

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2637

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DATE	D-PG	OFFICIAL STATUS
02/26/2018	6189	Introduction and first reading
		Referred to Environment and Natural Resources Finance
03/08/2018		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act

1.2 relating to environment; prohibiting the Pollution Control Agency from raising

1.3 certain fees without legislative approval; amending Minnesota Statutes 2016,

1.4 sections 115.03, subdivision 1; 115.77, subdivision 1; 115.84, subdivisions 2, 3;

1.5 Minnesota Statutes 2017 Supplement, section 116.07, subdivision 4d.

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

1.7 Section 1. Minnesota Statutes 2016, section 115.03, subdivision 1, is amended to read:

1.8 Subdivision 1. **Generally.** The agency is hereby given and charged with the following

1.9 powers and duties:

1.10 (a) to administer and enforce all laws relating to the pollution of any of the waters of

1.11 the state;

1.12 (b) to investigate the extent, character, and effect of the pollution of the waters of this

1.13 state and to gather data and information necessary or desirable in the administration or

1.14 enforcement of pollution laws, and to make such classification of the waters of the state as

1.15 it may deem advisable;

1.16 (c) to establish and alter such reasonable pollution standards for any waters of the state

1.17 in relation to the public use to which they are or may be put as it shall deem necessary for

1.18 the purposes of this chapter and, with respect to the pollution of waters of the state, chapter

1.19 116;

1.20 (d) to encourage waste treatment, including advanced waste treatment, instead of stream

1.21 low-flow augmentation for dilution purposes to control and prevent pollution;

1.22 (e) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable

1.23 orders, permits, variances, standards, rules, schedules of compliance, and stipulation

2.1 agreements, under such conditions as it may prescribe, in order to prevent, control or abate
2.2 water pollution, or for the installation or operation of disposal systems or parts thereof, or
2.3 for other equipment and facilities:

2.4 (1) requiring the discontinuance of the discharge of sewage, industrial waste or other
2.5 wastes into any waters of the state resulting in pollution in excess of the applicable pollution
2.6 standard established under this chapter;

2.7 (2) prohibiting or directing the abatement of any discharge of sewage, industrial waste,
2.8 or other wastes, into any waters of the state or the deposit thereof or the discharge into any
2.9 municipal disposal system where the same is likely to get into any waters of the state in
2.10 violation of this chapter and, with respect to the pollution of waters of the state, chapter
2.11 116, or standards or rules promulgated or permits issued pursuant thereto, and specifying
2.12 the schedule of compliance within which such prohibition or abatement must be
2.13 accomplished;

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

2.17 (4) requiring the construction, installation, maintenance, and operation by any person
2.18 of any disposal system or any part thereof, or other equipment and facilities, or the
2.19 reconstruction, alteration, or enlargement of its existing disposal system or any part thereof,
2.20 or the adoption of other remedial measures to prevent, control or abate any discharge or
2.21 deposit of sewage, industrial waste or other wastes by any person;

2.22 (5) establishing, and from time to time revising, standards of performance for new sources
2.23 taking into consideration, among other things, classes, types, sizes, and categories of sources,
2.24 processes, pollution control technology, cost of achieving such effluent reduction, and any
2.25 nonwater quality environmental impact and energy requirements. Said standards of
2.26 performance for new sources shall encompass those standards for the control of the discharge
2.27 of pollutants which reflect the greatest degree of effluent reduction which the agency
2.28 determines to be achievable through application of the best available demonstrated control
2.29 technology, processes, operating methods, or other alternatives, including, where practicable,
2.30 a standard permitting no discharge of pollutants. New sources shall encompass buildings,
2.31 structures, facilities, or installations from which there is or may be the discharge of pollutants,
2.32 the construction of which is commenced after the publication by the agency of proposed
2.33 rules prescribing a standard of performance which will be applicable to such source.
2.34 Notwithstanding any other provision of the law of this state, any point source the construction

