

1.1 A bill for an act

1.2 relating to public health and the environment; clarifying the authority of the
1.3 Pollution Control Agency to deny and revoke permits for commercial waste and
1.4 animal feedlot facilities; amending Minnesota Statutes 2008, sections 115.076;
1.5 116.07, subdivision 7; 116.0713.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2008, section 115.076, is amended to read:

1.8 **115.076 ~~BACKGROUND OF PERMIT APPLICANTS~~ COMMERCIAL**
1.9 **WASTE AND ANIMAL FEEDLOT FACILITY PERMITS; REVOCATION;**
1.10 **REFUSAL TO ISSUE OR TRANSFER.**

1.11 Subdivision 1. **Authority of commissioner.** (a) The agency may revoke or refuse to
1.12 issue or to authorize the transfer of:

1.13 (1) a hazardous waste facility permit or a solid waste facility permit to construct
1.14 or operate a commercial waste facility as defined in section 115A.03, subdivision 6, if
1.15 the agency determines that the permit applicant or permittee does not possess sufficient
1.16 expertise and competence to operate the facility in conformance with the requirements of
1.17 this chapter and chapters 114C and 116, or if other circumstances exist that demonstrate
1.18 that the permit applicant or permittee may not operate the facility in conformance with the
1.19 requirements of this chapter and chapters 114C and 116; or

1.20 (2) an animal feedlot facility permit, under section 116.07, subdivision 7, to construct
1.21 or operate an animal feedlot facility, if the agency determines that the permit applicant
1.22 or permittee does not possess sufficient expertise and competence to operate the feedlot
1.23 facility in conformance with the requirements of this chapter and chapter 116 or if other

2.1 circumstances exist that demonstrate that the permit applicant or permittee may not operate
2.2 the feedlot facility in conformance with the requirements of this chapter and chapter 116.

2.3 (b) In making a determination under paragraph (a), the agency may consider:

2.4 (1) the experience of the permit applicant or permittee in constructing or operating
2.5 commercial waste facilities or animal feedlot facilities;

2.6 (2) the expertise of the permit applicant or permittee;

2.7 (3) the past record of the permit applicant or permittee in operating commercial
2.8 waste facilities or animal feedlot facilities in Minnesota and other states;

2.9 (4) any criminal convictions of the permit applicant or permittee in state or federal
2.10 court during the past five years that bear on the likelihood that the permit applicant or
2.11 permittee will operate the facility in conformance with the applicable requirements of this
2.12 chapter and chapters 114C and 116; and

2.13 (5) in the case of a corporation or business entity, any criminal convictions in state
2.14 or federal court during the past five years of any of the permit applicant's or permittee's
2.15 officers, partners, or facility managers that bear on the likelihood that the facility will be
2.16 operated in conformance with the applicable requirements of this chapter and chapters
2.17 114C and 116.

2.18 Subd. 2. **Permit applicant or permittee.** For purposes of this section, a permit
2.19 applicant or permittee includes a natural person, a partnership and its owners, and a
2.20 corporation and its parent.

2.21 Subd. 3. **Investigation.** The commissioner may conduct an investigation to assist in
2.22 making determinations under subdivision 1. The reasonable costs of any investigation
2.23 must be paid by the permit applicant or permittee.

2.24 Subd. 4. **Notice of permit revocation or denial.** The agency may not revoke or
2.25 refuse to issue or transfer a permit under this section without first providing the permit
2.26 applicant or permittee with the relevant information and with an opportunity to respond
2.27 by commenting on the information and submitting additional information regarding the
2.28 circumstances surrounding the conviction, corrective measures to prevent recurrence, the
2.29 applicant's or permittee's rehabilitation, and technical and managerial experience. In
2.30 making a final decision on the permit, the agency shall consider the permit applicant's or
2.31 permittee's response prior to making a final decision on the permit.

2.32 Subd. 5. **Hearing.** If the agency proposes to deny a permit under this section,
2.33 the permit applicant or permittee may request a hearing under chapter 14. The permit
2.34 applicant or permittee may request that the hearing be held under Minnesota Rules, parts
2.35 1400.8510 to 1400.8612.

3.1 Sec. 2. Minnesota Statutes 2008, section 116.07, subdivision 7, is amended to read:

3.2 Subd. 7. **Counties; processing of applications for animal lot permits.** Any
3.3 Minnesota county board may, by resolution, with approval of the Pollution Control
3.4 Agency, assume responsibility for processing applications for permits required by the
3.5 Pollution Control Agency under this section for livestock feedlots, poultry lots or other
3.6 animal lots. The responsibility for permit application processing, if assumed by a county,
3.7 may be delegated by the county board to any appropriate county officer or employee.

3.8 (a) For the purposes of this subdivision, the term "processing" includes:

3.9 (1) the distribution to applicants of forms provided by the Pollution Control Agency;

3.10 (2) the receipt and examination of completed application forms, and the certification,
3.11 in writing, to the Pollution Control Agency either that the animal lot facility for which a
3.12 permit is sought by an applicant will comply with applicable rules and standards, or, if
3.13 the facility will not comply, the respects in which a variance would be required for the
3.14 issuance of a permit; and

3.15 (3) rendering to applicants, upon request, assistance necessary for the proper
3.16 completion of an application.

