agency for the performance of its responsibilities of decision making in accordance with the procedures of sections 116C.22 to 116C.33.

Subd. 6. If an agency has a procedure for setting priorities in issuing a permit according to the date of the application for the permit, the date used shall be the date upon which a master application is received by the coordination unit.

History: *1975 c 271 s 6; 1976 c 303 s 5*

116C.27 NOTICE.

Subdivision 1. The coordination unit immediately after transmittal of the completed applications to the appropriate agency shall cause a notice to be published at the applicant's expense once each week on the same day of the week for three consecutive weeks in a newspaper of general circulation within each county in which the project is proposed to be constructed or operated. The notice shall describe the nature of the master application including, with reasonable specificity, the project proposed, its location,

the various permits applied for, and the agency having jurisdiction over each permit. Except as provided in subdivision 2, the notice shall also state the time and place of the public hearing, to be held not less than 20 days after the date of last publication of the notice. It shall further state that a copy of the master application and a copy of all permit applications for the project are available for public inspection in the office of the county auditor of each county in which the project is proposed to be constructed or operated, as well as in other locations which the coordination unit may designate.

Subd. 2. If the responses to the master application received by the coordination unit from the state agencies unanimously state the position that a public hearing in relation to a master application would not be of value in consideration of the overall public interest and are not required by any other law or rule, the provisions of subdivision 1 pertaining to the time and place of a public hearing shall not be included in the notice. In place thereof the notice shall state that members of the public may present relevant views and supporting materials in writing to the coordination unit concerning any of the permits applied for within 30 days after the last date of publication of the notice in a newspaper.

History: *1976 c 303 s 6*

116C.28 PUBLIC HEARING.

Subdivision 1. When one or more agencies notifies the coordination unit that a public hearing is required or appropriate on matters relating to the project described in the master application, the coordination unit shall set the time and place for a hearing in which each of the affected agencies shall participate. The hearing shall be held pursuant to the contested case provisions of chapter 14 and section 116C.27.

Subd. 2. Each participating state agency shall be represented at the public hearing by its chief administrative officer or a designee. The representative of any state agency within whose jurisdiction a specific application lies shall participate in the portion of the hearing pertaining to submission of information, views, and supporting materials which are relevant to its application. The administrative law judge may, when appropriate, continue a hearing from time to time and place to place. The hearing shall be recorded in any manner suitable for transcription pursuant to chapter 14.

Subd. 3. Within 60 days of receipt of the administrative law judge's report, each state agency which is a party to the hearing shall forward its final decision on permit applications within its jurisdiction to the coordination unit, provided that this date may be extended by the chair of the board for reasonable cause. Every final decision shall set forth the basis for the decision together with a final order denying the permit or granting the permit including the specifying of any conditions under which the permit is issued.

Subd. 4. If notice has been published pursuant to section 116C.27, subdivision 2, and no public hearing is conducted, the coordination unit shall, not less than 30 days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency having jurisdiction concerning any permit application described in the notice. Concurrently therewith, the coordination unit shall notify each state agency, in writing, of the date not to exceed 60 days by which final decisions on applications shall be forwarded to the coordination unit; provided that this date may be extended by the chair of the board for reasonable cause. Each final decision shall set forth the information required by subdivision 3.

Subd. 5. As soon as all final decisions are received by the coordination unit from the various participating state agencies, the coordination unit shall immediately incorporate them, without modification, into one document and shall transmit the document to the applicant either personally or by certified mail.

History: *1975 c 271 s 6; 1976 c 303 s 7; 1978 c 674 s 60; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444*

116C.29 WITHDRAWAL OF AGENCY PARTICIPATION.

After an agency has responded that it has an interest in the master application, it may withdraw from further participation in the processing of that master application at any time by written notification to the coordination unit, if it subsequently appears to the agency that it has no permit programs under its jurisdiction which are applicable to the project.

History: *1976 c 303 s 8*

116C.30 APPLICATION.

Subdivision 1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by chapter 14, or any other statute authorizing either judicial or administrative review of an agency decision.

Subd. 2. Each state agency having jurisdiction to approve or deny an application for a permit shall have continuing power as vested in it prior to February 15, 1977, to make such determinations. Nothing in sections 116C.22 to 116C.34 shall lessen or reduce such powers, and such sections shall modify only the procedures to be followed in the carrying out of such powers.

Subd. 3. A state agency may in the performance of its responsibilities of decision making under sections 116C.22 to 116C.33, request or receive additional information from an applicant.

Subd. 4. Fee schedules authorized by statute for an application or permit shall continue to be applicable even though the application or permit is processed under the provisions set forth in sections 116C.22 to 116C.33. The coordination unit shall not charge the applicant or participating agencies a fee for its services.

Subd. 5. Sections 116C.22 to 116C.33 shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under sections 116C.27 to 116C.29, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of a state agency.

Subd. 6. Nothing in sections 116C.22 to 116C.34 shall modify in any manner whatsoever the applicability or inapplicability of any land use rule, statute or local zoning ordinance to the lands of any state agency.

History: *1976 c 303 s 9; 1982 c 424 s 130; 1985 c 248 s 70*

116C.31 LOCAL CERTIFICATION.

Subdivision 1. No master application shall be processed pursuant to sections 116C.22 to 116C.33 unless it is accompanied by a certification issued not more than 120 days prior to the date the master application is first received by the coordination unit, from the local governmental units in whose jurisdiction the proposed project is located, certifying that the project is in compliance with all zoning ordinances, subdivision regulations, and environmental regulations administered by the local governmental unit and certifying that the preparation of any environmental impact statement which the local governmental unit is authorized to require pursuant to local ordinance, state statute, or board rule, has been completed or deemed not necessary. If the local governmental unit has required any environmental impact statement concerning the project, a copy of the completed environmental impact statement shall be attached to the local governmental unit's certification. If the local governmental unit has no zoning ordinances, subdivision regulations, or environmental regulations, the certification from the local governmental unit shall so state. A local governmental unit may accept applications for certifications as provided in this section and shall rule upon the same expeditiously to insure that the purposes of sections 116C.22 to 116C.33 are accomplished fully. After issuing a certification for the purposes of this section, no local government shall rescind it even though the local government may have changed its zoning

ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under sections 116C.22 to 116C.33. Upon certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of sections 116C.22 to 116C.33, including any administrative or judicial reviews, are completed.

Subd. 2. A ruling by a local governmental unit denying an application for certification shall not be appealable under sections 116C.22 to 116C.34. The denial of an application for certification by a local governmental unit shall not preclude the applicant from filing a permit application under any other available statute or procedure.

History: *1975 c 271 s 6; 1976 c 303 s 10*

116C.32 RULES; COOPERATION.

The commissioner shall as soon as practicable adopt rules, not inconsistent with rules of procedure established by the office of administrative hearings, to implement the provisions of sections 116C.22 to 116C.34, including master application procedures, notice procedures, and public hearing procedures and costs.

History: *1975 c 271 s 6; 1976 c 303 s 11; 1980 c 615 s 60; 1983 c 289 s 37*

116C.33 CONFLICT WITH FEDERAL REQUIREMENTS.

Subdivision 1. If in a final order of a court of competent jurisdiction, any part of sections 116C.22 to 116C.34 as enacted or administered is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds authorized to this state, the conflicting part of sections 116C.22 to 116C.34 shall be void to the limited extent necessary to remove the conflict and the remainder of sections 116C.22 to 116C.34 shall remain effective.

Subd. 2. The commissioner, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing, and related procedural matters provided in sections 116C.22 to 116C.34.

History: *1975 c 271 s 6; 1976 c 303 s 12; 1983 c 289 s 38*

116C.34 BUREAU OF BUSINESS LICENSES.

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

Subd. 2. The bureau shall:

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

(b) Standardize permit titles and assign designation codes to all such permits which would thereafter be imprinted on all permit forms.

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

(d) Identify the public information procedures currently associated with each permit program.

(e) Identify the data monitored or acquired through each permit and ascertain current users of that data.

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

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

Subd. 3. The auditor of each county shall post in a conspicuous place in the auditor's office the telephone numbers of the bureau of business licenses and the permit information center in the office of the applicable regional development commission; copies of any master applications or permit applications forwarded to the auditor pursuant to section 116C.27, subdivision 1; and copies of any information published by the bureau or an information center pursuant to subdivision 1.

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

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

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

POWER PLANT SITES

116C.51 CITATION.

Sections 116C.51 to 116C.69 shall be known as the Minnesota power plant siting act.

History: *1973 c 591 s 1*

116C.52 DEFINITIONS.

Subdivision 1. **Applicability.** As used in sections 116C.51 to 116C.68, the terms defined in this section have the meanings given them, unless otherwise provided or indicated by the context.

Subd. 2. **Board.** "Board" shall mean the Minnesota environmental quality board.

Subd. 3. MS 1990 [Renumbered subd 4]

Subd. 3. **Construction.** "Construction" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. **High voltage transmission line.** "High voltage transmission line" means a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 200 kilovolts or more, except that the board, by rule, may exempt lines pursuant to section 116C.57, subdivision 5.

Subd. 5. MS 1990 [Renumbered subd 7]

Subd. 5. **Large electric power generating plant.** "Large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.

Subd. 6. MS 1990 [Renumbered subd 10]

Subd. 6. **Large electric power facilities.** "Large electric power facilities" means high voltage transmission lines and large electric power generating plants.

Subd. 7. MS 1990 [Renumbered subd 3]

Subd. 7. **Person.** "Person" shall mean an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subd. 8. **Route.** "Route" means the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.

Subd. 9. **Site.** "Site" means the location of a large electric power generating plant.

Subd. 10. MS 1990 · [Renumbered subd 6]

Subd. 10. **Utility.** "Utility" shall mean any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipally owned utility.

History: *1973 c 591 s 2; 1975 c 271 s 6; 1977 c 439 s 1-5*

116C.53 SITING AUTHORITY.

