

Chapter 15

Environmental Regulations

TABLE OF CONTENTS

I.	Authority and purpose for environmental regulations.....	3
II.	Financial assistance	3
A.	Grants and loans	3
B.	Environmental and Natural Resources Trust Fund.....	4
C.	Dedicated sales and use tax	4
III.	Environmental Rights Act.....	5
IV.	MPCA water quality programs.....	7
A.	Pollution discharge elimination system.....	7
B.	Water pollution control financial assistance.....	8
C.	Subsurface sewage treatment systems.....	8
D.	Underground storage tanks.....	8
E.	Nonpoint source pollution	8
V.	Environmental Quality Board.....	9
A.	Environmental review	10
B.	Critical areas.....	11
C.	Other programs.....	13
VI.	Public Utilities Commission.....	13
A.	Power plant siting	13
B.	Small electric power projects	14
VII.	Protection of state waters.....	15
A.	Shoreland development	15
B.	Clean Water Legacy Act	16
C.	Floodplain management and the national insurance program	17
D.	Wetlands.....	17
E.	Wild and scenic rivers	18
F.	Riparian protection and water quality practices.	19
G.	Water surface use and lake improvement.....	20
H.	Army Corps of Engineers.....	21

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

VIII.	Open burning in cities	21
A.	Prohibited Burning	22
B.	Local regulation.....	23
IX.	City trees and plants	25
X.	Safe Drinking Water Act.....	25
XI.	Pipeline safety	26
XII.	Pesticide regulation	27
XIII.	Coal tar sealant products	28
XIV.	Phosphorus fertilizers	28
XV.	Community energy conservation.....	28
XVI.	Noise.....	29
XVII.	Solid waste	29
XVIII.	Conservation easements	29
XIX.	How this chapter applies to home rule charter cities.....	29

Chapter 15

Environmental Regulations

Find out about the most significant environmental regulations, many required by state law and rules, and the opportunities city officials have to help protect and improve a city's natural resources by protecting state waters, water quality, observing pipeline safety, regulating pesticides, and more. This information can be used with a city's efforts on community development when considering implementation.

RELEVANT LINKS:

[Minn. Stat. ch. 14.](#)
["Rulemaking in Minnesota: A Guide," Office of the Revisor of Statutes.](#)
[Minn. Stat. § 14.091.](#)

Handbook, [Comprehensive Planning, Land Use and City Owned Land.](#)

[LMC Grants Guide.](#)

[MPCA](#)
520 Lafayette Road North
St. Paul, MN 55155-4194.
(651) 296-6300.
(800) 657-3864.

I. Authority and purpose for environmental regulations

Environmental matters are important to local governments. Preserving the quality of life is a concern for most cities and their residents. Cities use their parks, recreation facilities, and natural resources to attract new residents and businesses. The purpose of this chapter is to outline the more significant environmental regulations affecting cities as well as the opportunities cities have to help protect and improve their natural resources.

Many environmental programs are mandated by state law and rules. Local governments may petition a state agency for the amendment or repeal of a rule, including a hearing with an administrative law judge if the agency denies the petition. A city can also challenge a state agency's attempt to enforce policies without going through rulemaking.

Because of the relationship between environmental quality and community development, materials provided in other chapters of this Handbook (especially those relating to land use controls) are relevant when considering how to best implement environmental regulations.

II. Financial assistance

Only a few of the environmental grants or alternative means of financial assistance available to Minnesota cities are mentioned in this chapter. Cities may always check LMC's Grant Guide for more information on current grant opportunities.

A. Grants and loans

The Minnesota Pollution Control Agency (MPCA) has various opportunities for eligible cities to receive grants and other financial assistance for environmental projects. Contact the MPCA for information about these opportunities.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[DNR](#)

Office of Management and
Budget Services
500 Lafayette Road, Box 10
St. Paul, MN 55155-4010.
(651) 259-5550.
(888) 646-6367.

[U.S. EPA.](#)

[USDA Rural Development](#)

375 Jackson Street, #410
St. Paul, MN 55101
(651) 602-7800.

[Minn. Const. art. XI, § 14.](#)
[Minn. Stat. ch. 116P.](#)

[LCCMR.](#)

[Minn. Stat. § 116P.03.](#)

[Minn. Const. art. XI, § 15.](#)

The Minnesota Department of Natural Resources (DNR) offers a number of financial assistance programs. The DNR's Financial Assistance Directory (Directory) provides information on the financial assistance programs offered to cities, counties, townships, nonprofits, schools, private individuals, and others. The Directory is available on the DNR website.

The U.S. Environmental Protection Agency (EPA) also has many different grant, loan, and fellowship programs. A full list of funding opportunities is available on the EPA website.

The United States Department of Agriculture (USDA) Rural Development provides financial support for essential public facilities and services such as water and sewer systems, housing, health clinics, emergency service facilities, and electric and telephone service.

B. Environmental and Natural Resources Trust Fund

Another possible source of financial assistance is the Minnesota Environmental and Natural Resources Trust Fund (ENRTF).

The Minnesota Constitution establishes a permanent trust fund in the state treasury. The assets of the fund are appropriated for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources.

The Legislative-Citizen Commission on Minnesota Resources (LCCMR) makes funding recommendations to the Legislature for special environmental and natural resource projects that are primarily funded through the trust fund. The LCCMR is made up of 17 members: five senators, five representatives, five citizens appointed by the governor, one citizen appointed by the Senate, and one citizen appointed by the House.

The trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but only to supplement those traditional sources. Since 1991, approximately \$1.1 billion has been appropriated to more than 1,700 projects from the ENRTF.

C. Dedicated sales and use tax

In 2008, Minnesota voters approved an amendment to the Minnesota Constitution that provided for three-eighths of one percent increase on the state sales and use tax for environmental, fine arts, cultural, and historical purposes. The term of this dedicated portion of the state sales and use tax is from July 1, 2009, until June 30, 2034.

RELEVANT LINKS:

[Minn. Stat. § 97A.056.](#)
[Lessard-Sams Outdoor Heritage Council.](#)

[Minn. Stat. § 114D.50.](#)
[Minn. Const. art. XI, § 15.](#)
[Minn. Stat. § 114D.30.](#)
[Clean Water Council.](#)

[Minn. Stat. § 85.53.](#)
[Minn. Stat. § 85.535.](#)
[Parks and Trails Legacy Advisory Committee.](#)
[Minn. Stat. § 85.536.](#)

[Greater Minnesota Regional Parks and Trails Commission.](#)

[Metropolitan Council.](#)

[Minn. Stat. ch. 116B.](#)
[Minn. Stat. § 116B.03.](#)
[Minn. Stat. § 116B.02, subd. 4.](#)

1. Outdoor Heritage Fund

Thirty-three percent of the sales and use tax receipts are deposited into the Outdoor Heritage Fund. Funding may only be used to restore, protect, and enhance wetlands, prairies, forests, and other habitats for fish, game, and wildlife. The 12-member Lessard-Sams Outdoor Heritage Council makes annual recommendations to the Legislature on how proceeds from the fund should be used.

2. Clean Water Fund

Thirty-three percent of the sales and use tax receipts are deposited into the Clean Water Fund. Funding may be spent to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation. At least five percent of the Clean Water Fund must be used to protect drinking water sources. The Clean Water Council was created to advise the administration and implementation of the Clean Water Legacy Act and provides recommendations on the use of the dedicated tax proceeds.

3. Parks and Trails Fund

The Parks and Trails Fund receives 14.25 percent of the sales and use tax receipts and may only be used to support parks and trails of regional or statewide significance. The Parks and Trails Legacy Advisory Committee, which consists of 17 appointed members, has been established to make recommendations for the allocation of the dedicated tax proceeds.

The Greater Minnesota Regional Parks and Trails Commission provides recommendations to the Legislature for grants to counties and cities outside of the seven-county metropolitan area for parks and trails of regional significance. Cities and counties in Greater Minnesota must first apply for a formal designation as a regional park or trail to be eligible for funding.

