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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3569

02/19/2020

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The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act

1.2 relating to environment; clarifying that agency interpretive statements may not be

1.3 treated as if they are properly adopted rules; clarifying that certain fee increases

1.4 require legislative approval; modifying effluent limitation requirements; placing

1.5 restrictions on using trichloroethylene; modifying definition of pipeline for certain

1.6 purposes; modifying requirements for Pollution Control Agency permitting

1.7 efficiency reports; 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 2018, sections 14.05, by adding

1.10 a subdivision; 115.03, subdivision 1; 115.455; 115.77, subdivision 1; 115.84,

1.11 subdivisions 2, 3; 116.03, subdivision 2b; 116.07, subdivision 4d; 216G.01,

1.12 subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 116.

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

1.14 Section 1. Minnesota Statutes 2018, section 14.05, is amended by adding a subdivision

1.15 to read:

1.16 Subd. 1a. **Limitation regarding certain policies, guidelines, and other interpretive**

1.17 **statements.** An agency must not seek to impose or require in a permit or contract or to

1.18 enforce against any person through monetary or nonmonetary penalty a policy, guideline,

1.19 bulletin, criterion, manual, standard, interpretive statement, or similar pronouncement that

1.20 has not been properly adopted under this chapter.

1.21 Sec. 2. Minnesota Statutes 2018, section 115.03, subdivision 1, is amended to read:

1.22 Subdivision 1. **Generally.** (a) The agency is hereby given and charged with the following

1.23 powers and duties:

1.24 ~~(a)~~ (1) to administer and enforce all laws relating to the pollution of any of the waters

1.25 of the state;

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

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

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

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

2.16 ~~(1)~~ (i) requiring the discontinuance of the discharge of sewage, industrial waste or other  
2.17 wastes into any waters of the state resulting in pollution in excess of the applicable pollution  
2.18 standard established under this chapter;

2.19 ~~(2)~~ (ii) prohibiting or directing the abatement of any discharge of sewage, industrial  
2.20 waste, or other wastes, into any waters of the state or the deposit thereof or the discharge  
2.21 into any municipal disposal system where the same is likely to get into any waters of the  
2.22 state in violation of this chapter and, with respect to the pollution of waters of the state,  
2.23 chapter 116, or standards or rules promulgated or permits issued pursuant thereto, and  
2.24 specifying the schedule of compliance within which such prohibition or abatement must be  
2.25 accomplished;

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

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

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

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

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

3.34 ~~(8)~~ (viii) notwithstanding any other provision of this chapter, and with respect to the  
3.35 pollution of waters of the state, chapter 116, requiring the achievement of more stringent

4.1 limitations than otherwise imposed by effluent limitations in order to meet any applicable  
4.2 water quality standard by establishing new effluent limitations, based upon section 115.01,  
4.3 subdivision 13, clause (b), including alternative effluent control strategies for any point  
4.4 source or group of point sources to insure the integrity of water quality classifications,  
4.5 whenever the agency determines that discharges of pollutants from such point source or  
4.6 sources, with the application of effluent limitations required to comply with any standard  
4.7 of best available technology, would interfere with the attainment or maintenance of the  
4.8 water quality classification in a specific portion of the waters of the state. Prior to  
4.9 establishment of any such effluent limitation, the agency shall hold a public hearing to  
4.10 determine the relationship of the economic and social costs of achieving such limitation or  
4.11 limitations, including any economic or social dislocation in the affected community or  
4.12 communities, to the social and economic benefits to be obtained and to determine whether  
4.13 or not such effluent limitation can be implemented with available technology or other  
4.14 alternative control strategies. If a person affected by such limitation demonstrates at such  
4.15 hearing that, whether or not such technology or other alternative control strategies are  
4.16 available, there is no reasonable relationship between the economic and social costs and  
4.17 the benefits to be obtained, such limitation shall not become effective and shall be adjusted  
4.18 as it applies to such person;

