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Nutrient Management Plans
Statutes & Regulations

Minnesota

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Nutrient Management Plans

STATE OF MINNESOTA

1) Minn. Stat. §§ 115.03, 116.07, 116.0711, 12; Minn. R. 7020.2225

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Minnesota Revisor's Office.

1) Minn. Stat. §§ 115.03, 116.07, 116.0711, 12; Minn. R. 7020.2225

§ 115.03. POWERS AND DUTIES.

Subdivision 1. ***Generally*****.** The agency is hereby given and charged with the following powers and duties:

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

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

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

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

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

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

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

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

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

(5) establishing, and from time to time revising, standards of performance for new sources taking into consideration, among other things, classes, types, sizes, and categories of sources, processes, pollution control technology, cost of achieving such effluent reduction, and any nonwater quality environmental impact and energy requirements. Said standards of performance for new sources shall encompass those standards for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the agency determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants. New sources shall encompass buildings, structures, facilities, or installations from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication by the agency of proposed rules prescribing a standard of performance which will be applicable to such source. Notwithstanding any other provision of the law of this state, any point source the construction of which is commenced after May 20, 1973, and which is so constructed as to meet all applicable standards of performance for new sources shall, consistent with and subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution Control Act, not be subject to any more stringent standard of performance for new sources during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169, or both, of the Federal Internal Revenue Code of 1954,

whichever period ends first. Construction shall encompass any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

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

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

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

(9) modifying, in its discretion, any requirement or limitation based upon best available technology with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner

or operator of such point source satisfactory to the agency that such modified requirements will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the elimination of the discharge of pollutants; and

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

(f) 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) 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) 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) 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) to train water pollution control personnel, and charge such fees therefor as are necessary to cover the agency's costs. All such fees received shall be paid into the state treasury and credited to the Pollution Control Agency training account;

(k) 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;

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

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

(n) to train subsurface sewage treatment system personnel, including persons who design, construct, install, inspect, service, and operate subsurface sewage treatment systems, and charge fees as necessary to pay the agency's costs. All fees received must be paid into the state treasury and credited to the agency's training account. Money in the account is appropriated to the agency to pay expenses related to training.

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

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

Subd. 2. ***Hearing or investigation*****.** In any hearing or investigation conducted pursuant to this chapter and chapters 114C, 116, and 116F, any employee or agent thereto authorized by the agency, may administer oaths, examine witnesses and issue, in the name of the agency, subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing or investigation. Witnesses shall receive the same fees and mileage as in civil actions.

Subd. 3. ***Contempt of court.*** In case of contumacy or refusal to obey a subpoena issued under this section, the district court of the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found or resides, shall have jurisdiction upon application of the agency or its authorized member, employee or agent to issue to such person an order requiring the person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Subd. 4. ***Building permits*****.** It is unlawful for any person to issue or grant a building permit for, or otherwise permit, the construction, enlargement, or relocation of a commercial or industrial building to be used as the place of employment of more than 12 persons, or any other commercial or industrial building to house a process producing industrial or other wastes, unless the sewage or industrial or other waste originating in

such buildings is or will be discharged into a disposal system for which a permit has first been granted by the agency unless the agency has cause not to apply this requirement, provided that this subdivision shall not apply to building permits issued for buildings, which have an estimated value of less than $500,000, located or to be located within an incorporated municipality. After January 1, 1975, such permits shall be acted upon by the agency within 90 days after submitted, provided that the agency, for good cause, may order said 90-day period to be extended for a reasonable time.

Subd. 4a. ***Section 401 certifications*****.**

(a) The following definitions apply to this subdivision:

(1) "section 401 certification" means a water quality certification required under section 401 of the federal Clean Water Act, United States Code, title 33, section 1341; and

(2) "nationwide permit" means a nationwide general permit issued by the United States Army Corps of Engineers and listed in Code of Federal Regulations, title 40, part 330, appendix A.

(b) The agency is responsible for providing section 401 certifications for nationwide permits.

(c) Before making a final decision on a section 401 certification for regional conditions on a nationwide permit, the agency shall hold at least one public meeting outside the seven-county metropolitan area.

(d) In addition to other notice required by law, the agency shall provide written notice of a meeting at which the agency will be considering a section 401 certification for regional conditions on a nationwide permit at least 21 days before the date of the meeting to the members of the senate and house of representatives environment and natural resources committees, the senate Agriculture and Rural Development Committee, and the house of representatives Agriculture Committee.

Subd. 5. ***Agency authority; national pollutant discharge elimination system*****.** Notwithstanding any other provisions prescribed in or pursuant to this chapter and, with respect to the pollution of waters of the state, in chapter 116, or otherwise, the agency shall have the authority to perform any and all acts minimally necessary including, but not limited to, the establishment and application of standards, procedures, rules, orders, variances, stipulation agreements, schedules of compliance, and permit conditions, consistent with and, therefore not less stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the state of Minnesota in the national pollutant discharge elimination system (NPDES); provided that this provision shall not be construed as a limitation on any powers or duties otherwise residing with the agency pursuant to any provision of law.

Subd. 5a. ***Public notice; application for national pollutant discharge elimination system permit.*** The commissioner must give public notice of a completed national pollutant discharge elimination system permit application for new municipal discharges in the official county newspaper of the county where the discharge is proposed.

Subd. 5b. [Repealed, 2003 c 128 art 1 s 120]

Subd. 5c. ***Regulating storm water discharges.***

(a) The agency may issue a general permit to any category or subcategory of point source storm water discharges that it deems administratively reasonable and efficient without making any findings under agency rules. Nothing in this subdivision precludes the agency from requiring an individual permit for a point source storm water discharge if the agency finds that it is appropriate under applicable legal or regulatory standards.

(b) Pursuant to this paragraph, the legislature authorizes the agency to adopt and enforce rules regulating point source storm water discharges. No further legislative approval is required under any other legal or statutory provision whether enacted before or after May 29, 2003.

(c) The agency shall develop performance standards, design standards, or other tools to enable and promote the implementation of low-impact development and other storm water management techniques. For the purposes of this section, "low-impact development" means an approach to storm water management that mimics a site's natural hydrology as the landscape is developed. Using the low-impact development approach, storm water is managed on site and the rate and volume of predevelopment storm water reaching receiving waters is unchanged. The calculation of predevelopment hydrology is based on native soil and vegetation.

Subd. 5d. ***Required disclosures; applicants for national pollution discharge elimination system permit.*** The commissioner must provide an applicant for a national pollution discharge elimination system permit with a written summary of all available methods for the applicant to participate in the permit process, including an explanation of all procedures for challenging and appealing a decision of the agency or a permit requirement included in any draft of a final permit.

Subd. 6. ***Certification statement; pollution control equipment loan.***

(a) In addition to its other powers and duties, the agency shall prepare the certification statement required to be submitted by an applicant for a pollution control equipment loan under the provisions of section 7(g) of the Small Business Act and section 8 of the Federal Water Pollution Control Act, as amended.

(b) The agency certification shall state whether the loan applicant's proposed additions to, or alterations in, equipment facilities or methods of operation are necessary and adequate to comply with the requirements established under the Federal Water Pollution Control Act, as amended. The agency's certification statement shall comply with the requirements of Code of Federal Regulations, title 40, part 21.

(c) The agency may identify small businesses eligible for loans under section 7(g) of the Small Business Act and section 8 of the Federal Water Pollution Control Act, as amended and assist in the preparation of loan application.

(d) No fee shall be required of an applicant for any assistance provided under this subdivision.

Subd. 7. ***Pollution control facility revenue bonds.*** In addition to its other powers and duties, the agency shall disseminate information and provide assistance regarding the small business administration program to guarantee payments or rentals on pollution control facility revenue bonds pursuant to Public Law 94-305 (June 4, 1976). The agency shall also encourage and assist governmental units to coordinate the joint or cooperative issuance of bonds guaranteed under this program to the end that the total amount of the bonds is sufficient in size to allow convenient sale.

