

Senator Chaudhary introduced--

S.F. No. 1116: Referred to the Committee on Environment and Natural Resources.

1 A bill for an act

2 relating to natural resources; requiring lifejackets
3 for children aboard watercraft; amending Minnesota
4 Statutes 2004, section 86B.501, by adding a
5 subdivision.

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

7 Section 1. Minnesota Statutes 2004, section 86B.501, is
8 amended by adding a subdivision to read:

9 Subd. 3. [LIFEJACKET REQUIRED FOR CHILDREN.] (a) No person
10 may operate a watercraft under way with a child under 13 years
11 of age aboard unless the child is:

12 (1) wearing an appropriate personal flotation device
13 approved under subdivision 1; or

14 (2) below the top deck or in an enclosed cabin.

15 (b) Paragraph (a) does not apply to commercial watercraft
16 where the child is a passenger and the operator is licensed by
17 the state of Minnesota or the United States Coast Guard to carry
18 passengers for hire.

1 Senator moves to amend S.F. No. 1116 as follows:

2 Page 1, after line 18, insert:

3 "[**EFFECTIVE DATE.**] This section is effective the day
4 following final enactment."

1 Senator moves to amend S.F. No. 1116 as follows:

2 Page 1, after line 18, insert:

3 "(c) A violation of this subdivision prior to May 1, 2008,
4 shall not result in a penalty, but is punishable only by a
5 safety warning."

U.S. Department of
Homeland Security

United States
Coast Guard



Command
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20583-0001
Staff Symbol: G-OPB-2
Phone: (202) 267-0872
Fax: (202) 267-4265
Email: apickup@comdt.uscg.mil

16750

FEB 18 2005

The Honorable Sarveer Chaudhary
75 Rev. Dr. Martin Luther King, Jr. Blvd.
317 State Capitol
St. Paul, MN 55155

Dear Senator Chaudhary:

On behalf of the U.S. Coast Guard, it is my pleasure to offer our support for the Chaudhary Life Jacket Bill, SF 260 that is scheduled for hearing in the Minnesota Senate's Environment and Natural Resources Committee on February 21, 2005.

The Coast Guard and the States, working through the National Association of State Boating Law Administrators (NASBLA), have been partners in the stewardship of recreational boating safety for nearly forty years. While it is the Coast Guard's policy that each State is best able to determine its unique needs regarding recreational boating safety, our close working relationship has ensured that the intent of the Congress to promote uniformity and reciprocity of boating laws among the States (46 U.S.C. 13101) is given priority and that safety continues to be our primary goal.

Every year, needless boating deaths impact our children simply because the child was not wearing a life jacket. Between 1999-2003, 160 of our children, under the age of 13 died while boating and 84 of them from drowning. Too many parents, families, as well as this nation are losing our most cherished gifts to a death that could have been prevented.

We are extremely pleased that Minnesota is considering uniformity with the Coast Guard's regulation whose sole purpose is to protect children and spare parents and families unwarranted grief.

As always, the Coast Guard remains proud of its recreational boating safety partnership with the State of Minnesota and, in particular, the Department of Natural Resources, as well as State and local law enforcement and marine safety organizations throughout Minnesota.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey N. Hoedt". The signature is written in a cursive style and is positioned above the printed name and title.

JEFFREY N. HOEDT

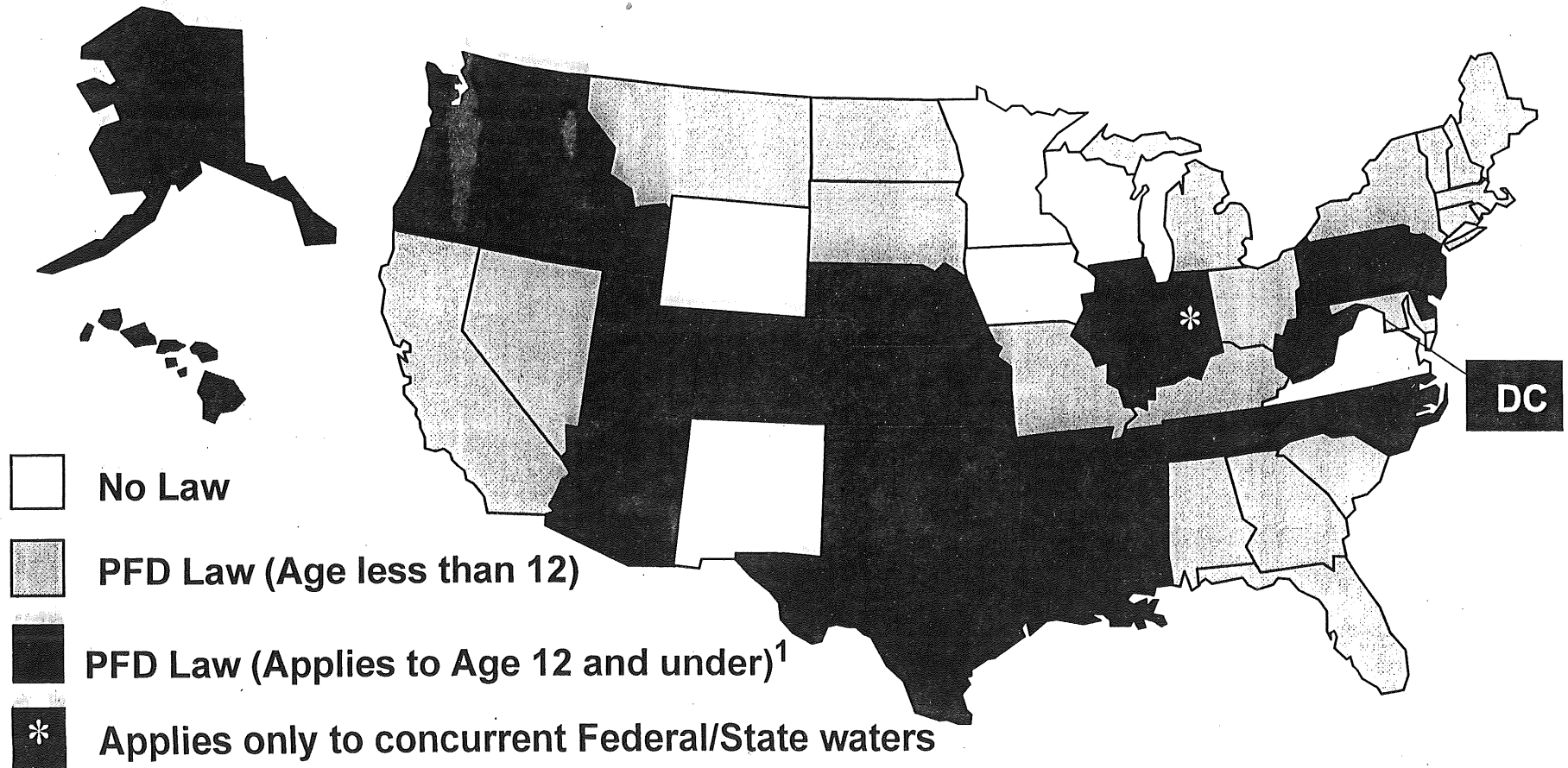
Chief, Office of Boating Safety
By direction of the Commandant



NTSB MOST WANTED

Transportation Safety Improvements

Personal Flotation Device Laws for Children



¹ Idaho Law applies to Age 14 and under

As of November 2004

"... a program to increase the public's awareness of, and support for action to adopt safety steps that can help prevent accidents and save lives."

National Transportation Safety Board
M-93-1 – Minimum Recreational Boating Safety Standards
(Current as of November 2004)

State	Age of Mandatory PFD Use	Mandatory Boater Education	Operator Licensing
Alabama	Under Age 8		YES
Alaska	Under Age 13		
Arizona	12 and Under		
Arkansas	12 and Under	YES	
California	11 and Under		
Colorado	Under Age 13	YES	
Connecticut	Under Age 12	YES	
Delaware	12 and Under	YES	
D.C.	Under Age 13	YES	
Florida	Under Age 6**	YES	
Georgia	Under Age 10	YES	
Hawaii	Under Age 13	YES	
Idaho	14 and Under**		
Illinois	12 and Under	YES	
Indiana	Under Age 13****		
Iowa			
Kansas	12 and Under	YES	
Kentucky	Under Age 12	YES	
Louisiana	12 and Under	YES	
Maine	10 and Under		
Maryland	Under Age 7	YES	
Massachusetts	Under Age 12		
Michigan	Under Age 6	YES	
Minnesota			
Mississippi	12 and Under**	YES	
Missouri	Under Age 7	YES	
Montana	Under Age 12		
Nebraska	Under Age 13	YES	
Nevada	Under Age 12	YES	
New Hampshire	5 and Under	YES	
New Jersey	12 and Under	YES	
New Mexico			
New York	Under Age 12**	YES	
North Carolina	Under Age 13		
North Dakota	10 and Under**	YES	
Ohio	Under Age 10**	YES	
Oklahoma	12 and Under**		
Oregon	12 and Under	YES	
Pennsylvania	12 and Under**	YES	
Rhode Island	10 and Under**	YES	
South Carolina	Under Age 12**		
South Dakota	Under Age 7	YES	
Tennessee	12 and Under	YES	
Texas	Under Age 13	YES	
Utah	12 and Under		
Vermont	Under Age 12	YES	
Virginia			
Washington	12 and Under		
West Virginia	12 and Under	YES	
Wisconsin			
Wyoming			

Law applies to power boats less than a length specified in the State law—length varies from less than 16 ft. to less than 29 ft. depending upon the State. Puerto Rico also reports mandatory PFD use ages 12 and under. **Indiana Emergency Administrative Rule effective 2003 addresses concurrent waters and requires children under age 13 to wear PFDs; State only waters do not fall under this rule. Under the heading mandatory education, a number of states currently are CUA, CAAA, or CAA based on Board evaluation of responses; some CUA states are possibly moving ahead with mandatory education and category assignment may change, for example Hawaii and Arizona.



National Marine
Manufacturers Association

February 1, 2005

The Honorable Satveer Chaudhary
317 State Capitol
St. Paul, MN 55155

Dear Senator Chaudhary:

On behalf of the National Marine Manufacturers Association (NMMA), the nation's leading marine manufacturer's association, I would like to thank you for your introduction of SB 260, which would require children under 13 to wear personal flotation devices (PFDs). However, I would urge you to make a revision in the language of the bill in order to conform to U.S. Coast Guard standards.

Specifically, we are asking for you to adopt language recommended by the U.S. Coast Guard that requires all children under 13 years of age wear Coast Guard approved life jackets while aboard recreational vessels underway, *except when the children are below decks or in an enclosed cabin.*

NMMA has a long tradition of supporting recreational boating safety and is proud of its many positive relationships with boat safety groups from around the country, all committed to reducing boating accidents, injuries and fatalities. We fully support state laws mandating PFD wear for children under 13 while on deck of a recreational marine vessel while underway.

NMMA believes that these laws provide needed protection to children as they move about above deck. Marine manufacturers also are doing their part to promote PFD wear through a self-imposed policy that all people featured in boat advertisements will be wearing a life vest.

We applaud this legislative effort to increase the safety of young boaters. We simply ask that you amend the language in SB 260 to reflect the recommendations of the U.S. Coast Guard and include the exemption for children below decks or in an enclosed cabin. If we can provide any help or support to you on this issue, please do not hesitate to contact us.

Sincerely,

Monita W. Fontaine
Vice President, Government Relations

Executive Committee

Chairman, NMMA
George Ballwoar
PERKO, Inc.

Vice Chairman, NMMA

Chuck Rowe
Indmar

Secretary, NMMA

Marty O'Donnell
Marfco

Treasurer, NMMA

David Slikkers
Tiara Yachts

Member At-Large

Kris Carroll
Grady-White Boats

BMD Representative

J.J. Marie
Zodiac of North America

EMD Representative

Jim Hubbard
Mercury Marine

AMD Representative

Rick Russell
Anderson Marine

President

Thomas J. Danmrich
NMMA

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Last update: February 5, 2005 at 11:10 PM

Doug Grow: Life jacket law would be 'tribute to the little guy'

Doug Grow

Star Tribune

Published February 6, 2005

Kim Johnson Jestus and her father, Allen Johnson, raced to West Rush Lake on that awful May day 16 months ago.

Her children, Grant, 5, and Stephanie, 7, had gone boating with their father, her ex-husband. Hours later, she received a call: Grant had fallen from the boat and was missing.

When she and her father -- hoping and praying that they would be greeted by good news -- arrived at the lake, there was chaos around them. There were sheriff's cars, State Patrol cars, a helicopter. This was a heartbreaking sight. Clearly, the search for Grant was still on.

Mother and Grandfather were there when Grant was found, two hours after the incident, in 11 feet of water. The child, who had not been wearing a life jacket, was rushed to Hennepin County Medical Center, accompanied by his mother, a pediatric nurse. Heroic efforts to bring the boy back to life were futile.

Sometime in the next few weeks, Mother and Grandfather will be telling state legislators about Grant. They'll talk about a high-energy kid who loved dirt, mud, water and his family.

And they'll talk of how Grant still might be here if Minnesota had a law that exists in 44 states and on all federal waters: In those places, all children 12 and younger must wear a life jacket. They hope that by the end of this session, Minnesota will have a similar law. Perhaps it even will be known as "Grant's Law."

In the Legislature, there are no sure things. But it's hard to imagine anyone opposing this law, which has the support of the National Transportation Safety

Board and even the boating industry.

The proposed law, patterned after the feds' law, requires all children 12 and under to wear a personal flotation device, except while on some commercial boats -- such as the Delta Queen -- or when the child is in the cabin or below deck on larger boats. (Under current law, there only needs to be a personal flotation device for each passenger on a boat.)

What's surprising is that such a law doesn't already exist. After all, Minnesota is the Land of 10,000 Lakes and has far more boats per capita than any other state.

"I think this is a situation where people say, 'This is something that should be left up to the parents,' " Grant's grandfather said. "I'm one of the first ones to agree that you can't legislate against stupidity, but nonetheless, when an adult's stupidity kills a kid, that's a different matter."

If nothing else, such a law would set the stage for legal accountability.

The state's Department of Natural Resources is taking no position on the law, which will be proposed by Sen. Satveer Chaudhary, DFL-Fridley, and Rep. Char Samuelson, R-New Brighton.

That neutrality should in no way be seen as opposition, said Kim Elverum, the DNR's water and boating safety czar.

"Our position is that everybody in a boat should have a life jacket on," he said.

Elverum believes Minnesota has been so slow to move on a law that is embraced in most places because the state already has an extraordinary boating safety record. Nationally, he said, there were five deaths for each 100,000 registered boats in 2003. Last year in Minnesota, there were 1.7 deaths per 100,000 registered boats.

In the past decade, he said, there have been four children killed in boating incidents. Only Grant was not wearing a life jacket.

Elverum said that surveys show that the vast majority of parents -- anywhere from 80 to 90 percent -- demand that their preteen kids wear personal flotation devices.

But Grant's mother and grandfather say a law surely would spare families tragedies.

"Save one kid and the law's worth it," Johnson said.

Kim Johnson Jestus, a nurse who works with kids, has a patient who is the age Grant would have been. The child was born the same month Grant was born. The child goes to the school that Grant would have gone to. He fell in the same lake Grant fell in. But the child was wearing a life jacket, and it saved his life.

"I can't say that a life jacket would have saved Grant, but it might have," she said.

Grant's mother and grandfather have a hole in their lives that no law will ever fill.

"But this could be a tribute to the little guy," Grant's grandfather said.

Doug Grow is at dgrow@startribune.com.

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**National
Transportation
Safety Board**

Safety Information

Washington, D.C. 20594

TESTIMONY OF

BILL GOSSARD

NATIONAL TRANSPORTATION SAFETY BOARD

BEFORE THE

SENATE ENVIRONMENT and NATURAL RESOURCES COMMITTEE

MINNESOTA SENATE

ON

S.F. 1116 – LIFEJACKETS FOR CHILDREN

ST. PAUL, MINNESOTA

February 21, 2005

Good morning, Chairman Marty and members of the Committee. It is a pleasure to discuss the National Transportation Safety Board's recreational boating safety recommendation addressing the use of personal flotation devices (lifejackets) for children.

The National Transportation Safety Board is an independent Federal agency charged by Congress to investigate transportation accidents, determine their probable cause, and make recommendations to prevent their recurrence. The Safety Board has neither regulatory authority nor grant funds. The recommendations that arise from our investigations and safety studies are our most important product. In our 35-year history, more than 80 percent of our recommendations have been adopted by organizations and government bodies in a position to effect improvements in transportation safety.

Recreational boating result in the greatest number of transportation fatalities after highway accidents, even exceeding fatalities from aviation accidents. In 2003, 703 persons were killed in boating accidents in this country. An American Red Cross survey indicates that more than 355,000 persons are injured annually from recreational boating accidents, and more than 40 percent of the injuries require medical treatment beyond first aid. The number of recreational boats and the speed at which they operate have increased in recent years.

As a result of its concern regarding the number of boating deaths and injuries, the Safety Board in 1993 conducted a study of recreational boating accidents and their causes. Examining recreational boating accidents that occurred in 18 States in 1991, the Board reviewed information on 407 fatal recreational boating accidents, which resulted in 478 fatalities. These accidents represented about 52 percent of the accidents and about 52 percent of the fatalities that occurred in 1991. The Safety Board also reviewed U.S. Coast Guard data and studies performed by other organizations. Further, the Board investigated three recreational boating accidents from 1992 in which 13 persons died, including 4 children and 2 teenagers. The minimal use of personal flotation devices (PFDs) that we found in our investigations of fatal recreational boating accidents was particularly notable.

The failure to use PFDs can have fatal consequences. And, states should require greater use of PFDs, especially among children

Failure to use PFDs is the leading cause of recreational boating drowning fatalities. Of the 478 fatalities that occurred in the accidents examined in our 1993 study, 351 resulted from drowning. Of those who drowned and for whom information on PFD use was available, 85 percent (281) did not wear PFDs. The Safety Board reviewed the circumstances of the 281 drownings in which the victims were not wearing a PFD and determined that as many as 238 persons (85 percent) may have survived had they been correctly wearing a PFD. Only a few factors can negate the

effectiveness of PFDs, most often hypothermia and injury as a result of blunt trauma force.

The 2003 boating experience again confirmed the importance of PFD use. According to U.S. Coast Guard boating accident statistics, nearly 86 percent of the fatalities who drowned in recreational boating accidents in 2003 could have survived if they had taken the simple step of wearing a lifejacket. Drownings accounted for 481, or nearly 68 percent, of the 703 recreational boating fatalities in 2003. PFDs could have prevented an estimated 416 or 86 percent of those fatalities. There is no question that wearing a PFD can save your life.

One accident in Arkansas that the Safety Board investigated highlights the Board's concerns. At about 11:30 on a Sunday morning, a 9-person family boarded a family-owned boat at a public boat launching area on the Fourche La Fave River near Perryville, Arkansas. The family, which included a man, a woman, and children ranging in age from 16 months to 14 years, intended to go down the river to fish from the bank. The man and a 12-year-old girl were the only persons on board who could swim.

Although weather conditions were ideal, the boat and the passengers were not adequately prepared for potential problems. The weather was clear and 90 degrees. Visibility was good, and there were only light winds. The 14-foot long aluminum boat was open, flat-bottomed, and not equipped with PFDs. With a 9.9-horsepower outboard motor, the motorboat fell under the Arkansas exemption, which did not require motorboats of less than 10 horsepower to carry PFDs. The passengers, who also did not wear PFDs, sat on four bench seats. At the site of the accident, the river was approximately 80 feet wide, and its depth at the center varied from 9 to 50 feet.

As the boat headed downstream, water splashed on the boy and girl who were sitting in the front seat. They moved rearward, causing the boat to flood. It sank in the middle of the river, in about 14 feet of water, and about 100 feet downstream from the boat launching area. The 12 year-old girl swam to shore, and a 14 year-old girl supported herself in the water by holding onto the bow of the boat, which remained above the surface.

Two fishermen, who arrived at the boat-launching area shortly after the accident, found the 12-year-old on the riverbank and the 14-year-old holding onto the boat. The men entered the water and brought the 14-year-old ashore. One rescuer searched the riverbank for more survivors. He found an unconscious 4-year-old in the water, near the riverbank, in the approximate area of the accident. Although he administered cardiopulmonary resuscitation (CPR), the child was pronounced dead upon arrival at a local hospital. Officials started a search, and found five other victims that day and one the next day. Five children and two adults died in this one accident.

The Safety Board's investigation of this accident concluded that the lack of PFDs contributed to the loss of these seven lives.

Another brief example shows the effectiveness of PFDs. Three men launched a small inflatable raft on the Arkansas River near Swissvale, Colorado. A Colorado State park ranger had spotted the three men at one point. Observing that one rafter was not wearing a PFD, the ranger contacted the men. After determining that the raft carried the correct number of PFDs, the park ranger recommended that the remaining rafter also wear his PFD. The rafter asked if he was legally required to wear a PFD and was told that he was not, whereupon he did not put it on, despite the fact that he could not swim.

After traveling about 2 miles, the men started through a rapid. Their raft was thrown sideways, hit a small rock, and capsized, throwing all three men into the water. Two men wearing PFDs struggled and eventually reached the riverbank. The third man, who had earlier refused to use a PFD, drowned.

State and federal laws require that all boats have life jackets on board. The problem is that they do not work if no one is wearing them. As with many accidents in which boats capsize, people don't think to put them on until it's too late. This is why the Safety Board has recommended that the States consider minimum standards to reduce the number and severity of boating accidents and to make PFD use by children mandatory. Requiring children to wear PFDs could, over time, result in more adults who wear PFDs, such as occurred with the use of child safety seats and safety belts in automobiles.