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

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

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

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

5.1 ~~(h)~~ (8) to conduct such investigations, issue such notices, public and otherwise, and hold  
5.2 such hearings as are necessary or which it may deem advisable for the discharge of its duties  
5.3 under this chapter and, with respect to the pollution of waters of the state, under chapter  
5.4 116, including, but not limited to, the issuance of permits, and to authorize any member,  
5.5 employee, or agent appointed by it to conduct such investigations or, issue such notices and  
5.6 hold such hearings;

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

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

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

5.23 ~~(l)~~ (12) to set a period not to exceed five years for the duration of any national pollutant  
5.24 discharge elimination system permit or not to exceed ten years for any permit issued as a  
5.25 state disposal system permit only;

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

5.31 ~~(n)~~ (14) to train subsurface sewage treatment system personnel, including persons who  
5.32 design, construct, install, inspect, service, and operate subsurface sewage treatment systems,  
5.33 and charge fees for the training as necessary to pay the agency's costs. The fees under this  
5.34 clause are subject to legislative approval under section 16A.1283. All fees received must

6.1 be paid into the state treasury and credited to the agency's training account. Money in the  
6.2 account is appropriated to the agency to pay expenses related to training.

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

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

6.9 Sec. 3. Minnesota Statutes 2018, section 115.455, is amended to read:

6.10 **115.455 EFFLUENT LIMITATIONS; COMPLIANCE.**

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

6.17 Sec. 4. Minnesota Statutes 2018, section 115.77, subdivision 1, is amended to read:

6.18 Subdivision 1. **Fees.** The agency shall collect fees in amounts necessary, but no greater  
6.19 than the amounts necessary, to cover the reasonable costs of reviewing applications and  
6.20 issuing certifications. The fees under this subdivision are subject to legislative approval  
6.21 under section 16A.1283.

6.22 Sec. 5. Minnesota Statutes 2018, section 115.84, subdivision 2, is amended to read:

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

6.26 Sec. 6. Minnesota Statutes 2018, section 115.84, subdivision 3, is amended to read:

6.27 Subd. 3. **Fees.** (a) Until the agency adopts a rule establishing fees for certification, the  
6.28 agency shall collect fees from laboratories registering with the agency, but not accredited  
6.29 by the commissioner of health under sections 144.97 to 144.99, in amounts necessary to  
6.30 cover the reasonable costs of the certification program, including reviewing applications,

7.1 issuing certifications, and conducting audits and compliance assistance. The fees under this  
 7.2 paragraph are subject to legislative approval under section 16A.1283.

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

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

7.7 Sec. 7. Minnesota Statutes 2018, section 116.03, subdivision 2b, is amended to read:

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

7.15 (b) The commissioner ~~shall~~ must prepare ~~an annual~~ semiannual permitting efficiency  
 7.16 ~~report reports~~ that includes include statistics on meeting the tier 2 goal in paragraph (a) and  
 7.17 the criteria for tier 2 by permit categories. ~~The report is~~ reports are due on February 1 and  
 7.18 August 1 each year. For permit applications that have not met the goal, ~~the~~ each report must  
 7.19 state the reasons for not meeting the goal. In stating the reasons for not meeting the goal,  
 7.20 the commissioner ~~shall~~ must separately identify delays caused by the responsiveness of the  
 7.21 proposer, ~~lack of staff,~~ scientific or technical disagreements, or the level of public  
 7.22 engagement. ~~The~~ Each report must specify the number of days from initial submission of  
 7.23 the application to the day of determination that the application is complete. ~~The~~ Each report  
 7.24 must aggregate the data for the year reporting period and assess whether program or system  
 7.25 changes are necessary to achieve the goal, in which case the commissioner must implement  
 7.26 those changes. Whenever a report required by this subdivision states the number of permits  
 7.27 completed within a particular period, the report must, immediately after the number and in  
 7.28 parentheses, state the percentage of total applications received for that permit category that  
 7.29 the number represents. Whenever a report required by this subdivision states the number  
 7.30 of permits completed within a particular period, the report must separately state completion  
 7.31 data for industrial and municipal permits. ~~The report reports~~ must be posted on the agency's  
 7.32 website and submitted to the governor and the chairs and ranking minority members of the  
 7.33 house of representatives and senate committees having jurisdiction over environment policy  
 7.34 and finance.

