

CHAPTER 115B

ENVIRONMENTAL COMPENSATION AND LIABILITY

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115B.01 CITATION.

Sections 115B.01 to 115B.24 may be cited as the environmental response and liability act.

History: 1983 c 121 s 1

115B.02 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 115B.01 to 115B.20, the following terms have the meanings given them.

Subd. 2. **Act of God.** "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Subd. 3. **Agency.** "Agency" means the pollution control agency.

Subd. 4. **Director.** "Director" means the director of the pollution control agency.

Subd. 5. **Facility.** "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(b) Any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(c) Any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Facility" does not include any consumer product in consumer use.

Subd. 6. **Federal Superfund Act.** "Federal Superfund Act" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, United States Code, title 42, section 9601 et seq.

Subd. 7. **Fund.** "Fund" means the environmental response, compensation and compliance fund established under section 115B.20.

Subd. 8. **Hazardous substance.** "Hazardous substance" means:

(a) Any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under United States Code, title 33, section 1321(b)(2)(A);

(b) Any hazardous air pollutant listed pursuant to the Clean Air Act, under United States Code, title 42, section 7412; and

(c) Any hazardous waste.

"Hazardous substance" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

Subd. 9. **Hazardous waste.** "Hazardous waste" means:

(a) Any hazardous waste as defined in section 116.06, subdivision 13, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(b) Any hazardous waste as defined in the Resource Conservation and Recovery Act, under United States Code, title 42, section 6903, which is listed or has the characteristics identified under United States Code, title 42, section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

Subd. 10. **Natural resources.** "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

Subd. 11. **Owner of real property.** "Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including without limitation a person who may be a fee owner, lessee, renter, tenant, lessor, contract for deed vendee, licensor, licensee, or occupant; provided that:

(1) A lessor of real property under a lease which in substance is a financing device and is treated as such under the United States Internal Revenue Code, common law, or statute, is not an owner of the real property;

(2) A public utility holding a public utility easement is an owner of the real property described in the easement only for the purpose of carrying out the specific use for which the easement was granted; and

(3) Any person holding a remainder or other nonpossessory interest or estate in real property is an owner of the real property beginning when that person's interest or estate in the real property vests in possession or that person obtains the unconditioned right to possession, or to control the use of, the real property.

Subd. 12. **Person.** "Person" means any individual, partnership, association, public or private corporation or other entity including the United States government, any interstate body, the state and any agency, department or political subdivision of the state.

Subd. 13. **Pollutant or contaminant.** "Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

"Pollutant or contaminant" does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

Subd. 14. **Public utility easement.** "Public utility easement" means an easement used for the purposes of transmission, distribution, or furnishing, at wholesale or retail, natural or manufactured gas, or electric or telephone service, by a public utility as

defined in section 216B.02, subdivision 4, a cooperative electric association organized under the provisions of chapter 308, a telephone company as defined in section 237.01, subdivisions 2 and 3, or a municipality producing or furnishing gas, electric, or telephone service.

Subd. 15. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

(a) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(b) Release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title 42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal nuclear regulatory commission under United States Code, title 42, section 2210;

(c) Release of source, by-product or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under United States Code, title 42, section 7912(a)(1) or 7942(a); or

(d) Any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18A.21, subdivision 25.

Subd. 16. **Remedy or remedial action.** "Remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, or a pollutant or contaminant, into the environment, to prevent, minimize or eliminate the release in order to protect the public health or welfare or the environment.

"Remedy" or "remedial action" includes, but is not limited to:

(a) Actions at the location of the release such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants or contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring and maintenance reasonably required to assure that these actions protect the public health and welfare and the environment; and

(b) The costs of permanent relocation of residents and businesses and community facilities when the agency determines that, alone or in combination with other measures, relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or pollutants or contaminants, or may otherwise be necessary to protect the public health or welfare.

"Remedy" or "remedial action" does not include offsite transport of hazardous substances, pollutants or contaminants, or contaminated materials or their storage, treatment, destruction, or secure disposition offsite unless the agency determines that these actions:

(1) Are more cost effective than other remedial actions;

(2) Will create new capacity to manage hazardous substances in addition to those located at the affected facility, in compliance with section 116.07 and subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq.; or

(3) Are necessary to protect the public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of the hazardous substances, pollutants or contaminants, or contaminated materials.

Subd. 17. **Remove or removal.** "Remove" or "removal" means:

- (a) The cleanup or removal of a released hazardous substance, or a pollutant or contaminant, from the environment;
- (b) Necessary actions taken in the event of a threatened release of a hazardous substance, or a pollutant or contaminant, into the environment;
- (c) Actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance, or a pollutant or contaminant;
- (d) Disposal or processing of removed material; or
- (e) Other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threatened release.

"Remove" or "removal" includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken pursuant to the Federal Superfund Act, under United States Code, title 42, section 9604(b), and any emergency assistance which may be provided under the Disaster Relief Act of 1974, United States Code, title 42, section 5121 et seq.

Subd. 18. **Respond or response.** "Respond" or "response" means remove, removal, remedy, and remedial action.

Subd. 19. **Water.** "Water" has the meaning given to the term "waters of the state" in section 115.01, subdivision 9.

History: 1983 c 121 s 2

115B.03 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** For the purposes of sections 115B.01 to 115B.20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

- (a) Owned or operated the facility:
 - (1) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility;
 - (2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or
 - (3) during the time of the release or threatened release;
- (b) Owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or
- (c) Knew or reasonably should have known that waste the person accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subd. 2. **Employees and employers.** When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of employment:

- (a) The employee is subject to liability under section 115B.04 or 115B.05 only if the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew that the substance was hazardous and that the conduct, if negligent, could result in serious harm.
- (b) The person's employer shall be considered a person responsible for the release or threatened release and is subject to liability under section 115B.04 or 115B.05 regardless of the degree of care exercised by the employee.

Subd. 3. **Owner of real property.** An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(a) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(b) knowingly permitted any person to make regular use of the facility for disposal of waste;

(c) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(d) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the release; or

(e) took action which significantly contributed to the release after that person knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (d), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 115B.01 to 115B.15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

History: 1983 c 121 s 3; 1986 c 444

115B.04 LIABILITY FOR RESPONSE COSTS AND NATURAL RESOURCES; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 12, and notwithstanding any other provision or rule of law, any person who is responsible for a release or threatened release of a hazardous substance from a facility is strictly liable, jointly and severally, for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(a) All reasonable and necessary response costs incurred by the state, a political subdivision of the state or the United States;

(b) All reasonable and necessary removal costs incurred by any person; and

(c) All damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss.

Subd. 2. **Liability for pollutant or contaminant excluded.** There is no liability under this section for response costs or damages which result from the release of a pollutant or contaminant.

Subd. 3. **Liability for a threatened release.** Liability under this section for a threatened release of a hazardous substance is limited to the recovery by the agency of reasonable and necessary response costs as provided in section 115B.17, subdivision 6.

Subd. 4. **Liability of political subdivisions.** The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1.

Subd. 5. **Transportation of household refuse.** A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this

section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. Defense to certain claims by political subdivisions and private persons.

It is a defense to a claim by a political subdivision or private person for recovery of the costs of its response actions under this section that the hazardous substance released from the facility was placed or came to be located in or on the facility before April 1, 1982, and that the response actions of the political subdivision or private person were not authorized by the agency as provided in section 115B.17, subdivision 12. This defense applies only to response costs incurred on or after July 1, 1983.

Subd. 7. Defense for intervening acts. It is a defense to liability under this section that the release or threatened release was caused solely by:

- (a) An act of God;
- (b) An act of war;
- (c) An act of vandalism or sabotage; or
- (d) An act or omission of a third party or the plaintiff.

