CHAPTER 114C

ENVIRONMENTAL REGULATORY INNOVATIONS

POLICY

114C.01 POLICY.
114C.02 DEFINITIONS.

MINNESOTA XL PROJECT

114C.10 ESTABLISHING MINNESOTA XL PERMIT PROJECT.
114C.11 MINNESOTA XL PERMITS.
114C.12 PROCEDURE TO ISSUE, AMEND, AND REVOKE.
114C.13 FEES.
114C.14 ENFORCEMENT AND JUDICIAL REVIEW.

VARIANCES

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

ENVIRONMENTAL AUDIT PILOT PROGRAM

114C.20 ENVIRONMENTAL IMPROVEMENT PROGRAM.
114C.21 DEFINITIONS.
114C.22 AUDITS.
114C.23 REVIEW OF PERFORMANCE SCHEDULES.
114C.24 ENFORCEMENT.
114C.25 GREEN STAR AWARD.
114C.26 ACCESS TO DOCUMENTS.
114C.27 NO EFFECT ON OTHER RIGHTS.
114C.28 REPORTING REQUIRED BY LAW.
114C.40 VOLUNTARY SELF-REPORTING OF MINOR VIOLATIONS.

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;

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(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 ESTABLISHING 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.

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(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 issuing.** 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;

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(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 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 other law.** 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 PROCEDURE TO ISSUE, AMEND, AND REVOKE.

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

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(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, record keeping, 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

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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.

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(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, record-keeping, or reporting requirements will provide the information needed by the agency to ensure compliance.

History: *1996 c 437 s 8*

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ENVIRONMENTAL AUDIT PILOT PROGRAM

114C.20 ENVIRONMENTAL IMPROVEMENT PROGRAM.

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

History: *1995 c 168 s 8; 1996 c 437 s 24; 1999 c 158 s 1; 2000 c 260 s 94*

114C.21 DEFINITIONS.

Subdivision 1. **Applicability.** As used in sections 114C.20 to 114C.28, the terms defined in this section have the meanings given.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 2a. **Environmental management system.** "Environmental management system" means a documented, systematic procedure or practice that reflects the regulated entity's due diligence in preventing, detecting, and correcting violations of environmental requirements. Due diligence encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect, and correct violations of environmental requirements and must be consistent with any criteria used by the United States Environmental Protection Agency to define due diligence in federal audit policies or regulations.

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 regulated entity may use an evaluation form developed by the regulated entity, prepared by a consultant, or prescribed or approved by the commissioner. 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

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Act, United States Code, title 42, section 6925; or a major source as defined in Minnesota Rules, parts 7007.0100, subpart 13, and 7007.0200, subpart 2.

Subd. 9. [Repealed, 1999 c 158 s 15]

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

Subd. 10a. **Regulated material.** "Regulated material" means the chemicals, wastes, or substances generated or released by a facility that make the facility subject to an environmental requirement.

Subd. 11. [Repealed, 1999 c 158 s 15]

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; 1999 c 158 s 2-5; 2000 c 260 s 94; 2001 c 187 s 1*

114C.22 AUDITS.

Subdivision 1. **Qualifications to participate.** For a facility to qualify for participation in the environmental improvement program, more than two years 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 submit findings from the facility's environmental management system;

(2) for a major facility, prepare an environmental audit program pollution prevention plan in accordance with subdivision 3;

(3) for a facility that is not a major facility, examine steps that could be taken to eliminate or reduce the generation or release of regulated materials 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 findings from the facility's environmental management system. 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, including a certification that the facility's environmental management system meets the requirements of section 114C.21, subdivision 2a, if the report contains findings from the facility's environmental management system;

(2) a disclosure of all violations of environmental requirements that were identified in the environmental audit or by the facility's environmental management system 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;

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(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.

Subd. 3. **Environmental audit program; pollution prevention plan.** (a) An environmental audit program pollution prevention plan must establish a program identifying the specific technically and economically practicable steps that could be taken to eliminate or reduce the generation or release of regulated materials.

