

(c) \$47,000 must be transferred from the special account established under section 4, subdivision 1, paragraph (d), to the general fund on June 30, 1989.

Sec. 10. EFFECTIVE DATE.

Sections 1 to 9 are effective September 1, 1987.

Approved June 3, 1987

CHAPTER 389—H.F.No. 606

An act relating to environment; establishing a petroleum tank release cleanup program; authorizing state action to prevent or correct health and environmental damage resulting from releases from petroleum storage tanks; establishing a petroleum tank release cleanup fund; establishing a petroleum tank release compensation board; authorizing reimbursement from the fund; requiring rulemaking; providing for administration by the pollution control agency and the department of commerce; requiring certification of tank installers; appropriating money; amending Minnesota Statutes 1986, sections 116.46, by adding subdivisions: 116.47; and 116.48, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 116; proposing coding for new law as Minnesota Statutes, chapter 115C.

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

Section 1. [115C.01] CITATION.

Sections 1 to 10 may be cited as the "petroleum tank release cleanup act."

Sec. 2. [115C.02] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 2 to 10.

Subd. 2. AGENCY. "Agency" means the pollution control agency.

Subd. 3. BOARD. "Board" means the petroleum tank release compensation board.

Subd. 4. CORRECTIVE ACTION. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subd. 5. DIRECTOR. "Director" means the director of the pollution control agency.

Subd. 6. FUND. "Fund" means the petroleum tank release cleanup fund.

Subd. 7. OPERATOR. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank.

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Subd. 8. OWNER. "Owner" means a person who holds title to, controls, or possesses an interest in a tank. "Owner" does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

Subd. 9. PERSON. "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subd. 10. PETROLEUM. "Petroleum" means:

- (1) gasoline and fuel oil as defined in section 296.01, subdivisions 3 and 4;
- (2) crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; or
- (3) constituents of gasoline and fuel oil under clause (1) and crude oil under clause (2).

Subd. 11. POLITICAL SUBDIVISION. "Political subdivision" means a county, a town, or a statutory or home rule charter city.

Subd. 12. RELEASE. "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of sections 1 to 10, but does not include discharges or designed venting allowed under agency rules.

Subd. 13. RESPONSIBLE PERSON. "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release.

Subd. 14. TANK. "Tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to contain or dispense petroleum.

"Tank" does not include:

- (1) a mobile storage tank used to transport petroleum from one location to another; or
- (2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29.

Sec. 3. [115C.03] RESPONSE TO RELEASES.

Subdivision 1. CORRECTIVE ACTION ORDERS. If there is a release, the director may order a responsible person to take reasonable and necessary corrective actions. The director shall notify the owner of real property where correc-

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tive action is ordered to be taken that responsible persons have been ordered to take corrective action and that the owner's cooperation will be required for responsible persons to take that action. When the director has ordered a responsible person to take a corrective action, a political subdivision may not request or order the person to take an action that conflicts with the action ordered by the director.

Subd. 2. AGENCY AND COMPELLED PERFORMANCE CORRECTIVE ACTIONS. The agency may take corrective action or request the attorney general to bring an action to compel performance of a corrective action if:

(1) a responsible person cannot be identified;

(2) an identified responsible person cannot or will not comply with the order issued under subdivision 1; or

(3) an administrative or judicial proceeding on an order issued under subdivision 1 is pending.

Subd. 3. EMERGENCY CORRECTIVE ACTION. To assure an adequate response to a release, the director may take corrective action without following the procedures of subdivision 1 if the director determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment. Before taking an action under this subdivision, the director shall make all reasonable efforts, taking into consideration the urgency of the situation, to order a responsible person to take a corrective action and notify the owner of real property where the corrective action is to be taken.

Subd. 4. RELEASE IS A PUBLIC NUISANCE. A release is a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

Subd. 5. INVESTIGATIONS. If the director has reason to believe that a release has occurred, the director may undertake reasonable investigations necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health and welfare or the environment.

