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# State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

# H. F. No. 2163

02/09/2012 Authored by McNamara and Smith

The bill was read for the first time and referred to the Committee on Environment, Energy and Natural Resources Policy and Finance

1.1 A bill for an act  
1.2 relating to environment; providing for regulation of pollutant spills; amending  
1.3 Minnesota Statutes 2010, sections 114C.11, subdivision 6; 115.01, by adding  
1.4 subdivisions; 115.061; 115E.01, subdivisions 3, 4, 6, 11, 11a, 11c, by adding  
1.5 subdivisions; 115E.02; 115E.03; 115E.04; 115E.05; 115E.08, subdivisions 2, 4;  
1.6 116.073, subdivision 1; repealing Minnesota Statutes 2010, sections 115C.065;  
1.7 115E.01, subdivisions 7, 11a, 13; 115E.04, subdivisions 1, 2, 3; 115E.045;  
1.8 115E.08, subdivision 3.

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

1.10 Section 1. Minnesota Statutes 2010, section 114C.11, subdivision 6, is amended to read:

1.11 Subd. 6. **Plans and progress reports under chapters 115D and 115E.** A permittee  
1.12 complies with the plan content and timing requirements of sections 115D.07, and  
1.13 115E.04, ~~and 115E.045~~ if the Minnesota XL permit requires the permittee to include  
1.14 in an overall environmental management plan satisfactory alternative information. A  
1.15 permittee complies with the progress report content and timing requirements of section  
1.16 115D.08 if the Minnesota XL permit requires the permittee to include in its overall  
1.17 reporting requirements satisfactory alternative information, and specifies a schedule for  
1.18 submitting the information.

1.19 Sec. 2. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
1.20 read:

1.21 Subd. 2a. **Contain and recover.** "Contain and recover" means actions to prevent  
1.22 the spread or escape of spilled or discharged pollutant material and to remove the spilled  
1.23 or discharged pollutant material from soil or water or places where it may reach waters of  
1.24 the state. Contain and recover includes corrective actions under chapters 115B and 115C  
1.25 and compliant removal and disposal or treatment of contaminated soil, water, and debris.

2.1 Sec. 3. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.2 read:

2.3 Subd. 2b. **Container.** "Container" means a device used to store, hold, or convey  
2.4 liquid or solid pollutant materials including a tank, process tank, hose, pipe, pipeline,  
2.5 cargo vessel, cargo railcar, cargo truck or trailer, vehicle fuel tank, or treatment works.

2.6 Sec. 4. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.7 read:

2.8 Subd. 4a. **Discovery.** "Discovery" means identification of the fact that a spill or  
2.9 discharge is or may be occurring or has occurred, by any means including notification  
2.10 by another person.

2.11 Sec. 5. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.12 read:

2.13 Subd. 6a. **Hazardous substance.** "Hazardous substance" has the meaning given  
2.14 under section 115B.02.

2.15 Sec. 6. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.16 read:

2.17 Subd. 7a. **Immediately notify.** "Immediately notify" means notify as soon as  
2.18 possible but in no case later than one hour after the discovery of a spill or discharge.

2.19 Sec. 7. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.20 read:

2.21 Subd. 8a. **Oil.** "Oil" has the meaning given under section 115E.01.

2.22 Sec. 8. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.23 read:

2.24 Subd. 10a. **Person in control.** "Person in control" means a person who, at the time  
2.25 of a spill or discharge or leading up to a discharge, is transporting, filling, emptying,  
2.26 maintaining, or operating the container or who had physical control of the pollutant  
2.27 material.

2.28 Sec. 9. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision to  
2.29 read:

3.1           Subd. 12a. **Pollutant material.** "Pollutant material" means oil, hazardous  
3.2 substances, hazardous wastes, and all other substances that, if spilled or discharged and  
3.3 not recovered, could cause water pollution.

3.4           Sec. 10. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision  
3.5 to read:

3.6           Subd. 15a. **Responsible person.** "Responsible person" means a person who is liable  
3.7 under chapter 115B or 115C, or for materials that are not covered under chapter 115B or  
3.8 115C, the owner or operator of the pollutant material or the material's container or the  
3.9 owner or operator of the facility that discharged the pollutant material.

3.10          Sec. 11. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision  
3.11 to read:

3.12          Subd. 18a. **Spill.** "Spill" means escape or loss of a pollutant material, in solid  
3.13 or liquid form, from its container, accidental or otherwise, recent or in the past, in any  
3.14 outdoor place above or below ground or in any indoor place where the pollutant material  
3.15 might enter a sanitary or storm sewer or drain or infiltrate into the ground or might  
3.16 otherwise escape from the building or structure. Spill includes release as defined under  
3.17 sections 115B.02, subdivision 15, and 115C.02, subdivision 12.

3.18          Sec. 12. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision  
3.19 to read:

3.20          Subd. 19a. **State duty officer.** "State duty officer" means the single point answering  
3.21 system established by the Department of Public Safety under section 115E.09.

3.22          Sec. 13. Minnesota Statutes 2010, section 115.01, is amended by adding a subdivision  
3.23 to read:

3.24          Subd. 19b. **Storage tank system.** "Storage tank system" means any one or  
3.25 combination of containers, including tanks, vessels, enclosures, or structures and  
3.26 appurtenances connected to them, whether above or below ground, that is used to contain  
3.27 or dispense pollutant material.