Subd. 8. ***Exemptions for aboveground storage tanks.*** The commissioner may not adopt rules under this section that regulate the use of the following aboveground storage tanks:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(3) tanks used for storing liquids that are gaseous at atmospheric temperature and pressure; or

(4) tanks used for storing agricultural chemicals regulated under chapter 18B, 18C, or 18D.

Subd. 8a. ***Permit duration for major aboveground storage facilities.*** Agency permits for major aboveground storage facilities may be issued for a term of up to ten years.

Subd. 8b. ***Permit duration; state disposal system permits; feedlots.*** State disposal system permits that are issued without a national pollutant discharge elimination system permit to feedlots shall be issued for a term of ten years. A feedlot with a permit under this subdivision is required to be in compliance with agency rules. A facility or operation change may require a permit modification if required under agency rules.

Subd. 9. ***Future costs of wastewater treatment; update of 1995 report.*** The commissioner shall, by January 15, 1998, and each even-numbered year thereafter, provide the chairs of the house of representatives and senate committees with primary jurisdiction over the agency's budget with the following information:

(1) an updated list of all wastewater treatment upgrade and construction projects the agency has identified to meet existing and proposed water quality standards and regulations;

(2) an estimate of the total costs associated with the projects listed in clause (1), and the projects' priority ranking under Minnesota Rules, chapter 7077. The costs of projects necessary to meet existing standards must be identified separately from the costs of projects necessary to meet proposed standards;

(3) the commissioner's best estimate, developed in consultation with the commissioner of employment and economic development and affected permittees, of the increase in sewer service rates to the residents in the municipalities required to construct the projects listed in clause (1) resulting from the cost of these projects; and

(4) a list of existing and proposed state water quality standards which are more stringent than is necessary to comply with federal law, either because the standard has no applicable federal water quality criteria, or because the standard is more stringent than the applicable federal water quality criteria.

Subd. 10. ***Pollutant loading offset.***

(a) The Pollution Control Agency may issue or amend permits to authorize pollutant discharges to a receiving water and may authorize reductions in loading from other sources to the same receiving water, if together the changes achieve a net decrease in the pollutant loading to the receiving water. A point source participating in a water quality offset authorized by this subdivision must have pollutant load reduction requirements for the traded pollutants based on water quality based effluent limits or wasteload allocations in place prior to the offset. The pollutant load reduction requirements in place prior to the offset must meet the requirements of this chapter and Minnesota Rules, parts 7050.0150, subpart 8; 7053.0205; and 7053.0215, including, but not limited to, requirements related to pollutant form, spatial loading, and temporal loading. The agency must require significant offset ratios for offsets between permitted sources and nonpermitted sources and must demonstrate how nonpermitted source offset credits make progress toward ensuring attainment of water quality standards. The agreement of a source to participate in an offset is voluntary. The agency shall track the pollutant offsets or "trades" implemented under this subdivision.

(b) The legislature intends this subdivision to confirm and clarify the authority of the Pollution Control Agency to issue the authorized permits under prior law. The

subdivision must not be construed as a legislative interpretation within the meaning of section 645.16, clause (8), or otherwise as the legislature's intent that the agency did not have authority to issue such a permit under prior law.

Subd. 11. ***Designated use patterns; aquatic pesticides*****.**

(a) The agency may issue under requirement of the federal government national pollutant discharge elimination system permits for pesticide applications for the following designated use patterns:

(1) mosquitoes and other flying insect pests;

(2) forest canopy pests;

(3) aquatic nuisance animals; and

(4) vegetative pests and algae.

If the federal government no longer requires a permit for a designated use pattern, the agency must immediately terminate the permit. The agency shall not require permits for aquatic pesticide applications other than those designated use patterns required by the federal government.

(b) The agency shall not regulate or require permits for the terrestrial application of pesticides or any other pesticide related permit except as provided in paragraph (a).

§ 116.07. POWERS AND DUTIES.

Subdivision 1. ***Generally*****.** In addition to any powers or duties otherwise prescribed by law and without limiting the same, the Pollution Control Agency shall have the powers and duties hereinafter specified.

Subd. 2. ***Adopting standards*****.**

(a) The Pollution Control Agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods which produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another

area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set standards of air quality which are more stringent than those set by the Pollution Control Agency.

(b) The Pollution Control Agency shall promote solid waste disposal control by encouraging the updating of collection systems, elimination of open dumps, and improvements in incinerator practices. The agency shall also adopt standards for the control of the collection, transportation, storage, processing, and disposal of solid waste and sewage sludge for the prevention and abatement of water, air, and land pollution, recognizing that due to variable factors, no single standard of control is applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, topography, soils and geology, climate, transportation, and land use. Such standards of control shall be premised on technical criteria and commonly accepted practices.

(c) The Pollution Control Agency shall also adopt standards describing the maximum levels of noise in terms of sound pressure level which may occur in the outdoor atmosphere, recognizing that due to variable factors no single standard of sound pressure is applicable to all areas of the state. Such standards shall give due consideration to such factors as the intensity of noises, the types of noises, the frequency with which noises recur, the time period for which noises continue, the times of day during which noises occur, and such other factors as could affect the extent to which noises may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life or property. In adopting standards, the Pollution Control Agency shall give due recognition to the fact that the quantity or characteristics of noise or the duration of its presence in the outdoor atmosphere, which may cause noise pollution in one area of the state, may cause less or not cause any noise pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, meteorological conditions and the fact that a standard which may be proper in an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such noise

standards shall be premised upon scientific knowledge as well as effects based on technically substantiated criteria and commonly accepted practices. No local governing unit shall set standards describing the maximum levels of sound pressure which are more stringent than those set by the Pollution Control Agency.

(d) The Pollution Control Agency shall adopt standards for the identification of hazardous waste and for the management, identification, labeling, classification, storage, collection, transportation, processing, and disposal of hazardous waste, recognizing that due to variable factors, a single standard of hazardous waste control may not be applicable to all areas of the state. In adopting standards, the Pollution Control Agency shall recognize that elements of control which may be reasonable and proper in densely populated areas of the state may be unreasonable and improper in sparsely populated or remote areas of the state. The agency shall consider existing physical conditions, topography, soils, and geology, climate, transportation and land use. Standards of hazardous waste control shall be premised on technical knowledge, and commonly accepted practices. Hazardous waste generator licenses may be issued for a term not to exceed five years. No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the Pollution Control Agency.

(e) A person who generates less than 100 kilograms of hazardous waste per month is exempt from the following agency hazardous waste rules:

(1) rules relating to transportation, manifesting, storage, and labeling for photographic fixer and x-ray negative wastes that are hazardous solely because of silver content; and

(2) any rule requiring the generator to send to the agency or commissioner a copy of each manifest for the transportation of hazardous waste for off-site treatment, storage, or disposal, except that counties within the metropolitan area may require generators to provide manifests.

Nothing in this paragraph exempts the generator from the agency's rules relating to on-site accumulation or outdoor storage. A political subdivision or other local unit of government may not adopt management requirements that are more restrictive than this paragraph.

(f) In any rulemaking proceeding under chapter 14 to adopt standards for air quality, solid waste, or hazardous waste under this chapter, or standards for water quality under chapter 115, the statement of need and reasonableness must include:

(1) an assessment of any differences between the proposed rule and:

(i) existing federal standards adopted under the Clean Air Act, United States Code, title 42, section 7412(b)(2); the Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1);

(ii) similar standards in states bordering Minnesota; and

(iii) similar standards in states within the Environmental Protection Agency Region 5; and

(2) a specific analysis of the need and reasonableness of each difference.

