

AN ACT

1.2 relating to the environment; providing for an
1.3 environmental permitting project; providing penalties;
1.4 amending Minnesota Statutes 1994, sections 115.03,
1.5 subdivisions 1 and 2; 115.04; 115.071, subdivisions 1,
1.6 2, 3, 4, and 5; 115.072; 115.075; 115.076, subdivision
1.7 1; 116.07, subdivision 9; and 116.091, subdivisions 1
1.8 and 3; Minnesota Statutes 1995 Supplement, section
1.9 116.072, subdivision 1; proposing coding for new law
1.10 as Minnesota Statutes, chapter 114C.

1.11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**
1.12 **ENVIRONMENTAL REGULATORY INNOVATIONS ACT**

1.13 **Section 1. [114C.01] [POLICY.]**

1.14 The legislature recognizes that Minnesota's existing
1.15 environmental laws play a critical role in protecting the
1.16 environment. However, the legislature finds that environmental
1.17 protection could be further enhanced by authorizing innovative
1.18 advances in environmental regulatory methods. It is the policy
1.19 of the legislature that Minnesota should develop environmental
1.20 regulatory methods that:
1.21 (1) encourage facility owners and operators to assess the
1.22 pollution they emit or cause, directly and indirectly, to the
1.23 air, water, and land;
1.24 (2) encourage facility owners and operators to innovate,
1.25 set measurable and verifiable goals, and implement the most
1.26 effective pollution prevention, source reduction, or other
1.27 pollution reduction strategies for their particular facilities,
1.28 while complying with verifiable and enforceable pollution

- 2.1 limits:
- 2.2 (3) encourage superior environmental performance and
- 2.3 continuous improvement toward sustainable levels of resource
- 2.4 usage and minimization of pollution discharges:
- 2.5 (4) reward facility owners and operators that reduce
- 2.6 pollution to levels below what is required by applicable law;
- 2.7 (5) consolidate into one permit environmental requirements
- 2.8 that are currently included in different permits, sometimes
- 2.9 issued by different state or local agencies;
- 2.10 (6) reduce the time and money spent by agencies and
- 2.11 facility owners and operators on paperwork and other
- 2.12 administrative tasks that do not benefit the environment;
- 2.13 (7) increase public participation and encourage stakeholder
- 2.14 consensus in the development of innovative environmental
- 2.15 regulatory methods and in monitoring the environmental
- 2.16 performance of projects under this chapter;
- 2.17 (8) encourage groups of facilities and communities to work
- 2.18 together to reduce pollution to levels below what is required by
- 2.19 applicable law;
- 2.20 (9) provide reasonable technical assistance to facilitate
- 2.21 meaningful stakeholder participation; and
- 2.22 (10) increase levels of trust and communication among
- 2.23 agencies, regulated parties, and the public.
- 2.24 **Sec. 2. [114C.02] [DEFINITIONS.]**
- 2.25 **Subdivision 1.** [SCOPE.] For the purposes of this chapter,
- 2.26 the definitions in this section have the meanings given them.
- 2.27 **Subd. 2.** [POLLUTION PREVENTION.] "Pollution prevention"
- 2.28 has the meaning given in section 115D.03.
- 2.29 **Subd. 3.** [SOURCE REDUCTION.] "Source reduction" has the
- 2.30 meaning given in section 115A.03.
- 2.31 **Subd. 4.** [STAKEHOLDERS.] "Stakeholders" means citizens in
- 2.32 the communities near the project site, facility workers,
- 2.33 government representatives, business groups, educational groups,
- 2.34 environmental groups, or other Minnesota citizens or public
- 2.35 interest groups.
- 2.36 **Subd. 5.** [STATE OR LOCAL AGENCY.] "State or local agency"

3.1 means any agency, department, board, bureau, office or other
3.2 instrumentality of the state, any political subdivision of the
3.3 state, any public corporation, any municipality, and any other
3.4 local unit of government.</u>

3.5 **PERMIT PROJECT**

3.6 **Sec. 3. [114C.10] [ESTABLISHMENT OF MINNESOTA XL PERMIT**
3.7 **PROJECT.]**

3.8 **Subdivision 1.** [PROJECT.] The pollution control agency is
3.9 authorized to establish and implement a permit project under
3.10 sections 114C.10 to 114C.14. The purpose of the project is to
3.11 work toward the policy goals listed in section 114C.01 by
3.12 issuing and studying the effect of permits that require
3.13 permittees to reduce overall levels of pollution below what is
3.14 required by applicable law, but which grant greater operational
3.15 flexibility than current law would otherwise allow. Permits
3.16 issued under this project shall be called Minnesota XL permits.

3.17 **Subd. 2.** [REPORT TO LEGISLATURE.] By January 15, 1998, the
3.18 commissioner of the pollution control agency shall report to the
3.19 legislature on implementation of the project, the environmental
3.20 results of the project, and recommendations for future
3.21 legislation to further the policy of this chapter.

3.22 **Sec. 4. [114C.11] [MINNESOTA XL PERMITS.]**

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

3.34 (b) The prospective permittees must be regulated by the
3.35 agency under chapter 115, chapter 116, or both, and voluntarily
3.36 submit a proposal for a Minnesota XL permit. The proposal must

