

## CHAPTER 115C

### PETROLEUM TANK RELEASE CLEANUP

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#### 115C.01 CITATION.

This chapter may be cited as the "Petroleum Tank Release Cleanup Act."

**History:** 1987 c 389 s 1; 1992 c 490 s 1

**NOTE** See section 115C 13 for repealer

#### 115C.02 DEFINITIONS

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 1a. [Repealed, 1995 c 254 art 1 s 97]

Subd. 2. **Agency.** "Agency" means the pollution control agency.

Subd. 2a. **Applicant.** "Applicant" means a person eligible under section 115C.09 to receive reimbursement from the fund.

Subd. 3. **Board.** "Board" means the petroleum tank release compensation board.

Subd. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the pollution control agency.

Subd. 5a. **Consultant.** "Consultant" means an individual, partnership, association, private corporation, or any other legal entity that provides consulting services. Consulting services include the rendering of professional opinion, advice, or analysis regarding a release.

Subd. 5b. **Contractor.** "Contractor" means an individual, partnership, association, private corporation, or any other legal entity that provides contractor services. Contractor services means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical work, plumbing, carpentry, and equipment.

Subd. 6. MS 1990 [Renumbered subd 1a]

Subd. 6a. **Fund.** "Fund" means the petroleum tank release cleanup fund.

Subd. 7. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of a tank.

Subd. 8. **Owner.** "Owner" means a person who holds title to, controls, or possesses an interest in a tank. "Owner" does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank and fails to take all necessary corrective action as a volunteer under section 115C.09. The state or an agency of the state is not an owner solely because it holds title to a tank or to real property where the tank is located in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

Subd. 9. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subd. 10. **Petroleum.** "Petroleum" means:

- (1) liquid petroleum products as defined in section 296A.01;
- (2) new and used lubricating oils; and
- (3) new and used hydraulic oils used in lifts to raise motor vehicles or farm equipment and for servicing or repairing motor vehicles or farm equipment.

Subd. 10a. **Petroleum refinery.** "Petroleum refinery" means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and indirect heating equipment associated with the refinery.

Subd. 11. **Political subdivision.** "Political subdivision" means a county, a town, or a statutory or home rule charter city.

Subd. 11a. **Preremoval site assessment.** "Preremoval site assessment" means actions defined in section 115C.092 which are taken by a registered consultant or the consultant's subcontractor prior to the removal of a tank in order to determine whether a release has occurred in the area immediately surrounding the tank.

Subd. 12. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after June 4, 1987, but does not include discharges or designed venting allowed under agency rules.

Subd. 12a. **Residential site.** "Residential site" means a site containing a residence used for permanent habitation by an applicant. A residence may be part of a multipurpose or multi-dwelling building, but shall not include multidwelling units which contain more than two separate residences, or buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

Subd. 13. **Responsible person.** "Responsible person" means a person who is responsible for a release under section 115C.021.

Subd. 14. **Tank.** "Tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to contain or dispense petroleum.

"Tank" does not include:

- (1) a mobile storage tank used to transport petroleum from one location to another, except a mobile storage tank with a capacity of 500 gallons or less used only to transport home heating fuel on private property; or
- (2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29.

Subd. 15. **Tank facility.** "Tank facility" means a contiguous area where tanks are located that are under the same ownership or control.

**History:** 1987 c 186 s 15; 1987 c 389 s 2; 1988 c 686 art 1 s 57; 1989 c 335 art 4 s 44; 1990 c 501 s 1,2; 1990 c 586 s 3; 1992 c 414 s 1; 1992 c 490 s 2-4; 1992 c 575 s 53; 1993 c 341 art 1 s 2,3; 1993 c 6 s 2; 1995 c 240 art 1 s 1,2; 1995 c 254 art 1 s 67; 1996 c 308 s 1,2; 1998 c 299 s 30

NOTE See section 115C 13 for repealer.

## 115C.021 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** Except as provided in subdivision 2, a person is responsible for a release from a tank if the person is an owner or operator of the tank at any time during or after the release.

Subd. 2. **Exception of certain tank owners.** An owner of a tank is not responsible for a release from the tank if the owner can establish that:

- (1) the tank was in place but the owner did not know or have reason to know of its existence at the time the owner first acquired right, title, or interest in the tank; and
- (2) the owner did not by failure to report under section 115.061 or other action significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

Subd. 3. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not responsible for a release from a tank solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where the tank is located under chapter 282 and other laws applicable to tax-forfeited land. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 3a. **Eminent domain.** (a) The department of transportation is not responsible for a release from a tank under this section solely as a result of the acquisition of property or as a result of providing funds for the acquisition of such property either through loan or grant, if the property was acquired by the department through exercise of the power of eminent domain, through negotiated purchase in lieu of or after filing a petition for the taking of the property through eminent domain, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

(b) A person who acquires property from the department, other than property acquired through a land exchange, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the department through exercise of the power of eminent domain, by negotiated purchase after filing a petition for the taking of the property through eminent domain, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

Subd. 4. **Mortgagees.** (a) A mortgagee is not responsible for a release from a tank solely because the mortgagee becomes an owner of real property on which the tank is located through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a tank is located or a holder of a security interest in a tank is not an operator of the tank for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the tank to protect its security interest.

