

Section 8 is effective upon approval by the Detroit Lakes city council and compliance with Minnesota Statutes, section 645.021.

Section 9 is effective upon approval by the Eden Prairie city council and compliance with Minnesota Statutes, section 645.021.

Section 10 is effective upon approval by the International Falls city council and compliance with Minnesota Statutes, section 645.021.

Section 11 is effective upon approval by the Marshall city council and compliance with Minnesota Statutes, section 645.021.

Section 12 is effective upon approval by the Proctor city council and compliance with Minnesota Statutes, section 645.021.

Section 14 is effective upon approval by the Stillwater city council and compliance with Minnesota Statutes, section 645.021.

Section 15 is effective upon approval by the Bemidji city council and compliance with Minnesota Statutes, section 645.021.

Presented to the governor May 21, 1999

Signed by the governor May 24, 1999, 9:37 a.m.

CHAPTER 203—H.F.No. 595

An act relating to storage tanks; imposing a specific standard of proof for certain petrofund reimbursement reductions; providing reimbursement for certain bulk petroleum plants upgrading or closing aboveground storage tanks; modifying application requirements for contamination; cleanup grants; regulating the cleanup of contaminated land; specifying the marking required on petroleum product storage tanks; modifying the application of the Fire Code to tanks; providing an exception; amending Minnesota Statutes 1998, sections 115C.08, subdivision 4; 115C.09, subdivision 3, and by adding a subdivision; 116J.553, subdivision 2; 116J.562, subdivision 2; 116J.567; and 239.752; proposing coding for new law in Minnesota Statutes, chapter 299F.

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

Section 1. Minnesota Statutes 1998, section 115C.08, subdivision 4, is amended to read:

Subd. 4. **EXPENDITURES.** (a) Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in this chapter;

(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;

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

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

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

(6) for reimbursement of the harmful substance compensation account under subdivision 5 and section 115B.26, subdivision 4;

(7) for administrative and staff costs as set by the board to administer the petroleum tank release program established in this chapter;

(8) for corrective action performance audits under section 115C.093; and

(9) for contamination cleanup grants, as provided in paragraph (c).

(b) Except as provided in paragraph (c), money in the fund is appropriated to the board to make reimbursements or payments under this section.

(c) \$6,200,000 is annually appropriated from the fund to the commissioner of trade and economic development for contamination cleanup grants under section 116J.554, provided that money appropriated in this paragraph may be used only for cleanup costs attributable to petroleum contamination, as determined by the commissioner of the pollution control agency. Of this amount, the commissioner may spend up to \$120,000 annually for administration of the contamination cleanup grant program. The appropriation does not cancel and is available until expended. The appropriation shall not be withdrawn from the fund nor the fund balance reduced until the funds are requested by the commissioner of trade and economic development. The commissioner shall schedule requests for withdrawals from the fund to minimize the necessity to impose the fee authorized by subdivision 2. Unless otherwise provided, the appropriation in this paragraph may be used for:

(1) project costs at a qualifying site if a portion of the cleanup costs are attributable to petroleum contamination; and

(2) the costs of performing contamination investigation if there is a reasonable basis to suspect the contamination is attributable to petroleum.

Sec. 2. Minnesota Statutes 1998, section 115C.09, subdivision 3, is amended to read:

Subd. 3. **REIMBURSEMENTS; SUBROGATION; APPROPRIATION.** (a) The board shall reimburse an eligible applicant from the fund 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;

(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; or

(3) 90 percent of the total reimbursable costs on the first \$250,000 and 100 percent of the cumulative total reimbursable costs in excess of \$250,000 at all sites in which the responsible person had interest, and for which the commissioner has not issued a closure letter as of April 3, 1996, if the responsible person dispensed less than 1,000,000 gallons of petroleum at each location in each of the last three calendar years that the responsible person dispensed petroleum at the location and:

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(i) has owned no more than three locations in the state at which motor fuel was dispensed into motor vehicles and has discontinued operation of all petroleum retail operations; or

(ii) has owned no more than one location in the state at which motor fuel was dispensed into motor vehicles.