4.1 address the major pollution impact from the facility or
4.2 facilities included in the proposal.
4.3 (c) If, in the course of preparing a Minnesota XL permit
4.4 for a prospective permittee, the commissioner concludes that the
4.5 Minnesota XL permit will not sufficiently promote the policy of
4.6 section 114C.01 or meet the issuance criteria in this section,
4.7 the commissioner may remove the prospective permittee from the
4.8 project. In that event, the commissioner shall provide the
4.9 prospective permittee with a reasonable amount of time to obtain
4.10 alternative permits made necessary by removal from the project.
4.11 **Subd. 2.** [MINIMUM CRITERIA FOR MINNESOTA XL PERMIT
4.12 ISSUANCE.] The pollution control agency may issue and amend a
4.13 Minnesota XL permit if the agency finds that the following
4.14 minimum criteria are met:
4.15 (1) the permit will facilitate pollution prevention and
4.16 source reduction activities by the facility and result in
4.17 significantly lower overall levels of pollution from the
4.18 facility, its customers, or suppliers than would otherwise be
4.19 required by applicable laws, without: (i) increasing the
4.20 negative impact on the environment, the local community, or
4.21 worker health and safety; or (ii) transferring pollution impacts
4.22 into the product;
4.23 (2) the pollution prevention, source reduction, or other
4.24 pollution reduction goals are verifiable;
4.25 (3) the pollution limits contained in the permit are
4.26 verifiable and enforceable;
4.27 (4) the stakeholder group has been involved through a
4.28 decision-making process that seeks consensus in the design of
4.29 the permit and will have the opportunity for continued
4.30 involvement in the implementation and evaluation of it;
4.31 (5) the permittee agrees to make available information that
4.32 it gives the agency about the XL project, except information
4.33 that is nonpublic under chapter 13 or confidential under section
4.34 116.075, to the stakeholder group in a format that is easily
4.35 understood;
4.36 (6) the permittee agrees to provide an assessment of the

5.1 success of the project in reducing the time and money spent at
5.2 the facility on paperwork and other administrative tasks that do
5.3 not directly benefit the environment;
5.4 (7) the permittee, the pollution control agency, and other
5.5 state and local agencies are likely to expend less time and
5.6 resources over the long term to administer the Minnesota XL
5.7 permit than other types of permits; and
5.8 (8) the project is not inconsistent with the federal
5.9 government's Project XL guidance or any federal laws governing
5.10 the Project XL program.
5.11 **Subd. 3.** [ADDITIONAL CRITERIA.] In addition to the minimum
5.12 criteria in subdivision 2, the commissioner in selecting
5.13 participants and the agency in issuing or amending a Minnesota
5.14 XL permit, must find that the permit meets one or more of the
5.15 following criteria:
5.16 (1) the permit allows the facility owner or operator as
5.17 much operational flexibility as can be reasonably provided
5.18 consistent with the need to achieve the anticipated pollution
5.19 reduction and ensure the verifiability and enforceability of the
5.20 permit's pollution limits;
5.21 (2) the permit provides facility-wide pollution limits
5.22 where practical, verifiable, and enforceable;
5.23 (3) the permit regulates air, water, and land pollution
5.24 effects, direct and indirect;
5.25 (4) the permit encourages pollution prevention or source
5.26 reduction;
5.27 (5) the permit encourages innovation in the design,
5.28 production, distribution, use, reuse, recycling, or disposal of
5.29 a product such that air, water, and land pollution impacts are
5.30 minimized over the life cycle of a product;
5.31 (6) the permit reduces the emission of nontoxic pollutants
5.32 regulated under applicable law;
5.33 (7) the permit reduces indoor chemical exposure, water use,
5.34 or energy use;
5.35 (8) the permit minimizes transfer, direct and indirect, of
5.36 pollution between the air, water, and land;

6.1 (9) the regulatory techniques employed in the permit have
6.2 potential application to other permittees;
6.3 (10) the permittee agrees to measure and demonstrate the
6.4 success of the Minnesota XL permit in addition to the assessment
6.5 in subdivision 2, clause (6), such as tracking pollution
6.6 prevention incentives and initiatives or using surveys to
6.7 measure any attitudinal changes by facility personnel or the
6.8 public;
6.9 (11) the permit is multiagency, under subdivision 4.
6.10 **Subd. 4.** [MULTIAGENCY MINNESOTA XL PERMITS.] The pollution
6.11 control agency may include or vary in a Minnesota XL permit the
6.12 related requirements of other state or local agencies, if the
6.13 pollution control agency, the prospective permittee, and the
6.14 other state or local agency find that it is reasonable to do
6.15 so. Notwithstanding conflicting procedural requirements, the
6.16 other agencies may exercise their related permitting, licensing,
6.17 or other approval responsibilities by including their
6.18 requirements in the Minnesota XL permit. The pollution control
6.19 agency may not include or vary the related requirements of other
6.20 state or local agencies in a Minnesota XL permit unless the
6.21 other agencies agree to sign the permit. The Minnesota XL
6.22 permit shall identify any requirement, the source of which is
6.23 not the pollution control agency, and identify the source
6.24 agency. The commissioner of the pollution control agency and
6.25 the other agencies may agree to share inspection or other
6.26 responsibilities related to the Minnesota XL permit. For
6.27 purposes of this subdivision, requirements are related if they
6.28 have a direct or indirect bearing on environmental protection or
6.29 indoor chemical exposure.
6.30 **Subd. 5.** [ENVIRONMENTAL POLICY ACT.] Sections 114C.10 to
6.31 114C.14 do not supersede the requirements of chapter 116D and
6.32 the rules adopted under it.
6.33 **Subd. 6.** [PLANS AND PROGRESS REPORTS UNDER CHAPTERS 115D
6.34 AND 115E.] A permittee complies with the plan content and timing
6.35 requirements of sections 115D.07, 115E.04, and 115E.045 if the
6.36 Minnesota XL permit requires the permittee to include in an

7.1 overall environmental management plan satisfactory alternative
7.2 information. A permittee complies with the progress report
7.3 content and timing requirements of section 115D.08 if the
7.4 Minnesota XL permit requires the permittee to include in its
7.5 overall reporting requirements satisfactory alternative
7.6 information, and specifies a schedule for submitting the
7.7 information.

