

Environmental Protection

CHAPTER 114C

ENVIRONMENTAL REGULATORY INNOVATIONS

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POLICY

114C.01 POLICY.

The legislature recognizes that Minnesota's existing environmental laws play a critical role in protecting the environment. However, the legislature finds that environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods. It is the policy of the legislature that Minnesota should develop environmental regulatory methods that:

- (1) encourage facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land;
- (2) encourage facility owners and operators to innovate, set measurable and verifiable goals, and implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for their particular facilities, while complying with verifiable and enforceable pollution limits;
- (3) encourage superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges;
- (4) reward facility owners and operators that reduce pollution to levels below what is required by applicable law;
- (5) consolidate into one permit environmental requirements that are currently included in different permits, sometimes issued by different state or local agencies;
- (6) reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment;
- (7) increase public participation and encourage stakeholder consensus in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this chapter;
- (8) encourage groups of facilities and communities to work together to reduce pollution to levels below what is required by applicable law;
- (9) provide reasonable technical assistance to facilitate meaningful stakeholder participation; and
- (10) increase levels of trust and communication among agencies, regulated parties, and the public.

History: 1996 c 437 s 1

114C.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the definitions in this section have the meanings given them.

Subd. 2. **Pollution prevention.** "Pollution prevention" has the meaning given in section 115D.03.

Subd. 3. **Source reduction.** "Source reduction" has the meaning given in section 115A.03.

Subd. 4. **Stakeholders.** "Stakeholders" means citizens in the communities near the project site, facility workers, government representatives, business groups, educational groups, environmental groups, or other Minnesota citizens or public interest groups.

Subd. 5. **State or local agency.** "State or local agency" means any agency, department, board, bureau, office or other instrumentality of the state, any political subdivision of the state, any public corporation, any municipality, and any other local unit of government.

History: 1996 c 437 s 2

MINNESOTA XL PROJECT

114C.10 ESTABLISHMENT OF MINNESOTA XL PERMIT PROJECT.

Subdivision 1. **Project.** The pollution control agency is authorized to establish and implement a permit project under sections 114C.10 to 114C.19. The purpose of the project is to work toward the policy goals listed in section 114C.01 by issuing and studying the effect of permits that require permittees to reduce overall levels of pollution below what is required by applicable law, but which grant greater operational flexibility than current law would otherwise allow. Permits issued under this project shall be called Minnesota XL permits.

Subd. 2. **Report to legislature.** By January 15, 1998, the commissioner of the pollution control agency shall report to the legislature on implementation of the project, the environmental results of the project, and recommendations for future legislation to further the policy of this chapter.

History: 1996 c 437 s 3

114C.11 MINNESOTA XL PERMITS.

Subdivision 1. **Participation in project.** (a) The commissioner of the pollution control agency may solicit requests for participation and shall select the participants in the project based on the policy set forth in section 114C.01 and to satisfy the criteria of subdivisions 2 and 3. In addition, the commissioner shall select participants that collectively represent a variety of facility types and projects that are expected to reduce air, water, and land pollution. A power generation facility may not be selected to participate in the project or be issued a Minnesota XL permit unless its proposal includes a plan for significantly reducing mercury emissions.

(b) The prospective permittees must be regulated by the agency under chapter 115, chapter 116, or both, and voluntarily submit a proposal for a Minnesota XL permit. The proposal must address the major pollution impact from the facility or facilities included in the proposal.

(c) If, in the course of preparing a Minnesota XL permit for a prospective permittee, the commissioner concludes that the Minnesota XL permit will not sufficiently promote the policy of section 114C.01 or meet the issuance criteria in this section, the commissioner may remove the prospective permittee from the project. In that event, the commissioner shall provide the prospective permittee with a reasonable amount of time to obtain alternative permits made necessary by removal from the project.