Subdivision 1. **Policy.** The legislature hereby declares it to be the policy of the state to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy the board shall choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and integrity and insuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

Subd. 2. **Jurisdiction.** The board is hereby given the authority to provide for site and route selection.

Subd. 3. **Interstate routes.** If a route is proposed in two or more states, the board shall attempt to reach agreement with affected states on the entry and exit points prior to authorizing the construction of the route. The board, in discharge of its duties pursuant to sections 116C.51 to 116C.69 may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States. The board may negotiate and enter into any agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certifying the construction, operation, and maintenance of large electric power facilities in accord with the purposes of sections 116C.51 to 116C.69 and for the enforcement of the respective state laws regarding such facilities.

History: *1973 c 591 s 3; 1975 c 271 s 6; 1977 c 439 s 6*

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

116C.55 DEVELOPMENT OF POWER PLANT STUDY AREAS CRITERIA; PUBLIC HEARINGS; INVENTORY.

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

Subd. 2. **Inventory criteria; public hearings.** The board shall promptly initiate a public planning process where all interested persons can participate in developing the criteria and standards to be used by the board in preparing an inventory of large electric power generating plant study areas and to guide the site and route suitability evaluation and selection process. The participatory process shall include, but should not be limited to public hearings. Before substantial modifications of the initial criteria and standards are adopted, additional public hearings shall be held. All hearings conducted under this subdivision shall be conducted pursuant to the rulemaking provisions of chapter 14.

Subd. 3. **Inventory of large electric power generating plant study areas.** On or before January 1, 1979, the board shall adopt an inventory of large electric power generating plant study areas and publish an inventory report. The inventory report shall specify the planning policies, criteria and standards used in developing the inventory. After completion of its initial inventory the board shall have a continuing responsibility to evaluate, update and publish its inventory.

History: *1973 c 591 s 5; 1975 c 271 s 6; 1977 c 439 s 8,9; 1982 c 424 s 130*

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

116C.57 DESIGNATION OF SITES AND ROUTES; PROCEDURES; CONSIDERATIONS; EMERGENCY CERTIFICATION; EXEMPTION.

Subdivision 1. **Designation of sites suitable for specific facilities; reports.** A utility must apply to the board in a form and manner prescribed by the board for designation of a specific site for a specific size and type of facility. The application shall contain at least two proposed sites. In the event a utility proposes a site not included in the board's inventory of study areas, the utility shall specify the reasons for the proposal and shall make an evaluation of the proposed site based upon the planning policies, criteria and standards specified in the inventory. Pursuant to sections 116C.57 to 116C.60, the board shall study and evaluate any site proposed by a utility and any other site the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate sites. No site designation shall be made in violation of the site selection standards established in section 116C.55. The board shall indicate the reasons for any refusal and indicate changes in size or type of facility necessary to allow site designation. Within a year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria specified in section 116C.55, subdivision 2, the responsibilities, procedures and considerations specified in section 116C.57, subdivision 4, and the considerations in chapter 116D which proposed site is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed six months. When the board designates a site, it shall issue a certificate of site compatibility to the utility with any appropriate conditions. The board shall publish a notice of its decision in the state register within 30 days of site designation. No large electric power generating plant shall be constructed except on a site designated by the board.

Subd. 2. **Designation of routes; procedure.** A utility shall apply to the board in a form and manner prescribed by the board for a permit for the construction of a high voltage transmission line. The application shall contain at least two proposed routes. Pursuant to sections 116C.57 to 116C.60, the board shall study, and evaluate the type, design, routing, right-of-way preparation and facility construction of any route proposed in a utility's application and any other route the board deems necessary which was proposed in a manner consistent with rules adopted by the board concerning the form, content, and timeliness of proposals for alternate routes provided, however, that the board shall identify the alternative routes prior to the commencement of public hearings thereon pursuant to section 116C.58. Within one year after the board's acceptance of a utility's application, the board shall decide in accordance with the criteria and standards specified in section 116C.55, subdivision 2, and the considerations specified in section 116C.57, subdivision 4, which proposed route is to be designated. The board may extend for just cause the time limitation for its decision for a period not to exceed 90 days. When the board designates a route, it shall issue a permit for the construction of a high voltage transmission line specifying the type, design, routing, right-of-way preparation and facility construction it deems necessary and with any other appropriate conditions. The board may order the construction of high voltage transmission line facilities which are capable of expansion in transmission capacity through multiple circuiting or design modifications. The board shall publish a notice of its decision in the state register within 30 days of issuance of the permit. No high voltage transmission line shall be constructed except on a route designated by the board, unless it was exempted pursuant to subdivision 5.

Subd. 3. **Emergency certification.** Any utility whose electric power system requires the immediate construction of a large electric power generating plant or high voltage transmission line may make application to the board for an emergency certificate of site compatibility or permit for the construction of high voltage transmission lines, which certificate or permit shall be issued in a timely manner no later than 195 days after the board's acceptance of the application and upon a finding by the board that a demonstrable emergency exists which requires immediate construction, and that adherence to the procedures and time schedules specified in this section would jeopardize the utility's electric power system or would jeopardize the utility's ability to meet the electric needs of its customers in an orderly and timely manner. A public hearing to determine if an

emergency exists shall be held within 90 days of the application. The board shall, after notice and hearing, promulgate rules specifying the criteria for emergency certification.

Subd. 4. **Considerations in designating sites and routes.** To facilitate the study, research, evaluation and designation of sites and routes, the board shall be guided by, but not limited to, the following responsibilities, procedures, and considerations:

(1) Evaluation of research and investigations relating to the effects on land, water and air resources of large electric power generating plants and high voltage transmission line routes and the effects of water and air discharges and electric fields resulting from such facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling, and monitoring of the water and air mass at proposed and operating sites and routes, evaluation of new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment;

(2) Environmental evaluation of sites and routes proposed for future development and expansion and their relationship to the land, water, air and human resources of the state;

(3) Evaluation of the effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects;

(4) Evaluation of the potential for beneficial uses of waste energy from proposed large electric power generating plants;

(5) Analysis of the direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired;

(6) Evaluation of adverse direct and indirect environmental effects which cannot be avoided should the proposed site and route be accepted;

(7) Evaluation of alternatives to the applicant's proposed site or route proposed pursuant to subdivisions 1 and 2;

(8) Evaluation of potential routes which would use or parallel existing railroad and highway rights-of-way;

(9) Evaluation of governmental survey lines and other natural division lines of agricultural land so as to minimize interference with agricultural operations;

(10) Evaluation of the future needs for additional high voltage transmission lines in the same general area as any proposed route, and the advisability of ordering the construction of structures capable of expansion in transmission capacity through multiple circuiting or design modifications;

(11) Evaluation of irreversible and irretrievable commitments of resources should the proposed site or route be approved; and

(12) Where appropriate, consideration of problems raised by other state and federal agencies and local entities.

(13) If the board's rules are substantially similar to existing rules and regulations of a federal agency to which the utility in the state is subject, the federal rules and regulations shall be applied by the board.

(14) No site or route shall be designated which violates state agency rules.

Subd. 5. **Exemption of certain routes.** A utility may apply to the board in a form and manner prescribed by the board to exempt the construction of any proposed high voltage transmission line from sections 116C.51 to 116C.69. Within 15 days of the board's receipt of the exemption application, the utility shall publish a notice and description of the exemption application in a legal newspaper of general circulation in each county in which the route is proposed and send a copy of the exemption application by certified mail to the chief executive of any regional development commission, county, incorporated municipality and organized town in which the route is proposed and shall send a notice and description of the exemption application to each owner over whose property the line may run, together with an understandable description of the procedures the owner must follow should that owner desire to object. For the purpose

of giving mailed notice under this subdivision, owners shall be those shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer; but other appropriate records may be used for this purpose. Except as to the owners of tax exempt property or property taxes on a gross earnings basis, every property owner whose name does not appear on the records of the county auditor or the county treasurer shall be deemed to have waived such mailed notice unless that owner has requested in writing that the county auditor or county treasurer, as the case may be, include the owner's name on the records for such purpose. The failure to give mailed notice to a property owner, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made. If any person who owns real property crossed by the proposed route, or any person owning property adjacent to property crossed by the proposed route, or any affected political subdivision files an objection with the board within 60 days after the board's receipt of the exemption application, the board shall either deny the exemption application or conduct a public hearing. If the board determines that the proposed high voltage transmission line will not create significant human or environmental impact, it may exempt the proposed transmission line with any appropriate conditions, but the utility shall comply with any applicable state rule and any applicable zoning, building and land use rules, regulations and ordinances of any regional, county, local and special purpose government in which the route is proposed. The board may by rule require a fee to pay expenses incurred in processing exemptions. Any fee charged is subject to the conditions of section 116C.69, subdivision 2a.

Subd. 5a. **Exemption of certain sites.** (a) A utility or person may apply to the board in a form and manner prescribed by the board to exempt the construction at a proposed site of a proposed electric power generating plant with a capacity between 50 and 80 megawatts from the requirements of sections 116C.51 to 116C.69. Within 15 days of the board's receipt of an exemption application, the utility or person shall:

(1) publish a notice and description of the exemption application in a legal newspaper of general circulation in the county of the proposed site;

(2) send a copy of the exemption application by certified mail to the chief executive of counties, home rule charter and statutory cities, and organized towns within ten miles of the proposed site; and

(3) mail to each owner whose property is part of or contiguous to the proposed site a notice and description of the exemption application, together with an understandable description of the procedures the owner must follow should the owner desire to object.

(b) For the purpose of giving mailed notice under this subdivision, owners are the persons or entities shown on the tax records of the county auditor or, in a county where tax statements are mailed by the county treasurer, on the records of the county treasurer, but other appropriate records may be used to identify owners. Except for owners of tax-exempt property or property taxed on a gross earnings basis, a property owner whose name does not appear on the records of the county auditor or the county treasurer is deemed to have waived the mailed notice unless the owner has requested in writing that the county auditor or county treasurer, as the case may be, include the owner's name on the records for that purpose. The failure to give mailed notice to a property owner or defects in the notice does not invalidate the proceedings, if a good faith effort is made to comply with this subdivision.