(b) Each environmental audit program pollution prevention plan must include:

(1) a policy statement articulating upper management support for eliminating or reducing the generation or release of regulated materials at the facility;

(2) a description of the current processes generating or releasing regulated materials that specifically describes the types, sources, and quantities of regulated materials currently being generated or released by the facility;

(3) a description of the current and past practices used to eliminate or reduce the generation or release of regulated materials at the facility and an evaluation of the effectiveness of these practices;

(4) an assessment of technically and economically practicable options available to eliminate or reduce the generation or release of regulated materials at the facility, including options such as changing the raw materials, operating techniques, equipment and technology, personnel training, and other practices used at the facility. The assessment may include a cost-benefit analysis of the available options;

(5) a statement of objectives based on the assessment in clause (4) and a schedule for achieving those objectives. Wherever technically and economically practicable, the objectives for eliminating or reducing the generation or release of each regulated material at the facility must be expressed in numeric terms based on a specified base year that is no earlier than 1987. Otherwise, the objectives must include a clearly stated list of actions designed to lead to the establishment of numeric objectives as soon as practicable;

(6) an explanation of the rationale and environmental benefit for each objective established for the facility;

(7) a listing of options that were considered not to be economically and technically practicable; and

(8) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting to the accuracy of the information in the plan.

(c) A summary containing the information described in paragraph (b), clause (5), must be submitted with the facility's initial environmental audit report. Subsequent environmental audit reports, submitted more than one year after the initial submittal, must include a progress report which describes the success in meeting the objectives included in the summary. After the first submission of the facility's progress report, progress reports are required only if at least one year has elapsed since the previous submission of a progress report.

History: *1995 c 168 s 10; 1996 c 437 s 24; 1999 c 158 s 6; 2000 c 260 s 94*

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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; 2000 c 260 s 94*

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 by the environmental management system 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 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) the owner or operator discloses a violation in the audit report required under section 114C.22, which (A) was part of an enforcement action initiated in the previous three years involving the imposition of a monetary penalty, or (B) occurred within one year after resolution of an enforcement action which did not include the imposition of a monetary penalty;

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(ii) the owner or operator discloses a violation in the audit report required under section 114C.22 which was also disclosed in a previous audit report submitted within the last year;

(iii) a violation caused serious harm to, or presents an imminent and substantial endangerment to, human health or the environment;

(iv) a violation is of the specific terms of an administrative order, a judicial order or consent decree, a stipulation agreement, or a schedule of compliance;

(v) a violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors; or

(vi) a violation is identified through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement; or

(3) an enforcement action against the owner or operator of a facility to enjoin an imminent and substantial danger under section 116.11.

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 program or the environmental management system, 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 program or the environmental management system; and

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

Subd. 5. **Violations discovered by state.** Nothing in sections 114C.20 to 114C.28 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; 1999 c 158 s 7-10; 2000 c 260 s 94; 2001 c 187 s 2*

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114C.25 GREEN STAR AWARD.

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

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

(2) the scope of the regulated entity's audit examines the facility's compliance with applicable environmental requirements;

(3) the regulated entity certifies that all violations that were identified in the audit 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; and

(4) at least two years have elapsed since the final resolution of an enforcement action involving the regulated entity.

(b) After consulting with each other, however, the commissioner or the county may issue an award if the enforcement action resulted from minor violations. If the regulated entity is located in a metropolitan county, the commissioner and the county must also consult with the Metropolitan Council before issuing a green star award.

(c) The award 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. A facility submitting findings from its environmental management system is not eligible to receive an award unless the findings are part of an audit which examines the facility's compliance with applicable environmental requirements.

History: *1995 c 168 s 14; 1996 c 437 s 24; 1999 c 158 s 11; 2000 c 260 s 94*

114C.26 ACCESS TO DOCUMENTS.

Subdivision 1. **Public access.** (a) After receipt by the commissioner of a report that complies with section 114C.22, subdivision 2, the state may not request, inspect, or seize a final audit report, draft audit papers, the notes or papers prepared by the auditor or the person conducting the audit, or the internal documents of a regulated entity establishing, coordinating, or responding to the audit, other than the report required in section 114C.22, subdivision 2, provided that the regulated entity is in compliance with its commitments under sections 114C.22 and 114C.23.