Subd. 6. DUTY TO PROVIDE INFORMATION. A person who the director has reason to believe is a responsible person, or the owner of real property where corrective action is ordered to be taken, or who might otherwise have information concerning a release, shall, when requested by the director or any member, employee, or agent of the agency who is authorized by the director, furnish to the director any information that person may have or may reasonably obtain that is relevant to the release.

Subd. 7. ACCESS TO INFORMATION AND PROPERTY. The director or any member, employee, or agent of the agency authorized by the director,

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may, upon presentation of official agency credentials, take any of the following actions:

(1) examine and copy books, papers, records, memoranda, or data of a person who has a duty to provide information to the director under subdivision 6; and

(2) enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from a person who has a duty to provide the information under subdivision 6, conducting surveys and investigations, and taking corrective action.

Subd. 8. CLASSIFICATION OF DATA. Except as otherwise provided in this subdivision, data obtained from a person under subdivision 6 or 7 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information that would tend to adversely affect the competitive position of that person, the director shall classify the data as private or nonpublic data as defined in section 13.02. Data classified as private or nonpublic under this subdivision may be disclosed when relevant in a proceeding under sections 3 to 10.

Sec. 4. [115C.04] LIABILITY FOR RESPONSE COSTS.

Subdivision 1. CORRECTIVE ACTION LIABILITY. A responsible person is liable for the cost of the corrective action taken by the agency under section 3, subdivisions 2 and 3, including the cost of investigating the release and administrative and legal expenses, if:

(1) the responsible person has failed to take a corrective action ordered by the director and the agency has taken the action;

(2) the agency has taken corrective action in an emergency under section 3, subdivision 3; or

(3) the agency has taken corrective action because a responsible person could not be identified.

Subd. 2. AVOIDANCE OF LIABILITY. (a) A responsible person may not avoid the liability by means of a conveyance of any right, title, or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

(b) This subdivision does not:

(1) prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;

(2) prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

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(3) bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

Subd. 3. AGENCY COST RECOVERY. Reasonable and necessary expenses incurred by the agency in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action in district court brought by the attorney general against a responsible person. The agency's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. Expenses that are recovered under this section must be deposited in the fund.

Sec. 5. [115C.05] CIVIL PENALTY.

The agency may enforce section 3 using the actions and remedies authorized under section 115.071, subdivision 3. The civil penalties recovered by the state must be credited to the fund.

Sec. 6. [115C.06] EFFECT ON OTHER LAW.

Subdivision 1. ACTIONS UNDER CHAPTER 115B. Sections 3 to 10 do not limit any actions initiated by the agency under chapter 115B.

Subd. 2. DUTY TO NOTIFY AND TAKE ACTION FOR RELEASE. Sections 3 to 10 do not limit a person's duty to notify the agency and take action related to a release as provided in section 115.061.

Sec. 7. [115C.07] PETROLEUM TANK RELEASE COMPENSATION BOARD.

Subdivision 1. ESTABLISHMENT. The petroleum tank release compensation board consists of the director of the pollution control agency, the commissioner of commerce, two representatives from the petroleum industry, and one representative from the insurance industry. The governor shall appoint the members from the insurance and petroleum industry. The filling of positions reserved for industry representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by section 15.0575. The governor shall designate the chair of the board.

Subd. 2. STAFF. The commissioner of commerce shall provide staff to support the activities of the board.

Subd. 3. RULES. (a) The board shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

(b) The board may adopt emergency rules under this subdivision for one year after the effective date of this section.

Sec. 8. [115C.08] PETROLEUM TANK RELEASE CLEANUP FUND.

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Subdivision 1. REVENUE SOURCES. Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank release cleanup fund:

(1) the proceeds of the fee imposed by subdivision 3;

(2) money recovered by the state under sections 4, 5, and 15, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;

(3) interest attributable to investment of money in the fund;

(4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund; and

(5) fees charged for the operation of the tank installer certification program established under section 15.

