

## CHAPTER 116B

### ENVIRONMENTAL RIGHTS

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#### 116B.01 PURPOSE.

The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.

**History:** 1971 c 952 s 1; 1986 c 444

#### 116B.02 DEFINITIONS.

Subdivision 1. For purposes of sections 116B.01 to 116B.13, the following terms have the meanings given them in this section.

Subd. 2. "Person" means any natural person, any state, municipality or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other entity, except a family farm, a family farm corporation or a bona fide farmer corporation.

Subd. 3. "Nonresident individual" means any natural person, or the personal representative of the person, who is not domiciled or residing in the state when suit is commenced.

Subd. 4. Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.

Subd. 5. "Pollution, impairment or destruction" is any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment; provided that "pollution, impairment or destruction" shall not include conduct which violates, or is likely to violate, any such standard, limitation, rules, order, license, stipulation agreement or permit solely because of the introduction of an odor into the air.

Subd. 6. "Family farm" shall mean any farm owned by a natural person, or one or more natural persons all of whom are related within the third degree of kindred according to the civil law, at least one of whose owners resides on or actively operates said farm.

Subd. 7. "Family farm corporation" means a corporation founded for the purpose of farming and owning agricultural land, in which the majority of the voting stock is held by, and the majority of the stockholders are, members of a family related to each other within the third degree of kindred according to the rules of the civil law, and at least one of whose stockholders is a person residing on or actively operating the farm, and none of whose stockholders are corporations.

Subd. 8. "Bona fide farmer corporation" means an association of two or more natural persons, one of which, if two persons are so associated, or the majority of which, if more than two persons are so associated, reside on, or are actively operating a farm.

**History:** 1971 c 952 s 2; 1985 c 248 s 70; 1986 c 444

### 116B.03 CIVIL ACTIONS.

Subdivision 1. Any person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned, from pollution, impairment, or destruction; provided, however, that no action shall be allowable hereunder for acts taken by a person on land leased or owned by said person pursuant to a permit or license issued by the owner of the land to said person which do not and can not reasonably be expected to pollute, impair, or destroy any other air, water, land, or other natural resources located within the state; provided further that no action shall be allowable under this section for conduct taken by a person pursuant to any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit issued by the pollution control agency, department of natural resources, department of health or department of agriculture.

Subd. 2. Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the attorney general and the pollution control agency. Within 21 days after commencing such action, the plaintiff shall cause written notice thereof to be published in a legal newspaper in the county in which suit is commenced, specifying the names of the parties, the designation of the court in which the suit was commenced, the date of filing, the act or acts complained of, and the declaratory or equitable relief requested. The court may order such additional notice to interested persons as it may deem just and equitable.

Subd. 3. In any action maintained under this section, the attorney general may intervene as a matter of right and may appoint outside counsel where as a result of such intervention the attorney general may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies set forth in section 116B.01.

Subd. 4. Except as provided in sections 14.44, 14.63 to 14.68, 115.05, 116.07 and 542.03, any action maintained under this section may be brought in any county in which one or more of the defendants reside when the action is begun, or in which the cause of action or some part thereof arose, or in which the conduct which has or is likely to cause such pollution, impairment, or destruction occurred. If none of the defendants shall reside or be found in the state, the action may be begun and tried in any county which the plaintiff shall designate. A corporation, other than railroad companies, street railway companies, and street railroad companies whether the motive power is steam, electricity, or other power used by these corporations or companies, also telephone companies, telegraph companies, and all other public service corporations, shall be considered as residing in any county wherein it has an office, resident agency, or business place. The above enumerated public service corporations shall be considered as residing in any county wherein the cause of action shall arise or in which the conduct which has or is likely to cause pollution, impairment or destruction occurred and wherein any part of its lines of railway, railroad, street railway, street railroad, without regard to the motive power of the railroad, street railway, or street railroad, telegraph or telephone lines or any other public service corporation shall extend, without regard to whether the corporation or company has an office, agent, or business place in the county or not.

Subd. 5. Where any action maintained under this section results in a judgment that a defendant has not violated an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, the judgment shall not in any way estop the agency from relitigating any or all of the same issues with the same or other defendant unless in the prior action the agency was, either initially or by

intervention a party. Where the action results in a judgment that the defendant has violated an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health or department of agriculture the judgment shall be res judicata in favor of the agency in any action the agency might bring against the same defendant.

**History:** 1971 c 952 s 3; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

#### **116B.04 BURDEN OF PROOF.**

In any action maintained under section 116B.03, where the subject of the action is conduct governed by any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate said environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit, the defendant may rebut the prima facie showing by the submission of evidence to the contrary; provided, however, that where the environmental quality standards, limitations, rules, orders, licenses, stipulation agreements, or permits of two or more of the aforementioned agencies are inconsistent, the most stringent shall control.

In any other action maintained under section 116B.03, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder.

**History:** 1971 c 952 s 4; 1985 c 248 s 70

#### **116B.05 APPOINTMENT OF REFEREE.**

The court may appoint a referee, who shall be a disinterested person to take testimony and make a report to the court in any such action.