**History:** 1988 c 686 art 1 s 58; 1990 c 586 s 4; 1992 c 414 s 2; 1997 c 200 art 2 s 2

**NOTE** See section 115C.13 for repealer

### 115C.03 RESPONSE TO RELEASES.

Subdivision 1. **Corrective action orders.** If there is a release, the commissioner may order a responsible person to take reasonable and necessary corrective actions. The commissioner shall notify the owner of real property where corrective action is ordered to be taken that responsible persons have been ordered to take corrective action and that the owner's cooperation will be required for responsible persons to take that action. When the commissioner has ordered a responsible person to take a corrective action, a political subdivision may not request or order the person to take an action that conflicts with the action ordered by the commissioner.

Subd. 1a. **Passive bioremediation.** Passive bioremediation must be used for petroleum tank cleanups whenever an assessment of the site determines that there is a low potential risk to public health and the environment.

Subd. 2. **Agency and compelled performance corrective actions.** The agency may take corrective action or request the attorney general to bring an action to compel performance of a corrective action if:

- (1) a responsible person cannot be identified;

(2) an identified responsible person cannot or will not comply with the order issued under subdivision 1; or

(3) an administrative or judicial proceeding on an order issued under subdivision 1 is pending.

**Subd. 3. Emergency corrective action.** To assure an adequate response to a release, the commissioner may take corrective action without following the procedures of subdivision 1 if the commissioner determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment. Before taking an action under this subdivision, the commissioner shall make all reasonable efforts, taking into consideration the urgency of the situation, to order a responsible person to take a corrective action and notify the owner of real property where the corrective action is to be taken.

**Subd. 4. Release is a public nuisance.** A release is a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

**Subd. 5. Investigations.** If the commissioner has reason to believe that a release has occurred, the commissioner may undertake reasonable investigations necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health and welfare or the environment.

**Subd. 6. Duty to provide information.** A person who the commissioner has reason to believe is a responsible person, or the owner of real property where corrective action is ordered to be taken, or who might otherwise have information concerning a release, shall, when requested by the commissioner or any member, employee, or agent of the agency who is authorized by the commissioner, furnish to the commissioner any information that person may have or may reasonably obtain that is relevant to the release.

**Subd. 7. Access to information and property.** The commissioner or any member, employee, or agent of the agency authorized by the commissioner, may, upon presentation of official agency credentials, take any of the following actions:

(1) examine and copy books, papers, records, memoranda, or data of a person who has a duty to provide information to the commissioner under subdivision 6; and

(2) enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from a person who has a duty to provide the information under subdivision 6, conducting surveys and investigations, and taking corrective action.

**Subd. 7a. Review of agency employee decisions.** A person aggrieved by a decision made by an employee of the agency relating to the need for or implementation of a corrective action may seek review of the decision by the commissioner. An application for review must state with specificity the decision for which review is sought, the name of the leak site, the leak number, the date the decision was made, the agency employee who made the decision, the ramifications of the decision, and any additional pertinent information. The commissioner shall review the application and schedule a time, date, and place for the aggrieved person to explain the grievance and for the agency employee to explain the decision under review. The commissioner shall issue a decision either sustaining or reversing the decision of the employee. The aggrieved person may appeal the commissioner's decision to the pollution control agency board in accordance with Minnesota Rules, part 7000.0500, subpart 6.

**Subd. 8. Classification of data.** Except as otherwise provided in this subdivision, data obtained from a person under subdivision 6 or 7 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 that would tend to adversely affect the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Data classified as private or nonpublic under this subdivision may be disclosed when relevant in a proceeding under this chapter.

**Subd. 9. Requests for review, investigation, and oversight.** (a) The commissioner may, upon request:

(1) assist in determining whether a release has occurred;

(2) assist in or supervise the development and implementation of reasonable and necessary corrective actions; and

(3) assist in or supervise the investigation, development, and implementation of actions to minimize, eliminate, or clean up petroleum contamination at sites where it is not certain that the contamination is attributable to a release.

(b) Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports and corrective action plans and implementation.

(c) Assistance may include the issuance of a written determination that an owner or prospective buyer of real property will not be a responsible person under section 115C.021, if the commissioner finds the release came from a tank not located on the property. The commissioner may also issue a written confirmation that the real property was the site of a release and that the tank from which the release occurred has been removed or that the agency has issued a site closure letter and has not revoked that status. The issuance of the written determination or confirmation applies to tanks not on the property or removed only and does not affect liability for releases from tanks that are on the property at the time of purchase. The commissioner may also issue site closure letters and nonresponsible person determinations for sites contaminated by petroleum where it is not certain that the contamination is attributable to a release. The written determination or confirmation extends to the successors and assigns of the person to whom it originally applied, if the successors and assigns are not otherwise responsible for the release.

(d) The person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. Money received by the agency for assistance under this subdivision must be deposited in the state treasury and credited to an account in the special revenue fund. Money in this account is annually appropriated to the commissioner for purposes of administering the subdivision.

**Subd. 10. Corrective action records.** A contractor or consultant who has billed for corrective action services must prepare and retain all records related to the corrective action services for a minimum of seven years from the date the corrective action services are performed, including, but not limited to, invoices submitted to applicants, subcontractor invoices, receipts for equipment rental, and all other goods rented or purchased, personnel time reports, mileage logs, and expense accounts. An applicant must obtain and retain records necessary to document costs submitted in a claim for reimbursement for corrective action services for seven years from the date the claim is submitted to the board.