The Metropolitan Council administers parks and trails grant funding within the seven-county metropolitan area to help regional park agencies acquire land within Metropolitan Council-approved regional park and trail master plan boundaries.

III. Environmental Rights Act

The Minnesota Environmental Rights Act (MERA) permits suits against alleged polluters, including local government units. MERA creates a civil cause of action to protect, preserve, and enhance natural resources of this state from pollution, impairment, or destruction.

RELEVANT LINKS:

State by Rochester Historic Preservation Comm. v. City of Rochester, No. C6-97-139 (Minn. Ct. App. 1997) (unpublished decision).

Minn. Stat. § 116B.03, subd. 1.

Minn. Stat. § 116B.04.
Freeborn County by Tuveson v. Bryson, 309 Minn. 178, 243 N.W.2d 316 (1976).

Minn. Stat. § 116B.03, subd. 2.
County of Dakota v. City of Lakeville, 559 N.W.2d 716 (Minn. Ct. App. 1997).

Minn. Stat. § 116B.02, subd. 5.
State by Schaller v. County of Blue Earth, 563 N.W.2d 260 (Minn. 1997).

State by Smart Growth Minneapolis v. City of Minneapolis, 954 N.W.2d 584 (Minn. 2021).

Minn. Stat. § 473.145

Minn. Stat. §§ 116B.09-.10.
People for Environmental Enlightenment and Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d 858 (Minn. 1978).

State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd., 673 N.W.2d 169 (Minn. Ct. App. 2003).
Minn. Stat. §§ 138.661-.669.

“Natural resources” include all mineral, animal, botanical, air, water, land, timber, soil, quietude (tranquility), recreational, and historical resources. Scenic and aesthetic resources are also considered natural resources when owned by a governmental unit or agency.

The law prohibits actions if the governing body or person is acting under any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement, or permit issued by the MPCA, the DNR, the Minnesota Department of Health (MDH), or the Minnesota Department of Agriculture (MDA).

Any person, including a city council, may bring a suit under this law. The burden of proof is on the person (or body) bringing the suit. The defendant may show there is no feasible and prudent alternative and that the alleged conduct is consistent and reasonably necessary for promotion of the public health, safety, and welfare in light of the state’s concern for the protection of the environment. Economic considerations alone are not a defense.

The person bringing an action under MERA must serve a copy of the summons and complaint to the attorney general and the MPCA, as well as publish notice of his or her action within 21 days after commencing the action. Otherwise, it will be dismissed.

In order to enjoin a project, the petitioner must clearly demonstrate that the proposed activity is likely to materially adversely affect the environment.

Minnesota courts have determined that planning level decisions, such as the adoption of a comprehensive plan, may support a claim against a city under MERA. Since this ruling, the legislature has amended state statute to specifically exclude comprehensive plans within the Metropolitan Council’s jurisdiction from the requirements of MERA.

This law also allows citizens, public and private corporations, and governmental units to challenge environmental quality standards on the basis that the standard does not adequately protect the environment. In such actions, the court must send the question to the agency that sets the standard.

The law protects an open space that is a part of a designated historic site when the open space independently and in connection with the remainder of the site constitutes a historical resource. An action to protect a historical resource under MERA is not precluded by administrative consultations and mediations conducted pursuant to the Minnesota or National Historic Sites acts.

RELEVANT LINKS:

[MPCA.](#)

[Minn. Stat. ch. 115.
*In re Cities of Annandale and
Maple Lake NPDES/SDS
Permit Issuance for
Discharge of Treated
Wastewater*, 731 N.W.2d
502 \(Minn. 2007\).
MPCA Programs.](#)

[Minn. Stat. §§ 115.01-.09.
*State ex rel. Ludwig v. City
of Bemidji*, 298 Minn. 27,
212 N.W.2d 876 \(1973\).
MPCA - NPDES.](#)

[Minn. Stat. § 115.03.](#)

[MPCA Wastewater.](#)

[MPCA Wastewater
Pretreatment.](#)

[Minn. R. ch. 7049.](#)

[Minn. Stat. § 115.071.](#)

IV. MPCA water quality programs

The MPCA has several responsibilities around water quality control. The MPCA establishes water quality standards, writes regulations, and issues orders for discontinuing the disposal of industrial wastes into state waters.

The MPCA also reviews and approves plans and issues permits for construction and operation of sewage and waste disposal facilities, investigates reports of pollution, enforces state pollution control laws, agency rules, and regulations, and administers certain grant provisions of the federal Water Pollution Control Act.

Citizens may also challenge the MPCA's issuance of wastewater treatment plant permits in relation to the federal Clean Water Act. The MPCA cooperates with city, county, state, and federal agencies concerned with water pollution problems. More specific information relating to the MPCA rules, regulations, and standards on air, land, and water pollution are available from the League of Minnesota Cities, an MPCA regional director, or the MPCA directly.

A. Pollution discharge elimination system

Under the State Water Pollution Control Act, which puts Minnesota into compliance with the National Pollutant Discharge Elimination System permit program (NPDES), the MPCA has authority to prohibit any discharge of sewage, industrial waste, or other wastes into state waters or municipal disposal systems, and to specify a schedule of compliance.

The MPCA may also prohibit the storage of any liquid or other pollutant in a manner that does not reasonably ensure against entry into state waters or pollution of state waters. It may require the construction, installation, maintenance, and operation of a disposal system, alteration of an existing system, or other remedial measures. The MPCA has developed performance standards for new sources of pollution. For cities, this program most directly affects the construction and operation of sanitary sewer treatment facilities. Owners of disposal systems or point sources must establish and maintain monitoring equipment and sample effluents.

The MPCA has also established pre-treatment standards to prevent or abate the discharge of pollutants into publicly owned disposal systems. The MPCA can order a polluting enterprise to immediately discontinue operations. As an alternative, the MPCA can request the attorney general to bring an action in the name of the state for a temporary restraining order to immediately abate or prevent pollution.

RELEVANT LINKS:

[State v. McAllister](#), 399 N.W.2d 685 (Minn. Ct. App. 1987).
[Minn. Stat. § 115.071](#), subd. 2.

[Minn. Stat. §§ 116.16-.202](#).
[Minnesota Public Facilities Authority](#).
800-657-3858.

[Minn. Stat. § 115.55](#).
[Minn. R. ch. 7080](#).

[Minn. Stat. § 115.55](#), subd. 7(c).
[MPCA – Minnesota's Subsurface Sewage Treatment Systems](#).
[Minn. R. 7080.1500](#).
[Minn. R. 7082.0040](#), subp. 5.

[Minn. Stat. § 116.49](#).
[MPCA-UST Program](#).
[EPA's Office of Underground Storage Tanks](#).
[Minn. R. ch. 7150](#).

[Minn. Stat. §§ 103F.701-.755](#).

Any person who willfully or negligently violates any provision of the state Water Pollution Control Act, or any standard, rule, variance, stipulation agreement, schedule of compliance, or permit issued may be found guilty of a misdemeanor offense.

B. Water pollution control financial assistance

The MPCA, in conjunction with the Minnesota Public Facilities Financing Authority, administers a system of federal and state loans and grants for wastewater treatment works construction projects, including central treatment plants and innovative and alternate systems, such as individual systems serving one or more homes or businesses. Cities should contact the Public Facilities Authority for additional information on financial assistance programs.

C. Subsurface sewage treatment systems

Minnesota counties are required to adopt ordinances implementing the subsurface sewage treatment system (SSTS) rules of the MPCA unless all towns and cities in the county have adopted the ordinance. An SSTS is more commonly known as a septic system.

Cities can adopt and enforce ordinances regulating new or replacement systems that are more restrictive than MPCA rules. Cities and counties with ordinances must submit reports to the MPCA each year by February 1.

D. Underground storage tanks

The MPCA's Underground Storage Tank (UST) Program was created to help prevent groundwater contamination caused by leaking tanks. This program focuses on inspections and technical assistance to achieve this objective.

