

This act is effective the day following final enactment.

Presented to the governor May 19, 1989

Signed by the governor May 19, 1989, 11:49 p.m.

CHAPTER 226—S.F.No. 997

An act relating to the environment; authorizing the pollution control agency to assist persons in reviewing real property for petroleum tank releases and to be paid for such assistance; authorizing expenditures from the petroleum tank release compensation fund; changing the terms for reimbursement of petroleum tank release costs by the petroleum tank release compensation board; requiring notification by owners of aboveground tanks; amending Minnesota Statutes 1988, sections 115C.03, by adding a subdivision; 115C.08, subdivision 4; 115C.09; and 116.48.

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

Section 1. Minnesota Statutes 1988, section 115C.03, is amended by adding a subdivision to read:

Subd. 9. REQUESTS FOR REVIEW, INVESTIGATION, AND OVERSIGHT. (a) The commissioner may, upon request:

(1) assist in determining whether a release has occurred; and

(2) assist in or supervise the development and implementation of reasonable and necessary response actions.

(b) Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports and corrective action plans and implementation.

(c) The person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. Money received by the agency for assistance under this subdivision must be deposited in the state treasury and credited to the fund.

Sec. 2. Minnesota Statutes 1988, section 115C.08, subdivision 4, is amended to read:

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

(1) to administer the petroleum tank release cleanup program established in sections 115C.03 to 115C.10;

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

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(3) for costs of recovering expenses of corrective actions under section 115C.04; ~~and~~

(4) for training, certification, and rulemaking under sections 116.46 to 116.50; ~~and~~

(5) for agency administrative costs of enforcing rules governing the construction, installation, operation, and closure of aboveground and underground petroleum storage tanks.

Sec. 3. Minnesota Statutes 1988, section 115C.09, is amended to read:

115C.09 CORRECTIVE ACTION REIMBURSEMENT TO RESPONSIBLE AND OTHER PERSONS.

Subdivision 1. **REIMBURSABLE CORRECTIVE ACTIONS COSTS.** (a) The board shall provide partial reimbursement ~~for the cost of corrective action~~ to eligible responsible persons for reimbursable costs incurred after June 4, 1987.

(b) The following costs shall be considered reimbursable for purposes of this section:

(1) corrective action costs incurred by the responsible person; and

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury or property damage caused by a release if the responsible person's liability for the costs has been established by a court order or a consent decree.

(c) A cost for liability to a third party is considered to be incurred by the responsible person when an order or consent decree establishing the liability is entered. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

Subd. 2. **RESPONSIBLE PERSON ELIGIBILITY.** (a) A responsible person who has ~~taken corrective action and~~ incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board. The board may consider applications for reimbursement after the commissioner has approved a design for corrective action that the commissioner determines will adequately address the release. The board may also consider applications when the corrective action has been fully constructed or installed and periodically afterward as the corrective action continues operation.

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

~~(4) the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release and that the release no longer poses a threat to public health and welfare or the environment; in terms of public health, welfare, and the environment.~~

(c) The board shall reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with one or more of the following requirements:

~~(2) (1) at the time of the release the tank was in substantial compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility;~~

~~(3) (2) the agency was given notice of the release as required by section 115.061;~~

~~(4) (3) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and~~

~~(5) (4) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.~~

(d) The reimbursement shall be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (c), clauses (1) to (4). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subd. 3. **REIMBURSEMENT.** (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the fund for ~~75~~ 90 percent of the portion of the total ~~corrective action~~ reimbursable costs ~~greater than \$10,000 and less than \$100,000~~ \$250,000. Not more than \$250,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement.

(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.

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

Subd. 3a. **ELIGIBILITY OF OTHER PERSONS.** Notwithstanding the provisions of subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

(1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;

(2) the commissioner has determined that the person was not a responsible person under section 115C.02; and

(3) the costs for which reimbursement is requested were actually incurred and were reasonable.