Subd. 2. **Minimum criteria for Minnesota XL permit issuance.** The pollution control agency may issue and amend a Minnesota XL permit if the agency finds that the following minimum criteria are met:

(1) the permit will facilitate pollution prevention and source reduction activities by the facility and result in significantly lower overall levels of pollution from the facility, its customers, or suppliers than would otherwise be required by applicable laws, without: (i) increasing the negative impact on the environment, the local community, or worker health and safety; or (ii) transferring pollution impacts into the product;

(2) the pollution prevention, source reduction, or other pollution reduction goals are verifiable;

(3) the pollution limits contained in the permit are verifiable and enforceable;

(4) the stakeholder group has been involved through a decision-making process that seeks consensus in the design of the permit and will have the opportunity for continued involvement in the implementation and evaluation of it;

(5) the permittee agrees to make available information that it gives the agency about the XL project, except information that is nonpublic under chapter 13 or confidential under section 116.075, to the stakeholder group in a format that is easily understood;

(6) the permittee agrees to provide an assessment of the success of the project in reducing the time and money spent at the facility on paperwork and other administrative tasks that do not directly benefit the environment;

(7) the permittee, the pollution control agency, and other state and local agencies are likely to expend less time and resources over the long term to administer the Minnesota XL permit than other types of permits; and

(8) the project is not inconsistent with the federal government's Project XL guidance or any federal laws governing the Project XL program.

Subd. 3. Additional criteria. In addition to the minimum criteria in subdivision 2, the commissioner in selecting participants and the agency in issuing or amending a Minnesota XL permit, must find that the permit meets one or more of the following criteria:

(1) the permit allows the facility owner or operator as much operational flexibility as can be reasonably provided consistent with the need to achieve the anticipated pollution reduction and ensure the verifiability and enforceability of the permit's pollution limits;

(2) the permit provides facility-wide pollution limits where practical, verifiable, and enforceable;

(3) the permit regulates air, water, and land pollution effects, direct and indirect;

(4) the permit encourages pollution prevention or source reduction;

(5) the permit encourages innovation in the design, production, distribution, use, reuse, recycling, or disposal of a product such that air, water, and land pollution impacts are minimized over the life cycle of a product;

(6) the permit reduces the emission of nontoxic pollutants regulated under applicable law;

(7) the permit reduces indoor chemical exposure, water use, or energy use;

(8) the permit minimizes transfer, direct and indirect, of pollution between the air, water, and land;

(9) the regulatory techniques employed in the permit have potential application to other permittees;

(10) the permittee agrees to measure and demonstrate the success of the Minnesota XL permit in addition to the assessment in subdivision 2, clause (6), such as tracking pollution prevention incentives and initiatives or using surveys to measure any attitudinal changes by facility personnel or the public;

(11) the permit is multiagency, under subdivision 4.

Subd. 4. Multiagency Minnesota XL permits. The pollution control agency may include or vary in a Minnesota XL permit the related requirements of other state or local agencies, if the pollution control agency, the prospective permittee, and the other state or local agency find that it is reasonable to do so. Notwithstanding conflicting procedural requirements, the other agencies may exercise their related permitting, licensing, or other approval responsibilities by including their requirements in the Minnesota XL permit. The pollution control agency may not include or vary the related requirements of other state or local agencies in a Minnesota XL permit unless the other agencies agree to sign the permit. The Minnesota XL permit shall identify any requirement, the source of which is not the pollution control agency, and identify the source agency. The commissioner of the pollution control agency and the other agencies may agree to share inspection or other responsibilities related to the Minnesota XL permit. For purposes of this subdivision, requirements are related if they have a direct or indirect bearing on environmental protection or indoor chemical exposure.

Subd. 5. **Environmental policy act.** Sections 114C.10 to 114C.19 do not supersede the requirements of chapter 116D and the rules adopted under it.

Subd. 6. **Plans and progress reports under chapters 115D and 115E.** A permittee complies with the plan content and timing requirements of sections 115D.07, 115E.04, and 115E.045 if the Minnesota XL permit requires the permittee to include in an overall environmental management plan satisfactory alternative information. A permittee complies with the progress report content and timing requirements of section 115D.08 if the Minnesota XL permit requires the permittee to include in its overall reporting requirements satisfactory alternative information, and specifies a schedule for submitting the information.