"Third party" for the purposes of clause (d) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (c) and (d) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 8. Intervening acts of public agencies. When the agency or the federal environmental protection agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 9. Releases subject to certain permits or standards; federal postclosure fund. It is a defense to liability under this section that:

(a) The release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(b) The hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(c) The release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(d) The release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(e) The release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(f) Liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 10. **Natural resources.** It is a defense to liability under this section, for any injury to, destruction of, or loss of natural resources that:

(a) The natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement, or other comparable approved final environmental analysis for a project or facility which was the subject of a governmental permit or license; and

(b) The project or facility was being operated within the terms of its permit or license.

Subd. 11. **Rendering assistance in response actions.** It is a defense to liability under this section that the response costs or damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the director or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the Federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 12. **Burden of proof for defenses.** Any person claiming a defense provided in subdivisions 6 to 11 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: 1983 c 121 s 4; 1986 c 444

115B.05 LIABILITY FOR ECONOMIC LOSS, DEATH, PERSONAL INJURY AND DISEASE; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 10, and notwithstanding any other provision or rule of law, any person who is responsible for the release of a hazardous substance from a facility is strictly liable for the following damages which result from the release or to which the release significantly contributes:

(a) all damages for actual economic loss including:

(1) any injury to, destruction of, or loss of any real or personal property, including relocation costs;

(2) any loss of use of real or personal property;

(3) any loss of past or future income or profits resulting from injury to, destruction of, or loss of real or personal property without regard to the ownership of the property; and

(b) all damages for death, personal injury, or disease including:

(1) any medical expenses, rehabilitation costs or burial expenses;

(2) any loss of past or future income, or loss of earning capacity; and

(3) damages for pain and suffering, including physical impairment.

Subd. 2. **Liability for pollutant or contaminant excluded.** There is no liability under this section for damages which result from the release of a pollutant or contaminant.

Subd. 3. **Certain employee claims not covered.** Except for a third party who is subject to liability under section 176.061, subdivision 5, there is no liability under this section for the death, personal injury or disease of an employee which is compensable under chapter 176 as an injury or disease arising out of and in the course of employment.

Subd. 4. **Liability limitations.** The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1.

Subd. 5. **Transportation of household refuse.** A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. Defense for intervening acts. It is a defense to liability under this section that the release or threatened release was caused solely by:

- (a) An act of God;
- (b) An act of war;
- (c) An act of vandalism or sabotage; or
- (d) An act or omission of a third party or the plaintiff.

"Third party" for the purposes of clause (d) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (c) and (d) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 7. Intervening acts of public agencies. When the agency or the federal environmental protection agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 8. Releases subject to certain permits or standards; federal postclosure fund. It is a defense to liability under this section that:

(a) The release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(b) The hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(c) The release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(d) The release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(e) The release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(f) Liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 9. Rendering assistance in response actions. It is a defense to liability under this section that the damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the director or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the Federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 10. Burden of proof for defenses. Any person claiming a defense provided in subdivisions 6 to 9 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: 1983 c 121 s 5; 1Sp1985 c 8 s 1; 1986 c 444

115B.055 EFFECT OF REMOVING AND REPEALING CERTAIN PROVISIONS.

Subdivision 1. **Joint and several liability for personal injury.** The enactment of Laws 1983, chapter 121, section 5, relating to joint and several liability, and the subsequent amendment of section 115B.05 as provided in this act, shall not be construed in any way as a determination of legislative intent regarding the applicability of joint and several liability in any action brought under section 115B.05. The determination of whether joint and several liability applies in any action brought under section 115B.05 shall be based solely on applicable statutory and common law.

Subd. 2. **Causation of personal injury.** In any action brought under section 115B.05, or under any other law, to recover damages for death, personal injury, or disease arising out of the release of a hazardous substance, the enactment of Laws 1983, chapter 121, section 7, and subsequent repeal of section 115B.07 under this act, relating to proof of causation, shall not be construed in any way as a determination of legislative intent regarding the legal principles applicable to the proof of the causal connection between the release and the death, injury, or disease. The legal principles applicable to the proof of causation shall be determined solely on the basis of applicable statutory and common law.

History: *1Sp1985 c 8 s 17*

115B.06 APPLICATION TO PAST ACTIONS.

Subdivision 1. **Application of section 115b.05.**

Section 115B.05 does not apply to any claim for damages arising out of the release of a hazardous substance which was placed or came to be located in or on the facility wholly before July 1, 1983.

Subd. 2. [Repealed, *1Sp1985 c 8 s 19*]

History: *1983 c 121 s 6; 1Sp1985 c 8 s 2*

115B.07 [Repealed, 1Sp1985 c 8 s 19]**115B.08 LIABILITY UNDER SECTION 115B.04; APPORTIONMENT AND CONTRIBUTION.**

Subdivision 1. **Right of apportionment; factors.** Any person held jointly and severally liable under section 115B.04 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each defendant to show how that defendant's liability should be apportioned. The court shall reduce the amount of damages in proportion to any amount of liability apportioned to the party recovering.

In apportioning the liability of any party under this section, the trier of fact shall consider the following:

- (a) The extent to which that party's contribution to the release of a hazardous substance can be distinguished;
- (b) The amount of hazardous substance involved;
- (c) The degree of toxicity of the hazardous substance involved;
- (d) The degree of involvement of and care exercised by the party in manufacturing, treating, transporting, and disposing of the hazardous substance;
- (e) The degree of cooperation by the party with federal, state, or local officials to prevent any harm to the public health or the environment; and
- (f) Knowledge by the party of the hazardous nature of the substance.

Subd. 2. **Contribution.** If a person is held jointly and severally liable under section 115B.04 and establishes a proportionate share of the aggregate liability, the provisions of section 604.02, subdivisions 1 and 2, shall apply with respect to contribution and reallocation of any uncollectible amounts.

History: *1983 c 121 s 8; 1986 c 444*

115B.09 LIABILITY UNDER SECTION 115B.05; COMPARATIVE FAULT AND CONTRIBUTION.

The provisions of sections 604.01 and 604.02, subdivisions 1 and 2, apply to any action for damages under section 115B.05.

History: 1983 c 121 s 9; 1Sp1985 c 8 s 3

115B.10 NO AVOIDANCE OF LIABILITY; INSURANCE AND SUBROGATION.

An owner or operator of a facility or any other person who may be liable under sections 115B.01 to 115B.15 may not avoid that liability by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement. Nothing in this section shall be construed:

(a) To prohibit any party who may be liable under sections 115B.01 to 115B.15 from entering an agreement by which that party is insured, held harmless or indemnified for part or all of that liability;

(b) To prohibit the enforcement of any insurance, hold harmless or indemnification agreement; or

(c) To bar any cause of action brought by a party who may be liable under sections 115B.01 to 115B.15 or by an insurer or guarantor, whether by right of subrogation or otherwise.

History: 1983 c 121 s 10

115B.11 STATUTE OF LIMITATIONS.

No person may recover 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.

History: 1983 c 121 s 11

115B.12 OTHER REMEDIES PRESERVED.

Nothing in sections 115B.01 to 115B.15 shall be construed to abolish or diminish any remedy or affect the right of any person to bring a legal action or use any remedy available under any other provision of state or federal law, including common law, to recover for personal injury, disease, economic loss or response costs arising out of a release of any hazardous substance, or for removal or the costs of removal of that hazardous substance. Nothing in sections 115B.01 to 115B.15 shall be construed to limit or restrict in any way the liability of any person under any other state or federal law, including common law, for loss due to personal injury or disease, for economic loss, or for response costs arising out of any release or threatened release of a hazardous substance from a facility regardless of the time at which a hazardous substance was placed or came to be located in or on the facility. The provisions of sections 115B.01 to 115B.15 shall not be considered, interpreted, or construed in any way as reflecting a determination, in whole or in part, of policy regarding the inapplicability of strict liability, or strict liability doctrines under any other state or federal law, including common law, to activities past, present or future, relating to hazardous substances, or pollutants or contaminants, or other similar activities.

History: 1983 c 121 s 12

115B.13 DOUBLE RECOVERY PROHIBITED.