Currently, 44 States, the District of Columbia, and Puerto Rico have some type of PFD use requirement for children. The Safety Board would like to see Minnesota become the 45th State to do so. The Safety Board considers recreational boating safety and the issue of children in PFDs (life jackets) so important that we have included this issue on our 2004-2005 "Most Wanted" transportation safety improvements list as one of the areas where critical changes are needed to reduce unnecessary loss of life.

Senate File 1116, the measure before you, would require children under age 13 to wear a PFD. The proposed section would not apply if the child who is below the top deck or in an enclosed cabin. This bill is consistent with other States' requirements. The U.S. Coast Guard, the National Association of State Boating Law Administrators, and the American Academy of Pediatrics support children under age 13 wearing PFDs (life jackets). Enacting this legislation would be an important step toward making boating safer for the children of Minnesota, as well as providing a more uniform national program for the safety of all children.

The United States Coast Guard has contracted with JSI Research & Training Institute to track personal flotation wear rates for the past 5 years. JSI reports that in 2002 children ages 12 and under was the only age category in which there was significant improvement in wear rates for life jackets. This improvement that JSI reports

most likely results from publicity around mandatory PFD use laws for this age group that have been largely adopted since 2000.

Thank you for providing the National Transportation Safety Board an opportunity to testify about this important safety initiative. I would be happy to answer any questions you may have.

-30-

Actions needed by States

HIGHWAY

Improve Child Occupant Protection

- Enact State laws requiring booster seats for young children.

Enact Primary Seat Belt Enforcement Laws

- Increase the number of people who wear seat belts through stronger enforcement laws.

Promote Youth Highway Safety

- Strengthen underage drinking and driving laws.
- Enact graduated driver licensing legislation.
- Prohibit nighttime driving by young novice drivers.
- Restrict the number of teen passengers traveling with young novice drivers.

Eliminate Hard Core Drinking Driving

- Enact State legislation and take other actions that are proven to reduce crashes involving those who repeatedly drink large amounts of alcohol and drive including:
 - frequent, statewide sobriety checkpoints.
 - legislation to create stricter sanctions for those arrested the first time with a high blood alcohol concentration (≥ 0.15 BAC).
 - zero blood alcohol requirement for convicted DWI offenders when they get their license back.
 - administrative rather than court-based license revocation for refusing to take or failing the sobriety test.
 - vehicle sanctions for DWI offenders.
 - eliminate plea-bargaining DWI offenses and programs that divert offenders and purge the offense record.
 - retain DWI offense records (to identify and prosecute repeat offenders) for at least 10 years.
 - develop and operate special sanction (court-based) programs for hard core DWI offenders.

Improve School Bus/Grade Crossing Safety

- Install stop signs at passive crossings.
- Prioritize for upgrade to lights and gates, crossings that school buses traverse that now only have warning signs.
- Install noise-reducing switches on new buses.
- Enhance bus driver training and evaluation.
- Include grade crossing questions on CDL exams.

MARINE

Enhance Recreational Boating Safety

- Require mandatory education of boat operators.
- Require use of life jackets for children.
- Require safety instruction prior to personal watercraft rental.



NTSB MOST WANTED

Transportation Safety Improvements 2005

*Critical changes needed to reduce
transportation accidents and save lives.*

NTSB MOST WANTED

AVIATION

The Federal Aviation Administration should act to:

Reduce Dangers to Aircraft Flying in Icing Conditions

- Use current research on freezing rain and large water droplets to revise the way aircraft are designed and approved for flight in icing conditions.
- Give flight crews accurate information to quickly recognize dangers of all types of icing and maintain airspeeds to avoid loss of aircraft control.

Eliminate Flammable Fuel/Air Vapors in Fuel Tanks on Transport Category Aircraft

- Modify procedures to reduce the potential for flammable fuel/air vapors in fuel tanks until permanent changes can be implemented.
- Implement design changes to eliminate the vulnerabilities of flammable fuel/air vapors in all transport category aircraft.

Stop Runway Incursions/Ground Collisions of Aircraft

- Give immediate warnings of probable collisions/incursions directly to flight crews in the cockpit.

Improve Audio and Data Recorders/Require Video Recorders

- Require cockpit voice recorders to retain at least 2 hours of audio.
- Require back-up power sources so cockpit voice recorders collect an extra 10 minutes of data when an aircraft's main power fails.
- Inspect and maintain data recorders yearly to make sure they operate properly.
- Install video recorders in cockpits to give investigators more information to solve complex accidents.

Require Restraint Systems for Children Under Age 2

- Require restraints for infants and small children during takeoff, landing, and in turbulent conditions to provide them the same protection as other airline passengers.

RAILROAD

The Federal Railroad Administration should act to:

Implement Positive Train Control Systems

- Prevent train collisions and overspeed accidents by requiring automatic control systems to override mistakes by human operators.

Improve Survivability of Recorders

- Improve event recorder design survivability on new and rebuilt locomotives to protect data from fire and impact forces during train accidents.

NTSB CLASSIFICATION

Unacceptable response

Acceptable response, progressing slowly

Acceptable response, progressing in a timely manner

Actions needed by Federal Agencies

HIGHWAY

The Federal Motor Carrier Safety Administration should act to:

Improve the Safety of Motor Carrier Operations

- Prevent motor carriers from operating if they put vehicles with mechanical problems on the road or unqualified drivers behind the wheel.

Prevent Medically-Unqualified Drivers from Operating Commercial Vehicles

- Establish a comprehensive medical oversight program for interstate commercial drivers.
- Ensure that examiners are qualified and know what to look for.
- Track all medical certificate applications.
- Enhance oversight and enforcement of invalid certificates.
- Provide mechanisms for reporting medical conditions.

The National Highway Traffic Safety Administration and U.S. DOT should act to:

Enhance Protection for Bus Passengers

- Redesign motor coach window emergency exits so passengers can easily open them.
- Issue standards for stronger bus roofs and require them in new motor coaches.
- Devise new standards to protect motor coach passengers from being thrown out of their seats or ejected when a bus sustains a front, side, or rear impact or rolls over.

MARINE

The U.S. Coast Guard should act to:

Improve Drug and Alcohol Testing of Crews After Accidents

- Strengthen and clarify regulations to require that drug and alcohol testing be conducted quickly after serious marine accidents.

INTERMODAL

The U.S. Department of Transportation, Federal Aviation Administration, U.S. Coast Guard and Pipeline and Hazardous Materials Safety Administration should act to:

Update Hours-of-Service Regulations in Aviation, Marine and Pipeline Industries

- Set working hour limits for flight crews, aviation mechanics, pipeline controllers, mariners and other transportation operators, and provide predictable work and rest schedules based on current fatigue research, circadian rhythms, sleep and rest requirements.



National Transportation Safety Board

490 L'Enfant Plaza, SW • Washington, DC 20594

(202) 314.6000 • <http://www.nts.gov>

**Senate Counsel, Research,
and Fiscal Analysis**


G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 762 - The Clean Water Legacy Act

Author: Senator Dennis Frederickson

Prepared by: Greg Knopff, Legislative Analyst 
phone: 651-296-9399 fax: 651-296-7747
e-mail: gregory.knopff@senate.mn

Date: February 18, 2005

Section 1 [Citation] cites the act as the "Clean Water Legacy Act."

Section 2 [Legislative Purpose and Findings] states the legislative purpose of and findings for the Clean Water Legacy Act.

Section 3 [Definitions] defines "citizen monitoring," "clean water council," "federal TMDL requirement," "impaired water," "public agencies," "restoration," "surface waters," "third-party TMDL," "total maximum daily load" or "TMDL," and "water quality standards" for the purposes of the Clean Water Legacy Act.

Section 4 [Implementation, Coordination, Goals, Policies, and Priorities]

Subdivision 1. [Coordination and Cooperation] directs the public agencies implementing this act to coordinate and cooperate with other agencies, individuals, and organizations in implementing the Clean Water Legacy Act.

Subdivision 2. [Goals for Implementation] states that the goals for implementation of the Clean Water Legacy Act are:

1. identify impaired waters within 10 years and ensure continuing evaluation of surface waters thereafter;

2. submit TMDL's to the U.S. Environmental Protection Agency (EPA) for all impaired waters in a timely manner;
3. set a reasonable time for restoring impaired waters;
4. provide assistance and incentives to improve the quality of waters; and
5. promptly seek delisting of waters from the impaired waters list.

Subdivision 3. [Implementation Policies] states that the policies to guide implementation of the Clean Water Legacy Act are:

1. develop regional and watershed TMDL's for multiple pollutants where reasonable and feasible;
2. maximize use of available organizational, technical, and financial resources;
3. maximize restoration opportunities by prioritizing and targeting available resources;
4. use existing regulatory authorities where applicable;
5. use demonstrated restoration methods;
6. identify any innovative approaches for the Legislature; and
7. identify and encourage prevention.

Subdivision 4. [Priorities for Identifying Impaired Waters] provides that priorities for identifying impaired waters are:

1. where the impairments pose the greatest risk to human and aquatic health; and
2. waters where public agency or citizen monitoring show impaired conditions.

Subdivision 5. [Priorities for Preparation of TMDL's] directs the Clean Water Council to recommend priorities for scheduling the preparation of TMDL's taking into account the severity of the impairment, the designated uses of the water, and applicable federal TMDL requirements. Additional considerations are listed.

Subdivision 6. [Priorities for Restoration of Impaired Waters] directs the Clean Water Council to give priority for recommending impaired waters restoration projects that are based on the priorities in subdivision 5, and:

1. use existing local authorities and infrastructure;
2. support existing restoration efforts;
3. leverage other sources of restoration funding;
4. have a high potential for early delisting.

Subdivision 7. [Priorities for Funding Prevention Actions] directs the Clean Water Council to use the priorities in Subdivision 6 for funding prevention actions.

Section 5 [Administration; Pollution Control Agency]

Subdivision 1. [General Duties and Authorities] directs the Pollution Control Agency (PCA) to identify impaired waters, develop and approve TMDL's, and propose waters to delist water from the impaired waters list.

Subdivision 2. [Administrative Procedures for TMDL Approval] provides that the approval of a TMDL is a final agency action and subject to the contested case procedures. This subdivision also clarifies that a TMDL is not subject to rulemaking requirements.

Subdivision 3. [Third-Party TMDL Development] allows the PCA to enter into agreements with qualified public or private entities to develop a third-party TMDL. A third-party TMDL must be approved by the PCA.

Section 6 [Clean Water Council]

Subdivision 1. [Creation; Duties] provides for the creation of the Clean Water Council to advise on the administration and implementation of the Clean Water Legacy Act. The PCA shall provide administrative support for the Council. The members will select a chair of the Council from the public members.

Subdivision 2. [Membership; Appointment] establishes membership for the Clean Water Council of 17 members. Four of the members shall represent state agencies and are appointed by the heads of the agencies. The agencies are: the Department of Natural Resources; Department of Agriculture; Pollution Control Agency; and Board of Water and Soil Resources. The four state agencies represented on the Council, acting

jointly, shall appoint 13 public members to the Council. The public members appointed shall represent:

- statewide farm organizations, two members;
- business organizations, two members;
- environmental organizations, two members;
- soil and water conservation districts, one member;
- watershed districts, one member;
- organizations focused on improving lakes and streams, one member;
- an organization of county governments, one member;
- organizations of city governments, two members; and
- the Metropolitan Council, one member.

Subdivision 3. [Terms, Compensation, and Removal] provides that the terms, compensation, removal, and filling of vacancies for Clean Water Council members is as provided under general law for advisory councils. This subdivision also provides that the initial terms of the state agency representatives expire on January 1, 2007.

Subdivision 4. [Implementation Plan] directs the Clean Water Council to develop an implementation plan for the Clean Water Legacy Act. The first implementation plan must be issued by December 1, 2005. After the first plan, the Council must issue biennial implementation plans by December 1 of each even-numbered year.

Subdivision 5. [Appropriation Recommendations] directs the Clean Water Council to recommend to the Governor appropriations from the Clean Water Legacy Account.

Subdivision 6. [Biennial Report] requires a biennial report, by December 1, of each even-numbered year, to the Legislature from the Clean Water Council on past expenditures and recommendations for future expenditures. The 2014 report must include an evaluation of the progress and need for future funding.

Section 7 [Public and Stakeholder Participation, Scientific Review, and Education]

Subdivision 1. [Public and Stakeholder Participation] directs public agencies involved in the implementation of the Clean Water Legacy Act to encourage participation by the public and stakeholders.

Subdivision 2. [Expert Scientific Advice] directs the Clean Water Council and public agencies to make use of expertise from educational, research, and technical organizations in implementing the Clean Water Legacy Act.

Subdivision 3. [Education] directs the Clean Water Council to develop strategies for informing, educating, and encouraging the participation of the public and stakeholders in the implementation of the Clean Water Legacy Act.

Section 8 [Clean Water Fees]

Subdivision 1. [Definitions] defines “average daily discharge or application limitation,” “effluent flow,” “fee collection authorities,” “individual sewage treatment system,” “nonresidential establishment,” “publicly owned treatment works,” and “residential dwelling” for the purposes of this section.

Subdivision 2. [Assessment of Clean Water Fees] provides that the fees imposed in subdivision 3 are on all discharges of domestic and industrial wastewater to sewage treatment systems.

Subdivision 3. [Fee Amounts] specifies the annual clean water fees, beginning on January 1, 2006, as follows:

Publicly Owned Treatment Works:

- residential dwellings with no more than two residential units, \$36/year;
- structures with more than two residential dwelling units and combined bill:
 - ▶ residential dwelling units, \$36/unit/year; and
 - ▶ nonresidential establishments, pay the fee based on the nonresidential establishment rates for their portion of the flow;
- nonresidential establishment with a separate bill (includes 2 or fewer residential dwellings):
 - ▶ average effluent flow of less than 10,000 gallons/day, \$120/year;

- ▶ average effluent flow of 10,000 gallons/day or more but less than 100,000 gallons/day, \$300/year; and
- ▶ average effluent flow of 100,000 gallons/day or more, \$600/year.

Permitted Nonpublic Wastewater Treatment Facilities:

- average daily discharge of less than 10,000 gallons/day, \$120/year;
- average daily discharge of 10,000 gallons/day or more but less than 100,000 gallons/day, \$300/year; and
- average daily discharge of 100,000 gallons/day or more, \$600/year.

Facilities with a General Permit from the PCA:

- no fee.

Domestic Wastewater Treatment Systems permitted by the PCA:

- residential dwelling, \$36/year; and
- nonresidential establishments, \$36/year.

Individual Sewage Treatment Systems:

- residential dwelling, \$36/year; and
- nonresidential establishments, \$36/year.

Any Other Wastewater Treatment System:

- residential dwelling, \$36/year; and
- nonresidential establishments, \$36/year.

Subdivision 4. [Collection and Enforcement] directs the public agency responsible for a sanitary sewer system to collect the fees imposed at the same time and frequency as charges for the service. The PCA will assess the fees on permitted facilities. Fees for individual sewage treatment systems and other systems will be collected by the county. This section also exempts a person from the payment of a fee if that person meets the criteria for telephone assistance or receives telephone assistance.

Subdivision 5. [Payment to the Commissioner of Revenue] requires all fees collected be remitted to the Commissioner of Revenue for deposit in the Clean Water Legacy Account in the Environmental Fund.

Subdivision 6. [Expiration] provides that this section expires on December 31, 2015.

Section 9 [Clean Water Legacy Account]

Subdivision 1. [Creation] creates the Clean Water Legacy account in the Environmental Fund and states that money in the Account must be made available for the Clean Water Phosphorus Reduction Grants in Section 10 of the bill and the Community Septic System Loan Program in Section 11 of the bill. This section also provides that the funding for Sections 9 and 10 of the bill must not supplant existing funding.

Subdivision 2. [Sources of Revenue] specifies that the sources of revenue for the Clean Water Legacy Account are the fees collected in Section 8 and interest on the account.

Subdivision 3. [Purposes] provides specific purposes that the Clean Water Legacy Account may be spent on, subject to appropriation by the Legislature.

Section 10 [Clean Water Legacy Phosphorus Reduction Grants]

Subdivision 1. [Creation of Fund, Appropriation] establishes the Clean Water Legacy Capital Improvement Fund to make grants for phosphorus reduction grants. The balance in the Fund is appropriated to the Public Facilities Authority (PFA) for the purposes of this section.

Subdivision 2. [Grants] directs the PFA to make grants from the Clean Water Legacy Capital Improvement Fund for wastewater treatment facility projects that will reduce the discharge of phosphorus to one milligram per liter.

Subdivision 3. [Eligible Capital Costs] provide that eligible capital cost for a loan under this section include as-bid construction costs and engineering planning and design costs.

Subdivision 4. [Grant Amounts and Priorities] specifies that grant amounts under this section are 75 percent of the costs for projects approved by July 1, 2009, and 50 percent for projects approved on or after July 1, 2009. Priority is given for projects that started construction after July 1, 2005. Application for a grant for any project that started before July 1, 2005, must be submitted by June 30, 2007.

Subdivision 5. [Fees] allows the PFA to charge an administrative fee of up to one-half of one percent of the grant amount.

Section 11 [Community Septic Loan Program]

Subdivision 1. [Creation of Fund] directs the PFA to establish a Community Septic System Replacement Fund to make loans for individual sewage treatment system (ISTS) replacement. Money in the fund is appropriated to the PFA for the loans. All repayments, investment income from the fund, and servicing fees charged must be deposited into the fund.

Subdivision 2. [Loans] directs the PFA to award loans to governmental units from the Community Septic System Replacement Fund to replace failing or inadequate systems. The governmental unit must own the replacement system and be responsible for inspection, maintenance, repair of the ISTS.

Subdivision 3. [Project Priority List] directs the PCA to rank loan applications based on the Water Pollution Control Revolving Fund priorities list.

Subdivision 4. [Loan Applications] specifies the information required on the application for a loan under this section.

Subdivision 5. [Loan Awards] specifies that the loans shall be awarded based on the priority list. The maximum loan to a government unit in any year is \$500,000.

Subdivision 6. [Loan Terms and Conditions] specifies that the loans:

1. must provide that debt service payments begin no later than two years after the loan is issued;
2. be at a one percent interest and amortized within ten years;
3. be paid from a dedicated source or sources of revenue and be guaranteed by a general obligation note of the governmental unit; and
4. be made only where permanent easements to the governmental unit are obtained for access to the financed systems.

Subdivision 7. [Special Assessment Deferral] allows governmental units to defer special assessments for the ISTS loans, as provided under current law for special assessments. The governmental unit may request loan deferral for the portion of the loan related to the deferred special assessments.

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Subdivision 8. [Eligible Costs] provides that the costs of planning, design, construction, legal fees, administration, and land acquisition are eligible costs for the loans.

Subdivision 9. [Disbursements] provides that the loan disbursement must be made for eligible project costs as they are incurred.

Subdivision 10. [Audits] requires governmental units that receive a loan to provide a copy of their annual audit or, if not required, their annual financial reporting form to the PFA.

Section 12 [Appropriations] (See attached spreadsheet from Dan Mueller)

GK:dv

Enclosure

SF762-Frederickson: Clean Water Legacy Act

Summary of Appropriations

(in 000's)

	<u>FY2006</u>	<u>FY2007</u>	<u>Biennium</u> <u>Total</u>
Expenditures (Environment Fund)			
Department of Revenue			
Admin cost for collection of clean water fees	38	31	69
Total Approp.: Revenue:	38	31	69
Pollution Control Agency			
Developing list of exempt fee payers and ISTS's	1,000	-	1,000
Statewide assessment of surface water quality	386	869	1,255
- Grants or contracts for citizen monitoring	1,474	3,256	4,730
Develop TMDL's for impaired waters	1,515	2,171	3,686
- Grants or contracts for TMDL's	385	1,119	1,504
Total Approp.: PCA:	4,760	7,415	12,175
Agriculture Department			
Low-interest loans, best management	50	200	250
- Pass-through to local governments	200	2,100	2,300
Technical asst. for pasture management	300	590	890
- Grants to develop conservation information	50	210	260
Effectiveness in restoring impaired waters	100	200	300
- Grants for on-farm demonstrations	-	600	600
Total Approp.: Agriculture:	700	3,900	4,600
Brd. Of Water & Soil Resources			
Targeted restoration incentive payments	-	300	300
- Grants to soil and water conservation dist.	450	5,450	5,900
Targeted restoration technical assistance	-	200	200
- Grants to support implementation activities	412	3,250	3,662
Evaluation of soil & water conservation practices	-	200	200
Grants to counties for ISTS	-	2,400	2,400
Grants for lake and river protection	300	1,500	1,800
Streambank, lakeshore and roadside protection	-	2,400	2,400
Total Approp.: BWSR:	1,162	15,700	16,862
Department of Natural Resources			
Statewide assessment of surface water quality	280	430	710
Restoration and prevention of impaired waters	100	2,350	2,450
- Grants for forest stewardship	-	1,700	1,700
Total Approp.: DNR:	380	4,480	4,860
Public Facilities Authority (DEED)			
Wastewater treatment and stormwater projects	-	22,433	22,433
Grants for phosphorus treatment infrastructure	4,400	17,000	21,400
Loans for septic system replacement	-	4,582	4,582
Total Approp.: PFA/DEED:	4,400	44,015	48,415
Total Approp.: ALL AGENCIES:	11,440	75,541	86,981

Clean Water Revenues

Collection of Clean Water Fees deposited into Clean Water Legacy Account	11,440	75,541	86,981
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Other Revenues/Local Expenses

Loan Repayment, Capital Fund	22	85	107
Local revenue for collection	[3,200]	[2,000]	[4,000]
Loss of revenue due to hardship exemption	[400]	[2,000]	[2,400]

1 Senator moves to amend S.F. No. 762 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [114D.05] [CITATION.]

4 This chapter may be cited as the "Clean Water Legacy Act."

5 Sec. 2. [114D.10] [LEGISLATIVE PURPOSE AND FINDINGS.]

6 Subdivision 1. [PURPOSE.] The purpose of the Clean Water
7 Legacy Act is to protect, restore, and preserve the quality of
8 Minnesota's surface waters by providing authority, direction,
9 and resources to achieve and maintain water quality standards
10 for surface waters as required by section 303(d) of the federal
11 Clean Water Act, United States Code, title 42, section 1313(d),
12 and applicable federal regulations.

