

CHAPTER 115B

ENVIRONMENTAL RESPONSE AND LIABILITY

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115B.02 DEFINITIONS.

[For text of subds 1 to 13, see M.S.1988]

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 308A, a telephone company as defined in section 237.01, subdivisions 2 and 3, or a municipality producing or furnishing gas, electric, or telephone service.

[For text of subds 15 to 19, see M.S.1988]

History: 1989 c 356 s 7

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

[For text of subds 1 to 3, see M.S.1988]

Subd. 4. **Liability of political subdivisions.** (a) The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1, except when the political subdivision is liable under this section as the owner or operator of a disposal facility as defined in section 115A.03, subdivision 10.

(b) When a political subdivision is liable as an owner or operator of a disposal facility, the liability of each political subdivision is limited to \$400,000 at each facility unless the facility was owned or operated under a valid joint powers agreement by three or more political subdivisions, in which case the aggregate liability of all political subdivisions that are parties to the joint powers agreement is limited to \$1,200,000.

(c) The limits on the liability of a political subdivision for ownership or operation of a disposal facility apply to the costs of remedial action incurred between the date a request for response action is issued by the agency and the date one year after the construction certificate of completion is approved by the commissioner, excluding costs incurred during negotiation of a consent order agreement.

(d) When a political subdivision takes remedial action as the owner or operator of a disposal facility between the dates in paragraph (c), it may receive, after approval by the agency, reimbursement of any amount spent pursuant to an approved work plan that exceeds the applicable liability limit specified in this subdivision.

[For text of subds 5 to 12, see M.S.1988]

History: 1989 c 325 s 29

115B.17 STATE RESPONSE TO RELEASES.*[For text of subds 1 to 6, see M.S.1988]*

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 account.

[For text of subds 8 to 14, see M.S.1988]

Subd. 15. Acquisition of property. The agency may acquire, by purchase or donation, an interest in real property, including easements and leases, that the agency determines is necessary for response action. The agency may acquire an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision.

History: 1989 c 325 s 30; 1989 c 335 art 4 s 36**115B.20 ENVIRONMENTAL RESPONSE, COMPENSATION, AND COMPLIANCE ACCOUNT.**

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

(b) The commissioner of finance shall administer a response account in the fund for the agency and the commissioner of agriculture to take removal, response, and other actions authorized under subdivision 2, clauses (1) to (4). The commissioner of finance shall allocate money from the response account to the agency and the commissioner of agriculture to take actions required under subdivision 2, clauses (1) to (4).

(c) The commissioner of finance shall administer the account in a manner that allows the commissioner of agriculture and the agency to utilize the money in the account to implement their removal and remedial action duties as effectively as possible.

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:

(1) preparation by the agency and the commissioner of agriculture for taking removal or remedial action under section 115B.17, or under chapter 18D, 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, or chapter 18D;

(2) removal and remedial actions taken or authorized by the agency or the commissioner of the pollution control agency under section 115B.17, or taken or authorized by the commissioner of agriculture under chapter 18D including related enforcement and compliance efforts under section 115B.17 or 115B.18, or chapter 18D, 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;

(3) reimbursement to any private person for expenditures made before July 1,

1983, to provide alternative water supplies deemed necessary by the agency or the commissioner of agriculture and the department of health to protect the public health from contamination resulting from the release of a hazardous substance;

(4) removal and remedial actions taken or authorized by the agency or the commissioner of agriculture or the pollution control agency under section 115B.17, or chapter 18D, including related enforcement and compliance efforts under section 115B.17 or 115B.18, or chapter 18D, 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;

(5) 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;

(6) 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;

(7) 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;

(8) 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;

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

(10) 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;

(11) acquisition of a property interest under section 115B.17, subdivision 15;

(12) reimbursement, in an amount to be determined by the agency in each case, to a political subdivision that is not a responsible person under section 115B.03, for reasonable and necessary expenditures resulting from an emergency caused by a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(13) reimbursement to a political subdivision for expenditures in excess of the liability limit under section 115B.04, subdivision 4.

Subd. 3. Limit on certain expenditures. The commissioner of agriculture or the pollution control agency or the agency may not spend any money under subdivision 2, clause (2) or (4), 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 commissioner of agriculture or the pollution control agency or the 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 commissioner of agriculture or the pollution control agency or the agency shall take into account:

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

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

(3) 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 account:

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

(2) 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;

(3) all interest attributable to investment of money deposited in the account; and

(4) 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 and the commissioner of agriculture shall make recommendations to the standing legislative committees on finance and appropriations regarding appropriations from the fund.

Subd. 6. **Report to legislature.** Each year, the commissioner of agriculture and 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 account has been spent during the previous fiscal year.

History: 1989 c 325 s 31; 1989 c 326 art 8 s 7; 1989 c 335 art 4 s 37-39

115B.22 HAZARDOUS WASTE GENERATOR TAX.