Subd. 2. IMPOSITION OF FEE. The board shall notify the commissioner of revenue if the unexpended balance of the fund falls below \$1,000,000, and the commissioner of revenue shall impose the fee established in subdivision 3 on the use of a tank for a 30-day period, within 60 days of receiving notice from the board.

Subd. 3. PETROLEUM TANK RELEASE CLEANUP FEE. A petroleum tank release cleanup fee is imposed on the use of tanks that contain petroleum products subject to the inspection fee charged in section 296.13. The fee must be collected in the manner provided in sections 296.13 and 296.14. The fee must be imposed as required under subdivision 3, at a rate of \$10 per 1,000 gallons of petroleum products as defined in section 296.01, subdivision 2, rounded to the nearest 1,000 gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 296.15.

Subd. 4. EXPENDITURES. Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in sections 3 to 10;

(2) for agency administrative costs under sections 116.46 to 116.50, sections 3 to 6, and section 15 and costs of corrective action taken by the agency under section 3, including investigations;

(3) for costs of recovering expenses of corrective actions under section 4; and

(4) for training, certification, and rulemaking under sections 116.46 to 116.50 and section 15.

Sec. 9. [115C.09] CORRECTIVE ACTION REIMBURSEMENT TO RESPONSIBLE PERSONS.

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Subdivision 1. REIMBURSABLE CORRECTIVE ACTIONS. The board shall provide partial reimbursement for the cost of corrective action to eligible responsible persons for releases reported after the effective date of sections 1 to 10.

Subd. 2. RESPONSIBLE PERSON ELIGIBILITY. (a) A responsible person who has taken corrective action in response to a release reported after the effective date of sections 1 to 10 may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board.

(b) A reimbursement may not be made unless the board determines that:

(1) the director has determined that the corrective action has adequately addressed the release and that the release no longer poses a threat to public health and welfare or the environment;

(2) at the time of the release the tank was in compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility;

(3) the agency was given notice of the release as required by section 115.061;

(4) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

(5) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

Subd. 3. REIMBURSEMENT. (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the fund for 75 percent of the portion of the total corrective action costs greater than \$10,000 and less than \$100,000.

(b) A reimbursement may not be made from the fund under this subdivision until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) Money in the fund is appropriated to the board to make reimbursements under this section.

Subd. 4. REIMBURSEMENT DOES NOT AFFECT OTHER LIABILITY. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

Sec. 10. [115C.10] FUNDING OF AGENCY ACTIONS.

Subdivision 1. PAYMENT FROM THE FUND. (a) If the cost of authorized actions under section 3 exceeds the amount appropriated to the agency for the actions and amounts awarded to the agency from the federal government,

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the agency may apply to the board for money to pay for the actions from the fund. The board shall pay the agency the cost of the proposed actions under section 3 if the board finds that the conditions for the agency to be paid from the fund have been met, and that an adequate amount exists in the fund to pay for the corrective action.

(b) Money in the fund is appropriated to the board for the purpose of this subdivision.

Subd. 2. FEDERAL FUNDS. The director shall take actions needed to obtain federal funding to carry out the provisions of the petroleum tank release cleanup act.

Sec. 11. Minnesota Statutes 1986, section 116.46, is amended by adding a subdivision to read:

Subd. 2a. INSTALLER. "Installer" means a person who places, constructs, or repairs an aboveground or underground tank, or permanently takes an aboveground or underground tank out of service.

Sec. 12. Minnesota Statutes 1986, section 116.46, is amended by adding a subdivision to read:

Subd. 9. ABOVEGROUND STORAGE TANK. "Aboveground storage tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank.

