

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 8:45 a.m.

CHAPTER 240—S.F.No. 507

An act relating to the environment; modifying the petroleum tank release cleanup program; providing for payment for a site assessment prior to tank removal; modifying reimbursement provisions; adding requirements for tank monitoring; establishing registration requirements; modifying program and liability provisions; clarifying liability for oil discharges; amending Minnesota Statutes 1994, sections 88.171, subdivision 2; 115C.02, by adding subdivisions; 115C.03, subdivision 10; 115C.09, subdivisions 2, 3, 3b, and 3c; 115C.11, subdivisions 1 and 2; 115C.12; 115C.13; 115E.01, by adding subdivisions; 115E.04, subdivision 2; 115E.06; and 115E.061; proposing coding for new law in Minnesota Statutes, chapters 115C; and 116.

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

ARTICLE 1

Section 1. Minnesota Statutes 1994, section 115C.02, is amended by adding a subdivision to read:

Subd. 11a. PREREMOVAL SITE ASSESSMENT. "Preremoval site assessment" means actions defined in section 115A.092 which are taken by a registered consultant or the consultant's subcontractor prior to the removal of a petroleum storage tank in order to determine whether a release has occurred in the area immediately surrounding the tank.

Sec. 2. Minnesota Statutes 1994, section 115C.02, is amended by adding a subdivision to read:

Subd. 12a. RESIDENTIAL SITE. "Residential site" means a site containing a residence used for permanent habitation by an applicant. A residence may be part of a multipurpose or multidwelling building, but shall not include multi-dwelling units which contain more than two separate residences, or buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

Sec. 3. Minnesota Statutes 1994, section 115C.03, subdivision 10, is amended to read:

Subd. 10. ~~RETENTION OF~~ RETENTION OF CORRECTIVE ACTION RECORDS. A per-

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~~son who applies for reimbursement under this chapter and a contractor or consultant who has billed the applicant for corrective action services that are part of the claim for reimbursement must maintain~~ prepare and retain all records related to the ~~claim for reimbursement~~ corrective action services for a minimum of ~~five~~ seven years from the date the ~~claim for reimbursement is submitted to the board;~~ corrective action services are performed, including, but not limited to, invoices submitted to applicants, subcontractor invoices, receipts for equipment rental, and all other goods rented or purchased, personnel time reports, mileage logs, and expense accounts. An applicant must obtain and retain records necessary to document costs submitted in a claim for reimbursement for corrective action services for seven years from the date the claim is submitted to the board.

Sec. 4. Minnesota Statutes 1994, section 115C.09, subdivision 2, is amended to read:

Subd. 2. **RESPONSIBLE PERSON ELIGIBILITY.** (a) A responsible person who has 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 at the following stages:

(1) after the commissioner approves ~~a plan for~~ corrective action actions related to soil ~~contamination~~ excavation and treatment or after the commissioner determines that further soil excavation and treatment should not be done;

(2) after the commissioner determines that the ~~corrective action plan~~ actions described in clause (1) ~~has~~ have been fully constructed or installed, ~~or completed;~~

(3) after the commissioner approves a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary;

(4) after the commissioner determines that the corrective action necessary to adequately address the release has been fully constructed or installed; and

(5) periodically afterward as the corrective action continues operation, but no more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(b) The commissioner shall review a plan, and provide an approval or disapproval to the responsible person and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (3), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete application within 60 days of submission of the application under paragraph (a), clauses (1) and (2), and within 120 days of submission of the application under paragraph (a), clauses (3) and (4), or the board shall explain

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for the record why additional time is necessary. For purposes of the preceding sentence, board consideration of an application is timely if it occurs at the regularly scheduled meeting following the deadline. Board staff may review applications submitted to the board simultaneous to the commissioner's consideration of the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(c) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

Sec. 5. Minnesota Statutes 1994, section 115C.09, subdivision 3, is amended to read:

Subd. 3. **REIMBURSEMENTS; SUBROGATION; APPROPRIATION.**

(a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the account ~~for~~ in the following amounts:

(1) 90 percent of the total reimbursable costs on the first \$250,000 and 75 percent on any remaining costs in excess of \$250,000 on a site; or

(2) for corrective actions at a residential site used as a permanent residence at the time the release was discovered, 92.5 percent of the total reimbursable costs on the first \$100,000 and 100 percent of any remaining costs in excess of \$100,000.