A person who recovers response costs or damages pursuant to sections 115B.01 to 115B.15 may not recover the same costs or damages pursuant to any other law. A person who recovers response costs or damages pursuant to any other state or federal law may not recover for the same costs or damages pursuant to sections 115B.01 to 115B.15.

History: 1983 c 121 s 13

115B.14 AWARD OF COSTS.

Upon motion of a party prevailing in an action under sections 115B.01 to 115B.15 the court may award costs, disbursements and reasonable attorney fees and witness fees to that party.

History: 1983 c 121 s 14

115B.15 APPLICATION OF SECTIONS 115B.01 TO 115B.14.

Sections 115B.01 to 115B.14 apply to any release or threatened release of a hazardous substance occurring on or after July 1, 1983, including any release which began before July 1, 1983, and continued after that date. Sections 115B.01 to 115B.14 do not apply to a release or threatened release which occurred wholly before July 1, 1983, regardless of the date of discovery of any injury or loss caused by the release or threatened release.

History: 1983 c 121 s 15

115B.16 DISPOSITION OF FACILITIES.

Subdivision 1. Closed disposal facilities; use of property. No person shall use any property on or in which hazardous waste remains after closure of a disposal facility as defined in section 115A.03, subdivision 10, in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the disposal facility's monitoring systems, unless the agency finds that the disturbance:

- (a) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
- (b) Is necessary to reduce a threat to human health or the environment.

Subd. 2. Recording of affidavit. Before any transfer of ownership of any property which the owner knew or should have known was used as the site of a hazardous waste disposal facility as defined in section 115A.03, subdivision 10, or which the owner knew or should have known is subject to extensive contamination by release of a hazardous substance, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

- (a) That the land has been used to dispose of hazardous waste or that the land is contaminated by a release of a hazardous substance;
- (b) The identity, quantity, location, condition and circumstances of the disposal or contamination to the full extent known or reasonably ascertainable; and
- (c) That the use of the property or some portion of it may be restricted as provided in subdivision 1.

An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under clauses (a) to (c) with respect to property for which an affidavit has already been recorded.

If the owner or any subsequent owner of the property removes the hazardous substance, together with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal of the hazardous substance.

Failure to record an affidavit as provided in this subdivision does not affect or prevent any transfer of ownership of the property.

Subd. 3. **Duty of county recorder.** The county recorder shall record all affidavits presented in accordance with subdivision 2. The affidavits shall be recorded in a manner which will assure their disclosure in the ordinary course of a title search of the subject property.

Subd. 4. **Penalties.** (a) Any person who knowingly violates the provisions of subdivision 1 is subject to a civil penalty in an amount determined by the court of not more than \$100,000, and shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance resulting from the violation.

(b) Any person who knowingly fails to record an affidavit as required by subdivision 2 shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance from a facility located on that property.

(c) A civil penalty may be imposed and recovered by an action brought by a county attorney or by the attorney general in the district court of the county in which the property is located.

(d) Any civil fines recovered under this subdivision shall be deposited in the fund.

History: 1983 c 121 s 16; 1986 c 444

115B.17 STATE RESPONSE TO RELEASES.

Subdivision 1. **Removal and remedial action.** Whenever there is a release or substantial threat of release from a facility of any pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or whenever a hazardous substance is released or there is a threatened release of a hazardous substance from a facility:

(a) The agency may take any removal or remedial action relating to the hazardous substance, or pollutant or contaminant, which the agency deems necessary to protect the public health or welfare or the environment. Before taking any action the agency shall:

(1) Request any responsible party known to the agency to take actions which the agency deems reasonable and necessary to protect the public health or welfare or the environment, stating the reasons for the actions, a reasonable time for beginning and completing the actions taking into account the urgency of the actions for protecting the public health or welfare or the environment, and the intention of the agency to take action if the requested actions are not taken as requested;

(2) Notify the owner of real property where the facility is located or where response actions are proposed to be taken, if the owner is not a responsible party, that responsible parties have been requested to take response actions and that the owner's cooperation will be required in order for responsible parties or the agency to take those actions; and

(3) Determine that the actions requested by the agency will not be taken by any known responsible party in the manner and within the time requested.

(b) The director may take removal action which the director deems necessary to protect the public health or welfare or the environment if the director determines that the release or threatened release constitutes an emergency requiring immediate action to prevent, minimize or mitigate damage to the public health or welfare or the environment. Before taking any action the director shall make reasonable efforts in light of the urgency of the action to follow the procedure provided in clause (a).

No removal action taken by any person shall be construed as an admission of liability for a release or threatened release.

Subd. 2. **Other actions.** Whenever the agency or director is authorized to act pursuant to subdivision 1 or whenever the agency or director has reason to believe that a release of a hazardous substance, or a pollutant or contaminant, has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, or a pollutant or contaminant, the agency or director may undertake investigations, monitoring, surveys, testing, and other similar activities necessary or appropriate to identify the existence and extent of the release or

threat thereof, the source and nature of the hazardous substances, or pollutants or contaminants, and the extent of danger to the public health or welfare or the environment. In addition, the agency may undertake planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action, and to enforce the provisions of sections 115B.01 to 115B.18.

Subd. 3. Duty to provide information. Any person who the agency has reason to believe is responsible for a release or threatened release as provided in section 115B.03, or who is the owner of real property where the release or threatened release is located or where response actions are proposed to be taken, when requested by the agency, or any member, employee or agent thereof who is authorized by the agency, shall furnish to the agency any information which that person may have or may reasonably obtain which is relevant to the release or threatened release.

Subd. 4. Access to information and property. The agency or any member, employee or agent thereof authorized by the agency, upon presentation of credentials, may:

(a) Examine and copy any books, papers, records, memoranda or data of any person who has a duty to provide information to the agency under subdivision 3; and

(b) Enter upon any property, public or private, for the purpose of taking any action authorized by this section including obtaining information from any person who has a duty to provide the information under subdivision 3, conducting surveys or investigations, and taking removal or remedial action.

Subd. 5. Classification of data. Except as otherwise provided in this subdivision, data obtained from any person pursuant to subdivision 3 or 4 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information which would tend to affect adversely the competitive position of that person, the director shall classify the data as private or nonpublic data as defined in section 13.02. Notwithstanding any other law to the contrary, data classified as private or nonpublic under this subdivision may be disclosed when relevant in any proceeding under sections 115B.01 to 115B.18, or to other public agencies concerned with the implementation of sections 115B.01 to 115B.18.

Subd. 6. Recovery of expenses. Any reasonable and necessary expenses incurred by the agency or director pursuant to this section, including all response costs, and administrative and legal expenses, may be recovered in a civil action brought by the attorney general against any person who may be liable under section 115B.04 or any other law. The agency's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. Any expenses incurred pursuant to this section which are recovered by the attorney general pursuant to section 115B.04 or any other law, including any award of attorneys fees, shall be deposited in the fund and credited to a special account for additional response actions as provided in section 115B.20, subdivision 2, clause (b) or (d).

Subd. 7. Actions relating to natural resources. For the purpose of this subdivision, the state is the trustee of the air, water and wildlife of the state. An action pursuant to section 115B.04 for damages with respect to air, water or wildlife may be brought by the attorney general in the name of the state as trustee for those natural resources. Any damages recovered by the attorney general pursuant to section 115B.04 or any other law for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance, or a pollutant or contaminant, shall be deposited in the fund and credited to a special account for the purposes provided in section 115B.20, subdivision 2, clause (f).

Subd. 8. Actions relating to pesticides or fertilizer or soil or plant amendments. When the commissioner of agriculture has reported an incident involving the release of pesticides under the provisions of section 18A.37 or the release of fertilizers or soil or plant amendments, and the agency determines that the incident constitutes a release of a hazardous substance, or a pollutant or contaminant, the agency shall authorize the

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commissioner, subject to the provisions of subdivision 13, to take any action which the agency would be authorized to take under subdivisions 1 to 4. Subject to the provisions of section 115B.20, subdivision 3, the agency shall reimburse the commissioner from the fund for the reasonable and necessary expenses incurred in taking those actions and may recover any amount spent from the fund under subdivision 6.