**History:** 1987 c 186 s 15; 1987 c 389 s 3; 1989 c 226 s 1; 1990 c 426 art 1 s 15; 1992 c 490 s 5; 1993 c 341 art 1 s 4, 5; 1994 c 639 art 4 s 2; 1995 c 220 s 103; 1995 c 240 art 1 s 3; 1996 c 308 s 3; 1997 c 200 art 2 s 3

**NOTE** See section 115C 13 for repealer

## 115C.04 LIABILITY FOR RESPONSE COSTS.

**Subdivision 1. Corrective action liability.** (a) A responsible person is liable for the cost of the corrective action taken by the agency under section 115C.03, subdivisions 2 and 3, including the cost of investigating the release and administrative and legal expenses, if:

(1) the responsible person has failed to take a corrective action ordered by the commissioner and the agency has taken the action;

(2) the agency has taken corrective action in an emergency under section 115C.03, subdivision 3; or

(3) the agency has taken corrective action because a responsible person could not be identified.

(b) A responsible person is liable for the reimbursement paid by the petroleum tank release compensation board under section 115C.09, subdivision 3a, to the extent the reimbursement is for corrective action that the responsible person could have been ordered to perform under section 115C.03, subdivision 1.

**Subd. 2. Avoidance of liability.** (a) A responsible person may not avoid the liability by means of a conveyance of any right, title, or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

(b) This subdivision does not:

(1) prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;

(2) prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

(3) bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

**Subd. 3. Agency cost recovery; subrogation.** Reasonable and necessary expenses incurred by the agency in taking a corrective action, including costs of investigating a release, administrative and legal expenses, and reimbursement costs described in subdivision 1, paragraph (b), may be recovered in a civil action in district court brought by the attorney general against a responsible person. The agency's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. If the responsible person has petroleum tank leakage or spill insurance coverage that insures against the liability provided in this section, the agency is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the expenses incurred by the agency and described in this subdivision. The agency may request the attorney general to bring an action in district court against the insurer to enforce this subrogation right. Expenses that are recovered under this section must be deposited in the fund.

**History:** 1987 c 186 s 15; 1987 c 389 s 4; 1988 c 683 s 2,3; 1989 c 335 art 4 s 106; 1991 c 294 s 1; 1995 c 220 s 130

**NOTE:** See section 115C 13 for repealer

#### 115C.045 KICKBACKS.

A consultant or contractor, as a condition of performing services, may not agree to pay or forgive the nonreimbursable portion of an application for reimbursement submitted under this chapter. An applicant may not accept forgiveness or demand payment from a consultant or contractor for the nonreimbursable portion of an application for reimbursement submitted under this chapter.

**History:** 1992 c 490 s 6

**NOTE:** See section 115C 13 for repealer

#### 115C.05 CIVIL PENALTY.

The agency may enforce section 115C.03 using the actions and remedies authorized under sections 115.071, subdivision 3, and 116.072. The civil penalties recovered by the state must be credited to the fund.

**History:** 1987 c 389 s 5; 1991 c 347 art 1 s 7

**NOTE:** See section 115C 13 for repealer

#### 115C.06 EFFECT ON OTHER LAW.

Subdivision 1. **Actions under chapter 115B.** This chapter does not limit any actions initiated by the agency under chapter 115B.

Subd. 2. **Duty to notify and take action for release.** This chapter does not limit a person's duty to notify the agency and take action related to a release as provided in section 115.061.

**History:** 1987 c 389 s 6; 1996 c 308 s 4

**NOTE:** See section 115C 13 for repealer

#### 115C.065 CONSULTANT'S OR CONTRACTOR'S DUTY TO NOTIFY.

A consultant or contractor involved in the removal of a petroleum tank shall immediately notify the agency if field instruments or laboratory tests indicate the presence of any petroleum contamination in excess of state guidelines.

**History:** 1992 c 490 s 7

**NOTE:** See section 115C 13 for repealer

**115C.07 PETROLEUM TANK RELEASE COMPENSATION BOARD.**

Subdivision 1 **Establishment.** The petroleum tank release compensation board consists of the commissioner of the pollution control agency, the commissioner of commerce, one representative from the petroleum industry, one public member, and one person with experience in claims adjustment. The governor shall appoint the members of the board. The filling of positions, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by section 15.0575. The governor shall designate the chair of the board.

Subd. 2. **Staff.** The commissioner of commerce shall provide staff to support the activities of the board at the board's request.

Subd. 3. **Rules.** (a) The board shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

(b) By January 1, 1994, the board shall publish proposed rules establishing a fee schedule of costs or criteria for evaluating the reasonableness of costs submitted for reimbursement. The board shall adopt the rules by June 1, 1994.

(c) The board may adopt rules requiring certification of environmental consultants.

(d) The board may adopt other rules necessary to implement this chapter.

