

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 639

(SENATE AUTHORS: INGEBRIGTSEN and Ruud)		
DATE	D-PG	OFFICIAL STATUS
02/04/2021	247	Introduction and first reading
		Referred to Environment and Natural Resources Policy and Legacy Finance
03/04/2021		Comm report: To pass as amended and re-refer to Environment and Natural Resources Finance

1.1

A bill for an act

1.2

relating to environment; clarifying that certain agency interpretive statements may

1.3

not be treated as if they are properly adopted rules; clarifying that certain fee

1.4

increases require legislative approval; modifying effluent limitation requirements;

1.5

modifying requirements for Pollution Control Agency permitting efficiency reports;

1.6

modifying procedure for filing petition seeking environmental assessment

1.7

worksheet; requiring analysis of Wisconsin's Green Tier Program; requiring

1.8

Pollution Control Agency to seek approval of certain modifications to state

1.9

implementation plan; amending Minnesota Statutes 2020, sections 84.027, by

1.10

adding a subdivision; 115.03, subdivision 1; 115.455; 115.77, subdivision 1;

1.11

115.84, subdivisions 2, 3; 116.03, subdivision 2b; 116.07, subdivision 4d, by

1.12

adding a subdivision; 116D.04, subdivision 2a.

1.13

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

1.14

Section 1. Minnesota Statutes 2020, section 84.027, is amended by adding a subdivision

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to read:

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Subd. 14c. Unadopted rules. (a) The commissioner of natural resources must not enforce

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or attempt to enforce an unadopted rule. For purposes of this subdivision, "unadopted rule"

1.18

means a guideline, bulletin, criterion, manual standard, interpretive statement, policy plan,

1.19

or similar pronouncement if the guideline, bulletin, criterion, manual standard, interpretive

1.20

statement, policy plan, or similar pronouncement has not been adopted according to the

1.21

rulemaking process provided under chapter 14. If an unadopted rule is challenged under

1.22

section 14.381, the commissioner must cease enforcement of the unadopted rule and

1.23

overcome a presumption that the unadopted rule must be adopted according to the rulemaking

1.24

process provided under chapter 14.

1.25

(b) Before the commissioner incorporates by reference an internal guideline, bulletin,

1.26

criterion, manual standard, interpretive statement, policy plan, or similar pronouncement

2.1 into a standard, permit, or contract, the commissioner must follow the rulemaking process
2.2 provided under chapter 14 to adopt, amend, revise, or incorporate any such guideline,
2.3 bulletin, criterion, manual standard, interpretive statement, policy plan, or similar
2.4 pronouncement.

2.5 Sec. 2. Minnesota Statutes 2020, section 115.03, subdivision 1, is amended to read:

2.6 Subdivision 1. **Generally.** (a) The agency is hereby given and charged with the following
2.7 powers and duties:

2.8 ~~(a)~~ (1) to administer and enforce all laws relating to the pollution of any of the waters
2.9 of the state;

2.10 ~~(b)~~ (2) to investigate the extent, character, and effect of the pollution of the waters of
2.11 this state and to gather data and information necessary or desirable in the administration or
2.12 enforcement of pollution laws, and to make such classification of the waters of the state as
2.13 it may deem advisable;

2.14 ~~(c)~~ (3) to establish and alter such reasonable pollution standards for any waters of the
2.15 state in relation to the public use to which they are or may be put as it shall deem necessary
2.16 for the purposes of this chapter and, with respect to the pollution of waters of the state,
2.17 chapter 116;

2.18 ~~(d)~~ (4) to encourage waste treatment, including advanced waste treatment, instead of
2.19 stream low-flow augmentation for dilution purposes to control and prevent pollution;

2.20 ~~(e)~~ (5) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable
2.21 orders, permits, variances, standards, rules, schedules of compliance, and stipulation
2.22 agreements, under such conditions as it may prescribe, in order to prevent, control or abate
2.23 water pollution, or for the installation or operation of disposal systems or parts thereof, or
2.24 for other equipment and facilities:

2.25 ~~(f)~~ (i) requiring the discontinuance of the discharge of sewage, industrial waste or other
2.26 wastes into any waters of the state resulting in pollution in excess of the applicable pollution
2.27 standard established under this chapter;