Subd. 2a. ***Exemptions from standards.*** No standards adopted by any state agency for limiting levels of noise in terms of sound pressure which may occur in the outdoor atmosphere shall apply to (1) segments of trunk highways constructed with federal interstate substitution money, provided that all reasonably available noise mitigation measures are employed to abate noise, (2) an existing or newly constructed segment of a highway, provided that all reasonably available noise mitigation measures, as approved by the commissioners of the Department of Transportation and Pollution Control Agency, are employed to abate noise, (3) except for the cities of Minneapolis and St. Paul, an existing or newly constructed segment of a road, street, or highway under the jurisdiction of a road authority of a town, statutory or home rule charter city, or county, except for roadways for which full control of access has been acquired, (4) skeet, trap or shooting sports clubs, or (5) motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1996. Nothing herein shall prohibit a local unit of government or a public corporation with the power to make rules for the government of its real property from regulating the location and operation of skeet, trap or shooting sports clubs, or motor vehicle race events conducted at a facility specifically designed for that purpose that was in operation on or before July 1, 1996.

Subd. 2b. ***PCB waste; oil-filled electric equipment.***

(a) A person who generates waste containing greater than 50 parts per million PCB which is subject to the federal requirements for the management of waste under Code of Federal Regulations, title 40, part 761, is also subject to state hazardous waste requirements for proper disposal, licensing, and fees. PCB small capacitors and lighting ballasts are also subject to state on-site accumulation requirements.

(b) PCB waste associated with oil-filled electric equipment voluntarily disposed of or retrofilled prior to the end of its service life is eligible for a waiver from annual hazardous waste fees. To be eligible for the waiver, a generator and the commissioner must execute a voluntary PCB phase-out

agreement, and before relicensing, the generator must demonstrate performance of the agreement. The PCB phase-out agreement must include a description of specific goals, activities to be performed to achieve the goals, phase-out criteria, and a schedule for implementation.

(c) For the purpose of this subdivision, "PCB" has the meaning given in section 116.36.

Subd. 2c. ***Exemption from standards for temporary storage facilities subject to control.***

(a) A temporary storage facility located at a commodity facility that is required to be controlled under Minnesota Rules, part 7011.1005, subpart 3, is not subject to Minnesota Rules, parts 7011.1000 to 7011.1015. For all portable equipment and fugitive dust emissions directly associated with the temporary storage facility, it is determined that there is no applicable specific standard of performance.

(b) For the purposes of this subdivision, the following terms have the meanings given to them:

(1) "temporary storage facility" means a facility storing grain that:

(i) uses an asphalt, concrete, or comparable base material;

(ii) has rigid, self-supporting sidewalls;

(iii) provides adequate aeration; and

(iv) provides an acceptable covering; and

(2) "portable equipment" means equipment that is not fixed at any one spot and can be moved, including but not limited to portable receiving pits, portable augers and conveyors, and portable reclaim equipment directly associated with the temporary storage facility.

Subd. 3. ***Administrative rules.***

Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules governing its own administration and procedure and its staff and employees.

Subd. 4. ***Rules and standards.***

(a) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions

of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution.

(b) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1969, chapter 1046, for the collection, transportation, storage, processing, and disposal of solid waste and the prevention, abatement, or control of water, air, and land pollution which may be related thereto, and the deposit in or on land of any other material that may tend to cause pollution. The agency shall adopt such rules and standards for sewage sludge, addressing the intrinsic suitability of land, the volume and rate of application of sewage sludge of various degrees of intrinsic hazard, design of facilities, and operation of facilities and sites. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques or to any other matter relevant to the prevention, abatement or control of water, air, and land pollution which may be advised through the control of collection, transportation, processing, and disposal of solid waste and sewage sludge, and the deposit in or on land of any other material that may tend to cause pollution. By January 1, 1983, the rules for the management of sewage sludge shall include an analysis of the sewage sludge determined by the commissioner of agriculture to be necessary to meet the soil amendment labeling requirements of section 18C.215.

(c) The rules for the disposal of solid waste shall include site-specific criteria to prohibit solid waste disposal based on the area's sensitivity to groundwater contamination, including site-specific testing. The rules shall provide criteria for locating landfills based on a site's sensitivity to groundwater contamination. Sensitivity to groundwater contamination is based on the predicted minimum time of travel of groundwater contaminants from the solid waste to the compliance boundary. The rules shall prohibit landfills in areas where karst is likely to develop. The rules shall specify testable or otherwise objective thresholds for these criteria. The rules shall also include modifications to financial assurance requirements under subdivision 4h that ensure the state is protected from financial responsibility for future groundwater contamination. The modifications to the financial assurance rules specified in this paragraph must require that a solid waste disposal facility subject to them maintain

financial assurance so long as the facility poses a potential environmental risk to human health, wildlife, or the environment, as determined by the agency following an empirical assessment. The financial assurance and siting modifications to the rules specified in this paragraph do not apply to:

(1) solid waste facilities initially permitted before January 1, 2011, including future contiguous expansions and noncontiguous expansions within 600 yards of a permitted boundary;

(2) solid waste disposal facilities that accept only construction and demolition debris and incidental nonrecyclable packaging, and facilities that accept only industrial waste that is limited to wood, concrete, porcelain fixtures, shingles, or window glass resulting from the manufacture of construction materials; and

(3) requirements for permit by rule solid waste disposal facilities.

(d) Until the rules are modified as provided in paragraph (c) to include site-specific criteria to prohibit areas from solid waste disposal due to groundwater contamination sensitivity, as required under this section, the agency shall not issue a permit for a new solid waste disposal facility, except for:

(1) the reissuance of a permit for a land disposal facility operating as of March 1, 2008;

(2) a permit to expand a land disposal facility operating as of March 1, 2008, beyond its permitted boundaries, including expansion on land that is not contiguous to, but is located within 600 yards of, the land disposal facility's permitted boundaries;

(3) a permit to modify the type of waste accepted at a land disposal facility operating as of March 1, 2008;

(4) a permit to locate a disposal facility that accepts only construction debris as defined in section 115A.03, subdivision 7;

(5) a permit to locate a disposal facility that:

(i) accepts boiler ash from an electric energy power plant that has wet scrubbed units or has units that have been converted from wet scrubbed units to dry scrubbed units as those terms are defined in section 216B.68;

(ii) is on land that was owned on May 1, 2008, by the utility operating the electric energy power plant; and

(iii) is located within three miles of the existing ash disposal facility for the power plant; or

(6) a permit to locate a new solid waste disposal facility for ferrous metallic minerals regulated under Minnesota Rules, chapter 6130, or for nonferrous metallic minerals regulated under Minnesota Rules, chapter 6132.

(e) Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the Pollution Control Agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1971, chapter 727, for the prevention, abatement, or control of noise pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances or conditions in order to make due allowances for variations therein. Without limitation, rules or standards may relate to sources or emissions of noise or noise pollution, to the quality or composition of noises in the natural environment, or to any other matter relevant to the prevention, abatement, or control of noise pollution.

(f) As to any matters subject to this chapter, local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the Pollution Control Agency.

(g) Pursuant to chapter 14, the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of this chapter for generators of hazardous waste, the management, identification, labeling, classification, storage, collection, treatment, transportation, processing, and disposal of hazardous waste and the location of hazardous waste facilities. A rule or standard may be of general application throughout the state or may be limited as to time, places, circumstances, or conditions. In implementing its hazardous waste rules, the Pollution Control Agency shall give high priority to providing planning and technical assistance to hazardous waste generators. The agency shall assist generators in investigating the availability and feasibility of both interim and long-term hazardous waste management methods. The methods shall include waste reduction, waste separation, waste processing, resource recovery, and temporary storage.