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 fund under this chapter 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.

(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.

(f) A reimbursement may not be made from the fund 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 applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the applicant.

(g) If the board reimburses an applicant for costs for which the applicant has insurance coverage, the board is subrogated to the rights of the applicant 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 an applicant of reimbursement constitutes an assignment by the applicant to the board of any rights of the applicant 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 applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the applicant was denied coverage by the insurer.

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

(i) The board may reduce the amount of reimbursement to be made under this chapter if it finds that the applicant 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) the agency was given notice of the release as required by section 115.061;

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

~~(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 the state rules applicable after December 22, 1993, to operating an underground storage tank and appurtenances without leak detection;~~

(4) the state rules applicable after December 22, 1998, to operating an underground storage tank and appurtenances without corrosion protection or spill and overflow protection; and

(5) the state rule applicable after November 1, 1998, to operating an aboveground tank without a dike or other structure that would contain a spill at the aboveground tank site.

(j) The reimbursement may be reduced as much as 100 percent for failure by the applicant to comply with the requirements in paragraph (i), clauses (1) to ~~(3)~~ (5). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the reasonable determination by the agency of the environmental impact of that the noncompliance poses a threat to the environment;

(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; and

(5) the documentation of noncompliance provided by the commissioner.

(k) An applicant 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 applicant, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the applicant 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 applicant and to one or more assignees by a multiparty check. The board has no liability to an applicant for a payment under an assignment meeting the requirements of this paragraph.

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Sec. 3. Minnesota Statutes 1998, section 115C.09, is amended by adding a subdivision to read:

Subd. 3h. **REIMBURSEMENT; ABOVEGROUND TANKS IN BULK PLANTS.** (a) As used in this subdivision, "bulk plant" means an aboveground or underground tank facility with a storage capacity of more than 1,100 gallons but less than 1,000,000 gallons that is used to dispense petroleum into cargo tanks for transportation and sale at another location.

(b) Notwithstanding any other provision in this chapter and any rules adopted pursuant to this chapter, the board shall reimburse 90 percent of an applicant's cost for bulk plant upgrades or closures completed between June 1, 1998, and November 1, 2003, to comply with Minnesota Rules, chapter 7151, provided that the board determines the costs were incurred and reasonable. The reimbursement may not exceed \$10,000 per bulk plant.

Sec. 4. Minnesota Statutes 1998, section 116J.553, subdivision 2, is amended to read:

Subd. 2. **REQUIRED CONTENT.** (a) The commissioner shall prescribe and provide the application form. The application must include at least the following information:

- (1) identification of the site;
- (2) an approved response action plan for the site, including the results of engineering and other tests showing the nature and extent of the release or threatened release of contaminants at the site;
- (3) a detailed estimate, along with necessary supporting evidence, of the total clean-up costs for the site;
- (4) an appraisal of the current market value of the property, separately taking into account the effect of the contaminants on the market value, prepared by a qualified independent appraiser using accepted appraisal methodology;
- (5) an assessment of the development potential or likely use of the site after completion of the response action plan, including any specific commitments from third parties to construct improvements on the site;
- (6) the manner in which the municipality will meet the local match requirement; and
- (7) any additional information or material that the commissioner prescribes.

(b) A response action plan is not required as a condition to receive a grant under section 116J.554, subdivision 1, paragraph (c).

Sec. 5. Minnesota Statutes 1998, section 116J.562, subdivision 2, is amended to read:

Subd. 2. **REDEVELOPMENT COSTS OR COSTS.** "Redevelopment costs" or "costs" means the costs of land acquisition, stabilizing unstable soils when infill is required, demolition, infrastructure improvement, and ponding, or other environmental infrastructure.