[For text of subds 1 to 6, see M.S.1988]

Subd. 7. **Disposition of proceeds.** The proceeds of the taxes imposed under this section including any interest and penalties shall be deposited in the environmental response, compensation, and compliance account.

[For text of subd 8, see M.S.1988]

History: 1989 c 335 art 4 s 40

115B.24 TAX ADMINISTRATION AND ENFORCEMENT.

[For text of subds 1 to 9, see M.S.1988]

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 environmental response, compensation, and compliance account to the commissioner of finance for transfer to the general fund.

History: 1989 c 335 art 4 s 41

115B.25 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 115B.25 to 115B.37.

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

[For text of subds 3 to 6, see M.S.1988]

Subd. 6a. **Facility.** "Facility" has the meaning given it in section 115B.02, subdivision 5.

Subd. 7. **Account.** Except when another account is specified, "account" means the harmful substance compensation account established in section 115B.26.

Subd. 7a. **Harmful substance.** "Harmful substance" means:

- (1) any commercial chemical designated under the Federal Water Pollution Control Act, United States Code, title 33, section 1321(b)(2)(A);
- (2) any hazardous air pollutant listed under the Clean Air Act, United States Code, title 42, section 7412;
- (3) any hazardous waste;
- (4) petroleum as defined in section 115C.02, subdivision 10; and
- (5) pesticide as defined in chapter 18B, or fertilizer, plant amendment, or soil amendment as defined in chapter 17.

Subd. 7b. **Hazardous waste.** "Hazardous waste" has the meaning given in section 115B.02, subdivision 9.

Subd. 7c. **Person.** "Person" has the meaning given in section 115B.02, subdivision 12.

[For text of subd 8, see M.S.1988]

Subd. 9. **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);
- (d) Discharges or designed venting of petroleum from a tank allowed under the rules of the pollution control agency; or
- (e) The use of a pesticide, fertilizer, plant amendment, or soil amendment in accordance with its labeling.

History: 1989 c 325 s 32-39; 1989 c 335 art 4 s 42

115B.26 HARMFUL SUBSTANCE COMPENSATION ACCOUNT.

Subdivision 1. **Establishment.** A harmful substance compensation account is in the environmental fund in the state treasury. Earnings, such as interest, dividends, and any other earnings arising from account 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 account.

Subd. 3. **Payment of claims when account insufficient.** If the amount of the claims granted exceeds the amount in the account, the board shall request a transfer from the general contingent account to the harmful substance compensation account 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 account. The board shall pay the remaining claims which have been granted after additional money is credited to the account.

Subd. 4. **Fund transfer request.** At the end of each fiscal year, the board shall submit a request to the petroleum tank release compensation board for transfer to the harmful substance compensation account from the petroleum tank release cleanup

fund under section 115C.08, subdivision 5, of an amount equal to the compensation granted by the board for claims related to petroleum releases plus administrative costs related to determination of those claims.

History: 1989 c 325 s 40; 1989 c 335 art 4 s 43

115B.27 HARMFUL SUBSTANCE COMPENSATION BOARD.

Subdivision 1. **Establishment of board.** The harmful substance 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 harmful 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.

[For text of subds 2 and 3, see M.S.1988]

History: 1989 c 325 s 41

115B.28 POWERS AND DUTIES OF THE BOARD.

[For text of subd 1, see M.S.1988]

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 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 not public data as defined in section 13.02, subdivision 8a, and protected information, in accordance with the limitations contained in section 115B.35.

[For text of subds 3 and 4, see M.S.1988]

History: 1989 c 325 s 42

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 that could reasonably have resulted from an exposure in Minnesota to a harmful substance released from a facility.

Subd. 2. *[Repealed, 1989 c 325 s 77]*

History: 1989 c 325 s 43

115B.30 ELIGIBLE INJURY AND DAMAGE.

[For text of subds 1 and 2, see M.S.1988]

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

(b) A claim for compensation for personal injury must be filed within two years

after the injury and its connection to exposure to a harmful substance was or reasonably should have been discovered.

(c) A claim for compensation for property damage must be filed within two years after the full amount of compensable losses can be determined.

(d) 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, 1992.

History: 1989 c 325 s 44

115B.34 COMPENSABLE LOSSES.

[For text of subd 1, see M.S.1988]

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 confirmed that the remedy provides safe drinking water and advised that the water not be used for drinking or determined that the replacement or decontamination of the source of drinking water was necessary, up to a maximum of \$25,000;

(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; and

(3) losses incurred as a result of the inability of an owner in hardship circumstances to sell the property due to the presence of harmful substances, limited to the increase in costs associated with the need to maintain two residences, but not to exceed \$25,000.

(b) In computation of the loss under paragraph (a), clause (3), the board shall offset the loss by the amount of any income received by the claimant from the rental of the property.

(c) 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 harmful 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.

(d) 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: 1989 c 325 s 45