

Presented to the governor April 16, 1992

Signed by the governor April 20, 1992, 4:45 p.m.

CHAPTER 490—S.F.No. 2430

An act relating to the environment; adding sanctions and procedures relating to petroleum tank release consultants and contractors; requiring a report to the legislature; amending Minnesota Statutes 1990, sections 115C.01; 115C.02, subdivision 1, and by adding subdivisions; 115C.03, by adding a subdivision; 116.48, by adding a subdivision; Minnesota Statutes 1991 Supplement, section 115C.09, subdivisions 5 and 7; proposing coding for new law in Minnesota Statutes, chapter 115C.

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

Section 1. Minnesota Statutes 1990, section 115C.01, is amended to read:

115C.01 CITATION.

~~Sections 115C.01 to 115C.10~~ This chapter may be cited as the "petroleum tank release cleanup act."

Sec. 2. Minnesota Statutes 1990, section 115C.02, subdivision 1, is amended to read:

Subdivision 1. **APPLICABILITY.** The definitions in this section apply to ~~sections 115C.02 to 115C.10~~ this chapter.

Sec. 3. Minnesota Statutes 1990, section 115C.02, is amended by adding a subdivision to read:

Subd. 5a. CONSULTANT. "Consultant" means an individual, partnership, association, private corporation, or any other legal entity that provides consulting services. Consulting services include the rendering of professional opinion, advice, or analysis regarding a release.

Sec. 4. Minnesota Statutes 1990, section 115C.02, is amended by adding a subdivision to read:

Subd. 5b. CONTRACTOR. "Contractor" means an individual, partnership, association, private corporation, or any other legal entity that provides contractor services. Contractor services means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical work, plumbing, carpentry, and equipment.

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Sec. 5. Minnesota Statutes 1990, section 115C.03, is amended by adding a subdivision to read:

Subd. 10. RETENTION OF RECORDS. A person who applies for reimbursement under this chapter and a contractor or consultant who has billed the applicant for services that are part of the claim for reimbursement must maintain all records related to the claim for reimbursement for a minimum of five years from the date the claim for reimbursement is submitted to the board.

Sec. 6. [115C.045] KICKBACKS.

A consultant or contractor, as a condition of performing services, may not agree to pay or forgive the nonreimbursable portion of an application for reimbursement submitted under this chapter. An applicant may not accept forgiveness or demand payment from a consultant or contractor for the nonreimbursable portion of an application for reimbursement submitted under this chapter.

Sec. 7. [115C.065] CONSULTANT'S OR CONTRACTOR'S DUTY TO NOTIFY.

A consultant or contractor involved in the removal of a petroleum tank shall immediately notify the agency if field instruments or laboratory tests indicate the presence of any petroleum contamination in excess of state guidelines.

Sec. 8. Minnesota Statutes 1991 Supplement, section 115C.09, subdivision 5, is amended to read:

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

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

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release, unless the reimbursement was made under subdivision 3a; or

(3) fails to reimburse a person for agreed-to amounts for corrective actions taken in response to a request by the applicant; or

(4) has entered an agreement to settle or compromise any portion of the incurred costs, in which case the amount returned must be prorated in proportion to the amount of the settlement or compromise.

(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 applicant. If the board's demand for return of the reimburse-

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ment is based on willful actions of the applicant, the applicant 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. 9. Minnesota Statutes 1991 Supplement, section 115C.09, subdivision 7, is amended to read:

Subd. 7. **DUTY TO PROVIDE INFORMATION.** (a) A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing. The board may obtain access to information required to be made available under this subdivision in the manner provided in section 115C.03, subdivision 7.

(b) After reimbursement has been granted, an agreement to settle or compromise any portion of the incurred costs must be reported to the board by the parties to the agreement.

Sec. 10. [115C.11] **CONSULTANTS AND CONTRACTORS; SANCTIONS.**

Subdivision 1. REGISTRATION. (a) All consultants and contractors must register with the board in order to participate in the petroleum tank release cleanup program.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors including an identification of the services offered.

(c) An applicant who applies for reimbursement must use a registered consultant and contractor in order to be eligible for reimbursement.

(d) The commissioner must inform any person who notifies the agency of a release under section 115.061 that the person must use a registered consultant or contractor to qualify for reimbursement and that a list of registered consultants and contractors is available from the board.

(e) Work performed by an unregistered consultant or contractor is ineligible for reimbursement.

(f) Work performed by a consultant or contractor prior to being removed from the registration list may be reimbursed by the board.

Subd. 2. **DISQUALIFICATION.** (a) The board must automatically remove from the registration list for five years a consultant or contractor who is convicted in a criminal proceeding for submitting false or fraudulent bills that are part of a claim for reimbursement under section 115C.09. The board may, in addition, impose one or more of the sanctions in paragraph (c).