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Sec. 6. Minnesota Statutes 1998, section 116J.567, is amended to read:

116J.567 SALE OF LAND.

Bond proceeds funds in the account may only be used for redevelopment costs for publicly owned property. Nonbond proceeds funds in the account may be used for redevelopment costs as defined in section 116J.562, subdivision 2, provided that the land upon which the improvements are made will ultimately be sold to a private developer at the fair market value of the land, unless it can be determined by the commissioner that a sale for less than fair market value does not result in a subsidy to a private business or developer. Net sale proceeds, up to the amount of the grant, must be paid to the account by the development authority within two years of the sale. The sale and repayment provisions of this section do not apply to lands that will be acquired with nonbond proceeds funds and retained in public ownership for infrastructure improvement and ponding or other environmental infrastructure. For the purpose of this section, "net sales proceeds" means the purchase price of the land minus redevelopment costs related to the land including redevelopment costs paid with grants made under section 116J.564.

Sec. 7. Minnesota Statutes 1998, section 239.752, is amended to read:

239.752 STORAGE TANK MARKING; RETAIL LOCATION.

Subdivision 1. MARKING REQUIRED. A person responsible for the product shall securely ~~mount~~ affix a permanent engraved plastic or stamped metal identification tag on the fill pipe of a petroleum product storage tank at a business where petroleum products are sold, offered for sale, or dispensed at retail into the storage tanks of motor vehicles. A bulk storage facility operator shall securely affix a metal identification tag on the fill pipe of each storage tank at the distributor's bulk storage facility. The identification tag must clearly display the grade or trade name of the product stored in the tank. The grade or trade name on the identification tag must be the same as the grade or trade name displayed on the dispensers through which the product is dispensed. The grade or trade name must not be displayed on an access cover over a fill pipe be constructed and printed according to subdivision 2 and installed according to subdivision 3. The identification tag must be printed with the appropriate product identification according to subdivision 4, 5, or 6. This section does not apply to storage tanks at petroleum refineries or terminals.

Subd. 2. IDENTIFICATION TAG; CONSTRUCTION, PRINTING. The identification tag required in subdivision 1 must be constructed of one three and one-half inch by three and one-half inch piece of aluminum or stainless steel. All surfaces of the tag must be coated with a permanent enamel paint or powder coating. The coating must be light blue for gasoline and alcohol products and dark green for petroleum distillate products. Lettering must be at least three-eighths of one inch high, and printed on the tag with permanent enamel paint or powder coating. Lettering must be black for gasoline and alcohol products and white for petroleum distillate products.

Subd. 3. IDENTIFICATION TAG; INSTALLATION. The identification tag required in subdivision 1 must be securely affixed to a fill pipe by means of an adjustable steel band clamp. The display surface of the tag must be positioned so that the product information can be easily read by a person filling the storage tank.

Subd. 4. PRODUCT IDENTIFICATION; GASOLINE, OXYGENATED GASOLINE. An identification tag placed on a storage tank containing gasoline or oxy-

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generated gasoline must be marked with the word "GASOLINE" and with the correct octane number and the appropriate product name of the fuel stored in the tank. The product name must be selected from the following:

- (1) "REGULAR" for oxygenated gasoline of less than 88 octane;
- (2) "MID-GRADE" for oxygenated gasoline of at least 88 octane, but less than 91 octane;
- (3) "PREMIUM" for oxygenated gasoline of at least 91 octane;
- (4) "NON-OXY PREM" for nonoxygenated gasoline of at least 91 octane;
- (5) "AVIATION" for gasoline used solely as a fuel for aircraft;
- (6) "RACING" for a special racing gasoline intended to be sold for use in off-road motor vehicles; or
- (7) "SPECIAL" for gasoline blended with mineral oil or other additives and intended to be sold for use in boats, chainsaws, snowmobiles, or off-road equipment.