Subd. 9. Actions relating to occupational safety and health. The agency, director and the commissioner of labor and industry shall make reasonable efforts to coordinate any actions taken under this section and under sections 182.65 to 182.674 to avoid duplication or conflict of actions or requirements with respect to a release or threatened release affecting the safety of any conditions or place of employment.

Subd. 10. Actions relating to health. The agency and director shall make reasonable efforts to coordinate and consult with the commissioner of health in planning and directing response actions with respect to a release or threatened release affecting the public health. If the commissioner of health, upon the request of the agency, takes any actions authorized under this section, the agency shall reimburse the commissioner from the fund for the reasonable and necessary expenses incurred in taking those actions and may recover any amount spent from the fund under subdivision 6.

Subd. 11. Limit on actions by political subdivisions. When the agency or director has requested a person who is responsible for a release or threatened release to take any response action under subdivision 1, no political subdivision shall request or order that person to take any action which conflicts with the action requested by the agency or director.

Subd. 12. Authorization of certain response actions: For the purpose of permitting a political subdivision or private person to recover response costs as provided in section 115B.04, subdivision 6, the agency may authorize the political subdivision to take removal or remedial actions or may authorize the private person to take removal actions with respect to any release of a hazardous substance which was placed or came to be located in the facility before April 1, 1982. The authorization shall be based on application of the criteria in the rules of the agency adopted under subdivision 13 or, if the rules have not been adopted, under the criteria set forth in subdivision 13 on which the rules are required to be based. The authorization shall not be inconsistent with the criteria. This subdivision shall not be construed to prohibit a political subdivision or private person from taking removal or remedial actions without the authorization of the agency.

Subd. 13. Priorities; rules. By November 1, 1983, the agency shall establish a temporary list of priorities among releases or threatened releases for the purpose of taking remedial action and, to the extent practicable consistent with the urgency of the action, for taking removal action under this section. The temporary list, with any necessary modifications, shall remain in effect until the agency adopts rules establishing state criteria for determining priorities among releases and threatened releases. The agency shall adopt the rules by July 1, 1984. After rules are adopted, a permanent priority list shall be established, and may be modified from time to time, according to the criteria set forth in the rules. Before any list is established under this subdivision the agency shall publish the list in the State Register and allow 30 days for comments on the list by the public.

The temporary list and the rules required by this subdivision shall be based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the administrative and financial capabilities of the agency, and other appropriate factors.

History: 1983 c 121 s 17; 1986 c 444

115B.18 FAILURE TO TAKE REQUESTED ACTIONS; CIVIL PENALTIES; ACTION TO COMPEL PERFORMANCE; INJUNCTIVE RELIEF.

Subdivision 1. **Civil penalties.** Any person responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility shall forfeit and pay to the state a civil penalty in an amount to be determined by the court of not more than \$20,000 per day for each day that the person fails to take reasonable and necessary response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3.

The penalty provided under this subdivision may be recovered by an action brought by the attorney general in the name of the state in connection with an action to recover expenses of the agency under section 115B.17, subdivision 6, or by a separate action in the district court of Ramsey county. All penalties recovered under this subdivision shall be deposited in the fund.

Subd. 2. **Action to compel performance.** When any person who is responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility, fails to take response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3, the attorney general may bring an action in the name of the state to compel performance of the requested response actions. If any person having any right, title, or interest in and to the real property where the facility is located or where response actions are proposed to be taken is not a person responsible for the release or threatened release, the person may be joined as an indispensable party in an action to compel performance in order to assure that the requested response actions can be taken on that property by the responsible parties.

Subd. 3. **Requests for response actions.** A request for emergency removal action shall be made by the director. Other requests for response actions shall be made by the agency. A request shall be in writing, shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed taking into account the urgency of the action for protection of the public health or welfare or the environment.

Subd. 4. **Injunctive relief.** The release or threatened release of a hazardous substance, or a pollutant or contaminant, shall constitute a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

History: 1983 c 121 s 18

115B.19 PURPOSES OF FUND AND TAXES.

In establishing the environmental response, compensation and compliance fund in section 115B.20 and imposing taxes in section 115B.22 it is the purpose of the legislature to:

(a) Encourage treatment and disposal of hazardous waste in a manner that adequately protects the public health or welfare or the environment;

(b) Encourage responsible parties to provide the response actions necessary to protect the public and the environment from the effects of the release of hazardous substances;

(c) Encourage the use of alternatives to land disposal of hazardous waste including resource recovery, recycling, neutralization, and reduction;

(d) Provide state agencies with the financial resources needed to prepare and implement an effective and timely state response to the release of hazardous substances, including investigation, planning, removal and remedial action;

(e) Compensate for increased governmental expenses and loss of revenue and to provide other appropriate assistance to mitigate any adverse impact on communities in which commercial hazardous waste processing or disposal facilities are located under the siting process provided in chapter 115A;

(f) Recognize the environmental and public health costs of land disposal of solid waste and of the use and disposal of hazardous substances and to place the burden of financing state hazardous waste management activities on those whose products and services contribute to hazardous waste management problems and increase the risks of harm to the public and the environment.

History: 1983 c 121 s 19

115B.20 ENVIRONMENTAL RESPONSE, COMPENSATION AND COMPLIANCE FUND.

Subdivision 1. Establishment. The environmental response, compensation and compliance fund is created as an account in the state treasury and may be spent only for the purposes provided in subdivision 2.

Subd. 2. Purposes for which money may be spent. Subject to appropriation by the legislature the money in the fund may be spent for any of the following purposes:

(a) Preparation by the agency for taking removal or remedial action under section 115B.17, including investigation, monitoring and testing activities, enforcement and compliance efforts relating to the release of hazardous substances, pollutants or contaminants under section 115B.17 or 115B.18;

(b) Removal and remedial actions taken or authorized by the agency or director under section 115B.17, including related enforcement and compliance efforts under section 115B.17 or 115B.18, and payment of the state share of the cost of remedial action which may be carried out under a cooperative agreement with the federal government pursuant to the Federal Superfund Act, under United States Code, title 42, section 9604(c)(3) for actions related to facilities other than commercial hazardous waste facilities located under the siting authority of chapter 115A;

(c) Reimbursement to any private person for expenditures made before July 1, 1983 to provide alternative water supplies deemed necessary by the agency and the department of health to protect the public health from contamination resulting from the release of a hazardous substance;

(d) Removal and remedial actions taken or authorized by the agency or director under section 115B.17 including related enforcement and compliance efforts under section 115B.17 or 115B.18, and payment of the state share of the cost of remedial action which may be carried out under a cooperative agreement with the federal government pursuant to the Federal Superfund Act, under United States Code, title 42, section 9604(c)(3) for actions related to commercial hazardous waste facilities located under the siting authority of chapter 115A;

(e) Compensation as provided by law, after submission by the waste management board of the report required under section 115A.08, subdivision 5, to mitigate any adverse impact of the location of commercial hazardous waste processing or disposal facilities located pursuant to the siting authority of chapter 115A;

(f) Planning and implementation by the commissioner of natural resources of the rehabilitation, restoration or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance;

(g) Inspection, monitoring and compliance efforts by the agency, or by political subdivisions with agency approval, of commercial hazardous waste facilities located under the siting authority of chapter 115A;

(h) Grants by the agency or the waste management board to demonstrate alternatives to land disposal of hazardous waste including reduction, separation, pretreatment, processing and resource recovery, for education of persons involved in regulating and handling hazardous waste;

(i) Intervention and environmental mediation by the legislative commission on waste management under chapter 115A; and

(j) Grants by the agency to study the extent of contamination and feasibility of cleanup of hazardous substances and pollutants or contaminants in major waterways of the state.