3.28          Sec. 14. Minnesota Statutes 2010, section 115.061, is amended to read:

3.29                 **115.061 SPILLS OR DISCHARGES; DUTY TO NOTIFY ~~AND AVOID~~**  
3.30 **~~WATER POLLUTION, CONTAIN, AND RECOVER.~~**

4.1 Subdivision 1. **Duty to contain and recover.** (a) Except as provided in paragraph  
4.2 (b), it is the duty of every person to notify the agency immediately of the discharge,  
4.3 accidental or otherwise, of any substance or material under its control which, if not  
4.4 recovered, may cause pollution of waters of the state, and the responsible person shall  
4.5 recover as rapidly and as thoroughly as possible such substance or material and take  
4.6 immediately such other action as may be reasonably possible to minimize or abate  
4.7 pollution of waters of the state caused thereby. Regardless of the volume of a spill or  
4.8 discharge, a responsible person must immediately stop the spill or discharge and take steps  
4.9 to thoroughly contain and recover the pollutant material to the extent safe and feasible.  
4.10 A responsible person must also take response or corrective actions necessary to prevent  
4.11 pollution or threats to public health.

4.12 (b) Notification is not required under paragraph (a) for a discharge of five gallons or  
4.13 less of petroleum, as defined in section 115C.02, subdivision 10. This paragraph does not  
4.14 affect the other requirements of paragraph (a). If there is more than one responsible person  
4.15 for a spill or discharge, they may, by mutual agreement, select one responsible person to  
4.16 act on behalf of all responsible persons. If there is no agreement, each responsible person  
4.17 remains responsible to contain and recover the pollutant material and to take response or  
4.18 corrective actions.

4.19 (c) Actions initiated or taken by third parties such as local officials, fire departments,  
4.20 or public works personnel do not relieve a responsible person from the duty to contain and  
4.21 recover spilled or discharged pollutant material and take other necessary response and  
4.22 corrective actions.

4.23 Subd. 2. **Notification; spills and discharges that have entered state waters.**  
4.24 A person in control or a responsible person who discovers that a pollutant material has  
4.25 directly or indirectly entered waters of the state by spillage, runoff, infiltration, or other  
4.26 means must immediately notify the agency regardless of the quantity of pollutant material  
4.27 discharged or spilled and regardless of whether the discharge or spill was intentional  
4.28 or accidental. Notification and follow-up reporting must be made as required under  
4.29 subdivision 5.

4.30 Subd. 3. **Notification; spills that have not yet reached state waters.** Except as  
4.31 provided in subdivision 4, a person in control or a responsible person must immediately  
4.32 notify the agency of the discovery of a pollutant material that has been spilled but that has  
4.33 not yet reached waters of the state, unless the spill of the pollutant material is known to  
4.34 be less than the volumes in Table I. Notification and follow-up reporting must be made  
4.35 as required under subdivision 5.

5.1 Table I: Material Categories and Quantities Requiring Notification of Spills

5.2 <u>Category A</u>	5.2 <u>Category B</u>	5.2 <u>Category C</u>
5.3 <u>One gallon if liquid or ten</u>	5.3 <u>Five gallons if liquid or 50</u>	5.3 <u>50 gallons if liquid or 500</u>
5.4 <u>pounds if solid for:</u>	5.4 <u>pounds if solid for:</u>	5.4 <u>pounds if solid for:</u>
5.5 <u>(1) extremely hazardous</u>	5.5 <u>(1) petroleum as defined</u>	5.5 <u>(1) sewage, wastewater,</u>
5.6 <u>substances under Code of</u>	5.6 <u>under section 115C.02,</u>	5.6 <u>manure, food products,</u>
5.7 <u>Federal Regulations, title</u>	5.7 <u>including ethanol;</u>	5.7 <u>and all other liquids</u>
5.8 <u>40, part 355, appendices</u>		5.8 <u>that are not hazardous</u>
5.9 <u>A and B;</u>		5.9 <u>substances, oil, or</u>
5.10		5.10 <u>petroleum and that are</u>
5.11		5.11 <u>not of an oily, petroleum,</u>
5.12		5.12 <u>or chemical nature; and</u>
5.13 <u>(2) hazardous substances</u>	5.13 <u>(2) asphalt, tar, and sealers;</u>	5.13 <u>(2) solid materials that</u>
5.14 <u>under section 115B.02</u>		5.14 <u>are not hazardous</u>
5.15 <u>or under Code of Federal</u>		5.15 <u>substances, that are</u>
5.16 <u>Regulations, title 40, part</u>		5.16 <u>spilled onto or near</u>
5.17 <u>302, table 302.4, except</u>		5.17 <u>shorelines, and that</u>
5.18 <u>for hazardous waste</u>		5.18 <u>may have polluting</u>
5.19 <u>spills that are reportable</u>		5.19 <u>effects if the material</u>
5.20 <u>under subdivision 4,</u>		5.20 <u>reaches water by runoff,</u>
5.21 <u>paragraph (b); and</u>		5.21 <u>infiltration, or other</u>
5.22		5.22 <u>means.</u>
5.23 <u>(3) category B and C</u>	5.23 <u>(3) crude oil;</u>	
5.24 <u>materials if a spill has</u>		
5.25 <u>reached a sanitary sewer</u>		
5.26 <u>or drain, storm sewer or</u>		
5.27 <u>drain, or wellhead.</u>		
5.28	5.28 <u>(4) lubricating oils,</u>	
5.29	5.29 <u>hydraulic oils, used</u>	
5.30	5.30 <u>oils, and waste oils;</u>	
5.31	5.31 <u>(5) vegetable and animal</u>	
5.32	5.32 <u>oils;</u>	
5.33	5.33 <u>(6) mineral oil and dielectric</u>	
5.34	5.34 <u>fluid documented</u>	
5.35	5.35 <u>to be less than 50</u>	
5.36	5.36 <u>parts per million</u>	
5.37	5.37 <u>of polychlorinated</u>	
5.38	5.38 <u>biphenyls (PCB's);</u>	
5.39	5.39 <u>(7) solutions containing</u>	
5.40	5.40 <u>less than one percent of</u>	
5.41	5.41 <u>category A materials;</u>	
5.42	5.42 <u>(8) paints;</u>	
5.43	5.43 <u>(9) petroleum solvents;</u>	
5.44	5.44 <u>(10) antifreeze; and</u>	
5.45	5.45 <u>(11) other materials</u>	
5.46	5.46 <u>of an oily,</u>	
5.47	5.47 <u>petroleum, or chemical</u>	
		5.47 <u>nature.</u>