History: 1996 c 437 s 4

114C.12 ISSUANCE, AMENDMENT, AND REVOCATION PROCEDURE.

Subdivision 1. **Stakeholder group.** The commissioner of the pollution control agency shall:

(1) ensure that the stakeholder group for each Minnesota XL permit includes members that represent diversity of stakeholders that emphasizes participation by members from the local community but does not exclude other stakeholders;

(2) ensure that a decision-making process that seeks consensus is in place; and

(3) ensure that reasonable technical assistance is provided to facilitate stakeholder understanding of the design, implementation, and evaluation of each Minnesota XL permit.

Subd. 2. **Unified permit action and variance procedure.** The pollution control agency may issue, amend, or revoke Minnesota XL permits using the single permit and variance procedure in subdivision 4, notwithstanding conflicting state or local procedural requirements. If a Minnesota XL permit includes variances from applicable state rules or local ordinances or local regulations, the issuance or amendment of the permit constitutes adoption of a variance to such state rules or local ordinances or local regulations if the Minnesota XL permit identifies, in general terms, any state rules or local ordinances or local regulations being varied.

Subd. 3. **Variance standards.** Although subdivision 2 establishes the procedure for granting variances in a Minnesota XL permit, the agency in deciding whether to grant a variance must apply the substantive standards for granting a variance applicable to the state rule, local ordinance, or local regulation being varied or find that the variance either:

(1) promotes reduction in overall levels of pollution beyond what is required by applicable law, consistent with the purposes of this chapter; or

(2) reduces the administrative burden on state or local agencies or the permittee, provided that alternative monitoring, testing, notification, recordkeeping, or reporting requirements will provide the information needed by the state or local agency to ensure compliance.

Subd. 4. **Procedure.** (a) The pollution control agency must provide at least 30 days for public comment on the agency's proposed issuance, amendment, or revocation of a Minnesota XL permit. Before the start of the public comment period, the commissioner of the pollution control agency must prepare a draft permit, permit amendment, or notice of permit revocation and a fact sheet that:

(1) briefly describes the principal facts and the significant factual, legal, methodological, and policy questions considered by the commissioner and the commissioner's proposed determination;

(2) briefly describes how the permit action proposed by the commissioner meets the criteria of section 114C.11 and furthers the policy of section 114C.01; and

(3) identifies any rules that would be varied by the commissioner's proposed permit action.

(b) The commissioner shall prepare a public notice of the proposed permit action that:

(1) briefly describes the facility or activity that is the subject of the proposed permit action;

(2) states the commissioner's proposed permit action and whether it includes a variance of any state rules or local ordinances or local regulations;

- (3) identifies an agency person to contact for additional information;
- (4) states that the draft permit, permit amendment, or notice of revocation and the fact sheet are available upon request;
- (5) states that comments may be submitted to the agency by the public during the comment period; and
- (6) describes the procedures that the agency will use to make a final decision, including how persons may request public informational meetings, contested case hearings, and appearances at public meetings of the agency. The agency or the commissioner may order a public informational meeting if the comments received during the comment period demonstrate considerable public interest in the proposed permit action.

(c) The commissioner shall mail the public notice to the applicant, all persons who have registered with the agency to receive notice of permit actions, and to any interested person upon request. The commissioner shall make a copy of the public notice available at the agency's main office and the applicable regional office. The commissioner shall circulate the public notice in the geographic area of the facility or activity subject to the proposed permit action, either by posting in public buildings, by publication in local newspapers or periodicals, by publication in the State Register, or by an alternate method deemed by the commissioner to be more effective such as an electronic bulletin board or mail service.

(d) The commissioner shall have the discretion to issue, amend, or revoke a Minnesota XL permit if:

(1) the commissioner has included in the public notice information notifying persons of their right to request that the decision to issue, amend, or revoke the Minnesota XL permit be presented to the agency; and

(2) neither the permit applicant, a member of the stakeholders group, or any person commenting on the proposed issuance, amendment, or revocation of the Minnesota XL permit has requested, during the comment period, that the decision be made by the agency or requested a contested case hearing.