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(b) The board may impose sanctions under paragraph (c) on a consultant or contractor for any of the following reasons:

(1) engaging in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) participating in a kickback scheme prohibited under section 115C.045;

(3) engaging in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;

(4) commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(5) revocation, suspension, restriction, limitation, or other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction.

(c) The board may impose one or more of the following sanctions:

(1) remove a consultant or contractor from the registration list for up to five years;

(2) publicly reprimand or censure the consultant or contractor;

(3) place the consultant or contractor on probation for a period and upon terms and conditions the board prescribes;

(4) require payment of all costs of proceedings resulting in an action instituted under this paragraph; or

(5) impose a civil penalty of not more than \$10,000, in an amount that the board determines will deprive the consultant or contractor of any economic advantage gained by reason of the consultant's or contractor's conduct or to reimburse the board for the cost of the investigation and proceeding.

(d) In deciding whether a particular sanction is appropriate, the board must consider the seriousness of the consultant's or contractor's acts or omissions and any mitigating factors.

(e) Civil penalties recovered by the state under this section must be credited to the account.

Subd. 3. NOTICE OF SANCTION. The board must notify a consultant or contractor of a proposed sanction at least 30 days before the board meeting at which the proposed sanction will be considered. The notice must advise the consultant or contractor of:

(1) the fact that sanctions are being considered;

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(2) the reasons for the proposed sanctions in terms sufficient to put the consultant or contractor on notice of the conduct on which the proposed sanctions are based;

(3) the reasons relied on under subdivision 2 for the proposed sanctions;

(4) the right to request a contested case hearing under chapter 14; and

(5) the potential effect of sanctions.

Subd. 4. SANCTION ORDER. The board may impose sanctions after a hearing before the board if a contested case hearing has not been requested. The board's sanction order is final. The sanctions are effective 30 days after the board issues its order.

Sec. 11. Minnesota Statutes 1990, section 116.48, is amended by adding a subdivision to read:

Subd. 8. NOTICE OF TANK INSTALLATION OR REMOVAL. Before beginning installation or removal of an underground tank system, owners and operators must notify the commissioner. Notification must be in writing or by telephone at least ten days before the tank installation or removal. Owners and operators must renotify the commissioner if the date of the tank installation or removal changes by more than 48 hours. The notification must include the following information:

(1) the name, address, and telephone number of the site owner;

(2) the location of the site, if different from clause (1);

(3) the date of the tank installation or removal; and

(4) the name of the contractor or company that will install or remove the tank.

Sec. 12. **REPORT TO LEGISLATURE.**

The commissioners of the pollution control agency and commerce shall jointly prepare a report that:

(1) describes the corrective action costs for which reimbursement has been paid under Minnesota Statutes, section 115C.09; and

(2) lists reasonable charges for corrective action services, including consulting, contracting, and disposal services.

The report must be submitted by January 15, 1993, to the appropriate committees of the legislature.

Presented to the governor April 16, 1992

New language is indicated by underline, deletions by ~~strikeout~~.

Signed by the governor April 20, 1992, 4:36 p.m.

CHAPTER 491—H.F.No. 2435

An act relating to the department of employee relations; public employment; removing a committee's expiration date; modifying retirement program options; expanding a bidding requirement exemption; amending Minnesota Statutes 1990, section 43A.316, subdivisions 4, 6, and 10; Minnesota Statutes 1991 Supplement, section 43A.316, subdivision 8; repealing Laws 1990, chapter 589, article 2, section 3.

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

Section 1. Minnesota Statutes 1990, section 43A.316, subdivision 4, is amended to read:

Subd. 4. **LABOR-MANAGEMENT COMMITTEE.** The labor-management committee consists of ten members appointed by the commissioner. The labor-management committee must comprise five members who represent employees, including at least one retired employee, and five members who represent eligible employers. Committee members are eligible for expense reimbursement in the same manner and amount as authorized by the commissioner's plan adopted under section 43A.18, subdivision 2. The commissioner shall consult with the labor-management committee in major decisions that affect the plan. The committee shall study issues relating to the insurance plan including, but not limited to, flexible benefits, utilization review, quality assessment, and cost efficiency. ~~The committee expires as provided in section 45.059, subdivision 5.~~

Sec. 2. Minnesota Statutes 1990, section 43A.316, subdivision 6, is amended to read:

Subd. 6. **COVERAGE.** (a) By January 1, 1989, the commissioner shall announce the benefits of the plan. The plan shall include employee hospital, medical, dental, and life insurance for employees and hospital and medical benefits for dependents. Health maintenance organization options and other delivery system options ~~shall~~ may be provided if they are available, cost effective, and capable of servicing the number of people covered in the plan. Participation in optional coverages may be provided by collective bargaining agreements. For employees not represented by an exclusive representative, the employer may offer the optional coverages to eligible employees and their dependents provided in the plan.

(b) The commissioner, with the assistance of the labor-management committee, shall periodically assess whether it is financially feasible for the plan to offer or to continue an individual retiree program that has competitive premium rates and benefits. If the commissioner determines it to be feasible to offer an

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