2.28 ~~(g)~~ (ii) prohibiting or directing the abatement of any discharge of sewage, industrial
2.29 waste, or other wastes, into any waters of the state or the deposit thereof or the discharge
2.30 into any municipal disposal system where the same is likely to get into any waters of the
2.31 state in violation of this chapter and, with respect to the pollution of waters of the state,
2.32 chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and

3.1 specifying the schedule of compliance within which such prohibition or abatement must be
3.2 accomplished;

3.3 ~~(3)~~ (iii) prohibiting the storage of any liquid or solid substance or other pollutant in a
3.4 manner which does not reasonably assure proper retention against entry into any waters of
3.5 the state that would be likely to pollute any waters of the state;

3.6 ~~(4)~~ (iv) requiring the construction, installation, maintenance, and operation by any person
3.7 of any disposal system or any part thereof, or other equipment and facilities, or the
3.8 reconstruction, alteration, or enlargement of its existing disposal system or any part thereof,
3.9 or the adoption of other remedial measures to prevent, control or abate any discharge or
3.10 deposit of sewage, industrial waste or other wastes by any person;

3.11 ~~(5)~~ (v) establishing, and from time to time revising, standards of performance for new
3.12 sources taking into consideration, among other things, classes, types, sizes, and categories
3.13 of sources, processes, pollution control technology, cost of achieving such effluent reduction,
3.14 and any nonwater quality environmental impact and energy requirements. Said standards
3.15 of performance for new sources shall encompass those standards for the control of the
3.16 discharge of pollutants which reflect the greatest degree of effluent reduction which the
3.17 agency determines to be achievable through application of the best available demonstrated
3.18 control technology, processes, operating methods, or other alternatives, including, where
3.19 practicable, a standard permitting no discharge of pollutants. New sources shall encompass
3.20 buildings, structures, facilities, or installations from which there is or may be the discharge
3.21 of pollutants, the construction of which is commenced after the publication by the agency
3.22 of proposed rules prescribing a standard of performance which will be applicable to such
3.23 source. Notwithstanding any other provision of the law of this state, any point source the
3.24 construction of which is commenced after May 20, 1973, and which is so constructed as to
3.25 meet all applicable standards of performance for new sources shall, consistent with and
3.26 subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water
3.27 Pollution Control Act, not be subject to any more stringent standard of performance for new
3.28 sources during a ten-year period beginning on the date of completion of such construction
3.29 or during the period of depreciation or amortization of such facility for the purposes of
3.30 section 167 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period
3.31 ends first. Construction shall encompass any placement, assembly, or installation of facilities
3.32 or equipment, including contractual obligations to purchase such facilities or equipment, at
3.33 the premises where such equipment will be used, including preparation work at such
3.34 premises;

4.1 ~~(6)~~ (vi) establishing and revising pretreatment standards to prevent or abate the discharge
4.2 of any pollutant into any publicly owned disposal system, which pollutant interferes with,
4.3 passes through, or otherwise is incompatible with such disposal system;

4.4 ~~(7)~~ (vii) requiring the owner or operator of any disposal system or any point source to
4.5 establish and maintain such records, make such reports, install, use, and maintain such
4.6 monitoring equipment or methods, including where appropriate biological monitoring
4.7 methods, sample such effluents in accordance with such methods, at such locations, at such
4.8 intervals, and in such a manner as the agency shall prescribe, and providing such other
4.9 information as the agency may reasonably require;

4.10 ~~(8)~~ (viii) notwithstanding any other provision of this chapter, and with respect to the
4.11 pollution of waters of the state, chapter 116, requiring the achievement of more stringent
4.12 limitations than otherwise imposed by effluent limitations in order to meet any applicable
4.13 water quality standard by establishing new effluent limitations, based upon section 115.01,
4.14 subdivision 13, clause (b), including alternative effluent control strategies for any point
4.15 source or group of point sources to insure the integrity of water quality classifications,
4.16 whenever the agency determines that discharges of pollutants from such point source or
4.17 sources, with the application of effluent limitations required to comply with any standard
4.18 of best available technology, would interfere with the attainment or maintenance of the
4.19 water quality classification in a specific portion of the waters of the state. Prior to
4.20 establishment of any such effluent limitation, the agency shall hold a public hearing to
4.21 determine the relationship of the economic and social costs of achieving such limitation or
4.22 limitations, including any economic or social dislocation in the affected community or
4.23 communities, to the social and economic benefits to be obtained and to determine whether
4.24 or not such effluent limitation can be implemented with available technology or other
4.25 alternative control strategies. If a person affected by such limitation demonstrates at such
4.26 hearing that, whether or not such technology or other alternative control strategies are
4.27 available, there is no reasonable relationship between the economic and social costs and
4.28 the benefits to be obtained, such limitation shall not become effective and shall be adjusted
4.29 as it applies to such person;

