

## CHAPTER 116

## POLLUTION CONTROL AGENCY

|          |                                       |        |                              |
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**116.011 ANNUAL POLLUTION REPORT.**

A goal of the pollution control agency is to reduce the amount of pollution that is emitted in the state. By April 1 of each year, the pollution control agency shall report the best estimate of the agency of the total volume of water and air pollution that was emitted in the state in the previous calendar year for which data are available. The agency shall report its findings for both water and air pollution:

(1) in gross amounts, including the percentage increase or decrease over the previous calendar year; and

(2) in a manner which will demonstrate the magnitude of the various sources of water and air pollution.

**History:** 2001 c 187 s 3.

**116.07 POWERS AND DUTIES.**

*[For text of subd 1, see M.S.2000]*

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

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

conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

The pollution control agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level, which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards shall give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the pollution control agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state; and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the pollution control agency.

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

A person who generates less than 100 kilograms of hazardous waste per month is exempt from the following agency hazardous waste rules:

- (1) rules relating to transportation, manifesting, storage, and labeling for photographic fixer and X-ray negative wastes that are hazardous solely because of silver content; and
- (2) any rule requiring the generator to send to the agency or commissioner a copy of each manifest for the transportation of hazardous waste for off-site treatment, storage, or disposal, except that counties within the metropolitan area may require generators to provide manifests.

Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

*[For text of subds 2a to 4b, see M.S.2000]*

Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of reviewing and acting upon applications for agency permits and implementing and enforcing the conditions of the

permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The fee schedule must reflect reasonable and routine permitting, implementation, and enforcement costs. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the environmental fund.

(b) Notwithstanding paragraph (a), and section 16A.1285, subdivision 2, the agency shall collect an annual fee from the owner or operator of all stationary sources, emission facilities, emissions units, air contaminant treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage facilities subject to the requirement to obtain a permit under subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or section 116.081. The annual fee shall be used to pay for all direct and indirect reasonable costs, including attorney general costs, required to develop and administer the permit program requirements of subchapter V of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., and sections of this chapter and the rules adopted under this chapter related to air contamination and noise. Those costs include the reasonable costs of reviewing and acting upon an application for a permit; implementing and enforcing statutes, rules, and the terms and conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally applicable regulations; responding to federal guidance; modeling, analyses, and demonstrations; preparing inventories and tracking emissions; and providing information to the public about these activities.

(c) The agency shall set fees that:

(1) will result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than \$25 per ton of each volatile organic compound; pollutant regulated under United States Code, title 42, section 7411 or 7412 (section 111 or 112 of the federal Clean Air Act); and each pollutant, except carbon monoxide, for which a national primary ambient air quality standard has been promulgated;

(2) may result in the collection, in the aggregate, from the sources listed in paragraph (b), of an amount not less than \$25 per ton of each pollutant not listed in clause (1) that is regulated under this chapter or air quality rules adopted under this chapter; and

(3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount needed to match grant funds received by the state under United States Code, title 42, section 7405 (section 105 of the federal Clean Air Act).

The agency must not include in the calculation of the aggregate amount to be collected under clauses (1) and (2) any amount in excess of 4,000 tons per year of each air pollutant from a source. The increase in air permit fees to match federal grant funds shall be a surcharge on existing fees. The commissioner may not collect the surcharge after the grant funds become unavailable. In addition, the commissioner shall use nonfee funds to the extent practical to match the grant funds so that the fee surcharge is minimized.

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

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

(f) Persons who wish to construct or expand a facility may offer to reimburse the agency for the costs of staff overtime or consultant services needed to expedite permit review. The reimbursement shall be in addition to fees imposed by law or rule. When the agency determines that it needs additional resources to review the permit application in an expedited manner, and that expediting the review would not disrupt permitting program priorities, the agency may accept the reimbursement. Reimbursements accepted by the agency are appropriated to the agency for the purpose of reviewing the permit application. Reimbursement by a permit applicant shall precede and not be contingent upon issuance of a permit and shall not affect the agency's decision on whether to issue or deny a permit, what conditions are included in a permit, or the application of state and federal statutes and rules governing permit determinations.

*[For text of subds 4e to 7c, see M.S.2000]*

Subd. 7d. **Exemption.** Notwithstanding subdivision 7 or Minnesota Rules, chapter 7020, to the contrary, and notwithstanding the proximity to public or private waters, an owner or resident of agricultural land on which livestock have been allowed to pasture as defined by Minnesota Rules, chapter 7020, at any time during the ten-year period beginning January 1, 1990, is permanently exempt from requirements related to feedlot or manure management on that land for so long as the property remains in pasture.