If the conditions in clauses (1) and (2) have not been met, or if, prior to the commissioner's decision, one or more members of the agency request that the decision to issue, amend, or revoke the Minnesota XL permit be made by the agency, then the agency shall have the sole authority to make that decision.

Subd. 5. Permit revocation. (a) The pollution control agency may revoke a Minnesota XL permit if requested by the permittee or if the agency finds that:

(1) the permittee is in significant noncompliance with the Minnesota XL permit or with applicable law;

(2) the permittee is not able, or has shown a lack of willingness, to comply with future pollution reduction deadlines in the Minnesota XL permit;

(3) the permitted facility or activity endangers human health or the environment and the danger cannot be removed by an amendment to the Minnesota XL permit; or

(4) after proper notification and a reasonable amount of time has passed, the permittee has not satisfactorily addressed a substantive issue raised by a majority of members of the stakeholders group.

(b) If the agency revokes a Minnesota XL permit, it shall in its revocation order:

(1) delay any compliance deadlines that had been varied by the Minnesota XL permit if the agency finds it necessary to provide the permittee a reasonable amount of time to obtain alternative permits under chapters other than this chapter and under local ordinances and regulations, and to achieve compliance; and

(2) establish practical interim requirements to replace the requirements of the Minnesota XL permit that the agency finds the permittee will not be able to comply with between the time of permit revocation and issuance of the alternative permits, provided that such interim requirements shall not allow pollution from the facility in excess of that allowed by applicable law at the time the permit was issued.

(c) The permittee shall comply with the agency's order and with all requirements of the Minnesota XL permit for which alternative interim requirements have not been established in the agency's order, until the applicable alternative permits have been issued.

History: 1996 c 437 s 5

114C.13 FEES.

Minnesota XL permittees shall continue to be subject to the same fee structures they would have been subject to if they had obtained the permits that the Minnesota XL permit replaces.

History: 1996 c 437 s 6

114C.14 ENFORCEMENT AND JUDICIAL REVIEW.

Subdivision 1. Enforcement. A Minnesota XL permit may be enforced in any manner provided by law for the enforcement of permits issued under chapter 115 or 116, except for requirements of other state or local agencies that are included in the permit and except that the defense in section 609.671, subdivision 14, also applies to any misdemeanor action taken under section 115.071, subdivision 2, paragraph (a). Requirements of other state or local agencies may be enforced using whatever authorities would be available if the requirements had been included in permits, licenses, or other approvals issued directly by the other agencies. The other agencies shall consult with the commissioner of the pollution control agency prior to taking any action enforcing a Minnesota XL permit.

Subd. 2. Judicial review. Any person aggrieved by a final decision of the pollution control agency to issue, amend, or revoke a Minnesota XL permit may obtain judicial review pursuant to sections 14.63 to 14.69.

History: 1996 c 437 s 7

VARIANCES

114C.19 VARIANCES THAT PROMOTE POLLUTION REDUCTIONS OR REDUCE UNNECESSARY ADMINISTRATIVE BURDEN.

In addition to the grounds for granting a variance set forth in section 116.07, subdivision 5, the pollution control agency may grant variances from its rules in order to:

(1) promote reduction in overall levels of pollution beyond what is required by applicable law, consistent with the purposes of this chapter; or

(2) reduce the administrative burden on the agency or the permittee, provided that alternative monitoring, testing, notification, recordkeeping, or reporting requirements will provide the information needed by the agency to ensure compliance.

History: 1996 c 437 s 8

ENVIRONMENTAL AUDIT PILOT PROGRAM

114C.20 ENVIRONMENTAL IMPROVEMENT PILOT PROGRAM ESTABLISHED.

An environmental improvement pilot program is established to promote voluntary compliance with environmental requirements.

History: 1995 c 168 s 8; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.21 DEFINITIONS.