(c) If a person who owns real property that is part of or contiguous to the proposed site or an affected political subdivision files an objection with the board within 60 days after the board receives an exemption application, the board must either deny the exemption application or conduct a public hearing to determine if the proposed electric power generating plant at the proposed site will cause any significant human or environmental impact.

(d) The board shall require environmental review under chapter 116D to assist in making its determination regarding potential significant human and environmental impact.

(e) If the board determines that the proposed plant has an electric power production capacity less than 80 megawatts and the proposed site will not have a significant human and environmental impact, the board may exempt the construction of the proposed plant at the proposed site from the requirements of sections 116C.51 to 116C.69 with any appropriate conditions.

(f) If an exemption is granted, the utility or person must comply with applicable state rules, local zoning, building, and land use rules, regulations, and ordinances of any regional, county, local, and special purpose governments in which the facility is to be located.

(g) The board may, by rule, require a fee to pay costs incurred in processing exemptions. An estimated cost for processing the exemption application must be discussed with the applicant and be approved by the board when an application is received. The applicant must remit 50 percent of the approved cost within 14 days of acceptance of the application. The balance is due within 30 days after receipt of an invoice from the board. Costs in excess of those approved must be certified by the board and charged to the applicant. Certification is prima facie evidence that the costs are reasonable and necessary. All money received pursuant to this subdivision must be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing the application and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 6. **Recording of survey points.** The permanent location of monuments or markers found or placed by a utility in a survey of right-of-way for a route shall be placed on record in the office of the county recorder or registrar of titles. No fee shall be charged to the utility for recording this information.

History: *1973 c 591 s 7; 1975 c 271 s 6; 1977 c 439 s 10; 1986 c 444; 1987 c 384 art 2 s 21; 1989 c 346 s 1; 1994 c 644 s 1*

116C.58 PUBLIC HEARINGS; NOTICE.

The board shall hold an annual public hearing at a time and place prescribed by rule in order to afford interested persons an opportunity to be heard regarding its inventory of study areas and any other aspects of the board's activities and duties or policies specified in sections 116C.51 to 116C.69. The board shall hold at least one public hearing in each county where a site or route is being considered for designation pursuant to section 116C.57. Notice and agenda of public hearings and public meetings of the board held in each county shall be given by the board at least ten days in advance but no earlier than 45 days prior to such hearings or meetings. Notice shall be by publication in a legal newspaper of general circulation in the county in which the public hearing or public meeting is to be held and by certified mailed notice to chief executives of the regional development commissions, counties, organized towns and the incorporated municipalities in which a site or route is proposed. All hearings held for designating a site or route or for exempting a route shall be conducted by an administrative law judge from the office of administrative hearings pursuant to the contested case procedures of chapter 14. Any person may appear at the hearings and present testimony and exhibits and may question witnesses without the necessity of intervening as a formal party to the proceedings.

History: *1973 c 591 s 8; 1975 c 271 s 6; 1977 c 439 s 11; 1980 c 615 s 60; 1982 c 424 s 130; 1984 c 640 s 32*

116C.59 PUBLIC PARTICIPATION.

Subdivision 1. **Advisory task force.** The board may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the board, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located.

No officer, agent, or employee of a utility shall serve on an advisory task force. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The task forces expire as provided in section 15.059, subdivision 6.

Subd. 2. **Other public participation.** The board shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the board's rules and guidelines as provided for in section 116C.66.

Subd. 3. **Public advisor.** The board shall designate one staff person for the sole purpose of assisting and advising those affected and interested citizens on how to effectively participate in site or route proceedings.

Subd. 4. **Scientific advisory task force.** The board may appoint one or more advisory task forces composed of technical and scientific experts to conduct research and make recommendations concerning generic issues such as health and safety, underground routes, double circuiting and long-range route and site planning. Reimbursement for expenses incurred shall be made pursuant to the rules governing reimbursement of state employees. The task forces expire as provided in section 15.059, subdivision 6.

History: *1973 c 591 s 9; 1975 c 271 s 6; 1977 c 439 s 12,13; 1985 c 248 s 70; 1988 c 629 s 19-21*

116C.60 PUBLIC MEETINGS; TRANSCRIPT OF PROCEEDINGS; WRITTEN RECORDS.

Meetings of the board, including hearings, shall be open to the public. Minutes shall be kept of board meetings and a complete record of public hearings shall be kept. All books, records, files, and correspondence of the board shall be available for public inspection at any reasonable time. The council shall also be subject to section 471.705.

History: *1973 c 591 s 10; 1975 c 271 s 6*

116C.61 LOCAL REGULATION; STATE PERMITS; STATE AGENCY PARTICIPATION.

Subdivision 1. **Regional, county and local ordinances, rules, regulations; primary responsibility and regulation of site designation, improvement and use.** To assure the paramount and controlling effect of the provisions herein over other state agencies, regional, county and local governments, and special purpose government districts, the issuance of a certificate of site compatibility or transmission line construction permit and subsequent purchase and use of such site or route locations for large electric power generating plant and high voltage transmission line purposes shall be the sole site approval required to be obtained by the utility. Such certificate or permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

Subd. 2. **Facility licensing.** Notwithstanding anything herein to the contrary, utilities shall obtain state permits that may be required to construct and operate large electric power generating plants and high voltage transmission lines. A state agency in processing a utility's facility permit application shall be bound to the decisions of the board, with respect to the site or route designation, and with respect to other matters for which authority has been granted to the board by sections 116C.51 to 116C.69.

Subd. 3. **State agency participation.** State agencies authorized to issue permits required for construction or operation of large electric power generating plants or high voltage transmission lines shall participate in and present the position of the agency at public hearings and all other activities of the board on specific site or route designations of the board, which position shall clearly state whether the site or route being considered for designation or permit approval for a certain size and type of facility will be in compliance with state agency standards, rules or policies.

History: *1973 c 591 s 11; 1975 c 271 s 6; 1977 c 439 s 14,15; 1985 c 248 s 70*

116C.62 IMPROVEMENT OF SITES AND ROUTES.

Utilities which have acquired a site or route in accordance with sections 116C.51 to 116C.69 may proceed to construct or improve the site or route for the intended purposes at any time, subject to section 116C.61, subdivision 2, provided that if the construction and improvement commences more than four years after a certificate or permit for the site or route has been issued then the utility must certify to the board that the site or route continues to meet the conditions upon which the certificate of site compatibility or transmission line construction permit was issued.

History: *1973 c 591 s 12; 1975 c 271 s 6; 1977 c 439 s 16*

116C.63 EMINENT DOMAIN POWERS; RIGHT OF CONDEMNATION.

Subdivision 1. Nothing in this section shall invalidate the right of eminent domain vested in utilities by statute or common law existing as of May 24, 1973, except to the extent modified herein. The right of eminent domain shall continue to exist for utilities and may be used according to law to accomplish any of the purposes and objectives of sections 116C.51 to 116C.69, including acquisition of the right to utilize existing high voltage transmission facilities which are capable of expansion or modification to accommodate both existing and proposed conductors. Notwithstanding any law to the contrary, all easement interests shall revert to the then fee owner if a route is not used for high voltage transmission line purposes for a period of five years.

Subd. 2. In eminent domain proceedings by a utility for the acquisition of real property proposed for construction of a route or a site, the proceedings shall be conducted in the manner prescribed in chapter 117, except as otherwise specifically provided in this section.

Subd. 3. When such property is acquired by eminent domain proceedings or voluntary purchase and the amount the owner shall receive for the property is finally determined, the owner who is entitled to payment may elect to have the amount paid in not more than ten annual installments, with interest on the deferred installments, at the rate of eight percent per annum on the unpaid balance, by submitting a written request to the utility before any payment has been made. After the first installment is paid the petitioner may make its final certificate, as provided by law, in the same manner as though the entire amount had been paid.

Subd. 4. When private real property that is an agricultural or nonagricultural homestead, nonhomestead agricultural land, rental residential property, and both commercial and noncommercial seasonal residential recreational property, as those terms are defined in section 273.13 is proposed to be acquired for the construction of a site or route by eminent domain proceedings, the fee owner, or when applicable, the fee owner with the written consent of the contract for deed vendee, or the contract for deed vendee with the written consent of the fee owner, shall have the option to require the utility to condemn a fee interest in any amount of contiguous, commercially viable land which the owner or vendee wholly owns or has contracted to own in undivided fee and elects in writing to transfer to the utility within 60 days after receipt of the notice of the objects of the petition filed pursuant to section 117.055. Commercial viability shall be determined without regard to the presence of the utility route or site. The owner or, when applicable, the contract vendee shall have only one such option and may not expand or otherwise modify an election without the consent of the utility. The required acquisition of land pursuant to this subdivision shall be considered an acquisition for a public purpose and for use in the utility's business, for purposes of chapter 117 and section 500.24, respectively; provided that a utility shall divest itself completely of all such lands used for farming or capable of being used for farming not later than the time it can receive the market value paid at the time of acquisition of lands less any diminution in value by reason of the presence of the utility route or site. Upon the owner's election made under this subdivision, the easement interest over and adjacent to the lands designated by the owner to be acquired in fee, sought in the condemnation petition for a high voltage transmission line right-of-way shall automatically be converted into a fee taking.

Subd. 5. A utility shall notify by certified mail each person who has transferred any interest in real property to the utility after July 1, 1974, but prior to the effective date of Laws 1977, chapter 439, for the purpose of a site or route that the person may elect in writing within 90 days after receipt of notice to require the utility to acquire any remaining contiguous parcel of land pursuant to this section or to return any payment to the utility and require it to make installment payments pursuant to this section.

History: *1973 c 591 s 13; 1977 c 439 s 17; 1978 c 674 s 15; 1980 c 614 s 87; 1Sp1985 c 14 art 4 s 15; 1986 c 444; 1Sp1986 c 1 art 4 s 7; 1987 c 268 art 6 s 1*

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

116C.64 FAILURE TO ACT.