Subd. 3. Limit on certain expenditures. The director or agency may not spend any money under subdivision 2, clause (b) or (d) for removal or remedial actions to the extent that the costs of those actions may be compensated from any fund established under the Federal Superfund Act, United States Code, title 42, section 9600 et seq. The director or agency shall determine the extent to which any of the costs of those actions may be compensated under the federal act based on the likelihood that the compensation will be available in a timely fashion. In making this determination the director or agency shall take into account:

(a) The urgency of the removal or remedial actions and the priority assigned under the Federal Superfund Act to the release which necessitates those actions;

(b) The availability of money in the funds established under the Federal Superfund Act; and

(c) The consistency of any compensation for the cost of the proposed actions under the Federal Superfund Act with the national contingency plan, if such a plan has been adopted under that act.

Subd. 4. Revenue sources. Revenue from the following sources shall be deposited in the environmental response, compensation and compliance fund:

(a) The proceeds of the taxes imposed pursuant to section 115B.22, including interest and penalties;

(b) All money recovered by the state under sections 115B.01 to 115B.18 or under any other statute or rule related to the regulation of hazardous waste or hazardous substances, including civil penalties and money paid under any agreement, stipulation or settlement but excluding fees imposed under section 116.12;

(c) All interest attributable to investment of money deposited in the fund; and

(d) All money received in the form of gifts, grants, reimbursement or appropriation from any source for any of the purposes provided in subdivision 2, except federal grants.

Subd. 5. Recommendation by LCWM. The legislative commission on waste management shall make recommendations to the standing legislative committees on finance and appropriations regarding appropriations from the fund.

Subd. 6. Report to legislature. By November 1, 1984, and each year thereafter, the agency shall submit to the senate finance committee, the house appropriations committee and the legislative commission on waste management a report detailing the activities for which money from the environmental response, compensation and compliance fund has been spent during the previous fiscal year.

History: 1983 c 121 s 20

115B.21 TAXES; DEFINITIONS.

Subdivision 1. Application. The definitions provided in this section and section 115B.02 apply to sections 115B.21 to 115B.24.

Subd. 2. Commissioner. "Commissioner" means the commissioner of revenue.

Subd. 3. Generator. "Generator" means a person who generates hazardous waste and who is required to disclose the generation of hazardous waste under the hazardous waste rules of the agency adopted under section 116.07.

Subd. 4. Long-term containment. "Long-term containment" means land disposal or storage for a period of more than one year.

Subd. 5. Treatment. "Treatment" means any material, technique or process designed to change the physical, chemical or biological character or composition of a hazardous waste in order to: (a) neutralize it; (b) render it nonhazardous or less hazardous; (c) render it safer to transport, store or dispose of; (d) make it amenable to storage; or (e) reduce its volume.

Subd. 6. Wastewater treatment unit. "Wastewater treatment unit" means a device which is part of a wastewater treatment facility subject to regulation pursuant to the federal Clean Water Act, under United States Code, title 33, section 1317(b) or 1342.

History: 1983 c 121 s 21

115B.22 HAZARDOUS WASTE GENERATOR TAX.

Subdivision 1. **Taxes imposed; exclusions.** Each generator of hazardous waste shall pay the taxes imposed by this section based upon the volume and destination of the hazardous wastes generated. The taxes imposed by this section do not apply to hazardous wastes destined for recycling or reuse including waste accumulated, stored, or physically, chemically, or biologically treated before recycling or reuse, to used crankcase oil, to hazardous waste which is generated as a result of any response action, or to hazardous waste which meets applicable pretreatment standards or compliance schedules and is discharged to a public sewage treatment works, or to hazardous waste that is generated as residue from a hazardous waste incineration facility that treats waste subject to taxation under subdivision 5.

Subd. 2. **Long-term containment without treatment.** Hazardous waste destined for long-term containment without treatment shall be taxed at the rate of 32 cents per gallon of liquid or \$32 per cubic yard of solid.

Subd. 3. **Long-term containment after treatment.** Hazardous waste destined for long-term containment after treatment shall be taxed at the rate of 16 cents per gallon of liquid or \$16 per cubic yard of solid.

Subd. 4. **Land treatment.** Hazardous waste destined for treatment in or on the land shall be taxed at the rate of \$32 per cubic yard.

Subd. 5. **Other treatment.** Hazardous waste destined for treatment, other than as provided in subdivision 6, to produce a material which is not hazardous, including treatment permitted by the agency in a sewage treatment works, or hazardous waste which is destined for destructive treatment by incineration shall be taxed at the rate of eight cents per gallon of liquid or \$8 per cubic yard of solid.

Subd. 6. **On-site wastewater treatment.** The tax imposed under this section does not apply to hazardous waste which is destined for treatment in an on-site wastewater treatment unit to produce a material which is not hazardous before entering a public sewer system or waters of the state but the tax does apply to any residue of treatment which is a hazardous waste.

Subd. 7. **Disposition of proceeds.** The proceeds of the taxes imposed under this section including any interest and penalties shall be deposited in the fund.

Subd. 8. **Review of tax by LCWM.** After the waste management board submits the plan required under section 115A.11 to the legislative commission on waste management, the commission shall review the taxes and tax rates imposed under this section in light of the objectives and recommendations of the plan, and shall recommend to the standing tax committees of both houses of the legislature any changes in the taxes or tax rates which are needed to assist or encourage implementation of the strategies adopted by the state for management of hazardous waste.

History: 1983 c 121 s 22; 1984 c 644 s 48

115B.23 SEVERABILITY.

If any tax imposed under section 115B.22 is found to be invalid because of the purpose for which the proceeds were appropriated or made available under section 115B.20, subdivision 2, the proceeds of that tax shall not be appropriated or available for the objectionable purposes, but the tax shall continue to be imposed and the proceeds shall be appropriated and made available for other purposes provided in section 115B.20, subdivision 2.

History: 1983 c 121 s 23

115B.24 TAX ADMINISTRATION AND ENFORCEMENT.

Subdivision 1. **Annual returns.** Every generator of hazardous waste subject to taxation pursuant to section 115B.22 shall file a return relating to the tax due for the preceding calendar year with the commissioner of revenue by April 15 each year, in the form prescribed by the commissioner. Payment of the tax, to the extent not paid in full pursuant to subdivisions 2 and 3, shall be submitted with the return.

Subd. 2. Declarations of estimated tax. For 1983, every generator of hazardous waste required to pay a tax pursuant to section 115B.22 shall make a declaration of estimated hazardous waste generated for the last six months of calendar year 1983 if the tax can reasonably be estimated to exceed \$500. The declaration of the estimated tax shall be filed by October 15, 1983. The amount of estimated tax with respect to which a declaration is required shall be paid in two equal installments by October 15, 1983 and January 15, 1984. For 1984 and subsequent years, every generator of hazardous waste required to pay a tax pursuant to section 115B.22 shall make a declaration of estimated hazardous waste generated for the calendar year if the tax can reasonably be expected to be in excess of \$1,000. The declaration of estimated tax shall be filed by March 15. The amount of estimated tax with respect to which a declaration is required shall be paid in four equal installments on or before the 15th day of March, June, September, and December.

An amendment of a declaration may be filed in any interval between installment dates prescribed above but only one amendment may be filed in each interval. If an amendment of a declaration is filed, the amount of each remaining installment shall be the amount which would have been payable if the new estimate had been made when the first estimate for the calendar year was made, increased or decreased, as the case may be, by the amount computed by dividing

(1) the difference between (A) the amount of estimated tax required to be paid before the date on which the amendment was made, and (B) the amount of estimated tax which would have been required to be paid before that date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the amendment is made.

The commissioner of revenue may grant a reasonable extension of time for filing any declaration but the extension shall not be for more than six months.

Subd. 3. Failure to pay estimated tax. (a) In case of any underpayment of estimated tax required by this section, except as provided in clause (b), there shall be added to the tax for the taxable year an amount determined at the rate specified in section 270.75, subdivision 4, upon the amount of the underpayment for the period of the underpayment.