The EPA's Office of Underground Storage Tanks may provide funding or related assistance to help state and local governments clean up these properties and foster redevelopment by returning them to productive economic and public use. Cities are encouraged to work with the MPCA to identify cleanup needs within their communities.

E. Nonpoint source pollution

The Legislature has established a clean water partnership program administered by the MPCA.

RELEVANT LINKS:

[Minnesota Clean Water Partnership Program.](#)

[Minn. Stat. § 103F.711, subd. 6.](#)

[Minnesota Nonpoint Source Management Program Plan.](#)

[Minn. Stat. § 103F.725.](#)

[Minn. Stat. § 103F.731.](#)

[Minn. Stat. §§ 103B.301-.355.](#)
[Minn. Stat. § 103B.231.](#)

[MPCA Stormwater Program.](#)

[Minn. Stat. §§ 116C.01-.08.](#)
[Minn. R. ch. 4405.](#)
[Environmental Quality Board](#)
520 Lafayette Rd
St Paul, MN 55101
651-757-2873.

The partnership conducts an assessment of state waters polluted by nonpoint sources and those that have a high potential for water pollution from nonpoint sources. Rainwater runoff is an example of a nonpoint source, at least until it finds its way into storm sewers. Pipes and ditches that have identifiable outlets are point sources.

Nonpoint sources are land management or land use activities that contribute or may contribute to ground and surface water pollution because of runoff, seepage, or percolation, and do not have a single, identifiable source point. Rain or snowmelt moving over and through the ground carries natural and human-made pollutions into lakes, streams, wetlands, and groundwater. The federal Clean Water Act established a federal program to help control nonpoint pollution sources. Minnesota's Nonpoint Source Management Program provides a statewide approach to addressing these water quality problems.

Certain cities are required to have local plans that specifically address nonpoint pollution problems.

The MPCA may provide financial and technical assistance for projects that will protect and improve ground and surface waters. To qualify for assistance, the proposed project must be identified in one of the following documents:

- The comprehensive water plan,
- A surface water management plan,
- A watershed protection and restoration implementation plan,
- An approved total maximum daily load (TMDL) or a TMDL implementation plan, or
- Any other plan that provides an inventory of existing physical and hydrologic information on the area, a general identification of water quality problems and goals, and demonstrates a local commitment to water quality protection, enhancement, or restoration.

Another way to address the nonpoint pollution is through stormwater regulations. Larger cities in urbanized areas are required to comply with the EPA's storm sewer systems program, as administered by the MPCA.

V. Environmental Quality Board

As environmental concerns often overlap the responsibilities of several state agencies, the Environmental Quality Board (EQB) coordinates these stakeholders who play a vital role in Minnesota's natural environment and development. The EQB is comprised of:

RELEVANT LINKS:

[Minn. Stat. § 116.03, subd. 2.](#)

- The office of the governor,
- The heads of nine state agencies, and
- One citizen representative from each congressional district.

The board develops policy, creates long-range plans, and reviews proposed projects that would significantly impact the environment. In addition, the EQB administers several substantive programs of interest to cities.

A. Environmental review

Minnesota has adopted a comprehensive and detailed environmental review program to determine the significant environmental effects of private and governmental actions.

The law generally prohibits the issuance of permits or actual development prior to completion of the review process.

Different governmental units are responsible for conducting the environmental review, depending on the project. The designated local government or state agency is considered the responsible governmental unit (RGU). In some cases, the EQB determines which level of government should be responsible.

Projects that need no governmental approval or small projects meeting state-adopted criteria are exempt from the environmental review process. For most projects that receive environmental review, the RGU begins the process by preparing an environmental assessment worksheet (EAW). Depending on the size, type, and location of a project, preparation and review of the worksheet is either: mandatory, specifically exempt, or left to the discretion of the governmental unit.

The worksheet is a relatively short form containing questions related to environmental impacts. Its purpose is to provide sufficient information to determine if a more detailed review is necessary. If the responsible unit determines a project has significant environmental impact, an environmental impact statement (EIS) is necessary.

The RGU or the project proposer may prepare the statement.

Some types of projects automatically require an EIS. For example, an EIS is required for the construction (new or expansion) of a warehousing or light industrial facility in a city of the third or fourth class equal to or in excess of 750,000 square feet of gross floor space.

[Minn. Stat. ch. 116D.](#)
[Minn. R. ch. 4410.](#)

[Minn. Stat. § 116D.04.](#)
[Minn. R. 4410.0500.](#)

[Minn. Stat. § 116D.04, subd. 2a \(f\).](#)
[Minn. R. ch. 4410.](#)
[Minn. R. 4410.1200.](#)

[Minn. Stat. § 116D.04.](#)

[Environmental Assessment Worksheet.](#)
[EAW Guidelines Preparing Environmental Assessment Worksheets.](#)

[Minn. R. 4410.2000.](#)
[Minn. R. 4410.4400.](#)

RELEVANT LINKS:

[Minn. R. 4410.2300.](#)

[Minn. Stat. § 116D.04.](#)
[Minn. R. 4410.2800.](#)
[Minn. Stat. § 116D.04, subd. 2a\(e\).](#)

[Minn. R. 4410.3600.](#)
[Minn. R. 4410.3610.](#)
[Alternative Urban Areawide Review.](#)
[Minn. R. 4410.3700.](#)

[Minn. Stat. § 116D.045.](#)
[Minn. R. 4410.6100.](#)
[Minn. R. 4410.6200.](#)
[Minn. R. 4410.2100.](#)

[Minn. Stat. § 116D.045.](#)
[Minn. R. 4410.6500.](#)
[Minn. R. 4410.6410.](#)

[Minn. Stat. § 116D.04, subd. 10.](#)
[In re Am. Iron & Supply Co.](#)
[604 N.W.2d 140 \(Minn. Ct. App. 2000\).](#)

[Minn. Stat. §§ 116G.01-.14.](#)
[Minn. R. 4410.8200.](#)

The statement must contain certain information, including the environmental, economic, employment, and sociological impacts for the proposed project, and each major alternative the statement identifies. The rules provide for a process to narrow these issues to those that are relevant and significant.

The EQB can delay implementation of projects and prevent projects that are inconsistent with the state's environmental protection policy. An EAW may also be ordered by the RGU when requested by a petition signed by 100 individuals who reside or own property in the state.

A decision on the need for the EAW must be made by the RGU within 15 days of receipt.

Cities may request EQB approval of projects that undergo environmental review under other governmental processes. In some cases, a local government unit can adopt an EQB promulgated model ordinance as an alternative to some of the regular environmental review criteria and procedures.

The RGU may assess the applicant the reasonable cost incurred preparing, reviewing, and distributing the EIS. The RGU and the party must agree to those costs and a written agreement must go to the EQB. In the event of a disagreement over the cost of an EIS, the board has the authority to modify the cost or determine that the city's assessed cost is reasonable.

An applicant must pay the assessment directly to the city when the city is the responsible agency. If the applicant pays half of the estimated cost of an EIS, the review process must begin even if the parties have not agreed on the final cost. If the required cash payment is altered by the EQB, the remaining cash payments will be adjusted accordingly.

A person aggrieved by a final decision on the need for an EAW or an EIS, or the adequacy of an EIS is entitled to judicial review with the Minnesota Court of Appeals.

A governmental unit's determination of the need for an EIS will be affirmed if it is supported by substantial evidence in the administrative record and is not arbitrary or capricious.

B. Critical areas

The EQB also has the responsibility to prepare criteria used to select areas of critical concern, recommend areas to the governor for critical area designation, and review local plans and regulations affecting those areas.