If the board fails to act within the times specified in section 116C.57, any affected utility may seek an order of the district court requiring the board to designate or refuse to designate a site or route.

History: *1973 c 591 s 14; 1975 c 271 s 6; 1977 c 439 s 19*

116C.645 REVOCATION OR SUSPENSION.

A site certificate or construction permit may be revoked or suspended by the board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the board of:

(1) Any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

(2) Failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) Any material violation of the provisions of sections 116C.51 to 116C.69, any rule promulgated pursuant thereto, or any order of the board.

History: *1977 c 439 s 20; 1978 c 658 s 1*

116C.65 JUDICIAL REVIEW.

Any utility, party or person aggrieved by the issuance of a certificate or emergency certificate of site compatibility or transmission line construction permit from the board or a certification of continuing suitability filed by a utility with the board or by a final order in accordance with any rules promulgated by the board, may appeal to the court of appeals in accordance with chapter 14. The appeal shall be filed within 60 days after the publication in the State Register of notice of the issuance of the certificate or permit by the board or certification filed with the board or the filing of any final order by the board.

History: *1973 c 591 s 15; 1975 c 271 s 6; 1977 c 439 s 21; 1980 c 509 s 28; 1982 c 424 s 130; 1983 c 247 s 54*

116C.66 RULES.

The board, in order to give effect to the purposes of sections 116C.51 to 116C.69, shall prior to July 1, 1978, adopt rules consistent with sections 116C.51 to 116C.69, including promulgation of site and route designation criteria, the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan or program established by the board, procedures for the revocation or suspension of a construction permit or a certificate of site compatibility, the procedure and timeliness for proposing alternative routes and sites, and route exemption criteria and procedures. No rule adopted by the board shall grant priority to state-owned wildlife management

areas over agricultural lands in the designation of route avoidance areas. The provisions of chapter 14 shall apply to the appeal of rules adopted by the board to the same extent as it applies to review of rules adopted by any other agency of state government.

The chief administrative law judge shall, prior to January 1, 1978, adopt procedural rules for public hearings relating to the site and route designation process and to the route exemption process. The rules shall attempt to maximize citizen participation in these processes.

History: *1973 c 591 s 16; 1975 c 271 s 6; 1977 c 439 s 22; 1978 c 658 s 2; 1982 c 424 s 130; 1984 c 640 s 32*

116C.67 SAVINGS CLAUSE.

The provisions of sections 116C.51 to 116C.69 shall not apply to any site evaluated and recommended by the governor's environmental quality council prior to the date of enactment, and to any high voltage transmission lines, the construction of which will commence prior to July 1, 1974.

History: *1973 c 591 s 17; 1977 c 439 s 23*

116C.68 ENFORCEMENT, PENALTIES.

Subdivision 1. Any person who violates sections 116C.51 to 116C.69 or any rule promulgated hereunder, or knowingly submits false information in any report required by sections 116C.51 to 116C.69 is guilty of a misdemeanor for the first offense and a gross misdemeanor for the second and each subsequent offense. Each day of violation shall constitute a separate offense.

Subd. 2. The provisions of sections 116C.51 to 116C.69 or any rules promulgated hereunder may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county wherein the violation takes place. The attorney general shall bring any action under this subdivision upon the request of the board.

Subd. 3. When the court finds that any person has violated sections 116C.51 to 116C.69, any rule hereunder, knowingly submitted false information in any report required by sections 116C.51 to 116C.69 or has violated any court order issued under sections 116C.51 to 116C.69, the court may impose a civil penalty of not more than $10,000 for each violation. These penalties shall be paid to the general fund in the state treasury.

History: *1973 c 591 s 18; 1975 c 271 s 6; 1977 c 439 s 24*

116C.69 BIENNIAL REPORT; APPLICATION FEES; APPROPRIATION; FUNDING.

Subdivision 1. **Biennial report.** Before November 15 of each even-numbered year the board shall prepare and submit to the legislature a report of its operations, activities, findings and recommendations concerning sections 116C.51 to 116C.69. The report shall also contain information on the board's biennial expenditures, its proposed budget for the following biennium, and the amounts paid in certificate and permit application fees pursuant to subdivisions 2 and 2a and in assessments pursuant to subdivision 3. The proposed budget for the following biennium shall be subject to legislative review.

Subd. 2. **Site application fee.** Every applicant for a site certificate shall pay to the board a fee in an amount equal to $500 for each $1,000,000 of production plant investment in the proposed installation as defined in the Federal Power Commission Uniform System of Accounts. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. The applicant shall pay within 30 days of notification any additional fees reasonably necessary for completion of the site evaluation and designation process by the board. In no event shall the total fees required of the applicant under this subdivision exceed an

amount equal to 0.001 of said production plant investment ($1,000 for each $1,000,000). All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing applications for certificates in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 2a. **Route application fee.** Every applicant for a transmission line construction permit shall pay to the board a base fee of $35,000 plus a fee in an amount equal to $1,000 per mile length of the longest proposed route. The board shall specify the time and manner of payment of the fee. If any single payment requested by the board is in excess of 25 percent of the total estimated fee, the board shall show that the excess is reasonably necessary. In the event the actual cost of processing an application up to the board's final decision to designate a route exceeds the above fee schedule, the board may assess the applicant any additional fees necessary to cover the actual costs, not to exceed an amount equal to $500 per mile length of the longest proposed route. All money received pursuant to this subdivision shall be deposited in a special account. Money in the account is appropriated to the board to pay expenses incurred in processing applications for construction permits in accordance with sections 116C.51 to 116C.69 and in the event the expenses are less than the fee paid, to refund the excess to the applicant.

Subd. 3. **Funding; assessment.** The board shall finance its base line studies, general environmental studies, development of criteria, inventory preparation, monitoring of conditions placed on site certificates and construction permits, and all other work, other than specific site and route designation, from an assessment made quarterly, at least 30 days before the start of each quarter, by the board against all utilities with annual retail kilowatt-hour sales greater than 4,000,000 kilowatt-hours in the previous calendar year.

Until June 30, 1992, the assessment shall also include an amount sufficient to cover 60 percent of the costs to the pollution control agency of achieving, maintaining, and monitoring compliance with the acid deposition control standard adopted under sections 116.42 to 116.45, reprinting informational booklets on acid rain, and costs for additional research on the impacts of acid deposition on sensitive areas published under section 116.44, subdivision 1. The commissioner of the pollution control agency must prepare a work plan and budget and submit them annually by June 30 to the pollution control agency board. The agency board must take public testimony on the budget and work plan. After the agency board approves the work plan and budget they must be submitted annually to the legislative water commission for review and recommendation before an assessment is levied. Each share shall be determined as follows: (1) the ratio that the annual retail kilowatt-hour sales in the state of each utility bears to the annual total retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.667, plus (2) the ratio that the annual gross revenue from retail kilowatt-hour sales in the state of each utility bears to the annual total gross revenues from retail kilowatt-hour sales in the state of all these utilities, multiplied by 0.333, as determined by the board. The assessment shall be credited to the special revenue fund and shall be paid to the state treasury within 30 days after receipt of the bill, which shall constitute notice of said assessment and demand of payment thereof. The total amount which may be assessed to the several utilities under authority of this subdivision shall not exceed the sum of the annual budget of the board for carrying out the purposes of this subdivision plus 60 percent of the annual budget of the pollution control agency for achieving, maintaining, and monitoring compliance with the acid deposition control standard adopted under sections 116.42 to 116.45, for reprinting informational booklets on acid rain, and for costs for additional research on the impacts of acid deposition on sensitive areas published under section 116.44, subdivision 1. The assessment for the second quarter of each fiscal year shall be adjusted to compensate for the amount by which actual expenditures by the board and the pollution control agency for the preceding fiscal year were more or less than the estimated expenditures previously assessed.

History: *1973 c 591 s 19 subds 1-3; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s*

313-315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 609 art 1 s 4; 1973 c 591 s 19 subds 1-3; 1975 c 271 s 6; 1977 c 439 s 25; 1981 c 356 s 313-315; 1982 c 482 s 5; 1Sp1985 c 13 s 240; 1987 c 186 s 15; 1987 c 304 s 1; 1988 c 609 art 1 s 1,4; 1989 c 335 art 1 s 269; 1990 c 597 s 56

RADIOACTIVE WASTE MANAGEMENT

116C.705 FINDINGS.

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

History: *1984 c 453 s 1*

116C.71 DEFINITIONS.

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

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

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

Subd. 1c. **Board.** "Board" means the Minnesota environmental quality board.

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

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

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

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

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

Subd. 2c. **Council.** "Council" means the governor's nuclear waste council.

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

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

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

(1) irradiated reactor fuel;

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

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

(4) transuranic wastes, meaning any radioactive waste containing alpha emitting

transuranic elements that is not acceptable for near-surface disposal as defined in the Code of Federal Regulations, title 10, section 61.55;

(5) any other highly radioactive materials that the nuclear regulatory commission or department of energy determines by law to require permanent isolation; or

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

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

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

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

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

Subd. 6. **Radioactive waste.** "Radioactive waste" means:

(a) Useless or unwanted capturable radioactive residues produced incidental to the use of radioactive material; or

(b) Useless or unwanted radioactive material; or

(c) Otherwise nonradioactive material made radioactive by contamination with radioactive material.

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

Subd. 7. **Radioactive waste management facility.** "Radioactive waste management facility" means a geographic site, including buildings, structures, and equipment in or upon which radioactive waste is retrievably or irretrievably disposed by burial in soil or permanently stored.