4.30 ~~(9)~~ (ix) modifying, in its discretion, any requirement or limitation based upon best
4.31 available technology with respect to any point source for which a permit application is filed
4.32 after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory
4.33 to the agency that such modified requirements will represent the maximum use of technology
4.34 within the economic capability of the owner or operator and will result in reasonable further
4.35 progress toward the elimination of the discharge of pollutants; and

~~(40)~~ (x) requiring that applicants for wastewater discharge permits evaluate in their applications the potential reuses of the discharged wastewater;

~~(f)~~ (6) to require to be submitted and to approve plans and specifications for disposal systems or point sources, or any part thereof and to inspect the construction thereof for compliance with the approved plans and specifications thereof;

~~(g)~~ (7) to prescribe and alter rules, not inconsistent with law, for the conduct of the agency and other matters within the scope of the powers granted to and imposed upon it by this chapter and, with respect to pollution of waters of the state, in chapter 116, provided that every rule affecting any other department or agency of the state or any person other than a member or employee of the agency shall be filed with the secretary of state;

~~(h)~~ (8) to conduct such investigations, issue such notices, public and otherwise, and hold such hearings as are necessary or which it may deem advisable for the discharge of its duties under this chapter and, with respect to the pollution of waters of the state, under chapter 116, including, but not limited to, the issuance of permits, and to authorize any member, employee, or agent appointed by it to conduct such investigations or, issue such notices and hold such hearings;

~~(i)~~ (9) for the purpose of water pollution control planning by the state and pursuant to the Federal Water Pollution Control Act, as amended, to establish and revise planning areas, adopt plans and programs and continuing planning processes, including, but not limited to, basin plans and areawide waste treatment management plans, and to provide for the implementation of any such plans by means of, including, but not limited to, standards, plan elements, procedures for revision, intergovernmental cooperation, residual treatment process waste controls, and needs inventory and ranking for construction of disposal systems;

~~(j)~~ (10) to train water pollution control personnel; and charge such fees therefor as are for the training as necessary to cover the agency's costs. The fees under this clause are subject to legislative approval under section 16A.1283. All such fees received shall be paid into the state treasury and credited to the Pollution Control Agency training account;

~~(k)~~ (11) to impose as additional conditions in permits to publicly owned disposal systems appropriate measures to insure compliance by industrial and other users with any pretreatment standard, including, but not limited to, those related to toxic pollutants, and any system of user charges ratably as is hereby required under state law or said Federal Water Pollution Control Act, as amended, or any regulations or guidelines promulgated thereunder;

6.1 ~~(H)~~ (12) to set a period not to exceed five years for the duration of any national pollutant
6.2 discharge elimination system permit or not to exceed ten years for any permit issued as a
6.3 state disposal system permit only;

6.4 ~~(m)~~ (13) to require each governmental subdivision identified as a permittee for a
6.5 wastewater treatment works to evaluate in every odd-numbered year the condition of its
6.6 existing system and identify future capital improvements that will be needed to attain or
6.7 maintain compliance with a national pollutant discharge elimination system or state disposal
6.8 system permit; and

6.9 ~~(n)~~ (14) to train subsurface sewage treatment system personnel, including persons who
6.10 design, construct, install, inspect, service, and operate subsurface sewage treatment systems,
6.11 and charge fees for the training as necessary to pay the agency's costs. The fees under this
6.12 clause are subject to legislative approval under section 16A.1283. All fees received must
6.13 be paid into the state treasury and credited to the agency's training account. Money in the
6.14 account is appropriated to the agency to pay expenses related to training.

