

(c) All hearings required by this subdivision shall be conducted in accordance with chapter 14.

**Sec. 20. INSTRUCTION TO REVISOR.**

The revisor shall renumber the definitions in Minnesota Statutes, section 326.165, in alphabetical order, as a separate section and shall correct references to those sections in Minnesota Statutes and Minnesota Rules.

**Sec. 21. REPEALER.**

Minnesota Statutes 1996, sections 326.191; 326.21; and 326.225, are repealed.

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:46 a.m.

**CHAPTER 341—H.F.No. 3297**

*An act relating to the environment; clarifying the liability of contractors performing certain response and development actions under MERLA; clarifying time for filing an action under MERLA; requiring public notice of proposed response actions; requiring a study; amending Minnesota Statutes 1996, sections 115B.03, by adding a subdivision; 115B.11; and 115B.17, by adding a subdivision.*

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

Section 1. Minnesota Statutes 1996, section 115B.03, is amended by adding a subdivision to read:

Subd. 10. CONTRACTORS. (a) For the purposes of this subdivision, "contractor" means a person who is not otherwise responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, and who, under contract with another person:

(1) performs response actions, including investigative, removal, or remedial actions to address the release or threatened release pursuant to a plan approved by the commissioner; or

(2) performs development actions at the site of the release or threatened release, such as site preparation, engineering, construction, and similar actions with respect to which the commissioner approves a contingency plan or other conditions which the commissioner deems necessary to protect public health or welfare or the environment.

(b) A contractor is not a responsible person for a release or threatened release solely as the result of performing response actions to address that release or threatened release if the contractor performs the response actions in accordance with a plan approved by the commissioner.

(c) A contractor who performs development actions, such as site preparation, engineering, construction, or similar actions, at the site of a release or threatened release is not responsible for the release or threatened release solely as a result of performing the devel-

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opment actions if the contractor complies with a contingency plan or other conditions approved by the commissioner. The contractor must obtain approval from the commissioner for the contingency plan or other conditions:

(1) for a site with a known release or threatened release, before the contractor commences the development actions; or

(2) for a site with a release or threatened release discovered during the contractor's performance of the development actions, before the contractor performs further development actions at the site after discovery of the release or threatened release.

(d) This subdivision shall not apply to a contractor who causes or contributes to a release or threatened release by an act or omission that is negligent, grossly negligent, or that constitutes intentional misconduct.

Sec. 2. Minnesota Statutes 1996, section 115B.11, is amended to read:

#### 115B.11 STATUTE OF LIMITATIONS.

Subdivision 1. CONSTRUCTION. For the purposes of this section, "construction" means actions taken after the selection of remedial action such as excavation, building of structures, installation of equipment or fixtures, and other physical actions to respond to a release or threatened release.

Subd. 2. ACTION FOR RECOVERY OF COSTS. (a) An action for recovery of response costs under section 115B.04, including recovery of costs and expenses under section 115B.17, subdivision 6, may be commenced any time after costs and expenses have been incurred but must be commenced no later than six years after initiation of physical on-site construction of a response action.

(b) A party prevailing in an action commenced within the time required under paragraph (a) shall be entitled to a declaratory judgment of liability for all future reasonable and necessary costs incurred by that party to respond to the release or threatened release, including costs and expenses under section 115B.17, subdivision 6.

Subd. 3. ACTION FOR DAMAGES. No person may recover damages pursuant to sections 115B.01 to 115B.15 unless the action is commenced within six years from the date when the cause of action accrues. In determining when the cause of action accrues for an action to recover damages for death, personal injury or disease, the court shall consider factors including the following:

(a) When the plaintiff discovered the injury or loss;

(b) Whether a personal injury or disease had sufficiently manifested itself; and

(c) When the plaintiff discovered, or using due diligence should have discovered, a causal connection between the injury, disease, or loss and the release of a hazardous substance.

Sec. 3. Minnesota Statutes 1996, section 115B.17, is amended by adding a subdivision to read:

Subd. 2b. PUBLIC NOTICE OF PROPOSED RESPONSE ACTIONS. Before selecting a remedial action to respond to a release or threatened release listed pursuant to subdivision 13, the commissioner shall give written notice of the proposed remedial ac-

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tion to the public by publication of a notice in a newspaper of general circulation in the affected area, and provide an opportunity for submission of comments on the proposed remedial action. The notice shall also be given by certified mail to all persons known to the commissioner at the time of the notice who the commissioner has reason to believe are responsible for the release or threatened release, including all persons who have previously received a request for response action under subdivision 1 with respect to the release or threatened release.

#### **Sec. 4. STUDY REGARDING EFFECT OF CHANGES TO STATUTE OF LIMITATIONS.**

The commissioner of the pollution control agency, in consultation with other parties who may have cost recovery claims, or their representatives, shall study the implications of the amendments to the statute of limitations in section 2 on both the state and any other parties. By January 15, 1999, the commissioner shall report to the legislature regarding the following:

- (1) the number of sites where the state has incurred response costs;
- (2) the number of potential and commenced cost recovery actions brought by the state or other parties; and
- (3) estimated fiscal impact of the legislative change on the state and other parties.

#### **Sec. 5. EFFECTIVE DATE.**

Sections 1 to 3 are effective the day following final enactment. Section 1 applies to response actions and development actions performed after that date. Section 2 applies to actions for recovery of costs commenced on or after that date. Response costs incurred before the effective date of section 2 are recoverable in an action commenced on or after the effective date of section 2 only if physical on-site construction of the response action was initiated not more than six years before the cost recovery action is commenced. Notwithstanding any provision in this act to the contrary, the running of the statute of limitations imposed by section 2 with respect to cost recovery actions is suspended until July 1, 1999. Section 2 shall not apply to any litigation pending in court on the date of enactment if the statute of limitations under Minnesota Statutes, chapter 115B, has been contested in the litigation. Section 2 shall not be offered by any party as evidence of the intent, meaning, or application of the statute of limitations under Minnesota Statutes, chapter 115B.

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:48 a.m.

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