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

(a) Uranium or thorium or any combination thereof, in any physical or chemical form; or

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

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

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

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

Subd. 10. MS 1990 [Renumbered subd 1a]

Subd. 11. MS 1990 [Renumbered subd 1b]

Subd. 12. MS 1990 [Renumbered subd 1c]

Subd. 13. MS 1990 [Renumbered subd 2a]

Subd. 14. MS 1990 [Renumbered subd 2b]

Subd. 14a. MS 1990 [Renumbered subd 2c]

Subd. 15. MS 1990 [Renumbered subd 2d]

Subd. 16. MS 1990 [Renumbered subd 2e]

Subd. 17. MS 1990 [Renumbered subd 2f]

Subd. 18. MS 1990 [Renumbered subd 3a]

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

116C.711 NUCLEAR WASTE COUNCIL.

Subdivision 1. **Establishment.** The governor's nuclear waste council is established.

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

(1) the commissioners of health, transportation, and natural resources, and the commissioner of the pollution control agency;

(2) four citizen members appointed by the governor;

(3) the director of the Minnesota geological survey;

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

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

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

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

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

Subd. 5. **Membership regulation.** Section 15.059 governs terms, compensation, removal, and filling of vacancies of members appointed by the governor. Section 15.059, subdivision 5, does not govern the expiration date of the council.

History: *1Sp1985 c 13 s 242; 1986 c 444; 1987 c 186 s 15*

116C.712 POWERS AND DUTIES.

Subdivision 1. **Duty.** The council's duty is to monitor the federal high-level radioactive waste disposal program under the Nuclear Waste Policy Act, Public Law Number 97-425 and advise the governor and the legislature on all policy issues relating to the federal high-level radioactive waste disposal program.

Subd. 2. **Expiration date.** The council terminates when the department of energy eliminates Minnesota from further siting consideration for disposal of high-level radioactive waste.

Subd. 3. **Council staff.** Staff support for council activities must be provided by the office of strategic and long-range planning. State departments and agencies must cooperate with the council in the performance of its duties. Upon the request of the chair of the council, the governor may, by order, require a state department or agency to furnish assistance necessary to carry out the council's functions under this chapter.

Subd. 4. **Federal and other funds.** The chair of the council may apply for, receive, and expend money made available from federal sources or other sources for the purpose of carrying out the council's responsibilities under this chapter.

Subd. 5. **Assessment.** (a) A person, firm, corporation, or association in the business of owning or operating a nuclear fission electrical generating plant in this state shall pay an assessment to cover the cost of:

(1) monitoring the federal high-level radioactive waste program under the Nuclear Waste Policy Act, United States Code, title 42, sections 10101 to 10226;

(2) advising the governor and the legislature on policy issues relating to the federal high-level radioactive waste disposal program;

(3) surveying existing literature and activity relating to radioactive waste management, including storage, transportation, and disposal, in the state;

(4) an advisory task force on low-level radioactive waste deregulation, created by a law enacted in 1990 until July 1, 1996; and

(5) other general studies necessary to carry out the purposes of this subdivision.

The assessment must not be more than the appropriation to the office of strategic and long-range planning for these purposes.

(b) The office shall bill the owner or operator of the plant for the assessment at least 30 days before the start of each quarter. The assessment for the second quarter of each fiscal year must be adjusted to compensate for the amount by which actual expenditures by the office for the preceding year were more or less than the estimated expenditures previously assessed. The billing may be made as an addition to the assessments made under section 116C.69. The owner or operator of the plant must pay the assessment within 30 days after receipt of the bill. The assessment must be deposited in the state treasury and credited to the special revenue fund.

(c) The authority for this assessment terminates when the department of energy eliminates Minnesota from further siting consideration for high-level radioactive waste by starting construction of a high-level radioactive waste disposal site in another state. The assessment required for any quarter must be reduced by the amount of federal grant money received by the office of strategic and long-range planning for the purposes listed in this section.

(d) The director of the office of strategic and long-range planning must report annually by July 1 to the legislative commission on waste management on activities assessed under paragraph (a).

History: *1Sp1985 c 13 s 243; 1986 c 444; 1987 c 404 s 147; 1988 c 686 art 1 s 62; 1990 c 600 s 3; 1991 c 345 art 2 s 23,24*

116C.72 RADIOACTIVE WASTE MANAGEMENT FACILITY.

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

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

116C.721 PUBLIC PARTICIPATION.

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

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

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

History: *1984 c 453 s 11*

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

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

History: *1984 c 453 s 12*

116C.723 CONSULTATION AND COOPERATION AGREEMENT.

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

Subd. 2. **Disposal studies.** Unless the state has executed a consultation and cooperation agreement, a person may not make a study or test of a specific area or site related to disposal including an exploratory drilling, a land survey, an aerial mapping, a field mapping, a waste suitability study, or other surface or subsurface geologic, hydrologic, or environmental testing or mapping.

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

116C.724 FIELD INVESTIGATIONS, TESTS, AND STUDIES.

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

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

(1) compliance with state drilling and drill hole restoration rules as an exploratory boring under chapter 156A;

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

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

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

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

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

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

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

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

History: *1984 c 453 s 14; 1Sp1985 c 13 s 245; 1985 c 248 s 70; 1986 c 444; 1987 c 186 s 15; 1987 c 309 s 24*

116C.73 TRANSPORTATION OF RADIOACTIVE WASTES INTO STATE.

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

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

116C.731 TRANSPORTATION OF HIGH LEVEL RADIOACTIVE WASTE.

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

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

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

Subd. 4. **Emergency response plan.** The commissioner of public safety shall consult with the commissioners of health and transportation, the commissioner of the pollution control agency, and representatives of the federal nuclear regulatory commission, the federal emergency management agency, and the United States department of transportation and before December 1, 1984, shall prepare a plan for emergency response to a high level radioactive waste transportation accident, including plans for evacuation and cleanup. The commissioner of public safety shall report by January 1 of each year to the legislature on the status of the plan and the ability of the state to respond adequately to an accident.

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

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

116C.74 PENALTIES.

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

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

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

(2) subject to a civil penalty of not more than $10,000 for each day of violation,

payable to the state, and may be ordered by the court to pay to the state an additional sum as compensation for cleanup and for pollution, destruction, or impairment of the environment, including but not limited to contamination of water supplies or water aquifers.

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

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

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

116C.75 DEFINITIONS.

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

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

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

History: *1986 c 425 s 10*

116C.76 NUCLEAR WASTE DEPOSITORY RELEASE INTO GROUNDWATER.

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

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

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

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

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

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

History: *1986 c 425 s 11*

RADIOACTIVE WASTE MANAGEMENT FACILITY AUTHORIZATION

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

The legislature recognizes that:

(1) the Minnesota environmental quality board on May 16, 1991, reviewed and found adequate a final environmental impact statement ("EIS") on the proposal to con-

struct and operate a dry cask storage facility for the temporary storage of spent nuclear fuel from the Prairie Island nuclear generating plant;

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

(3) the public utilities commission in docket no. E002/CN-91-91 reviewed the facility and approved a limited certificate of need approving the use of casks.

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

History: *1994 c 641 art 1 s 1*

116C.771 ADDITIONAL CASK LIMITATIONS.

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

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

(c)(1) An additional eight casks may be filled and placed at Prairie Island if the legislature has not revoked the authorization under clause (2) or the public utility has satisfied the wind power and biomass mandate requirements in sections 216B.2423, subdivision 1, clause (1), and 216B.2424, clause (1), and the alternative site in Goodhue county is operational or under construction. (2) If the site is not under construction or operational or the wind mandates are not satisfied, the legislature may revoke the authorization for the additional eight casks by a law enacted prior to June 1, 1999.

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

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

History: *1994 c 641 art 1 s 2*

116C.772 PUBLIC UTILITY RESPONSIBILITIES.

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

Subd. 2. **Dry cask alternatives study.** The public utility must submit to the legislative electric energy task force a reevaluation of all alternatives and combinations of those alternatives to dry cask storage.

Subd. 3. **Worker transition plan.** The public utility must submit to the department of economic security a worker transition plan if there is a shutdown of the Prairie Island nuclear generating plant for longer than six months.

Subd. 4. **Nuclear power phase-out plan.** The public utility must submit to the electric energy task force a detailed plan for the phase-out of all nuclear power generated by the utility.

Subd. 5. **Decommissioning plan.** The public utility must submit to the electric energy task force a decommissioning plan for TN-40 storage casks after the casks are emptied of spent fuel.

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

116C.773 CONTRACTUAL AGREEMENT.

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

History: *1994 c 641 art 1 s 4*

116C.774 AUTHORIZATION.

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

History: *1994 c 641 art 1 s 5*

116C.775 SHIPMENT PRIORITIES; PRAIRIE ISLAND.

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

History: *1994 c 641 art 1 s 6*

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

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

History: *1994 c 641 art 1 s 7*

116C.777 SITE.

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

History: *1994 c 641 art 1 s 8*

116C.778 RERACKING.

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

History: *1994 c 641 art 1 s 9*

116C.779 FUNDING FOR RENEWABLE DEVELOPMENT.

The public utility that operates the Prairie Island nuclear generating plant must transfer to a renewable development account $500,000 each year for each dry cask containing spent fuel that is located at the independent spent fuel storage installation at Prairie Island after January 1, 1999. The fund transfer must be made if waste is stored in a cask for any part of a year. Funds in the account can only be expended for development of renewable energy sources.

History: *1994 c 641 art 1 s 10*

116C.80 HIGH-LEVEL RADIOACTIVE WASTE; SPENT NUCLEAR FUEL STORAGE; ALTERNATIVE SITE.

Subdivision 1. **Definition; dry cask storage facility.** For the purposes of this section, "dry cask storage facility" or "facility" means a high-level radioactive waste facility that is located in Goodhue county but not on Prairie Island for storage of spent nuclear fuel produced by a nuclear reactor at the Prairie Island nuclear power generating plant.

Subd. 2. **Certificate of site comparability.** Prior to construction of a dry cask storage facility, the public utility that operates the nuclear power generating power plant at Prairie Island shall obtain a certificate from the environmental quality board that the site for the facility is comparable to the independent spent fuel storage facility site located on Prairie Island for which the public utilities commission granted a certificate of need in docket number E002/CN-91-91.