Subd. 5. PRODUCT IDENTIFICATION; ALCOHOL, ALCOHOL-BASED MOTOR FUEL. An identification tag placed on a storage tank containing unblended alcohol or a predominantly alcohol-based motor fuel must be marked with the word "ALCOHOL" and with the appropriate product name of the fuel stored in the tank. The product name must be selected from the following:

- (1) "ETHANOL" for denatured ethanol, as defined in section 296A.01;
- (2) "METHANOL" for methanol;
- (3) "E-85" for an ethanol-gasoline blend, as defined in section 296A.01; or
- (4) "M-85" for a methanol-gasoline blend, as defined in section 296A.01.

Subd. 6. PRODUCT INFORMATION; PETROLEUM DISTILLATES. Storage tanks containing diesel fuel, heating fuel, kerosene, or other petroleum distillate must be marked with the word "DISTILLATE" and with the correct product grade and appropriate tax status selected from the following:

- (1) "#1 DIESEL" "UNDYED" for #1 diesel fuel for which the motor fuel excise tax has been paid;
- (2) "#1" "DYED" for #1 heating fuel or #1 diesel fuel intended to be sold for use in off-road vehicles and equipment;
- (3) "#2 DIESEL" "UNDYED" for #2 diesel fuel for which the motor fuel excise tax has been paid;
- (4) "#2" "DYED" for #2 heating fuel or #2 diesel fuel intended to be sold for use in off-road vehicles and equipment;
- (5) "DIESEL" "PREMIUM" "UNDYED" for premium diesel fuel for which the motor fuel excise tax has been paid;
- (6) "DIESEL" "PREMIUM" "DYED" for premium diesel fuel intended to be sold off-road;

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(7) "KEROSENE" "UNDYED" for kerosene for which the federal motor fuel excise tax has been paid;

(8) "KEROSENE" "DYED" for kerosene intended to be sold for use in off-road vehicles, heating equipment, and other off-road equipment; or

(9) "JET/TURBINE" for jet fuel or turbine fuel.

Sec. 8. [299F.014] ABOVEGROUND PETROLEUM STORAGE TANKS NOT USED FOR DISPENSING TO THE PUBLIC; TANK VEHICLES.

(a) Any rule of the commissioner of public safety that adopts provisions of the Uniform Fire Code relating to aboveground tanks for petroleum storage that are not used for dispensing to the public is superseded by Minnesota Rules, chapter 7151, in regard to: secondary containment, substance transfer areas, tank and piping standards, overfill protection, corrosion protection, leak detection, labeling, monitoring, maintenance, recordkeeping, and decommissioning. If Minnesota Rules, chapter 7151, does not address an issue relating to aboveground tanks for petroleum storage that are not used for dispensing to the public, any applicable provision of the Uniform Fire Code, 1997 Edition, shall apply.

(b) A motorized tank vehicle used to transport petroleum products may be parked within 500 feet of a residence if the vehicle is parked at an aboveground tank facility used for dispensing petroleum into cargo tanks for sale at another location.

Sec. 9. UNDERGROUND TANKS ON FARMS.

An owner or operator of a registered underground storage tank located on a farm in the state who fails to remove the underground storage tank in compliance with the requirements of Minnesota Rules, chapter 7150, before December 22, 2000, shall not be subject to any penalties under state law for failure to comply with the removal requirements of Minnesota Rules, chapter 7150, with regard to a tank located on a farm.

Sec. 10. EFFECTIVE DATE.

Sections 1 to 6 and 9 are effective the day following final enactment. Section 7 is effective June 1, 2000.

Presented to the governor May 21, 1999

Signed by the governor May 24, 1999, 10:05 a.m.

CHAPTER 204—H.F.No. 1235

VETOED

CHAPTER 205—H.F.No. 1467

An act relating to education; family and early childhood education; providing for children and family support programs, community and systems change, prevention and intervention, self-suffi-

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