RELEVANT LINKS:

[Minn. Stat. § 116G.05.](#)

[Minn. Stat. § 116G.15.](#)

[Minn. Stat. § 116G.06.](#)
[Minn. Stat. ch. 14.](#)

[Minn. R. 4410.8800.](#)

[Minn. Stat. § 116G.07, subd. 1.](#)

[Minn. Stat. § 116G.07, subd. 2.](#)

[Minn. Stat. § 116G.08.](#)

[Minn. Stat. § 116G.09.](#)

“Critical areas” are those areas that would be significantly affected by existing or proposed major government development, serve a substantial number of people beyond the vicinity of the development, and tend to generate substantial development or urbanization. Critical areas are also locations that have a significant impact on historical, natural, scientific, or cultural resources with regional or statewide importance. For example, the Mississippi River Corridor Critical Area consists of the area along each side of the Mississippi River in the metropolitan area.

Prior to submitting recommendations to the governor, the EQB holds a hearing at a location convenient to people affected by the proposed designation. After that, the governor may make the formal designation of the areas and notify local units. The governor’s order describes the boundaries of the area, specifies standards and guidelines for preparing plans and regulations, and indicates what development, if any, may occur. This order is effective for three years pending approval either by the Legislature or the regional development commission (or commissions if there is overlapping jurisdiction) having jurisdiction over the area.

Within 30 days after receiving notification of designation of an area within its boundaries, a local unit must submit existing plans and regulations affecting the area to the appropriate regional development commission (or to the EQB if no regional commission exists). If no plans or regulations exist, the local unit must within six months adopt plans and regulations to protect the area.

As an alternative, the local unit may request that the regional commission prepare plans for the local unit within the same timeframe.

Regional commissions have 45 days to review proposed plans, make recommendations, and give them to the EQB. The EQB, in turn, has 45 days to either review and approve them or return them to the local unit or commission for modification. If the EQB returns the plans for modification, the local unit or commission has 60 days to revise and resubmit them. Plans and regulations are not effective until the EQB issues its order.

The EQB may grant extensions for large projects. Additionally, the EQB has authority to direct state agencies to aid the local units or commissions in the development of plans and regulations if the local units or commissions cannot effectively deal with the problem.

If the local unit fails to adopt an approved plan within one year after designation of the area, the EQB must adopt a plan for the unit and specify the extent that the plan would supersede local ordinances. The local unit can still adopt its own regulations in the future.

RELEVANT LINKS:

[Minn. Stat. § 116G.10, subd. 2.](#)

[Minn. Stat. § 116G.12.](#)

[Minn. R. 4410.9700.](#)

[Minn. Stat. § 116G.07, subd.4.](#)

[Minn. Stat. § 116G.15, subd.8.](#)

[EQB](#)
[Minn. Stat. §§ 116C.705-.992.](#)

[Minn. Stat. ch. 216E.](#)
[Minn. Stat. ch. 216A.](#)
[Public Utilities Commission.](#)

[Minn. Stat. § 216C.06, subd. 18.](#)

[Minn. Stat. § 216C.17, subd. 2.](#)

[Minn. Stat. § 216B.2421.](#)

Two years after adoption of a plan, a local unit must resubmit its plans and regulations along with any recommendations for changes for EQB review and approval.

Designation of an area limits the power of local units to grant development permits. Local units may grant permission only if: 1) the order specifically allows for the development or is essential to protect the public health, safety, or welfare because of an emergency; and 2) a local ordinance allowing the development was in effect immediately prior to the designation. If approved plans and regulations are in force, development would need to follow those provisions. Local units must notify the EQB of any application for development permission in designated areas.

Plans and regulations of local governments within the Mississippi River Corridor Critical Area are exempt from these requirements and are subject to alternative requirements noted in statute.

C. Other programs

The EQB has additional responsibilities as provided in various statutes.

For example, the EQB has responsibilities regarding radioactive waste management within Minnesota, our state's participation in the Midwest Interstate Low-Level Radioactive Waste Compact, and establishing standards for silica sand mining operations.

VI. Public Utilities Commission

Responsibility for power-plant siting and routing, wind-energy conversion systems and pipeline-routing rests with the Public Utilities Commission (PUC). The EQB works with the PUC in carrying out duties related to energy infrastructure as integrated with environmental policy goals.

A. Power plant siting

The following applies to all electric or natural gas (including synthetic natural gas) utilities, including those owned and operated by cities.

Each utility, coal or petroleum supplier, and large energy facility in the state must prepare a report specifying in five, 10, and 15 year forecasts the projected demand for energy within its service areas and the facilities necessary to meet the demand. This information must be provided to the commissioner of the Department of Commerce by July 1 of each year. A "large energy facility" is any:

RELEVANT LINKS:

[Minn. Stat. § 103I.681.](#)

[Minn. Stat. § 216E.03.](#)

[Minn. Stat. § 216B.243, subd. 7.](#)

[Minn. Stat. § 216E.05.](#)

[Minn. R. 7850.5300.](#)

- Electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system.
- High-voltage transmission line with a capacity of 300 kilovolts or more and greater than one mile in length in Minnesota.
- High-voltage transmission line with a capacity of 100 kilovolts or more with more than 10 miles of its length in Minnesota.
- Pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives.
- Pipeline for transporting natural or synthetic gas at pressures in excess of 200 pounds per square inch with more than 50 miles of its length in Minnesota.
- Facility designed for or capable of storing on a single site more than 100,000 gallons of liquefied natural or synthetic gas.
- Underground gas storage facility requiring a permit.
- Nuclear fuel processing or nuclear waste storage or disposal facility.
- Facility intended to convert any material into any other combustible fuel and having the capacity to process in excess of 75 tons of the material per hour.

Any developer wishing to construct a large energy facility must obtain a permit from the PUC.

At least 90 days before filing, an applicant must provide notice to the affected local units of government, detailing the proposed route and allowing for consultation. Following a public hearing, only proposals that meet site selection criteria will be approved.

A certificate of need or permit for a large energy facility supersedes and pre-empts all other state, regional, county, local, and special purpose district zoning, building and land use rules, regulations, laws, or ordinances.

B. Small electric power projects

Under the Energy Security and Reliability Act of 2001, cities and towns have the authority to grant permits for some electric power projects within their jurisdictions. Generally, qualifying projects are electric power generating plants under 80 megawatts, peaking plants burning natural gas, substations, and high voltage transmission lines between 100 and 200 kilovolts.

RELEVANT LINKS:

[Minn. Stat. § 216E.05, subd. 3.](#)

[Minn. Stat. § 103B.101, BWSR Resources.](#)

[Minn. Stat. § 103B.101, subd. 12.](#)

[Minn. Stat. §§ 103F.201-.227.](#)
[Minn. R. ch. 6120.](#)
[Minnesota Shoreland Management Resource Guide.](#)

If a city receives an application for local review, it can relinquish control of the project by filing a request with the PUC within 60 days from the date of the application. An applicant must notify the PUC that it has elected to seek local approval within 10 days of application submission with the local unit of government.

VII. Protection of state waters

Minnesota is known as the land of 10,000 lakes, due in part to the large amount of surface water present here. Because water is such a large part of the state's identity, protection of state surface waters is a priority at each level of government.

Numerous jurisdictions have responsibilities in various programs and initiatives concerning water quality, agricultural best management practices, groundwater protection, and cleanup.

The Board of Water and Soil Resources (BWSR) is a good example of the multiple layers of responsibility. It is comprised of officials from various state departments, county boards, and watershed districts as well as private citizens. The BWSR:

- Coordinates the water and soil planning activities of local units of government.
- Facilitates cooperation between state agencies and local units of government.
- Develops information and educational programs to increase awareness of local problems.
- Helps resolve water policy conflicts and issues.
- Coordinates state and federal resources.

BWSR has broad authority to issue administrative penalty orders of up to \$10,000 for violations of laws relating to soil and water conservation districts, watershed districts, drainage, protection of water resources, and state waters.

A. Shoreland development

The commissioner of the Department of Natural Resources (DNR) has set model standards and criteria for the subdivision, use, and development of shoreland in municipalities, including the criteria applicable to county shoreland development. Cities with shoreland must submit ordinances, rules, or regulations that affect shoreland development and use to the Minnesota Department of Natural Resources for review.