7.8 **Sec. 5.** [114C.12] [ISSUANCE, AMENDMENT, AND REVOCATION
7.9 **PROCEDURE.]**

7.10 **Subdivision 1.** [STAKEHOLDER GROUP.] The commissioner of
7.11 the pollution control agency shall:

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

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

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

7.21 **Subd. 2.** [UNIFIED PERMIT ACTION AND VARIANCE
7.22 **PROCEDURE.]** The pollution control agency may issue, amend, or
7.23 revoke Minnesota XL permits using the single permit and variance
7.24 procedure in subdivision 4, notwithstanding conflicting state or
7.25 local procedural requirements. If a Minnesota XL permit
7.26 includes variances from applicable state rules or local
7.27 ordinances or local regulations, the issuance or amendment of
7.28 the permit constitutes adoption of a variance to such state
7.29 rules or local ordinances or local regulations if the Minnesota
7.30 XL permit identifies, in general terms, any state rules or local
7.31 ordinances or local regulations being varied.

7.32 **Subd. 3.** [VARIANCE STANDARDS.] Although subdivision 2
7.33 establishes the procedure for granting variances in a Minnesota
7.34 XL permit, the agency in deciding whether to grant a variance
7.35 must apply the substantive standards for granting a variance
7.36 applicable to the state rule, local ordinance, or local

8.1 regulation being varied or find that the variance either:
8.2 (1) promotes reduction in overall levels of pollution
8.3 beyond what is required by applicable law, consistent with the
8.4 purposes of this chapter; or
8.5 (2) reduces the administrative burden on state or local
8.6 agencies or the permittee, provided that alternative monitoring,
8.7 testing, notification, recordkeeping, or reporting requirements
8.8 will provide the information needed by the state or local agency
8.9 to ensure compliance.
8.10 **Subd. 4.** [PROCEDURE.] (a) The pollution control agency
8.11 must provide at least 30 days for public comment on the agency's
8.12 proposed issuance, amendment, or revocation of a Minnesota XL
8.13 permit. Before the start of the public comment period, the
8.14 commissioner of the pollution control agency must prepare a
8.15 draft permit, permit amendment, or notice of permit revocation
8.16 and a fact sheet that:
8.17 (1) briefly describes the principal facts and the
8.18 significant factual, legal, methodological, and policy questions
8.19 considered by the commissioner and the commissioner's proposed
8.20 determination;
8.21 (2) briefly describes how the permit action proposed by the
8.22 commissioner meets the criteria of section 114C.11 and furthers
8.23 the policy of section 114C.01; and
8.24 (3) identifies any rules that would be varied by the
8.25 commissioner's proposed permit action.
8.26 (b) The commissioner shall prepare a public notice of the
8.27 proposed permit action that:
8.28 (1) briefly describes the facility or activity that is the
8.29 subject of the proposed permit action;
8.30 (2) states the commissioner's proposed permit action and
8.31 whether it includes a variance of any state rules or local
8.32 ordinances or local regulations;
8.33 (3) identifies an agency person to contact for additional
8.34 information;
8.35 (4) states that the draft permit, permit amendment, or
8.36 notice of revocation and the fact sheet are available upon

9.1 request;

9.2 (5) states that comments may be submitted to the agency by

9.3 the public during the comment period; and

9.4 (6) describes the procedures that the agency will use to

9.5 make a final decision, including how persons may request public

9.6 informational meetings, contested case hearings, and appearances

9.7 at public meetings of the agency. The agency or the

9.8 commissioner may order a public informational meeting if the

9.9 comments received during the comment period demonstrate

9.10 considerable public interest in the proposed permit action.

9.11 (c) The commissioner shall mail the public notice to the

9.12 applicant, all persons who have registered with the agency to

9.13 receive notice of permit actions, and to any interested person

9.14 upon request. The commissioner shall make a copy of the public

9.15 notice available at the agency's main office and the applicable

9.16 regional office. The commissioner shall circulate the public

9.17 notice in the geographic area of the facility or activity

9.18 subject to the proposed permit action, either by posting in

9.19 public buildings, by publication in local newspapers or

9.20 periodicals, by publication in the State Register, or by an

9.21 alternate method deemed by the commissioner to be more effective

9.22 such as an electronic bulletin board or mail service.

9.23 (d) The commissioner shall have the discretion to issue,

9.24 amend, or revoke a Minnesota XL permit if:

9.25 (1) the commissioner has included in the public notice

9.26 information notifying persons of their right to request that the

9.27 decision to issue, amend, or revoke the Minnesota XL permit be

9.28 presented to the agency; and

9.29 (2) neither the permit applicant, a member of the

9.30 stakeholders group, or any person commenting on the proposed

9.31 issuance, amendment, or revocation of the Minnesota XL permit

9.32 has requested, during the comment period, that the decision be

9.33 made by the agency or requested a contested case hearing.

9.34 If the conditions in clauses (1) and (2) have not been met,

9.35 or if, prior to the commissioner's decision, one or more members

9.36 of the agency request that the decision to issue, amend, or

10.1 revoke the Minnesota XL permit be made by the agency, then the
10.2 agency shall have the sole authority to make that decision.

10.3 **Subd. 5.** [PERMIT REVOCATION.] (a) The pollution control
10.4 agency may revoke a Minnesota XL permit if requested by the
10.5 permittee or if the agency finds that:

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

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

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

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

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

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

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

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

11.1 have been issued.

11.2 **Sec. 6.** [114C.13] [FEES.]

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

11.6 **Sec. 7.** [114C.14] [ENFORCEMENT AND JUDICIAL REVIEW.]

11.7 **Subdivision 1.** [ENFORCEMENT.] A Minnesota XL permit may be
11.8 enforced in any manner provided by law for the enforcement of
11.9 permits issued under chapter 115 or 116, except for requirements
11.10 of other state or local agencies that are included in the permit
11.11 and except that the defense in section 609.671, subdivision 14,
11.12 also applies to any misdemeanor action taken under section
11.13 115.071, subdivision 2, paragraph (a). Requirements of other
11.14 state or local agencies may be enforced using whatever
11.15 authorities would be available if the requirements had been
11.16 included in permits, licenses, or other approvals issued
11.17 directly by the other agencies. The other agencies shall
11.18 consult with the commissioner of the pollution control agency
11.19 prior to taking any action enforcing a Minnesota XL permit.