Subdivision 1. Applicability. As used in sections 114C.20 to 114C.31, the terms defined in this section have the meanings given.

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

Subd. 3. **Environmental requirement.** "Environmental requirement" means a requirement in:

(1) a law administered by the agency, a rule adopted by the agency, a permit or order issued by the agency, an agreement entered into with the agency, or a court order issued pursuant to any of the foregoing; or

(2) an ordinance or other legally binding requirement of a local government unit under authority granted by state law relating to environmental protection, including solid and hazardous waste management.

Subd. 4. **Environmental audit; audit.** "Environmental audit" or "audit" means a systematic, documented, and objective review by a regulated entity of one or more facility operations and practices related to compliance with one or more environmental requirements and, if deficiencies are found, a plan for corrective action. The final audit document must be designated as an "audit report" and must include the date of the final written report of findings for the audit.

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

Subd. 6. **Facility.** "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person.

Subd. 7. **Local governmental unit.** "Local governmental unit" means a county, a statutory or home rule charter city, a town, a sanitary district, or the metropolitan area.

Subd. 8. **Major facility.** "Major facility" means an industrial or municipal wastewater discharge major facility as defined in rules of the agency; a feedlot that is permitted for 1,000 or more animal units; a large quantity hazardous waste generator as defined in rules of the agency; a hazardous waste treatment, storage, or disposal facility that is required to have a permit under the federal Resource Conservation and Recovery Act, United States Code, title 42, section 6925; a major stationary air emission source as defined in rules of the agency; an air emission source that emits 50 or more tons per year of any air pollutant regulated under rules of the agency; or an air emission source that emits 75 tons or more per year of all air pollutants regulated under rules of the agency.

Subd. 9. **Pollution prevention.** "Pollution prevention" means the elimination or reduction at the source of the use, generation, or release of pollutants.

Subd. 10. **Regulated entity.** "Regulated entity" means a public or private organization that is subject to environmental requirements.

Subd. 11. **Self-evaluation.** "Self-evaluation" means a systematic, documented, and objective review by a regulated entity of one or more facility operations and practices related to compliance with one or more environmental requirements, based upon an evaluation form prescribed or approved by the commissioner.

Subd. 12. **State.** "State" means the pollution control agency, the attorney general, and all local governmental units.

History: 1995 c 168 s 9; 1996 c 359 s 3-5; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.22 AUDITS OR SELF-EVALUATIONS.

Subdivision 1. **Qualification to participate in program.** For a facility to qualify for participation in the environmental improvement program, more than one year must have elapsed since the initiation of an enforcement action that resulted in the imposition of a penalty involving the facility. In addition, a regulated entity must:

(1) conduct an environmental audit or a self-evaluation;

(2) for a major facility, prepare a pollution prevention plan and submit progress reports in accordance with sections 115D.07 to 115D.09;

(3) for a facility that is not a major facility, examine pollution prevention opportunities at the facility; and

(4) submit a report in accordance with subdivision 2.

Subd. 2. Report. A regulated entity must submit a report to the commissioner, and to a local governmental unit if the report identifies a violation of an ordinance enacted by the local governmental unit or of another legally binding requirement imposed by the local governmental unit, within 45 days after the date of the final written report of findings for an environmental audit or within 45 days after the completion of a self-evaluation. The report must contain:

(1) a certification by the owner or operator of the facility that the applicable requirements of subdivision 1, clauses (1) to (4), have been met;

(2) a disclosure of all violations of environmental requirements that were identified in the environmental audit or self-evaluation and a brief description of proposed actions to correct the violations;

(3) a commitment signed by the owner or operator of the facility to correct the violations as expeditiously as possible under the circumstances;

(4) if more than 90 days will be required to correct the violations, a performance schedule that identifies the time that will be needed to correct the violations and a brief statement of the reasons that support the time periods set out in the performance schedule; and

(5) a description of the steps the owner or operator has taken or will take to prevent recurrence of the violations.

History: 1995 c 168 s 10; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.23 REVIEW OF PERFORMANCE SCHEDULES.