RELEVANT LINKS:

[Minn. Stat. § 103F.221, subd. 1.](#)

[Minn. Stat. § 103F.221, subd. 2.](#)

[Minn. Stat. § 103F.221, subd. 5.](#)

[Minn. Stat. ch. 114D.](#)
[Minn. Stat. ch. 446A.](#)
[Minnesota Public Facilities Authority.](#)

[Minn. Stat. § 446A.075.](#)

[Minn. Stat. § 115.55.](#)

[Minn. Stat. § 446A.073.](#)
[Minnesota Public Facilities Authority.](#)

Cities with shoreland must submit ordinances, rules, or regulations to the DNR for review if they affect shoreland development and use. The DNR determines whether these ordinances, rules, or regulations comply with state standards. If the local ordinances do not comply, the DNR notifies the city that it has one year to make any necessary changes.

If a city has no ordinance complying with state standards or fails to comply within one year after receiving notice of noncompliance, the DNR may adopt an ordinance for the city and charge it for the cost. City planning and land use controls for land that is not shoreland but is in the vicinity of shoreland must, if practical, be compatible with planning and land use controls for shorelands. Cities may adopt more restrictive regulations relating to shorelands.

B. Clean Water Legacy Act

The Clean Water Legacy Act (enacted to begin cleaning up impaired state waters and to comply with the federal Clean Water Act) funds water improvement projects throughout the state. The Public Facilities Authority provides low-interest loans to priority projects through the State Revolving Fund (SRF). Supplemental assistance is available through matching grants (with USDA-Rural Development) or zero interest deferred loans from the Wastewater Infrastructure Fund.

The Small Community Wastewater Treatment Program awards loans and technical assistance grants to governmental units to replace failing or inadequate septic systems.

Technical assistance grants of up to \$60,000 may be used to:

- Conduct site evaluations and prepare reports indicating the feasibility of installing new subsurface treatment systems that meet state requirements.
- Provide independent advice on the feasibility of alternative systems.
- Develop the technical, managerial, and financial capacity necessary to build, operate, and maintain treatment systems.

Point Source Implementation grants are available for water infrastructure projects where a variety of pollutants are present, including concentrations of phosphorus and nitrogen greater than one milligram and 10 milligrams per liter, respectively. These grants will provide up to 80 percent of the project costs, up to a maximum of \$7 million. Grant applications must be made to the Public Facilities Authority and meet the criteria of the MPCA.

RELEVANT LINKS:

[Minn. Stat. §§ 103F.101-.151.](#)
[Minn. R. ch. 6120.](#)
[Minn. Stat. § 103F.121.](#)

[DNR Floodplain Management.](#)

[Minn. Stat. § 103F.165.](#)
[Ramsey County v. Stevens](#),
283 N.W.2d 918 (Minn.
1979).
[DNR National Flood Insurance Program.](#)
LMC information memo,
National Flood Insurance Program.

[Minn. Stat. § 103G.005, subd. 19.](#)
[DNR Wetlands.](#)

[Minn. Stat. §§ 103G.221-.2372.](#)

[Minn. Stat. § 103G.221, subd. 1.](#)
[Minn. R. 8420.0233.](#)

[Minn. Stat. § 103G.222.](#)
[Minn. Stat. § 103G.005, subd. 10i.](#)

C. Floodplain management and the national insurance program

The Minnesota Floodplain Management Act hopes to minimize flood damage through proper floodplain management. All local government units must prepare or amend local flood management ordinances after receiving notice from the DNR that necessary technical information is available. The ordinances must conform to state law and must be approved by the DNR. If the DNR disapproves the proposed ordinance, the local unit has 90 days to resubmit the ordinance for approval. The local unit must then adopt an ordinance within 90 days after approval.

The Act also provides for our state's participation in the national flood insurance program. The DNR is required to prepare a list of all the cities that have areas subject to recurring flooding. After receiving notice from the Commissioner of FEMA that a flood hazard area has been identified, cities are encouraged to apply for participation in the national flood insurance program.

All plans are subject to DNR review, modification, and approval.

D. Wetlands

Wetlands are defined by law as areas that have a predominance of hydric soils and are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or periodically support, hydrophytic vegetation typically adapted for life in saturated soils and support this vegetation under normal circumstances, including deepwater aquatic habitats that are not public waters or public waters wetlands. .

The state wetlands protection program protects groundwater quantity and all types of wetlands, regardless of size, and prohibits the draining of wetlands unless the area will be replaced by an area with equal or greater public value under a replacement plan. Cities may also provide more procedures and stricter wetlands protections than are required in state law.

No draining, filling, or altering is permitted unless authorized by a local government unit's (LGU) comprehensive wetland protection and management plan. Outside the seven-county metropolitan area, the LGU may be a city, county, or soil and water conservation district. Within the seven-county metropolitan area, a city, town, watershed management organization, or soil and water conservation district may be the LGU. In many cases, the LGU will designate a soil and water conservation district to assist in administration of the law.

RELEVANT LINKS:

[Minn. R. 8420.0200.](#)
[Minn. Stat. § 15.99.](#)
[Minn. Stat. § 103G.2242,](#)
[subd. 9, 9a.](#)

[Minn. Stat. § 103G.222.](#)
[Minn. Stat. § 103G.2242.](#)
[Minn. Stat. § 103G.2243.](#)
[BWSR Wetlands.](#)

[Minn. Stat. §§ 103F.301-](#)
[.345.](#)
[Minn. R. ch. 6105.](#)

[DNR Wild & Scenic Rivers](#)
[Program.](#)

[Minn. Stat. § 103F.315.](#)

[Minn. Stat. § 103F.325.](#)

[Minn. R. 6105.0070.](#)

LGUs are responsible for making decisions on applications that request changes to protected wetlands. Landowners may apply for wetland boundary or type determinations. The LGU may seek assistance from a technical evaluation panel; they may also delegate the authority to designated staff or establish other appropriate procedures. Decisions must be made within 60 days of application. Landowners must appeal this decision to BWSR within 30 days of receipt of written notice (though the timeframe may be extended by mutual agreement).

Wetlands may not be drained or filled unless replaced by actions that provide at least equal public value under a replacement plan or a protection and management plan approved by the BWSR. If a wetland is drained for agricultural uses, a city may require a deed restriction if the city determines the wetland area drained is at risk of conversion to a nonagricultural use within 10 years, based on the zoning classification, proximity to a municipality or full-service road, or other city criteria. (No deed restriction need be required if the city determines the land is not at risk for nonagricultural use in the next 10 years). A replacement plan may include a wetland banking program to replace wetlands lost due to local government road construction.

In addition, stormwater ponds that are created primarily to fulfill stormwater management and water quality treatment requirements may not be used to satisfy wetland replacement requirements unless the design includes pre-treatment of runoff, and the pond functions as a wetland.

E. Wild and scenic rivers

The DNR commissioner administers the state system of scenic and wild rivers.

Six Minnesota rivers (Mississippi, Kettle, Rum, North Fork – Crow, Minnesota, and Cannon) have segments designated under the program. A seventh, the St. Croix, is similarly designated under the National Wild and Scenic Rivers Program.

All or any segment of a river and its adjacent lands that possess outstanding scenic, recreational, natural, historical, scientific, or similar values are eligible for inclusion within the state system. Rivers in the state system are classified as wild, scenic, or recreational. For each river proposed for inclusion in the system, the DNR must prepare a management plan that does not restrict compatible, pre-existing economic uses of particular tracts of land. The plan must give primary emphasis to the area's scenic, recreational, natural, historical, scientific, and similar values.