11.20 **Subd. 2.** [JUDICIAL REVIEW.] Any person aggrieved by a
11.21 final decision of the pollution control agency to issue, amend,
11.22 or revoke a Minnesota XL permit may obtain judicial review
11.23 pursuant to sections 14.63 to 14.69.

11.24 **VARIANCES**

11.25 **Sec. 8.** [114C.15] [VARIANCES THAT PROMOTE POLLUTION
11.26 REDUCTIONS OR REDUCE UNNECESSARY ADMINISTRATIVE BURDEN.]

11.27 In addition to the grounds for granting a variance set
11.28 forth in section 116.07, subdivision 5, the pollution control
11.29 agency may grant variances from its rules in order to:
11.30 (1) promote reduction in overall levels of pollution beyond
11.31 what is required by applicable law, consistent with the purposes
11.32 of this chapter; or
11.33 (2) reduce the administrative burden on the agency or the
11.34 permittee, provided that alternative monitoring, testing,
11.35 notification, recordkeeping, or reporting requirements will
11.36 provide the information needed by the agency to ensure

12.1 compliance.
12.2 **Sec. 9.** Minnesota Statutes 1994, section 115.03,
12.3 subdivision 1, is amended to read:
12.4 **Subdivision 1.** [GENERALLY.] The agency is hereby given and
12.5 charged with the following powers and duties:
12.6 (a) To administer and enforce all laws relating to the
12.7 pollution of any of the waters of the state;
12.8 (b) To investigate the extent, character, and effect of the
12.9 pollution of the waters of this state and to gather data and
12.10 information necessary or desirable in the administration or
12.11 enforcement of pollution laws, and to make such classification
12.12 of the waters of the state as it may deem advisable;
12.13 (c) To establish and alter such reasonable pollution
12.14 standards for any waters of the state in relation to the public
12.15 use to which they are or may be put as it shall deem necessary
12.16 for the purposes of this chapter and, with respect to the
12.17 pollution of waters of the state, chapter 116;
12.18 (d) To encourage waste treatment, including advanced waste
12.19 treatment, instead of stream low-flow augmentation for dilution
12.20 purposes to control and prevent pollution;
12.21 (e) To adopt, issue, reissue, modify, deny, or revoke,
12.22 enter into or enforce reasonable orders, permits, variances,
12.23 standards, rules, schedules of compliance, and stipulation
12.24 agreements, under such conditions as it may prescribe, in order
12.25 to prevent, control or abate water pollution, or for the
12.26 installation or operation of disposal systems or parts thereof,
12.27 or for other equipment and facilities;
12.28 (1) Requiring the discontinuance of the discharge of
12.29 sewage, industrial waste or other wastes into any waters of the
12.30 state resulting in pollution in excess of the applicable
12.31 pollution standard established under this chapter;
12.32 (2) Prohibiting or directing the abatement of any discharge
12.33 of sewage, industrial waste, or other wastes, into any waters of
12.34 the state or the deposit thereof or the discharge into any
12.35 municipal disposal system where the same is likely to get into
12.36 any waters of the state in violation of this chapter and, with

13.1 respect to the pollution of waters of the state, chapter 116, or
13.2 standards or rules promulgated or permits issued pursuant
13.3 thereto, and specifying the schedule of compliance within which
13.4 such prohibition or abatement must be accomplished;

13.5 (3) Prohibiting the storage of any liquid or solid
13.6 substance or other pollutant in a manner which does not
13.7 reasonably assure proper retention against entry into any waters
13.8 of the state that would be likely to pollute any waters of the
13.9 state;

13.10 (4) Requiring the construction, installation, maintenance,
13.11 and operation by any person of any disposal system or any part
13.12 thereof, or other equipment and facilities, or the
13.13 reconstruction, alteration, or enlargement of its existing
13.14 disposal system or any part thereof, or the adoption of other
13.15 remedial measures to prevent, control or abate any discharge or
13.16 deposit of sewage, industrial waste or other wastes by any
13.17 person;

13.18 (5) Establishing, and from time to time revising, standards
13.19 of performance for new sources taking into consideration, among
13.20 other things, classes, types, sizes, and categories of sources,
13.21 processes, pollution control technology, cost of achieving such
13.22 effluent reduction, and any nonwater quality environmental
13.23 impact and energy requirements. Said standards of performance
13.24 for new sources shall encompass those standards for the control
13.25 of the discharge of pollutants which reflect the greatest degree
13.26 of effluent reduction which the agency determines to be
13.27 achievable through application of the best available
13.28 demonstrated control technology, processes, operating methods,
13.29 or other alternatives, including, where practicable, a standard
13.30 permitting no discharge of pollutants. New sources shall
13.31 encompass buildings, structures, facilities, or installations
13.32 from which there is or may be the discharge of pollutants, the
13.33 construction of which is commenced after the publication by the
13.34 agency of proposed rules prescribing a standard of performance
13.35 which will be applicable to such source. Notwithstanding any
13.36 other provision of the law of this state, any point source the

14.1 construction of which is commenced after May 20, 1973, and which
14.2 is so constructed as to meet all applicable standards of
14.3 performance for new sources shall, consistent with and subject
14.4 to the provisions of section 306(d) of the Amendments of 1972 to
14.5 the Federal Water Pollution Control Act, not be subject to any
14.6 more stringent standard of performance for new sources during a
14.7 ten-year period beginning on the date of completion of such
14.8 construction or during the period of depreciation or
14.9 amortization of such facility for the purposes of section 167 or
14.10 169, or both, of the Federal Internal Revenue Code of 1954,
14.11 whichever period ends first. Construction shall encompass any
14.12 placement, assembly, or installation of facilities or equipment,
14.13 including contractual obligations to purchase such facilities or
14.14 equipment, at the premises where such equipment will be used,
14.15 including preparation work at such premises;