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

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

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

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(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(e) (f) A reimbursement may not be made from the account under this subdivision in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the responsible person has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the responsible person under this subdivision.

(d) (g) If the board reimburses a responsible person for costs for which the responsible person has petroleum tank leakage or spill insurance coverage, the board is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by a responsible person of reimbursement constitutes an assignment by the responsible person to the board of any rights of the responsible person with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the responsible party the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the responsible person was denied coverage by the insurer.

(e) (h) Money in the account is appropriated to the board to make reimbursements under this section. A reimbursement to a state agency must be credited to the appropriation account or accounts from which the reimbursed costs were paid.

(f) (i) The board ~~shall~~ may reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

(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;~~

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

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

(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.~~

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(3) the state and federal rules and regulations applicable to the condition or operation of the tank when the noncompliance caused or failed to mitigate the release.

~~(e)~~ (j) The reimbursement ~~shall~~ may be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph ~~(f)~~ (i), clauses (1) to ~~(4)~~ (3). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the ~~likely~~ reasonable determination by the agency of the 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.

~~(h)~~ (k) A person may assign the right to receive reimbursement to each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. An assignment must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the responsible person, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the responsible person is valid unless terminated by filing a termination with the board, in a form prescribed by the board, which must include the written concurrence of the assignee. The board shall maintain an index of assignments filed under this paragraph. The board shall pay the reimbursement to the responsible person and to one or more assignees by a multiparty check. The board has no liability to a responsible person for a payment under an assignment meeting the requirements of this paragraph.

Sec. 6. Minnesota Statutes 1994, section 115C.09, subdivision 3b, is amended to read:

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 May 23, 1989.

(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.

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(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 3, paragraph ~~(f)~~ (i), except that the board may not reduce the reimbursement to a mortgagee who acquires title to the property through foreclosure or receipt of a deed in lieu of foreclosure.

Sec. 7. Minnesota Statutes 1994, section 115C.09, subdivision 3c, is amended to read:

Subd. 3c. **RELEASE AT REFINERIES AND TANK FACILITIES NOT ELIGIBLE FOR REIMBURSEMENT.** (a) Notwithstanding other provisions of subdivisions 1 to 3b, a reimbursement may not be made under this section for costs associated with a release:

(1) from a tank located at a petroleum refinery; or

(2) from a tank facility, including a pipeline terminal, with more than 1,000,000 gallons of total petroleum storage capacity at the tank facility.

(b) Paragraph (a), clause (2), does not apply to reimbursement for costs associated with a release from a tank facility:

(1) owned or operated by a person engaged in the business of mining iron ore or taconite;

(2) owned by a political subdivision, a housing and redevelopment authority, an economic development authority, or a port authority that acquired the tank facility prior to May 23, 1989; or

(3) owned by a person:

(i) who acquired the tank facility prior to May 23, 1989;

(ii) who did not use the tank facility for the bulk storage of petroleum; and

(iii) who is not affiliated with the party who used the tank facility for the bulk storage of petroleum.

Sec. 8. **[115C.092] TANK REMOVALS; PAYMENT FOR PREREMOVAL SITE ASSESSMENT.**

Subdivision 1. PREREMOVAL SITE ASSESSMENT; REIMBURSEMENT. (a) Preremoval site assessment costs which are in compliance with the requirements of this chapter and with rules promulgated under this chapter shall be reimbursable. The applicant shall obtain written competitive proposals for the preremoval site assessment on a form prescribed by the board utilizing, as appropriate, tasks and costs established in rules promulgated under this chapter governing the initial site assessment.