(h) The Pollution Control Agency shall give highest priority in the consideration of permits to authorize disposal of diseased shade trees by open burning at designated sites to evidence concerning economic costs of transportation and disposal of diseased shade trees by alternative methods.

Subd. 4a. ***Permits*****.**

(a) The Pollution Control Agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.

The Pollution Control Agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.

The agency may not issue a permit to a facility without analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the geographic area within which the facility's emissions are likely to be deposited, provided that the facility is located in a community in a city of the first class in Hennepin County that meets all of the following conditions:

(1) is within a half mile of a site designated by the federal government as an EPA superfund site due to residential arsenic contamination;

(2) a majority of the population are low-income persons of color and American Indians;

(3) a disproportionate percent of the children have childhood lead poisoning, asthma, or other environmentally related health problems;

(4) is located in a city that has experienced numerous air quality alert days of dangerous air quality for sensitive populations between February 2007 and February 2008; and

(5) is located near the junctions of several heavily trafficked state and county highways and two one-way streets which carry both truck and auto traffic.

The Pollution Control Agency may revoke or modify any permit issued under this subdivision and section 116.081whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

(b) The Pollution Control Agency has the authority for approval over the siting, expansion, or operation of a solid waste facility with regard to environmental issues. However, the agency's issuance of a permit does not release the permittee from any liability, penalty, or duty imposed by any applicable county

ordinances. Nothing in this chapter precludes, or shall be construed to preclude, a county from enforcing land use controls, regulations, and ordinances existing at the time of the permit application and adopted pursuant to sections 366.10 to 366.181, 394.21 to 394.37, or 462.351 to 462.365, with regard to the siting, expansion, or operation of a solid waste facility.

(c) Except as prohibited by federal law, a person may commence construction, reconstruction, replacement, or modification of any facility prior to the issuance of a construction permit by the agency.

Subd. 4b. ***Permits; hazardous waste facilities.***

(a) Except as otherwise provided in sections 115A.18 to 115A.30, the agency shall commence any environmental review required under chapter 116D within 120 days of its acceptance of a completed permit application. The agency shall respond to a permit application for a hazardous waste facility within 120 days following a decision not to prepare environmental documents or following the acceptance of a negative declaration notice or an environmental impact statement. Except as otherwise provided in sections 115A.18 to 115A.30, within 60 days following the submission of a final permit application for a hazardous waste facility, unless a time extension is agreed to by the applicant, the agency shall issue or deny all permits needed for the construction of the proposed facility.

(b) The agency shall promulgate rules pursuant to chapter 14 for all hazardous waste facilities. The rules shall require:

(1) contingency plans for all hazardous waste facilities which provide for effective containment and control in any emergency condition;

(2) the establishment of a mechanism to assure that money to cover the costs of closure and postclosure monitoring and maintenance of hazardous waste facilities will be available;

(3) the maintenance of liability insurance by the owner or operator of hazardous waste facilities during the operating life of the facility.

Subd. 4c. [Repealed, 1983 c 373 s 72]

Subd. 4d. ***Permit fees.***

(a) The agency may collect permit fees in amounts not greater than those necessary to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The fee schedule must reflect reasonable and routine

direct and indirect costs associated with permitting, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the environmental fund.

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

(c) The agency shall set fees that:

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

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

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

The agency must not include in the calculation of the aggregate amount to be collected under clauses (1) and (2) any amount in excess of 4,000

tons per year of each air pollutant from a source. The increase in air permit fees to match federal grant funds shall be a surcharge on existing fees. The commissioner may not collect the surcharge after the grant funds become unavailable. In addition, the commissioner shall use nonfee funds to the extent 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 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 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 precede and not be contingent upon issuance of a permit; shall 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 not affect final decisions regarding environmental review.

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

Subd. 4e. ***Hazardous waste processing facilities; agreements; financial responsibility*****.** When the agency issues a permit for a facility for the processing of hazardous waste, the agency may approve as a condition of the permit an agreement by which the permittee indemnifies the generators of hazardous waste accepted by the facility for part or all of any liability which may accrue to the generators as a result of a release or threatened release of a hazardous waste from the facility. The agency may approve an agreement under this subdivision only if the agency determines that the permittee has demonstrated financial responsibility to carry out the agreement during the term of the permit. If a generator of hazardous waste accepted by a permitted processing facility is held liable for costs or damages arising out of a release of a hazardous waste from the facility, and the permittee is subject to an agreement approved under this subdivision, the generator is liable to the extent that the costs or damages were not paid under this agreement.

Subd. 4f. ***Closure and postclosure responsibility and liability*****.** An operator or owner of a facility is responsible for closure of the facility and postclosure care relating to the facility. If an owner or operator has failed to provide the required closure or postclosure care of the facility the agency may take the actions. The owner or operator is liable for the costs of the required closure and postclosure care taken by the agency.

Subd. 4g. ***Closure and postclosure rules*****.** The agency shall adopt rules establishing requirements for the closure of solid waste disposal facilities and for the postclosure care of closed facilities. The rules apply to all solid waste disposal facilities in operation at the time the rules are effective. The rules must provide standards and procedures for closing disposal facilities and for the care, maintenance, and monitoring of the facilities after closure that will prevent, mitigate, or minimize the threat to public health and the environment posed by closed disposal facilities.

Subd. 4h. ***Financial responsibility rules*****.**

(a) The agency shall adopt rules requiring the operator or owner of a solid waste disposal facility to submit to the agency proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for 30 years after closure for a mixed municipal solid waste disposal facility or for a minimum of 20 years after closure, as determined by agency rules, for any other solid waste disposal facility, and to provide for the closure of the facility and postclosure care required under agency rules. Proof of financial responsibility is required of the operator or owner of a facility receiving an original permit or a permit for expansion after adoption of the rules. Within 180 days of the effective date of the rules or by July 1, 1987, whichever is later, proof of financial responsibility is required of an operator or owner of a facility with a remaining capacity of

more than five years or 500,000 cubic yards that is in operation at the time the rules are adopted. Compliance with the rules and the requirements of paragraph (b) is a condition of obtaining or retaining a permit to operate the facility.

(b) A municipality, as defined in section 475.51, subdivision 2, including a sanitary district, that owns or operates a solid waste disposal facility that was in operation on May 15, 1989, may meet its financial responsibility for all or a portion of the contingency action portion of the reasonable and necessary response costs at the facility by pledging its full faith and credit to meet its responsibility.

The pledge must be made in accordance with the requirements in chapter 475 for issuing bonds of the municipality, and the following additional requirements:

(1) The governing body of the municipality shall enact an ordinance that clearly accepts responsibility for the costs of contingency action at the facility and that reserves, during the operating life of the facility and for the time period required in paragraph (a) after closure, a portion of the debt limit of the municipality, as established under section 475.53or other law, that is equal to the total contingency action costs.

(2) The municipality shall require that all collectors that haul to the facility implement a plan for reducing solid waste by using volume-based pricing, recycling incentives, or other means.

(3) When a municipality opts to meet a portion of its financial responsibility by relying on its authority to issue bonds, it shall also begin setting aside in a dedicated long-term care trust fund money that will cover a portion of the potential contingency action costs at the facility, the amount to be determined by the agency for each facility based on at least the amount of waste deposited in the disposal facility each year, and the likelihood and potential timing of conditions arising at the facility that will necessitate response action. The agency may not require a municipality to set aside more than five percent of the total cost in a single year.

(4) A municipality shall have and consistently maintain an investment grade bond rating as a condition of using bonding authority to meet financial responsibility under this section.

(5) The municipality shall file with the commissioner of revenue its consent to have the amount of its contingency action costs deducted from state aid payments otherwise due the municipality and paid instead to the remediation fund created in section 116.155, if the municipality fails to conduct the contingency action at the facility when ordered by

the agency. If the agency notifies the commissioner that the municipality has failed to conduct contingency action when ordered by the agency, the commissioner shall deduct the amounts indicated by the agency from the state aids in accordance with the consent filed with the commissioner.