13 Subd. 2. [FINDINGS.] The legislature finds that:

14 (1) there is a close link between protecting, restoring,
15 and preserving the quality of Minnesota's surface waters and the
16 ability to develop the state's economy, enhance its quality of
17 life, and protect its human and natural resources;

18 (2) achieving the state's water quality goals will require
19 long-term commitment and cooperation by all state and local
20 agencies, and other public and private organizations and
21 individuals, with responsibility and authority for water
22 management, planning, and protection; and

23 (3) all persons and organizations whose activities affect
24 the quality of waters, including point and nonpoint sources of
25 pollution, have a responsibility to participate in and support
26 efforts to achieve the state's water quality goals.

27 Sec. 3. [114D.15] [DEFINITIONS.]

28 Subdivision 1. [APPLICATION.] The definitions provided in
29 this section apply to the terms used in this chapter.

30 Subd. 2. [CITIZEN MONITORING.] "Citizen monitoring" means
31 monitoring of surface water quality by individuals and
32 nongovernmental organizations that is consistent with Pollution
33 Control Agency guidance on monitoring procedures, quality
34 assurance protocols, and data management.

35 Subd. 3. [CLEAN WATER COUNCIL.] "Clean Water Council" or
36 "council" means the Clean Water Council created pursuant to

1 section 114D.30, subdivision 1.

2 Subd. 4. [FEDERAL TMDL REQUIREMENTS.] "Federal TMDL
3 requirements" means the requirements of section 303(d) of the
4 Clean Water Act, United States Code, title 42, section 1313(d),
5 and associated regulations and guidance.

6 Subd. 5. [IMPAIRED WATER.] "Impaired water" means surface
7 water that does not meet applicable water quality standards.

8 Subd. 6. [PUBLIC AGENCIES.] "Public agencies" means all
9 state agencies, political subdivisions, and other public
10 organizations, with authority, responsibility, or expertise in
11 protecting, restoring, or preserving the quality of surface
12 waters, managing or planning for surface waters and related
13 lands, or financing waters-related projects. "Public agencies"
14 includes counties, cities, towns, joint powers organizations and
15 special purpose units of government, and the University of
16 Minnesota and other public education institutions.

17 Subd. 7. [RESTORATION.] "Restoration" means actions,
18 including effectiveness monitoring, that are taken to achieve
19 and maintain water quality standards for impaired waters in
20 accordance with a TMDL that has been approved by the United
21 States Environmental Protection Agency under federal TMDL
22 requirements.

23 Subd. 8. [SURFACE WATERS.] "Surface waters" means waters
24 of the state as defined in section 115.01, subdivision 22,
25 excluding groundwater as defined in section 115.01, subdivision
26 6.

27 Subd. 9. [THIRD-PARTY TMDL.] "Third-party TMDL" means a
28 TMDL that is developed in whole or in part by a qualified public
29 or private entity other than the Pollution Control Agency
30 consistent with the goals, policies, and priorities in section
31 114D.20.

32 Subd. 10. [TOTAL MAXIMUM DAILY LOAD OR TMDL.] "Total
33 maximum daily load" or "TMDL" means a calculation of the maximum
34 amount of a pollutant that may be introduced into a surface
35 water and still ensure that applicable water quality standards
36 for that water are achieved and maintained. A TMDL is the sum

1 of the pollutant load allocations for all sources of the
2 pollutant, including a load allocation for point sources, a load
3 allocation for nonpoint sources and natural background, a load
4 allocation for future growth of point and nonpoint sources, and
5 a margin of safety to account for uncertainty about the
6 relationship between pollutant loads and the quality of the
7 receiving surface water. "Natural background" means
8 characteristics of the water body resulting from the
9 multiplicity of factors in nature, including climate and
10 ecosystem dynamics, that affect the physical, chemical, or
11 biological conditions in a water body, but does not include
12 measurable and distinguishable pollution that is attributable to
13 human activity or influence. A TMDL must take into account
14 seasonal variations.

15 Subd. 11. [WATER QUALITY STANDARDS.] "Water quality
16 standards" for Minnesota surface waters are found in Minnesota
17 Rules, chapters 7050 and 7052.

18 Sec. 4. [114D.20] [IMPLEMENTATION; COORDINATION; GOALS;
19 POLICIES; AND PRIORITIES.]

20 Subdivision 1. [COORDINATION AND COOPERATION.] In
21 implementing this chapter, public agencies shall take into
22 consideration the relevant provisions of local and other
23 applicable water management, conservation, land use, land
24 management, and development plans and programs. Public agencies
25 with authority for local water management, conservation, land
26 use, land management, and development plans shall take into
27 consideration the manner in which their plans affect the
28 implementation of this chapter. Public agencies shall identify
29 opportunities to participate and assist in the successful
30 implementation of this chapter, including the funding or
31 technical assistance needs, if any, that may be necessary. In
32 implementing this chapter, public agencies shall endeavor to
33 engage the cooperation of organizations and individuals whose
34 activities affect the quality of surface waters, including point
35 and nonpoint sources of pollution, and who have authority and
36 responsibility for water management, planning, and protection.

1 To the extent practicable, public agencies shall endeavor to
2 enter into formal and informal agreements and arrangements with
3 federal agencies and departments to jointly utilize staff and
4 resources to deliver programs or conduct activities to achieve
5 the intent of this chapter, including efforts under the federal
6 Clean Water Act and other federal farm and soil and water
7 conservation programs.

8 Subd. 2. [GOALS FOR IMPLEMENTATION.] The following goals
9 must guide the implementation of this chapter:

10 (1) to identify impaired waters in accordance with federal
11 TMDL requirements within ten years after the effective date of
12 this section and thereafter to ensure continuing evaluation of
13 surface waters for impairments;

14 (2) to submit TMDL's to the United States Environmental
15 Protection Agency for all impaired waters in a timely manner in
16 accordance with federal TMDL requirements;

17 (3) to set a reasonable time for implementing restoration
18 of each identified impaired water;

19 (4) to provide assistance and incentives to prevent waters
20 from becoming impaired and to improve the quality of waters that
21 are listed as impaired but do not have an approved TMDL
22 addressing the impairment; and

23 (5) to promptly seek the delisting of waters from the
24 impaired waters list when those waters are shown to achieve the
25 designated uses applicable to the waters.

26 Subd. 3. [IMPLEMENTATION POLICIES.] The following policies
27 must guide the implementation of this chapter:

28 (1) develop regional and watershed TMDL's, and TMDL's for
29 multiple pollutants, where reasonable and feasible;

30 (2) maximize use of available organizational, technical,
31 and financial resources to perform sampling, monitoring, and
32 other activities to identify impaired waters, including use of
33 citizen monitoring;

34 (3) maximize opportunities for restoration of impaired
35 waters, by prioritizing and targeting of available programmatic,
36 financial, and technical resources and by providing additional

1 state resources to complement and leverage available resources;

2 (4) use existing regulatory authorities to achieve
3 restoration for point and nonpoint sources of pollution where
4 applicable, and promote the development and use of effective
5 nonregulatory measures to address pollution sources for which
6 regulations are not applicable;

7 (5) use restoration methods that have a demonstrated
8 effectiveness in reducing impairments and provide the greatest
9 long-term positive impact on water quality protection and
10 improvement while incorporating innovative approaches on a
11 case-by-case basis;

12 (6) identify for the legislature any innovative approaches
13 that may strengthen or complement existing programs; and

14 (7) identify and encourage implementation of measures to
15 prevent waters from becoming impaired and to improve the quality
16 of waters that are listed as impaired but have no approved TMDL
17 addressing the impairment.

18 Subd. 4. [PRIORITIES FOR IDENTIFYING IMPAIRED WATERS.] The
19 Pollution Control Agency, in accordance with federal TMDL
20 requirements, shall set priorities for identifying impaired
21 waters, giving consideration to:

22 (1) waters where impairments would pose the greatest
23 potential risk to human or aquatic health; and

24 (2) waters where data developed through public agency or
25 citizen monitoring or other means, provides evidence that an
26 impaired condition exists.

27 Subd. 5. [PRIORITIES FOR PREPARATION OF TMDL'S.] The Clean
28 Water Council shall recommend priorities for scheduling and
29 preparing TMDL's taking into account the severity of the
30 impairment, the designated uses of those waters, and other
31 applicable federal TMDL requirements. In recommending
32 priorities, the council shall also give consideration to waters
33 and watersheds:

34 (1) with impairments that pose the greatest potential risk
35 to human health;

36 (2) with impairments that pose the greatest potential risk

1 to threatened or endangered species;

2 (3) with impairments that pose the greatest potential risk
3 to aquatic health;

4 (4) where other public agencies and participating
5 organizations and individuals, especially local, basinwide, or
6 regional agencies or organizations, have demonstrated readiness
7 to assist in carrying out the responsibilities, including
8 availability and organization of human, technical, and financial
9 resources necessary to undertake the work; and

10 (5) where there is demonstrated coordination and
11 cooperation among cities, counties, watershed districts, and
12 soil and water conservation districts in planning and
13 implementation of activities that will assist in carrying out
14 the responsibilities.

15 Subd. 6. [PRIORITIES FOR RESTORATION OF IMPAIRED
16 WATERS.] In implementing restoration of impaired waters, in
17 addition to the priority considerations in subdivision 5 the
18 Clean Water Council shall give priority in its recommendations
19 for restoration funding from the clean water legacy account to
20 restoration projects that:

21 (1) coordinate with and utilize existing local authorities
22 and infrastructure for implementation;

23 (2) can be implemented in whole or in part by providing
24 support for existing or ongoing restoration efforts; and

25 (3) most effectively leverage other sources of restoration
26 funding, including federal, state, local, and private sources of
27 funds; and

28 (4) show a high potential for early restoration and
29 delisting based upon data developed through public agency or
30 citizen monitoring or other means.

31 Subd. 7. [PRIORITIES FOR FUNDING PREVENTION ACTIONS.] The
32 Clean Water Council shall apply the priorities applicable under
33 subdivision 6, as far as practicable, when recommending
34 priorities for funding actions to prevent waters from becoming
35 impaired and to improve the quality of waters that are listed as
36 impaired but do not have an approved TMDL.

1 Sec. 5. [114D.25] [ADMINISTRATION; POLLUTION CONTROL
2 AGENCY.]

3 Subdivision 1. [GENERAL DUTIES AND AUTHORITIES.] The
4 Pollution Control Agency, in accordance with federal TMDL
5 requirements, shall: identify impaired waters and propose a
6 list of the waters for review and approval by the United States
7 Environmental Protection Agency; develop and approve TMDL's for
8 listed impaired waters and submit the approved TMDL's to the
9 United States Environmental Protection Agency for final
10 approval; and propose to delist waters from the Environmental
11 Protection Agency impaired waters list.

12 Subd. 2. [ADMINISTRATIVE PROCEDURES FOR TMDL
13 APPROVAL.] The approval of a TMDL by the Pollution Control
14 Agency must be considered a final decision of the agency, and is
15 subject to the contested case procedures of sections 14.57 to
16 14.62, and to judicial review under sections 14.63 to 14.69. A
17 TMDL is not subject to the rulemaking requirements of chapter
18 14, including section 14.386.

19 Subd. 3. [THIRD-PARTY TMDL DEVELOPMENT.] The Pollution
20 Control Agency may enter agreements with any qualified public or
21 private entity setting forth the terms and conditions under
22 which that entity is authorized to develop a third-party TMDL.
23 In determining whether an entity is qualified to develop a
24 third-party TMDL, the agency shall consider the technical and
25 administrative qualifications of the entity and any potential
26 conflict of interest of the entity with respect to the
27 development of the third-party TMDL. A third-party TMDL is
28 subject to modification and approval by the Pollution Control
29 Agency, and must be approved by the Pollution Control Agency
30 before it is submitted to the United States Environmental
31 Protection Agency. The Pollution Control Agency shall consider
32 authorizing the development of third-party TMDL's consistent
33 with the goals, policies, and priorities determined under
34 section 116.384.

35 Sec. 6. [114D.30] [CLEAN WATER COUNCIL.]

36 Subdivision 1. [CREATION; DUTIES.] A Clean Water Council

1 is created to advise on the administration and implementation of
2 this chapter, and foster coordination and cooperation as
3 described in section 114D.20, subdivision 1. The council may
4 also advise on the development of appropriate processes for
5 expert scientific review as described in section 114D.35,
6 subdivision 2. The Pollution Control Agency shall provide
7 administrative support for the council with the support of other
8 member agencies. The members of the council shall elect a chair
9 from the nonagency members of the council.

10 Subd. 2. [MEMBERSHIP; APPOINTMENT.] The commissioners of
11 natural resources, agriculture, and the Pollution Control
12 Agency, and the executive director of the Board of Water and
13 Soil Resources are the appointing authorities for the council.
14 Each appointing authority shall appoint one person from their
15 respective agency to serve as a member of the council. The
16 appointing authorities, acting jointly, shall appoint 13
17 additional nonagency members of the council as follows:

- 18 (1) two members representing statewide farm organizations;
19 (2) two members representing business organizations;
20 (3) two members representing environmental organizations;
21 (4) one member representing soil and water conservation
22 districts;
23 (5) one member representing watershed districts;
24 (6) one member representing organizations focused on
25 improvement of Minnesota lakes or streams;
26 (7) one member representing an organization of county
27 governments;
28 (8) two members representing organizations of city
29 governments; and
30 (9) one member representing the Metropolitan Council
31 established under section 473.123.

32 Subd. 3. [TERMS; COMPENSATION; REMOVAL.] The initial terms
33 of members representing state agencies and the Metropolitan
34 Council expire on the first Monday in January, 2007.
35 Thereafter, the terms of members representing the state agencies
36 and the Metropolitan Council are four years and are coterminous

1 with the governor. The terms of other members of the council
2 shall be as provided in section 15.059, subdivision 2. Members
3 may serve until their successors are appointed and qualify.
4 Compensation and removal of council members is as provided in
5 section 15.059, subdivisions 3 and 4. A vacancy on the council
6 may be filled by the appointing authorities, as provided in
7 subdivision 1, for the remainder of the unexpired term.

8 Subd. 4. [IMPLEMENTATION PLAN.] The Clean Water Council
9 shall prepare a plan for implementation of this chapter. The
10 plan shall address general procedures and timeframes for
11 implementing this chapter, and shall include a more specific
12 implementation work plan for the next fiscal biennium and a
13 framework for setting priorities to address impaired waters
14 consistent with section 114D.45, subdivisions 2 to 7. The
15 council shall issue the first implementation plan under this
16 subdivision by December 1, 2005, and shall issue a revised work
17 plan by December 1 of each even-numbered year thereafter.

18 Subd. 5. [RECOMMENDATIONS ON APPROPRIATION OF FUNDS.] The
19 Clean Water Council shall recommend to the governor the manner
20 in which money from the clean water legacy account should be
21 appropriated for the purposes identified in section 114D.45,
22 subdivision 3. The council's recommendations must be consistent
23 with the purposes, policies, goals, and priorities in sections
24 114D.05 to 114D.35, and shall allocate adequate support and
25 resources to identify impaired waters, develop TMDL's, implement
26 restoration of impaired waters, and provide assistance and
27 incentives to prevent waters from becoming impaired and improve
28 the quality of waters which are listed as impaired but have no
29 approved TMDL.

30 Subd. 6. [BIENNIAL REPORT TO LEGISLATURE.] By December 1
31 of each even-numbered year, the council shall submit a report to
32 the legislature on the activities for which money from the clean
33 water legacy account has been or will be spent for the current
34 biennium, and the activities for which money from the account is
35 recommended to be spent in the next biennium. The report due on
36 December 1, 2014, must include an evaluation of the progress

1 made through June 30, 2014, in implementing this chapter, the
2 need for funding of future implementation of those sections, and
3 recommendations for the sources of funding.

4 Sec. 7. [114D.35] [PUBLIC AND STAKEHOLDER PARTICIPATION;
5 SCIENTIFIC REVIEW; EDUCATION.]

6 Subdivision 1. [PUBLIC AND STAKEHOLDER PARTICIPATION.]
7 Public agencies involved in the implementation of this chapter
8 shall encourage participation by the public and stakeholders,
9 including local citizens, land owners and managers, and public
10 and private organizations, in the identification of impaired
11 waters, in developing TMDL's, and in planning and implementing
12 restoration of impaired waters. In particular, the Pollution
13 Control Agency shall make reasonable efforts to provide timely
14 information to the public and to stakeholders about impaired
15 waters that have been identified by the agency. The agency
16 shall seek broad and early public and stakeholder participation
17 in scoping the activities necessary to develop a TMDL, including
18 the scientific models, methods, and approaches to be used in
19 TMDL development, and to implement restoration pursuant to
20 section 114D.15, subdivision 7.

21 Subd. 2. [EXPERT SCIENTIFIC ADVICE.] The Clean Water
22 Council and public agencies shall make use of available
23 expertise from educational, research, and technical
24 organizations, including the University of Minnesota and other
25 higher education institutions, to provide appropriate
26 independent expert advice on models, methods, and approaches
27 used in identifying impaired waters, developing TMDL's, and
28 implementing prevention and restoration.

29 Subd. 3. [EDUCATION.] The Clean Water Council shall
30 develop strategies for informing, educating, and encouraging the
31 participation of citizens, stakeholders, and others regarding
32 the identification of impaired waters, development of TMDL's,
33 and development and implementation of restoration for impaired
34 waters. Public agencies shall be responsible for implementing
35 the strategies.

36 Sec. 8. [114D.40] [CLEAN WATER FEES.]

1 Subdivision 1. [DEFINITIONS.] (a) The definitions in this
2 subdivision apply to the terms used in this section.

3 (b) "Average daily discharge or application limitation"
4 means the highest allowable average of daily discharge or land
5 application during a calendar day or any 24-hour period that
6 reasonably represents the discharge during the calendar day for
7 the purposes of sampling, calculated as the sum of all daily
8 discharges or land applications measured during a day, divided
9 by the number of daily discharges or land applications during
10 that day.

11 (c) "Effluent flow" means the flow of domestic wastewater
12 from a residential dwelling or nonresidential establishment.
13 The rate of water usage by a residential dwelling or
14 nonresidential establishment must be substituted for the
15 effluent flow if effluent flow from the residential dwelling or
16 nonresidential establishment is not measured.

17 (d) "Fee collection authority" means a county, the
18 Pollution Control Agency, or a public agency with authority to
19 collect fees and charges for sewer services provided by a
20 publicly owned treatment works.

21 (e) "Individual sewage treatment system" means a sewage
22 treatment system, or part thereof, that is regulated by the
23 state or its political subdivisions, and which serves a
24 residential dwelling, or nonresidential establishment, or group
25 thereof, using sewage tanks followed by soil treatment and
26 disposal or using advanced treatment devices that discharge
27 below final grade. "Individual sewage treatment system" also
28 includes sewage holding tanks and privies.

29 (f) "Nonresidential establishment" means a structure or
30 portion of a structure that is not a residential dwelling.

31 (g) "Publicly owned treatment works" means a device or
32 system used in the treatment, recycling, or reclamation of
33 municipal sewage or liquid industrial waste that is owned by the
34 state, a political subdivision, sanitary district, or other
35 public organization established under state law and which relies
36 primarily on wastewater treatment systems other than individual

1 sewage treatment systems.

2 (h) "Residential dwelling" means a room or group of rooms
3 used by an individual, family, or other group as living quarters
4 which includes facilities for sleeping, eating, cooking, and
5 sanitation. "Residential dwelling" includes apartments,
6 condominiums, cooperatives, attached and detached dwellings,
7 mobile homes, seasonal or recreational dwellings, or a dwelling
8 in which a resident of that dwelling engages in a business or
9 employment. A farm that includes buildings is treated as a
10 residential dwelling. "Residential dwelling" does not include:

11 (1) hotels, motels, resorts, boarding houses, clubs,
12 hospitals, nursing homes, dormitories, schools, colleges, or
13 similar institutional or transient facilities; or

14 (2) any structure containing not more than two residential
15 dwelling units that receives a single bill for sewer services
16 that is combined with one or more nonresidential establishments.

17 Subd. 2. [ASSESSMENT OF CLEAN WATER FEES.] A clean water
18 fee is imposed as provided in subdivision 3 on all discharges of
19 domestic and industrial wastewater to sanitary sewer systems;
20 wastewater treatment plants, facilities, or systems; individual
21 sewage treatment systems; and other systems.

22 Subd. 3. [FEE AMOUNTS.] (a) Beginning January 1, 2006, the
23 amounts of the clean water fees imposed under this section are
24 as provided in this subdivision.