**History:** 1971 c 952 s 5

#### **116B.06 BOND.**

If the court has reasonable grounds to doubt the plaintiff's ability to pay any judgment for costs and disbursements which might be rendered against that plaintiff pursuant to chapter 549, in an action brought under section 116B.03, the court may order the plaintiff to post a bond or cash not to exceed \$500 to serve as security for such judgment.

**History:** 1971 c 952 s 6; 1986 c 444

#### **116B.07 RELIEF.**

The court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction. When the court grants temporary equitable relief, it may require the plaintiff to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

**History:** 1971 c 952 s 7

#### **116B.08 REMITTITUR.**

Subdivision 1. If administrative, licensing, or other similar proceedings are required to determine the legality of the defendants' conduct, the court shall remit the parties to such

proceedings. If administrative, licensing, or other similar proceedings are available to determine the legality of the defendants' conduct, the court may remit the parties to such proceedings. In so remitting the parties the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land or other natural resources located within the state. In so remitting the parties the court shall retain jurisdiction of the cause pending completion thereof.

Subd. 2. Upon completion of such proceedings, the court shall adjudicate the impact of the defendants' conduct, program, or product on the air, water, land, or other natural resources located within the state in accordance with the preceding sections 116B.02 to 116B.07. In such adjudication, the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in sections 116B.01 to 116B.13.

Subd. 3. Where, as to any such administrative, licensing, or other similar proceedings referred to above, judicial review thereof is available, notwithstanding any other provisions of law to the contrary, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Subd. 4. Nothing in this section shall be applicable to any action maintained under section 116B.10 or to any appropriate administrative proceeding required thereunder.

**History:** 1971 c 952 s 8.

### 116B.09 INTERVENTION; JUDICIAL REVIEW.

Subdivision 1. Except as otherwise provided in section 116B.10, in any administrative, licensing, or other similar proceeding, and in any action for judicial review thereof which is made available by law, any natural person residing within the state, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.

Subd. 2. In any such administrative, licensing, or other similar proceedings, the agency shall consider the alleged impairment, pollution, or destruction of the air, water, land, or other natural resources located within the state and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

Subd. 3. In any action for judicial review of any administrative, licensing, or other similar proceeding as described in subdivision 1, the court shall, in addition to any other duties imposed upon it by law, grant review of claims that the conduct caused, or is likely to cause pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state, and in granting such review it shall act in accordance with the provisions of sections 116B.01 to 116B.13 and the Administrative Procedure Act.

**History:** 1971 c 952 s 9

### 116B.10 REVIEWAL OF STATE ACTIONS.

Subdivision 1. **Civil actions.** As hereinafter provided in this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other legal entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief against the state or any agency or instrumentality thereof where the nature of the action is a challenge to an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the state or any agency or instrumentality thereof for which the applicable statutory appeal period has elapsed.

Subd. 2. **Burden of proof.** In any action maintained under this section the plaintiff shall have the burden of proving that the environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit is inadequate to protect the air, water, land, or other natural resources located within the state from pollution, impairment, or destruction. The plaintiff shall have the burden of proving the existence of material evidence showing said inadequacy of said environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit.

Subd. 3. **Remittitur; judicial review.** In any action maintained under this section the district court, upon a prima facie showing by the plaintiff of those matters specified in subdivision 2, shall remit the parties to the state agency or instrumentality that promulgated the environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit which is the subject of the action, requiring said agency or instrumentality to institute the appropriate administrative proceedings to consider and make findings and an order on those matters specified in subdivision 2. In so remitting the parties, the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land, or other natural resources located within the state. In so remitting the parties, the court shall retain jurisdiction for purposes of judicial review to determine whether the order of the agency is supported by the preponderance of the evidence. If plaintiff fails to establish said prima facie showing, the court shall dismiss the action and award such costs and disbursements as the court deems appropriate.

Subd. 4. **Intervention.** In any action maintained under this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party, provided that said person makes timely application to the district court prior to the court's remittance of the action as specified in subdivision 3.

Subd. 5. **Venue.** Any action maintained under this section shall be brought in the county in which is located the principal office of the state agency or instrumentality that promulgated the rule, standard, order or permit which is the subject of the action.

**History:** 1971 c 952 s 10; 1985 c 248 s 70

### 116B.11 JURISDICTION; SERVING PROCESS.

Subdivision 1. As to any cause of action arising under sections 116B.01 to 116B.13, the district court may exercise personal jurisdiction over any foreign corporation or any nonresident individual in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:

- (a) Commits or threatens to commit any act in the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or
- (b) Commits or threatens to commit any act outside the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or
- (c) Engages in any other of the activities specified in section 543.19.

Subd. 2. The service of process on any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state with the same effect as though the summons had been personally served within this state.

Subd. 3. Only causes of action arising from acts enumerated or referenced in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

Subd. 4. Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereafter provided by law or the Minnesota rules of civil procedure.

**History:** 1971 c 952 s 11; 1986 c 444