5.48 Subd. 4. Notification in specific circumstances. (a) A property owner or a person  
5.49 in control of or responsible for a container or pollutant material must immediately notify  
5.50 the agency, according to subdivision 5, of the discovery of a spill the volume of which is

6.1 not known and cannot be reasonably estimated or discovery of a spill of a material that  
6.2 cannot be reasonably identified.

6.3 (b) A person in control or responsible person must immediately notify the agency,  
6.4 according to subdivision 5, of every spill or discharge of hazardous waste and every spill  
6.5 or discharge of fluid containing 50 parts per million or more PCB's.

6.6 (c) For storage tank systems:

6.7 (1) a responsible person must immediately notify the agency, according to  
6.8 subdivision 5, of the discovery of all pollutant material leaks, spills, and overfills or  
6.9 leaking pipes, hoses, or appurtenances; discovery of the presence of pollutant material in  
6.10 sumps, basins, and secondary containment; and discovery of other loss of stored pollutant  
6.11 material from a storage tank system if the loss exceeds the quantities in Table I under  
6.12 subdivision 3 or if the quantity of the loss cannot be reliably estimated. Notification shall  
6.13 be made regardless of whether the spill is or appears to be contained by a secondary  
6.14 containment structure either separate from or integral to the tank or piping design. As used  
6.15 in this clause, "secondary containment" includes an engineered structure such as a dike,  
6.16 sump, vault, or holding basin; the interstice of double-walled and doubled-floored tanks;  
6.17 and a curbed pad and tank overflow catchment structure for substance transfer operations;

6.18 (2) notification of leak testing or leak detection method results must be according  
6.19 to this clause. Any leak testing or leak detection method performed on a storage tank or  
6.20 tank appurtenance must be done by qualified personnel. Examples of leak testing and  
6.21 leak detection methods include, but are not limited to, visual monitoring, internal tank  
6.22 inspection, tightness testing, automatic tank gauging, interstitial monitoring, sensing  
6.23 devices, monitoring wells, chemical marker, vacuum testing, pressure testing, hydrostatic  
6.24 testing, and inventory reconciliation:

6.25 (i) if, in the opinion of test personnel pursuant to the applicable testing protocol or  
6.26 detection procedure, the storage tank or tank appurtenance is leaking or has leaked or has  
6.27 failed the leak test, the test personnel must immediately notify the responsible person, who  
6.28 must immediately notify the agency according to subdivision 5;

6.29 (ii) if, in the opinion of an agency inspector or test personnel pursuant to the  
6.30 applicable testing protocol or detection procedure, the storage tank or tank appurtenance  
6.31 may have a leak or the test result is inconclusive, the test personnel and responsible person  
6.32 must immediately repeat the test or take further investigatory steps to determine whether a  
6.33 leak is occurring or has occurred. If a definitive test result cannot be reached within 48  
6.34 hours of the first test, the test personnel must notify the responsible person, who must  
6.35 immediately notify the agency according to subdivision 5;

(iii) if, in the opinion of test personnel pursuant to the applicable testing protocol or detection procedure, the storage tank or tank appurtenance does not have a leak or has passed the leak test, no notification is required. In such case, the responsible person must retain the qualified test personnel's report on the test and must provide the report to the agency upon request; and

(iv) the agency may by rule, permit, or guidance establish procedures for leak testing and leak detection, such as acceptable methods, qualifications, test protocols, thresholds, record keeping, and reporting;

(3) if contaminated soil, contaminated groundwater, free product as a liquid or vapor, or other indication of a historic spill is discovered by measurement or observation during operation or repair of an active storage tank system or tank appurtenance, the property owner or responsible person must immediately notify the agency according to subdivision 5. If the condition is discovered during repair or removal of an inactive and empty storage tank, the property owner or responsible person must notify the agency the next business day; and

(4) a person such as a consultant or contractor involved in the testing, inspection, repair, investigation, closure, or removal of a storage tank or tank appurtenance must immediately notify the responsible person if field instruments, observations, or laboratory tests indicate that a spill or leak has or may have occurred. The person must notify the agency of the indication of a spill or leak by the next business day if the person has not confirmed that the responsible person has notified the agency.

**Subd. 5. Notifications and follow-up reports.** (a) Notification to the agency under subdivisions 2 to 4 must be made by telephone call to the state duty officer or by an electronic notification system if the state duty officer makes such a system available.

(b) If there is more than one person in control or responsible for a pollutant material that was spilled or discharged, they may, by mutual agreement, make a single notification on behalf of all persons required to notify. Each remains responsible, however, for the completeness and accuracy of the notification and for follow-up information and reporting under paragraph (e). If there is no agreement, each person who is required to notify must make a notification.