25 (b) For discharges to sanitary sewer systems served by a
26 publicly owned treatment works, the clean water fees are as
27 follows:

28 (1) for each residential dwelling that receives a separate
29 bill for service and contains not more than two residential
30 dwelling units, \$36 per year;

31 (2) for a structure that contains more than two residential
32 dwelling units that do not receive separate bills for service,
33 clean water fees must be calculated as follows:

34 (i) \$36 per year for each residential dwelling unit in the
35 structure; and

36 (ii) any nonresidential establishment which is billed

1 together with the residential dwelling units is subject to a
2 clean water fee on that portion of the effluent flow for the
3 structure that is attributable to that nonresidential
4 establishment, and the fee must be calculated based on effluent
5 flows as provided in clause (3); and

6 (3) for each nonresidential establishment that receives a
7 separate bill for service, the fee is as follows:

8 (i) if average effluent flow is less than 10,000 gallons
9 per day, \$120 per year;

10 (ii) if average effluent flow is 10,000 gallons per day or
11 greater, but less than 100,000 gallons per day, \$300 per year;
12 and

13 (iii) if average effluent flow is 100,000 gallons per day
14 or greater, \$600 per year.

15 (c) Except as provided in paragraph (d), for discharges
16 from wastewater treatment facilities, other than publicly owned
17 treatment works, that are required to obtain a national
18 pollution discharge elimination system or state disposal system
19 permit, the fee is as follows:

20 (1) for permits authorizing an average daily discharge or
21 land application limitation of less than 10,000 gallons on an
22 annualized basis, \$120 per year;

23 (2) for permits authorizing an average daily discharge or
24 land application limitation of 10,000 gallons per day or
25 greater, but less than 100,000 gallons per day, \$300 per year;
26 and

27 (3) for permits authorizing an average daily discharge or
28 land application limitation of 100,000 gallons per day or
29 greater, \$600 per year.

30 (d) A clean water fee must not be imposed under paragraph
31 (c), on discharges from a facility that operates under a general
32 permit issued by the agency.

33 (e) For discharges to domestic wastewater treatment systems
34 permitted by the Pollution Control Agency, excluding publicly
35 owned treatment works, the fee is \$36 per year for each
36 residential dwelling and nonresidential establishment that

1 discharges to the systems. No single residential unit or
2 nonresidential establishment may be required to pay more than
3 one clean water fee under this paragraph.

4 (f) For individual sewage treatment systems not permitted
5 by the Pollution Control Agency, the fee is \$36 per year for
6 each residential dwelling and nonresidential establishment
7 served by the system. No single residential unit or
8 nonresidential establishment may be required to pay more than
9 one clean water fee under this paragraph.

10 (g) For any wastewater system not described in paragraphs
11 (b) to (f), that accepts and discharges untreated or partially
12 treated wastewater, the fee is \$36 per year for each residential
13 dwelling and nonresidential establishment that discharges to the
14 system.

15 (h) Any single residential unit or nonresidential
16 establishment that would be subject to payment of a clean water
17 fee under both paragraphs (f) and (g) may only be required to
18 pay the clean water fee under paragraph (e).

19 Subd. 4. [COLLECTION AND ENFORCEMENT.] (a) Fees imposed on
20 discharges to sanitary sewer systems served by publicly owned
21 treatment works must be collected by the public agency that
22 collects fees or charges from the users of that service. The
23 fees must be collected at the same time and with the same
24 frequency as fees or charges for service are collected. The
25 collecting entity may enforce payment of the fees using the same
26 enforcement authority applicable to sewer service charges.

27 (b) Fees imposed under subdivision 3, paragraphs (c) and
28 (e), must be collected by the Pollution Control Agency from the
29 permittees for the facilities or systems. The Pollution Control
30 Agency may enforce payment of the fees using the same
31 enforcement authority applicable to permit fees.

32 (c) Fees imposed under subdivision 3, paragraphs (f) and
33 (g), must be collected by each county, from the owners of the
34 residential dwellings or nonresidential establishments subject
35 to the fee that are located in the county. A county shall
36 collect the fees at least once per calendar year, but may

1 collect the fees more frequently. If fees are collected
2 annually, a county shall require payment of the fees by not
3 later than February 1 following the calendar year for which the
4 fee is imposed. The county shall determine that manner in which
5 the fees are collected. Each county shall enact and enforce an
6 appropriate ordinance to enforce payment of the fees.

7 (d) By August 15, 2005, a county shall identify and develop
8 a list of all persons subject to the fees under subdivision 3,
9 paragraphs (f) and (g), located in that county. A county shall
10 annually update the list by August 15 of each year.

11 (e) A fee collection authority shall exempt a person from
12 payment of the clean water fee for a discharge of wastewater
13 from a residential dwelling if the fee collection authority
14 determines that the person meets any of the criteria for
15 eligibility under the telephone assistance plan established
16 under section 237.70, or that the person is receiving telephone
17 assistance under that plan. The Pollution Control Agency shall
18 create a form that fee collection authorities shall use to
19 determine eligibility for exemption under this paragraph.

20 (f) Any statement, invoice, or other document used to
21 collect the fees under this subdivision must clearly identify
22 the fee as the "Minnesota Clean Water Fee."

23 Subd. 5. [PAYMENT TO COMMISSIONER OF REVENUE; DEPOSIT.] (a)
24 A fee collection authority shall remit all fees collected under
25 this section, less the costs to collect the fees, not to exceed
26 five percent of the total collected, to the commissioner of
27 revenue. The fees must be remitted in a manner prescribed by
28 the commissioner. Amounts collected during the previous
29 calendar quarter must be remitted to the commissioner on April
30 30, July 31, October 31, and January 31. In addition to the
31 costs of collecting the fees, a fee collection authority may
32 retain from fees collected for calendar year 2006 the costs to
33 develop methods and procedures for collecting the clean water
34 fees.

35 (b) The commissioner of revenue shall deposit all clean
36 water fees remitted by fee collection authorities in the clean

1 water legacy account.

2 (c) The assessment, audit, refund, penalty, interest,
3 enforcement, collection remedies, appeal, and administrative
4 provisions of chapters 270 and 289A that are applicable to fees
5 imposed under chapter 297A apply to the fees imposed by this
6 section.

7 Subd. 6. [EXPIRATION.] This section expires on December
8 31, 2015.

9 Sec. 9. [114D.45] [CLEAN WATER LEGACY ACCOUNT.]

10 Subdivision 1. [CREATION.] The clean water legacy account
11 is created as an account in the environmental fund. Money in
12 the account must be made available for the implementation of
13 this chapter and sections 446A.073 and 446A.074, without
14 supplanting or taking the place of any other funds which are
15 currently available or may become available from any other
16 source, whether federal, state, local, or private, for
17 implementation of those sections.

18 Subd. 2. [SOURCES OF REVENUE.] The following revenues must
19 be deposited in the clean water legacy account:

20 (1) the revenue from the clean water fees collected under
21 section 114D.40; and

22 (2) interest accrued on the account.

23 Subd. 3. [PURPOSES.] Subject to appropriation by the
24 legislature, the clean water legacy account may be spent for the
25 following purposes:

26 (1) to provide grants, loans, and technical assistance to
27 public agencies and others who are participating in the process
28 of identifying impaired waters, developing TMDL's, implementing
29 restoration plans for impaired waters, and monitoring the
30 effectiveness of restoration;

31 (2) to support measures to prevent waters from becoming
32 impaired and to improve the quality of waters that are listed as
33 impaired but have no approved TMDL addressing the impairment;

34 (3) to provide grants and loans for wastewater and
35 stormwater treatment projects through the Public Facilities
36 Authority;

1 (4) to support the efforts of public agencies associated
2 with individual sewage treatment systems and financial
3 assistance for upgrading and replacing the systems; and

4 (5) to provide funds to state agencies to carry out their
5 responsibilities under this chapter.

6 Sec. 10. [446A.073] [CLEAN WATER LEGACY PHOSPHORUS
7 REDUCTION GRANTS.]

8 Subdivision 1. [CREATION OF FUND; APPROPRIATION.] The
9 authority shall establish a clean water legacy capital
10 improvement fund and shall make grants from the fund as provided
11 in this section. Money in the clean water legacy capital
12 improvement fund, including interest earned, is appropriated to
13 the authority for the purposes of this section.

14 Subd. 2. [GRANTS.] The authority shall award grants from
15 the clean water legacy capital improvement fund to governmental
16 units for the capital costs of wastewater treatment facility
17 projects or a portion thereof that will reduce the discharge of
18 total phosphorus from the facility to one milligram per liter or
19 less. A project is eligible for a grant if it meets the
20 following requirements:

21 (1) the applicable phosphorus discharge limit is
22 incorporated in a permit issued by the agency for the wastewater
23 treatment facility on or after March 28, 2000, or the grantee
24 agrees to comply with the applicable limit as a condition of
25 receiving the grant;

26 (2) the governmental unit has submitted a facilities plan
27 for the project to the agency and a grant application to the
28 authority on a form prescribed by the authority; and

29 (3) the agency has approved the application and facilities
30 plan, and certified the eligible costs for the project to the
31 authority.

32 Subd. 3. [ELIGIBLE CAPITAL COSTS.] Eligible capital costs
33 for phosphorus reduction grants under subdivision 4, paragraph
34 (a), include the as-bid construction costs and engineering
35 planning and design costs. Eligible capital costs for
36 phosphorus reduction grants under subdivision 4, paragraph (b),

1 include the final, incurred construction, engineering, planning,
2 and design costs.

3 Subd. 4. [GRANT AMOUNTS AND PRIORITIES.] (a) Priority must
4 be given to projects that start construction on or after July 1,
5 2005. If a facility's plan for a project is approved by the
6 agency before July 1, 2009, the amount of the grant is 75
7 percent of the eligible capital cost of the project. If a
8 facility's plan for a project is approved by the agency on or
9 after July 1, 2009, the amount of the grant is 50 percent of the
10 eligible capital cost of the project. Priority in awarding
11 grants under this paragraph must be based on the date of
12 approval of the facility's plan for the project.

13 (b) Projects that meet the eligibility requirements in
14 subdivision 2 and have started construction before July 1, 2005,
15 are eligible for grants to reimburse 75 percent of the eligible
16 capital cost of the project, less any amounts previously
17 received in grants from other sources. Application for a grant
18 under this paragraph must be submitted to the agency no later
19 than June 30, 2007. Priority for award of grants under this
20 paragraph must be based on the date of agency approval of the
21 application for the grant.

22 (c) In each fiscal year that money is available for grants,
23 the authority shall first award grants under paragraph (a) to
24 projects that met the eligibility requirements of subdivision 2
25 by May 1 of that year. The authority shall use any remaining
26 money available that year to award grants under paragraph (b).
27 Grants that have been approved but not awarded in a previous
28 fiscal year carry over and must be awarded in subsequent fiscal
29 years in accordance with the priorities in this paragraph.

30 (d) Disbursements of grants under this section by the
31 authority to recipients must be made for eligible project costs
32 as incurred by the recipients, and must be made by the authority
33 in accordance with the project financing agreement and
34 applicable state law.

35 Subd. 5. [FEES.] The authority may charge the grant
36 recipient a fee for its administrative costs not to exceed

1 one-half of one percent of the grant amount, to be paid upon
2 execution of the grant agreement.

3 Sec. 11. [446A.074] [COMMUNITY SEPTIC SYSTEM LOAN
4 PROGRAM.]

5 Subdivision 1. [CREATION OF FUND.] The authority shall
6 establish a community septic system replacement fund and shall
7 make loans from the fund as provided in this section. Money in
8 the fund, including interest earned, is annually appropriated to
9 the authority and does not lapse. The fund shall be credited
10 with all loan repayments and investment income from the fund,
11 and servicing fees assessed under section 446A.04, subdivision
12 5. The authority shall manage and administer the community
13 septic system replacement fund and, for these purposes, may
14 exercise all powers provided in this chapter.

15 Subd. 2. [LOANS.] The authority shall award loans to
16 governmental units from the community septic system replacement
17 fund for projects to replace failing or inadequate individual
18 sewage treatment systems with new individual sewage treatment
19 systems. A governmental unit receiving a loan from the fund
20 shall own the individual sewage treatment systems built under
21 the program and shall be responsible, either directly or through
22 a contract with a private vendor, for all inspections,
23 maintenance, and repairs necessary to assure proper operation of
24 the systems.

25 Subd. 3. [PROJECT PRIORITY LIST.] Governmental units
26 seeking loans from the community septic system loan program
27 shall first submit a project proposal to the agency. A project
28 proposal must include an identification and description of the
29 condition of all individual sewage treatment systems in the
30 project area. The agency shall rank project proposals on its
31 project priority list used for the water pollution control
32 revolving fund under section 446A.07.

33 Subd. 4. [LOAN APPLICATIONS.] Governmental units with
34 projects on the project priority list shall submit applications
35 to the authority on forms prescribed by the authority. The
36 application must include:

1 (1) a list of the individual sewage treatment systems
2 proposed to be replaced over a period of up to three years;

3 (2) a project schedule and cost estimate for each year of
4 the project;

5 (3) a financing plan for repayment of the loan; and

6 (4) a management plan providing for the inspection,
7 maintenance, and repairs necessary to assure proper operation of
8 the systems.

9 Subd. 5. [LOAN AWARDS.] The authority shall award loans to
10 governmental units with approved loan applications based on
11 their ranking on the agency's project priority list. The loan
12 amount must be based on the estimated project costs for the
13 portion of the project expected to be completed within one year,
14 up to an annual maximum of \$500,000. For projects expected to
15 take more than one year to complete, the authority may make a
16 multiyear commitment for a period not to exceed three years,
17 contingent on the future availability of funds. Each year of a
18 multiyear commitment must be funded by a separate loan agreement
19 meeting the terms and conditions in subdivision 6. A
20 governmental unit receiving a loan under a multiyear commitment
21 has priority for additional loan funds in subsequent years.

22 Subd. 6. [LOAN TERMS AND CONDITIONS.] Loans from the
23 community septic system replacement fund must comply with the
24 following terms and conditions:

25 (1) principal and interest payments must begin no later
26 than two years after the loan is awarded;

27 (2) loans must carry an interest rate of one percent and
28 must be fully amortized within ten years of the first scheduled
29 payment;

30 (3) a governmental unit receiving a loan must establish a
31 dedicated source or sources of revenues for repayment of the
32 loan and must issue a general obligation note to the authority
33 for the full amount of the loan; and

34 (4) each property owner to be served by an individual
35 sewage treatment system under this program must provide a
36 permanent easement to the governmental unit to allow access to

1 the system for inspections, maintenance, and repairs.

2 Subd. 7. [SPECIAL ASSESSMENT DEFERRAL.] (a) A governmental
3 unit that receives a loan under this section, and levies special
4 assessments to repay the loan, may defer payment of the
5 assessments under sections 435.193 to 435.195.

6 (b) A governmental unit that defers payment of special
7 assessments for one or more properties under paragraph (a) may
8 request deferral of that portion of the debt service on its
9 loan, and the authority shall accept appropriate amendments to
10 the general obligation note of the governmental unit. If
11 special assessment payments are later received from properties
12 that received a deferral, the funds received must be paid to the
13 authority with the next scheduled loan payment.

14 Subd. 8. [ELIGIBLE COSTS.] Eligible costs for community
15 septic system loans include the costs of planning, design,
16 construction, legal fees, administration, and land acquisition.

17 Subd. 9. [DISBURSEMENTS.] Loan disbursements by the
18 authority under this section must be made for eligible project
19 costs as incurred by the recipients, and must be made in
20 accordance with the project loan agreement and applicable state
21 law.

22 Subd. 10. [AUDITS.] A governmental unit receiving a loan
23 under this section must annually provide to the authority for
24 the term of the loan a copy of its annual independent audit or,
25 if the governmental unit is not required to prepare an
26 independent audit, a copy of the annual financial reporting form
27 it provides to the state auditor.

28 Sec. 12. [APPROPRIATIONS.]

29 Subdivision 1. [GENERAL PROVISIONS.] The appropriations in
30 this section are from the environmental fund and are available
31 for the fiscal years ending June 30, 2006, and June 30, 2007.
32 Any money remaining after the first year of the biennium is
33 available for the second year. Appropriations in this section
34 that are encumbered under contract, including grant contract, on
35 or before June 30, 2007, are available until June 30, 2009.

36 Subd. 2. [DEPARTMENT OF REVENUE; FEE COLLECTION

1 COSTS.] \$38,000 in fiscal year 2006 and \$31,000 in fiscal year
2 2007 are appropriated to the Department of Revenue to pay the
3 costs of collection and administration of the clean water fees
4 imposed in Minnesota Statutes, section 114D.40.

5 Subd. 3. [POLLUTION CONTROL AGENCY.] The following amounts
6 are appropriated to the Pollution Control Agency for the
7 purposes stated:

8 (1) \$1,000,000 in fiscal year 2006 is to assist counties in
9 developing the list required under Minnesota Statutes, section
10 114D.40, subdivision 4, paragraph (e), of persons subject to
11 clean water fees under Minnesota Statutes, section 114D.40,
12 subdivision 3, paragraphs (f) and (g);

13 (2) \$1,860,000 in fiscal year 2006 and \$4,125,000 in fiscal
14 year 2007 are for statewide assessment of surface water quality
15 and trends; of these amounts, up to \$1,474,000 in fiscal year
16 2006 and \$3,256,600 in fiscal year 2007 are available for grants
17 or contracts to support citizen monitoring of surface waters;
18 and

19 (3) \$1,900,000 in fiscal year 2006 and \$3,290,000 in fiscal
20 year 2007 are to develop TMDL's for waters listed on the United
21 States Environmental Protection Agency approved 2004 impaired
22 waters list; of this appropriation, up to \$384,950 in fiscal
23 year 2006 and \$1,118,750 in fiscal year 2007 are available for
24 grants or contracts to develop TMDL's.

25 Subd. 4. [AGRICULTURE DEPARTMENT.] The following amounts
26 are appropriated to the Department of Agriculture for the
27 purposes stated:

28 (1) \$250,000 in fiscal year 2006 and \$2,300,000 in fiscal
29 year 2007 are for agricultural best management practices
30 low-interest loans to producers and rural landowners under
31 Minnesota Statutes, section 17.117; of these amounts, \$200,000
32 in fiscal year 2006 and \$2,100,000 in fiscal year 2007 are
33 available for pass-through to local governments and lenders for
34 low-interest loans;

35 (2) \$350,000 in fiscal year 2006 and \$800,000 in fiscal
36 year 2007 are to expand technical assistance to producers and

1 conservation professionals on nutrient and pasture management;
2 target practices to sources of water impairments; coordinate
3 federal and state farm conservation programs to fully utilize
4 federal conservation funds; and expand conservation planning
5 assistance for producers; of these amounts, \$50,000 in fiscal
6 year 2006 and \$210,000 in fiscal year 2007 are available for
7 grants or contracts to develop nutrient and conservation
8 planning assistance information materials; and

9 (3) \$100,000 in fiscal year 2006 and \$800,000 in fiscal
10 year 2007 are for research, evaluation, and effectiveness
11 monitoring of agricultural practices in restoring impaired
12 waters; of these amounts, \$600,000 in fiscal year 2007 is
13 available for grants or contracts for research, evaluations, and
14 effectiveness monitoring of agricultural practices in restoring
15 impaired waters, including on-farm demonstrations.

16 Subd. 5. [BOARD OF WATER AND SOIL RESOURCES.] The
17 following amounts are appropriated to the Board of Water and
18 Soil Resources for restoration and prevention actions as
19 described in Minnesota Statutes, section 114D.20, subdivisions 6
20 and 7:

21 (1) \$450,000 in fiscal year 2006 and \$5,750,000 in fiscal
22 year 2007 are for targeted nonpoint restoration cost-share and
23 incentive payments; of these amounts, up to \$450,000 in fiscal
24 year 2006 and \$5,450,000 in fiscal year 2007 are available for
25 grants to soil and water conservation districts through the
26 state cost-share program authorized under Minnesota Statutes,
27 section 103C.501;

28 (2) \$412,000 in fiscal year 2006 and \$3,450,000 in fiscal
29 year 2007 are for targeted nonpoint technical and engineering
30 assistance for restoration activities; of these amounts, up to
31 \$412,000 in fiscal year 2006 and \$3,250,000 in fiscal year 2007
32 are available for grants to soil and water conservation
33 districts, watershed management organizations, or counties to
34 support implementation of nonpoint restoration activities;

35 (3) \$200,000 in fiscal year 2007 is for reporting and
36 evaluation of applied soil and water conservation practices;

1 (4) \$2,400,000 in fiscal year 2007 is for grants to
2 counties for implementation of county individual sewage
3 treatment systems programs through the local water resources
4 protection and management program under Minnesota Statutes,
5 section 103B.3369;

6 (5) \$300,000 in fiscal year 2006 and \$1,500,000 in fiscal
7 year 2007 are for base and challenge grants to support nonpoint
8 source protection activities related to lake and river
9 protection and management through the local water resources
10 protection and management program under Minnesota Statutes,
11 section 103B.3369; and

12 (6) \$2,400,000 in fiscal year 2007 is for grants to soil
13 and water conservation districts for streambank, stream channel,
14 lakeshore, and roadside protection and restoration projects
15 through the state-cost share program under Minnesota Statutes,
16 section 103C.501.

17 Subd. 6. [DEPARTMENT OF NATURAL RESOURCES.] The following
18 amounts are appropriated to the Department of Natural Resources
19 for the purposes stated:

20 (1) \$280,000 in fiscal year 2006 and \$430,000 in fiscal
21 year 2007 are for statewide assessment of surface water quality
22 and trends; and

23 (2) \$100,000 in fiscal year 2006 and \$4,050,000 in fiscal
24 year 2007 are for restoration of impaired waters and actions to
25 prevent waters from becoming impaired; of these amounts, up to
26 \$1,700,000 in fiscal year 2007 is available for grants and
27 contracts for forest stewardship planning and implementation,
28 and for research and monitoring.