Subd. 3b. VOLUNTEER ELIGIBILITY. (a) Notwithstanding subdivisions 1 to 3, a person may apply to the board for partial reimbursement under subdivision 3 who:

(1) is not a responsible person under section 115C.02;

(2) holds legal or equitable title to the property where a release occurred; and

(3) incurs reimbursable costs on or after the effective date of this subdivision.

(b) A person eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.

(c) The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with the provisions of subdivision 2, paragraph (c).

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.

Subd. 5. RETURN OF REIMBURSEMENT. (a) The board may demand the complete or partial return of any reimbursement made under this section if the responsible person:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this section; or

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release.

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(b) If a reimbursement under this subdivision is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the responsible person. If the board's demand for return of the reimbursement is based on willful actions of the responsible person, the responsible person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

Sec. 4. Minnesota Statutes 1988, section 116.48, is amended to read:

116.48 NOTIFICATION REQUIREMENTS.

Subdivision 1. **TANK STATUS.** (a) An owner of an underground storage tank must notify the agency by June 1, 1986, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

(b) An owner of an aboveground storage tank must notify the agency by June 1, 1990, or within 30 days after installation, whichever is later, of the tank's existence and specify the age, size, type, location, uses, and contents of the tank on forms prescribed by the agency.

Subd. 2. **ABANDONED TANKS.** An owner of an underground or aboveground storage tank permanently taken out of service on or after January 1, 1974, must notify the agency by June 1, 1986, in the case of underground storage tanks; by June 1, 1990, in the case of aboveground storage tanks; or, in either case, within 30 days of discovery, whichever is later, of the existence of the tank and specify or estimate to the best of the owner's knowledge on forms prescribed by the agency, the date the tank was taken out of service, the age, size, type, and location of the tank, and the type and quantity of substance remaining in the tank.

Subd. 3. **CHANGE IN STATUS.** An owner must notify the agency within 30 days of a permanent removal from service or a change in the reported uses, contents, or ownership of ~~the~~ an underground or aboveground storage tank.

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

Subd. 5. **SELLER'S RESPONSIBILITY.** A person who sells a tank intended to be used as an underground or aboveground storage tank or property that the seller knows contains an underground or aboveground storage tank must inform the purchaser in writing of the owner's notification requirements of this section.

Subd. 6. **AFFIDAVIT.** Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank or con-

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tained an underground or aboveground storage tank that had a release for which no corrective action was taken, the owner shall record with the county recorder or registrar of titles of the county in which the property is located an affidavit containing:

- (1) a legal description of the property where the tank is located;
- (2) a description of the tank, of the location of the tank, and of any known release from the tank of a regulated substance;
- (3) a description of any restrictions currently in force on the use of the property resulting from any release; and
- (4) the name of the owner.

The county recorder shall record the affidavits in a manner that will insure their disclosure in the ordinary course of a title search of the subject property. Before transferring ownership of property that the owner knows contains an underground or aboveground storage tank, the owner shall deliver to the purchaser a copy of the affidavit and any additional information necessary to make the facts in the affidavit accurate as of the date of transfer of ownership.

Subd. 7. **RECORDING OF REMOVAL AFFIDAVIT.** If an affidavit has been recorded under subdivision 6 and the tank and any regulated substance released from the tank have been removed from the property in accordance with applicable law, the owner or other interested party may file with the county recorder or registrar of titles an affidavit stating the name of the owner, the legal description of the property, the place and date of filing and document number of the affidavit filed under subdivision 6, and the approximate date of removal of the tank and regulated substance. Upon filing the affidavit described in this subdivision, the affidavit and the affidavit filed under subdivision 6, together with the information set forth in the affidavits, cease to constitute either actual or constructive notice.

Sec. 5. EFFECTIVE DATE.

Sections 1 to 4 are effective the day following final enactment.

Presented to the governor May 19, 1989

Signed by the governor May 22, 1989, 11:18 p.m.

CHAPTER 227—S.F.No. 1011

An act relating to highways; redesignating the AMVETS memorial highway as the American Veterans Memorial Highway; amending Minnesota Statutes 1988, section 161.14, subdivision 23.

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