Subd. 3. **Review by the board.** The board shall review the siting procedures and considerations for siting large energy electric generating plants under sections 116C.51 to 116C.69 and rules adopted under those sections and shall adopt, by resolution, after a public comment period, those procedures, considerations, and rules it determines are necessary to designate a site for a dry cask storage facility and to issue a certificate of site comparability. The siting procedures and considerations must provide for an opportunity for all interested persons to participate.

History: *1994 c 641 art 6 s 1*

116C.81 [Renumbered 116C.40]

116C.82 [Renumbered 116C.41]

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

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

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

ARTICLE I. POLICY AND PURPOSE

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

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (United States Code, title 42, sections 2021b to 2021d), as amended through December 31, 1982, has provided for and encouraged the development of low-level radioactive waste compacts as a tool for managing such waste. The party states acknowledge that the Congress has declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive

waste generated within the region requires that sufficient capacity to manage such waste be properly provided.

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

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

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

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

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

5. Encouraging the reduction of the amounts of low-level radioactive waste generated in the region;

6. Distributing the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states, and among generators and other persons who use regional facilities to manage their waste; and

7. Ensuring the ecological and economical management of low-level radioactive wastes.

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

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

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

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

ARTICLE II. DEFINITIONS

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

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

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

c. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

d. "Disposal" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

e. "Eligible state" means a state qualified to be a party state to this compact as provided in article VIII.

f. "Facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

g. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the U.S. Nuclear Regulatory Commission or a party state, to produce or possess such waste. Generator does not include a person who provides a service by arranging for the collection, transportation, treatment, storage or disposal of wastes generated outside the region.

h. "Host state" means any state which is designated by the Commission to host a regional facility.

i. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954, (United States Code, title 42, section 2014).

j. "Management plan" means the plan adopted by the Commission for the storage, transportation, treatment, and disposal of waste within the region.

k. "Party state" means any eligible state which enacts the compact into law.

l. "Person" means any individual, corporation, business enterprise or other legal entity either public or private and any legal successor, representative, agent or agency of that individual, corporation, business enterprise, or legal entity.

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

n. "Regional facility" means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the Commission.

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

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

q. "Storage" means the temporary holding of waste for treatment or disposal.

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

s. "Waste management" means the storage, transportation, treatment, or disposal of waste.

ARTICLE III. THE COMMISSION

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

b. Each Commission member is entitled to one vote. No action of the Commission is binding unless a majority of the total membership cast their vote in the affirmative.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws, and policies which are not inconsistent with this compact, including procedures which substantially conform with the provisions of federal law on administrative procedure compiled at United States Code, title 5, sections 500 to 559, as amended through December 31, 1982, in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

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

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

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

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

h. The Commission may:

1. Enter into an agreement with any person, state, or group of states for the right to use regional facilities for waste generated outside of the region and for the right to use facilities outside the region for waste generated within the region. The right of any person to use a regional facility for waste generated outside of the region requires an affirmative vote of a majority of the Commission, including the affirmative vote of the member of the host state in which any affected regional facility is located.

2. Approve the disposal of waste generated within the region at a facility other than a regional facility.

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

4. Review the emergency closure of a regional facility, determine the appropriateness of that closure, and take whatever actions are necessary to ensure that the interests of the region are protected.

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

6. Suspend the privileges or revoke the membership of a party state by a two-thirds vote of the membership in accordance with article VIII.

i. The Commission shall:

1. Receive and act on the petition of a nonparty state to become an eligible state.

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

3. Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

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

5. Adopt an annual budget.

j. Funding of the budget of the Commission shall be provided as follows:

1. Each state, upon becoming a party state, shall pay $50,000 or $1,000 per cubic meter of waste shipped from that state in 1980, whichever is lower, to the Commission which shall be used for the administrative costs of the Commission;

2. Each state hosting a regional facility shall levy surcharges on all users of the regional facility based upon its portion of the total volume and characteristics of wastes managed at that facility. The surcharges collected at all regional facilities shall:

a. Be sufficient to cover the annual budget of the Commission;

b. Represent the financial commitments of all party states to the Commission; and

c. Be paid to the Commission, provided, however, that each host state collecting surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

k. The Commission shall keep accurate accounts of all receipts and disbursements. The Commission shall contract with an independent certified public accountant to

annually audit all receipts and disbursements of Commission funds, and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by this article.

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

m. The Commission is not liable for any costs associated with any of the following:

1. The licensing and construction of any facility,

2. The operation of any facility,

3. The stabilization and closure of any facility,

4. The care of any facility,

5. The extended institutional control, aftercare of any facility, or

6. The transportation of waste to any facility.

n. 1. The Commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the Commission are not liabilities of the party states. Members of the Commission are not personally liable for actions taken by them in their official capacity.

2. Except as provided under sections m. and n.1. of this article, nothing in this compact alters liability for any act, omission, course of conduct or liability resulting from any causal or other relationships.

o. Any person aggrieved by a final decision of the Commission may obtain judicial review of such decision in any court of competent jurisdiction by filing in such court a petition for review within 60 days after the Commission's final decision.

ARTICLE IV. REGIONAL MANAGEMENT PLAN

The Commission shall adopt a regional management plan designed to ensure the safe and efficient management of waste generated within the region. In adopting a regional waste management plan the Commission shall:

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

b. Develop and consider policies promoting source reduction of waste generated within the region;

c. Develop and adopt procedures and criteria for identifying a party state as a host state for a regional facility. In developing these criteria, the Commission shall consider all the following;

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

2. The existence of regional facilities within each party state.

3. The minimization of waste transportation.

4. The volumes and types of wastes generated within each party state.

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

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

e. Prepare a draft management plan, including procedures, criteria and host states, including alternatives, which shall be made available in a convenient form to the pub-

lic for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption of the management plan. The management plan shall include the commission's response to public and party state comment.

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

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

b. Each party state has the right to have all wastes generated within its borders managed at regional facilities subject to the provisions contained in article IX.c. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to article III.

c. Party states or generators may negotiate for the right of access to a facility outside the region and may export waste outside the region subject to Commission approval under article III.

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

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

ARTICLE VI. DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state upon a two-thirds vote of its members.

b. If all regional facilities required by the regional management plan are not developed pursuant to section a., or upon notification that an existing regional facility will be closed, the Commission may designate a host state.

c. Each party state designated as a host state is responsible for determining possible facility locations within its borders. The selection of a facility site shall not conflict with applicable federal and host state laws, regulations and rules not inconsistent with this compact and shall be based on factors including, but not limited to, geological, environmental and economic viability of possible facility locations.

d. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. The Commission may relieve a party state of this responsibility only upon a showing by the requesting party state that no feasible potential regional facility site of the type it is designated to host exists within its borders.

e. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of a regional facility.

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

g. The Commission may designate a party state as a host state while a regional facility is in operation if the Commission determines that an additional regional facility is or may be required to meet the needs of the region. The Commission shall make this designation following the procedures established under article IV.

h. Designation of a host state is for a period of 20 years or the life of the regional facility which is established under that designation, whichever is longer. Upon request of a host state, the Commission may modify the period of its designation.

i. A host state may establish a fee system for any regional facility within its borders. The fee system shall be reasonable and equitable. This fee system shall provide

the host state with sufficient revenue to cover any costs, including but not limited to the planning, siting, licensure operation, decommissioning, extended care and long-term liability, associated with such facilities. This fee system may also include reasonable revenue beyond the costs incurred for the host state, subject to approval by the Commission. A host state shall submit an annual financial audit of the operation of the regional facility to the Commission. The fee system may include incentives for source reduction and may be based on the hazard of the waste as well as the volume.

j. A host state shall ensure that a regional facility located within its borders which is permanently closed is properly decommissioned. A host state shall also provide for the care of a closed or decommissioned regional facility within its borders so that the public health and safety of the state and region are ensured.

k. A host state intending to close a regional facility located within its borders shall notify the Commission in writing of its intention and the reasons. Notification shall be given to the Commission at least five years prior to the intended date of closure. This section shall not prevent an emergency closing of a regional facility by a host state to protect its air, land and water resources and the health and safety of its citizens. However, a host state which has an emergency closing of a regional facility shall notify the Commission in writing within three working days of its action and shall, within 30 working days of its action, demonstrate justification for the closing.

l. If a regional facility closes before an additional or new facility becomes operational, waste generated within the region may be shipped temporarily to any location agreed on by the Commission until a regional facility is operational.

m. A party state which is designated as a host state by the Commission and fails to fulfill its obligations as a host state may have its privileges under the compact suspended or membership in the compact revoked by the Commission.

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

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

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

3. Prohibits any storage or treatment of waste by the generator on its own premises;

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

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

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

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

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

9. Alters or limits liability of transporters of waste, owners and operators of sites for their acts, omissions, conduct or relationships in accordance with applicable laws.

b. For purposes of this compact, all state laws or parts of laws in conflict with this compact are hereby superseded to the extent of the conflict.

c. No law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

ARTICLE VIII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. Eligible parties to this compact are the states of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Virginia and Wisconsin. Eligibility terminates on July 1, 1984.

b. Any state not eligible for membership in the compact may petition the Commission for eligibility. The Commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of all host states. Any state becoming eligible upon the approval of the Commission becomes a member of the compact in the same manner as any state eligible for membership at the time this compact enters into force.

c. An eligible state becomes a party state when the state enacts the compact into law and pays the membership fee required in article III.j.1.