3.1 of which is commenced after May 20, 1973, and which is so constructed as to meet all
3.2 applicable standards of performance for new sources shall, consistent with and subject to
3.3 the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution
3.4 Control Act, not be subject to any more stringent standard of performance for new sources
3.5 during a ten-year period beginning on the date of completion of such construction or during
3.6 the period of depreciation or amortization of such facility for the purposes of section 167
3.7 or 169, or both, of the Federal Internal Revenue Code of 1954, whichever period ends first.
3.8 Construction shall encompass any placement, assembly, or installation of facilities or
3.9 equipment, including contractual obligations to purchase such facilities or equipment, at
3.10 the premises where such equipment will be used, including preparation work at such
3.11 premises;

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

3.15 (7) requiring the owner or operator of any disposal system or any point source to establish
3.16 and maintain such records, make such reports, install, use, and maintain such monitoring
3.17 equipment or methods, including where appropriate biological monitoring methods, sample
3.18 such effluents in accordance with such methods, at such locations, at such intervals, and in
3.19 such a manner as the agency shall prescribe, and providing such other information as the
3.20 agency may reasonably require;

3.21 (8) notwithstanding any other provision of this chapter, and with respect to the pollution
3.22 of waters of the state, chapter 116, requiring the achievement of more stringent limitations
3.23 than otherwise imposed by effluent limitations in order to meet any applicable water quality
3.24 standard by establishing new effluent limitations, based upon section 115.01, subdivision
3.25 13, clause (b), including alternative effluent control strategies for any point source or group
3.26 of point sources to insure the integrity of water quality classifications, whenever the agency
3.27 determines that discharges of pollutants from such point source or sources, with the
3.28 application of effluent limitations required to comply with any standard of best available
3.29 technology, would interfere with the attainment or maintenance of the water quality
3.30 classification in a specific portion of the waters of the state. Prior to establishment of any
3.31 such effluent limitation, the agency shall hold a public hearing to determine the relationship
3.32 of the economic and social costs of achieving such limitation or limitations, including any
3.33 economic or social dislocation in the affected community or communities, to the social and
3.34 economic benefits to be obtained and to determine whether or not such effluent limitation
3.35 can be implemented with available technology or other alternative control strategies. If a

4.1 person affected by such limitation demonstrates at such hearing that, whether or not such
4.2 technology or other alternative control strategies are available, there is no reasonable
4.3 relationship between the economic and social costs and the benefits to be obtained, such
4.4 limitation shall not become effective and shall be adjusted as it applies to such person;

4.5 (9) modifying, in its discretion, any requirement or limitation based upon best available
4.6 technology with respect to any point source for which a permit application is filed after July
4.7 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the
4.8 agency that such modified requirements will represent the maximum use of technology
4.9 within the economic capability of the owner or operator and will result in reasonable further
4.10 progress toward the elimination of the discharge of pollutants; and

4.11 (10) requiring that applicants for wastewater discharge permits evaluate in their
4.12 applications the potential reuses of the discharged wastewater;

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

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

4.21 (h) to conduct such investigations, issue such notices, public and otherwise, and hold
4.22 such hearings as are necessary or which it may deem advisable for the discharge of its duties
4.23 under this chapter and, with respect to the pollution of waters of the state, under chapter
4.24 116, including, but not limited to, the issuance of permits, and to authorize any member,
4.25 employee, or agent appointed by it to conduct such investigations or, issue such notices and
4.26 hold such hearings;

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

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

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

5.10 (l) to set a period not to exceed five years for the duration of any national pollutant
5.11 discharge elimination system permit or not to exceed ten years for any permit issued as a
5.12 state disposal system permit only;

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

5.17 (n) to train subsurface sewage treatment system personnel, including persons who design,
5.18 construct, install, inspect, service, and operate subsurface sewage treatment systems, and
5.19 charge fees as necessary to pay the agency's costs. The fees under this paragraph are subject
5.20 to legislative approval under section 16A.1283. All fees received must be paid into the state
5.21 treasury and credited to the agency's training account. Money in the account is appropriated
5.22 to the agency to pay expenses related to training.