29 Subd. 7. [PUBLIC FACILITIES AUTHORITY.] \$4,400,000 in
30 fiscal year 2006 and \$44,015,000 in fiscal year 2007 are
31 appropriated to the Public Facilities Authority; of these
32 amounts, \$4,400,000 in fiscal year 2006 and \$17,000,000 in
33 fiscal year 2007 are for deposit in the clean water legacy
34 capital improvements fund for grants under Minnesota Statutes,
35 section 446A.073; \$4,582,000 in fiscal year 2007 is for deposit
36 in the community septic system replacement fund for loans under

1 Minnesota Statutes, section 446A.074; and \$22,433,000 in fiscal
2 year 2007 is for deposit in the water pollution control
3 revolving fund under Minnesota Statutes, section 446A.07, for
4 wastewater treatment and stormwater projects. Money
5 appropriated under this subdivision does not cancel."

1 Senator moves to amend S.F. No. 762 as follows:

2 Page 3, line 19, delete "wasteload" and insert "load"

3 Page 3, line 20, delete "an" and insert "a load"

4 Page 5, line 2, delete "which" and insert "that" and after "

5 but" insert "do not" and delete "no" and insert "an"

6 Page 6, after line 16, insert:

7 "(2) with impairments that pose the greatest potential risk

8 to threatened or endangered species;"

9 Page 6, line 17, delete "(2)" and insert "(3)"

10 Page 6, line 19, delete "(3)" and insert "(4)"

11 Page 6, line 25, delete "(4)" and insert "(5)"

12 Page 7, line 14, delete "which" and insert "that"

13 Page 7, line 15, after "but" insert "do not" and delete

14 "no" and insert "an"

15 Page 7, line 24, delete "State" and insert "States"

16 Page 9, line 21, delete "authority" and insert

17 "authorities, as"

18 Page 9, line 22, after "1" insert a comma

19 Page 10, line 18, delete "such"

20 Page 11, line 32, delete "authorities" and insert

21 "authority" and delete "counties" and insert "a county"

22 Page 11, line 33, delete "and" and insert "or a" and delete

23 "agencies" and insert "agency"

24 Page 12, line 28, delete "facility" and insert "facilities"

25 Page 12, line 29, delete "residential dwelling" and insert "

26 structure"

27 Page 12, line 30, delete "which receive" and insert "that

28 receives"

29 Page 12, line 31, after "services" insert "that is combined"

30 Page 13, line 1, after "(a)" insert "Beginning January 1,

31 2006,"

32 Page 13, line 32, delete "which" and insert "that"

33 Page 15, line 14, delete "The counties" and insert "A

34 county"

35 Page 15, line 17, delete "the counties" and insert "a

36 county"

- 1 Page 15, line 19, delete "counties" and insert "county"
- 2 Page 15, line 22, delete "the counties" and insert "a
- 3 county"
- 4 Page 15, line 25, delete "The counties" and insert "A
- 5 county"
- 6 Page 15, line 27, delete "The fee collection authorities"
- 7 and insert "A fee collection authority"
- 8 Page 16, line 4, delete "The fee collection authorities"
- 9 and insert "A fee collection authority"
- 10 Page 16, line 11, delete the second "the" and insert "a"
- 11 and delete "authorities" and insert "authority"
- 12 Page 16, line 16, delete the first "the"
- 13 Page 16, line 23, delete everything after "6." and insert
- 14 "[EXPIRATION.]"
- 15 Page 16, delete line 24
- 16 Page 16, line 25, delete everything before "This" and
- 17 delete "repealed" and insert "expires"
- 18 Page 17, line 5, delete "USES OF ACCOUNT" and insert
- 19 "PURPOSES"
- 20 Page 17, line 6, delete "used" and insert "spent"
- 21 Page 17, line 26, after "FUND" insert "; APPROPRIATION"
- 22 Page 17, line 28, after the period, insert "Money in the
- 23 clean water legacy capital improvement fund, including interest
- 24 earned, is appropriated to the authority for the purposes of
- 25 this section."
- 26 Page 18, line 30, delete "up to"
- 27 Page 19, line 23, after "fund" insert ", including interest
- 28 earned,"
- 29 Page 22, delete lines 11 and 12, and insert "Any money
- 30 remaining after the first year of the biennium is available for
- 31 the second year."
- 32 Page 23, line 10, after "landowners" insert "under
- 33 Minnesota Statutes, section 17.117"
- 34 Page 24, line 8, delete "restoration"
- 35 Page 24, line 9, after "assistance" insert "for restoration"
- 36 Page 24, line 13, after "support" insert "implementation of"

1 and delete "implementation"

2 Page 25, line 12, delete "to" and insert "for deposit in"

3 Page 25, line 14, after "is" insert "for deposit in" and

4 delete "to"

5 Page 25, line 17, delete "to" and insert "for deposit in"

6 Page 25, line 18, delete "446.07" and insert "446A.07"

7 Page 25, line 19, delete "Funds" and insert "Money"

8 Page 25, line 20, delete "do" and insert "does" and delete

9 everything after "cancel" and insert a period

10 Page 25, delete lines 21 to 23.

Senators Frederickson; Johnson, D.E.; Hottinger; Higgins and Dille introduced--
S.F. No. 762: Referred to the Committee on Environment and Natural Resources.

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A bill for an act

relating to the environment; creating the Clean Water Legacy Act; providing authority, direction, and funding to achieve and maintain water quality standards for Minnesota's surface waters in accordance with section 303(d) of the federal Clean Water Act; appropriating money; proposing coding for new law in Minnesota Statutes chapter 446A; proposing coding for new law as Minnesota Statutes, chapter 114D.

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

Section 1. [114D.05] [CITATION.]

This chapter may be cited as the "Clean Water Legacy Act."

Sec. 2. [114D.10] [LEGISLATIVE PURPOSE AND FINDINGS.]

Subdivision 1. [PURPOSE.] The purpose of the Clean Water

Legacy Act is to protect, restore, and preserve the quality of Minnesota's surface waters by providing authority, direction, and resources to achieve and maintain water quality standards for surface waters as required by section 303(d) of the federal Clean Water Act, United States Code, title 42, section 1313(d), and applicable federal regulations.

Subd. 2. [FINDINGS.] The legislature finds that:

(1) there is a close link between protecting, restoring, and preserving the quality of Minnesota's surface waters and the ability to develop the state's economy, enhance its quality of life, and protect its human and natural resources;

(2) achieving the state's water quality goals will require long-term commitment and cooperation by all state and local

1 agencies, and other public and private organizations and
2 individuals, with responsibility and authority for water
3 management, planning, and protection; and

4 (3) all persons and organizations whose activities affect
5 the quality of waters, including point and nonpoint sources of
6 pollution, have a responsibility to participate in and support
7 efforts to achieve the state's water quality goals.

8 Sec. 3. [114D.15] [DEFINITIONS.]

9 Subdivision 1. [APPLICATION.] The definitions provided in
10 this section apply to the terms used in this chapter.

11 Subd. 2. [CITIZEN MONITORING.] "Citizen monitoring" means
12 monitoring of surface water quality by individuals and
13 nongovernmental organizations that is consistent with Pollution
14 Control Agency guidance on monitoring procedures, quality
15 assurance protocols, and data management.

16 Subd. 3. [CLEAN WATER COUNCIL.] "Clean Water Council" or
17 "council" means the Clean Water Council created pursuant to
18 section 114D.30, subdivision 1.

19 Subd. 4. [FEDERAL TMDL REQUIREMENTS.] "Federal TMDL
20 requirements" means the requirements of section 303(d) of the
21 Clean Water Act, United States Code, title 42, section 1313(d),
22 and associated regulations and guidance.

23 Subd. 5. [IMPAIRED WATER.] "Impaired water" means surface
24 water that does not meet applicable water quality standards.

25 Subd. 6. [PUBLIC AGENCIES.] "Public agencies" means all
26 state agencies, political subdivisions, and other public
27 organizations, with authority, responsibility, or expertise in
28 protecting, restoring, or preserving the quality of surface
29 waters, managing or planning for surface waters and related
30 lands, or financing waters-related projects. "Public agencies"
31 includes counties, cities, towns, joint powers organizations and
32 special purpose units of government, and the University of
33 Minnesota and other public education institutions.

34 Subd. 7. [RESTORATION.] "Restoration" means actions,
35 including effectiveness monitoring, that are taken to achieve
36 and maintain water quality standards for impaired waters in

1 accordance with a TMDL that has been approved by the United
2 States Environmental Protection Agency under federal TMDL
3 requirements.

4 Subd. 8. [SURFACE WATERS.] "Surface waters" means waters
5 of the state as defined in section 115.01, subdivision 22,
6 excluding groundwater as defined in section 115.01, subdivision
7 6.

8 Subd. 9. [THIRD-PARTY TMDL.] "Third-party TMDL" means a
9 TMDL that is developed in whole or in part by a qualified public
10 or private entity other than the Pollution Control Agency
11 consistent with the goals, policies, and priorities in section
12 114D.20.

13 Subd. 10. [TOTAL MAXIMUM DAILY LOAD OR TMDL.] "Total
14 maximum daily load" or "TMDL" means a calculation of the maximum
15 amount of a pollutant that may be introduced into a surface
16 water and still ensure that applicable water quality standards
17 for that water are achieved and maintained. A TMDL is the sum
18 of the pollutant load allocations for all sources of the
19 pollutant, including a wasteload allocation for point sources, a
20 load allocation for nonpoint sources and natural background, an
21 allocation for future growth of point and nonpoint sources, and
22 a margin of safety to account for uncertainty about the
23 relationship between pollutant loads and the quality of the
24 receiving surface water. "Natural background" means
25 characteristics of the water body resulting from the
26 multiplicity of factors in nature, including climate and
27 ecosystem dynamics, that affect the physical, chemical, or
28 biological conditions in a water body, but does not include
29 measurable and distinguishable pollution that is attributable to
30 human activity or influence. A TMDL must take into account
31 seasonal variations.

32 Subd. 11. [WATER QUALITY STANDARDS.] "Water quality
33 standards" for Minnesota surface waters are found in Minnesota
34 Rules, chapters 7050 and 7052.

35 Sec. 4. [114D.20] [IMPLEMENTATION; COORDINATION; GOALS;
36 POLICIES; AND PRIORITIES.]

1 Subdivision 1. [COORDINATION AND COOPERATION.] In
2 implementing this chapter, public agencies shall take into
3 consideration the relevant provisions of local and other
4 applicable water management, conservation, land use, land
5 management, and development plans and programs. Public agencies
6 with authority for local water management, conservation, land
7 use, land management, and development plans shall take into
8 consideration the manner in which their plans affect the
9 implementation of this chapter. Public agencies shall identify
10 opportunities to participate and assist in the successful
11 implementation of this chapter, including the funding or
12 technical assistance needs, if any, that may be necessary. In
13 implementing this chapter, public agencies shall endeavor to
14 engage the cooperation of organizations and individuals whose
15 activities affect the quality of surface waters, including point
16 and nonpoint sources of pollution, and who have authority and
17 responsibility for water management, planning, and protection.
18 To the extent practicable, public agencies shall endeavor to
19 enter into formal and informal agreements and arrangements with
20 federal agencies and departments to jointly utilize staff and
21 resources to deliver programs or conduct activities to achieve
22 the intent of this chapter, including efforts under the federal
23 Clean Water Act and other federal farm and soil and water
24 conservation programs.

25 Subd. 2. [GOALS FOR IMPLEMENTATION.] The following goals
26 must guide the implementation of this chapter:

27 (1) to identify impaired waters in accordance with federal
28 TMDL requirements within ten years after the effective date of
29 this section and thereafter to ensure continuing evaluation of
30 surface waters for impairments;

31 (2) to submit TMDL's to the United States Environmental
32 Protection Agency for all impaired waters in a timely manner in
33 accordance with federal TMDL requirements;

34 (3) to set a reasonable time for implementing restoration
35 of each identified impaired water;

36 (4) to provide assistance and incentives to prevent waters

1 from becoming impaired and to improve the quality of waters
2 which are listed as impaired but have no approved TMDL
3 addressing the impairment; and

4 (5) to promptly seek the delisting of waters from the
5 impaired waters list when those waters are shown to achieve the
6 designated uses applicable to the waters.

7 Subd. 3. [IMPLEMENTATION POLICIES.] The following policies
8 must guide the implementation of this chapter:

9 (1) develop regional and watershed TMDL's, and TMDL's for
10 multiple pollutants, where reasonable and feasible;

11 (2) maximize use of available organizational, technical,
12 and financial resources to perform sampling, monitoring, and
13 other activities to identify impaired waters, including use of
14 citizen monitoring;

15 (3) maximize opportunities for restoration of impaired
16 waters, by prioritizing and targeting of available programmatic,
17 financial, and technical resources and by providing additional
18 state resources to complement and leverage available resources;

19 (4) use existing regulatory authorities to achieve
20 restoration for point and nonpoint sources of pollution where
21 applicable, and promote the development and use of effective
22 nonregulatory measures to address pollution sources for which
23 regulations are not applicable;

24 (5) use restoration methods that have a demonstrated
25 effectiveness in reducing impairments and provide the greatest
26 long-term positive impact on water quality protection and
27 improvement while incorporating innovative approaches on a
28 case-by-case basis;

29 (6) identify for the legislature any innovative approaches
30 that may strengthen or complement existing programs; and

31 (7) identify and encourage implementation of measures to
32 prevent waters from becoming impaired and to improve the quality
33 of waters that are listed as impaired but have no approved TMDL
34 addressing the impairment.

35 Subd. 4. [PRIORITIES FOR IDENTIFYING IMPAIRED WATERS.] The
36 Pollution Control Agency, in accordance with federal TMDL

1 requirements, shall set priorities for identifying impaired
2 waters, giving consideration to:

3 (1) waters where impairments would pose the greatest
4 potential risk to human or aquatic health; and

5 (2) waters where data developed through public agency or
6 citizen monitoring or other means, provides evidence that an
7 impaired condition exists.

8 Subd. 5. [PRIORITIES FOR PREPARATION OF TMDL'S.] The Clean
9 Water Council shall recommend priorities for scheduling and
10 preparing TMDL's taking into account the severity of the
11 impairment, the designated uses of those waters, and other
12 applicable federal TMDL requirements. In recommending
13 priorities, the council shall also give consideration to waters
14 and watersheds:

15 (1) with impairments that pose the greatest potential risk
16 to human health;

17 (2) with impairments that pose the greatest potential risk
18 to aquatic health;

19 (3) where other public agencies and participating
20 organizations and individuals, especially local, basinwide, or
21 regional agencies or organizations, have demonstrated readiness
22 to assist in carrying out the responsibilities, including
23 availability and organization of human, technical, and financial
24 resources necessary to undertake the work; and

25 (4) where there is demonstrated coordination and
26 cooperation among cities, counties, watershed districts, and
27 soil and water conservation districts in planning and
28 implementation of activities that will assist in carrying out
29 the responsibilities.

30 Subd. 6. [PRIORITIES FOR RESTORATION OF IMPAIRED
31 WATERS.] In implementing restoration of impaired waters, in
32 addition to the priority considerations in subdivision 5 the
33 Clean Water Council shall give priority in its recommendations
34 for restoration funding from the clean water legacy account to
35 restoration projects that:

36 (1) coordinate with and utilize existing local authorities

1 and infrastructure for implementation;

2 (2) can be implemented in whole or in part by providing
3 support for existing or ongoing restoration efforts; and

4 (3) most effectively leverage other sources of restoration
5 funding, including federal, state, local, and private sources of
6 funds; and

7 (4) show a high potential for early restoration and
8 delisting based upon data developed through public agency or
9 citizen monitoring or other means.

10 Subd. 7. [PRIORITIES FOR FUNDING PREVENTION ACTIONS.] The
11 Clean Water Council shall apply the priorities applicable under
12 subdivision 6, as far as practicable, when recommending
13 priorities for funding actions to prevent waters from becoming
14 impaired and to improve the quality of waters which are listed
15 as impaired but have no approved TMDL.

16 Sec. 5. [114D.25] [ADMINISTRATION; POLLUTION CONTROL
17 AGENCY.]

18 Subdivision 1. [GENERAL DUTIES AND AUTHORITIES.] The
19 Pollution Control Agency, in accordance with federal TMDL
20 requirements, shall: identify impaired waters and propose a
21 list of the waters for review and approval by the United States
22 Environmental Protection Agency; develop and approve TMDL's for
23 listed impaired waters and submit the approved TMDL's to the
24 United State Environmental Protection Agency for final approval;
25 and propose to delist waters from the Environmental Protection
26 Agency impaired waters list.

27 Subd. 2. [ADMINISTRATIVE PROCEDURES FOR TMDL
28 APPROVAL.] The approval of a TMDL by the Pollution Control
29 Agency must be considered a final decision of the agency, and is
30 subject to the contested case procedures of sections 14.57 to
31 14.62, and to judicial review under sections 14.63 to 14.69. A
32 TMDL is not subject to the rulemaking requirements of chapter
33 14, including section 14.386.

34 Subd. 3. [THIRD-PARTY TMDL DEVELOPMENT.] The Pollution
35 Control Agency may enter agreements with any qualified public or
36 private entity setting forth the terms and conditions under

1 which that entity is authorized to develop a third-party TMDL.
2 In determining whether an entity is qualified to develop a
3 third-party TMDL, the agency shall consider the technical and
4 administrative qualifications of the entity and any potential
5 conflict of interest of the entity with respect to the
6 development of the third-party TMDL. A third-party TMDL is
7 subject to modification and approval by the Pollution Control
8 Agency, and must be approved by the Pollution Control Agency
9 before it is submitted to the United States Environmental
10 Protection Agency. The Pollution Control Agency shall consider
11 authorizing the development of third-party TMDL's consistent
12 with the goals, policies, and priorities determined under
13 section 116.384.

14 Sec. 6. [114D.30] [CLEAN WATER COUNCIL.]

15 Subdivision 1. [CREATION; DUTIES.] A Clean Water Council
16 is created to advise on the administration and implementation of
17 this chapter, and foster coordination and cooperation as
18 described in section 114D.20, subdivision 1. The council may
19 also advise on the development of appropriate processes for
20 expert scientific review as described in section 114D.35,
21 subdivision 2. The Pollution Control Agency shall provide
22 administrative support for the council with the support of other
23 member agencies. The members of the council shall elect a chair
24 from the nonagency members of the council.

25 Subd. 2. [MEMBERSHIP; APPOINTMENT.] The commissioners of
26 natural resources, agriculture, and the Pollution Control
27 Agency, and the executive director of the Board of Water and
28 Soil Resources are the appointing authorities for the council.
29 Each appointing authority shall appoint one person from their
30 respective agency to serve as a member of the council. The
31 appointing authorities, acting jointly, shall appoint 13
32 additional nonagency members of the council as follows:

- 33 (1) two members representing statewide farm organizations;
34 (2) two members representing business organizations;
35 (3) two members representing environmental organizations;
36 (4) one member representing soil and water conservation

1 districts;

2 (5) one member representing watershed districts;

3 (6) one member representing organizations focused on
4 improvement of Minnesota lakes or streams;

5 (7) one member representing an organization of county
6 governments;

7 (8) two members representing organizations of city
8 governments; and

9 (9) one member representing the Metropolitan Council
10 established under section 473.123.

11 Subd. 3. [TERMS; COMPENSATION; REMOVAL.] The initial terms
12 of members representing state agencies and the Metropolitan
13 Council expire on the first Monday in January, 2007.

14 Thereafter, the terms of members representing the state agencies
15 and the Metropolitan Council are four years and are coterminous
16 with the governor. The terms of other members of the council
17 shall be as provided in section 15.059, subdivision 2. Members
18 may serve until their successors are appointed and qualify.
19 Compensation and removal of council members is as provided in
20 section 15.059, subdivisions 3 and 4. A vacancy on the council
21 may be filled by the appointing authority provided in
22 subdivision 1 for the remainder of the unexpired term.

23 Subd. 4. [IMPLEMENTATION PLAN.] The Clean Water Council
24 shall prepare a plan for implementation of this chapter. The
25 plan shall address general procedures and timeframes for
26 implementing this chapter, and shall include a more specific
27 implementation work plan for the next fiscal biennium and a
28 framework for setting priorities to address impaired waters
29 consistent with section 114D.45, subdivisions 2 to 7. The
30 council shall issue the first implementation plan under this
31 subdivision by December 1, 2005, and shall issue a revised work
32 plan by December 1 of each even-numbered year thereafter.

33 Subd. 5. [RECOMMENDATIONS ON APPROPRIATION OF FUNDS.] The
34 Clean Water Council shall recommend to the governor the manner
35 in which money from the clean water legacy account should be
36 appropriated for the purposes identified in section 114D.45,

1 subdivision 3. The council's recommendations must be consistent
2 with the purposes, policies, goals, and priorities in sections
3 114D.05 to 114D.35, and shall allocate adequate support and
4 resources to identify impaired waters, develop TMDL's, implement
5 restoration of impaired waters, and provide assistance and
6 incentives to prevent waters from becoming impaired and improve
7 the quality of waters which are listed as impaired but have no
8 approved TMDL.