(b) If contamination is found at the site, the board shall reimburse an appli-

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cant upon submission of the applicant's first application for reimbursement under section 115C.09, subdivision 2. If no contamination is found at the site, the board shall reimburse the applicant upon provision by the applicant of documentation that the tank or tanks have been removed from the site.

(c) Notwithstanding any provision in this subdivision to the contrary, the board shall not reimburse for a preremoval site assessment which is done for the purposes of facilitating a property transfer. The board shall presume that a preremoval site assessment is done for the purposes of facilitating a property transfer if the property is transferred within three months of incurring preremoval site assessment costs.

Subd. 2. REQUIREMENTS OF A PREREMOVAL SITE ASSESSMENT. The preremoval site assessment shall include a preremoval site assessment report to the tank owner as prescribed in subdivision 3 and (1) three borings if one tank is to be removed, or (2) five borings if more than one tank is to be removed. The placement of the borings shall be based on the tank system location, estimated depth and gradient of groundwater, and the maximum probability of encountering evidence of petroleum contamination.

Subd. 3. REPORT TO TANK OWNER. The consultant shall prepare a preremoval site assessment report which must include the following:

(1) a summary of any unusual site features affecting the preremoval site assessment and subsequent corrective action;

(2) the opinion of the consultant as to the presence and relative magnitude of any petroleum contamination on the site;

(3) the recommendation of the consultant as to whether further corrective action is needed, including groundwater remediation;

(4) the recommendation of the consultant as to whether the contaminated soil, if any, should be excavated and the volume of soil that should be excavated;

(5) a statement as to whether a petroleum tank release was reported to the agency and the date and time of that report, if any; and

(6) the signature of the consultant or contractor, and the date the report was prepared.

If further corrective action is recommended by the consultant, the preremoval site assessment report and any additional information gathered by the consultant during the assessment shall be used for securing competitive bids or proposals on forms prescribed by the board to implement corrective actions at the site, consistent with rules promulgated under this chapter.

Subd. 4. BID AND INVOICE FORMS; AGENCY FACT SHEETS. By August 1, 1995, the board shall prescribe a preremoval site assessment bid and

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invoice form as described in subdivision 1 and the agency shall publish fact sheets applicable to the preremoval site assessment.

Sec. 9. Minnesota Statutes 1994, section 115C.11, subdivision 1, is amended to read:

Subdivision 1. **REGISTRATION.** (a) All consultants and contractors who perform corrective action services must register with the board ~~in order to participate in the petroleum tank release cleanup program. In order to register, consultants must meet and demonstrate compliance with the following criteria:~~

(1) provide a signed statement to the board verifying agreement to abide by this chapter and the rules adopted under it and to include a signed statement with each claim that all costs claimed by the consultant are a true and accurate account of services performed;

(2) provide a signed statement that the consultant shall make available for inspection any records requested by the board for field or financial audits under the scope of this chapter;

(3) certify knowledge of the requirements of this chapter and the rules adopted under it;

(4) obtain and maintain professional liability coverage, including pollution impairment liability; and

(5) agree to submit to the board a certificate or certificates verifying the existence of the required insurance coverage.

(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~~ All corrective action services must be performed by registered consultant consultants and contractor in order to be eligible for reimbursement contractors.

~~(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~~ Reimbursement for corrective action services performed by an unregistered consultant or contractor is ineligible for reimbursement subject to reduction under section 115C.09, subdivision 3, paragraph (i).

~~(f) Work (e)~~ Corrective action services performed by a consultant or contractor prior to being removed from the registration list may be reimbursed without reduction by the board.

~~(g) (f)~~ If the information in an application for registration becomes inaccu-

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rate or incomplete in any material respect, the registered consultant or contractor must promptly file a corrected application with the board.

(h) (g) Registration is effective on the date a complete application is received by the board. The board may reimburse without reduction the cost of work performed by an unregistered contractor if the contractor performed the work within 30 days of the effective date of registration.

Sec. 10. Minnesota Statutes 1994, section 115C.11, subdivision 2, is amended to read:

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).