*[For text of subds 8 to 11, see M.S.2000]*

Subd. 12. **Fire training ash disposal.** The ash from a legitimate fire training exercise involving the live burning of a structure is classified as demolition debris and may be disposed in any permit-by-rule land disposal facility authorized under agency rules or any permitted demolition land disposal facility, with the consent of the disposal facility operator, if a person certified by a Minnesota state college or university fire safety center certifies in writing in advance to the commissioner that the structure has been adequately prepared for such a training exercise, taking into account all applicable safety concerns and regulations, including pollution control agency guidelines regarding the removal of hazardous materials from training-burn structures before the training event.

**History:** 2001 c 67 s 1; 2001 c 116 s 1; 2001 c 128 s 1; 1Sp2001 c 2 s 137

#### **116.0711 FEEDLOT PERMIT CONDITIONS.**

(a) The agency shall not require feedlot permittees to maintain records as to rainfall or snowfall as a condition of a general feedlot permit if the owner directs the commissioner or agent of the commissioner to appropriate data on precipitation maintained by a government agency or educational institution.

(b) A feedlot permittee shall give notice to the agency when the permittee proposes to transfer ownership or control of the feedlot to a new party. The commissioner shall not unreasonably withhold or unreasonably delay approval of any transfer request. This request shall be handled in accordance with sections 116.07 and 15.992.

(c) The environmental quality board shall review and recommend modifications to environmental review rules related to phased actions and animal agriculture facilities. The environmental quality board shall report recommendations to the chairs of the committees of the senate and house of representatives with jurisdiction over agriculture and the environment by January 15, 2002.

(d) If the owner of an animal feedlot requests an extension for an application for a National Pollutant Discharge Elimination permit or state disposal system permit by June 1, 2001, then the agency shall grant an extension for the application to September 1, 2001.

(c) An animal feedlot in shoreland that has been unused may resume operation after obtaining a permit from the agency or county, regardless of the number of years that the feedlot was unused.

**History:** 2001 c 128 s 2

#### 116.0712 MODIFIED LEVEL ONE FEEDLOT INVENTORY.

(a) Except as provided in paragraph (b), a delegated county that has completed a modified level 1 inventory that includes facility location, approximate number of animal units, and whether the facility is an open lot or confinement operation, may report that information to the agency in aggregate. A feedlot that is included in an inventory meeting these criteria has satisfied registration requirements under agency rule.

(b) A county must submit to the agency the complete registration information for a feedlot having 1,000 animal units or greater or a feedlot meeting the definition of a concentrated animal feeding operation as defined in Code of Federal Regulations, title 40, section 122.23.

**History:** 2001 c 128 s 3

116.67 [Repealed, 1Sp2001 c 2 s 162]

#### 116.70 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 116.731 to 116.734.

Subd. 2. [Repealed, 1Sp2001 c 2 s 162]

*[For text of subd 3, see M.S.2000]*

Subd. 3a. [Repealed, 1Sp2001 c 2 s 162]

Subd. 4. [Repealed, 1Sp2001 c 2 s 162]

**History:** 1Sp2001 c 2 s 138

116.71 [Repealed, 1Sp2001 c 2 s 162]

116.72 [Repealed, 1Sp2001 c 2 s 162]

116.73 [Repealed, 1Sp2001 c 2 s 162]

116.74 [Repealed, 1Sp2001 c 2 s 162]

#### 116.92 MERCURY EMISSIONS REDUCTION.

*[For text of subs 1 to 5a, see M.S.2000]*

Subd. 6. **Mercury thermometers prohibited.** (a) A manufacturer, wholesaler, or retailer may not sell or distribute at no cost a thermometer containing mercury that was manufactured after June 1, 2001.

(b) Paragraph (a) does not apply to:

(1) an electronic thermometer with a battery containing mercury if the battery is in compliance with section 325E.125;

(2) a mercury thermometer used for food research and development or food processing, including meat, dairy products, and pet food processing;

(3) a mercury thermometer that is a component of an animal agriculture climate control system or industrial measurement system until such time as the system is replaced or a nonmercury component for the system is available; or

(4) a mercury thermometer used for calibration of other thermometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the National Institute of Standards and Technology.

*[For text of subd 7, see M.S.2000]*

Subd. 8. **Ban; toys, games, and apparel.** A person may not sell for resale or at retail in this state a toy or game that contains mercury, or an item of clothing or wearing apparel that is exempt from sales tax under section 297A.67, subdivision 8, that contains an electric switch that contains mercury.

*[For text of subds 8a and 9, see M.S.2000]*

**History:** 2000 c 418 art 1 s 44; 2001 c 47 s 1