(c) A notification made by a third party such as a fire department or passerby does not relieve any person in control or responsible person from a spill or discharge notification duty. A notification to the state duty officer does not replace a 911 call to a local public safety answering point, any required calls to a local sanitary sewer operator, or any calls mandated by other state or federal law, except as specifically provided under chapter 115E. A notification to the state duty officer under this section that is

related to hazardous substances or oil also serves as a notification to the Department of Transportation, Department of Public Safety, and Department of Agriculture if the caller identifies those other agencies as requiring notice.

(d) The person making the notification to the state duty officer must provide the following information, to the extent known at the time of the notification:

(1) the material spilled or discharged or the type of material if the exact material identification is not known;

(2) the quantity spilled or an estimate or description of the quantity if the exact volume of spill is not known;

(3) the location of the spill, extent of spread of the spill, and proximity of the spill to surface waters, storm or sanitary sewers, wells, and structures;

(4) the circumstances of the spill, including, if known, cause, time of spill, and time of discovery;

(5) whether a responsible person or another person has committed to contain, recover, and otherwise respond to the spill;

(6) actions taken and actions planned to contain, recover, and otherwise respond to the spill;

(7) whether the person in control, a responsible person, a property owner, a local official, or a third party requests assistance or guidance from the agency or other state personnel;

(8) a telephone number that will be answered for the next hour by a knowledgeable person in control or responsible person at the scene of the spill, a telephone number that will be answered the next business day, and an e-mail or other electronic contact for the responsible person; and

(9) an explanation for any late report or delayed containment and recovery.

(e) Follow-up notifications must be made to the state duty officer by telephone or e-mail when previously unknown required information under paragraph (d) becomes known to the person in control or the responsible person.

(f) For spills or discharges greater than ten times the volume of notification thresholds under subdivision 3, Table I, and as requested by the agency under section 116.091, a responsible person must submit a written report on the spill or discharge to the agency containing the information in clauses (1) to (5) within 30 days after the date of the notification to the state duty officer. The written report must identify the spill by state duty officer report number and must summarize:

(1) the quantity of the spill as finally determined;



(2) the quantity of spilled material that was recovered as liquid or solid material, estimated quantity of material that was recovered in soil or debris, estimated quantity of material treated on site, quantity of material that was disposed of off site, and quantity of spilled material that was not recovered;

(3) the location and facilities used for disposal;

(4) the cause of the spill; and

(5) the actions taken to prevent or prepare for similar spills in the future.

Sec. 15. Minnesota Statutes 2010, section 115E.01, subdivision 3, is amended to read:

Subd. 3. ~~Commissioners~~ **Commissioner**. "~~Commissioners~~ **Commissioner**" means the commissioner of ~~public safety and~~

~~(1) the commissioner of agriculture, with respect to agricultural chemicals; or~~  
~~(2) the commissioner of the Pollution Control Agency, with respect to other hazardous substances and oil.~~

Sec. 16. Minnesota Statutes 2010, section 115E.01, is amended by adding a subdivision to read:

Subd. 3b. **Container**. "**Container**" has the meaning given under section 115.01.

Sec. 17. Minnesota Statutes 2010, section 115E.01, subdivision 4, is amended to read:

Subd. 4. **Discharge**. "**Discharge**" ~~means an intentional or unintentional emission, other than natural seepage, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;~~ has the meaning given under section 115.01 and also includes release as defined in section sections 115B.02, subdivision 15, and 115C.02, subdivision 12.

Sec. 18. Minnesota Statutes 2010, section 115E.01, subdivision 6, is amended to read:

Subd. 6. **Hazardous substance**. "**Hazardous substance**" has the meaning given in section 115B.02, subdivision 8, except a hazardous substance that is also regulated as an agricultural chemical under chapter 18D or 18E.

Sec. 19. Minnesota Statutes 2010, section 115E.01, subdivision 11, is amended to read:

Subd. 11. **Response**. "**Response**" has the meaning given in section 115B.02, subdivision 18, and the meaning of corrective action given in section 115C.02, subdivision 4. Response includes actions to contain and recover a spill or discharge and restoration,

10.1 rehabilitation, replacement, or acquisition of the equivalent of the natural resources  
10.2 affected by the discharge of hazardous substances or oil.

10.3 Sec. 20. Minnesota Statutes 2010, section 115E.01, subdivision 11a, is amended to  
10.4 read:

10.5 Subd. 11a. **Response area.** "Response area" means the area designated by the  
10.6 federal on-scene coordinator, or the commissioner of the Pollution Control Agency, or the  
10.7 ~~commissioner of agriculture~~ in which response to a discharge is occurring.

10.8 Sec. 21. Minnesota Statutes 2010, section 115E.01, subdivision 11c, is amended to  
10.9 read:

10.10 Subd. 11c. **Responsible party.** "Responsible party" means a responsible person as  
10.11 defined under section 115.01 or chapter 115B or 115C or a responsible party as defined in  
10.12 section 1001 of the Oil Pollution Act of 1990.

10.13 Sec. 22. Minnesota Statutes 2010, section 115E.01, is amended by adding a subdivision  
10.14 to read:

10.15 Subd. 11d. **Spill.** "Spill" has the meaning given under section 115.01.

10.16 Sec. 23. Minnesota Statutes 2010, section 115E.02, is amended to read:

10.17 **115E.02 DUTY TO PREVENT DISCHARGES AND SPILLS.**

10.18 A person who owns or operates a vessel or facility transporting, storing, or otherwise  
10.19 handling hazardous substances or oil or who is otherwise in control of hazardous  
10.20 substances or oil shall take reasonable steps to prevent the discharge or spill of those  
10.21 materials in a place or manner that might cause pollution of the land, waters, or air of  
10.22 the state or that might threaten the public's ~~safety or health.~~ Compliance with Pollution  
10.23 Control Agency rules and permits, Department of Transportation rules, United States  
10.24 Environmental Protection Agency regulations, United States Coast Guard regulations,  
10.25 established fire and building codes, and nationally recognized industrial standards is  
10.26 considered among the reasonable required steps to prevent discharges.