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

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

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

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

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

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

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

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

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

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

8.30 (iii) business schedule for project completion; and

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



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

9.3 (i) an overview of the permit review program;

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

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

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

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

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

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

9.17 (i) Upon receipt of notice that the application is complete, the permit professional shall  
9.18 submit to the agency a timetable for submitting a draft permit. The permit professional shall  
9.19 submit a draft permit on or before the date provided in the timetable. Within 60 days after  
9.20 the close of the public comment period, the commissioner shall notify the applicant whether  
9.21 the permit can be issued.

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

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

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

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

10.1 (l) If an environmental or resource management permit is not issued or denied within  
 10.2 the applicable period described in paragraph (a), the commissioner must immediately begin  
 10.3 review of the application and must take all steps necessary to issue the final permit, deny  
 10.4 the permit, or issue the public notice for the draft permit within 150 days of the expiration  
 10.5 of the applicable period described in paragraph (a). The commissioner may extend the period  
 10.6 for up to 60 days by issuing a written notice to the applicant stating the length of and reason  
 10.7 for the extension. Except as prohibited by federal law, after the applicable period expires,  
 10.8 any person may seek an order of the district court requiring the commissioner to immediately  
 10.9 take action on the permit application. A time limit under this paragraph may be extended  
 10.10 through written agreement between the commissioner and the applicant.

10.11 Sec. 8. Minnesota Statutes 2018, section 116.07, subdivision 4d, is amended to read:

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

10.23 (b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner  
 10.24 or operator of all stationary sources, emission facilities, emissions units, air contaminant  
 10.25 treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage  
 10.26 facilities subject to a notification, permit, or license requirement under this chapter,  
 10.27 subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401  
 10.28 et seq., or rules adopted thereunder. The annual fee ~~shall~~ must be used to pay for all direct  
 10.29 and indirect reasonable costs, including legal costs, required to develop and administer the  
 10.30 notification, permit, or license program requirements of this chapter, subchapters I and V  
 10.31 of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules  
 10.32 adopted thereunder. Those costs include the reasonable costs of reviewing and acting upon  
 10.33 an application for a permit; implementing and enforcing statutes, rules, and the terms and  
 10.34 conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally  
 10.35 applicable regulations; responding to federal guidance; modeling, analyses, and

11.1 demonstrations; preparing inventories and tracking emissions; and providing information  
11.2 to the public about these activities.

11.3 (c) The agency shall set fees that:

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

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

11.12 (3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount  
11.13 needed to match grant funds received by the state under United States Code, title 42, section  
11.14 7405 (section 105 of the federal Clean Air Act).

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

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

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

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

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

12.23 **Sec. 9. [116.385] TRICHLOROETHYLENE; RESTRICTION ON USE.**

12.24 Subdivision 1. **Definitions.** For purposes of this section, "trichloroethylene" means a  
 12.25 chemical with the Chemical Abstract Services Registry Number of 79-01-6.

12.26 Subd. 2. **Certificate of compliance and use restriction.** (a) Beginning July 1, 2020,  
 12.27 the Pollution Control Agency must notify the owner or operator of a facility with an air  
 12.28 emission permit issued by the Pollution Control Agency that the facility must, within 90  
 12.29 days of receiving the notice, submit a certificate of compliance, provided by the Pollution  
 12.30 Control Agency, that the facility does not use trichloroethylene at the facility, including in  
 12.31 any manufacturing, processing, or cleaning processes or, if the facility uses trichloroethylene,  
 12.32 that the facility is in compliance with the facility's air emission permit. The notice required  
 12.33 under this subdivision must include a copy of this section.

13.1 (b) Beginning January 1, 2023, an owner or operator of a facility required to have an air  
 13.2 emission permit issued by the Pollution Control Agency may not use trichloroethylene at  
 13.3 the permitted facility, including in any manufacturing, processing, or cleaning processes,  
 13.4 if there is a replacement chemical that is less toxic to human health, equally effective for  
 13.5 the use for which trichloroethylene is used at the facility, and commercially readily available  
 13.6 at a comparable price. By January 1, 2023, restricting use must be made enforceable in the  
 13.7 air emission permit for the facility or in an enforceable agreement with the owner or operator.