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

e. Any party state may withdraw from this compact by repealing the authorizing legislation but no withdrawal may take effect until five years after the governor of the withdrawing state gives notice in writing of the withdrawal to the Commission and to the governor of each party state. Withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. Any host state which grants a disposal permit for waste generated in a withdrawing state shall void the permit when the withdrawal of that state is effective.

f. Any party state which fails to comply with the terms of this compact or fails to fulfill its obligations may have its privileges suspended or its membership in the compact revoked by the Commission in accordance with article III.h.6. Revocation takes effect one year from the date the affected party state receives written notice from the Commission of its action. All legal rights of the affected party state established under this compact cease upon the effective date of revocation but any legal obligations of that party state arising prior to revocation continue until they are fulfilled. The chairperson of the Commission shall transmit written notice of a revocation of a party state's membership in the compact immediately following the vote of the Commission to the governor of the affected party state, all other governors of the party states and the Congress of the United States.

g. This compact becomes effective July 1, 1983, or at any date subsequent to July 1, 1983, upon enactment by at least three eligible states. However, article IX, section (b) shall not take effect until the Congress has by law consented to this compact. The Congress shall have an opportunity to withdraw such consent every five years. Failure of the Congress to affirmatively withdraw its consent has the effect of renewing consent for an additional five-year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under sections b. and c. of this article and to the power of the Commission to ban the shipment of waste from the region pursuant to article III.

h. The withdrawal of a party state from this compact under section e. of this article or the suspension or revocation of a state's membership in this compact under section f. of this article does not affect the applicability of this compact to the remaining party states.

i. A state which has been designated by the Commission to be a host state has 90 days from receipt by the Governor of written notice of designation to withdraw from the compact without any right to receive refund of any funds already paid pursuant to this compact, and without any further payment. Withdrawal becomes effective immediately upon notice as provided in section e. of this article. A designated host state which withdraws from the compact after 90 days and prior to fulfilling its obligations shall be assessed a sum the Commission determines to be necessary to cover the costs borne by the Commission and remaining party states as a result of that withdrawal.

ARTICLE IX. PENALTIES

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

b. Unless otherwise authorized by the Commission pursuant to article III.h. after January 1, 1986, it is a violation of this compact:

1. For any person to deposit at a regional facility waste not generated within the region;

2. For any regional facility to accept waste not generated within the region;

3. For any person to export from the region waste which is generated within the region; or

4. For any person to dispose of waste at a facility other than a regional facility.

c. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws, rules and regulations may result in the imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

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

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History: *1983 c 353 s 1*

116C.832 DEFINITIONS.

Subdivision 1. **Terms defined in compact.** The terms defined in article II of the Midwest Interstate Low-Level Radioactive Waste Compact have the meanings given them for the purposes of sections 116C.833 to 116C.848.

Subd. 2. **Advisory committee.** "Advisory committee" means the advisory committee established under section 116C.839.

Subd. 3. **Agency.** "Agency" means the pollution control agency.

Subd. 4. MS 1990 [Renumbered subd 5]

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

Subd. 5. MS 1990 [Renumbered subd 4]

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

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

Subd. 7. **Site.** "Site" means a site for construction and operation of a low-level radioactive waste facility.

Subd. 8. **Siting board.** "Siting board" means the low-level radioactive waste facility siting board established under section 116C.846, subdivision 1.

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

116C.833 COMPACT COMMISSION MEMBER.

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

Subd. 2. **Semiannual report.** In addition to other duties specified in sections 116C.833 to 116C.843, the commissioner shall report semiannually to the governor and the legislature concerning the activities of the Interstate Commission. The report shall include any recommendations the commissioner deems necessary to assure the protection of the interest of the state in the proper functioning of the compact. The commissioner also shall report to the governor and the legislature any time there is a change in the status of a host state or other party states in the compact.

History: *1983 c 353 s 3; 1987 c 186 s 15*

116C.834 ASSESSMENT OF GENERATORS.

Subdivision 1. **Costs.** All costs incurred by the state to carry out its responsibilities under the compact and under sections 116C.833 to 116C.843 shall be paid by generators of low-level radioactive waste in this state through fees assessed by the pollution control agency. The agency shall assess the fees in the manner provided in section 16A.128. Fees may be reasonably assessed on the basis of volume or degree of hazard of the waste produced by a generator. Costs for which fees may be assessed include, but are not limited to:

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

(b) the expenses of the Commission member and costs incurred to support the work of the Interstate Commission;

(c) regulatory costs, including but not limited to costs of adopting and enforcing regulations if the state enters into a limited agreement with the United States Nuclear Regulatory Commission to assume state regulation of transportation and packaging, or disposal, of low-level radioactive wastes;

(d) siting costs of a low-level radioactive waste facility under section 116C.842 and sections 116C.845 to 116C.848 to the extent that the costs are reasonably attributable to waste generated in this state; and

(e) any liability the state may incur as a party state to the compact.

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

History: *1983 c 353 s 4; 1987 c 311 s 4*

116C.835 ENFORCEMENT OF COMPACT AND LAWS.

Subdivision 1. **Criminal penalties.** Any person who willfully or negligently violates any provision of the compact upon conviction is guilty of a misdemeanor, and is subject

to a fine of not more than $2,500 in the event of a willful violation or not more than $300 in the event of a negligent violation. A second conviction of the same provision after a first conviction is punishable by a fine of not more than $50,000, or by imprisonment for not more than two years, or both.

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

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

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

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

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

Subd. 6. **Effect on state.** Nothing in this section shall be construed to permit any action or remedy against the state for violation of any provision of the compact. The sole remedy for such a violation is the remedy provided in article III, section h.6. and article VIII, section f. of the compact.

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

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

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

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

(a) initiate a proceeding against another party state in the manner provided in article III, section i.3. of the compact, and may appeal the decision of the Interstate Commission as provided in article III, section o.; or

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

History: *1983 c 353 s 6*

116C.837 REVIEW OF STATE AUTHORITY TO ENFORCE COMPACT.

The advisory committee shall review the authority of the state to enforce the compact, including the control of shipment of waste under article IX, section b of the compact. The governor shall report to the advisory committee any recommendations on possible agreement state status with the United States Nuclear Regulatory Commission

in order to enforce the compact. The advisory committee shall recommend any legislative changes which it determines necessary and desirable to assure adequate state authority to enforce the compact.

History: *1983 c 353 s 7*

116C.838 EFFECT ON EXISTING STATE LAW.

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

History: *1983 c 353 s 8*

116C.839 ADVISORY COMMITTEE.

An advisory committee is created to consult with and advise the commissioner, the governor, and the legislature on low-level radioactive waste issues. The advisory committee shall consist of three representatives chosen by the speaker of the house; three senators chosen by the senate committee on committees; the commissioner; the commissioner of health; the commissioner of transportation; the commissioner of department of natural resources; and the chair of the environmental quality board. The committee shall elect a chair from among its members. The committee expires on June 30, 1993.

The advisory committee may appoint a technical task force on low-level radioactive waste, including but not limited to any members of the public with special expertise in low-level radioactive waste, state agency personnel, and generators representing the medical, industrial, and commercial organizations in the state which ship wastes to regional facilities. The task force expires as provided in section 15.059, subdivision 6.

History: *1983 c 353 s 9; 1986 c 444; 1987 c 186 s 15; 1988 c 629 s 22*

116C.840 DUTY TO PROVIDE INFORMATION.

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

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

Subd. 3. **Review by advisory committee.** When the agency requests information under this section, it shall notify the advisory committee of the types of information requested and the parties to whom the request was made. The advisory committee may review the reasonableness of any request for information under this section and make recommendations to the agency.

History: *1983 c 353 s 10*

116C.841 AUDIT REVIEW.

The legislative audit commission shall review the annual report prepared by the Interstate Commission regarding its audit activities and the annual financial audit of

the operation of the low-level radioactive waste facility prepared by the host state, and shall present their review to the commissioner, the governor, the legislature, and the advisory committee.

History: *1983 c 353 s 11; 1987 c 186 s 15*

116C.842 CONTINGENT PROVISIONS.

Subdivision 1. **Report.** In the event Minnesota is designated by the Interstate Commission to be a host state for a regional low-level radioactive waste facility, the commissioner within 14 days shall report to the governor, the legislature, and the advisory committee with recommendations for further action.

Subd. 2. **Option for withdrawal.** In the event Minnesota is designated by the Interstate Commission to be a host state for a regional low-level radioactive waste facility, the advisory committee shall report to the governor and the legislature within 30 days with its recommendations whether or not Minnesota should exercise its option to withdraw from the compact. It is the intent of the legislature that, if the legislature is not or will not be in session so that action cannot be taken in a timely manner and if the advisory committee recommends withdrawal from the compact, the governor shall convene a special legislative session for the purpose of acting on the advisory committee's recommendation.

Subd. 3. **Development of a siting process.** In the event that Minnesota is to be a host state for a regional low-level radioactive waste facility, the low-level waste facility siting board established under section 116C.846, subdivision 1, shall develop a siting process and report to the governor, the advisory committee, and the legislature. The siting board shall prepare recommendations for legislation including siting criteria, procedures for public participation, licensing, regulation, and bonding requirements. The recommendations shall include bonding requirements sufficient to cover any costs of monitoring the facility and providing for its safety and security in the event that the licensee discontinues operation, management, or supervision of the facility for so long as the materials stored or treated at the facility pose a threat to the public health.

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

History: *1983 c 353 s 12; 1987 c 186 s 15; 1987 c 311 s 5*

116C.843 CONGRESSIONAL CONDITIONS ON COMPACT CONSENT.

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

History: *1983 c 353 s 13*

LOW-LEVEL RADIOACTIVE WASTE FACILITY SITE

116C.845 SITING DETERMINATION.

If the governor determines that a low-level radioactive waste facility should be sited in the state, the governor shall issue an executive order and notify the chair of the environmental quality board, the commissioner, and the chair of the advisory committee. The governor must determine whether a low-level radioactive waste facility should be sited in the state by ten days after:

(1) Minnesota is designated as a host state by the Interstate Commission under the compact;

(2) Minnesota volunteers as a host state for a regional facility under the compact; or

(3) Minnesota withdraws from the compact.

History: *1987 c 186 s 15; 1987 c 311 s 6*

116C.846 SITING BOARD.

Subdivision 1. **Establishment.** The low-level radioactive waste facility siting board is established to select a facility site when the governor issues an executive order that a facility should be sited.

Subd. 2. **Membership.** (a) The siting board has 11 members consisting of the commissioner of natural resources, commissioner of transportation, chair of the environmental quality board, and eight citizen members representing each of the eight congressional districts.