14.16 (6) Establishing and revising pretreatment standards to
14.17 prevent or abate the discharge of any pollutant into any
14.18 publicly owned disposal system, which pollutant interferes with,
14.19 passes through, or otherwise is incompatible with such disposal
14.20 system;

14.21 (7) Requiring the owner or operator of any disposal system
14.22 or any point source to establish and maintain such records, make
14.23 such reports, install, use, and maintain such monitoring
14.24 equipment or methods, including where appropriate biological
14.25 monitoring methods, sample such effluents in accordance with
14.26 such methods, at such locations, at such intervals, and in such
14.27 a manner as the agency shall prescribe, and providing such other
14.28 information as the agency may reasonably require;

14.29 (8) Notwithstanding any other provision of this chapter,
14.30 and with respect to the pollution of waters of the state,
14.31 chapter 116, requiring the achievement of more stringent
14.32 limitations than otherwise imposed by effluent limitations in
14.33 order to meet any applicable water quality standard by
14.34 establishing new effluent limitations, based upon section
14.35 115.01, subdivision 13, clause (b), including alternative
14.36 effluent control strategies for any point source or group of

15.1 point sources to insure the integrity of water quality
15.2 classifications, whenever the agency determines that discharges
15.3 of pollutants from such point source or sources, with the
15.4 application of effluent limitations required to comply with any
15.5 standard of best available technology, would interfere with the
15.6 attainment or maintenance of the water quality classification in
15.7 a specific portion of the waters of the state. Prior to
15.8 establishment of any such effluent limitation, the agency shall
15.9 hold a public hearing to determine the relationship of the
15.10 economic and social costs of achieving such limitation or
15.11 limitations, including any economic or social dislocation in the
15.12 affected community or communities, to the social and economic
15.13 benefits to be obtained and to determine whether or not such
15.14 effluent limitation can be implemented with available technology
15.15 or other alternative control strategies. If a person affected
15.16 by such limitation demonstrates at such hearing that, whether or
15.17 not such technology or other alternative control strategies are
15.18 available, there is no reasonable relationship between the
15.19 economic and social costs and the benefits to be obtained, such
15.20 limitation shall not become effective and shall be adjusted as
15.21 it applies to such person;

15.22 (9) Modifying, in its discretion, any requirement or
15.23 limitation based upon best available technology with respect to
15.24 any point source for which a permit application is filed after
15.25 July 1, 1977, upon a showing by the owner or operator of such
15.26 point source satisfactory to the agency that such modified
15.27 requirements will represent the maximum use of technology within
15.28 the economic capability of the owner or operator and will result
15.29 in reasonable further progress toward the elimination of the
15.30 discharge of pollutants; and

15.31 (10) Requiring that applicants for wastewater discharge
15.32 permits evaluate in their applications the potential reuses of
15.33 the discharged wastewater;

15.34 (f) To require to be submitted and to approve plans and
15.35 specifications for disposal systems or point sources, or any
15.36 part thereof and to inspect the construction thereof for

16.1 compliance with the approved plans and specifications thereof;

16.2 (g) To prescribe and alter rules, not inconsistent with

16.3 law, for the conduct of the agency and other matters within the

16.4 scope of the powers granted to and imposed upon it by this

16.5 chapter and, with respect to pollution of waters of the state,

16.6 in chapter 116, provided that every rule affecting any other

16.7 department or agency of the state or any person other than a

16.8 member or employee of the agency shall be filed with the

16.9 secretary of state;

16.10 (h) To conduct such investigations, issue such notices,

16.11 public and otherwise, and hold such hearings as are necessary or

16.12 which it may deem advisable for the discharge of its duties

16.13 under this chapter and, with respect to the pollution of waters

16.14 of the state, under chapter 116, including, but not limited to,

16.15 the issuance of permits, and to authorize any member, employee,

16.16 or agent appointed by it to conduct such investigations or,

16.17 issue such notices and hold such hearings;

16.18 (i) For the purpose of water pollution control planning by

16.19 the state and pursuant to the Federal Water Pollution Control

16.20 Act, as amended, to establish and revise planning areas, adopt

16.21 plans and programs and continuing planning processes, including,

16.22 but not limited to, basin plans and areawide waste treatment

16.23 management plans, and to provide for the implementation of any

16.24 such plans by means of, including, but not limited to,

16.25 standards, plan elements, procedures for revision,

16.26 intergovernmental cooperation, residual treatment process waste

16.27 controls, and needs inventory and ranking for construction of

16.28 disposal systems;

16.29 (j) To train water pollution control personnel, and charge

16.30 such fees therefor as are necessary to cover the agency's

16.31 costs. All such fees received shall be paid into the state

16.32 treasury and credited to the pollution control agency training

16.33 account;

16.34 (k) To impose as additional conditions in permits to

16.35 publicly owned disposal systems appropriate measures to insure

16.36 compliance by industrial and other users with any pretreatment

17.1 standard, including, but not limited to, those related to toxic
17.2 pollutants, and any system of user charges ratably as is hereby
17.3 required under state law or said Federal Water Pollution Control
17.4 Act, as amended, or any regulations or guidelines promulgated
17.5 thereunder;

17.6 (l) To set a period not to exceed five years for the
17.7 duration of any National Pollutant Discharge Elimination System
17.8 permit;

17.9 (m) To require each governmental subdivision identified as
17.10 a permittee for a wastewater treatment works to annually
17.11 evaluate the condition of its existing system and identify
17.12 future capital improvements that will be needed to attain or
17.13 maintain compliance with a national pollutant discharge
17.14 elimination system or state disposal system permit; and

17.15 (n) To train individual sewage treatment system personnel,
17.16 including persons who design, construct, install, inspect,
17.17 service, and operate individual sewage treatment systems, and
17.18 charge fees as necessary to pay the agency's costs. All fees
17.19 received must be paid into the state treasury and credited to
17.20 the agency's training account. Money in the account is
17.21 appropriated to the agency to pay expenses related to training.
17.22 The information required in clause (m) must be submitted
17.23 annually to the commissioner on a form provided by the
17.24 commissioner. The commissioner shall provide technical
17.25 assistance if requested by the governmental subdivision.