(6) The municipality shall file with the agency written proof that it has complied with the requirements of paragraph (b).

(c) The method for proving financial responsibility under paragraph (b) may not be applied to a new solid waste disposal facility or to expansion of an existing facility, unless the expansion is a vertical expansion. Vertical expansions of qualifying existing facilities cannot be permitted for a duration of longer than three years.

(d) The commissioner shall consult with the commissioner of management and budget for guidance on the forms of financial assurance that are acceptable for private owners and public owners, and in carrying out a periodic review of the adequacy of financial assurance for solid waste disposal facilities. Financial assurance rules shall allow financial mechanisms to public owners of solid waste disposal facilities that are appropriate to their status as subdivisions of the state.

Subd. 4i. ***Civil penalties.*** The civil penalties of sections 115.071 and 116.072 apply to any person in violation of the rules adopted under subdivision 4g or 4h.

Subd. 4j. ***Permits; solid waste facilities.***

(a) The agency may not issue a permit for new or additional capacity for a mixed municipal solid waste resource recovery or disposal facility as defined in section 115A.03 unless each county using or projected in the permit to use the facility has in place a solid waste management plan approved under section 115A.46 or 473.803 and amended as required by section 115A.96, subdivision 6. The agency shall issue the permit only if the capacity of the facility is consistent with the needs for resource recovery or disposal capacity identified in the approved plan or plans. Consistency must be determined by the Pollution Control Agency. Plans approved before January 1, 1990, need not be revised if the capacity sought in the permit is consistent with the approved plan or plans.

(b) The agency shall require as part of the permit application for a waste incineration facility identification of preliminary plans for ash management and ash leachate treatment or ash utilization. The permit issued by the agency must include requirements for ash management and ash leachate treatment.

(c) Within 180 days of receipt of a completed application, the agency shall approve, disapprove, or delay decision on the application, with reasons for the delay, in writing.

(d) The agency may not issue a permit for a new disposal facility, as defined in section 115A.03, subdivision 10, or a permit to expand an existing disposal facility unless:

(1) all local units of government in which the facility is to be sited and exercising their respective land use and zoning authority pursuant to chapter 366, 494, or 462 have granted approval for and provided any required public notices of the new or expanded facility prior to the issuance of the permit;

(2) all local units of government in which the facility is to be sited and exercising their respective land use and zoning authority pursuant to chapter 366, 494, or 462 have authorized the permit to be issued prior to or concurrent with the required approval by the local unit of government; or

(3) the new or expanded facility is part of and will be sited on land already identified in an approved solid waste management plan as described in paragraph (a).

(e) The commissioners of the Pollution Control Agency and natural resources shall apply Minnesota Rules, parts 7001.3050, subpart 3, item G, and 7035.2525, subpart 2, item G, to solid waste facilities permitted under and in compliance with those rules and in compliance with Minnesota Rules, chapter 6132.

Subd. 4k. ***Household hazardous waste and other problem materials; management.***

(a) The agency shall adopt rules to require the owner or operator of a solid waste disposal facility or resource recovery facility to submit to the agency and to each county using or projected to use the facility a management plan for the separation of household hazardous waste and other problem materials from solid waste prior to disposal or processing and for the proper management of the waste. The rules must require that the plan be developed in coordination with each county using, or projected to use, the facility. The plan must not be inconsistent with the plan developed under section 115A.956, subdivision 2, and must include:

(1) identification of materials that are problem materials, as defined in section 115A.03, subdivision 24a, for the facility;

(2) participation in public education activities on management of household hazardous waste and other problem materials in the facility's service area;

(3) a strategy for reduction of household hazardous waste and other problem materials entering the facility; and

(4) a plan for the storage and proper management of separated household hazardous waste and other problem materials.

(b) By September 30, 1992, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to household hazardous waste management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to household hazardous waste management;

(2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

(c) By September 30, 1993, the owner or operator of a facility shall implement the elements of the plan required in paragraph (a) relating to problem materials management. After that date, the agency may not grant or renew a permit for a facility until the agency has:

(1) reviewed the elements of the facility's plan relating to problem materials management;

(2) directed the applicant or permittee to make changes to these elements as necessary to comply with the plan requirements under paragraph (a); and

(3) included a requirement to implement the elements as a condition of the issued or renewed permit.

Subd. 5. ***Variances.***

The Pollution Control Agency may grant variances from its rules as provided in rules adopted under this section and sections 14.055 and 14.056 in order to avoid undue hardship and to promote the effective and reasonable application and enforcement of laws, rules, and standards for prevention, abatement and

control of water, air, noise, and land pollution. The variance rules shall provide for notice and opportunity for hearing before a variance is granted.

A local government unit authorized by contract with the Pollution Control Agency pursuant to section 116.05 to exercise administrative powers under this chapter may grant variances after notice and public hearing from any ordinance, rule, or standard for prevention, abatement, or control of water, air, noise and land pollution, adopted pursuant to said administrative powers and under the provisions of this chapter.

Subd. 6. ***Pollution Control Agency; exercise of powers*****.** In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

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

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

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

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

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

(b) For the purposes of this subdivision, the term "processing" may include, at the option of the county board, issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the Pollution Control Agency. The Pollution Control Agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the

issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14. For permit applications filed after October 1, 2001, section 15.99 applies to feedlot permits issued by the agency or a county pursuant to this subdivision.

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

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

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

(f) The Pollution Control Agency shall work with the Minnesota Extension Service, the Department of Agriculture, the Board of Water and Soil Resources, producer groups, local units of government, as well as with appropriate federal agencies such as the Natural Resources Conservation Service and the Farm Service Agency, to notify and educate producers of rules under this subdivision at the time the rules are being developed and adopted and at least every two years thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) A feedlot operator who stores and applies up to 100,000 gallons per calendar year of private truck wash wastewater resulting from trucks that transport animals or supplies to and from the feedlot does not require a permit to land-apply industrial by-products if the feedlot operator stores and applies the wastewater in accordance with Pollution Control Agency requirements for land applications of industrial by-product that do not require a permit.

(s) A feedlot operator who holds a permit from the Pollution Control Agency to land-apply industrial by-products from a private truck wash is not required to have a certified land applicator apply the private truck wash wastewater if the wastewater is applied by the feedlot operator to cropland owned or leased by the feedlot operator or by a commercial animal waste technician licensed by the commissioner of agriculture under chapter 18C. For purposes of this paragraph and paragraph (r), "private truck wash" means a truck washing facility owned or leased, operated, and used only by a feedlot operator to wash trucks owned or leased by the feedlot operator and used to transport animals or supplies to and from the feedlot.

Subd. 7a. ***Notice of application for livestock feedlot permit.***

(a) A person who applies to the Pollution Control Agency or a county board for a permit to construct or expand a feedlot with a capacity of 500 animal units or more shall, not less than 20 business days before the date on which a permit is issued, provide notice to each resident and each owner of real property within 5,000 feet of the perimeter of the proposed feedlot. The notice may be delivered by first class mail, in person, or by the publication in a newspaper of general circulation within the affected area and must include information on the type of livestock and the proposed capacity of the feedlot. Notification under this subdivision is satisfied under an equal or greater notification requirement

of a county or town permit process. A person must also send a copy of the notice by first class mail to the clerk of the town in which the feedlot is proposed not less than 20 business days before the date on which a permit is issued.

(b) The agency or a county board must verify that notice was provided as required under paragraph (a) prior to issuing a permit.