10.27 Sec. 24. Minnesota Statutes 2010, section 115E.03, is amended to read:

10.28 **115E.03 DUTY TO PREPARE FOR RESPONSE TO DISCHARGES AND**  
10.29 **SPILLS.**

10.30 Subdivision 1. **General preparedness.** A person who owns or operates a vessel or  
10.31 facility transporting, storing, or otherwise handling hazardous substances or oil or who is

otherwise in control of hazardous substances or oil shall be prepared at all times to rapidly and thoroughly recover discharged or spilled hazardous substances or oil that were under that person's control and to take all other actions necessary to minimize or abate pollution of land, waters, and air of the state and to protect the public's ~~safety and~~ health.

Subd. 2. **Specific preparedness.** The following persons shall comply with the specific requirements of subdivisions 3 and 4 and section 115E.04:

(1) persons who own or operate a vessel that is constructed or adapted to carry, or that carried, oil or hazardous substances in bulk as cargo or cargo residue;

(2) persons who own or operate railroad car rolling stock transporting an aggregate total of more than 100,000 gallons of oil or hazardous substance as cargo in Minnesota in any calendar month;

(3) persons who own or operate facilities containing ~~1,000,000~~ 10,000 gallons or more of oil or hazardous substance in tank storage at any time;

(4) persons who own or operate facilities where there is transfer of an average monthly aggregate total of more than ~~1,000,000~~ 100,000 gallons of oil or hazardous substances to or from vessels, tanks, rolling stock, vehicles, or pipelines, ~~except for facilities where the primary transfer activity is the retail sales of motor fuels;~~

(5) persons who own or operate hazardous liquid pipeline facilities through which more than 100,000 gallons of oil or hazardous substance is transported in any calendar month; ~~and~~

(6) persons ~~required to demonstrate preparedness under section 115E.05;~~ who own or operate trucks or cargo trailer rolling stock transporting an average monthly aggregate total of more than 10,000 gallons of oil or hazardous substances as bulk cargo in this state; and

(7) persons who own electrical equipment with more than 100,000 aggregate total gallons of dielectric fluid in the state.

Subd. 3. **Level of preparedness.** (a) A person described in subdivision 2 that is subject to the federal Oil Pollution Act of 1990 shall maintain ~~a~~ the level of preparedness ~~that ensures~~ required by the federal Oil Pollution Act of 1990 regulations to ensure that effective response can reliably be made to worst case discharges as defined by federal law and regulation.

(b) A person described in subdivision 2 that is not subject to the federal Oil Pollution Act of 1990 shall maintain a level of preparedness that ensures that effective response can reliably be made to spills of all materials that the person stores, transports, transfers, or otherwise handles, for the quantities of the largest containers that the person owns, operates, transports, or otherwise handles.

Subd. 4. **Demonstration of satisfactory preparedness.** A person required to maintain preparedness under subdivision 2 may demonstrate satisfactory preparedness to the commissioner of the lead agency through one or a combination of the following means:

- (1) adequate response personnel and equipment in the usual employ of the person;
- (2) adequate response personnel and equipment available from for-hire cleanup contractors with arrangements made for their deployment;
- (3) adequate response personnel and equipment from a response cooperative or community awareness and emergency response organization meeting guidelines prepared by the lead agency with arrangements made for their deployment; or
- (4) adequate response personnel and equipment of local, state, or federal public sector response organizations with arrangements made for their deployment.

Subd. 5. **Department of Transportation.** The commissioner of transportation may examine the evidence of financial responsibility required under section 1016 of the Oil Pollution Act of 1990 for a vessel and may apply the sanctions in that section.

Sec. 25. Minnesota Statutes 2010, section 115E.04, is amended to read:

**115E.04 PREVENTION AND RESPONSE PLANS PREPAREDNESS.**

~~Subdivision 1. **Plan contents.** Persons required to show specific preparedness under section 115E.03, subdivision 2, shall prepare and maintain a prevention and response plan for a worst case discharge. The plan must:~~

~~(1) describe how it is consistent with the requirements of the national or area contingency plans developed under the Oil Pollution Act of 1990;~~

~~(2) describe the measures taken to prevent discharges from occurring, including prevention of a worst case discharge, prevention of discharges of lesser magnitude, and prevention of discharges similar to those that have occurred from the vessel or facility during its history of operation;~~

~~(3) identify the individual or individuals having full authority to implement response actions, and those individuals' qualifications and titles;~~

~~(4) identify how communication and incident command relationships will be established between the individuals in command of a vessel or facility response and the following persons:~~

~~(i) individuals in the employ of the owner or operator of the vessel or facility who are responding to the discharge;~~

~~(ii) appropriate federal, state, and local officials; and~~

~~(iii) other persons providing emergency response equipment and personnel;~~

~~(5) describe the facility or vessel and identify the locations and characteristics of potential worst case discharges from the vessel or facility;~~

~~(6) identify the means under section 115E.03, subdivision 4, that will be used to satisfy the requirement to have adequate equipment and personnel to respond to a worst case discharge;~~