RELEVANT LINKS:

[Minn. Stat. § 103F.325, subd. 2.](#)

[Minn. Stat. § 103F.325, subd. 5.](#)

[Minn. Stat. § 103F.335.](#)

[Minn. Stat. § 103F.331. *Pine County v. State, Department of Natural Resources*, 280 N.W.2d 625 \(Minn. 1979\).](#)

[Minn. Stat. § 103F.335, subd. 2.](#)

[Minn. Stat. § 103F.48.](#)

The plan must also set the boundaries of the included area along the river, which must include not more than 320 acres per mile on both sides of the river. The plan must also include proposed regulations governing public use and land use controls of land and water within the area, which could differ from state regulations.

The DNR must make the plan available to affected local governing bodies, shoreland owners, conservation and outdoor recreation groups, and the general public. A public hearing must be held on the proposed plan within 60 days after making the plan available. Following this hearing, the DNR may issue an order making the formal designation of the river as a wild, scenic, or recreational river. Following the designation, it must adopt the management plan.

The Legislature can designate additional rivers or delete rivers from the system but does not need to follow the same procedural steps.

Within six months after designation, each local government containing a portion of the designated area must adopt or amend its local ordinances and land use district maps to comply with the state standards and the management plan. If the local unit fails to comply, the DNR must adopt necessary ordinances, maps or amendments as in the case of shoreland development. The DNR will assist local units in preparation, implementation, and enforcement.

The DNR has power to acquire title, scenic easements, or other interests in land. The DNR must set standards and criteria for the subdivision, use, development, and preservation of lands in incorporated and unincorporated areas within the designated boundaries. The standards are essentially the same as those for shoreland development.

All state, local, and special government units and other authorities must exercise their powers to further the purposes of the Act and the management plans.

F. Riparian protection and water quality practices.

The legislature has established vegetative buffer requirements for public waters and public drainage. The policy behind the requirements is to:

- Protect state water resources from erosion and runoff pollution.
- Stabilize soils, shores, and banks.
- Protect or provide riparian corridors.

RELEVANT LINKS:

[Minn. Stat. § 103F.48, subd. 1\(i\). Minn. Stat. § 103G.201.](#)

[Minn. Stat. § 103F.48, subd. 3.](#)

[Minn. Stat. § 103F.48, subd. 5.](#)

[Minn. Stat. § 103F.48, subd. 7.](#)

[Minn. Stat. § 459.20. Minn. R. ch. 6110.](#)

[Minn. R. 6110.3400.](#)

While state shoreland rules already require a 50-foot vegetative buffer around most lakes and rivers, there are also buffer requirements for small water courses, such as streams and ditches with steady flow.

For public waters, the requirement is the more restrictive of state shoreland requirements or a 50-foot average width, 30-foot minimum width of continuously maintained perennially rooted vegetation buffer. Ditches within the benefited area of public drainage systems must maintain a 16.5-foot or greater width continuous buffer of perennially rooted vegetation.

The impact on cities is notably limited by the exceptions contained within the statute. Land adjacent to public waters is exempt from the requirements to the extent the exemptions are not inconsistent with the requirements of state shoreland rules, if it is at least one of the following:

- Enrolled in the federal Conservation Reserve Program.
- Used as public or private water access or a recreational use area.
- Covered by a road, trail, building, or other structure.
- Regulated by a NPDES/SDS permit system and provides water resources riparian protection under any of the following: a municipal separate storm sewer system (MS4), construction stormwater (CSW), or industrial stormwater (ISW).
- In a temporary non-vegetated condition due to construction or conservation projects authorized by a federal, state, or local government unit.

BWSR is responsible for administration of these requirements, and local soil and water conservation districts are the first point of contact for noncompliance and enforcement.

G. Water surface use and lake improvement

City councils have authority to improve and regulate the use of a body of water located entirely within a city, or jointly with other cities and townships when the body of water is within the contiguous boundaries of two or more cities and townships.

This includes development and implementation of plans to eliminate lake pollution, as well as the authority to undertake improvement measures.

Cities can regulate the water surface use of bodies of water situated entirely within their boundaries. This includes regulation of type and size of watercraft, horsepower of motors and speed of watercraft, as long as the requirements are the same for residents of the lake as they are for public users. When the body of water is in more than one city or township, the units may agree to joint regulations.

RELEVANT LINKS:

Minn. Stat. § 103F.801.
A.G. Op. 1007 (June 11,
1975).
Minn. Stat. §§ 462.351-.365.
Handbook, *Comprehensive
Planning, Land Use and City
Owned Land*.

*Army Corps of Engineers.
Solid Waste Agency of N.
Cook County, v. U.S. Army
Corps of Eng'rs*, 531 U.S.
159, 121 S. Ct. 675 (2001).

Minn. Stat. § 88.01, subd. 23.

Minn. Stat. § 88.17, subd.
1(a).

Minn. Stat. § 88.17, subd.
1(c).

Minn. Stat. § 88.17, subd.
1(b).

Minn. Stat. § 88.17, subd.
1(b).
Minn. Stat. § 88.195, subd. 2.

County boards may also exercise lake improvement and water surface use regulation powers over lakes, unless the lake is completely within the boundaries of a single city (or lake conservation district). Cities continue to regulate the use of any shoreland within their boundaries under their land use control authority, including the Shoreland Development Act.

H. Army Corps of Engineers

The Army Corps of Engineers (Corps) has broad regulatory authority over navigable waters.

The Corps attempted by rule to assert regulatory jurisdiction over non-navigable, isolated, intrastate waters that served as habitats for migratory birds. The rule was struck down by the U.S. Supreme Court.

VIII. Open burning in cities

Open burning is defined as the burning of any matter that is not contained within a fully enclosed firebox, structure, or vehicle and from which the products of combustion are emitted directly into the atmosphere without passing through a stack, duct, or chimney.

Subject to two specific exceptions, individuals intending to burn vegetative materials, such as grass, leaves, brush, and untreated lumber, are generally required first to obtain permission in one of the following forms:

- A written permit issued by a person authorized by the commissioner of the DNR or the commissioner's agent.
- An electronic permit issued by the commissioner, an agent authorized by the commissioner, or an internet site authorized by the commissioner.
- A general permit adopted by the county board of commissioners.

The burning permit sets the time and conditions by which the approved fire may be started and burned, including a specific listing of the materials that may be burned.

Permit holders must have the permit on their person and produce it for inspection when requested by a forest, conservation, or other peace officer. Fires may only be started on land owned by the permit holder, under the legal control of the permit holder, or with the written permission of the owner, lessee, or agent of the owner or lessee of the land. A person violating the exceeding the permit conditions is guilty of a misdemeanor.

RELEVANT LINKS:

[Minn. Stat. § 88.17, subd. 5\(d\).](#)

[Minn. Stat. § 88.171.](#)

[Minn. Stat. § 88.171, subd. 2.](#)

[Minn. Stat. § 88.171, subd. 8\(a\).](#)

[Minn. Stat. § 88.171, subd. 8\(b\).](#)

[Minn. Stat. § 88.171, subd. 9.](#)

[DNR Wildfire Information Center.](#)

Local jurisdictions, including cities, are not restricted by statute from charging an administrative fee for issuing open burning permits within their jurisdiction. The permit fee should be established by the council and included within the city's fee schedule ordinance.

A. Prohibited Burning

1. Prohibited materials

State statute prohibits the open burning of materials which produce excessive or noxious smoke. A non-exhaustive list of examples is provided in the statute. Even if an open burning permit is issued, individuals are generally prohibited from burning such materials.

The commissioner of the DNR may allow burning of prohibited materials, however, when the commissioner of the Department of Health or a local health agency (typically a county health board) has made a determination that it is necessary to abate a public nuisance.

2. Garbage

Since 1969, the burning of household garbage generally has been prohibited in Minnesota. "Garbage" is defined as discarded material resulting from the handling, processing, storage, preparation, serving, or consumption of food.

However, a Minnesota county may, by resolution, allow a resident to conduct open burning of the garbage generated at that resident's household upon determining that regularly scheduled pickup of the material is not reasonably available.

3. Burning Bans

No person may conduct, cause, or permit open burning during a burning ban put in place by a city, county, or state department or agency. The DNR adopts statewide burning restrictions each spring, typically a time with a high degree of fire danger.