Subd. 7b. ***Feedlot inventory; notification and public meeting requirements*****.**

(a) Any state agency or local government unit conducting an inventory or survey of livestock feedlots under its jurisdiction must publicize notice of the inventory in a newspaper of general circulation in the affected area and in other media as appropriate. The notice must state the dates the inventory will be conducted, the information that will be requested in the inventory, and how the information collected will be provided to the public. The notice must also specify the date for a public meeting to provide information regarding the inventory.

(b) A local government unit conducting an inventory or survey of livestock feedlots under its jurisdiction must hold at least one public meeting within the boundaries of the jurisdiction of the local unit of government, prior to beginning the inventory. A state agency conducting a survey of livestock feedlots must hold at least four public meetings outside of the seven-county Twin Cities metropolitan area, prior to beginning the inventory. The public meeting must provide information concerning the dates the inventory will be conducted, the procedure the agency or local unit of government will use to request the information to be included in the inventory, and how the information collected will be provided to the public.

Subd. 7c. ***Feedlots; NPDES permitting requirements*****.**

(a) The agency must issue national pollutant discharge elimination system permits for feedlots only as required by federal law. The issuance of national pollutant discharge elimination system permits for feedlots must be based on the following:

(1) a permit for a newly constructed or expanded animal feedlot that is identified as a priority by the commissioner, using criteria in effect on January 1, 2010, must be issued as an individual permit;

(2) an existing feedlot that is identified as a priority by the commissioner, using criteria in effect on January 1, 2010, must be issued as an individual permit; and

(3) the agency must issue a general national pollutant discharge elimination system permit, if required, for animal feedlots that are not identified under clause (1) or (2).

(b) Prior to the issuance of a general national pollutant discharge elimination system permit for a category of animal feedlot facility permittees, the agency must hold at least one public hearing on the permit issuance.

(c) To the extent practicable, the agency must include a public notice and comment period for an individual national pollutant discharge elimination system permit concurrent with any public notice and comment for:

(1) the purpose of environmental review of the same facility under chapter 116D; or

(2) the purpose of obtaining a conditional use permit from a local unit of government where the local government unit is the responsible governmental unit for purposes of environmental review under chapter 116D.

(d) A feedlot owner may choose to apply for a national pollutant discharge elimination system permit even if the feedlot is not required by federal law to have a national pollutant discharge elimination system permit.

Subd. 7d. ***Exemption*****.**

(a) Notwithstanding subdivision 7 or Minnesota Rules, chapter 7020, to the contrary, and notwithstanding the proximity to public or private waters, an owner or resident of agricultural land on which livestock have been allowed to pasture at any time during the ten-year period beginning January 1, 2010, is permanently exempt from requirements related to feedlot or manure management on that land for so long as the property remains in pasture.

(b) For the purposes of this subdivision, "pasture" means areas where livestock graze on grass or other growing plants. Pasture also means agricultural land where livestock are allowed to forage during the winter time and which land is used for cropping purposes in the growing season. In either case, the concentration of animals must be such that a vegetative cover, whether of grass, growing plants, or crops, is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

Subd. 7e. ***Manure digesters; permits*****.** Except for areas within the metropolitan area, as defined in section 473.121, subdivision 2, or within cities of the first or second class, an air emission permit is not required for a manure digester and associated electrical generation equipment that process manure from the farm or provide for backup power for the farm.

Subd. 8. ***Public information*****.** The agency may publish, broadcast, or distribute information pertaining to agency activities, laws, rules, and standards.

Subd. 9. ***Orders; investigations*****.** The agency shall have the following powers and duties for the enforcement of any provision of this chapter and chapter 114C, relating to air contamination or waste:

(1) to adopt, issue, reissue, modify, deny, revoke, enter into or enforce reasonable orders, schedules of compliance and stipulation agreements;

(2) to require the owner or operator of any emission facility, air contaminant treatment facility, potential air contaminant storage facility, or any system or facility related to the storage, collection, transportation, processing, or disposal of waste to establish and maintain records; to make reports; to install, use, and maintain monitoring equipment or methods; and to make tests, including testing for odor where a nuisance may exist, in accordance with methods, at locations, at intervals, and in a manner as the agency shall prescribe; and to provide other information as the agency may reasonably require;

(3) to conduct investigations, issue notices, public and otherwise, and order hearings as it may deem necessary or advisable for the discharge of its duties under this chapter and chapter 114C, including but not limited to the issuance of permits; and to authorize any member, employee, or agent appointed by it to conduct the investigations and issue the notices.

Subd. 10. [Repealed, 1997 c 231 art 13 s 20]

Subd. 11. ***Permits; landfarming contaminated soil*****.**

(a) If the agency receives an application for a permit to spread soil contaminated by a harmful substance as defined in section 115B.25, subdivision 7a, on land in an organized or unorganized township other than the township of origin of the soil, the agency must notify the board of the organized township, or the county board of the unorganized township where the spreading would occur at least 60 days prior to issuing the permit.

(b) The agency must not issue a permit to spread contaminated soil on land outside the township of origin if, by resolution, the township board of the organized township, or the county board of the unorganized township where the soil is to be spread requests that the agency not issue a permit.

Subd. 12. ***Fire-training ash disposal*****.** The ash from a legitimate fire training exercise involving the live burning of a structure is classified as demolition debris and may be disposed in any permit-by-rule land disposal facility authorized under agency rules or any permitted demolition land disposal facility, with the consent of the disposal facility

operator, if a person certified by a Minnesota state college or university fire safety center certifies in writing in advance to the commissioner that the structure has been adequately prepared for such a training exercise, taking into account all applicable safety concerns and regulations, including Pollution Control Agency guidelines regarding the removal of hazardous materials from training-burn structures before the training event.

§ 116.0711. FEEDLOT PERMITS; CONDITIONS; COUNTRY GRANTS.

Subdivision 1. *Conditions*.

(a) The agency shall not require feedlot permittees to maintain records as to rainfall or snowfall as a condition of a general feedlot permit if the owner directs the commissioner or agent of the commissioner to appropriate data on precipitation maintained by a government agency or educational institution.

(b) A feedlot permittee shall give notice to the agency when the permittee proposes to transfer ownership or control of the feedlot to a new party. The commissioner shall not unreasonably withhold or unreasonably delay approval of any transfer request. This request shall be handled in accordance with sections 116.07 and 15.992.

(c) An animal feedlot in shoreland that has been unused may resume operation after obtaining a permit from the agency or county, regardless of the number of years that the feedlot was unused.

Subd. 2. *County feedlot program grants; three-part formula*.

(a) Money appropriated to the commissioner to make grants to delegated counties to administer the county feedlot program must be distributed according to the three-part formula in paragraphs (b) to (d).

(b) Number of feedlots in the county: 60 percent of the total appropriation must be distributed according to the number of feedlots that are required to be registered in the county. Grants awarded under this paragraph must be matched with a combination of local cash and in-kind contributions.

(c) Minimum program requirements: 25 percent of the total appropriation must be distributed based on the county (1) conducting an annual number of inspections at feedlots that is equal to or greater than seven percent of the total number of registered feedlots that are required to be registered in the county; and (2) meeting noninspection minimum program requirements as identified in the county feedlot workplan form. Counties that do not meet the inspection requirement must not receive 50 percent of the eligible funding under this paragraph. Counties must receive funding for noninspection requirements under this paragraph according to a scoring system checklist administered by the commissioner. The commissioner, in consultation with the Minnesota Association of County Feedlot Officers

executive team, shall make a final decision regarding any appeal by a county regarding the terms and conditions of this paragraph.

(d) Performance credits: 15 percent of the total appropriation must be distributed according to work that has been done by the counties during the fiscal year. The amount must be determined by the number of performance credits a county accumulates during the year based on a performance credit matrix jointly agreed upon by the commissioner in consultation with the Minnesota Association of County Feedlot Officers executive team. To receive an award under this paragraph, the county must meet the requirements of paragraph (c), clause (1), and achieve 90 percent of the requirements according to paragraph (c), clause (2), of the formula. The rate of reimbursement per performance credit item must not exceed $200.