13.8 (c) Before issuing or renewing an air emission permit, at the request of the owner or  
 13.9 operator of the facility that wishes to continue to use trichloroethylene, the commissioner  
 13.10 and the owner or operator must cooperatively perform a feasibility study on using a  
 13.11 replacement chemical at the facility. The commissioner may use funds in the trichloroethylene  
 13.12 emissions account to reimburse the Pollution Control Agency and owner or operator for the  
 13.13 costs associated with the feasibility study.

13.14 (d) If the study does not demonstrate that a replacement chemical is feasible, owners or  
 13.15 operators of facilities may demonstrate compliance with this section by complying with the  
 13.16 health-based value and health risk limits for trichloroethylene as established by rule of the  
 13.17 Department of Health. If such compliance is not feasible, the commissioner must grant a  
 13.18 variance under this section according to section 116.07, subdivision 5.

13.19 Subd. 3. **Exceptions.** The prohibition in subdivision 2, paragraph (b), does not apply  
 13.20 to:

13.21 (1) processes that result in only trace amounts of trichloroethylene remaining after most  
 13.22 of it has been transformed into another substance or consumed;

13.23 (2) using trichloroethylene in closed systems so that no trichloroethylene is emitted from  
 13.24 the facility;

13.25 (3) holding trichloroethylene, or products containing trichloroethylene, for distribution  
 13.26 to a third party; or

13.27 (4) a medical or medical research facility.

13.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

13.29 Sec. 10. Minnesota Statutes 2018, section 216G.01, subdivision 3, is amended to read:

13.30 Subd. 3. **Pipeline.** "Pipeline" means a pipeline owned or operated by a condemning  
 13.31 authority, as defined in section 117.025, subdivision 4, located in this state which that is  
 13.32 used to transport natural or synthetic gas at a pressure of more than 90 pounds per square

14.1 inch, or to transport crude petroleum or petroleum fuels or oil or their derivatives, coal,  
 14.2 anhydrous ammonia or any mineral slurry to a distribution center or storage facility ~~which~~  
 14.3 that is located within or outside of this state. "Pipeline" does not include a pipeline owned  
 14.4 or operated by a natural gas public utility as defined in section 216B.02, subdivision 4.

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

14.6 The commissioner of the Pollution Control Agency must conduct an analysis of the  
 14.7 Green Tier Program operated in Wisconsin under Wisconsin Statutes, section 299.83, which  
 14.8 recognizes and rewards environmental performance that voluntarily exceeds legal  
 14.9 requirements related to health, safety, and the environment resulting in continuous  
 14.10 improvement in Wisconsin's environment, economy, and quality of life. By February 1,  
 14.11 2021, the commissioner must report the results of the analysis to the chairs and ranking  
 14.12 minority members of the house of representatives and senate committees and divisions with  
 14.13 jurisdiction over environment and natural resources. The report must include:

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

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

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

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

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

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

14.23 (a) The commissioner of the Pollution Control Agency must seek approval from the  
 14.24 federal Environmental Protection Agency for revisions to the state's federal Clean Air Act  
 14.25 state implementation plan so that under the revised plan, the Pollution Control Agency is  
 14.26 prohibited from applying a national or state ambient air quality standard in a permit issued  
 14.27 solely to authorize operations to continue at an existing facility with unmodified emissions  
 14.28 levels. Nothing in this section shall be construed to require the commissioner to apply for  
 14.29 a revision that would prohibit the agency from applying a national or state ambient air  
 14.30 quality standard in a permit that authorizes an increase in emissions due to construction of  
 14.31 a new facility or in a permit that authorizes changes to existing facilities that result in a

15.1 significant net emissions increase of a regulated NSR pollutant, as defined in Code of Federal  
15.2 Regulations, title 40, section 52.21(b)(50).

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