~~(7) contain copies of contracts, correspondence, or other documents showing that adequate personnel and equipment as described in section 115E.03, subdivision 4, will be available to respond to a worst case discharge;~~

~~(8) describe the actions that will be taken by the persons described in section 115E.03, subdivision 4, in the event of a worst case discharge; and~~

~~(9) describe the training, equipment testing, periodic drills, and unannounced drills that will be used to ensure that the persons and equipment described in section 115E.03, subdivision 4, are ready for response.~~

~~A plan submitted to the federal government under the Oil Pollution Act of 1990 or prepared under other law may be used to satisfy the requirements in clauses (1) to (9) provided that the information required by clauses (1) to (9) is included in the plan.~~

**Subd. 1a. Specific prevention and preparedness measures; plans required.**

(a) Persons who own or operate facilities listed in section 115E.03, subdivision 2, must comply with the prevention and preparedness measures of subdivisions 1a to 3d.

(b) Facilities listed in section 115E.03, subdivision 2, that are subject to federal Oil Pollution Act of 1990 plan requirements must maintain a compliant federal plan that contains or describes the information under subdivisions 2a to 3d or may maintain a separate spill prevention and response plan that contains the information in subdivisions 2a to 3d.

(c) Facilities listed in section 115E.03, subdivision 2, that are not subject to federal Oil Pollution Act of 1990 plan requirements must maintain a written spill prevention and response plan that contains or describes the information in subdivisions 2a to 3d.

(d) The written federal Oil Pollution Act of 1990 plan or the written spill prevention and response plan must be maintained on site, must be updated with all major changes in facility, operations, contacts, or materials, and must be available to employees or other parties with any role in the plan.

~~**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.~~

~~(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.~~

Subd. 2a. **Site diagrams and maps.** (a) All facilities listed in section 115E.03, subdivision 2, that operate in a fixed location, including major pumping stations and terminals of pipeline systems, electrical substations with more than 10,000 gallons of dielectric fluid, and major fueling and yard locations of railroads must have a site diagram that is posted on site or accessible at all times to employees and first responders and that shows:

(1) the oil and hazardous substance storage, transfer, use, and control locations on the site;

(2) drainage on the site, including direction of drainage, storm and sanitary sewer inlets, ditches, storm water structures, and storm water outfalls;

(3) adjacent private wells and any public water supply wellhead protection zones in the area of the facility;

(4) location of on-site containment and response equipment; and

(5) contact information for the facility operators and the state duty officer.

(b) In addition to the site diagram under paragraph (a), all facilities listed in section 115E.03, subdivision 2, that are subject to the federal Oil Pollution Act of 1990 must have:

(1) for fixed facilities, a map showing:

(i) the receiving water body into which the site's storm water and drainage drains;

(ii) response access points to those receiving waters;

(iii) the sensitive areas of those receiving waters as shown in the federal Environmental Protection Agency Inland Sensitivity Atlas and sensitive areas from which to divert spilled material; and

(iv) potential areas in those receiving waters in which to recover spilled material and strategies to recover spilled material; and

(2) for railroad and pipeline facilities and for vessels in scheduled routes, a map showing:

(i) the sensitive areas adjacent to and downstream of the facility right-of-way or route as shown in the federal Environmental Protection Agency Inland Sensitivity Atlas

15.1 and sensitive areas from which to divert spilled material adjacent to and downstream of  
15.2 major water bodies adjacent to rights-of-way; and

15.3 (ii) potential areas in and strategies with which to recover spilled material.

15.4 ~~Subd. 3. **Notification.** (a) The commissioner of public safety must be notified when~~  
15.5 ~~any of the following takes place:~~

15.6 ~~(1) submission of the plan to the federal government;~~

15.7 ~~(2) granting of exemptions or extensions of time by the federal government for~~  
15.8 ~~submission of the plan; or~~

15.9 ~~(3) completion of the plan if submission to the federal government is not required.~~

15.10 ~~(b) Notification under this subdivision must be on a form prescribed by the~~  
15.11 ~~commissioner of public safety and must include:~~

15.12 ~~(1) a description of the facility or vessel;~~

15.13 ~~(2) a description of the activities involving oil or hazardous substances;~~

15.14 ~~(3) a description of the types of materials being handled, including whether~~  
15.15 ~~agricultural chemicals are involved; and~~

15.16 ~~(4) other information required by the commissioner.~~

15.17 ~~(c) The commissioner of public safety shall transmit a copy of the notification to the~~  
15.18 ~~other commissioners as appropriate, depending on the types of materials involved.~~

15.19 Subd. 3a. **Equipment.** (a) All facilities listed in section 115E.03, subdivision 2, that  
15.20 operate in a fixed location, including major pumping stations and terminals of pipeline  
15.21 systems, electrical substations with more than 10,000 gallons of dielectric fluid, and major  
15.22 fueling and yard locations of railroads must have:

15.23 (1) equipment and materials maintained on site for use by trained employees or first  
15.24 responders to contain spills by diking, blocking drainage, covering storm sewer inlets, and  
15.25 absorbing oil; and

15.26 (2) for facilities adjacent to surface water or with oil storage or transfer within 50  
15.27 feet of a storm sewer, access to at least 50 feet of on-water spill containment boom and  
15.28 sorbent boom or pads suitable for deployment at a storm sewer outfall. The equipment  
15.29 may be housed at a local fire department or public works department under a written  
15.30 agreement and may be jointly owned with nearby facilities under a written agreement.

15.31 (b) All facilities listed in section 115E.03, subdivision 2, that are subject to the  
15.32 federal Oil Pollution Act of 1990 equipment requirements must maintain equipment and  
15.33 materials required by the federal Oil Pollution Act of 1990 in compliance with the act.

