

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1802

(SENATE AUTHORS: RUUD)

DATE	D-PG	OFFICIAL STATUS
03/06/2017	1069	Introduction and first reading
		Referred to Environment and Natural Resources Policy and Legacy Finance
03/09/2017	1223	Comm report: To pass and re-referred to Environment and Natural Resources Finance

- 1.1 A bill for an act
- 1.2 relating to environment; enabling landfill to enter closed landfill program under
- 1.3 certain conditions; amending Minnesota Statutes 2016, sections 115B.39,
- 1.4 subdivision 2; 115B.40, subdivision 4.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 115B.39, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Definitions.** (a) In addition to the definitions in this subdivision, the definitions
- 1.8 in sections 115A.03 and 115B.02 apply to sections 115B.39 to 115B.445, except as
- 1.9 specifically modified in this subdivision.
- 1.10 (b) "Cleanup order" means a consent order between responsible persons and the agency
- 1.11 or an order issued by the United States Environmental Protection Agency under section 106
- 1.12 of the federal Superfund Act.
- 1.13 (c) "Closure" means actions to prevent or minimize the threat to public health and the
- 1.14 environment posed by a mixed municipal solid waste disposal facility that has stopped
- 1.15 accepting waste by controlling the sources of releases or threatened releases at the facility.
- 1.16 "Closure" includes removing contaminated equipment and liners; applying final cover;
- 1.17 grading and seeding final cover; installing wells, borings, and other monitoring devices;
- 1.18 constructing groundwater and surface water diversion structures; and installing gas control
- 1.19 systems and site security systems, as necessary. The commissioner may authorize use of
- 1.20 final cover that includes processed materials that meet the requirements in Code of Federal
- 1.21 Regulations, title 40, section 503.32, paragraph (a).

(d) "Closure upgrade" means construction activity that will, at a minimum, modify an existing cover so that it satisfies current rule requirements for mixed municipal solid waste land disposal facilities.

(e) "Contingency action" means organized, planned, or coordinated courses of action to be followed in case of fire, explosion, or release of solid waste, waste by-products, or leachate that could threaten human health or the environment.

(f) "Corrective action" means steps taken to repair facility structures including liners, monitoring wells, separation equipment, covers, and aeration devices and to bring the facility into compliance with design, construction, groundwater, surface water, and air emission standards.

(g) "Custodial" or "custodial care" means actions taken for the care, maintenance, and monitoring of closure actions at a mixed municipal solid waste disposal facility after completion of the postclosure period.

(h) "Decomposition gases" means gases produced by chemical or microbial activity during the decomposition of solid waste.

~~(h)~~ (i) "Dump materials" means nonhazardous mixed municipal solid wastes disposed at a Minnesota waste disposal site other than a qualified facility prior to 1973.

~~(i)~~ (j) "Environmental response action" means response action at a qualified facility, including corrective action, closure, postclosure care; contingency action; environmental studies, including remedial investigations and feasibility studies; engineering, including remedial design; removal; remedial action; site construction; and other similar cleanup-related activities.

~~(j)~~ (k) "Environmental response costs" means:

(1) costs of environmental response action, not including legal or administrative expenses; and

(2) costs required to be paid to the federal government under section 107(a) of the federal Superfund Act, as amended.

~~(k)~~ (l) "Postclosure" or "postclosure care" means actions taken for the care, maintenance, and monitoring of closure actions at a mixed municipal solid waste disposal facility.

~~(l)~~ (m) "Qualified facility" means a mixed municipal solid waste disposal facility as described in the most recent agency permit, including adjacent property used for solid waste disposal that did not occur under a permit from the agency, that:

3.1 (1)(i) is or was permitted by the agency;

3.2 (ii) stopped accepting solid waste, except demolition debris, for disposal by April 9,
3.3 1994; and

3.4 (iii) stopped accepting demolition debris for disposal by June 1, 1994, except that
3.5 demolition debris may be accepted until May 1, 1995, at a permitted area where disposal
3.6 of demolition debris is allowed, if the area where the demolition debris is deposited is at
3.7 least 50 feet from the fill boundary of the area where mixed municipal solid waste was
3.8 deposited; ~~or~~

3.9 (2) is or was permitted by the agency; and

3.10 (i) stopped accepting waste by January 1, 2000, except that demolition debris, industrial
3.11 waste, and municipal solid waste combustor ash may be accepted until January 1, 2001, at
3.12 a permitted area where disposal of such waste is allowed, if the area where the waste is
3.13 deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid
3.14 waste was deposited; or

3.15 (ii) stopped accepting waste by January 1, 2019, and is located in a county that meets
3.16 all applicable recycling goals in section 115A.551 and that has arranged for all mixed
3.17 municipal solid waste generated in the county to be delivered to and processed by a resource
3.18 recovery facility located in the county for at least 20 years; or

3.19 (3) is or was permitted by the agency and stopped accepting mixed municipal solid waste
3.20 and industrial waste for disposal by January 1, 2009, and for which the postclosure care
3.21 period ended on July 26, 2013.