6.15 (b) The information required in paragraph (a), clause ~~(m)~~ (13), must be submitted in
6.16 every odd-numbered year to the commissioner on a form provided by the commissioner.
6.17 The commissioner shall provide technical assistance if requested by the governmental
6.18 subdivision.

6.19 (c) The powers and duties given the agency in this subdivision also apply to permits
6.20 issued under chapter 114C.

6.21 Sec. 3. Minnesota Statutes 2020, section 115.455, is amended to read:

6.22 **115.455 EFFLUENT LIMITATIONS; COMPLIANCE.**

6.23 To the extent allowable under federal law, for a municipality that constructs a publicly
6.24 owned treatment works or for an industrial national pollutant discharge elimination system
6.25 and state disposal system permit holder that constructs a treatment works to comply with a
6.26 new or modified effluent limitation, compliance with any new or modified effluent limitation
6.27 adopted after construction begins that would require additional capital investment is required
6.28 no sooner than 16 years after the date the facility begins operating.

6.29 Sec. 4. Minnesota Statutes 2020, section 115.77, subdivision 1, is amended to read:

6.30 Subdivision 1. **Fees.** The agency shall collect fees in amounts necessary, but no greater
6.31 than the amounts necessary, to cover the reasonable costs of reviewing applications and

7.1 issuing certifications. The fees under this subdivision are subject to legislative approval
7.2 under section 16A.1283.

7.3 Sec. 5. Minnesota Statutes 2020, section 115.84, subdivision 2, is amended to read:

7.4 Subd. 2. **Rules.** The agency may adopt rules to govern certification of laboratories
7.5 according to this section. ~~Notwithstanding section 16A.1283, the agency may adopt rules~~
7.6 ~~establishing fees.~~

7.7 Sec. 6. Minnesota Statutes 2020, section 115.84, subdivision 3, is amended to read:

7.8 Subd. 3. **Fees.** (a) Until the agency adopts a rule establishing fees for certification, the
7.9 agency shall collect fees from laboratories registering with the agency, but not accredited
7.10 by the commissioner of health under sections 144.97 to 144.99, in amounts necessary to
7.11 cover the reasonable costs of the certification program, including reviewing applications,
7.12 issuing certifications, and conducting audits and compliance assistance. The fees under this
7.13 paragraph are subject to legislative approval under section 16A.1283.

7.14 (b) Fees under this section must be based on the number, type, and complexity of
7.15 analytical methods that laboratories are certified to perform.

7.16 (c) Revenue from fees charged by the agency for certification ~~shall~~ must be credited to
7.17 the environmental fund.

7.18 Sec. 7. Minnesota Statutes 2020, section 116.03, subdivision 2b, is amended to read:

7.19 Subd. 2b. **Permitting efficiency.** (a) It is the goal of the state that environmental and
7.20 resource management permits be issued or denied within 90 days for tier 1 permits or 150
7.21 days for tier 2 permits following submission of a permit application. The commissioner of
7.22 the Pollution Control Agency shall establish management systems designed to achieve the
7.23 goal. For the purposes of this section, "tier 1 permits" are permits that do not require
7.24 individualized actions or public comment periods, and "tier 2 permits" are permits that
7.25 require individualized actions or public comment periods.

7.26 (b) The commissioner ~~shall~~ must prepare ~~an annual~~ semiannual permitting efficiency
7.27 ~~report reports~~ that includes include statistics on meeting the tier 2 goal in paragraph (a) and
7.28 the criteria for tier 2 by permit categories. ~~The report is~~ reports are due on February 1 and
7.29 August 1 each year. For permit applications that have not met the goal, ~~the~~ each report must
7.30 state the reasons for not meeting the goal. In stating the reasons for not meeting the goal,
7.31 the commissioner ~~shall~~ must separately identify delays caused by the responsiveness of the
7.32 proposer, ~~lack of staff,~~ scientific or technical disagreements, or the level of public

engagement. ~~The~~ Each report must specify the number of days from initial submission of the application to the day of determination that the application is complete. ~~The~~ Each report must aggregate the data for the ~~year~~ reporting period and assess whether program or system changes are necessary to achieve the goal. If program or system changes are necessary to achieve the goal, the commissioner must implement those changes. Whenever a report required by this subdivision states the number of permits completed within a particular period, the report must, immediately after the number and in parentheses, state the percentage of total applications received for that permit category that the number represents. Whenever a report required by this subdivision states the number of permits completed within a particular period, the report must separately state completion data for industrial and municipal permits. ~~The report reports~~ must be posted on the agency's website and submitted to the governor and the chairs and ranking minority members of the house of representatives and senate committees having jurisdiction over environment policy and finance.