**History:** 1987 c 186 s 15; 1987 c 389 s 7; 1991 c 175 s 2; 1993 c 341 art 1 s 6; 1996 c 305 art 2 s 24

**NOTE** See section 115C.13 for repealer

**115C.08 PETROLEUM TANK FUND.**

Subdivision 1. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank fund:

(1) the proceeds of the fee imposed by subdivision 3;

(2) money recovered by the state under sections 115C.04, 115C.05, and 116.491, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;

(3) interest attributable to investment of money in the fund;

(4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund;

(5) fees charged for the operation of the tank installer certification program established under section 116.491; and

(6) money obtained from the return of reimbursements, civil penalties, or other board action under this chapter.

Subd. 2. **Imposition of fee.** The board shall notify the commissioner of revenue if the unencumbered balance of the fund falls below \$4,000,000, and within 60 days after receiving notice from the board, the commissioner of revenue shall impose the fee established in subdivision 3 on the use of a tank for four calendar months, with payment to be submitted with each monthly distributor tax return.

Subd. 3. **Petroleum tank release cleanup fee.** A petroleum tank release cleanup fee is imposed on the use of tanks that contain petroleum products defined in section 296A.01. On products other than gasoline, the fee must be paid in the manner provided in section 296A.15 by the first licensed distributor receiving the product in Minnesota, as defined in section 296A.01. When the product is gasoline, the distributor responsible for payment of the gasoline tax is also responsible for payment of the petroleum tank cleanup fee. The fee must be imposed as required under subdivision 2, at a rate of \$20 per 1,000 gallons of petroleum products, rounded to the nearest 1,000 gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 296A.22.

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

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

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

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

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

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

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

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

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

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

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

(c) \$6,200,000 is annually appropriated from the fund to the commissioner of trade and economic development for contamination cleanup grants under section 116J.554, provided that money appropriated in this paragraph may be used only for cleanup costs attributable to petroleum contamination, as determined by the commissioner of the pollution control agency. Of this amount, the commissioner may spend up to \$120,000 annually for administration of the contamination cleanup grant program.

**Subd. 5. Account transfer.** The board shall authorize the commissioner of finance to transfer to the harmful substance compensation account the amount requested by the harmful substance compensation board under section 115B.26, subdivision 4. Transfer of the amount must be made at the earliest practical date after authorization by the board. If the unencumbered balance in the account is less than \$2,000,000, the transfer must be made at the earliest practical date after the unencumbered balance in the account exceeds that amount.

**History:** 1987 c 389 s 8; 1989 c 209 art 1 s 10; 1989 c 226 s 2; 1989 c 325 s 46,47; 1989 c 335 art 4 s 45,106; 1990 c 501 s 3,4; 1991 c 199 art 1 s 28; 1992 c 597 s 2; 1993 c 341 art 1 s 7-10; 1995 c 186 s 119; 1995 c 220 s 130; 1995 c 254 art 1 s 68-70; 1996 c 397 s 1; 1997 c 200 art 2 s 4; 1998 c 299 s 30; 1998 c 408 s 1

**NOTE** See section 115C.13 for repealer

## 115C.082 LEAD FUND.

**Subdivision 1. Fund established.** A lead fund is created in the state treasury. The fund consists of all money and interest made available to the fund by law.

**Subd. 2.** [Repealed, 1995 c 213 art 2 s 12]

**History:** 1Sp1993 c 1 art 9 s 1; 1994 c 465 art 2 s 8; 1994 c 483 s 1

## 115C.09 REIMBURSEMENT.

**Subdivision 1. Reimbursable costs.** (a) The board shall provide reimbursement to eligible applicants for reimbursable costs.

(b) The following costs are reimbursable for purposes of this chapter:

(1) corrective action costs incurred by the applicant and documented in a form prescribed by the board, except the costs related to the physical removal of a tank;

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury, property damage, or corrective action costs incurred by a third party caused by a release where the responsible person's liability for the costs has been established by a court order or court-approved settlement;

(3) up to 180 days worth of interest costs associated with the financing of corrective action and incurred by the applicant in a written financing contract signed by the applicant and executed after May 25, 1991. Interest costs are not eligible for reimbursement to the extent they exceed two percentage points above the adjusted prime rate charged by banks, as defined in section 270.75, subdivision 5, at the time the financing contract was executed; and



(4) preremoval site assessment costs incurred by the applicant and eligible for reimbursement under section 115C.092.

(c) A cost for liability to a third party is incurred by the responsible person when an order or court-approved settlement is entered that sets forth the specific costs attributed to the liability. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

**Subd. 2. Responsible person eligibility.** A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for reimbursement under subdivision 3.

**Subd. 2a. Application for reimbursement.** (a) The board may consider applications for reimbursement at the following stages:

(1) after the commissioner approves corrective actions related to soil excavation and treatment or after the commissioner determines that further soil excavation and treatment should not be done. Remedial investigation costs such as soil borings monitoring wells, and well searches are reimbursable at this stage, but corrective action costs relating to the construction and installation of a comprehensive corrective action design system are not; and

(2) after the commissioner approves a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary, for corrective action costs related to the construction and installation of a comprehensive corrective action design system. An applicant shall not submit an application for reimbursement more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(b) The commissioner shall review a plan, and provide an approval or disapproval to the applicant and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (2), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete application within 60 days of submission of the application under paragraph (a), clause (1), and within 120 days of submission of the application under paragraph (a), clause (2), or the board shall explain for the record why additional time is necessary. For purposes of the preceding sentence, board consideration of an application is timely if it occurs at the regularly scheduled meeting following the deadline. Board staff may review applications submitted to the board at the same time the commissioner considers the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(c) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

**Subd. 3. Reimbursements; subrogation; appropriation.** (a) The board shall reimburse an eligible applicant from the fund in the following amounts:

(1) 90 percent of the total reimbursable costs on the first \$250,000 and 75 percent on any remaining costs in excess of \$250,000 on a site;

(2) for corrective actions at a residential site used as a permanent residence at the time the release was discovered, 92.5 percent of the total reimbursable costs on the first \$100,000 and 100 percent of any remaining costs in excess of \$100,000; or

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

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

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

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the fund under this chapter until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the applicant.