15.34 (c) Vessel, railroad, and trucking mobile facilities listed in section 115E.03,  
15.35 subdivision 2, that are not subject to the federal Oil Pollution Act of 1990 equipment  
15.36 requirements must have equipment and materials on the vessel, train, or truck sufficient to

16.1 provide initial containment and storm sewer blockage in the event of a fuel tank leak or  
16.2 small cargo tank leak or a transfer operation spill.

16.3 Subd. 3b. **Contracts and arrangements.** (a) All facilities listed in section 115E.03,  
16.4 subdivision 2, that are subject to the federal Oil Pollution Act of 1990 must maintain  
16.5 written contracts with oil spill removal organizations and other contractors in compliance  
16.6 with the act.

16.7 (b) All facilities listed in section 115E.03, subdivision 2, that are not subject to the  
16.8 federal Oil Pollution Act of 1990 must maintain written arrangements with contractors  
16.9 and other parties qualified to stop, contain, and recover spilled materials from the facility.

16.10 (c) All facilities listed in section 115E.03, subdivision 2, must have an employee  
16.11 who is authorized to hire response contractors readily available on site or available by  
16.12 telephone at all times to on-site staff and first responders.

16.13 Subd. 3c. **Containment safeguards for liquid material transfer.** (a) Facilities  
16.14 listed in section 115E.03, subdivision 2, that routinely transfer oil or liquid hazardous  
16.15 substances must provide an engineered impermeable spill containment structure at the  
16.16 locations in the facility where oil or hazardous substance transfer is routinely made  
16.17 between tanks and cargo railcars or cargo trucks or trailers or between railcars and cargo  
16.18 trucks or trailers and locations in the facility for fueling railroad locomotives. The  
16.19 engineered containment must be capable of containing the largest cargo compartment  
16.20 involved in any transfer and also capable of containing five minutes worth of normal  
16.21 transfer volume. The containment structure must safely hold any spilled material until  
16.22 it is recovered.

16.23 (b) The engineered containment structure is not required at locations for fueling  
16.24 vehicles or for transfers done by permanent piping between storage tanks.

16.25 Subd. 3d. **Training and exercising.** Facilities listed in section 115E.03, subdivision  
16.26 2, must train new employees and must, at least annually, provide refresher training to  
16.27 existing employees on:

16.28 (1) spill notification of local public safety responders, appropriate company officials,  
16.29 the state duty officer, and contracted response companies;

16.30 (2) safe procedures for stopping leaks and spills by emergency shutoffs and valves  
16.31 and similar means;

16.32 (3) procedures for isolating spill areas from traffic, people, and sources of ignition;

16.33 (4) procedures for containing spills or procedures for making on-site containment  
16.34 equipment available to local first responders; and

16.35 (5) procedures for deployment of spill containment and sorbent equipment at the  
16.36 surface water or storm sewer outfall connected to a fixed location facility storm sewers.



Subd. 4. **Review of prevention and response ~~plan preparedness and plans.~~** (a)

A person required to show specific preparedness under section 115E.03, subdivision 2, must submit a copy of the federal or state prevention and response plan to ~~any of the commissioners who request it~~ commissioner and to an official of a political subdivision with appropriate jurisdiction upon the official's request, or the plan and equipment and material named in the plan may be examined upon the request of an authorized agent of ~~a~~ the commissioner or official.

(b) Upon the request of ~~one or more of the commissioners~~ commissioner, a person shall demonstrate the adequacy of prevention and response plans and preparedness measures by conducting announced or unannounced drills, calling persons and organizations named in a prevention and response plan and verifying roles and capabilities, locating and testing response equipment, questioning response personnel, or other means that in the judgment of the ~~requesting~~ commissioner demonstrate preparedness. ~~Before requesting an unannounced drill, the requesting commissioner shall notify the other commissioners that a drill will be requested and invite them to participate in or witness the drill.~~ If an unannounced drill is conducted to the satisfaction of the ~~commissioners~~ commissioner, the person conducting the drill may not be required to conduct an additional unannounced drill in the same calendar year.

Subd. 5. **Citizens advisory groups.** ~~The commissioner of the Pollution Control Agency, the Department of Agriculture, or the Department of Public Safety may establish, or a local official may request a commissioner to~~ may establish; a citizens advisory group following a discharge of oil or a hazardous substance. The purpose of the citizens advisory group is to facilitate exchange of information and concerns related to the discharge and response between the owner or operator of the vessel or facility, the governmental responders, and the affected members of the public.

Sec. 26. Minnesota Statutes 2010, section 115E.05, is amended to read:

**115E.05 ORDERS AND INJUNCTIONS; ENFORCEMENT.**

Subdivision 1. **Amendment to plan.** If ~~one or more of the commissioners~~ commissioner finds the prevention and response plans or preparedness measures of a person do not meet the requirements of this chapter, the commissioner ~~or commissioners making the finding~~ may by order require that reasonable amendments to the plan or reasonable additional preventive or preparedness measures be implemented in a timely fashion. ~~If more than one commissioner makes the finding, the order must be a joint order.~~

Subd. 2. **Compliance.** If oil or a hazardous substance is discharged while it is under the control of a person not identified in section 115E.03, subdivision 2, ~~any one of~~

18.1 the ~~commissioners~~ commissioner may by order require the person to comply with the  
18.2 prevention and response plan requirements of sections 115E.03 and 115E.04 in a timely  
18.3 manner if:

- 18.4 (1) land, water, or air of the state is polluted or threatened; or
- 18.5 (2) human life, safety, health, natural resources, or property is damaged or threatened.