(b) This subdivision does not restrict the ability of the state to seek monitoring, testing, or sampling data, or information about the location or nature of spills, releases, or threatened releases related to a suspected violation even if the information is contained in an audit report, draft audit papers, or other document protected under this subdivision.

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, any notes or papers prepared by the auditor or by the person conducting the audit, and the internal documents of a regulated entity establishing, coordinating, or responding to the audit 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

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confidentiality that exists, under current or developing common or statutory law, with respect to any other documents relating to an environmental audit.

Subd. 4. **Exceptions.** Nothing in this section or any policy or rule adopted by the agency on environmental auditing shall limit the ability of:

(1) the state to seek any information that the state deems necessary to investigate, prevent, or respond to a situation that presents an imminent and substantial endangerment to human health or the environment;

(2) the state to seek any information the state deems necessary to respond to a continuing violation of any environmental requirement;

(3) the state to seek information as part of a criminal investigation; or

(4) the federal government to seek any information it is authorized to obtain under federal law.

History: *1995 c 168 s 15; 1996 c 437 s 24; 1999 c 158 s 12; 2000 c 260 s 94*

114C.27 NO EFFECT ON OTHER RIGHTS.

Sections 114C.20 to 114C.28 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 program; or

(2) rights of other persons relative to the matters addressed by the environmental improvement program.

History: *1995 c 168 s 16; 1996 c 437 s 24; 1999 c 158 s 13; 2000 c 260 s 94*

114C.28 REPORTING REQUIRED BY LAW.

Nothing in sections 114C.20 to 114C.28 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; 1999 c 158 s 14; 2000 c 260 s 94*

114C.29 [Repealed, 1999 c 158 s 15]

114C.30 [Repealed, 1999 c 158 s 15]

114C.31 [Repealed, 1999 c 158 s 15]

114C.40 VOLUNTARY SELF-REPORTING OF MINOR VIOLATIONS.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given.

(b) "Commissioner" means the commissioner of the Pollution Control Agency.

(c) "Environmental requirement" means a requirement in 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.

(d) "Regulated entity" means a public or private organization or individual that is subject to environmental requirements.

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Subd. 2. **Enforcement delay.** Except for violations determined by the commissioner under subdivision 4, the commissioner must defer for 60 calendar days enforcement of an environmental requirement against a regulated entity if:

(1) violation of the environmental requirement was first identified by the regulated entity or an employee of or person contracted by the regulated entity;

(2) the regulated entity notified the commissioner, through electronic submission or in writing, that a violation has occurred within two business days of the violation coming to the regulated entity's attention. The commissioner must contact the regulated entity within seven business days of receipt of the notification to schedule a consultation to discuss the nature of the violation. During the consultation, the regulated entity and the commissioner must develop a plan and mutually agreed upon timeframe for the regulated entity to return to compliance. The regulated entity must submit, through electronic submission or in writing, the agreed upon plan within seven business days of the consultation. The regulated entity must return to compliance within 60 calendar days following the date of the consultation unless a different timeframe was agreed upon during the consultation; and

(3) the regulated entity has not been cited for noncompliance under subdivision 4 by the agency within the past two years from the date of the notification under clause (2).

Subd. 3. **Penalties waived.** The commissioner must not impose or bring an action for any administrative, civil, or criminal penalties against a regulated entity if the regulated entity complies with subdivision 2.

Subd. 4. **Exceptions.** Notwithstanding subdivisions 2 and 3, the commissioner may, at any time, bring:

(1) a criminal enforcement action against any person who 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 regulated entity if:

(i) a violation caused or had potential to cause serious harm to human health or the environment;

(ii) a violation is of the specific terms of an administrative order, a judicial order or consent decree, a stipulation agreement, or a schedule of compliance;

(iii) a violation has resulted in economic benefit which gives the regulated entity a clear advantage over its business competitors; or

(iv) a violation is identified through a monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, consent decree, stipulation agreement, or schedule of compliance; or

(3) an enforcement action against a regulated entity to enjoin an imminent and substantial danger under section 116.11.

Subd. 5. **Reporting required by law.** Nothing in this section 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: *1Sp2015 c 4 art 4 s 99*

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