(g) If the board reimburses an applicant for costs for which the applicant has insurance coverage, the board is subrogated to the rights of the applicant with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by an applicant of reimbursement constitutes an assignment by the applicant to the board of any rights of the applicant with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the applicant was denied coverage by the insurer.

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

(i) The board may reduce the amount of reimbursement to be made under this chapter if it finds that the applicant has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

(1) the agency was given notice of the release as required by section 115.061;

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

(3) the state and federal rules and regulations applicable to the condition or operation of the tank when the noncompliance caused or failed to mitigate the release.

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

(1) the reasonable determination by the agency of the environmental impact of the non-compliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

(k) An applicant may assign the right to receive reimbursement to each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. An assignment must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the applicant, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the applicant is valid unless terminated by filing a termination with the board, in a form prescribed by the board, which must include the written concurrence of the assignee. The board shall maintain an index of assignments filed under this paragraph. The board shall pay the reimbursement to the applicant and to one or more assignees by a multiparty check. The board has no liability to an applicant for a payment under an assignment meeting the requirements of this paragraph.

**Subd. 3a. Eligibility of other persons.** A person who has taken corrective action may apply to the board for reimbursement under subdivision 3 if the board determines that:

(1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;

(2) the commissioner has determined that the person was not a responsible person as defined in this chapter;

(3) the board has determined the person was not a volunteer under subdivision 3b; and

(4) the person incurs reimbursable costs on or after June 4, 1987.

Notwithstanding subdivision 3, paragraph (a), a person eligible for reimbursement under this subdivision shall receive 100 percent of total reimbursable costs up to \$1,000,000.

**Subd. 3b. Volunteer eligibility.** (a) A person may apply to the board for reimbursement under subdivision 3 if the board determines that:

(1) the person is not a responsible person as defined in this chapter;

(2) holds legal or equitable title to the property where a release occurred; and

(3) incurs reimbursable costs on or after May 23, 1989.

(b) The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with subdivision 3, paragraph (i), except that the board may not reduce the reimbursement under this provision to a mortgagee who acquires title to the property through foreclosure or receipt of a deed in lieu of foreclosure.

**Subd. 3c. Release at refineries and tank facilities not eligible for reimbursement.**

(a) Reimbursement may not be made under this chapter for costs associated with a release:

(1) from a tank located at a petroleum refinery; or

(2) from a tank facility, including a pipeline terminal, with more than 1,000,000 gallons of total petroleum storage capacity at the tank facility.

(b) Paragraph (a), clause (2), does not apply to reimbursement for costs associated with a release from a tank facility:

(1) owned or operated by a person engaged in the business of mining iron ore or taconite;

(2) owned by a political subdivision, a housing and redevelopment authority, an economic development authority, or a port authority that acquired the tank facility prior to May 23, 1989; or

(3) owned by a person:

(i) who acquired the tank facility prior to May 23, 1989;

(ii) who did not use the tank facility for the bulk storage of petroleum; and

(iii) who is not affiliated with the party who used the tank facility for the bulk storage of petroleum.

Subd. 3d. **Political subdivision eligibility.** (a) A political subdivision that has taken corrective action may apply to the board for reimbursement under subdivision 3 if the board determines that:

- (1) the political subdivision is not a responsible person as defined by this chapter;
- (2) is not a volunteer under subdivision 3b; and
- (3) incurs reimbursable costs on or after April 8, 1992.

(b) A political subdivision eligible for reimbursement under this subdivision may only apply for reimbursement if the identified responsible person has failed to take a corrective action ordered by the commissioner.

Subd. 3e. **Department of transportation eligibility.** The department of transportation may apply to the board and is eligible for reimbursement of reimbursable costs associated with property that the department has acquired under section 115C.021, subdivision 3a, if corrective action pursuant to a plan reviewed and approved by the commissioner of the pollution control agency in accordance with applicable rules and guidance documents was taken on the entire property so acquired. Notwithstanding subdivision 3, paragraph (a), the department of transportation shall receive 100 percent of total reimbursable costs associated with a single release up to \$1,000,000.

Subd. 3f. **Reimbursements; small gasoline retailers.** (a) As used in this subdivision, "small gasoline retailer" means a tank owner or operator who owns only one location in this state, and no locations in any other state, where motor fuel was dispensed to the public into motor vehicles, watercraft, or aircraft, and who dispensed motor fuel at that location.