(b) The governor must appoint the eight citizen members of the siting board by 30 days after the executive order for siting a facility is issued.

(c) The chair of the environmental quality board is the chair of the siting board.

Subd. 3. **Staffing and administration.** The environmental quality board shall provide staffing and administrative assistance for the siting board.

Subd. 4. **Compensation.** The citizen members of the siting board shall be compensated as provided in section 15.0575.

Subd. 5. **Termination.** The siting board is terminated when the siting process is finished.

History: *1987 c 311 s 7*

116C.847 SITING CRITERIA.

Subdivision 1. **Health, safety, and environmental considerations.** The siting board must maintain health, safety, and environmental considerations above all other siting criteria.

Subd. 2. **Volunteer site preferred.** The siting board shall attempt to select a site from an area proposed in the volunteer siting process.

Subd. 3. **Siting board to seek agreements and resolutions of interest.** The chair shall actively solicit, encourage, and assist counties, together with developers, landowners, the local business community, and other interested parties, in developing resolutions of interest to enter an agreement to investigate the feasibility of siting a low-level radioactive waste facility.

Subd. 4. **County resolution of interest.** A county may begin to negotiate an agreement to evaluate siting a low-level radioactive facility after the county board files with the siting board a resolution of interest adopted by the county board that expresses the county board's interest in negotiations and its willingness to accept the preliminary evaluation of one or more study areas in the county for consideration as a location of a facility.

Subd. 5. **Economic development impact.** The commissioner of trade and economic development must analyze the effects on businesses and the local economy and anticipated effects on local communities by a low-level radioactive waste facility.

History: *1987 c 311 s 8; 1987 c 312 art 1 s 26 subd 2*

116C.848 NONVOLUNTEER SITING PROCESS.

If a site is not selected from the volunteer siting process, the site selection shall proceed from the process developed under section 116C.842.

History: *1987 c 311 s 9*

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

116C.851 DEFINITIONS.

Subdivision 1. **Facility.** "Facility" has the meaning given in section 116C.831, article II, paragraph (f).

Subd. 2. **Low-level radioactive waste.** "Low-level radioactive waste" means waste that consists of or contains class A, B, or C radioactive waste as defined by Code of Federal Regulations, title 10, section 61.55, as in effect on January 26, 1983.

History: *1990 c 600 s 4*

NOTE: This section is repealed effective June 30, 1996. See Laws 1990, chapter 600, section 8.

116C.852 LOW-LEVEL RADIOACTIVE WASTE DISPOSAL.

(a) Except as provided in paragraph (b), low-level radioactive waste may not be treated, recycled, stored, or disposed of in this state except at a facility that is specifically licensed for treatment, recycling, storage, or disposal of low-level radioactive waste, regardless of whether or not the waste has been reclassified as "below regulatory concern" by the United States Nuclear Regulatory Commission under a generic rule or standard adopted after July 2, 1990.

(b) Paragraph (a) does not apply to treatment, recycling, storage, or disposal of low-level radioactive waste that is specifically authorized under a license issued by the United States Nuclear Regulatory Commission, or is otherwise authorized under regulations of the United States Nuclear Regulatory Commission in effect on July 2, 1990.

History: *1990 c 600 s 5; 1991 c 202 s 4; 1992 c 593 art 1 s 34*

NOTE: This section is repealed effective June 30, 1996. See Laws 1990, chapter 600, section 8.

GENETICALLY ENGINEERED ORGANISMS

116C.91 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 116C.91 to 116C.98, the terms defined in this section have the meanings given them.

Subd. 2. **Board.** "Board" means the environmental quality board.

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

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

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

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

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

History: *1989 c 346 s 2; 1991 c 250 s 28; 1994 c 454 s 9*

116C.92 COORDINATION OF ACTIVITIES.

The environmental quality board is designated the state coordinating organization for state and federal regulatory activities relating to genetically engineered organisms.

History: *1989 c 346 s 3*

116C.93 ADVISORY COMMITTEE.

The board shall establish an advisory committee on genetically engineered organisms to provide advice at the request of the board on general issues involving genetic engineering and on issues relating to specific proposals, including the identification of research needed for adequate regulation of field trials.

History: *1989 c 346 s 4*

116C.94 RULES.

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

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

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

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

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

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

History: *1989 c 346 s 5; 1991 c 250 s 29; 1994 c 454 s 10*

116C.95 LIABILITY.

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

History: *1989 c 346 s 6*

116C.96 COST REIMBURSEMENT.

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

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

116C.97 EXEMPTIONS.

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

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

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

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

History: *1994 c 454 s 12*

116C.98 NOTIFICATION FOR THE RELEASE OF CERTAIN GENETICALLY ENGINEERED PLANTS.

Subdivision 1. **General.** Certain genetically engineered plants may be released without the regulatory oversight under section 116C.94, provided that the release is in compliance with the requirements of this section. Any other release of genetically engineered organisms requires regulatory oversight under section 116C.94 unless it is exempt under section 116C.97.

Subd. 2. **Genetically engineered plants eligible for use under the notification procedure.** (a) Genetically engineered plants which meet the eligibility criteria of paragraphs (b) to (g) and whose release meets the performance standards in subdivision 3 are eligible for release under the notification procedure of subdivision 4.

(b) The genetically engineered plant is:

(1) one of the following species: corn (Zea mays L.), cotton (Gossypium hirsutum L.), potato (Solanum tuberosum L.), soybean (Glycine max (L.) Merr.), tobacco (Nicotiana tabacum L.), or tomato (Lycopersicon esculentum L.); or

(2) any additional plant species that the commissioner of agriculture, after public notice and after complying with chapter 116D and the rules adopted under it, has determined may be safely used in accordance with the organism eligibility criteria set forth in paragraphs (c) to (g) and the release performance standards set forth in subdivision 3.

(c) The genetically engineered material is stably integrated in the plant genome.

(d) The function of the genetically engineered material is known and its expression in the genetically engineered organism does not result in plant disease.

(e) The genetically engineered material does not:

(1) cause the production of an infectious entity;

(2) encode substances that are known or likely to be toxic to nontarget organisms known or likely to feed or live on the plant species; or

(3) encode products intended for pharmaceutical use.

(f) The genetically engineered sequences must be:

(1) noncoding regulatory sequences of known function;

(2) sense or antisense genetic constructs derived from viral coat protein genes from plant viruses that are prevalent and endemic in the area where the use will occur and that infect plants of the same host species; or

(3) antisense genetic constructs derived from noncapsid viral genes from plant viruses that are prevalent and endemic in the area where the use will occur and that infect plants of the same host species.

(g) The plant has not been modified to contain the following genetic material from animal or human pathogens:

(1) any nucleic acid sequence derived from an animal or human virus; or

(2) coding sequences whose products are known or likely causal agents of disease in animals or humans.

Subd. 3. **Performance standards for releases under the notification procedure.** (a) The performance standards in this subdivision must be met for any releases under the notification procedure.

(b) If the genetically engineered plants or plant materials are shipped, they must be shipped in such a way that the viable plant material is unlikely to be disseminated while in transit and must be maintained at the destination facility in such a way that there is no release into the environment.

(c) The genetically engineered plants must be planted in such a way that they are not inadvertently mixed with nonregulated plant materials of any species which are not part of the release.

(d) The plants and plant parts must be maintained in such a way that the identity of all material is known while it is in use, and the plant parts must be contained or devitalized when no longer in use.

(e) There must be a viable vector agent associated with the genetically engineered plants.

(f) The field trial must be conducted such that:

(1) the genetically engineered plants will not persist in the environment; and

(2) no offspring can be produced that could persist in the environment.

(g) Upon termination of the field test:

(1) no viable material shall remain which is likely to volunteer in subsequent seasons; or

(2) plant volunteers shall be managed to prevent persistence in the environment.

Subd. 4. **Notification procedure.** (a) Notification shall be directed to the commissioner of agriculture.

(b) The notification shall include the following:

(1) name, title, address, telephone number, and signature of the responsible person;

(2) information necessary to identify the genetically engineered plant or plants, including:

(i) the scientific, common, or trade names, and phenotype of the genetically engineered plant;

(ii) the designations for the genetic loci, the encoded proteins or functions, and donor organisms for all genes from which used genetic material was derived; and

(iii) the method by which the recipient was transformed;

(3) the names and locations of the origination and destination facilities for movement or the field site location for the environmental release, and the size of the use;

(4) the expected date of release and the expected duration of the release; and

(5) a statement that certifies that use of the genetically engineered organism will be in accordance with the provisions of this section.

(c) Notification must be submitted at least 30 days prior to the day of use.

(d) Release reports may be required by the commissioner of agriculture. Release reports shall include:

(1) the release identification number;

(2) methods of observation, resulting data, and analysis regarding all deleterious effects on plants, nontarget organisms, or the environment; and

(3) any other available information requested by the commissioner of agriculture or the chair of the board regarding the impact of the genetically engineered organism on human health or the environment.

(e) The commissioner of agriculture shall be notified of any unexpected occurrences relating to the release.

(f) Access shall be allowed for state regulatory officials to inspect facilities or the field test site, or both, and any records necessary to evaluate compliance with the provisions of subdivisions 2 and 3.

Subd. 5. **Administrative action in response to notification.** (a) The commissioner of agriculture shall publish notice of the proposed release at the earliest opportunity in the EQB Monitor and shall mail notice to the chief executive of the county within which the release will take place.

(b) The commissioner of agriculture shall grant or deny permission to release the noticed genetically engineered plant within 30 days of the receipt of the notification.

(c) A person denied permission for use of a genetically engineered plant under notification may apply for a permit for use of that genetically engineered plant without prejudice.

(d) The commissioner of agriculture shall notify the chair of the board of any unexpected occurrences relating to the release.

Subd. 6. **Repealer.** When the commissioner of agriculture adopts rules under section 18F.13, paragraph (b), this section is repealed.

History: *1994 c 454 s 13*