9 Subd. 6. [BIENNIAL REPORT TO LEGISLATURE.] By December 1
10 of each even-numbered year, the council shall submit a report to
11 the legislature on the activities for which money from the clean
12 water legacy account has been or will be spent for the current
13 biennium, and the activities for which money from the account is
14 recommended to be spent in the next biennium. The report due on
15 December 1, 2014, must include an evaluation of the progress
16 made through June 30, 2014, in implementing this chapter, the
17 need for funding of future implementation of those sections, and
18 recommendations for the sources of such funding.

19 Sec. 7. [114D.35] [PUBLIC AND STAKEHOLDER PARTICIPATION;
20 SCIENTIFIC REVIEW; EDUCATION.]

21 Subdivision 1. [PUBLIC AND STAKEHOLDER PARTICIPATION.]
22 Public agencies involved in the implementation of this chapter
23 shall encourage participation by the public and stakeholders,
24 including local citizens, land owners and managers, and public
25 and private organizations, in the identification of impaired
26 waters, in developing TMDL's, and in planning and implementing
27 restoration of impaired waters. In particular, the Pollution
28 Control Agency shall make reasonable efforts to provide timely
29 information to the public and to stakeholders about impaired
30 waters that have been identified by the agency. The agency
31 shall seek broad and early public and stakeholder participation
32 in scoping the activities necessary to develop a TMDL, including
33 the scientific models, methods, and approaches to be used in
34 TMDL development, and to implement restoration pursuant to
35 section 114D.15, subdivision 7.

36 Subd. 2. [EXPERT SCIENTIFIC ADVICE.] The Clean Water

1 Council and public agencies shall make use of available
2 expertise from educational, research, and technical
3 organizations, including the University of Minnesota and other
4 higher education institutions, to provide appropriate
5 independent expert advice on models, methods, and approaches
6 used in identifying impaired waters, developing TMDL's, and
7 implementing prevention and restoration.

8 Subd. 3. [EDUCATION.] The Clean Water Council shall
9 develop strategies for informing, educating, and encouraging the
10 participation of citizens, stakeholders, and others regarding
11 the identification of impaired waters, development of TMDL's,
12 and development and implementation of restoration for impaired
13 waters. Public agencies shall be responsible for implementing
14 the strategies.

15 Sec. 8. [114D.40] [CLEAN WATER FEES.]

16 Subdivision 1. [DEFINITIONS.] (a) The definitions in this
17 subdivision apply to the terms used in this section.

18 (b) "Average daily discharge or application limitation"
19 means the highest allowable average of daily discharge or land
20 application during a calendar day or any 24-hour period that
21 reasonably represents the discharge during the calendar day for
22 the purposes of sampling, calculated as the sum of all daily
23 discharges or land applications measured during a day, divided
24 by the number of daily discharges or land applications during
25 that day.

26 (c) "Effluent flow" means the flow of domestic wastewater
27 from a residential dwelling or nonresidential establishment.
28 The rate of water usage by a residential dwelling or
29 nonresidential establishment must be substituted for the
30 effluent flow if effluent flow from the residential dwelling or
31 nonresidential establishment is not measured.

32 (d) "Fee collection authorities" means counties, the
33 Pollution Control Agency, and public agencies with authority to
34 collect fees and charges for sewer services provided by a
35 publicly owned treatment works.

36 (e) "Individual sewage treatment system" means a sewage

1 treatment system, or part thereof, that is regulated by the
2 state or its political subdivisions, and which serves a
3 residential dwelling, or nonresidential establishment, or group
4 thereof, using sewage tanks followed by soil treatment and
5 disposal or using advanced treatment devices that discharge
6 below final grade. "Individual sewage treatment system" also
7 includes sewage holding tanks and privies.

8 (f) "Nonresidential establishment" means a structure or
9 portion of a structure that is not a residential dwelling.

10 (g) "Publicly owned treatment works" means a device or
11 system used in the treatment, recycling, or reclamation of
12 municipal sewage or liquid industrial waste that is owned by the
13 state, a political subdivision, sanitary district, or other
14 public organization established under state law and which relies
15 primarily on wastewater treatment systems other than individual
16 sewage treatment systems.

17 (h) "Residential dwelling" means a room or group of rooms
18 used by an individual, family, or other group as living quarters
19 which includes facilities for sleeping, eating, cooking, and
20 sanitation. "Residential dwelling" includes apartments,
21 condominiums, cooperatives, attached and detached dwellings,
22 mobile homes, seasonal or recreational dwellings, or a dwelling
23 in which a resident of that dwelling engages in a business or
24 employment. A farm that includes buildings is treated as a
25 residential dwelling. "Residential dwelling" does not include:

26 (1) hotels, motels, resorts, boarding houses, clubs,
27 hospitals, nursing homes, dormitories, schools, colleges, or
28 similar institutional or transient facility; or

29 (2) any residential dwelling containing not more than two
30 residential dwelling units which receive a single bill for sewer
31 services with one or more nonresidential establishments.

32 Subd. 2. [ASSESSMENT OF CLEAN WATER FEES.] A clean water
33 fee is imposed as provided in subdivision 3 on all discharges of
34 domestic and industrial wastewater to sanitary sewer systems;
35 wastewater treatment plants, facilities, or systems; individual
36 sewage treatment systems; and other systems.

1 Subd. 3. [FEE AMOUNTS.] (a) The amounts of the clean water
2 fees imposed under this section are as provided in this
3 subdivision.

4 (b) For discharges to sanitary sewer systems served by a
5 publicly owned treatment works, the clean water fees are as
6 follows:

7 (1) for each residential dwelling that receives a separate
8 bill for service and contains not more than two residential
9 dwelling units, \$36 per year;

10 (2) for a structure that contains more than two residential
11 dwelling units that do not receive separate bills for service,
12 clean water fees must be calculated as follows:

13 (i) \$36 per year for each residential dwelling unit in the
14 structure; and

15 (ii) any nonresidential establishment which is billed
16 together with the residential dwelling units is subject to a
17 clean water fee on that portion of the effluent flow for the
18 structure that is attributable to that nonresidential
19 establishment, and the fee must be calculated based on effluent
20 flows as provided in clause (3); and

21 (3) for each nonresidential establishment that receives a
22 separate bill for service, the fee is as follows:

23 (i) if average effluent flow is less than 10,000 gallons
24 per day, \$120 per year;

25 (ii) if average effluent flow is 10,000 gallons per day or
26 greater, but less than 100,000 gallons per day, \$300 per year;

27 and

28 (iii) if average effluent flow is 100,000 gallons per day
29 or greater, \$600 per year.

30 (c) Except as provided in paragraph (d), for discharges
31 from wastewater treatment facilities, other than publicly owned
32 treatment works, which are required to obtain a national
33 pollution discharge elimination system or state disposal system
34 permit, the fee is as follows:

35 (1) for permits authorizing an average daily discharge or
36 land application limitation of less than 10,000 gallons on an

1 annualized basis, \$120 per year;

2 (2) for permits authorizing an average daily discharge or
3 land application limitation of 10,000 gallons per day or
4 greater, but less than 100,000 gallons per day, \$300 per year;
5 and

6 (3) for permits authorizing an average daily discharge or
7 land application limitation of 100,000 gallons per day or
8 greater, \$600 per year.

9 (d) A clean water fee must not be imposed under paragraph
10 (c), on discharges from a facility that operates under a general
11 permit issued by the agency.

12 (e) For discharges to domestic wastewater treatment systems
13 permitted by the Pollution Control Agency, excluding publicly
14 owned treatment works, the fee is \$36 per year for each
15 residential dwelling and nonresidential establishment that
16 discharges to the systems. No single residential unit or
17 nonresidential establishment may be required to pay more than
18 one clean water fee under this paragraph.

19 (f) For individual sewage treatment systems not permitted
20 by the Pollution Control Agency, the fee is \$36 per year for
21 each residential dwelling and nonresidential establishment
22 served by the system. No single residential unit or
23 nonresidential establishment may be required to pay more than
24 one clean water fee under this paragraph.

25 (g) For any wastewater system not described in paragraphs
26 (b) to (f), that accepts and discharges untreated or partially
27 treated wastewater, the fee is \$36 per year for each residential
28 dwelling and nonresidential establishment that discharges to the
29 system.

30 (h) Any single residential unit or nonresidential
31 establishment that would be subject to payment of a clean water
32 fee under both paragraphs (f) and (g) may only be required to
33 pay the clean water fee under paragraph (e).

34 Subd. 4. [COLLECTION AND ENFORCEMENT.] (a) Fees imposed on
35 discharges to sanitary sewer systems served by publicly owned
36 treatment works must be collected by the public agency that

1 collects fees or charges from the users of that service. The
2 fees must be collected at the same time and with the same
3 frequency as fees or charges for service are collected. The
4 collecting entity may enforce payment of the fees using the same
5 enforcement authority applicable to sewer service charges.

6 (b) Fees imposed under subdivision 3, paragraphs (c) and
7 (e), must be collected by the Pollution Control Agency from the
8 permittees for the facilities or systems. The Pollution Control
9 Agency may enforce payment of the fees using the same
10 enforcement authority applicable to permit fees.

11 (c) Fees imposed under subdivision 3, paragraphs (f) and
12 (g), must be collected by each county, from the owners of the
13 residential dwellings or nonresidential establishments subject
14 to the fee that are located in the county. The counties shall
15 collect the fees at least once per calendar year, but may
16 collect the fees more frequently. If fees are collected
17 annually, the counties shall require payment of the fees by not
18 later than February 1 following the calendar year for which the
19 fee is imposed. The counties shall determine that manner in
20 which the fees are collected. Each county shall enact and
21 enforce an appropriate ordinance to enforce payment of the fees.

22 (d) By August 15, 2005, the counties shall identify and
23 develop a list of all persons subject to the fees under
24 subdivision 3, paragraphs (f) and (g), located in that county.
25 The counties shall annually update the list by August 15 of each
26 year.

27 (e) The fee collection authorities shall exempt a person
28 from payment of the clean water fee for a discharge of
29 wastewater from a residential dwelling if the fee collection
30 authority determines that the person meets any of the criteria
31 for eligibility under the telephone assistance plan established
32 under section 237.70, or that the person is receiving telephone
33 assistance under that plan. The Pollution Control Agency shall
34 create a form that fee collection authorities shall use to
35 determine eligibility for exemption under this paragraph.

36 (f) Any statement, invoice, or other document used to

1 collect the fees under this subdivision must clearly identify
2 the fee as the "Minnesota Clean Water Fee."

3 Subd. 5. [PAYMENT TO COMMISSIONER OF REVENUE; DEPOSIT.] (a)
4 The fee collection authorities shall remit all fees collected
5 under this section, less the costs to collect the fees, not to
6 exceed five percent of the total collected, to the commissioner
7 of revenue. The fees must be remitted in a manner prescribed by
8 the commissioner. Amounts collected during the previous
9 calendar quarter must be remitted to the commissioner on April
10 30, July 31, October 31, and January 31. In addition to the
11 costs of collecting the fees, the fee collection authorities may
12 retain from fees collected for calendar year 2006 the costs to
13 develop methods and procedures for collecting the clean water
14 fees.

15 (b) The commissioner of revenue shall deposit all clean
16 water fees remitted by the fee collection authorities in the
17 clean water legacy account.

18 (c) The assessment, audit, refund, penalty, interest,
19 enforcement, collection remedies, appeal, and administrative
20 provisions of chapters 270 and 289A that are applicable to fees
21 imposed under chapter 297A apply to the fees imposed by this
22 section.

23 Subd. 6. [EFFECTIVE DATE; REPEALER.] The fees imposed by
24 this section are effective and collection must begin for the
25 year beginning January 1, 2006. This section is repealed on
26 December 31, 2015.

27 Sec. 9. [114D.45] [CLEAN WATER LEGACY ACCOUNT.]

28 Subdivision 1. [CREATION.] The clean water legacy account
29 is created as an account in the environmental fund. Money in
30 the account must be made available for the implementation of
31 this chapter and sections 446A.073 and 446A.074, without
32 supplanting or taking the place of any other funds which are
33 currently available or may become available from any other
34 source, whether federal, state, local, or private, for
35 implementation of those sections.

36 Subd. 2. [SOURCES OF REVENUE.] The following revenues must

1 be deposited in the clean water legacy account:

2 (1) the revenue from the clean water fees collected under
3 section 114D.40; and

4 (2) interest accrued on the account.

5 Subd. 3. [USES OF ACCOUNT.] Subject to appropriation by
6 the legislature, the clean water legacy account may be used for
7 the following purposes:

8 (1) to provide grants, loans, and technical assistance to
9 public agencies and others who are participating in the process
10 of identifying impaired waters, developing TMDL's, implementing
11 restoration plans for impaired waters, and monitoring the
12 effectiveness of restoration;

13 (2) to support measures to prevent waters from becoming
14 impaired and to improve the quality of waters that are listed as
15 impaired but have no approved TMDL addressing the impairment;

16 (3) to provide grants and loans for wastewater and
17 stormwater treatment projects through the Public Facilities
18 Authority;

19 (4) to support the efforts of public agencies associated
20 with individual sewage treatment systems and financial
21 assistance for upgrading and replacing the systems; and

22 (5) to provide funds to state agencies to carry out their
23 responsibilities under this chapter.

24 Sec. 10. [446A.073] [CLEAN WATER LEGACY PHOSPHORUS
25 REDUCTION GRANTS.]

26 Subdivision 1. [CREATION OF FUND.] The authority shall
27 establish a clean water legacy capital improvement fund and
28 shall make grants from the fund as provided in this section.

29 Subd. 2. [GRANTS.] The authority shall award grants from
30 the clean water legacy capital improvement fund to governmental
31 units for the capital costs of wastewater treatment facility
32 projects or a portion thereof that will reduce the discharge of
33 total phosphorus from the facility to one milligram per liter or
34 less. A project is eligible for a grant if it meets the
35 following requirements:

36 (1) the applicable phosphorus discharge limit is

1 incorporated in a permit issued by the agency for the wastewater
2 treatment facility on or after March 28, 2000, or the grantee
3 agrees to comply with the applicable limit as a condition of
4 receiving the grant;

5 (2) the governmental unit has submitted a facilities plan
6 for the project to the agency and a grant application to the
7 authority on a form prescribed by the authority; and

8 (3) the agency has approved the application and facilities
9 plan, and certified the eligible costs for the project to the
10 authority.

11 Subd. 3. [ELIGIBLE CAPITAL COSTS.] Eligible capital costs
12 for phosphorus reduction grants under subdivision 4, paragraph
13 (a), include the as-bid construction costs and engineering
14 planning and design costs. Eligible capital costs for
15 phosphorus reduction grants under subdivision 4, paragraph (b),
16 include the final, incurred construction, engineering, planning,
17 and design costs.

18 Subd. 4. [GRANT AMOUNTS AND PRIORITIES.] (a) Priority must
19 be given to projects that start construction on or after July 1,
20 2005. If a facility's plan for a project is approved by the
21 agency before July 1, 2009, the amount of the grant is 75
22 percent of the eligible capital cost of the project. If a
23 facility's plan for a project is approved by the agency on or
24 after July 1, 2009, the amount of the grant is 50 percent of the
25 eligible capital cost of the project. Priority in awarding
26 grants under this paragraph must be based on the date of
27 approval of the facility's plan for the project.

28 (b) Projects that meet the eligibility requirements in
29 subdivision 2 and have started construction before July 1, 2005,
30 are eligible for grants to reimburse up to 75 percent of the
31 eligible capital cost of the project, less any amounts
32 previously received in grants from other sources. Application
33 for a grant under this paragraph must be submitted to the agency
34 no later than June 30, 2007. Priority for award of grants under
35 this paragraph must be based on the date of agency approval of
36 the application for the grant.

1 (c) In each fiscal year that money is available for grants,
2 the authority shall first award grants under paragraph (a) to
3 projects that met the eligibility requirements of subdivision 2
4 by May 1 of that year. The authority shall use any remaining
5 money available that year to award grants under paragraph (b).
6 Grants that have been approved but not awarded in a previous
7 fiscal year carry over and must be awarded in subsequent fiscal
8 years in accordance with the priorities in this paragraph.

9 (d) Disbursements of grants under this section by the
10 authority to recipients must be made for eligible project costs
11 as incurred by the recipients, and must be made by the authority
12 in accordance with the project financing agreement and
13 applicable state law.

14 Subd. 5. [FEES.] The authority may charge the grant
15 recipient a fee for its administrative costs not to exceed
16 one-half of one percent of the grant amount, to be paid upon
17 execution of the grant agreement.

18 Sec. 11. [446A.074] [COMMUNITY SEPTIC SYSTEM LOAN
19 PROGRAM.]

20 Subdivision 1. [CREATION OF FUND.] The authority shall
21 establish a community septic system replacement fund and shall
22 make loans from the fund as provided in this section. Money in
23 the fund is annually appropriated to the authority and does not
24 lapse. The fund shall be credited with all loan repayments and
25 investment income from the fund, and servicing fees assessed
26 under section 446A.04, subdivision 5. The authority shall
27 manage and administer the community septic system replacement
28 fund and, for these purposes, may exercise all powers provided
29 in this chapter.

30 Subd. 2. [LOANS.] The authority shall award loans to
31 governmental units from the community septic system replacement
32 fund for projects to replace failing or inadequate individual
33 sewage treatment systems with new individual sewage treatment
34 systems. A governmental unit receiving a loan from the fund
35 shall own the individual sewage treatment systems built under
36 the program and shall be responsible, either directly or through

1 a contract with a private vendor, for all inspections,
2 maintenance, and repairs necessary to assure proper operation of
3 the systems.

4 Subd. 3. [PROJECT PRIORITY LIST.] Governmental units
5 seeking loans from the community septic system loan program
6 shall first submit a project proposal to the agency. A project
7 proposal must include an identification and description of the
8 condition of all individual sewage treatment systems in the
9 project area. The agency shall rank project proposals on its
10 project priority list used for the water pollution control
11 revolving fund under section 446A.07.

12 Subd. 4. [LOAN APPLICATIONS.] Governmental units with
13 projects on the project priority list shall submit applications
14 to the authority on forms prescribed by the authority. The
15 application must include:

16 (1) a list of the individual sewage treatment systems
17 proposed to be replaced over a period of up to three years;

18 (2) a project schedule and cost estimate for each year of
19 the project;

20 (3) a financing plan for repayment of the loan; and

21 (4) a management plan providing for the inspection,

22 maintenance, and repairs necessary to assure proper operation of
23 the systems.

24 Subd. 5. [LOAN AWARDS.] The authority shall award loans to
25 governmental units with approved loan applications based on
26 their ranking on the agency's project priority list. The loan
27 amount must be based on the estimated project costs for the
28 portion of the project expected to be completed within one year,
29 up to an annual maximum of \$500,000. For projects expected to
30 take more than one year to complete, the authority may make a
31 multiyear commitment for a period not to exceed three years,
32 contingent on the future availability of funds. Each year of a
33 multiyear commitment must be funded by a separate loan agreement
34 meeting the terms and conditions in subdivision 6. A
35 governmental unit receiving a loan under a multiyear commitment
36 has priority for additional loan funds in subsequent years.

1 Subd. 6. [LOAN TERMS AND CONDITIONS.] Loans from the
2 community septic system replacement fund must comply with the
3 following terms and conditions:

4 (1) principal and interest payments must begin no later
5 than two years after the loan is awarded;

6 (2) loans must carry an interest rate of one percent and
7 must be fully amortized within ten years of the first scheduled
8 payment;

9 (3) a governmental unit receiving a loan must establish a
10 dedicated source or sources of revenues for repayment of the
11 loan and must issue a general obligation note to the authority
12 for the full amount of the loan; and

13 (4) each property owner to be served by an individual
14 sewage treatment system under this program must provide a
15 permanent easement to the governmental unit to allow access to
16 the system for inspections, maintenance, and repairs.

17 Subd. 7. [SPECIAL ASSESSMENT DEFERRAL.] (a) A governmental
18 unit that receives a loan under this section, and levies special
19 assessments to repay the loan, may defer payment of the
20 assessments under sections 435.193 to 435.195.

21 (b) A governmental unit that defers payment of special
22 assessments for one or more properties under paragraph (a) may
23 request deferral of that portion of the debt service on its
24 loan, and the authority shall accept appropriate amendments to
25 the general obligation note of the governmental unit. If
26 special assessment payments are later received from properties
27 that received a deferral, the funds received must be paid to the
28 authority with the next scheduled loan payment.

29 Subd. 8. [ELIGIBLE COSTS.] Eligible costs for community
30 septic system loans include the costs of planning, design,
31 construction, legal fees, administration, and land acquisition.

32 Subd. 9. [DISBURSEMENTS.] Loan disbursements by the
33 authority under this section must be made for eligible project
34 costs as incurred by the recipients, and must be made in
35 accordance with the project loan agreement and applicable state
36 law.

1 Subd. 10. [AUDITS.] A governmental unit receiving a loan
2 under this section must annually provide to the authority for
3 the term of the loan a copy of its annual independent audit or,
4 if the governmental unit is not required to prepare an
5 independent audit, a copy of the annual financial reporting form
6 it provides to the state auditor.

7 Sec. 12. [APPROPRIATIONS.]

8 Subdivision 1. [GENERAL PROVISIONS.] The appropriations in
9 this section are from the environmental fund and are available
10 for the fiscal years ending June 30, 2006, and June 30, 2007.
11 Unless otherwise specified in this section, these appropriations
12 do not cancel and remain available until June 30, 2007.
13 Appropriations in this section that are encumbered under
14 contract, including grant contract, on or before June 30, 2007,
15 are available until June 30, 2009.

16 Subd. 2. [DEPARTMENT OF REVENUE; FEE COLLECTION
17 COSTS.] \$38,000 in fiscal year 2006 and \$31,000 in fiscal year
18 2007 are appropriated to the Department of Revenue to pay the
19 costs of collection and administration of the clean water fees
20 imposed in Minnesota Statutes, section 114D.40.