18.6 Subd. 3. **Financial assurance for response.** ~~(a) For purposes of this subdivision,~~  
18.7 ~~"ordering commissioner" means:~~

- 18.8 ~~(1) the commissioner of the Pollution Control Agency;~~
- 18.9 ~~(2) the commissioner of natural resources;~~
- 18.10 ~~(3) the commissioner of agriculture; or~~
- 18.11 ~~(4) two or more of these commissioners acting jointly.~~

18.12 ~~(b)~~ (a) The ~~ordering~~ commissioner may issue an order under this subdivision if the  
18.13 ~~ordering~~ commissioner determines that adequate response is not being made or that other  
18.14 circumstances exist which indicate adequate response will not continue. When ordered by  
18.15 the ~~ordering~~ commissioner, the owner or operator of a vessel or facility responsible for the  
18.16 discharge of a hazardous substance or oil shall provide financial assurance acceptable to  
18.17 the ~~ordering~~ commissioner. The financial assurance must be in the amount necessary to  
18.18 cover the reasonable response costs, as determined within one year after discharge by the  
18.19 ~~ordering~~ commissioner, of any additional response that is determined to be reasonable and  
18.20 necessary under applicable laws and regulations.

18.21 ~~(c)~~ (b) The ~~ordering~~ commissioner may issue only one financial assurance order  
18.22 under this subdivision for a single incident involving the discharge of hazardous  
18.23 substances or oil.

18.24 ~~(d)~~ (c) The commissioner may enforce this subdivision ~~may be enforced by the~~  
18.25 ~~ordering commissioner~~ under section 115.071.

18.26 ~~(e)~~ (d) An order issued under this subdivision shall cease to be effective upon  
18.27 completion of a response in accordance with applicable laws and regulations.

18.28 Subd. 4. **Other enforcement powers.** For the purposes of enforcing this chapter,  
18.29 the commissioner ~~of the Pollution Control Agency~~ may exercise the regulatory and  
18.30 enforcement powers in chapters 115 and 116 ~~and the commissioner of the Department~~  
18.31 ~~of Agriculture may exercise the regulatory and enforcement powers in chapters 18B,~~  
18.32 ~~18C, and 18D.~~

18.33 Sec. 27. Minnesota Statutes 2010, section 115E.08, subdivision 2, is amended to read:

18.34 Subd. 2. **Duties.** The commissioner of public safety shall at least annually assess  
18.35 the preparedness of each state agency for carrying out its responsibilities ~~under sections~~

~~115E.01 to 115E.09 related to oil or hazardous substances and shall chair regular meetings of representatives of each agency to prepare for coordinated response. The commissioner of public safety shall develop an incident command system for use by state agency responders in consultation with the affected state agencies. Following each major incident, the commissioner of public safety shall review the performance of each responding agency and the adequacy of the overall response and shall report to the agencies involved and the governor. The commissioner shall also identify opportunities for state agencies to coordinate with federal departments and agencies and political subdivisions of the state for preparedness and response actions.~~

Sec. 28. Minnesota Statutes 2010, section 115E.08, subdivision 4, is amended to read:

Subd. 4. **Annual report.** The commissioner of public safety shall annually report to the appropriate committees of the legislature on the readiness of state government to respond appropriately to discharges of oil or hazardous substances.

Sec. 29. Minnesota Statutes 2010, section 116.073, subdivision 1, is amended to read:

Subdivision 1. **Authority to issue.** (a) Pollution Control Agency staff designated by the commissioner and Department of Natural Resources conservation officers may issue citations to a person who:

(1) disposes of solid waste as defined in section 116.06, subdivision 22, at a location not authorized by law for the disposal of solid waste without permission of the owner of the property;

(2) fails to report or recover discharges as required under section 115.061;

(3) fails to take discharge preventive or preparedness measures required under chapter 115E; or

(4) fails to install or use vapor recovery equipment during the transfer of gasoline from a transport delivery vehicle to an underground storage tank as required in section 116.49, subdivisions 3 and 4.

(b) In addition, Pollution Control Agency staff designated by the commissioner may issue citations to owners and operators of facilities who violate sections 116.46 to 116.50 and Minnesota Rules, chapters 7150 and 7151 and parts 7001.4200 to 7001.4300. A citation issued under this subdivision must include a requirement that the person cited remove and properly dispose of or otherwise manage the waste or discharged oil or hazardous substance, reimburse any government agency that has disposed of the waste or discharged oil or hazardous substance and contaminated debris for the reasonable costs of disposal, or correct any storage tank violations.

20.1 (c) Citations for violations of sections ~~115E.045 and~~ 116.46 to 116.50 and Minnesota  
20.2 Rules, chapters 7150 and 7151, may be issued only after the owners and operators have  
20.3 had a 60-day period to correct violations stated in writing by Pollution Control Agency  
20.4 staff, unless there is a discharge associated with the violation or the violation is a repeat  
20.5 violation from a previous inspection.

20.6 Sec. 30. **REVISOR'S INSTRUCTION.**

20.7 In Minnesota Statutes, section 115C.13, the revisor of statutes shall delete the  
20.8 reference to section 115C.065.

20.9 Sec. 31. **REPEALER.**

20.10 Minnesota Statutes 2010, sections 115C.065; 115E.01, subdivisions 7, 11a, and 13;  
20.11 115E.04, subdivisions 1, 2, and 3; 115E.045; and 115E.08, subdivision 3, are repealed.