(b) Notwithstanding subdivision 1, paragraph (b), clause (1), for eligible applicants who are small gasoline retailers that have dispensed less than 500,000 gallons of motor fuel during the most recent calendar year that petroleum products were dispensed at the location owned by the retailer, the board shall reimburse the applicant for 90 percent of the applicant's total reimbursable cost for tank removal projects started after January 1, 1996, including, but not limited to, tank removal, closure in place, backfill, resurfacing, and utility service restoration costs, regardless of whether a release has occurred at the site, provided that the tank involved is a regulated underground storage tank.

(c) Notwithstanding subdivision 1, paragraph (b), clause (1), for eligible applicants who are small gasoline retailers that have dispensed less than 250,000 gallons of motor fuel during the most recent calendar year that petroleum products were dispensed at the location owned by the retailer, provided that the tank involved is a regulated underground storage tank, the board shall reimburse the applicant for 95 percent of the following costs:

- (1) tank removal costs described in paragraph (b); and
- (2) petroleum contamination cleanup as provided under subdivision 1 incurred during or after the tank removal project.

(d) An applicant who owns only one location in this or any other state where motor fuel was dispensed to the public into motor vehicles, watercraft, or aircraft but who did not dispense motor fuel at that location may qualify as a small gasoline retailer if:

(1) the previous tank owner or operator at the location was a small gasoline retailer that dispensed less than 500,000 gallons of motor fuel during the most recent calendar year that petroleum products were dispensed at the location; and

(2) the applicant acquired legal or equitable title to the property after January 1, 1996.

(e) This subdivision expires January 1, 2000.

Subd. 3g. **Reimbursements; small business owners.** (a) As used in this subdivision, "small business owner" means a person:

- (1) who has no more than \$250,000 per year in sales;
- (2) who owns no more than one location where motor fuel was previously dispensed to the public into motor vehicles;
- (3) who did not dispense motor fuel at that location; and
- (4) whose tanks were never registered with the state.

(b) Notwithstanding subdivision 1, paragraph (b), clause (1), the board shall reimburse an eligible applicant who is a small business owner for 90 percent of the applicant's total re-

imbursable cost for tank removal projects started after January 1, 1998, including, but not limited to, tank removal, closure in place, backfill, resurfacing, and utility service restoration costs, regardless of whether a release has occurred at the site, and provided that the person does not intend to replace the tanks.

**Subd. 4. Reimbursement does not affect other liability.** The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

**Subd. 5. Return of reimbursement.** (a) The board may demand the complete or partial return of any reimbursement made under this chapter if the applicant for reimbursement:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this chapter;

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release, unless the reimbursement was made under subdivision 3a;

(3) fails to reimburse a person for agreed-to amounts for corrective actions taken in response to a request by the applicant; or

(4) has entered an agreement to settle or compromise any portion of the incurred costs, in which case the amount returned must be prorated in proportion to the amount of the settlement or compromise.

(b) If a reimbursement under this chapter is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the applicant. If the board's demand for return of the reimbursement is based on willful actions of the applicant, the applicant shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

**Subd. 6. Fraud.** If a person, with intent to defraud, issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the board for reimbursement:

(1) that person shall be considered to have presented a false claim to a public body under section 609.465; and

(2) the board may demand that the person return any money received as a result of a reimbursement made on the basis of the false invoice or other demand for payment. If the money is not returned upon demand by the board, the board may recover the money, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the person. The person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the money received by the person on the basis of the false invoice or other demand for payment.

**Subd. 7. Duty to provide information.** (a) A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing. The board may obtain access to information required to be made available under this chapter in the manner provided in section 115C.03, subdivision 7.

(b) After reimbursement has been granted, an agreement to settle or compromise any portion of the incurred costs must be reported to the board by the parties to the agreement.

**Subd. 8. Limitation on reimbursement obligation.** The amount of the state's obligation to make reimbursement under this chapter is limited to the amount available. Notwithstanding any other provisions of this chapter, there shall be no obligation to the general fund to make a reimbursement if there are not sufficient funds in the petroleum tank fund.

**Subd. 9. Insufficient funds.** The board may not approve an application for reimbursement if there are insufficient funds available to pay the reimbursement.

Subd. 10. **Delegation of board's powers.** The board may delegate to the commissioner of commerce its powers and duties under this chapter.

**History:** 1987 c 186 s 15; 1987 c 389 s 9; 1988 c 683 s 4-6; 1989 c 226 s 3; 1989 c 335 art 4 s 106; 1990 c 501 s 5-7; 1991 c 175 s 3-9; 1991 c 233 s 52; 1991 c 294 s 2; 1992 c 414 s 3,4; 1992 c 490 s 8,9; 1993 c 341 art 1 s 11-16; 1994 c 632 art 4 s 44; 1995 c 220 s 130; 1995 c 240 art 1 s 4-7; 1996 c 308 s 5; 1996 c 397 s 2; 1997 c 200 art 2 s 5,6; 1997 c 246 s 12,35; 1Sp1998 c 1 art 3 s 16,17

**NOTE** See section 115C 13 for repealer.

### 115C.091 PHASE-IN PROCEDURE.

In approving applications for reimbursement under this chapter, the petroleum tank release compensation board shall ensure that:

(1) the difference between the total amount of reimbursements approved by the board in fiscal year 1995 and the funds available to pay the reimbursements as of June 30, 1995, is at least 30 percent less than the difference between the total amount of reimbursements approved by the board as of June 30, 1993, and the funds available to pay the reimbursements as of that date; and

(2) the difference between the total amount of reimbursements approved by the board in fiscal year 1996 and the funds available to pay the reimbursements as of June 30, 1996, is at least 70 percent less than the difference between the total amount of reimbursements approved by the board as of June 30, 1993, and the funds available to pay the reimbursements as of that date.