(a) A reasonable performance schedule prepared under section 114C.22, subdivision 2, clause (4), must be approved by the commissioner. In reviewing the reasonableness of a performance schedule, the commissioner shall take into account information supplied by the regulated entity, any public comments, and information developed by agency staff. The decision about whether a performance schedule is reasonable must be based on the following factors:

(1) the nature of the violations;

(2) the environmental and public health consequences of the violations;

(3) the economic circumstances of the facility;

(4) the availability of equipment and material; and

(5) the time needed to implement pollution prevention opportunities as an alternative to pollution control approaches to remedying the violations. Information submitted to the commissioner that is trade secret information, as that term is defined in section 13.37, is nonpublic data under chapter 13.

(b) In the event of a dispute over approval of the performance schedule, the regulated entity may request a hearing under the procedures in Minnesota Rules, parts 1400.8510 to 1400.8612. A performance schedule may be amended by written agreement between the commissioner and the regulated entity.

History: 1995 c 168 s 12; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.24 ENFORCEMENT.

Subdivision 1. Deferred enforcement. The state must defer for at least 90 days enforcement of an environmental requirement against the owner or operator of a facility if a report that meets the requirements of section 114C.22, subdivision 2, has been submitted to the commissioner. If the report includes a performance schedule, and the performance schedule is approved under section 114C.23, the state must defer enforcement for the term of the approved performance schedule unless the owner or operator of the facility fails to meet an interim performance date contained in the schedule.

Subd. 2. Penalties waived. If, within 90 days after the report required in section 114C.22, subdivision 2, is received by the commissioner or within the time specified in an

approved performance schedule, the owner or operator of a facility corrects the violations identified in the audit or self-evaluation and certifies to the commissioner that the violations have been corrected, the state may not impose or bring an action for any administrative, civil, or criminal penalties against the owner or operator of the facility for the reported violations.

Subd. 3. Exceptions. Notwithstanding subdivisions 1 and 2, the state may at any time bring:

(1) a criminal enforcement action against any person who knowingly commits a violation under section 609.671;

(2) a civil or administrative enforcement action, which may include a penalty, under section 115.071 or 116.072, against the owner or operator of a facility if:

(i) less than one year has elapsed since the final resolution of a notice of violation, an administrative penalty order, or a civil or criminal lawsuit that resulted in an enforcement action being taken against the owner or operator of a facility for a violation of a requirement that was also shown as having been violated in the report required under section 114C.22, subdivision 2; or

(ii) a violation caused serious harm to public health or the environment; or

(3) the enforcement action is against the owner or operator of a facility to enjoin an imminent threat to public health or the environment.

Subd. 4. Good faith consideration. If the state finds that one of the conditions in subdivision 3 exists, the state must take into account the good faith efforts of the regulated entity to comply with environmental requirements in deciding whether to pursue an enforcement action, whether an enforcement action should be civil or criminal, and what, if any, penalty should be imposed. In determining whether the regulated entity has acted in good faith, the state must consider whether:

(1) when noncompliance was discovered, the regulated entity took corrective action that was timely under the circumstances;

(2) the regulated entity exercised reasonable care in attempting to prevent the violations and ensure compliance with environmental requirements;

(3) the noncompliance resulted in significant economic benefit to the regulated entity;

(4) prior to implementing the audit or self-evaluation program, the regulated entity had a history of good faith efforts to comply with the environmental requirements;

(5) the regulated entity demonstrated good faith efforts to achieve compliance since implementing an environmental auditing or self-evaluation program; and

(6) the regulated entity has demonstrated efforts to implement pollution prevention opportunities.

Subd. 5. Violations discovered by the state. Nothing in sections 114C.20 to 114C.31 precludes the state from taking any enforcement action the state is authorized to take with respect to violations discovered by the state prior to the time a regulated entity has submitted to the commissioner a report that meets the requirements of section 114C.22, subdivision 2.