(c) The commissioner shall allow electronic submission of environmental review and permit documents to the agency.

(d) Within 30 business days of application for a permit subject to paragraph (a), the commissioner of the Pollution Control Agency shall notify the permit applicant, in writing, whether the application is complete or incomplete. If the commissioner determines that an application is incomplete, the notice to the applicant must enumerate all deficiencies, citing specific provisions of the applicable rules and statutes, and advise the applicant on how the deficiencies can be remedied. If the commissioner determines that the application is complete, the notice must confirm the application's tier 1 or tier 2 permit status. If the commissioner believes that a complete application for a tier 2 construction permit cannot be issued within the 150-day goal, the commissioner must provide notice to the applicant with the commissioner's notice that the application is complete and, upon request of the applicant, provide the permit applicant with a schedule estimating when the agency will begin drafting the permit and issue the public notice of the draft permit. This paragraph does not apply to an application for a permit that is subject to a grant or loan agreement under chapter 446A.

(e) For purposes of this subdivision, "permit professional" means an individual not employed by the Pollution Control Agency who:

(1) has a professional license issued by the state of Minnesota in the subject area of the permit;

(2) has at least ten years of experience in the subject area of the permit; and

(3) abides by the duty of candor applicable to employees of the Pollution Control Agency under agency rules and complies with all applicable requirements under chapter 326.

(f) Upon the agency's request, an applicant relying on a permit professional must participate in a meeting with the agency before submitting an application:

(1) at least two weeks prior to the preapplication meeting, the applicant must submit at least the following:

(i) project description, including, but not limited to, scope of work, primary emissions points, discharge outfalls, and water intake points;

(ii) location of the project, including county, municipality, and location on the site;

(iii) business schedule for project completion; and

(iv) other information requested by the agency at least four weeks prior to the scheduled meeting; and

(2) during the preapplication meeting, the agency shall provide for the applicant at least the following:

(i) an overview of the permit review program;

(ii) a determination of which specific application or applications will be necessary to complete the project;

(iii) a statement notifying the applicant if the specific permit being sought requires a mandatory public hearing or comment period;

(iv) a review of the timetable established in the permit review program for the specific permit being sought; and

(v) a determination of what information must be included in the application, including a description of any required modeling or testing.

(g) The applicant may select a permit professional to undertake the preparation of the permit application and draft permit.

(h) If a preapplication meeting was held, the agency shall, within seven business days of receipt of an application, notify the applicant and submitting permit professional that the application is complete or is denied, specifying the deficiencies of the application.

(i) Upon receipt of notice that the application is complete, the permit professional shall submit to the agency a timetable for submitting a draft permit. The permit professional shall submit a draft permit on or before the date provided in the timetable. Within 60 days after

10.1 the close of the public comment period, the commissioner shall notify the applicant whether
10.2 the permit can be issued.

10.3 (j) Nothing in this section shall be construed to modify:

10.4 (1) any requirement of law that is necessary to retain federal delegation to or assumption
10.5 by the state; or

10.6 (2) the authority to implement a federal law or program.

10.7 (k) The permit application and draft permit shall identify or include as an appendix all
10.8 studies and other sources of information used to substantiate the analysis contained in the
10.9 permit application and draft permit. The commissioner shall request additional studies, if
10.10 needed, and the permit applicant shall submit all additional studies and information necessary
10.11 for the commissioner to perform the commissioner's responsibility to review, modify, and
10.12 determine the completeness of the application and approve the draft permit.

10.13 (l) If an environmental or resource management permit is not issued or denied within
10.14 the applicable period described in paragraph (a), the commissioner must immediately begin
10.15 review of the application and must take all steps necessary to issue the final permit, deny
10.16 the permit, or issue the public notice for the draft permit within 150 days of the expiration
10.17 of the applicable period described in paragraph (a). The commissioner may extend the period
10.18 for up to 60 days by issuing a written notice to the applicant stating the length of and reason
10.19 for the extension. A time limit under this paragraph may be extended through written
10.20 agreement between the commissioner and the applicant.