Subd. 3. ***Minimum grant; prorated grant; transfers*****.**

Delegated counties are eligible for a minimum grant of $7,500. To receive the full $7,500 amount, a county must meet the requirements under subdivision 2, paragraph (c). Nondelegated counties that apply for delegation shall receive a grant prorated according to the number of full quarters remaining in the program year from the date of commissioner approval of the delegation. Awards to any newly delegated counties must be made out of the appropriation reserved under subdivision 2, paragraph (d). The commissioner, in consultation with the Minnesota Association of County Feedlot Officers executive team, may decide to use money reserved under subdivision 2, paragraph (d), in an amount not to exceed five percent of the total annual appropriation for initiatives to enhance existing delegated county feedlot programs, information and education, or technical assistance efforts to reduce feedlot-related pollution hazards. Any amount remaining after distribution under subdivision 2, paragraphs (b) and (c), must be transferred for purposes of subdivision 2, paragraph (d).

§ 116.0712. MODIFIED LEVEL ONE FEEDLOT INVENTORY.

(a) Except as provided in paragraph (b), a delegated county that has completed a modified level 1 inventory that includes facility location, approximate number of animal units, and whether the facility is an open lot or confinement operation, may report that information to the agency in aggregate. A feedlot that is included in an inventory meeting these criteria has satisfied registration requirements under agency rule.

(b) A county must submit to the agency the complete registration information for a feedlot having 1,000 animal units or greater or a feedlot meeting the definition of a concentrated animal feeding operation as defined in Code of Federal Regulations, title 40, section 122.23.

Standards for Discharge, Design, Construction, Operation, and Closure

7020.2225. LAND APPLICATION OF MANURE.

Subpart 1. In general.

A. Manure and process wastewater must not be applied to land in a manner that will:

(1) result in a discharge to waters of the state during the application process, except that manure and process wastewater application is allowed onto seasonally saturated soils that are seeded to annual farm crops or crop rotations of perennial grasses or legumes; or

(2) cause pollution of waters of the state due to manure-contaminated runoff.

B. Manure and process wastewater application into road ditches is prohibited.

C. All manure and process wastewater applications to land must meet the requirements of this part except where specifically exempted.

D. When ownership of manure or process wastewater is transferred from an animal feedlot with capacity of 300 or more animal units or a manure storage area capable of holding the manure produced by 300 or more animal units for application to land not owned or leased by the owner of the animal feedlot or the manure storage area, any person receiving the manure or the process wastewater shall:

(1) comply with the manure management plan completed by the owner of the animal feedlot where the manure or process wastewater was produced; and

(2) complete the manure management plan requirements in subpart 4, item D, except for provisions that were completed by the owner of the animal feedlot where the manure or process wastewater was produced.

Subp. 2. Manure nutrient testing requirements. Manure from all manure storage areas storing manure produced from more than 100 animal units must be tested by the owner of the animal feedlot for nitrogen and phosphorus content in accordance with items A to E, except that item A is not required for manure storage areas storing manure produced by fewer than 300 animal units.

A. For manure storage areas storing manure from 300 or more animal units, the manure must initially be tested once per year for at least three years.

B. Manure must be retested following changes in conditions affecting manure nutrient content including unusual climatic conditions, or changes in manure storage and handling, livestock types, or livestock feed.

C. Ongoing testing must continue at least once every four years unless more frequent testing is required under item B or in a permit.

D. The nutrient analysis must be conducted using a laboratory certified by the Minnesota Department of Agriculture or commissioner-approved on-farm sampling and analysis.

E. Sampling must be conducted so that a representative sample is obtained in accordance with University of Minnesota Extension Service recommendations.

Subp. 3. Nutrient application rate standards. Items A and B apply to all manure and process wastewater application sites. Item C applies only to animal feedlots with a capacity of 300 or more animal units and manure storage areas capable of holding the manure produced by 300 or more animal units.

A. Manure and process wastewater application rates must be limited as described in subitems (1) to (3) so that the estimated plant available nitrogen from all nitrogen sources does not exceed expected crop nitrogen needs for nonlegume crops and expected nitrogen removal for legumes.

(1) Expected crop nitrogen needs, crop nitrogen removal rates, and estimated plant available nitrogen from manure and legumes must be based on the most recent published recommendations of the University of Minnesota Extension Service or of another land grant college in a contiguous state.

(2) Estimated plant available nitrogen from organic nitrogen sources, including manure, may deviate up to 20 percent from University of Minnesota Extension Service, or of another land grant college in a contiguous state, estimates where site nutrient management history, soil conditions, or cool weather warrant additional nitrogen application. When crop nitrogen deficiencies are visible or measured, remedial nitrogen applications above the 20 percent deviation can be made.

(3) Nitrogen sources include commercial fertilizer nitrogen, soil organic matter, irrigation water, legumes grown during previous years, biosolids, process wastewater, and manure applied for the current year and previous years.

B. Nutrient application rate standards for land in special protection areas must meet the requirements in subpart 6, item B, subitem (2), if applicable.

C. For land receiving manure or process wastewater from animal feedlots capable of holding 300 or more animal units or manure storage areas capable of holding the manure produced by 300 or more animal units, soil samples from the upper six inches must be collected at a minimum frequency of once every four years and analyzed for phosphorus using the Bray P1 or Olsen test. If soil phosphorus levels exceed the levels in subitems (1) and (2), then the owner must complete a manure management plan in accordance with subpart 4, item D, and submit it with a permit application to the agency or delegated county for review in accordance with subpart 4, item B, subitem (1).

(1) Fields in special protection areas or within 300 feet of open tile intakes that have an average soil phosphorus test level exceeding 75 ppm using the Bray P1 test or 60 ppm using the Olsen test.

(2) Fields outside the special protection areas and more than 300 feet from open tile intakes that have an average soil phosphorus test level exceeding 150 ppm using the Bray P1 test or 120 ppm using the Olsen test.

Subp. 4. Manure management plan requirements. Item A indicates who must prepare a manure management plan and when the plan must be prepared. Item B lists when manure management plans must be submitted to the agency or delegated county for review. Item C describes when the manure management plan must be reviewed and revised. Item D lists the required elements of a manure management plan. Item E describes exceptions to manure management plans when manure ownership is transferred.

A. An owner or operator of an animal feedlot shall prepare and retain on file a manure management plan that complies with item D according to the following schedule:

(1) upon application for an NPDES, SDS, interim, or construction short-form permit for a facility capable of holding 100 or more animal units;

(2) an owner of an animal feedlot capable of holding 300 or more animal units that is not required to obtain an NPDES, SDS, interim, or construction short-form permit shall prepare or update a manure management plan prior to January 1, 2005, when a manure management plan does not meet the requirements of this part or reflect current operations and the manure is applied by someone other than a commercial animal waste technician or a certified private manure applicator; and

(3) once a manure management plan is required for a facility, a plan that meets the requirements under this subpart must be retained on file at the animal feedlot or manure storage area.

B. A manure management plan that complies with the requirements of item D must be submitted to the commissioner or delegated county when any one of the following conditions applies:

(1) when an owner submits a permit application to the commissioner for an NPDES, SDS, or interim permit under part 7020.0405, subpart 1, item C, subitem (3); or

(2) the manure management plan is requested by the commissioner or county feedlot pollution control officer.

C. The manure management plan must be reviewed by the owner each year and adjusted for any changes in the amount of manure production, manure nutrient test results, fields available for receiving manure, crop rotations, or other practices which affect the available nutrient amounts or crop nutrient needs on fields receiving manure.