For purposes of this subdivision, the amount of the underpayment shall be the excess of

(1) the amount of the installment, over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) April 15, or

(2) With respect to any portion of the underpayment, the date on which the portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under this subdivision for the installment date.

(b) Notwithstanding the provisions of clause (a), the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were the lesser of:

(1) For 1985 and thereafter, the tax shown on the return of the taxpayer for the preceding year or, for 1984, twice the amount of the tax shown for 1983; or

(2) Eighty percent of the actual liability for the year.

Subd. 4. Refunds of overpayments of estimated tax. Refunds of overpayments of estimated tax shall be made as provided in section 290.936.

Subd. 5. Exchange of information. Notwithstanding the provisions of section 116.075, the pollution control agency may provide the commissioner of revenue with the information necessary for the enforcement of section 115B.22 and this section. Information disclosed in a return filed pursuant to this section is public. Information exchanged between the commissioner and the agency is public unless the information is of the type determined to be for the confidential use of the agency pursuant to section 116.075 or is trade secret information classified pursuant to section 13.37. Information obtained in the course of an audit of the taxpayer by the department of revenue shall be nonpublic or private data to the extent that it is not directly divulged in a return of the tax.

Subd. 6. Payment by out-of-state generators. A generator of any hazardous waste which is generated outside of this state and is transported into this state for long-term containment or treatment as described in section 115B.22, subdivisions 2 to 5 shall pay the tax imposed by section 115B.22 at the first point at which the hazardous wastes are received by a person in this state for storage, treatment or long-term containment. The tax shall be paid to the person who first receives the wastes in this state at the time the waste is received and shall be remitted by that person to the commissioner of revenue quarterly in the form and manner provided by the commissioner.

Subd. 7. Duties of the agency and metropolitan counties. The agency shall provide to the commissioner the names and addresses of all persons known to the agency who are subject to tax under section 115B.22, together with any information which the agency possesses concerning the amount of hazardous waste generated and disposed of by those persons. Metropolitan counties required to regulate hazardous wastes under section 473.811, subdivision 5b, shall provide to the agency the data and information necessary to allow the agency to carry out its duties under this subdivision. Upon request by the commissioner, the agency shall examine returns and reports filed with the commissioner and notify the commissioner of any suspected inaccurate or fraudulent declaration or return. The agency may assist in auditing any person subject to tax under section 115B.22 when requested by the commissioner.

Subd. 8. Penalties; enforcement. The audit, penalty and enforcement provisions applicable to taxes imposed under chapter 290 apply to the taxes imposed under section 115B.22 and those provisions shall be administered by the commissioner.

Subd. 9. Rules. The commissioner may adopt temporary and permanent rules necessary to implement the provisions of this section and section 115B.22.

Subd. 10. Administrative expenses. Any amount expended by the commissioner from a general fund appropriation to enforce and administer section 115B.22 and this section shall be reimbursed to the general fund and the amount necessary to make the reimbursement is appropriated from the fund to the commissioner of finance for transfer to the general fund.

History: 1983 c 121 s 24

115B.25 DEFINITIONS.

Subdivision 1. General. The terms used in sections 115B.25 to 115B.37 have the definitions given them in section 115B.02 and this section.

Subd. 2. Board. "Board" means the hazardous substance injury compensation board established in section 115B.27.

Subd. 3. Compensable loss. "Compensable loss" means a loss that is compensable under section 115B.34.

Subd. 4. Eligible person. "Eligible person" means a person who is eligible to file a claim with the fund under section 115B.29.

Subd. 5. Eligible personal injury. "Eligible personal injury" means personal injury that is eligible for compensation under section 115B.30.

Subd. 6. Eligible property damage. "Eligible property damage" means property damage that is eligible for compensation under section 115B.30.

Subd. 7. **Fund.** "Fund" means the hazardous substance injury compensation fund established in section 115B.26.

Subd. 8. **Protected information.** "Protected information" means information provided to the board by a nongovernmental third party, or information provided to the board by a governmental party if access to that information is protected under other law, that is relevant to a determination required of the board under section 115B.33, subdivisions 1, clauses (2) to (4), and 2, clause (2).

History: 1Sp1985 c 8 s 4

115B.26 HAZARDOUS SUBSTANCE INJURY COMPENSATION FUND.

Subdivision 1. **Establishment.** A hazardous substance injury compensation fund is established as an account in the state treasury. Earnings, such as interest, dividends, and any other earnings arising from fund assets, must be credited to the fund.

Subd. 2. **Appropriation.** The amount necessary to pay for staff assistance, administrative services, and office space under section 115B.28, subdivision 4, and to pay claims of compensation granted by the board under sections 115B.25 to 115B.37 is appropriated to the board from the hazardous substance injury compensation fund.

Subd. 3. **Payment of claims when fund insufficient.** If the amount of the claims granted exceeds the amount in the fund, the board shall request a transfer from the general contingent account to the hazardous substance injury compensation fund as provided in section 3.30. If no transfer is approved, the board shall pay the claims which have been granted in the order granted only to the extent of the money remaining in the fund. The board shall pay the remaining claims which have been granted after additional money is credited to the fund.

History: 1Sp1985 c 8 s 5

115B.27 HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD.

Subdivision 1. **Establishment of board.** The hazardous substance injury compensation board is established. The board consists of five members who will serve part time and who will be appointed by the governor with the advice and consent of the senate. One member must be a physician knowledgeable in toxicology; one member must be a member of the bar of this state; one member must be a health professional knowledgeable in the area of hazardous substance injuries; and two members must be members of the general public. The board shall annually elect a member to serve as chair for a term of one year. Filling of vacancies on the board and removal of members are governed by section 15.0575.

Subd. 2. **Membership terms.** The initial members shall be appointed to terms as follows:

- (1) two members appointed for six years;
- (2) two members appointed for four years;
- (3) the fifth member appointed for two years.

At the end of each member's term, the successor shall be appointed for six years and each successor thereafter shall be appointed for six years.

Subd. 3. **Compensation and expenses.** Notwithstanding the provisions of section 15.0575, the commissioner of employee relations shall establish the compensation to be paid members of the board, based on the professional expertise and experience of the members. Expenses shall be paid as provided in the plan for state employees adopted under section 43A.18, subdivision 2.

History: 1Sp1985 c 8 s 6; 1986 c 444

115B.28 POWERS AND DUTIES OF THE BOARD.

Subdivision 1. **Duties.** In addition to performing duties specified in sections 115B.25 to 115B.37 or in other law, and subject to the limitations on disclosure contained in section 115B.35, the board shall:

(1) adopt rules as soon as practicable after all members are appointed, including rules governing practice and procedure before the board, the form and procedure for applications for compensation, and procedures for claims investigations;

(2) publicize the availability of compensation and application procedures on a statewide basis with special emphasis on geographical areas surrounding sites identified by the pollution control agency as having releases from a facility where a hazardous substance was placed or came to be located prior to July 1, 1983;

(3) collect, analyze, and make available to the public, in consultation with the department of health, the pollution control agency, the University of Minnesota medical and public health schools, and the medical community, data regarding injuries relating to exposure to hazardous substances; and

(4) prepare and transmit by December 31 of each year to the governor and the legislature an annual report to include (a) a summary of board activity under clause (3); (b) data determined by the board from actual cases, including but not limited to number of cases, actual compensation received by each claimant, types of cases, and types of injuries compensated, as they relate to types of hazardous substances as well as length of exposure, but excluding identification of the claimants; (c) all administrative costs associated with the business of the board; and (d) board recommendations for legislative changes, further study, or any other recommendation aimed at improving the system of compensation.