3.17 (b) For the purposes of this subdivision, the term "processing" may include, at the
3.18 option of the county board, issuing, denying, modifying, imposing conditions upon, or
3.19 revoking permits pursuant to the provisions of this section or rules promulgated pursuant
3.20 to it, subject to review, suspension, and reversal by the Pollution Control Agency. The
3.21 Pollution Control Agency shall, after written notification, have 15 days to review, suspend,
3.22 modify, or reverse the issuance of the permit. After this period, the action of the county
3.23 board is final, subject to appeal as provided in chapter 14. For permit applications filed
3.24 after October 1, 2001, section 15.99 applies to feedlot permits issued by the agency or a
3.25 county pursuant to this subdivision.

3.26 (c) For the purpose of administration of rules adopted under this subdivision, the
3.27 commissioner and the agency may provide exceptions for cases where the owner of a
3.28 feedlot has specific written plans to close the feedlot within five years. These exceptions
3.29 include waiving requirements for major capital improvements.

3.30 (d) For purposes of this subdivision, a discharge caused by an extraordinary natural
3.31 event such as a precipitation event of greater magnitude than the 25-year, 24-hour event,
3.32 tornado, or flood in excess of the 100-year flood is not a "direct discharge of pollutants."

3.33 (e) In adopting and enforcing rules under this subdivision, the commissioner shall
3.34 cooperate closely with other governmental agencies.

3.35 (f) The Pollution Control Agency shall work with the Minnesota Extension Service,
3.36 the Department of Agriculture, the Board of Water and Soil Resources, producer groups,

4.1 local units of government, as well as with appropriate federal agencies such as the Natural
4.2 Resources Conservation Service and the Farm Service Agency, to notify and educate
4.3 producers of rules under this subdivision at the time the rules are being developed and
4.4 adopted and at least every two years thereafter.

4.5 (g) The Pollution Control Agency shall adopt rules governing the issuance and
4.6 denial of permits for livestock feedlots, poultry lots or other animal lots pursuant to this
4.7 section. Pastures are exempt from the rules authorized under this paragraph. A feedlot
4.8 permit is not required for livestock feedlots with more than ten but less than 50 animal
4.9 units; provided they are not in shoreland areas. A livestock feedlot permit does not
4.10 become required solely because of a change in the ownership of the buildings, grounds,
4.11 or feedlot. These rules apply both to permits issued by counties and to permits issued
4.12 by the Pollution Control Agency directly.

4.13 (h) The Pollution Control Agency shall exercise supervising authority with respect
4.14 to the processing of animal lot permit applications by a county.

4.15 (i) Any new rules or amendments to existing rules proposed under the authority
4.16 granted in this subdivision, or to implement new fees on animal feedlots, must be
4.17 submitted to the members of legislative policy and finance committees with jurisdiction
4.18 over agriculture and the environment prior to final adoption. The rules must not become
4.19 effective until 90 days after the proposed rules are submitted to the members.

4.20 (j) Until new rules are adopted that provide for plans for manure storage structures,
4.21 any plans for a liquid manure storage structure must be prepared or approved by a
4.22 registered professional engineer or a United States Department of Agriculture, Natural
4.23 Resources Conservation Service employee.

4.24 (k) A county may adopt by ordinance standards for animal feedlots that are more
4.25 stringent than standards in Pollution Control Agency rules.

4.26 (l) After January 1, 2001, a county that has not accepted delegation of the feedlot
4.27 permit program must hold a public meeting prior to the agency issuing a feedlot permit
4.28 for a feedlot facility with 300 or more animal units, unless another public meeting has
4.29 been held with regard to the feedlot facility to be permitted.

4.30 (m) After the proposed rules published in the State Register, volume 24, number 25,
4.31 are finally adopted, the agency may not impose additional conditions as a part of a feedlot
4.32 permit, unless specifically required by law or agreed to by the feedlot operator.

4.33 (n) For the purposes of feedlot permitting, a discharge from land-applied manure
4.34 or a manure stockpile that is managed according to agency rule must not be subject to
4.35 a fine for a discharge violation.

5.1 (o) For the purposes of feedlot permitting, manure that is land applied, or a manure
5.2 stockpile that is managed according to agency rule, must not be considered a discharge
5.3 into waters of the state, unless the discharge is to waters of the state, as defined by
5.4 section 103G.005, subdivision 17, except type 1 or type 2 wetlands, as defined in section
5.5 103G.005, subdivision 17b, and does not meet discharge standards established for feedlots
5.6 under agency rule.

5.7 (p) Unless the upgrade is needed to correct an immediate public health threat under
5.8 section 145A.04, subdivision 8, or the facility is determined to be a concentrated animal
5.9 feeding operation under Code of Federal Regulations, title 40, section 122.23, in effect on
5.10 April 15, 2003, the agency may not require a feedlot operator:

5.11 (1) to spend more than \$3,000 to upgrade an existing feedlot with less than 300
5.12 animal units unless cost-share money is available to the feedlot operator for 75 percent of
5.13 the cost of the upgrade; or

5.14 (2) to spend more than \$10,000 to upgrade an existing feedlot with between 300
5.15 and 500 animal units, unless cost-share money is available to the feedlot operator for 75
5.16 percent of the cost of the upgrade or \$50,000, whichever is less.