3.22 Sec. 2. Minnesota Statutes 2016, section 115B.40, subdivision 4, is amended to read:

3.23 Subd. 4. **Qualified facility not under cleanup order; duties.** (a) The owner or operator
3.24 of a qualified facility that is not subject to a cleanup order shall:

3.25 (1) complete closure activities at the facility, or enter into a binding agreement with the
3.26 commissioner to do so, as provided in paragraph (e), within one year from the date the
3.27 owner or operator is notified by the commissioner under subdivision 3 of the closure activities
3.28 that are necessary to properly close the facility in compliance with facility's permit, closure
3.29 orders, or enforcement agreement with the agency, and with the solid waste rules in effect
3.30 at the time the facility stopped accepting waste;

3.31 (2) undertake or continue postclosure or custodial care at the facility until the date of
3.32 notice of compliance under subdivision 7;

(3) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph ~~(H)~~ (m), clause (1), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 any funds required for proof of financial responsibility under section 116.07, subdivision 4h, that remain after facility closure and any postclosure care and response action undertaken by the owner or operator at the facility including, if proof of financial responsibility is provided through a letter of credit or other financial instrument or mechanism that does not accumulate money in an account, the amount that would have accumulated had the owner or operator utilized a trust fund, less any amount used for closure, postclosure care, and response action at the facility; ~~and~~

(4) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph ~~(H)~~ (m), clause (2), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 an amount of cash that is equal to the sum of their approved current contingency action cost estimate and the present value of their approved estimated remaining postclosure care costs required for proof of financial responsibility under section 116.07, subdivision 4h; and

(5) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (m), clause (3), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 an amount of cash that is equal to any funds required for proof of financial responsibility under section 116.07, subdivision 4h, that remain after facility closure and any postclosure and custodial care and response action undertaken by the owner or operator at the facility have been reimbursed.

(b) The owner or operator of a qualified facility that is not subject to a cleanup order shall:

(1) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph ~~(H)~~ (m), clause (1), provide the commissioner with a copy of all applicable comprehensive general liability insurance policies and other liability policies relating to property damage, certificates, or other evidence of insurance coverage held during the life of the facility; and

(2) enter into a binding agreement with the commissioner to:

(i) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph ~~(H)~~ (m), clause (1), take any actions necessary to preserve the owner or operator's rights to payment or defense under insurance policies included in clause (1); cooperate with the commissioner in asserting claims under the policies; and, within 60 days of a request by the commissioner, but no earlier than July 1, 1996, assign only those rights under the policies related to environmental response costs;

(ii) cooperate with the commissioner or other persons acting at the direction of the commissioner in taking additional environmental response actions necessary to address releases or threatened releases and to avoid any action that interferes with environmental response actions, including allowing entry to the property and to the facility's records and allowing entry and installation of equipment; and

(iii) refrain from developing or altering the use of property described in any permit for the facility except after consultation with the commissioner and in conformance with any conditions established by the commissioner for that property, including use restrictions, to protect public health and welfare and the environment.

(c) The owner or operator of a qualified facility defined in section 115B.39, subdivision 2, paragraph ~~(l)~~ (m), clause (1), that is a political subdivision may use a portion of any funds established for response at the facility, which are available directly or through a financial instrument or other financial arrangement, for closure or postclosure care at the facility if funds available for closure or postclosure care are inadequate and shall assign the rights to any remainder to the commissioner.

(d) The agreement required in paragraph (b), clause (2), must be in writing and must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

(e) A binding agreement entered into under paragraph (a), clause (1), may include a provision that the owner or operator will reimburse the commissioner for the costs of closing the facility to the standard required in that clause.

Sec. 3. REVISOR'S INSTRUCTION.

In Minnesota Statutes and Minnesota Rules, the revisor of statutes shall replace all references to Minnesota Statutes, section 115B.39, subdivision 2, paragraph (l), with Minnesota Statutes, section 115B.39, subdivision 2, paragraph (m), and shall make all other necessary changes to preserve the meaning of the text and to conform with the paragraph relettering in this act.