17.26 The powers and duties given the agency in this subdivision
17.27 also apply to permits issued under chapter 114C.

17.28 **Sec. 10.** Minnesota Statutes 1994, section 115.03,
17.29 subdivision 2, is amended to read:

17.30 **Subd. 2.** [HEARING OR INVESTIGATION.] In any hearing or
17.31 investigation conducted pursuant to this chapter and chapters
17.32 114C, 116, and 116F, any employee or agent thereto authorized by
17.33 the agency, may administer oaths, examine witnesses and issue,
17.34 in the name of the agency, subpoenas requiring the attendance
17.35 and testimony of witnesses and the production of evidence
17.36 relevant to any matter involved in any such hearing or

18.1 investigation. Witnesses shall receive the same fees and
18.2 mileage as in civil actions.
18.3 **Sec. 11.** Minnesota Statutes 1994, section 115.04, is
18.4 amended to read:

18.5 **115.04 [DISPOSAL SYSTEMS AND POINT SOURCES.]**

18.6 **Subdivision 1.** [INFORMATION.] Any person operating or
18.7 installing a disposal system or other point source, or portion
18.8 thereof, when requested by the agency, or any member, employee
18.9 or agent thereof, when authorized by it, shall furnish to it any
18.10 information which that person may have or which is relevant to
18.11 the subject of this chapter, chapter 114C, and, with respect to
18.12 the pollution of waters of the state, of chapter 116.

18.13 **Subd. 2.** [EXAMINATION OF RECORDS.] The agency or any
18.14 member, employee or agent thereof, when authorized by it, upon
18.15 presentation of credentials, may examine and copy any books,
18.16 papers, records or memoranda pertaining to the installation,
18.17 maintenance, or operation or discharge, including, but not
18.18 limited to, monitoring data, of disposal systems or other point
18.19 sources, in accordance with the purposes of this chapter, chapter 114C, and, with respect to the pollution of waters of
18.20 the state, chapter 116.

18.22 **Subd. 3.** [ACCESS TO PREMISES.] Whenever it shall be
18.23 necessary for the purposes of this chapter, chapter 114C, and,
18.24 with respect to pollution of waters of the state, chapter 116,
18.25 the agency or any member, employee, or agent thereof, when
18.26 authorized by it, upon presentation of credentials, may enter
18.27 upon any property, public or private, for the purpose of
18.28 obtaining information or examination of records or conducting
18.29 surveys or investigations.

18.30 **Sec. 12.** Minnesota Statutes 1994, section 115.071,
18.31 subdivision 1, is amended to read:

18.32 **Subdivision 1.** [REMEDIES AVAILABLE.] The provisions of
18.33 sections 103F.701 to 103F.761, this chapter and chapters 114C,
18.34 115A, and 116, and sections 325E.10 to 325E.1251 and 325E.32 and
18.35 all rules, standards, orders, stipulation agreements, schedules
18.36 of compliance, and permits adopted or issued by the agency

19.1 thereunder or under any other law now in force or hereafter
19.2 enacted for the prevention, control, or abatement of pollution
19.3 may be enforced by any one or any combination of the following:
19.4 criminal prosecution; action to recover civil penalties;
19.5 injunction; action to compel performance; or other appropriate
19.6 action, in accordance with the provisions of said chapters and
19.7 this section.

19.8 **Sec. 13.** Minnesota Statutes 1994, section 115.071,
19.9 subdivision 2, is amended to read:

19.10 **Subd. 2.** [CRIMINAL PENALTIES.] (a) [VIOLATIONS OF LAWS;
19.11 ORDERS; PERMITS.] Except as provided in section 609.671, any
19.12 person who willfully or negligently violates any provision of
19.13 this chapter or chapter 114C or 116, or any standard, rule,
19.14 variance, order, stipulation agreement, schedule of compliance
19.15 or permit issued or adopted by the agency thereunder shall upon
19.16 conviction be guilty of a misdemeanor.
19.17 (b) [DUTY OF LAW ENFORCEMENT OFFICIALS.] It shall be the
19.18 duty of all county attorneys, sheriffs and other peace officers,
19.19 and other officers having authority in the enforcement of the
19.20 general criminal laws to take all action to the extent of their
19.21 authority, respectively, that may be necessary or proper for the
19.22 enforcement of said provisions, rules, standards, orders,
19.23 stipulation agreements, variances, schedule of compliance, or
19.24 permits.

19.25 **Sec. 14.** Minnesota Statutes 1994, section 115.071,
19.26 subdivision 3, is amended to read:

19.27 **Subd. 3.** [CIVIL PENALTIES.] Any person who violates any
19.28 provision of this chapter or chapter 114C or 116, except any
19.29 provisions of chapter 116 relating to air and land pollution
19.30 caused by agricultural operations which do not involve National
19.31 Pollutant Discharge Elimination System permits, or of (1) any
19.32 effluent standards and limitations or water quality standards,
19.33 (2) any permit or term or condition thereof, (3) any National
19.34 Pollutant Discharge Elimination System filing requirements, (4)
19.35 any duty to permit or carry out inspection, entry or monitoring
19.36 activities, or (5) any rules, stipulation agreements, variances,

20.1 schedules of compliance, or orders issued by the agency, shall
20.2 forfeit and pay to the state a penalty, in an amount to be
20.3 determined by the court, of not more than \$10,000 per day of
20.4 violation except that if the violation relates to hazardous
20.5 waste the person shall forfeit and pay to the state a penalty,
20.6 in an amount to be determined by the court, of not more than
20.7 \$25,000 per day of violation.