5.17 (q) For the purposes of this section, "pastures" means areas, including winter feeding
5.18 areas as part of a grazing area, where grass or other growing plants are used for grazing
5.19 and where the concentration of animals allows a vegetative cover to be maintained during
5.20 the growing season except that vegetative cover is not required:

5.21 (1) in the immediate vicinity of supplemental feeding or watering devices;

5.22 (2) in associated corrals and chutes where livestock are gathered for the purpose of
5.23 sorting, veterinary services, loading and unloading trucks and trailers, and other necessary
5.24 activities related to good animal husbandry practices; and

5.25 (3) in associated livestock access lanes used to convey livestock to and from areas
5.26 of the pasture.

5.27 (r) In an action brought by the state to compel performance under section
5.28 115.071, subdivision 5, for an animal feedlot violation, the court shall either approve
5.29 the performance measures sought by the state or deny them. The court shall not amend
5.30 the performance measures sought by the state, unless the changes are approved by the
5.31 commissioner.

5.32 (s) A feedlot operator has 60 days to challenge the requirements of a permit issued
5.33 for the feedlot. After a 60-day period, a feedlot operator shall not be allowed to challenge
5.34 the conditions of the permit.

6.1 Sec. 3. Minnesota Statutes 2008, section 116.0713, is amended to read:

6.2 **116.0713 LIVESTOCK ODOR HYDROGEN SULFIDE MONITORING AND**
6.3 **ENFORCEMENT.**

6.4 (a) The Pollution Control Agency must:

6.5 (1) monitor and identify potential livestock facility violations of the state ambient
6.6 air quality standards for hydrogen sulfide, using a protocol for responding to citizen
6.7 complaints regarding feedlot odor and its hydrogen sulfide component, including the
6.8 appropriate use of portable monitoring equipment that enables monitoring staff to follow
6.9 plumes;

6.10 (2) require monitoring of hydrogen sulfide on the downwind boundaries of the
6.11 property for all concentrated animal feeding operations based on the prevailing winds in
6.12 the area; and

6.13 ~~(2)~~ (3) when livestock production facilities are found to be in violation of ambient
6.14 hydrogen sulfide standards, take appropriate actions necessary to ensure compliance,
6.15 utilizing appropriate technical assistance and enforcement and penalty authorities provided
6.16 to the agency by statute and rule.

6.17 (b) Livestock production facilities are exempt from state ambient air quality
6.18 standards while manure is being removed and for seven days after manure is removed
6.19 from barns or manure storage facilities.

6.20 (c) For a livestock production facility having greater than 300 animal units, the
6.21 maximum cumulative exemption in a calendar year under paragraph (b) is 21 days for
6.22 the removal process.

6.23 (d) The operator of a livestock production facility that claims exemption from state
6.24 ambient air quality standards under paragraph (b) must provide notice of that claim to
6.25 either the Pollution Control Agency or the county feedlot officer delegated under section
6.26 116.07.

6.27 (e) State ambient air quality standards are applicable at the property boundary of a
6.28 farm or a parcel of agricultural land on which a livestock production facility is located,
6.29 except that if the owner or operator of the farm or parcel obtains an air quality easement
6.30 from the owner of land adjoining the farm or parcel, the air quality standards must be
6.31 applicable at the property boundary of the adjoining land to which the easement pertains.
6.32 The air quality easement must be for no more than five years, must be in writing, and must
6.33 be available upon request by the agency or the county feedlot officer. Notwithstanding
6.34 the provisions of this paragraph, state ambient air quality standards are applicable at
6.35 locations to which the general public has access. The "general public" does not include
6.36 employees or other categories of people who have been directly authorized by the property

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7.1 owner to enter or remain on the property for a limited period of time and for a specific
7.2 purpose, or trespassers.

7.3 (f) The agency may not require air emission modeling for a type of livestock system
7.4 that has not had a hydrogen sulfide emission violation.

7.5 (g) Notwithstanding section 116B.02, subdivision 2, chapter 116B applies to
7.6 hydrogen sulfide emissions from any livestock facility in the state.

7.7 (h) The commissioner shall require a livestock facility owner or operator to take all
7.8 necessary actions to abate an imminent public health threat within 30 days after the threat
7.9 is discovered. If the owner or operator does not take the appropriate actions within the
7.10 30-day period, the commissioner shall immediately take action under section 115B.17 to
7.11 abate the imminent public health threat.

7.12 (i) For the purposes of this section:

7.13 (1) "concentrated animal feeding operation" has the meaning given in Code of
7.14 Federal Regulations, title 40, section 122.23; and

7.15 (2) "imminent public health threat" means an ambient air quality measurement of at
7.16 least 75 parts per billion of hydrogen sulfide at the property boundary of a livestock facility.