21 Subd. 3. [POLLUTION CONTROL AGENCY.] The following amounts
22 are appropriated to the Pollution Control Agency for the
23 purposes stated:

24 (1) \$1,000,000 in fiscal year 2006 is to assist counties in
25 developing the list required under Minnesota Statutes, section
26 114D.40, subdivision 4, paragraph (e), of persons subject to
27 clean water fees under Minnesota Statutes, section 114D.40,
28 subdivision 3, paragraphs (f) and (g);

29 (2) \$1,860,000 in fiscal year 2006 and \$4,125,000 in fiscal
30 year 2007 are for statewide assessment of surface water quality
31 and trends; of these amounts, up to \$1,474,000 in fiscal year
32 2006 and \$3,256,600 in fiscal year 2007 are available for grants
33 or contracts to support citizen monitoring of surface waters;
34 and

35 (3) \$1,900,000 in fiscal year 2006 and \$3,290,000 in fiscal
36 year 2007 are to develop TMDL's for waters listed on the United

1 States Environmental Protection Agency approved 2004 impaired
2 waters list; of this appropriation, up to \$384,950 in fiscal
3 year 2006 and \$1,118,750 in fiscal year 2007 are available for
4 grants or contracts to develop TMDL's.

5 Subd. 4. [AGRICULTURE DEPARTMENT.] The following amounts
6 are appropriated to the Department of Agriculture for the
7 purposes stated:

8 (1) \$250,000 in fiscal year 2006 and \$2,300,000 in fiscal
9 year 2007 are for agricultural best management practices
10 low-interest loans to producers and rural landowners; of these
11 amounts, \$200,000 in fiscal year 2006 and \$2,100,000 in fiscal
12 year 2007 are available for pass-through to local governments
13 and lenders for low-interest loans;

14 (2) \$350,000 in fiscal year 2006 and \$800,000 in fiscal
15 year 2007 are to expand technical assistance to producers and
16 conservation professionals on nutrient and pasture management;
17 target practices to sources of water impairments; coordinate
18 federal and state farm conservation programs to fully utilize
19 federal conservation funds; and expand conservation planning
20 assistance for producers; of these amounts, \$50,000 in fiscal
21 year 2006 and \$210,000 in fiscal year 2007 are available for
22 grants or contracts to develop nutrient and conservation
23 planning assistance information materials; and

24 (3) \$100,000 in fiscal year 2006 and \$800,000 in fiscal
25 year 2007 are for research, evaluation, and effectiveness
26 monitoring of agricultural practices in restoring impaired
27 waters; of these amounts, \$600,000 in fiscal year 2007 is
28 available for grants or contracts for research, evaluations, and
29 effectiveness monitoring of agricultural practices in restoring
30 impaired waters, including on-farm demonstrations.

31 Subd. 5. [BOARD OF WATER AND SOIL RESOURCES.] The
32 following amounts are appropriated to the Board of Water and
33 Soil Resources for restoration and prevention actions as
34 described in Minnesota Statutes, section 114D.20, subdivisions 6
35 and 7:

36 (1) \$450,000 in fiscal year 2006 and \$5,750,000 in fiscal

1 year 2007 are for targeted nonpoint restoration cost-share and
2 incentive payments; of these amounts, up to \$450,000 in fiscal
3 year 2006 and \$5,450,000 in fiscal year 2007 are available for
4 grants to soil and water conservation districts through the
5 state cost-share program authorized under Minnesota Statutes,
6 section 103C.501;

7 (2) \$412,000 in fiscal year 2006 and \$3,450,000 in fiscal
8 year 2007 are for targeted nonpoint restoration technical and
9 engineering assistance activities; of these amounts, up to
10 \$412,000 in fiscal year 2006 and \$3,250,000 in fiscal year 2007
11 are available for grants to soil and water conservation
12 districts, watershed management organizations, or counties to
13 support nonpoint restoration implementation activities;

14 (3) \$200,000 in fiscal year 2007 is for reporting and
15 evaluation of applied soil and water conservation practices;

16 (4) \$2,400,000 in fiscal year 2007 is for grants to
17 counties for implementation of county individual sewage
18 treatment systems programs through the local water resources
19 protection and management program under Minnesota Statutes,
20 section 103B.3369;

21 (5) \$300,000 in fiscal year 2006 and \$1,500,000 in fiscal
22 year 2007 are for base and challenge grants to support nonpoint
23 source protection activities related to lake and river
24 protection and management through the local water resources
25 protection and management program under Minnesota Statutes,
26 section 103B.3369; and

27 (6) \$2,400,000 in fiscal year 2007 is for grants to soil
28 and water conservation districts for streambank, stream channel,
29 lakeshore, and roadside protection and restoration projects
30 through the state-cost share program under Minnesota Statutes,
31 section 103C.501.

32 Subd. 6. [DEPARTMENT OF NATURAL RESOURCES.] The following
33 amounts are appropriated to the Department of Natural Resources
34 for the purposes stated:

35 (1) \$280,000 in fiscal year 2006 and \$430,000 in fiscal
36 year 2007 are for statewide assessment of surface water quality

1 and trends; and

2 (2) \$100,000 in fiscal year 2006 and \$4,050,000 in fiscal
3 year 2007 are for restoration of impaired waters and actions to
4 prevent waters from becoming impaired; of these amounts, up to
5 \$1,700,000 in fiscal year 2007 is available for grants and
6 contracts for forest stewardship planning and implementation,
7 and for research and monitoring.

8 Subd. 7. [PUBLIC FACILITIES AUTHORITY.] \$4,400,000 in
9 fiscal year 2006 and \$44,015,000 in fiscal year 2007 are
10 appropriated to the Public Facilities Authority; of these
11 amounts, \$4,400,000 in fiscal year 2006 and \$17,000,000 in
12 fiscal year 2007 are to the clean water legacy capital
13 improvements fund for grants under Minnesota Statutes, section
14 446A.073; \$4,582,000 in fiscal year 2007 is to the community
15 septic system replacement fund for loans under Minnesota
16 Statutes, section 446A.074; and \$22,433,000 in fiscal year 2007
17 is to the water pollution control revolving fund under Minnesota
18 Statutes, section 446.07, for wastewater treatment and
19 stormwater projects. Funds appropriated under this subdivision
20 do not cancel and are available until expended.

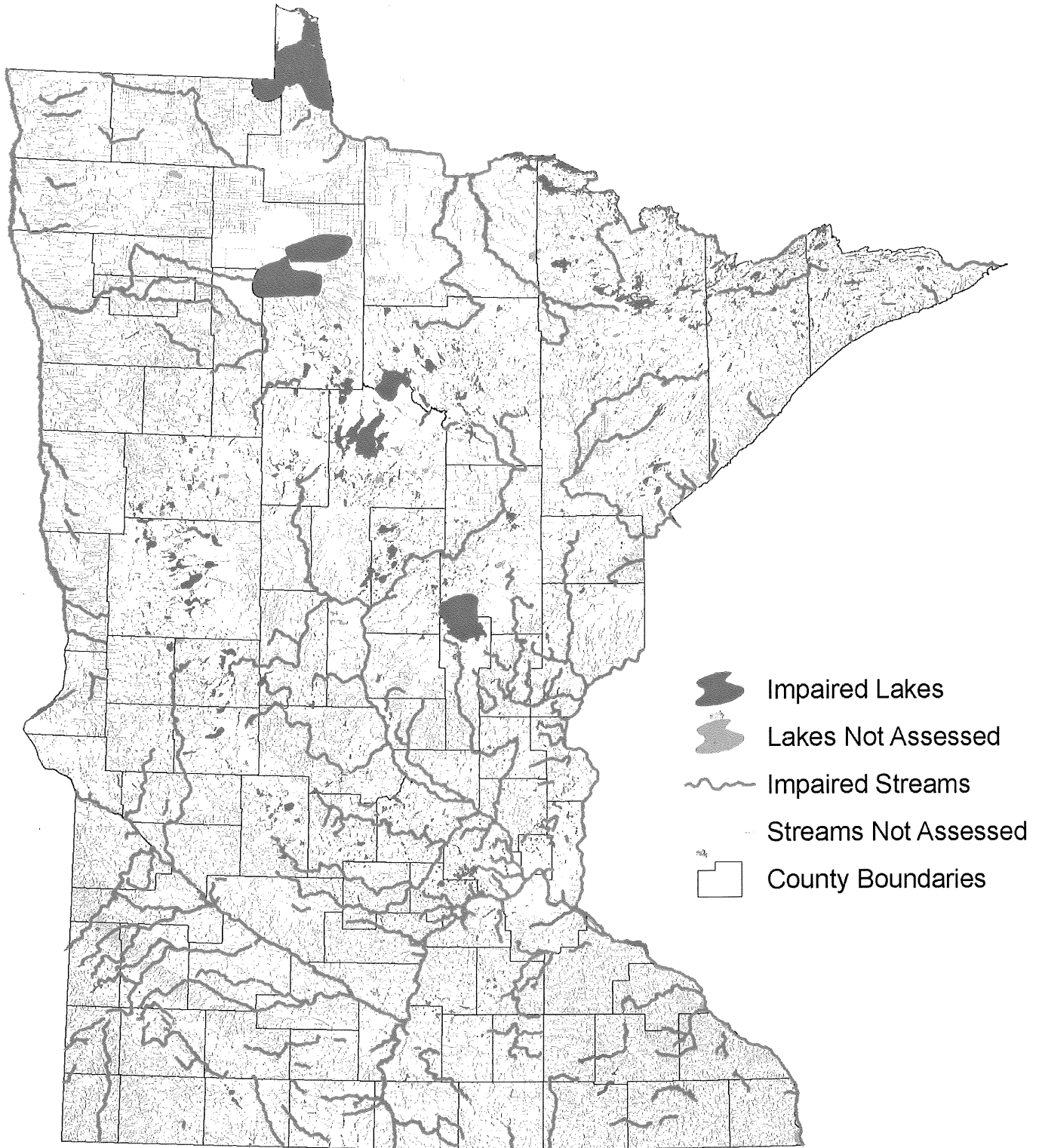
21 Sec. 13. [EFFECTIVE DATE.]

22 Sections 1 to 11 are effective the day following final
23 enactment. Section 12 is effective July 1, 2005.

Organizations Supporting Clean Water Legacy

American Public Information on the Environment
Audubon Chapter of Minneapolis
Audubon Minnesota
Blue Earth River Basin Initiative
Cannon River Watershed Partnership
Carpenter Saint Croix Valley Nature Center
Cenex Harvest States
Clean Water Action Alliance Minnesota
Clean Up the River Environment
Dakota Soil and Water Conservation District
Environmental Justice Advocates of Minnesota
Friends of the Boundary Waters Wilderness
Friends of the Mississippi River
Goodhue County
Land Stewardship Project
LaSeuer Soil and Water Conservation District
League of Minnesota Cities
Minnesota Agri-Growth Council
Minnesota Association of Small Cities
Minnesota Association of Soil and Water Conservation Districts
Minnesota Center for Environmental Advocacy
Minnesota Chamber of Commerce
Minnesota Conservation Federation
Minnesota Environmental Partnership
Minnesota Farm Bureau
Minnesota Farmers Union
Minnesota Lakes Association
Minnesota Milk Producers Association
Minnesota Pork Producers Association
Minnesota Power
Minnesota Project
Minnesota Rivers Council
Minnesota Soybean Growers Association
The Nature Conservancy
Rice Soil and Water Conservation District
Rural Advantage
Steele Soil and Water Conservation District
Waseca Soil and Water Conservation District
Trust for Public Land, Minnesota Office

Minnesota 2004 Impaired Waters



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OUR PERSPECTIVE

Clean water

Alas, a 'user fee' is necessary

Minnesota appears poised to create an \$80 million-a-year program to inspect and restore the state's polluted waters. This is an important, overdue step forward in caring for the state's trademark resource. Its "user fee" funding method is unfortunate, in our view, but manifestly an idea whose time has come.

Under federal law, states must inventory their lakes and rivers for a wide range of pollutants: mercury, phosphorus, coliform bacteria and so on. Where contamination exceeds U.S. standards, plans must be developed for reducing it and holding the "total maximum daily load" (TMDL) of pollutants to acceptable levels; otherwise, further development in the watershed may be banned. This is hardly an abstract possibility: Among the small fraction of Minnesota waters tested so far, 40 percent exceeded the limit for one or more pollutants and were officially classed as "impaired."

The threat to economic growth is one of two big reasons for the unusual unity behind the Clean Water Legacy legislation: 88 environmental, business, local government and agriculture groups support it; the co-authors include House Speaker Steve Sviggum on the Republican side and Senate Majority Leader Dean Johnson of the DFL; Gov. Tim Pawlenty has praised the consensus approach. Apart from some quibbles over implementation details, there appears to be no substantial dissent — unusual, these days, for such a large and ambitious environmental initiative.

The other reason is that this program will be funded not from tax revenue but with a \$36 annual fee on every household that discharges wastewater into a sewer or septic system — essentially every residence. Apartment houses will be charged \$36 per unit; commercial properties will pay \$120, \$300 or \$600 per year, depending on discharge volume.

There is much to be said for fee-based financing of public services that are used only by some citizens, or used much more heavily by some citizens than others, or used chiefly

as a matter of choice. Hunting and fishing licenses come to mind, along with recreational vehicle registrations and campground charges.

But wastewater disposal? It's hard to think of a more universally necessary public function; even people who prefer to haul their own trash can't do the same with wastewater. And though every home and business in the state requires clean drinking water, they certainly do not share equally in creating the pollution problems that the TMDL program is meant to address.

The aims of Clean Water Legacy make it a perfect example of a public function that should be financed from a progressive tax system, perhaps supplemented with additional fees from the largest polluters. To call this universal, compulsory charge a "user fee" is a fanciful, if not cynical, relabeling of what is clearly a tax in both form and function — and a regressive one at that, despite the plan's higher business rates and unspecified exemptions for some low-income households.

Regrettably, such artifice seems necessary to accomplish objectives that Minnesota has been neglecting. Only 8 percent of rivers and 14 percent of lakes have been tested under the TMDL standards. Yet year after year, clean water programs suffer in the competition for state revenue. There's a paradox here — clean water has a universal constituency, and for that very reason lacks the narrower, focused backing of other causes. Dramatic funding cuts have been the upshot.

Steve Morse, the former state senator and deputy commissioner of natural resources who played a key role in shaping the Legacy approach, notes that environmental spending across the board has been reduced by about one-third in the last four years of Ventura and Pawlenty budgets; even some specially designated funds have been raided for other purposes.

In a better world, the notion of user fees for clean water would be laughable. In this world, it's lamentable that such an important job won't get done without them.

Frederick Sam

Developers find dirty water limiting growth

ANNANDALE, Minn. (AP) — Old west storefronts still line the main street here, but farm fields are making way for subdivisions in this town in one of the United States' fastest-growing counties.

Developers are eager to build more houses in a part of the state where communities settled and thrived around the many lakes and rivers. But water, a resource that once fostered growth, now threatens to halt it.

Environmentalists are suing to block a planned water treatment plant here because they say rivers and lakes are already too polluted to take more discharge. They say they're supported by the federal Clean Water Act. The lawsuit has drawn the attention of business leaders statewide, who fear that the state's water quality problems could stymie development in growing areas.

Annandale and neighboring Maple Lake sought the plant because their aging sewer systems

can't take any more strain.

"We basically tell them, 'Get in line,'" Annandale Mayor Marian Harmoning said of the developers who come to city hall, seeking annexation of farmland for new city neighborhoods.

It's put developers in the unexpected position of pushing for legislation to improve enforcement of environmental regulations and clean up Minnesota's dirty water.

"It's a dual message you get," said developer Brad Paumen, owner of Maple Lake-based Paumen Properties. "One message is we need more jobs in town, we need more businesses in town, so we need more houses in town. For the developer, what's frustrating is you buy property, invest some engineering and incur expenses, and then it gets put on hold for two years."

Local politicians say they want to see their cities grow, but are forced to put a hold on it un-

til they're able to expand sewer capacity.

"We're caught between a rock and a hard spot," said Maple Lake Mayor Mike Messina. "We're trying to be environmentally responsible — but at what cost?"

The lawsuit, filed by the St. Paul-based Minnesota Center for Environmental Advocacy, is awaiting arguments in the Minnesota Court of Appeals. It contends that the Minnesota Pollution Control Agency violated the federal Clean Water Act when it granted a permit to the Annandale-Maple Lake plant.

The \$11 million plant in rural Albion Township would discharge treated wastewater, including phosphorous, into the north fork of the Crow River, which flows into the Mississippi River. Eventually the discharge makes its way to southeastern Minnesota's Lake Pepin, which is fed by the Mississippi.

The MPCA has declared the

lake "impaired." That prompts a federal requirement that Lake Pepin have a state cleanup plan before more pollutants are permitted. But the MPCA hasn't done that for Lake Pepin or the Crow River.

"The new plant is adding pollutants to an already-polluted situation contrary to the clear recommendations of MPCA's own scientists," the lawsuit states.

MPCA officials say they don't have the money to prepare the cleanup plans.

A bipartisan group of state lawmakers, with support from both the environmental community and business groups, are getting behind a bill at the Capitol to raise \$80 million a year for water testing and cleanup. The money would come from sewer fees of \$36 a year for homeowners and business fees ranging from \$120 to \$600 a year, depending on their size.

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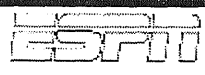
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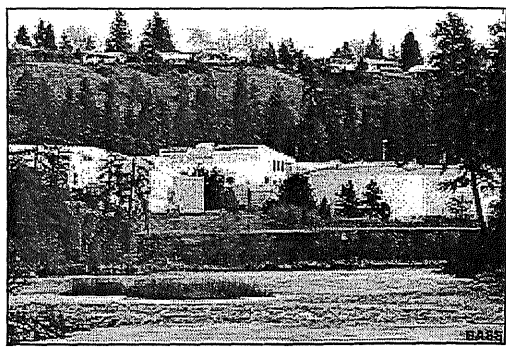
Pollution News

'Girly' bass in West Virginia fisheries alarm some scientists

By John Hay Rabb
 BASS Times, Dec. 2004

WASHINGTON, D.C. — The recent discovery of male bass with female reproductive organs in two West Virginia rivers west of Washington, D.C., has once again focused public attention on the negative effects of so-called endocrine disruptors on certain fish species.

Public health and environmental officials across the country have yet to agree on a viable approach to remove endocrine disruptors from waters that support black bass and other freshwater fish species.



Researchers are studying the level of chemical contamination below sewage treatment facilities to determine whether the byproducts of human birth control are giving male bass "female" characteristics and what this means for the humans who consume them.

The U.S. Environmental Protection Agency (EPA) defines an endocrine disruptor as "an external agent that interferes in some way with the role of natural hormones in the body." The endocrine system in humans and animals circulates hormones that are produced by the endocrine glands. These glands include the adrenal, pituitary and thyroid glands, the pancreas, the testes and the ovaries. Hormones produced by these glands regulate the function of major organs and other physiological systems.

The discovery of endocrine disruptors in West Virginia waters was an unexpected and unwelcome development for federal and state agencies that had recently studied Cacapon Creek and the South Branch of the Potomac River. In 2003, researchers were trying to determine the cause of high smallmouth bass mortality rates in the South Branch. They dissected over 100 bass and found that 42 percent of the male fish contained eggs. During a follow-up survey in spring 2004, fisheries biologists examined 66 male smallmouth bass from the South Branch, and almost 80 percent of the fish had either eggs or other female reproductive characteristics.

There was much initial speculation about the source of the reproductive anomalies found in the male bass. Chicken manure, human hormones and even caffeine were

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found in the male bass. Chicken manure, human hormones and even caffeine were suggested as possible causes. Investigators refused to speculate and cautioned that more research was needed in order to identify the exact substances that had affected the male bass.

"Thousands of chemicals have been identified as endocrine disruptors," cautioned Bret Preston of the West Virginia Division of Natural Resources. West Virginia officials have no plans to issue a fish consumption advisory based solely upon the discovery of intersex condition in bass.

Male bass with female reproductive characteristics have led some researchers to investigate the female hormone estrogen as a possible cause of the anomalies.

While there are a variety of ways that bass might come into contact with estrogen, one of the most likely explanations is exposure to sewage plant effluent. Urine and feces from women on oral contraceptives or hormone replacement treatment typically contain abnormally high levels of estrogen. Modern sewage treatment plants do not remove or even test for estrogen, so the hormone is released into waterways along with sewage plant effluent.

England is the only country in the world that measures and limits estrogen levels in sewage plant effluent.

There's growing evidence to suggest that estrogen is linked to the "feminization" of male bass. A number of studies in this area have been conducted or are in progress. One recent study was conducted by the Canadian government agency, Environment Canada. This research showed that male fish living close to sewage plant effluent outfalls had a measurably higher incidence of "feminization" than fish living in other locations.

Perhaps the most comprehensive research on the relationship between estrogen and reproductive endocrine disruptors in fish was conducted by two British academics, Alan Pickering and John Sumpter. Pickering is a retired professor. Sumpter is the director of fish physiology studies at Brunel University near London. Their joint study, "Comprehending Endocrine Disruptors in Aquatic Environments," was published in the American Chemical Society journal, Environmental Science and Technology.

Pickering and Sumpter studied 24 wastewater effluent sites in eight European countries. At a number of the sites they detected high levels of estrogen. The researchers focused on ethinyl estradiol (EE2), a synthetic form of estrogen which is the active ingredient in most birth control pills. Pickering and Sumpter placed special emphasis on EE2 because it's potent even in low concentrations and does not readily biodegrade.