20.8 In addition, in the discretion of the court, the defendant
20.9 may be required to:

20.10 (a) forfeit and pay to the state a sum which will
20.11 adequately compensate the state for the reasonable value of
20.12 cleanup and other expenses directly resulting from unauthorized
20.13 discharge of pollutants, whether or not accidental;

20.14 (b) forfeit and pay to the state an additional sum to
20.15 constitute just compensation for any loss or destruction to
20.16 wildlife, fish or other aquatic life and for other actual
20.17 damages to the state caused by an unauthorized discharge of
20.18 pollutants.

20.19 As a defense to any of said damages, the defendant may
20.20 prove that the violation was caused solely by (1) an act of God,
20.21 (2) an act of war, (3) negligence on the part of the state of
20.22 Minnesota, or (4) an act or failure to act which constitutes
20.23 sabotage or vandalism, or any combination of the foregoing
20.24 clauses.

20.25 The civil penalties and damages provided for in this
20.26 subdivision may be recovered by a civil action brought by the
20.27 attorney general in the name of the state.

20.28 **Sec. 15.** Minnesota Statutes 1994, section 115.071,
20.29 subdivision 4, is amended to read:

20.30 **Subd. 4.** [INJUNCTIONS.] Any violation of the provisions,
20.31 rules, standards, orders, stipulation agreements, variances,
20.32 schedules of compliance, or permits specified in this chapter
20.33 and ~~chapter~~ chapters 114C and 116 shall constitute a public
20.34 nuisance and may be enjoined as provided by law in an action, in
20.35 the name of the state, brought by the attorney general.

20.36 **Sec. 16.** Minnesota Statutes 1994, section 115.071,

21.1 subdivision 5, is amended to read:
21.2 **Subd. 5.** [ACTIONS TO COMPEL PERFORMANCE.] In any action to
21.3 compel performance of an order of the agency for any purposes
21.4 relating to the prevention, control or abatement of pollution
21.5 under this chapter and ~~chapter~~ chapters 114C and 116, the court
21.6 may require any defendant adjudged responsible to do and perform
21.7 any and all acts and things within the defendant's power which
21.8 are reasonably necessary to accomplish the purposes of the order.
21.9 In case a municipality or its governing or managing body or any
21.10 of its officers is a defendant, the court may require it to
21.11 exercise its powers, without regard to any limitation of any
21.12 requirement for an election or referendum imposed thereon by law
21.13 and without restricting the powers of the agency to do any or
21.14 all of the following, without limiting the generality hereof:
21.15 to levy taxes, levy special assessments, prescribe service or
21.16 use charges, borrow money, issue bonds, employ assistance,
21.17 acquire real or personal property, let contracts or otherwise
21.18 provide for the doing of work or the construction, installation,
21.19 maintenance, or operation of facilities, and do all other acts
21.20 and things reasonably necessary to accomplish the purposes of
21.21 the order, but the court shall grant the municipality the
21.22 opportunity to determine the appropriate financial alternatives
21.23 to be utilized in complying with the court imposed requirements.

21.24 **Sec. 17.** Minnesota Statutes 1994, section 115.072, is
21.25 amended to read:

21.26 **115.072 [RECOVERY OF LITIGATION COSTS AND EXPENSES.]**

21.27 In any action brought by the attorney general, in the name
21.28 of the state, pursuant to the provisions of this chapter and
21.29 ~~chapter~~ chapters 114C and 116, for civil penalties, injunctive
21.30 relief, or in an action to compel compliance, if the state shall
21.31 finally prevail, and if the proven violation was willful, the
21.32 state, in addition to other penalties provided in this chapter,
21.33 may be allowed an amount determined by the court to be the
21.34 reasonable value of all or a part of the litigation expenses
21.35 incurred by the state. In determining the amount of such
21.36 litigation expenses to be allowed, the court shall give

22.1 consideration to the economic circumstances of the defendant.
22.2 Amounts recovered under the provisions of this section and
22.3 section 115.071, subdivisions 3 to 5, shall be paid into the
22.4 environmental fund in the state treasury to the extent provided
22.5 in section 115.073.

22.6 **Sec. 18.** Minnesota Statutes 1994, section 115.075, is
22.7 amended to read:

22.8 **115.075 [INFORMATION AND MONITORING.]**

22.9 A person may not:

22.10 (1) make a false material statement, representation, or
22.11 certification in; omit material information from; or alter,
22.12 conceal, or fail to file or maintain a notice, application,
22.13 record, report, plan, manifest, or other document required under
22.14 section 103F.701 or this chapter or chapter 114C, 115A 2 or 116;
22.15 or
22.16 (2) falsify, tamper with, render inaccurate, or fail to
22.17 install a monitoring device or method required to be maintained
22.18 or followed for the purpose of compliance with sections 103F.701
22.19 to 103F.761 or this chapter or chapter 114C, 115A 2 or 116.