Subd. 2. Powers. In addition to exercising any powers specified in sections 115B.25 to 115B.37 or in other law, the board may:

(1) in reviewing a claim, consider any information relevant to the claim, in accordance with the evidentiary standards contained in section 115B.35;

(2) contract for consultant or other services necessary to carry out the board's duties under sections 115B.25 to 115B.37;

(3) grant reasonable partial compensation on an emergency basis pending the final decision on a claim, subject to the adoption of rules by the board, if the claim is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made;

(4) limit access to information collected and maintained by the board and take any other action necessary to protect privileged or confidential information, in accordance with the limitations contained in section 115B.35.

Subd. 3. Investigation; obtaining information. The board may investigate any claim for compensation and for this purpose it may require from the claimant and request from any person information regarding any matter, fact, or circumstance which is relevant to determination of a claim under section 115B.33. In exercising its powers under this subdivision, the board may collect information reasonably calculated to lead to the discovery of evidence admissible under section 115B.35. The board shall reimburse the person requested to provide information the actual cost of copies of documents, papers, samples, or other tangible items necessary to respond to the request from the board. In order to obtain this information the board, subject to any applicable privilege, may:

(a) request any person to produce documents, papers, books, or other tangible things in the possession, custody, or control of that person;

(b) request the sworn testimony of any person as to any relevant fact or opinion;

(c) direct written questions to any person and request written answers and objections;

(d) request a mental or physical examination of the claimant or autopsy of any deceased person whose death is the basis of the claim, provided that notice is given to the claimant and the claimant receives a copy of the report; and

(e) request a waiver of medical privilege by the claimant.

The board shall give written notice of any request under this subdivision at least 15 days before the person is expected to comply with the request. If a person fails or

refuses to comply with a request for information relevant to the release of a hazardous substance, the board may issue a subpoena for the production of the information and may petition the district court for an order enforcing the subpoena. If a person fails or refuses to comply with a request for other information relevant to determination of the claim, the board may petition the district court for an order to compel compliance with the request. If the claimant refuses to comply with a request by the board for information relevant to the claim, the board may dismiss the claim.

Subd. 4. Administrative personnel and services. The commissioner of health shall provide staff assistance, administrative services, and office space under a contract with the board. The board shall reimburse the commissioner for the staff, services, and space provided. In order to perform its duties, the board may request information from the supervising officer of any state agency or state institution of higher education. The supervising officer shall comply with the board's request to the extent possible considering available agency or institution appropriations and may assign agency or institution employees to assist the board in performing its duties under sections 115B.25 to 115B.37.

History: 1Sp1985 c 8 s 7

115B.29 ELIGIBLE PERSONS.

Subdivision 1. Personal injury and certain property claims. A person may file a claim with the board pursuant to this section for compensation for an eligible injury, or for eligible property damage described in section 115B.34, subdivision 2, paragraph (a), clause (1), that could reasonably have resulted from an exposure in Minnesota to a hazardous substance released from a facility.

Subd. 2. Other property claims. A person may file a claim with the board pursuant to this section for eligible property damage described in section 115B.34, subdivision 2, paragraph (a), clause (2), that could reasonably have resulted from a release of a hazardous substance, if:

(1) the persons responsible for the release of the hazardous substance are unknown or cannot with reasonable diligence be determined or located; or

(2) a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the hazardous substance.

History: 1Sp1985 c 8 s 8

115B.30 ELIGIBLE INJURY AND DAMAGE.

Subdivision 1. Eligible personal injury. (a) A personal injury which could reasonably have resulted from exposure to a hazardous substance released from a facility where it was placed or came to be located is eligible for compensation from the fund if:

(1) it is a medically verified chronic or progressive disease, illness, or disability such as cancer, organic nervous system disorders, or physical deformities, including malfunctions in reproduction, in humans or their offspring, or death; or

(2) it is a medically verified acute disease or condition that typically manifests itself rapidly after a single exposure or limited exposures and the persons responsible for the release of the hazardous substance are unknown or cannot with reasonable diligence be determined or located or a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the hazardous substance.

(b) A personal injury is not compensable from the fund if:

(1) the injury is compensable under the workers' compensation law, chapter 176;

(2) the injury arises out of the claimant's use of a consumer product;

(3) the injury arises out of an exposure that occurred or is occurring outside the geographical boundaries of the state;

(4) the injury results from the release of a hazardous substance for which the claimant is a responsible person; or

(5) the injury is an acute disease or condition other than one described in paragraph (a).

Subd. 2. Eligible property damage. Damage to real property in Minnesota owned by the claimant is eligible for compensation from the fund if the damage results from the presence in or on the property of a hazardous substance released from a facility where it was placed or came to be located. Damage to property is not eligible for compensation from the fund if it results from the release of a hazardous substance for which the claimant is a responsible person.

Subd. 3. Time for filing claim. A claim is not eligible for compensation from the fund unless it is filed with the board within the time provided in this subdivision.

(a) A claim for compensation for personal injury must be filed within two years after the injury and its connection to exposure to a hazardous substance was or reasonably should have been discovered.

(b) A claim for compensation for property damage must be filed within six years after the damage was or reasonably should have been discovered.

Notwithstanding the provisions of this subdivision, claims for compensation that would otherwise be barred by any statute of limitations provided in sections 115B.25 to 115B.37 may be filed not later than January 1, 1988.

History: *1Sp1985 c 8 s 9*

115B.31 OTHER ACTIONS.

Subdivision 1. Subsequent action or claim prohibited in certain cases. (a) A person who has settled a claim for an eligible injury or eligible property damage with a responsible person, either before or after bringing an action in court for that injury or damage, may not file a claim with the fund for the same injury or damage. A person who has received a favorable judgment in a court action for an eligible injury or eligible property damage may not file a claim with the fund for the same injury or damage, unless the judgment cannot be satisfied in whole or in part against the persons responsible for the release of the hazardous substance. A person who has filed a claim with the board may not file another claim with the board for the same eligible injury or damage, unless the claim was inactivated by the board as provided in section 115B.32, subdivision 1.

(b) A person who has filed a claim with the board for an eligible injury or damage, and who has received and accepted an award from the board, is precluded from bringing an action in court for the same eligible injury or damage.

(c) A person who files a claim with the board for personal injury or property damage must include all known claims eligible for compensation in one proceeding before the board.

Subd. 2. Use of protected information and board findings. The findings and decision of the board are inadmissible in any court action. Protected information may not be used in any court action except to the extent that the information is otherwise available to a party or discovered under the applicable rules of civil or criminal procedure.

Subd. 3. Subrogation by state. The state is subrogated to all the claimant's rights under statutory or common law to recover losses compensated from the fund from other sources, including responsible persons as defined in section 115B.03. The state may bring a subrogation action in its own name or in the name of the claimant. The state may not bring a subrogation action against a person who was a party in a court action by the claimant for the same eligible injury or damage, unless the claimant dismissed the action prior to trial. Money recovered by the state under this subdivision must be deposited in the fund. Nothing in sections 115B.25 to 115B.37 shall be construed to create a standard of recovery in a subrogation action.

Subd. 4. Simultaneous claim and court action prohibited. A claimant may not commence a court action to recover for any injury or damage for which the claimant seeks compensation from the fund during the time that a claim is pending before the

board. A person may not file a claim with the board for compensation for any injury or damage for which the claimant seeks to recover in a pending court action. The time for filing a claim under section 115B.30 or the statute of limitations for any civil action is suspended during the period of time that a claimant is precluded from filing a claim or commencing an action under this subdivision.

History: *1Sp1985 c 8 s 10; 1986 c 444*

115B.32 CLAIM FOR COMPENSATION.

Subdivision 1. Form. A claim for compensation from the fund must be filed with the board in the form required by the board. When a claim does not include all the information required by subdivision 2 and applicable board rules, the board staff shall notify the claimant of the absence of the required information within 14 days of the filing of the claim. All required information must be received by the board not later than 60 days after the claimant received notice of its absence or the claim will be inactivated and may not be resubmitted for at least one year following the date of inactivation. The board may decide not to inactivate a claim under this subdivision if it finds serious extenuating circumstances.