One of the study's most dramatic findings concerned the effect of EE2 on gender balance in some fish populations. Near wastewater effluent outfalls, some of the fish populations contained abnormally high percentages of females. Pickering and Sumpter hypothesized that estrogen from sewage effluent caused such acute reproductive endocrine disruptions in male fish that they were unable to reproduce and probably died sooner than the females.

As a result of their research, Pickering and Sumpter concluded that "deleterious impacts of estrogenic effluents on fish populations is one of the most important

(questions) that still needs to be answered."

In a recent interview, Sumpter was more definitive about the relationship between estrogen and reproductive endocrine disruptors. "There are some locations in the UK," he said, "where effluent does appear to be causing significant (and probably adverse) effects on the reproductive systems of wild fish."

Because much of the research involved English freshwater fish ("coarse fish"), Sumpter was asked if his conclusions might also be applicable to black bass. He replied: "My guess is that if black bass lived in UK rivers, in some locations concentrations of estrogen would be high enough to cause (negative) effects."

Britain's Environment Agency, the rough equivalent of our EPA, is sufficiently concerned about estrogen in sewage effluent that it plans to request approximately \$80 million to build two state-of-the-art demonstration sewage treatment plants designed to filter estrogen out of wastewater. The plants would employ activated charcoal filtration technology. In addition, the effluent from 17 existing sewage treatment plants would be monitored to determine how much estrogen is being released into waterways.

Britain's independent water industry authority must decide if it will include the two pilot plants in its 2005-2010 work plan. If the pilot plants are approved, the cost of construction and operation would be covered by higher water and sewer rates for consumers.

According to Dr. Sumpter, "the superclean effluent (from the pilot plants) will be monitored chemically and biologically" to determine its impact on controlled fish populations. However, Dr. Sumpter expressed concern about the use of activated charcoal to filter sewage effluent. "Treatment with charcoal will remove many chemicals on top of the estrogens," he said. "If the cleanup process proves advantageous to fish living downstream (from the pilot plants), how will one know if the reduced effects are a consequence of estrogen removal?"

Another unanswered question is the extent to which estrogen from sewage effluent might affect humans who ingest the endocrine disruptive hormone.

Dr. Louis Guillette Jr., a zoology professor at the University of Florida, said that "eating contaminated fish could work through a (human) endocrine system" and possibly cause neurological and thyroid system problems. Dr. Sumpter said a recent study demonstrated that "rats fed fish contaminated with estrogen chemicals (exhibited) adverse reproductive effects."

Due to medical ethics concerns, the direct effects of endocrine disruptors on humans have not been studied. Until rigorous medical research shows a direct connection between elevated estrogen levels and negative health effects in humans, public health and environmental officials are unlikely to devote significant time and money to reducing estrogen levels in fish populations.

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CREATE A CLEAN WATER LEGACY

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The State of Our Water

Minnesota - The Land of 12,000 Lakes. Our lakes, rivers and streams make Minnesota a great place to live. Minnesotans enjoy them for fishing, boating and swimming and rely on them as sources of our drinking water.

Unfortunately, Minnesota's water is not as clean as it should be. Of the lakes and rivers tested in Minnesota, 40% are polluted (or "impaired") with contaminants such as human and animal waste, algae from phosphorus, fertilizers, and mercury.

We must act now to clean up our polluted waters to avoid additional beach closings, more stringent fish consumption advisories, and serious economic restrictions on cities and businesses in all regions of the state.

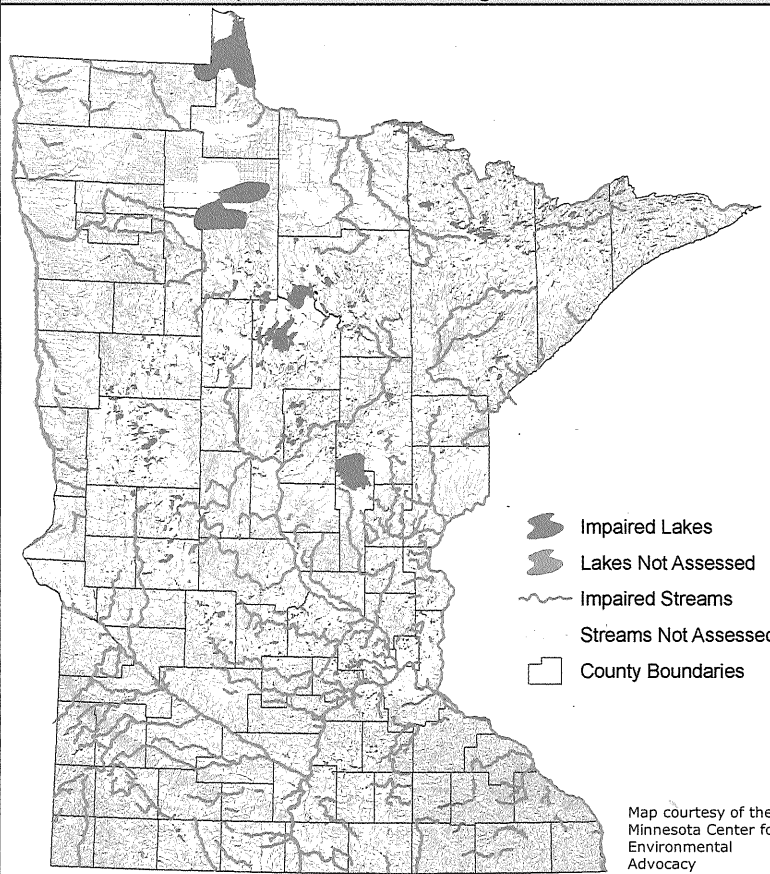


Drain pipe emptying into ditch

Minnesotans have a right to know if our waters are contaminated or safe. For our economy, environment and health, we must create a clean water legacy for Minnesota.

The Need

To test all of our lakes and rivers and implement clean up plans it will cost approximately \$270 million per year. The Clean Water Legacy will create new state money and leverage federal, local, and private dollars to begin to meet this need.



Broad Support

A broad coalition of 40 groups, including The Minnesota Chamber of Commerce, Minnesota Farm Bureau, League of Minnesota Cities and member organizations of the Minnesota Environmental Partnership, known as the Impaired Waters Stakeholders Group, worked for two years to find a solution that will begin to pay for testing and clean up of Minnesota's waters.

Facts

- Minnesota has the most surface waters of all 48 contiguous states.
- Yet, only 8% of our river miles and 14% of our lakes have been tested for pollution problems; 40 percent of those are contaminated.

The Clean Water Legacy Solution

After reviewing nearly 60 funding options, the coalition recommended a stable, long-term funding mechanism. Under the Clean Water Legacy plan, \$80 million to test and clean up Minnesota's waters would be generated through a user fee on municipal wastewater connections and septic systems. Key elements of the funding plan include:

- "Hardship exemptions" for those who can't afford to pay the additional charges
- Increased fees for heavy water users, such as apartment complexes and larger businesses.
- Leveraging dollars from federal, local and private resources, including more than \$40 million per year from the federal farm bill for conservation and restoration practices."

Our Position:

The Minnesota Environmental Partnership (MEP) supports generating \$75-\$100 million in new state dollars annually to test Minnesota's waters, develop clean-up plans and implement restoration activities to clean up contaminated waters and keep clean waters clean. MEP endorses the coalition's proposed user fees on municipal wastewater connections and septic systems to protect our water and pay for needed testing and cleanup.



Minnesotans Want Clean Water

Minnesotans want to clean up our waters:
In a recent poll by MEP, 77 percent of those polled favored raising \$75 million a year to clean up Minnesota's contaminated lakes, rivers and streams.

Fact

Cleaning up our waters is critical to business and economic development. Any new or expanded economic development along Minnesota polluted waterways must comply with the clean-up plans.

Protect Our
Water is not a
Democratic or
Republican issue –
it's a Minnesota
issue.

For more information contact:

John Curry
Minnesota Center for Environmental
Advocacy
651.223.5969

Anne Hunt
Minnesota Environmental Partnership
651.290.0154 MEP
651.276.0380 mobile

John Tuma
Minnesota Environmental Partnership
612.991.1093 mobile

www.ProtectOurWater.info





THE LEAGUE
OF WOMEN VOTERS

M I N N E S O T A

550 RICE STREET ST. PAUL, MN 55103 PHONE (651) 224-5445 FAX (651) 290-2145

February 21, 2005

Senator John Marty, Chair
Senate Environment and Natural Resources Committee
323 Capitol
75 Rev. Dr. Martin Luther King , Jr., Blvd.
St. Paul, MN 55155

Dear Senator Marty,

The League of Women Voters Minnesota (LWVMN) urges your support for SF762, the Clean Water Legacy Act. This is a much-needed initiative to address the deteriorating condition of Minnesota's rivers, streams and lakes. LWVMN recognizes that Minnesota's natural resources are the foundation of the state's economy and quality of life. We also recognize that all citizens contribute directly or indirectly to the pollutants in our waters and that we should all share the costs of water-quality testing, preparation of clean-up plans for polluted waters, implementation of those plans, and protection of waters that are not polluted.

The MPCA and limited citizen water-monitoring programs have assessed only a small percent of our rivers and lakes. Of the waters tested, many are in violation of Clean Water Act standards - they are not fishable, swimmable or drinkable because of excessive phosphorus, mercury and/or fecal coliform bacteria. These polluted waters threaten human health as well as the recreational activities for which Minnesota is famous.

The wanton discharges of our early industries have been halted and state and federal law mostly control the direct discharge of many pollutants. However, it is only through careful evaluation that the more complex "non-point" sources can be identified and controlled or stopped.

In addition to expanding river and lake monitoring to identify polluted waters, the Clean Water Legacy Act will assure the development and implementation of plans to clean up polluted waters. It will also identify our highest quality rivers and lakes and assure their protection.

(OVER)

Minnesota's water resources are under increasing pressure as our population expands. We cannot afford to let deterioration continue; our health and economy depend upon sparkling clear, unpolluted lakes and rivers. The League of Women Voters of Minnesota is proud to support SF762 - it will benefit ALL Minnesotans. We thank Senators Frederickson, D.E. Johnson, Hottinger, Higgens and Dille for authoring this important bill and ask that the Senate Environment and Natural Resources Committee approve it so that our children and grandchildren will experience Minnesota truly as the "Land of Sky Blue Waters."

Sincerely,

Allene Moesler, Volunteer Lobbyist
League of Women Voters of Minnesota

Cc: Senator Tom Saxhaug, Committee Vice Chair
Senator Pat Pariseau,
Senator Thomas Bakk
Senator Satveer Chaudhary
Senator Dennis Fredrickson
Senator John Hottinger
Senator Michael Jungbauer
Senator Sean Nienow
Senator Gen Olson
Senator LeRoy Stumpf

Organizations Supporting Clean Water Legacy

American Public Information on the Environment
Audubon Chapter of Minneapolis
Audubon Minnesota
Blue Earth River Basin Initiative
Cannon River Watershed Partnership
Carpenter Saint Croix Valley Nature Center
Cenex Harvest States
Clean Water Action Alliance Minnesota
Clean Up the River Environment
Dakota Soil and Water Conservation District
Environmental Justice Advocates of Minnesota
Friends of the Boundary Waters Wilderness
Friends of the Mississippi River
Goodhue County
Land Stewardship Project
LaSeuer Soil and Water Conservation District
League of Minnesota Cities
Minnesota Agri-Growth Council
Minnesota Association of Small Cities
Minnesota Association of Soil and Water Conservation Districts
Minnesota Center for Environmental Advocacy
Minnesota Chamber of Commerce
Minnesota Conservation Federation
Minnesota Environmental Partnership
Minnesota Farm Bureau
Minnesota Farmers Union
Minnesota Lakes Association
Minnesota Milk Producers Association
Minnesota Pork Producers Association
Minnesota Power
Minnesota Project
Minnesota Rivers Council
Minnesota Soybean Growers Association
The Nature Conservancy
Rice Soil and Water Conservation District
Rural Advantage
Steele Soil and Water Conservation District
Waseca Soil and Water Conservation District
Trust for Public Land, Minnesota Office

Senator Betzold introduced--

S.F. No. 686: Referred to the Committee on Environment and Natural Resources.

1 A bill for an act

2 relating to waters; providing for administrative
3 penalty orders; providing civil penalties; requiring
4 an implementation plan; providing a rulemaking
5 exemption; proposing coding for new law in Minnesota
6 Statutes, chapter 103G.

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

8 Section 1. [103G.252] [ADMINISTRATIVE PENALTY ORDERS.]

9 The commissioner may issue an order requiring violations to
10 be corrected and administratively assessing monetary penalties
11 for violations of chapters 103F and 103G, rules, orders,
12 agreements, settlements, licenses, registrations, or permits for
13 activities affecting the course, current, or cross section of
14 public waters or appropriating or diverting waters of the
15 state. The commissioner must follow the procedures in section
16 103G.253 when issuing an administrative penalty order. The
17 maximum monetary amount of an administrative penalty order is
18 \$10,000 for each violator for all violations by that violator
19 identified in an inspection or review of compliance.

20 Sec. 2. [103G.253] [ADMINISTRATIVE PENALTY ORDER
21 PROCEDURE.]

22 Subdivision 1. [CONTENTS OF ORDER.] An order assessing an
23 administrative penalty under section 103G.252 must include:

24 (1) a concise statement of the facts alleged to constitute
25 a violation;

26 (2) a reference to the law, rule, order, agreement,

1 settlement, license, registration, or permit that has been
2 violated;

3 (3) a statement of the corrective order and the amount of
4 the administrative penalty to be imposed and the factors upon
5 which it is based; and

6 (4) a statement of the person's right to review the order.

7 Subd. 2. [AMOUNT OF PENALTY; CONSIDERATIONS.] (a) In
8 determining the amount or requirements of a penalty under
9 section 103G.252, the commissioner may consider:

10 (1) the willfulness of the violation;

11 (2) the gravity of the violation, including damage to
12 humans, animals, air, water, land, forests, or other natural
13 resources of the state;

14 (3) the history of past violations;

15 (4) the number of violations;

16 (5) the economic benefit gained by the person by allowing
17 or committing the violation; and

18 (6) other factors as justice may require, if the
19 commissioner specifically identifies the additional factors in
20 the commissioner's order.

21 (b) For a second or subsequent violation, the commissioner
22 shall, in determining the amount or requirements of a penalty,
23 consider:

24 (1) the factors in paragraph (a);

25 (2) the similarity of the most recent previous violation
26 and the violation to be penalized;

27 (3) the time elapsed since the last violation;

28 (4) the number of previous violations; and

29 (5) the response of the person to the most recent previous
30 violation identified.

31 Subd. 3. [CORRECTIVE ORDER.] (a) The commissioner may
32 issue an order requiring the violations cited in the order to be
33 corrected within the time period specified in the order.

34 Corrective orders may require repair, restoration, replacement,
35 and monetary restitution as determined by the commissioner.

36 (b) The person to whom the order was issued shall provide

1 information to the commissioner before the 31st day after the
2 order was received demonstrating that the violation has been
3 corrected or that the person has developed a corrective plan.
4 The commissioner shall determine whether the violation has been
5 corrected or whether the corrective plan is acceptable and
6 notify the person to whom the order was issued of the
7 commissioner's determination.

8 Subd. 4. [PENALTY.] (a) Except as provided in paragraph
9 (c), if the commissioner determines that the violation has been
10 corrected or the person to whom the order was issued has
11 developed a corrective plan acceptable to the commissioner, the
12 monetary penalty may be forgiven in whole or in part.

13 (b) Unless the person requests review of the order under
14 subdivision 5 before the monetary penalty is due, the penalty in
15 the order is due and payable on the 31st day after the order was
16 received.

17 (c) For repeated or serious violations, the commissioner
18 may issue an order with a monetary penalty that shall not be
19 forgiven after the corrective action is taken.

20 (d) Interest at the rate established in section 549.09
21 begins to accrue on penalties under this subdivision on the 31st
22 day after the order with the penalty was received.

23 Subd. 5. [EXPEDITED ADMINISTRATIVE HEARING.] (a) Within 30
24 days after receiving an order, the person to whom the order was
25 issued may request an expedited hearing, using the procedures
26 adopted under section 14.51, to review the commissioner's
27 action. The hearing request must specifically state the reasons
28 for seeking review of the order. The person to whom the order
29 was issued and the commissioner are the parties to the expedited
30 hearing. The commissioner must notify the person to whom the
31 order was issued of the time and place of the hearing at least
32 15 days before the hearing. The expedited hearing must be held
33 within 30 days after a request for hearing has been filed with
34 the commissioner unless the parties agree to a later date.

35 (b) All written arguments must be submitted within ten days
36 following the close of the hearing. The hearing shall be

1 conducted according to rules adopted under section 14.51, as
2 modified by this subdivision. The Office of Administrative
3 Hearings may, in consultation with the commissioner of natural
4 resources, adopt rules specifically applicable to cases under
5 this section.

6 (c) The administrative law judge shall issue a report
7 making recommendations about the commissioner's action to the
8 commissioner within 30 days following the close of the record.
9 The administrative law judge may not recommend a change in the
10 amount of the proposed penalty or corrective order unless the
11 administrative law judge determines that, based on the factors
12 in subdivision 2, the monetary penalty or corrective order is
13 unreasonable.

14 (d) If the administrative law judge makes a finding that
15 the hearing was requested solely for purposes of delay or that
16 the hearing request was frivolous, the commissioner may add to
17 the amount of the penalty the costs charged to the Department of
18 Natural Resources by the Office of Administrative Hearings for
19 the hearing.

20 (e) If the administrative law judge issues a report that
21 recommends dismissal of the order assessing the administrative
22 penalty, the commissioner must refund the costs charged to the
23 person receiving the order by the Office of Administrative
24 Hearings for the hearing and reasonable and necessary attorney
25 fees incurred for the hearing. For purposes of this paragraph,
26 the administrative law judge may recommend attorney fees to be
27 refunded, not to exceed the amount of the penalty order.

28 (f) If a hearing has been held, the commissioner may not
29 issue a final order until at least five days after receipt of
30 the report of the administrative law judge. The person to whom
31 the order was issued may, within those five days, comment to the
32 commissioner on the recommendations and the commissioner must
33 consider the comments. The final order may be appealed
34 according to sections 14.63 to 14.69.

35 (g) If a hearing has been held and a final order issued by
36 the commissioner, the penalty must be paid within 30 days after

1 the date the final order is received and the corrective action
2 must be completed within the time period specified by the final
3 order, unless review of the final order is requested under
4 sections 14.63 to 14.69. If review is not requested or the
5 order is reviewed and upheld, the amount due is the penalty,
6 together with interest accruing from 31 days after the original
7 order was received at the rate established in section 549.09.

8 Subd. 6. [ALTERNATIVE DISPUTE RESOLUTION.] In addition to
9 review under subdivision 5, the commissioner may enter into
10 mediation or other alternative dispute resolution concerning an
11 order issued under this section if the commissioner and the
12 person to whom the order was issued both agree to mediation or
13 other alternative dispute resolution.

14 Subd. 7. [ENFORCEMENT.] (a) The attorney general may
15 proceed on behalf of the state to enforce penalties that are due
16 and payable under this section in any manner provided by law for
17 the collection of debts.

18 (b) The attorney general may petition the district court to
19 file the administrative order as an order of the court. At any
20 court hearing, the only issues parties may contest are
21 procedural and notice issues. Once entered, the administrative
22 order may be enforced in the same manner as a final judgment of
23 the district court.

24 (c) If a person fails to pay the penalty or comply with a
25 corrective order, the attorney general may bring a civil action
26 in district court seeking payment of the penalties, injunctive
27 relief, or other appropriate relief including monetary damages,
28 attorney fees, costs, and interest.

29 Subd. 8. [REVOCAION AND SUSPENSION OF PERMIT, LICENSE, OR
30 REGISTRATION.] If a person fails to pay a penalty owed under
31 this section, the commissioner may revoke or refuse to reissue
32 or renew a permit, license, or registration issued by the
33 commissioner.

34 Subd. 9. [CUMULATIVE REMEDY.] The authority of the
35 commissioner to issue a corrective order assessing penalties is
36 in addition to other remedies available under statutory or

1 common law, except that the state may not seek civil penalties
2 under any other provision of law for the violations covered by
3 the administrative penalty order. The payment of a penalty does
4 not preclude the use of other enforcement provisions, under
5 which penalties are not assessed, in connection with the
6 violation for which the penalty was assessed.

7 Sec. 3. [103G.254] [RECOVERY OF LITIGATION COSTS AND
8 EXPENSES.]

9 In any judicial action brought by the attorney general for
10 civil penalties, injunctive relief, or an action to compel
11 performance under section 103G.253, if the state finally
12 prevails and if the proven violation was willful, the state, in
13 addition to other penalties provided by law, may be allowed an
14 amount determined by the court to be the reasonable value of all
15 or part of the litigation expenses incurred by the state. In
16 determining the amount of the litigation expenses to be allowed,
17 the court shall give consideration to the economic circumstances
18 of the defendant.

19 Sec. 4. [IMPLEMENTATION PLAN; RULEMAKING EXEMPTION.]

20 The commissioner of natural resources shall prepare a plan
21 to implement the administrative penalty order according to
22 sections 1 to 3. The commissioner shall provide a 30-day period
23 for public comment on the plan. The plan must be finalized by
24 December 31, 2005. The plan is exempt from the rulemaking
25 procedures under Minnesota Statutes, chapter 14, and Minnesota
26 Statutes, section 14.386, does not apply.