Sec. 13. Minnesota Statutes 1986, section 116.47, is amended to read:

116.47 EXEMPTIONS.

Sections 116.48 ~~and~~, 116.49, and section 15 do not apply to:

(1) farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

(2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29;

(3) surface impoundments, pits, ponds, or lagoons;

(4) storm water or waste water collection systems;

(5) flow-through process tanks;

(6) tanks located in an underground area, including basements, cellars, mine-

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workings, drifts, shafts, or tunnels, if the storage tank is located upon or above the surface of the floor; or

(7) septic tanks.

Sec. 14. Minnesota Statutes 1986, section 116.48, subdivision 4, is amended to read:

Subd. 4. **DEPOSIT INFORMATION.** Beginning ~~January 1, 1986,~~ on the effective date of this section and until July 1, 1987, a person who ~~deposits~~ transfers the title to regulated substances ~~is to be placed directly into~~ an underground storage tank must inform the owner or operator in writing of the notification requirement of this section.

Sec. 15. **[116.491] TANK INSTALLERS TRAINING AND CERTIFICATION.**

Subdivision 1. REQUIREMENT. (a) After the effective date of rules adopted under subdivision 3, a person may not install, repair, or take an aboveground or underground tank permanently out of service without first obtaining a certification of competence issued by the agency.

(b) The agency shall conduct examinations to test the competence of applicants for certification, issue documentation of certification, and require certification to be renewed at reasonable intervals. The agency may conduct training programs for installers.

Subd. 2. FEES. The agency may charge fees as are necessary to cover the actual costs of processing applications, conducting examinations, issuing and renewing certificates, and providing training programs. The fees received under this section must be credited to the petroleum tank release cleanup fund.

Subd. 3. RULES. The agency shall adopt rules containing standards of competence for installers and to implement this section.

Sec. 16. **INITIAL FUNDING FOR PETROLEUM TANK RELEASE CLEANUP FUND.**

To provide the initial funding for the petroleum tank release cleanup fund, the commissioner of revenue shall impose the fee established in section 8, subdivision 3, in the months of September and October 1987 for collection during the months of October and November 1987.

Sec. 17. **APPROPRIATION.**

Subdivision 1. PETROLEUM TANK RELEASE CLEANUP FUND. (a) \$719,200 is appropriated from the general fund for transfer to the petroleum tank release cleanup fund.

(b) The amount appropriated in paragraph (a) is appropriated from the

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petroleum tank release cleanup fund and must be transferred to the general fund by June 30, 1988.

Subd. 2. POLLUTION CONTROL AGENCY. (a) The following amounts are appropriated from the petroleum tank release cleanup fund for the fiscal years indicated:

	<u>1988</u>	<u>1989</u>
<u>Pollution Control Agency</u>		
<u>Administration</u>	\$386,400	\$397,500
<u>Corrective/Investigative</u>		
<u>Action Costs</u>	\$250,000	\$350,000

(b) Expenses incurred by the agency under section 3 must be paid by the agency from the appropriation in this subdivision. Before using this appropriation, the agency shall use any federal money available to pay for corrective actions, except that the fund may be used to pay any state match required by federal law. The director shall report to the petroleum tank release compensation board describing the corrective or investigative action being taken, the reason that the appropriation is being used to pay for that action, and an estimate of the cost of that action.

(c) The approved complement of the agency is increased by eight positions in fiscal year 1988 and by one additional position in fiscal year 1989.

Subd. 3. DEPARTMENT OF COMMERCE. The following amounts are appropriated from the petroleum tank release cleanup fund for the fiscal years indicated:

	<u>1988</u>	<u>1989</u>
<u>Department of Commerce</u>		
<u>Administration</u>	\$82,800	\$55,400

The approved complement of the department of commerce is increased by two positions.

Sec. 18. EFFECTIVE DATE.

Sections 1 to 15 are effective the day following final enactment. The portion of section 14 that relieves a person who deposits regulated substances in an underground storage tank from the responsibility for informing the owner or operator in writing of the notification requirement of Minnesota Statutes, section 116.48, is effective retroactively to January 1, 1986. Sections 16 and 17 are effective July 1, 1987.

Approved June 3, 1987

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