Subd. 2. Required information. A claimant must provide the following information as part of the claim, provided that nothing in Laws 1985, First Special Session chapter 8 shall be construed to require the claimant to initiate a court action before filing a claim:

- (1) a sworn verification by the claimant of the facts set forth in the claim to the best of the claimant's knowledge;
- (2) evidence that the claimant is an eligible person;
- (3) evidence of the claimant's exposure to a named hazardous substance;
- (4) evidence that the claimant's exposure to the substance in the amount and duration experienced by the claimant could reasonably have been caused or significantly contributed to by the release of a hazardous substance from a facility where the substance was placed or came to be located, to the extent the information is available to the claimant;
- (5) evidence that the exposure experienced by the claimant can cause or can significantly contribute to the injury suffered by the claimant;
- (6) evidence of the injury eligible for compensation suffered by the claimant and the compensable losses resulting from the injury;
- (7) evidence of any property damage eligible for compensation and the amount of compensable losses resulting from the damage;
- (8) information regarding any collateral sources of compensation; and
- (9) other information required by the rules of the board.

Subd. 3. Death claims. In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

History: *1Sp1985 c 8 s 11*

115B.33 DETERMINATION OF CLAIM.

Subdivision 1. Standard for personal injury. The board shall grant compensation to a claimant who shows that it is more likely than not that:

- (1) the claimant suffers a medically verified injury that is eligible for compensation from the fund and that has resulted in a compensable loss;
- (2) the claimant has been exposed to a hazardous substance;
- (3) the release of the hazardous substance from a facility where the substance was placed or came to be located could reasonably have resulted in the claimant's exposure to the substance in the amount and duration experienced by the claimant; and

(4) the injury suffered by the claimant can be caused or significantly contributed to by exposure to the hazardous substance in an amount and duration experienced by the claimant.

Subd. 2. **Standard for property damage.** The board shall grant compensation to a claimant who shows that it is more likely than not that:

(1) the claimant has suffered property damage that is eligible for compensation and that has resulted in compensable loss; and

(2) the presence of the hazardous substance in or on the property could reasonably have resulted from the release of the hazardous substance from a facility where the substance was placed or came to be located.

History: *1Sp1985 c 8 s 12*

115B.34 COMPENSABLE LOSSES.

Subdivision 1. **Personal injury losses.** Losses compensable by the fund for personal injury are limited to:

(a) medical expenses directly related to the claimant's injury;

(b) up to two-thirds of the claimant's lost wages not to exceed \$2,000 per month or \$24,000 per year;

(c) up to two-thirds of a self-employed claimant's lost income, not to exceed \$2,000 per month or \$24,000 per year;

(d) death benefits to dependents which the board shall define by rule subject to the following conditions:

(1) the rule adopted by the board must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;

(2) the total benefits paid to all dependents of a claimant must not exceed \$2,000 per month;

(3) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;

(4) payment of benefits is subject to the limitations of section 115B.36; and

(e) the value of household labor lost due to the claimant's injury or disease, which must be determined in accordance with a schedule established by the board by rule, not to exceed \$2,000 per month or \$24,000 per year.

Subd. 2. **Property damage losses.** (a) Losses compensable by the fund for property damage are limited to the following losses caused by damage to the principal residence of the claimant:

(1) the reasonable cost of replacing or decontaminating the primary source of drinking water for the property not to exceed the amount actually expended by the claimant or assessed by a local taxing authority, if the department of health has determined that the water is contaminated or has included the property in a well advisory area and has certified that the replacement or decontamination of the source of drinking water effectively has or will eliminate the contamination, up to a maximum of \$25,000; and

(2) losses incurred as a result of a bona fide sale of the property at less than the appraised market value under circumstances that constitute a hardship to the owner, limited to 75 percent of the difference between the appraised market value and the selling price, but not to exceed \$25,000.

(b) For purposes of paragraph (a), the following definitions apply:

(1) "appraised market value" means an appraisal of the market value of the property disregarding any decrease in value caused by the presence of a hazardous substance in or on the property; and

(2) "hardship" means an urgent need to sell the property based on a special circumstance of the owner including catastrophic medical expenses, inability of the

owner to physically maintain the property due to a physical or mental condition, and change of employment of the owner or other member of the owner's household requiring the owner to move to a different location.

(c) Appraisals are subject to board approval. The board may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision.

History: 1Sp1985 c 8 s 13

115B.35 DETERMINATION OF CLAIMS.

Subdivision 1. **Assignment of claims.** The chair of the board shall assign each claim that has been accepted for filing to one member of the board, except that no claims shall be assigned to either of the two members appointed to the board as members of the general public.

Subd. 2. **Treatment of protected information.** In making a preliminary or final decision under this section, the board shall examine protected information outside of the presence of the claimant, the claimant's attorney, or any other person except staff to the board. The board, the board's staff, and any other person who obtains access to protected information under this section may not reveal protected information to any person except as provided in this section.

Subd. 3. **Evidence admissible in claim proceedings.** In the determination of a claim, the board may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and repetitious evidence.

Subd. 4. **Preliminary decision.** The board member to whom the claim is assigned shall review all materials filed in support of the claim and may cause an investigation to be conducted into the validity of the claim. The board member may make a preliminary decision on the basis of the papers filed in support of the claim and the report of any investigation of it. The decision must be in writing and include the reasons for the decision, subject to the limitations on disclosure of protected information.

Subd. 5. **Circulation of preliminary decision.** Copies of the preliminary decision made under subdivision 4 must be circulated to the other board members as soon as practicable. On receipt of the preliminary decision, the members have 20 days to challenge it by written notice to the members who made the decision. If no other member challenges the preliminary decision, a copy must be sent to the claimant who may challenge the decision by written notice to the board within 30 days of receipt of the decision. If the board member relies on protected information to deny a claim, the preliminary decision must include a statement to this effect. If no notice is received within the required time, the preliminary decision becomes a final decision of the board.

Subd. 6. **Challenges.** If a board member or a claimant challenges a preliminary decision made pursuant to subdivision 4, the full board shall order the claimant to appear before the board. The appearance is not a contested case hearing under chapter 14. The claimant may produce further evidence to support the claim, including books, studies, reports, and any other written material and oral testimony of witnesses, including experts. The board members may ask questions of the claimant and any witnesses presented by the claimant. After the appearance, the board shall make a final decision on the claim as soon as practicable. The decision must be in writing and include the reasons for the decision, subject to the limits on disclosure of protected information. A copy of each final decision must be sent to the claimant, including, for a claim that is granted, an explanation of the form in which the claim will be paid. If the final decision of the board relies on protected information to deny a claim, the decision shall include a statement to this effect. At the claimant's request, the board shall disclose to the claimant that portion of the protected information relied on by the board and shall provide the claimant with an opportunity to provide additional

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information relevant to the element of the standard that has not been demonstrated. The board shall make a final decision based on all available information.

Subd. 7. **Record.** Any appearance by a claimant or witnesses must be tape recorded but a formal record pursuant to chapter 14 is not required.

Subd. 8. **Appeal.** A final decision of the board made under this section is conclusive on all matters decided. There is no right to judicial review of a final decision of the board.

Subd. 9. **Remedies and penalties.** A board member, board staff person, or other person who reveals protected information in violation of this section is subject to the civil remedies contained in section 13.08 and the penalties in section 13.09.

History: *1Sp1985 c 8 s 14; 1986 c 444*

115B.36 AMOUNT AND FORM OF PAYMENT.

If the board decides to grant compensation, it shall determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of insurance and social security and any emergency award made by the board. The board shall pay compensation in the amount of the net uncompensated loss, provided that no claimant may receive more than \$250,000. In the case of a death, the total amount paid to all persons on behalf of the claimant may not exceed \$250,000.

Compensation from the fund may be awarded in a lump sum or in installments at the discretion of the board.

History: *1Sp1985 c 8 s 15*

115B.37 ATTORNEY FEES.

The board may by rule limit the fee charged by any attorney for representing a claimant before the board.

History: *1Sp1985 c 8 s 16*