(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; or

(6) if the person is a consultant, failure to comply with any of the ongoing obligations for registration as a consultant in subdivision 1, paragraph (a).

(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

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(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.

Sec. 11. Minnesota Statutes 1994, section 115C.12, is amended to read:

115C.12 APPEAL OF REIMBURSEMENT DETERMINATION.

Subdivision 1. APPEAL FROM DETERMINATION OF COMMISSIONER OF COMMERCE. (a) ~~A person may appeal to the board within 90 days after notice of a reimbursement determination made under section 115C.09 by submitting a written notice setting forth the specific basis for the appeal.~~

~~(b) The board shall consider the appeal within 90 days of the notice of appeal. The board shall notify the appealing party of the date of the meeting at which the appeal will be heard at least 30 days before the date of the meeting.~~

~~(c) The board's decision must be based on the written record and written arguments and submissions unless the board determines that oral argument is necessary to aid the board in its decision making. Any written submissions must be delivered to the board at least 15 days before the meeting at which the appeal will be heard. Any request for the presentation of oral argument must be in writing and submitted along with the notice of appeal. An applicant for reimbursement may appeal to the board a reimbursement determination made by the commissioner of commerce under authority delegated by the board according to section 115C.09, subdivision 10. The commissioner of commerce shall send written notification of the reimbursement determination by first class United States mail to the applicant for reimbursement at the applicant's last known address. The applicant for reimbursement must file written notice with the board of an appeal of a reimbursement determination made by the commissioner of commerce within 60 days of the date that the commissioner of commerce sends written notice to the applicant of the reimbursement determination. The board shall consider the appeal within 90 days of receipt of the written notice of appeal by the applicant for reimbursement.~~

Subd. 2. APPEAL FROM DECISION OF THE BOARD. (a) An applicant for reimbursement may appeal a reimbursement determination of the board as a contested case under chapter 14. An applicant for reimbursement must provide written notification to the board of a request for a contested case within 30 days of the date that the board makes a reimbursement determination.

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(b) This subdivision applies to reimbursement determinations made by the board as a result of an appeal to the board under subdivision 1 and reimbursement determinations made by the board when the board has not delegated its authority to make reimbursement determinations.

Sec. 12. Minnesota Statutes 1994, section 115C.13, is amended to read:

115C.13 REPEALER.

Sections 115C.01, 115C.02, 115C.021, 115C.03, 115C.04, 115C.045, 115C.05, 115C.06, 115C.065, 115C.07, 115C.08, 115C.09, 115C.092, 115C.10, 115C.11, and 115C.12, are repealed effective June 30, 2000.

Sec. 13. [116.481] MONITORING.

Subdivision 1. MEASUREMENT OF TANK CAPACITY. (a) By September 1, 1996, all aboveground tanks of 2,000 gallons or more used for storage and subsequent resale of petroleum products must be equipped with:

(1) a gauge in working order that shows the current level of product in the tank; or

(2) an audible or visual alarm which alerts the person delivering fuel into the tank that the tank is within 100 gallons of capacity.

(b) In lieu of the equipment specified in paragraph (a), the owner or operator of a tank may use a manual method of measurement which accurately determines the amount of product in the tank and the amount of capacity available to be used. This information must be readily available to anyone delivering fuel into the tank prior to delivery. Documentation that a tank has the available capacity for the amount of product to be delivered must be transmitted to the person making the delivery.

Subd. 2. CONTENTS LABELED. (a) By December 1, 1995, all aboveground tanks governed by this section must be numbered and labeled as to the tank contents, total capacity, and capacity in volume increments of 500 gallons or less.

(b) Piping connected to the tank must be labeled with the product carried at the point of delivery and at the tank inlet. Manifolder delivery points must have all valves labeled as to product distribution.

Subd. 3. SITE DIAGRAM. (a) All tanks at a facility shall be shown on a site diagram which is permanently mounted in an area accessible to delivery personnel. The diagram shall show the number, capacity, and contents of tanks and the location of piping, valves, storm sewers, and other information necessary for emergency response, including the facility owner's or operator's telephone number.