**History:** 1993 c 341 art 1 s 24

### 115C.092 TANK REMOVALS; PAYMENT FOR PREREMOVAL SITE ASSESSMENT.

Subdivision 1. **Preremoval site assessment; reimbursement.** (a) Preremoval site assessment costs which are in compliance with the requirements of this chapter and with rules promulgated under this chapter shall be reimbursable under section 115C.09, subdivision 3. The applicant shall obtain written competitive proposals for the preremoval site assessment on a form prescribed by the board utilizing, as appropriate, tasks and costs established in rules promulgated under this chapter governing the initial site assessment.

(b) If contamination is found at the site, the board shall reimburse an applicant upon submission of the applicant's first application for reimbursement under section 115C.09, subdivision 2. If no contamination is found at the site, the board shall reimburse the applicant upon provision by the applicant of documentation that the tank or tanks have been removed from the site.

(c) Notwithstanding any provision in this subdivision to the contrary, the board shall not reimburse for a preremoval site assessment which is done for the purposes of facilitating a property transfer. The board shall presume that a preremoval site assessment is done for the purposes of facilitating a property transfer if the property is transferred within three months of incurring preremoval site assessment costs.

Subd. 2. **Requirements of a preremoval site assessment.** The preremoval site assessment shall include a preremoval site assessment report to the tank owner as prescribed in subdivision 3 and (1) three borings if one tank is to be removed, or (2) five borings if more than one tank is to be removed. The placement of the borings shall be based on the tank system location, estimated depth and gradient of groundwater, and the maximum probability of encountering evidence of petroleum contamination.

Subd. 3. **Report to tank owner.** The consultant shall prepare a preremoval site assessment report which must include the following:

(1) a summary of any unusual site features affecting the preremoval site assessment and subsequent corrective action;

(2) the opinion of the consultant as to the presence and relative magnitude of any petroleum contamination on the site;

(3) the recommendation of the consultant as to whether further corrective action is needed, including groundwater remediation;

(4) the recommendation of the consultant as to whether the contaminated soil, if any, should be excavated and the volume of soil that should be excavated;

(5) a statement as to whether a petroleum tank release was reported to the agency and the date and time of that report, if any; and

(6) the signature of the consultant or contractor, and the date the report was prepared.

If further corrective action is recommended by the consultant, the preremoval site assessment report and any additional information gathered by the consultant during the assessment shall be used for securing competitive bids or proposals on forms prescribed by the board to implement corrective actions at the site, consistent with rules promulgated under this chapter.

**Subd. 4. Bid and invoice forms; agency fact sheets.** By August 1, 1995, the board shall prescribe a preremoval site assessment bid and invoice form as described in subdivision 1 and the agency shall publish fact sheets applicable to the preremoval site assessment.

**History:** 1995 c 240 art 1 s 8; 1996 c 308 s 6

**NOTE** See section 115C.13 for repealer

### 115C.093 CORRECTIVE ACTION PERFORMANCE AUDITS.

(a) The board shall contract for performance audits of corrective actions for which reimbursement is sought under section 115C.09, subdivision 3, paragraph (a), clause (3), and may contract for audits of other corrective actions.

(b) A responsible person may request a performance audit under this section. If the board denies the request, it must provide the requester with the reasons for the denial.

(c) A performance audit conducted under this section must evaluate the adequacy of the corrective actions, the validity of the corrective action costs, and whether alternative methods or technologies could have been used to carry out the corrective actions at a lower cost. The board shall report the results of audits conducted under this section to the chairs of the senate committees on environment and natural resources and commerce and consumer protection, the finance division of the senate committee on environment and natural resources, and the house of representatives committees on environment and natural resources, environment and natural resources finance, and commerce, tourism, and consumer affairs. Money in the fund is appropriated to the board for the purposes of this section.

**History:** 1996 c 397 s 3

### 115C.10 FUNDING OF AGENCY ACTIONS.

**Subdivision 1. Payment from fund; subrogation; appropriation.** (a) If the cost of authorized actions under section 115C.03 exceeds the amount appropriated to the agency for the actions and amounts awarded to the agency from the federal government, the agency may apply to the board for money to pay for the actions from the fund. The board shall pay the agency the cost of the proposed actions under section 115C.03 if the board finds that the conditions for the agency to be paid from the fund have been met, and that an adequate amount exists in the fund to pay for the corrective action. If the board pays the agency for the cost of authorized actions for which there is insurance coverage, the board is subrogated to the agency's rights with respect to the insurance, to the extent of the board's payment of costs for which insurance coverage exists, subject to the limitations on an agency cost recovery action set forth in section 115C.04, subdivision 3. The board may request the attorney general to bring an action in district court against the responsible person, the applicant, or the insurer to enforce the board's subrogation rights. Acceptance of a payment from the board by the agency constitutes an assignment to the board of the subrogation rights specified in this subdivision.

(b) Money in the fund is appropriated to the board for the purpose of this subdivision.