10.21 Sec. 8. Minnesota Statutes 2020, section 116.07, subdivision 4d, is amended to read:

10.22 Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater
10.23 than those necessary to cover the reasonable costs of developing, reviewing, and acting
10.24 upon applications for agency permits and implementing and enforcing the conditions of the
10.25 permits pursuant to agency rules. Permit fees ~~shall~~ must not include the costs of litigation.
10.26 The fee schedule must reflect reasonable and routine direct and indirect costs associated
10.27 with permitting, implementation, and enforcement. The agency may impose an additional
10.28 enforcement fee to be collected for ~~a period of~~ up to two years to cover the reasonable costs
10.29 of implementing and enforcing the conditions of a permit under the rules of the agency.
10.30 Water fees under this paragraph are subject to legislative approval under section 16A.1283.
10.31 Any money collected under this paragraph ~~shall~~ must be deposited in the environmental
10.32 fund.

11.1 (b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner
11.2 or operator of all stationary sources, emission facilities, emissions units, air contaminant
11.3 treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage
11.4 facilities subject to a notification, permit, or license requirement under this chapter,
11.5 subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401
11.6 et seq., or rules adopted thereunder. The annual fee ~~shall~~ must be used to pay for all direct
11.7 and indirect reasonable costs, including legal costs, required to develop and administer the
11.8 notification, permit, or license program requirements of this chapter, subchapters I and V
11.9 of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules
11.10 adopted thereunder. Those costs include the reasonable costs of reviewing and acting upon
11.11 an application for a permit; implementing and enforcing statutes, rules, and the terms and
11.12 conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally
11.13 applicable regulations; responding to federal guidance; modeling, analyses, and
11.14 demonstrations; preparing inventories and tracking emissions; and providing information
11.15 to the public about these activities.

11.16 (c) The agency shall set fees that:

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

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

11.25 (3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount
11.26 needed to match grant funds received by the state under United States Code, title 42, section
11.27 7405 (section 105 of the federal Clean Air Act).

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

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

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

(f) Permit applicants who wish to construct, reconstruct, or modify a project may offer to reimburse the agency for the costs of staff time or consultant services needed to expedite the preapplication process and permit development process through the final decision on the permit, including the analysis of environmental review documents. The reimbursement ~~shall be~~ is in addition to permit application fees imposed by law. When the agency determines that it needs additional resources to develop the permit application in an expedited manner, and that expediting the development is consistent with permitting program priorities, the agency may accept the reimbursement. The commissioner must give the applicant an estimate of costs to be incurred by the commissioner. The estimate must include a brief description of the tasks to be performed, a schedule for completing the tasks, and the estimated cost for each task. The applicant and the commissioner must enter into a written agreement detailing the estimated costs for the expedited permit decision-making process to be incurred by the agency. The agreement must also identify staff anticipated to be assigned to the project. The commissioner must not issue a permit until the applicant has paid all fees in full. The commissioner must refund any unobligated balance of fees paid. Reimbursements accepted by the agency are appropriated to the agency for the purpose of developing the permit or analyzing environmental review documents. Reimbursement by a permit applicant ~~shall~~ must precede and not be contingent upon issuance of a permit; ~~shall~~ must not affect the agency's decision on whether to issue or deny a permit, what conditions are included in a permit, or the application of state and federal statutes and rules governing permit determinations; and ~~shall~~ must not affect final decisions regarding environmental review.

(g) The fees under this subdivision are exempt from section 16A.1285.

13.1 Sec. 9. Minnesota Statutes 2020, section 116.07, is amended by adding a subdivision to
13.2 read:

13.3 Subd. 13. **Unadopted rules.** (a) The commissioner of the Pollution Control Agency
13.4 must not enforce or attempt to enforce an unadopted rule. For purposes of this subdivision,
13.5 "unadopted rule" means a guideline, bulletin, criterion, manual standard, interpretive
13.6 statement, policy plan, or similar pronouncement if the guideline, bulletin, criterion, manual
13.7 standard, interpretive statement, policy plan, or similar pronouncement has not been adopted
13.8 according to the rulemaking process provided under chapter 14. If an unadopted rule is
13.9 challenged under section 14.381, the commissioner must cease enforcement of the unadopted
13.10 rule and overcome a presumption that the unadopted rule must be adopted according to the
13.11 rulemaking process provided under chapter 14.