22.20 **Sec. 19.** Minnesota Statutes 1994, section 115.076,
22.21 subdivision 1, is amended to read:

22.22 **Subdivision 1.** [AUTHORITY OF COMMISSIONER.] The agency may
22.23 refuse to issue or to authorize the transfer of a hazardous
22.24 waste facility permit or a solid waste facility permit to
22.25 construct or operate a commercial waste facility as defined in
22.26 section 115A.03, subdivision 6, if the agency determines that
22.27 the permit applicant does not possess sufficient expertise and
22.28 competence to operate the facility in conformance with the
22.29 requirements of this chapter and ~~chapter~~ chapters 114C and 116,
22.30 or if other circumstances exist that demonstrate that the permit
22.31 applicant may not operate the facility in conformance with the
22.32 requirements of this chapter and ~~chapter~~ chapters 114C and 116.
22.33 In making this determination, the agency may consider:
22.34 (1) the experience of the permit applicant in constructing
22.35 or operating commercial waste facilities;
22.36 (2) the expertise of the permit applicant;

23.1 (3) the past record of the permit applicant in operating
23.2 commercial waste facilities in Minnesota and other states;
23.3 (4) any criminal convictions of the permit applicant in
23.4 state or federal court during the past five years that bear on
23.5 the likelihood that the permit applicant will operate the
23.6 facility in conformance with the requirements of this chapter
23.7 and ~~chapter~~ chapters 114C and 116; and
23.8 (5) in the case of a corporation or business entity, any
23.9 criminal convictions in state or federal court during the past
23.10 five years of any of the permit applicant's officers, partners,
23.11 or facility managers that bear on the likelihood that the
23.12 facility will be operated in conformance with the requirements
23.13 of this chapter and ~~chapter~~ chapters 114C and 116.

23.14 **Sec. 20.** Minnesota Statutes 1994, section 116.07,
23.15 subdivision 9, is amended to read:

23.16 **Subd. 9.** [ORDERS; INVESTIGATIONS.] The agency shall have
23.17 the following powers and duties for the enforcement of any
23.18 provision of this chapter and chapter 114C</u>, relating to air
23.19 contamination or waste:
23.20 (a) to adopt, issue, reissue, modify, deny, revoke, enter
23.21 into or enforce reasonable orders, schedules of compliance and
23.22 stipulation agreements;
23.23 (b) to require the owner or operator of any emission
23.24 facility, air contaminant treatment facility, potential air
23.25 contaminant storage facility, or any system or facility related
23.26 to the storage, collection, transportation, processing, or
23.27 disposal of waste to establish and maintain records; to make
23.28 reports; to install, use, and maintain monitoring equipment or
23.29 methods; and to make tests, including testing for odor where a
23.30 nuisance may exist, in accordance with methods, at locations, at
23.31 intervals, and in a manner as the agency shall prescribe; and to
23.32 provide other information as the agency may reasonably require;
23.33 (c) to conduct investigations, issue notices, public and
23.34 otherwise, and order hearings as it may deem necessary or
23.35 advisable for the discharge of its duties under this chapter and
23.36 chapter 114C</u>, including but not limited to the issuance of

24.1 permits; and to authorize any member, employee, or agent
24.2 appointed by it to conduct the investigations and issue the
24.3 notices.

24.4 **Sec. 21.** Minnesota Statutes 1995 Supplement, section
24.5 116.072, subdivision 1, is amended to read:

24.6 **Subdivision 1.** [AUTHORITY TO ISSUE PENALTY ORDERS.] (a)

24.7 The commissioner may issue an order requiring violations to be
24.8 corrected and administratively assessing monetary penalties for
24.9 violations of this chapter and chapters 114C, 115, 115A, 115D,
24.10 and 115E, any rules adopted under those chapters, and any
24.11 standards, limitations, or conditions established in an agency
24.12 permit; and for failure to respond to a request for information
24.13 under section 115B.17, subdivision 3. The order must be issued
24.14 as provided in this section.

24.15 (b) A county board may adopt an ordinance containing
24.16 procedures for the issuance of administrative penalty orders and
24.17 may issue orders beginning August 1, 1996. Before adopting
24.18 ordinances, counties shall work cooperatively with the agency to
24.19 develop an implementation plan for the orders that substantially
24.20 conforms to a model ordinance developed by the counties and the
24.21 agency. After adopting the ordinance, the county board may
24.22 issue orders requiring violations to be corrected and
24.23 administratively assessing monetary penalties for violations of
24.24 county ordinances adopted under section 400.16, 400.161, or
24.25 473.811 or chapter 115A that regulate solid and hazardous waste
24.26 and any standards, limitations, or conditions established in a
24.27 county license issued pursuant to these ordinances. For
24.28 violations of ordinances relating to hazardous waste, a county's
24.29 penalty authority is described in subdivisions 2 to 5. For
24.30 violations of ordinances relating to solid waste, a county's
24.31 penalty authority is described in subdivision 5a. Subdivisions
24.32 6 to 11 apply to violations of ordinances relating to both solid
24.33 and hazardous waste.

24.34 (c) Monetary penalties collected by a county must be used
24.35 to manage solid and hazardous waste. A county board's authority
24.36 is limited to violations described in paragraph (b). Its

25.1 authority to issue orders under this section expires August 1,
25.2 1999.

25.3 **Sec. 22.** Minnesota Statutes 1994, section 116.091,
25.4 subdivision 1, is amended to read:

25.5 **Subdivision 1.** [INFORMATION.] Any person operating any
25.6 emission system or facility specified in chapter 114C or section
25.7 116.081, subdivision 1, when requested by the pollution control
25.8 agency, shall furnish to it any information which that person
25.9 may have which is relevant to pollution or the rules or
25.10 provisions of this chapter.

25.11 **Sec. 23.** Minnesota Statutes 1994, section 116.091,
25.12 subdivision 3, is amended to read:

25.13 **Subd. 3.** [ACCESS TO PREMISES.] Whenever the agency deems
25.14 it necessary for the purposes of this chapter or chapter 114C,
25.15 the agency or any member, employee, or agent thereof, when
25.16 authorized by it, may enter upon any property, public or
25.17 private, for the purpose of obtaining information or conducting
25.18 surveys or investigations.

25.19 **Sec. 24.** [INSTRUCTION TO REVISOR.]

25.20 The revisor of statutes shall codify the environmental
25.21 improvement pilot program, Laws 1995, chapter 168, sections 8 to
25.22 20, as Minnesota Statutes, sections 114C.20 to 114C.33.

25.23 **Sec. 25.** [EFFECTIVE DATE.]

25.24 Sections 1 to 23 are effective the day following final
25.25 enactment.