(b) Prior to delivering product into an underground or aboveground tank, delivery personnel shall:

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(1) consult the site diagram, where applicable, for proper delivery points, tank and piping locations, and valve settings;

(2) visually inspect the tank, piping, and valve settings to determine that the product being delivered will flow only into the appropriate tank; and

(3) determine, using equipment and information available at the site, that the available capacity of the tank is sufficient to hold the amount being delivered.

Delivery personnel must remain in attendance during delivery.

Subd. 4. CAPACITY OF TANK. A tank may not be filled from a transport vehicle compartment containing more than the available capacity of the tank, unless the hose of the transport vehicle is equipped with a manually operated shut-off nozzle.

Subd. 5. EXEMPTION. Aboveground and underground tanks located at refineries, pipeline terminals, and river terminals are exempt from this section.

Sec. 14. EFFECTIVE DATE.

Sections 2 and 5, paragraph (a), are effective retroactive to June 4, 1987. Section 5, paragraphs (c) to (k), section 7, and section 8, subdivision 4, are effective the day following final enactment. Section 10 is effective January 1, 1996. All other sections are effective August 1, 1995. Sections 1 and 8 apply only to prerule site assessments begun on or after August 1, 1995.

ARTICLE 2

Section 1. Minnesota Statutes 1994, section 88.171, subdivision 2, is amended to read:

Subd. 2. **PROHIBITED MATERIALS.** No person shall conduct, cause, or permit open burning of ~~oils~~; rubber, plastics, chemically treated materials, or other materials which produce excessive or noxious smoke including, but not limited to, tires, railroad ties, chemically treated lumber, composite shingles, tar paper, insulation, composition board, sheetrock, wiring, paint, or paint filters. Except as specifically authorized by the commissioner of the pollution control agency as an emergency response to an oil spill, no person shall conduct, cause, or permit open burning of oil.

Sec. 2. Minnesota Statutes 1994, section 115E.01, is amended by adding a subdivision to read:

Subd. 3a. DAMAGES. "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of hazardous substances or oil.

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Sec. 3. Minnesota Statutes 1994, section 115E.01, is amended by adding a subdivision to read:

Subd. 11a. RESPONSE AREA. "Response area" means the area designated by the federal on-scene coordinator, the commissioner of the pollution control agency, or the commissioner of agriculture in which response to a discharge is occurring.

Sec. 4. Minnesota Statutes 1994, section 115E.01, is amended by adding a subdivision to read:

Subd. 11b. RESPONSE COSTS. "Response costs" means the costs of response that are incurred after a discharge of oil or hazardous substances has occurred, or, where there is a substantial threat of discharge of oil or hazardous substances, the costs to prevent, minimize, or mitigate a discharge.

Sec. 5. Minnesota Statutes 1994, section 115E.01, is amended by adding a subdivision to read:

Subd. 11c. RESPONSIBLE PARTY. "Responsible party" means a responsible party as defined in section 1001 of the Oil Pollution Act of 1990.

Sec. 6. Minnesota Statutes 1994, section 115E.04, subdivision 2, is amended to read:

Subd. 2. **TIMING.** (a) A person required to be prepared under section 115E.03, other than a person who owns or operates a motor vehicle, rolling stock, or a facility that stores less than 250,000 gallons of oil or a hazardous substance, shall complete the response plan required by this section by March 1, 1993, unless one of the commissioners orders the person to demonstrate preparedness at an earlier date under section 115E.05. ~~Plans must be updated every three years. Plans must be updated before three years following a significant discharge, upon significant change in vessel or facility operation or ownership, upon significant change in the national or area contingency plans under the Oil Pollution Act of 1990, or upon change in the capabilities or role of a person named in a plan who has an important response role.~~

(b) A person who owns or operates a motor vehicle, rolling stock, or a facility that stores less than 250,000 gallons of oil or a hazardous substance shall complete the response plan required by this section by January 1, 1994.