13.12 (b) Before the commissioner incorporates by reference an internal guideline, bulletin,
13.13 criterion, manual standard, interpretive statement, policy plan, or similar pronouncement
13.14 into a standard, permit, or contract, the commissioner must follow the rulemaking process
13.15 provided under chapter 14 to adopt, amend, revise, or incorporate any such guideline,
13.16 bulletin, criterion, manual standard, interpretive statement, policy plan, or similar
13.17 pronouncement.

13.18 Sec. 10. Minnesota Statutes 2020, section 116D.04, subdivision 2a, is amended to read:

13.19 Subd. 2a. **When prepared.** (a) Where there is potential for significant environmental
13.20 effects resulting from any major governmental action, the action must be preceded by a
13.21 detailed environmental impact statement prepared by the responsible governmental unit.
13.22 The environmental impact statement must be an analytical rather than an encyclopedic
13.23 document that describes the proposed action in detail, analyzes its significant environmental
13.24 impacts, discusses appropriate alternatives to the proposed action and their impacts, and
13.25 explores methods by which adverse environmental impacts of an action could be mitigated.
13.26 The environmental impact statement must also analyze those economic, employment, and
13.27 sociological effects that cannot be avoided should the action be implemented. To ensure its
13.28 use in the decision-making process, the environmental impact statement must be prepared
13.29 as early as practical in the formulation of an action.

13.30 (b) The board shall by rule establish categories of actions for which environmental
13.31 impact statements and for which environmental assessment worksheets must be prepared
13.32 as well as categories of actions for which no environmental review is required under this
13.33 section. A mandatory environmental assessment worksheet is not required for the expansion
13.34 of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the

conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.15, subdivision 2d, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared is the state agency with the greatest responsibility for supervising or approving the project as a whole.

(c) A mandatory environmental impact statement is not required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, or produces less than 400,000 tons of chemicals annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.15, subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter.

(d) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet by publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed, by posting the notice on a website that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed, or in any other manner determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit may extend the 30-day comment period for an additional 30 days one time. Further extensions of the comment period may not be made unless approved by the project's proposer. The responsible governmental unit's decision on the need for an environmental impact statement must be based on the environmental assessment worksheet and the comments received during the comment period, and must be made within 15 days after the close of the comment period. The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.

(e) An environmental assessment worksheet must also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 100 individuals who

reside or own property in ~~the state~~ a county where the proposed action will be undertaken or in one or more adjoining counties, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet must be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet must be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.

(f) Except in an environmentally sensitive location where Minnesota Rules, part 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental review under this chapter and rules of the board, if:

(1) the proposed action is:

(i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

(ii) an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 1,000 animal units;

(2) the application for the animal feedlot facility includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with Pollution Control Agency feedlot rules; and

(3) the county board holds a public meeting for citizen input at least ten business days before the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot facility unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted. The exemption in this paragraph is in addition to other exemptions provided under other law and rules of the board.

(g) The board may, before final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

(h) An early and open process must be used to limit the scope of the environmental impact statement to a discussion of those impacts that, because of the nature or location of the project, have the potential for significant environmental effects. The same process must

16.1 be used to determine the form, content, and level of detail of the statement as well as the
16.2 alternatives that are appropriate for consideration in the statement. In addition, the permits
16.3 that will be required for the proposed action must be identified during the scoping process.
16.4 Further, the process must identify those permits for which information will be developed
16.5 concurrently with the environmental impact statement. The board shall provide in its rules
16.6 for the expeditious completion of the scoping process. The determinations reached in the
16.7 process must be incorporated into the order requiring the preparation of an environmental
16.8 impact statement.