When dry conditions warrant it, the DNR or another unit of government can impose an absolute burning ban within a particular geographic area or jurisdiction. Burning bans are generally imposed in only the most severe conditions. When possible, use restrictions or the non-issuance (or revocation) of burning permits are more likely to occur.

RELEVANT LINKS:

B. Local regulation

While state statutes provide many absolutes regarding open burning in Minnesota, from defining the circumstances when burning permits are mandatory to prohibiting the open burning of certain materials, cities may participate in the regulatory process or provide additional burning restrictions.

1. Local ordinances

Cities generally may adopt open burning ordinances that are more restrictive than and consistent with state statutes. A local jurisdiction may not waive the formal permitting process beyond the exceptions provided in statute.

Likewise, a city may not allow the open burning of any materials specifically prohibited by statute.

A city may consider:

- Adopting a local burning ordinance.
- Establishing administrative fees for the costs incurred in issuing open burning permits.
- A further restriction on the hours when open burning may be lawfully conducted.
- Restrictions on the materials that may be burned.
- Restrictions on the distance recreational fires may be from homes, property lines, and streets.
- Requiring individuals to first obtain a local permit before conducting a campfire or other recreational fire.
- A prohibition on open burning when local conditions would make it particularly dangerous.
- Providing a city official (such as the fire chief, marshal, or designee) the authority to declare open burning bans when dry conditions warrant it.
- If located outside the metropolitan area, allowing the open burning of leaves.
- Imposing a ban on the burning of leaves.
- Providing criminal consequences for non-compliance with local regulations.

See Section VIII-B-2 *Open burning of leaves*.

RELEVANT LINKS:

[Minn. Stat. § 415.19.](#)

[Minn. Stat. § 116.082.](#)

[Minn. Stat. § 473.121, subd. 2.](#)

[Minn. Stat. § 116.082.](#)

[Minn. Stat. § 88.18.](#)

When adopting a local burning ordinance, a city should consider the costs involved in regulation and enforcement. State statute requires statutory and home rule charter cities to provide notice of most proposed ordinances and proposed amendments to ordinances at least ten days before the city council meeting at which the proposed ordinance or proposed amendment is scheduled for a final vote.

2. Open burning of leaves

While the burning of leaves without an open burning permit issued by a DNR forestry official or one of its marshals is generally prohibited, there is one substantial exception in the statutes applicable to many Minnesota cities.

A home rule charter or statutory city located outside of the Twin Cities metropolitan area may allow the open burning of dried leaves within the city's jurisdiction. For purposes of this section, the metropolitan area is defined as the area over which the Metropolitan Council has jurisdiction.

To allow the open burning of leaves, non-metro cities must first adopt an ordinance and provide copies of it to the DNR, and the Minnesota Pollution Control Agency (MPCA).

The ordinance shall limit leaf burning to the period between September 15 and December 1. Additionally, the ordinance must include any conditions necessary to minimize air pollution, fire danger, or any other hazards and nuisance concerns. The open burning of leaves is prohibited during air pollution alerts, warnings, or emergencies as declared by the MPCA.

Allowing leaf burning is an option, not a mandate, for eligible cities. A city ordinance can require a local permit for leaf burning, though permitting is not necessary under state statute. If a non-metro city decides the environmental, health, or nuisance concerns that accompany leaf burning outweigh the possible benefits, it can: simply not adopt such a provision (or if it has already adopted such a provision, it can revoke it); or it can adopt an ordinance that prohibits all leaf burning within its jurisdiction.

3. Fire wardens

The commissioner of the DNR appoints local government officials, authorized agents of the Minnesota Pollution Control Agency, fire chiefs, or other responsible persons to be fire wardens. Fire wardens issue open burning permits in accordance with all state and local open burning regulations within their respective districts.

RELEVANT LINKS:

[DNR Forestry Area Offices.](#)

[Minn. Stat. § 18G.13.](#)
[Minn. Stat. § 18G.11.](#)
[MDA Pest Management.](#)

[Minn. Stat. §§ 89.51–.64.](#)
[DNR Division of Forestry.](#)

[Minnesota Tree Inspector Program.](#)

[Minn. Stat. § 412.221, subds. 8, 22.](#)

[Minn. Stat. §§ 144.381–.387.](#)
[MDH Drinking Water Protection.](#)
[U.S. EPA.](#)
[Minnesota Rural Water Association.](#)

It is common for city officials to be commissioned as fire warden and assist the DNR in issuing open burning permits. City officials interested in becoming fire wardens should contact their local forestry office. This may be particularly beneficial in cities that have adopted additional regulations or restrictions on open burning. Local officials may be in a better position to ensure that state regulations, as well as any additional local regulations are satisfied when open burning permits are issued. In the absence of a fire warden that is a city official, a DNR forest officer, county official, or other appointed (but otherwise independent individual) has the authority to issue open burning permits for that area.

IX. City trees and plants

Cities have authority to control pests that may be detrimental to the health and welfare of humans, animals, or the environment. The Minnesota Department of Agriculture (MDA) may provide funding, conduct research, or enter into contracts with cities in connection with new or emerging plant pests programs.

Cities are subject to DNR rules for forest and shade tree pest control programs, unless the city adopts an ordinance the commissioner determines is more stringent. Cities may qualify for grants from the Shade Tree Pest Control program to aid in the control of a shade tree pest. Cities must meet specific grant criteria and track the use of grant funds. The DNR also certifies tree inspectors and may provide urban forest management assistance to cities. The MDA retains authority over efforts to control or eradicate emerging plant or forest pests.

Statutory cities also have the authority to establish their own programs to combat shade tree pests or pathogens through local ordinances.

X. Safe Drinking Water Act

The Minnesota Department of Health (MDH) has implemented the federal Safe Drinking Water Act and set standards for safe drinking water that apply to all public water systems. A public water system is a system providing piped water for human consumption that contains a minimum of 15 service connections for 15 living units or serves an average of 25 persons daily for at least 60 days of the year. MDH will approve the site design, construction, and alteration of public supplies; inspect the facilities and records of the public water supply; contract with local boards of health for routine surveys, inspections, and testing of the public water supply quality; and develop an emergency plan to protect the public when a decline in water quality or quantity creates a serious health risk.

RELEVANT LINKS:

[Minn. R. ch. 4720.](#)

[Minn. Stat. ch. 103I.](#)
[Minn. R. 4720.5100-.5590.](#)
[Minn. Stat. § 103I.111, subd. 2b.](#)

[MDH Well Management Program.](#)

[Minn. Stat. ch. 216G.](#)
[Minn. Stat. ch. 299J.](#)
[Minn. R. ch. 7560.](#)

[LMC Information Memo, *Regulating City Rights of Way*, Office of Pipeline Safety.](#)

[Minn. R. ch. 7852.](#)
[Minn. Stat. § 216G.02, subd. 4.](#)

[Minn. Stat. ch. 216D.](#)
[Gopher State One Call.](#)

[Minn. Stat. § 216D.07.](#)

[Minn. Stat. § 299J.05 \(a\).](#)
[Minn. R. 7535.0500.](#)

MDH has set rules to implement the federal act, including the granting of variances and exemptions from federal requirements. Amendments to the federal law have increased the testing requirements for public water supplies.

The Department of Health assists in the regulation of wells and borings. Wellhead protection plans reduce the chance that contaminants will enter public water supplies. Cities have the authority to regulate wells by ordinance or through their zoning code. City ordinances must be consistent with and as restrictive as standards in state law or rule. In addition, ordinances must be consistent with and as restrictive as ordinances adopted by the county board. City ordinances attempting to regulate the construction, maintenance, or sealing of wells are subject to MDH review.

XI. Pipeline safety

The Minnesota Office of Pipeline Safety, regulates pipeline routing, excavations, and safety.