(c) Plans required under section 115E.04 or 115E.045 must be updated every three years. Plans must be updated before three years following a significant discharge, upon significant change in vessel or facility operation or ownership, upon significant change in the national or area contingency plans under the Oil Pollution Act of 1990, or upon change in the capabilities or role of a person named in a plan who has an important response role.

Sec. 7. Minnesota Statutes 1994, section 115E.06, is amended to read:

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115E.06 GOOD SAMARITAN.

(a) A person listed in this paragraph who is rendering assistance in response to a discharge of a hazardous substance ~~or oil~~ is not liable for response costs that result from actions taken or failed to be taken in the course of the assistance unless the person is grossly negligent or engages in willful misconduct:

(1) a member of a cooperative or community awareness and emergency response group in compliance with standards in rules adopted by the pollution control agency;

(2) an employee or official of the political subdivision where the response takes place, or a political subdivision that has a mutual aid agreement with that subdivision;

(3) a member or political subdivision sponsor of a hazardous materials incident response team or special chemical assessment team designated by the commissioner of the department of public safety;

(4) a person carrying out the directions of: (i) the commissioner of the pollution control agency, the commissioner of agriculture, the commissioner of natural resources, or the commissioner of public safety; or (ii) the United States Coast Guard or Environmental Protection Agency on-scene coordinator consistent with a national contingency plan under the Oil Pollution Act of 1990; and

(5) a for-hire response contractor.

(b) This section does not exempt from liability responsible persons with respect to the discharge under chapter 115B or 115C or responsible parties with respect to the discharge under chapter 18B or 18D.

Sec. 8. Minnesota Statutes 1994, section 115E.061, is amended to read:

115E.061 RESPONDER IMMUNITY; OIL DISCHARGES.

(a) Notwithstanding any other law, a person ~~identified in section 115E.06, paragraph (a)~~ who is rendering care, assistance, or advice in response to a discharge or threat of discharge of oil is not liable for response costs or damages that result from actions taken or failed to be taken in the course of rendering the care, assistance, or advice ~~in accordance~~ consistent with the national contingency plan under the Oil Pollution Act of 1990, or as otherwise directed by the federal on-scene coordinator, the commissioner of the pollution control agency, the commissioner of agriculture, the commissioner of natural resources, or the commissioner of public safety.

(b) Paragraph (a) does not apply:

(1) to a responsible ~~person under chapter 115B or 115C~~ party;

(2) with respect to personal injury or wrongful death; ~~or~~

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(3) if the person rendering assistance is grossly negligent or engages in willful misconduct; or

(4) to a discharge that occurs outside the response area or after the response.

(c) Nothing in this section relieves a responsible party from liability the responsible party otherwise has for the initial discharge or threat of discharge that necessitated the response.

(d) Nothing in this section relieves a responsible party from the following duties:

(1) to take steps to prevent discharges under section 115E.02;

(2) to be prepared for discharges under section 115E.03, subdivision 1; or

(3) duties under section 115.061.

(e) A responsible party is liable for any response costs and damages that another person is relieved of under paragraph (a).

Sec. 9. **EFFECTIVE DATE.**

Sections 1 to 8 are effective the day following final enactment.

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 8:46 a.m.

CHAPTER 241—S.F.No. 999

An act relating to state finance; adding certain human services obligations to the requirement that state agencies promptly pay their bills; amending Minnesota Statutes 1994, section 16A.124, subdivision 8, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1994, section 16A.124, is amended by adding a subdivision to read:

Subd. 4b. HEALTH CARE PAYMENTS. The commissioner of human services must pay or deny a valid vendor obligation for health services under the medical assistance, general assistance medical care, or MinnesotaCare program within 30 days after receipt. A "valid vendor obligation" means a clean claim submitted directly to the commissioner by an eligible health care provider for health services provided to an eligible recipient. A "clean claim" means an original paper or electronic claim with correct data elements, prepared in accordance with the commissioner's published specifications for claim preparation, that

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