16.9 (i) The responsible governmental unit shall, to the extent practicable, avoid duplication
16.10 and ensure coordination between state and federal environmental review and between
16.11 environmental review and environmental permitting. Whenever practical, information
16.12 needed by a governmental unit for making final decisions on permits or other actions required
16.13 for a proposed project must be developed in conjunction with the preparation of an
16.14 environmental impact statement. When an environmental impact statement is prepared for
16.15 a project requiring multiple permits for which two or more agencies' decision processes
16.16 include either mandatory or discretionary hearings before a hearing officer before the
16.17 agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the
16.18 contrary, conduct the hearings in a single consolidated hearing process if requested by the
16.19 proposer. All agencies having jurisdiction over a permit that is included in the consolidated
16.20 hearing shall participate. The responsible governmental unit shall establish appropriate
16.21 procedures for the consolidated hearing process, including procedures to ensure that the
16.22 consolidated hearing process is consistent with the applicable requirements for each permit
16.23 regarding the rights and duties of parties to the hearing, and shall use the earliest applicable
16.24 hearing procedure to initiate the hearing. All agencies having jurisdiction over a permit
16.25 identified in the draft environmental assessment worksheet scoping document must begin
16.26 reviewing any permit application upon publication of the notice of preparation of the
16.27 environmental impact statement.

16.28 (j) An environmental impact statement must be prepared and its adequacy determined
16.29 within 280 days after notice of its preparation unless the time is extended by consent of the
16.30 parties or by the governor for good cause. The responsible governmental unit shall determine
16.31 the adequacy of an environmental impact statement, unless within 60 days after notice is
16.32 published that an environmental impact statement will be prepared, the board chooses to
16.33 determine the adequacy of an environmental impact statement. If an environmental impact
16.34 statement is found to be inadequate, the responsible governmental unit has 60 days to prepare
16.35 an adequate environmental impact statement.

(k) The proposer of a specific action may include in the information submitted to the responsible governmental unit a preliminary draft environmental impact statement under this section on that action for review, modification, and determination of completeness and adequacy by the responsible governmental unit. A preliminary draft environmental impact statement prepared by the project proposer and submitted to the responsible governmental unit must identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the preliminary draft environmental impact statement. The responsible governmental unit shall require additional studies, if needed, and obtain from the project proposer all additional studies and information necessary for the responsible governmental unit to perform its responsibility to review, modify, and determine the completeness and adequacy of the environmental impact statement.

Sec. 11. **ANALYSIS OF WISCONSIN'S GREEN TIER PROGRAM.**

The commissioner of the Pollution Control Agency must conduct an analysis of the Green Tier Program operated in Wisconsin under Wisconsin Statutes, section 299.83, which recognizes and rewards environmental performance that voluntarily exceeds legal requirements related to health, safety, and the environment resulting in continuous improvement in Wisconsin's environment, economy, and quality of life. By February 1, 2022, the commissioner must report the results of the analysis to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources. The report must include:

(1) an overview of how the program operates in Wisconsin;

(2) an assessment of benefits and challenges that would likely accompany the adoption of a similar program in Minnesota;

(3) a comparison of the program with the Minnesota XL permit project operated under Minnesota Statutes, sections 114C.10 to 114C.19;

(4) an assessment of what policy changes, legal changes, and funding would be required to successfully implement a similar program in Minnesota; and

(5) any other related matters deemed relevant by the commissioner.

Sec. 12. **STATE IMPLEMENTATION PLAN REVISIONS.**

(a) The commissioner of the Pollution Control Agency must seek approval from the federal Environmental Protection Agency for revisions to the state's federal Clean Air Act state implementation plan so that under the revised plan, the Pollution Control Agency is

18.1 prohibited from applying a national or state ambient air quality standard in a permit issued
18.2 solely to authorize operations to continue at an existing facility with unmodified emissions
18.3 levels. Nothing in this section shall be construed to require the commissioner to apply for
18.4 a revision that would prohibit the agency from applying a national or state ambient air
18.5 quality standard in a permit that authorizes an increase in emissions due to construction of
18.6 a new facility or in a permit that authorizes changes to existing facilities that result in a
18.7 significant net emissions increase of a regulated NSR pollutant, as defined in Code of Federal
18.8 Regulations, title 40, section 52.21(b)(50).

18.9 (b) The commissioner of the Pollution Control Agency must report quarterly to the chairs
18.10 and ranking minority members of the house of representatives and senate committees and
18.11 divisions with jurisdiction over environment and natural resources policy on the status of
18.12 efforts to implement paragraph (a) until the revisions required by paragraph (a) have been
18.13 either approved or denied.