D. Except as provided in item E, the manure management plan must contain:

(1) a description of the manure storage/handling system and the expected annual amount of manure and nutrients which will need to be land applied;

(2) application methods, equipment, and calibration procedures;

(3) acreage available for manure and process wastewater application including maps or aerial photos showing field locations and areas within the fields that are suitable for manure or process wastewater application;

(4) a description of nutrient testing methods and frequency and the expected nutrient content of the manure to be applied;

(5) planned manure application rates and assumptions used to determine these rates, including assumptions of crop nitrogen and phosphorus needs and nitrogen and phosphorus supplied from all manure and nonmanure sources;

(6) total nitrogen and phosphorus amounts from manure and nonmanure sources to be applied per acre on each field and for each crop in the rotation when applied in accordance with the planned manure or process wastewater application rates established under subitem (5);

(7) expected first and second year plant available nutrients from the manure and process wastewater;

(8) expected months of application;

(9) a description of protective measures to minimize the risk of surface water and groundwater contamination when applying manure or process wastewater in a floodplain, special protection area, soils with less than three feet above limestone bedrock, drinking water supply management areas where the aquifer is designated vulnerable under chapter 4720, and land within 300 feet of all surface tile intakes, sinkholes without constructed diversions, and uncultivated wetlands. Protective measures include, but are not limited to, soil and water conservation measures, timing of application, methods of application, manure application rates, and frequency of application;

(10) for application onto frozen or snow-covered soil, the following information about the fields that may receive the manure or process wastewater:

(a) field location;

(b) land slopes;

(c) proximity of fields to surface waters;

(d) expected months of application for each field; and

(e) tillage and other conservation measures used to minimize risk of manure-contaminated runoff;

(11) a description of how phosphorus from manure is to be managed to minimize phosphorus transport to surface waters resulting from soil phosphorus build-up to levels described in subpart 3, item C;

(12) plans for soil nitrate testing in accordance with University of Minnesota Extension Service recommendations; and

(13) type of cover crop to be planted when manure is to be applied in June, July, or August to fields that have been harvested and would otherwise not have active growing crops for the remainder of the growing season.

E. When ownership of manure from an animal feedlot capable of holding 300 or more animal units or a manure storage area capable or holding the manure produced by 300 or more animal units is to be transferred for application to fields not owned or leased by the owner of the animal feedlot or manure storage area, the owner of the animal feedlot where the manure was produced need not include the requirements in item D, subitems (3), (5) to (7), and (10) in the owner's manure management plan. Any person receiving the manure shall comply with subpart 1, item C.

Subp. 5. Record keeping. Item A establishes the length of time that records must be kept. Items B and C indicate the information needed in records depending on the size and location of the facility.

A. Any person applying or receiving manure or process wastewater from a facility capable of holding 100 or more animal units shall maintain records of the amount of manure or process wastewater application on file:

(1) for the most recent six years for manure or process wastewater application within special protection areas; and

(2) for the most recent three years on land not covered under subitem (1).

B. For an animal feedlot capable of holding 300 or more animal units or a manure storage area capable of holding the manure produced by 300 or more animal units, or where manure or process wastewater is applied from an animal feedlot capable of holding 100 or more animal units or a manure storage area capable of holding the manure produced by 100 or more animal units in a drinking water supply management area where the aquifer is designated vulnerable under chapter 4720, records kept in accordance with item A must contain the following information:

(1) field locations and cropland acreage where manure is applied;

(2) volume or tonnage of manure applied on each field;

(3) manure test nitrogen and phosphorus content, as required by subpart 2;

(4) dates of application;

(5) dates of manure incorporation when incorporating within ten days;

(6) expected plant-available amounts of nitrogen and phosphorus released from manure and commercial fertilizers on each field where manure is applied;

(7) a description of changes to the manure management plan, including documentation of the justification for any remedial nitrogen applications that exceed the nitrogen rate standard in subpart 3; and

(8) soil nutrient test results.

C. For an animal feedlot or a manure storage area with a capacity of 100 or more animal units and fewer than 300 animal units, where manure or process wastewater will not be applied in a drinking water supply management area in which the aquifer is designated vulnerable under chapter 4720, records kept in accordance with item A must contain the following:

(1) information necessary to credit the nitrogen available for crop growth that is supplied by manure and process wastewater applications; and

(2) manure and process wastewater test results for nitrogen and phosphorus content, if required in subpart 2.

D. Where manure or process wastewater from animal feedlots or manure storage areas with a capacity of 300 or more animal units is transferred for application to fields not owned or leased by the owner of the animal feedlot which produced the manure, the owner of the animal feedlot or the manure storage area from which the manure is produced must meet the following requirements:

(1) the manure and process wastewater records for the most recent three years must be kept on file and must contain the following information:

(a) the volume or tonnage of manure or process wastewater delivered;

(b) the nutrient content of the manure or process wastewater delivered;

(c) the name and address of any commercial hauler or applicator who received the manure or process wastewater; and

(d) the location where the manure or process wastewater was applied and rate of application; and

(2) commercial applicators spreading manure or process wastewater onto land not owned or leased by the owner of the animal feedlot or the manure storage area from which the manure or process wastewater is produced shall keep records, in accordance with subitem (1). A copy of these records must be submitted to the owner of the animal feedlot or the manure storage area from which the manure or process wastewater is produced no later than 60 days following land application.

Subp. 6. Manure and process wastewater application requirements in special protection areas.

A. Manure or process wastewater must not be applied to frozen or snow-covered soils in special protection areas.

B. Manure or process wastewater applied to unfrozen soils in special protection areas must comply with subitem (1), (2), or (3).

(1) A vegetative buffer must be maintained that:

(a) consists of perennial grasses or forages;

(b) is a minimum of 100 feet wide along lakes and perennial streams and 50 feet wide in other special protection areas; and

(c) does not receive manure applications from any animal feedlot or manure storage area.

(2) The following practices must be complied with:

(a) no application within 25 feet of the protected water, protected wetland, intermittent stream, or drainage ditch in the special protection area;

(b) inject or incorporate within 24 hours and prior to rainfall; and

(c) apply at a rate and/or frequency which will not allow soil phosphorus levels to increase over any six-year period with the following exception: soil phosphorus may be increased to 21 ppm (Bray P1) or 16 ppm (Olsen) when soil testing indicates soil phosphorus test concentrations are less than these values.

(3) Other agency-approved practices must be implemented that have been demonstrated through research by a land grant college to provide an equal degree of water quality protection as the measures in subitems (1) and (2).

C. Manure and process wastewater application by a traveling gun, center pivot, or other irrigation equipment that allows liquid application of manure to travel more than 50 feet in the air is prohibited in special protection areas.

Subp. 7. Manure and process wastewater application for land within 300 feet of open tile intakes. Manure and process wastewater applied within 300 feet of open tile intakes, and where manure-contaminated runoff may flow into the open tile intake, must be injected or incorporated within 24 hours of application according to the schedule in items A and B unless other agency-approved water quality protection management practices are implemented in accordance with item C.

A. All liquid manure and process wastewater applied within 300 feet of open tile intakes must be injected or incorporated within 24 hours of application beginning October 23, 2000.

B. All manure and process wastewater applied within 300 feet of open tile intakes must be injected or incorporated within 24 hours of application when applied after October 1, 2005.

C. Other agency-approved practices must be implemented that have been demonstrated through research by a land grant college to provide an equal degree of water quality protection as injection or incorporation within 24 hours.

Subp. 8. Manure and process wastewater application near sinkholes, mines, quarries, and wells.

A. Manure and process wastewater must not be applied to land within 50 feet of an active or inactive water supply well, sinkhole, mine, or quarry.

B. Manure and process wastewater must be incorporated within 24 hours of surface application when applied to land that slopes toward a sinkhole and is less than 300 feet from the sinkhole except that no setback incorporation is necessary where diversions prevent manure-contaminated runoff from entering the sinkhole.