5.23 The information required in clause (m) must be submitted in every odd-numbered year to
5.24 the commissioner on a form provided by the commissioner. The commissioner shall provide
5.25 technical assistance if requested by the governmental subdivision.

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

5.28 Sec. 2. Minnesota Statutes 2016, section 115.77, subdivision 1, is amended to read:

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

6.1 Sec. 3. Minnesota Statutes 2016, section 115.84, subdivision 2, is amended to read:

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

6.5 Sec. 4. Minnesota Statutes 2016, section 115.84, subdivision 3, is amended to read:

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

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

6.14 (c) Revenue from fees charged by the agency for certification shall be credited to the
6.15 environmental fund.

6.16 Sec. 5. Minnesota Statutes 2017 Supplement, section 116.07, subdivision 4d, is amended
6.17 to read:

6.18 Subd. 4d. **Permit fees.** (a) The agency may collect permit fees in amounts not greater
6.19 than those necessary to cover the reasonable costs of developing, reviewing, and acting
6.20 upon applications for agency permits and implementing and enforcing the conditions of the
6.21 permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The
6.22 fee schedule must reflect reasonable and routine direct and indirect costs associated with
6.23 permitting, implementation, and enforcement. The agency may impose an additional
6.24 enforcement fee to be collected for a period of up to two years to cover the reasonable costs
6.25 of implementing and enforcing the conditions of a permit under the rules of the agency.
6.26 Water fees under this paragraph are subject to legislative approval under section 16A.1283.
6.27 Any money collected under this paragraph shall be deposited in the environmental fund.

6.28 (b) Notwithstanding paragraph (a), the agency shall collect an annual fee from the owner
6.29 or operator of all stationary sources, emission facilities, emissions units, air contaminant
6.30 treatment facilities, treatment facilities, potential air contaminant storage facilities, or storage
6.31 facilities subject to a notification, permit, or license requirement under this chapter,
6.32 subchapters I and V of the federal Clean Air Act, United States Code, title 42, section 7401

7.1 et seq., or rules adopted thereunder. The annual fee shall be used to pay for all direct and
7.2 indirect reasonable costs, including legal costs, required to develop and administer the
7.3 notification, permit, or license program requirements of this chapter, subchapters I and V
7.4 of the federal Clean Air Act, United States Code, title 42, section 7401 et seq., or rules
7.5 adopted thereunder. Those costs include the reasonable costs of reviewing and acting upon
7.6 an application for a permit; implementing and enforcing statutes, rules, and the terms and
7.7 conditions of a permit; emissions, ambient, and deposition monitoring; preparing generally
7.8 applicable regulations; responding to federal guidance; modeling, analyses, and
7.9 demonstrations; preparing inventories and tracking emissions; and providing information
7.10 to the public about these activities.

7.11 (c) The agency shall set fees that:

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

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

7.20 (3) shall collect, in the aggregate, from the sources listed in paragraph (b), the amount
7.21 needed to match grant funds received by the state under United States Code, title 42, section
7.22 7405 (section 105 of the federal Clean Air Act).

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

7.29 (d) To cover the reasonable costs described in paragraph (b), the agency shall provide
7.30 in the rules promulgated under paragraph (c) for an increase in the fee collected in each
7.31 year by the percentage, if any, by which the Consumer Price Index for the most recent
7.32 calendar year ending before the beginning of the year the fee is collected exceeds the
7.33 Consumer Price Index for the calendar year 1989. For purposes of this paragraph the
7.34 Consumer Price Index for any calendar year is the average of the Consumer Price Index for

8.1 all-urban consumers published by the United States Department of Labor, as of the close
8.2 of the 12-month period ending on August 31 of each calendar year. The revision of the
8.3 Consumer Price Index that is most consistent with the Consumer Price Index for calendar
8.4 year 1989 shall be used.

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

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

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