Subd. 6. False statements. (a) A person may not knowingly make a false material statement or representation in the report filed in accordance with section 114C.22, subdivision 2. As used in this subdivision, "knowingly" has the meaning given in section 609.671, subdivision 2.

(b) A person found to have knowingly made a false material statement or representation shall be subject to the administrative penalties and process set forth in section 116.072.

History: 1995 c 168 s 13; 1996 c 359 s 6-9; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.25 GREEN STAR EMBLEM.

A regulated entity may display at a facility a "green star" emblem designed by the commissioner if:

(1) the regulated entity qualifies for participation in the environmental improvement program under section 114C.22;

(2) the regulated entity certifies that all violations that were identified in the audit or self-evaluation of the facility were corrected within 90 days or within the time specified in an

approved performance schedule or certifies that no violations were identified in the audit or self-evaluation; and

(3) at least one year has elapsed since the final resolution of a notice of violation, an administrative penalty order, or a civil or criminal enforcement action involving the regulated entity. The emblem may be displayed for a period of two years from the time that the commissioner determines that the requirements of this section have been met.

History: 1995 c 168 s 14; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.26 ACCESS TO DOCUMENTS.

Subdivision 1. Public access. The state may not request, inspect, or seize a final audit report, draft audit papers, a self-evaluation form, the notes or papers prepared by the auditor or the person conducting the self-evaluation in connection with the audit or self-evaluation, or the internal documents of a regulated entity establishing, coordinating, or responding to the audit or self-evaluation, other than the report required in section 114C.22, subdivision 2, except in accordance with the agency's policy on environmental auditing, as adopted by the agency on January 24, 1995.

Subd. 2. Third-party access. After receipt by the commissioner of a report that complies with section 114C.22, subdivision 2, the final audit report, draft audit reports, the self-evaluation form, any notes or papers prepared by the auditor or by the person conducting the self-evaluation in connection with the audit or self-evaluation, and the internal documents of a regulated entity establishing, coordinating, or responding to the audit or self-evaluation covered by the report are privileged as to all persons other than the state provided that the regulated entity is in compliance with its commitments under sections 114C.22 and 114C.23.

Subd. 3. Nonwaiver of protections. Participation by a regulated entity in the environmental improvement program does not waive, minimize, reduce, or otherwise adversely affect the level of protection or confidentiality that exists, under current or developing common or statutory law, with respect to any other documents relating to an environmental audit or self-evaluation.

History: 1995 c 168 s 15; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.27 NO EFFECT ON OTHER RIGHTS.

Sections 114C.20 to 114C.29 do not affect, impair, or alter:

- (1) rights of a regulated entity that chooses not to participate, or is not eligible to participate, in the environmental improvement pilot program; or
- (2) rights of other persons relative to the matters addressed by the environmental improvement pilot program.

History: 1995 c 168 s 16; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.28 REPORTING REQUIRED BY LAW.

Nothing in sections 114C.20 to 114C.31 alters the obligation of any regulated entity to report releases, violations, or other matters that are required to be reported by state or federal law, rule, permit, or enforcement action.

History: 1995 c 168 s 17; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.29 SURVIVAL OF RIGHTS AND PROTECTIONS.

All rights and protections provided under sections 114C.20 to 114C.31 shall survive the repeal of those sections with respect to any report filed under section 114C.22, subdivision 2, that is submitted before July 1, 1999.

History: 1995 c 168 s 18; 1996 c 437 s 24

NOTE: See section 114C.30 for repealer.

114C.30 REPEALER.

Sections 114C.20 to 114C.31 are repealed effective July 1, 1999.

History: *1995 c 168 s 19; 1996 c 359 s 10; 1996 c 437 s 24*

114C.31 REPORT.

The commissioner, in consultation with the attorney general, shall submit a report to the chairs of the environment and natural resources committees of the senate and the house of representatives by January 15, 1999, that evaluates the effectiveness of the environmental improvement pilot program and recommends whether the program should be extended.

History: *1995 c 168 s 20; 1996 c 437 s 24*

NOTE: See section 114C.30 for repealer.