Under the public right-of-way mapping rule, cities must maintain maps, diagrams, or other records of underground facilities in the city right-of-way; install a locating wire or other marking on underground facilities; and locate the portion of the service lateral within the public right-of-way. City right-of-way ordinances should reflect these requirements.

The PUC is responsible for adopting rules regulating pipeline routing. The state routing permit system supersedes and pre-empts all zoning, building, or land use rules, regulations, or ordinances adopted by cities or other local governments.

The one-call excavation notice system addresses most excavations that disturb the soil by use of a motor, engine, hydraulic or pneumatically powered tool, machine-powered equipment, or explosives. Cities that issue permits for excavations must display an excavator and operator notice at city hall or other permitting sites. Cities must provide the notice and a copy of the state law requiring notification prior to any excavation. The state notification center is responsible for providing cities with notice forms and information about the law. The law specifically allows local permitting of excavations, and provides protections to cities for the actions of an excavator who fails to comply with state law.

The State Fire Marshall Division of Pipeline Safety is responsible for administering the law and has adopted a model ordinance requiring a setback from pipelines in residential areas or other areas where development occurs. The model pipeline ordinance applies only to new development.

RELEVANT LINKS:

[Minn. Stat. § 299J.05 \(b\).](#)
[Minn. R. 7535.0400.](#)

[Minn. Stat. § 299J.10.](#)

[Minn. Stat. ch. 18B.](#)

[Minn. R. 1505.0830-.1290.](#)
[Minn. Stat. § 18B.065.](#)
[Minn. Stat. § 18B.02.](#)
[Minn. Stat. § 18B.09.](#)
[MDA Plants, Pests & Pest Control.](#)

[Minn. Stat. § 18B.07.](#)
[Minn. Stat. § 18B.09.](#)

[Minn. Stat. § 18B.055.](#)

Statutory or home rule charter cities that have pipelines within their borders must adopt a pipeline setback ordinance that meets or exceeds the minimum standards of the model ordinance. The commissioner of the Department of Public Safety must approve the ordinance. If a city has not adopted an approved ordinance, the state ordinance will apply.

A city that has a pipeline within its jurisdiction must also prepare a pipeline release emergency response plan consistent with state regulations. The city must consult with the pipeline owner or operator when preparing the plan and coordinate the plan with the county. The city must review its plan annually and amend it to reflect changes in the operation of the pipeline or other matters related to pipeline safety.

XII. Pesticide regulation

Minnesota has a series of statutes regulating the use of pesticides.

State laws pre-empt local ordinances that prohibit or regulate the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. The MDA has responsibility for the collection and disposal of waste pesticides and must make pesticide disposal sites available in each county for both agricultural and nonagricultural pesticide waste. They do not pre-empt local responsibilities for zoning, fire codes, or hazardous waste disposal. Statutory or home rule charter cities may enact ordinances containing the state-specified pesticide application warning information and include their own licensing, penalty, and enforcement provisions, but may not enact more restrictive warning requirements.

Cities are subject to the laws and regulations concerning the use, storage, and posting requirements for pesticides. For parks, golf courses, athletic fields, playgrounds, or other similar recreational property, cities must post warning signs immediately adjacent to areas where pesticides have been applied, and at or near entrances to the property.

If the improper application of pesticides results in the death of bees, the commissioner of Agriculture can order the applicator to pay the fair market value of the dead bees to the owner. Cities are not specifically immune from penalty under this law and must be careful to understand how it impacts city operations. In addition, a city may, by ordinance, prohibit the use of pollinator-lethal pesticides within its boundaries in most instances.

RELEVANT LINKS:

[Minn. Stat. § 116.202.](#)

[Coal Tar Sealant Products,](#)
[LMC Model Ordinance.](#)

[Minn. Stat. § 18C.60.](#)
[Minn. Stat. § 18C.110.](#)

[Minn. Stat. § 216C.381.](#)
[MN Dep't of Commerce.](#)

[Minn. Stat. § 216B.1691.](#)

[Minn. Stat. § 216B.1691.](#)

XIII. Coal tar sealant products

The sale and use of coal tar-based products anywhere in Minnesota is prohibited.

Cities have the authority to enforce the statewide coal tar ban. To enforce this prohibition, however, a city must enact an ordinance establishing its enforcement authority.

XIV. Phosphorus fertilizers

State law bans phosphorus in almost all lawn fertilizer. These restrictions, however, do not apply to agricultural use. Exceptions also exist for golf courses, new sod or seed on lawns, or soil-tested lawns showing a need for additional phosphorus.

Unless adopted before Aug. 1, 2002, cities are preempted from adopting an ordinance restricting the sale of turf phosphorous fertilizer. In most instances, cities are also prohibited from enforcing or adopting ordinances regulating the use or sale of phosphorous fertilizers.

XV. Community energy conservation

Minnesota is one of the more innovative states when it comes to energy conservation and related energy programs.

Energy conservation, energy management, and the use of renewable resources are key elements in reducing energy costs. These elements work best when promoted by local units of government. The best energy management program should meet the specific needs of the community.

An effective energy management program allows local governments to maintain some control over energy costs, freeing up funds for other community projects.

The Minnesota Legislature has enacted laws requiring municipal and commercial electric utilities to gradually increase their use of renewable energy sources, such as hydroelectric, wind, solar, hydrogen, or biomass.

The term “biomass” refers to plant and animal materials, agricultural and forest residues, mixed municipal solid wastes, and sludge from wastewater treatment. Each utility must submit an energy policy report containing an estimate of the rate impact of any activities necessary to comply with this requirement.

RELEVANT LINKS:

[Minn. Stat. § 116.07, subd. 2\(c\)](#)
[Minn. R. ch. 7030.](#)
[Handbook, *City Regulatory Functions*.](#)

[Minn. Stat. ch. 443.](#)
[Minn. Stat. § 115A.94.](#)

[MPCA Brownfield Assistance Program.](#)

[C & A Carbone, Inc. v. Town of Clarkstown, N.Y.](#), 511 U.S. 383, 114 S. Ct. 1677 (1994) distinguished by [United Waste Systems of Iowa, Inc. v. Wilson](#), 189 F.3d 762 (8th Cir. 1999). [Red River Service Corp. v. City of Minot, N.D.](#), 146 F.3d 583 (8th Cir. 1998). [United Haulers Assn., Inc. v. Oneida-Herkimer Solid Waste Management](#), 550 U.S. 330, 127 S. Ct. 1786 (2007).

[Minn. Stat. ch. 84C.](#)
[Minn. Stat. § 475.52.](#)

XVI. Noise

Minnesota law requires the MPCA to control noises that “may be injurious to human health or welfare, animal or plant life, or property, or could interfere unreasonably with the enjoyment of life and property.” Cities have similar authority to define various nuisances and provide for their regulation, prevention, or abatement.

XVII. Solid waste

Although the state and counties are playing an even greater role in solid waste management, cities are still charged with primary responsibility for regulating collection and recycling services. Cities are authorized to license haulers of solid waste. Cities may organize collection practices to meet state or local solid waste management goals.

Contaminated sites (also known as “brownfields”) pose serious problems for redevelopment as well as pollution problems. The MPCA is a resource for information and assistance on contaminated sites.

Flow control ordinances, where a city requires that trash collected in the city be disposed of at a particular landfill, raise constitutional concerns. Such an ordinance may violate the commerce clause of the United States Constitution if it favors in-state businesses over out-of-state entities. However, an ordinance may pass constitutional muster if the selection process is open and competitive and offers equal opportunities for all businesses. Additionally, local regulations that direct waste to public facilities might not be considered discrimination and might not violate or impede interstate commerce, as long as private businesses are treated equally.

XVIII. Conservation easements

Statutory cities may obtain conservation easements and issue debt obligations to acquire development rights in the form of conservation easements. A conservation easement typically limits the use of a portion of property to protect natural, scenic, or open-space values of real property.

XIX. How this chapter applies to home rule charter cities

Almost everything in this chapter applies equally to statutory and home rule charter cities.