**Subd. 2. Federal funds.** The commissioner shall take actions needed to obtain federal funding to carry out the provisions of the Petroleum Tank Release Cleanup Act.

**History:** 1987 c 186 s 15; 1987 c 389 s 10; 1989 c 335 art 4 s 106; 1991 c 294 s 3; 1995 c 220 s 130; 1996 c 308 s 7.

**NOTE** See section 115C.13 for repealer

**115C.11 CONSULTANTS AND CONTRACTORS; SANCTIONS.**

Subdivision 1. **Registration.** (a) All consultants and contractors who perform corrective action services must register with the board. In order to register, consultants must meet and demonstrate compliance with the following criteria:

(1) provide a signed statement to the board verifying agreement to abide by this chapter and the rules adopted under it and to include a signed statement with each claim that all costs claimed by the consultant are a true and accurate account of services performed;

(2) provide a signed statement that the consultant shall make available for inspection any records requested by the board for field or financial audits under the scope of this chapter;

(3) certify knowledge of the requirements of this chapter and the rules adopted under it;

(4) obtain and maintain professional liability coverage, including pollution impairment liability; and

(5) agree to submit to the board a certificate or certificates verifying the existence of the required insurance coverage.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors.

(c) All corrective action services must be performed by registered consultants and contractors.

(d) Reimbursement for corrective action services performed by an unregistered consultant or contractor is subject to reduction under section 115C.09, subdivision 3, paragraph (i).

(e) Corrective action services performed by a consultant or contractor prior to being removed from the registration list may be reimbursed without reduction by the board.

(f) If the information in an application for registration becomes inaccurate or incomplete in any material respect, the registered consultant or contractor must promptly file a corrected application with the board.

(g) Registration is effective 30 days after a complete application is received by the board. The board may reimburse without reduction the cost of work performed by an unregistered contractor if the contractor performed the work within 60 days of the effective date of registration.

(h) Registration under this section remains in force until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. All registrants must comply with registration criteria under this section.

Subd. 2. [Repealed, 1996 c 308 s 13]

Subd. 3. [Repealed, 1996 c 308 s 13]

Subd. 4. [Repealed, 1996 c 308 s 13]

**History:** 1992 c 490 s 10; 1993 c 341 art 1 s 17; 1995 c 220 s 130; 1995 c 240 art 1 s 9,10; 1996 c 308 s 8

**NOTE** See section 115C 13 for repealer

**115C.111 CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING BEFORE MARCH 14, 1996.**

Subdivision 1. **Application.** This section applies to administrative actions based on conduct that occurred before March 14, 1996.

Subd. 2. **Authority.** The commissioner of commerce may by order censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this subdivision and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

(1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;



- (2) has participated in a kickback scheme prohibited under section 115C.045;
- (3) has engaged in conduct likely to deceive or defraud, or demonstrated a willful or careless disregard for public health or the environment;
- (4) has committed fraud, embezzlement, theft, forgery, bribery, falsified or destroyed records, made false statements, received stolen property, made false claims, or obstructed justice;
- (5) is the subject of an order revoking, suspending, restricting, limiting, or imposing other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction; or
- (6) if the person is a consultant, has failed to comply with any of the ongoing obligations for registration as a consultant in section 115C.11, subdivision 1.

Subd. 3. **Amount of civil penalty.** The civil penalty that may be imposed under subdivision 2 shall be in an amount that the commissioner of commerce determines will deprive the consultant or contractor of any economic advantage gained by reason of the consultant's or contractor's conduct or to reimburse the board for the cost of the investigation and proceeding.

**History:** 1996 c 308 s 9

### **115C.112 CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING ON AND AFTER MARCH 14, 1996.**

The commissioner of commerce may by order deny a registration, censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this section and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

- (1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;
- (2) has participated in a kickback scheme prohibited under section 115C.045;
- (3) has engaged in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;
- (4) has committed fraud, embezzlement, theft, forgery, bribery, falsified or destroyed records, made false statements, received stolen property, made false claims, or obstructed justice;
- (5) is the subject of an order revoking, suspending, restricting, limiting, or imposing other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction;
- (6) if the person is a consultant, has failed to comply with any of the ongoing obligations for registration as a consultant in section 115C.11, subdivision 1;
- (7) has failed to comply with any provision or any rule or order under this chapter or chapter 45;
- (8) has engaged in anticompetitive activity;
- (9) has performed corrective action without having an accurate and complete registration on file with the board or has allowed another to perform corrective action when that party does not have a complete registration on file with the board;
- (10) has been shown to be incompetent, untrustworthy, or financially irresponsible; or
- (11) has made or assisted another in making any material misrepresentation or omission to the board, commissioner, commissioner of commerce, or upon reasonable request has withheld or concealed information from, or refused to furnish information to, the board, commissioner, or commissioner of commerce.

**History:** 1996 c 308 s 10

**115C.113 ORDERS.**

The commissioner of commerce may issue an order requiring a registrant or applicant for registration to show cause why the registration should not be revoked or suspended, the registrant censured, the application denied, or other sanction imposed under section 115C.111 or 115C.112. The order must be calculated to give reasonable notice of the time and place for hearing on the matter, and must state the reasons for the entry of the order. The commissioner of commerce may by order summarily suspend a registration pending final determination of an order to show cause. A hearing on the merits must be held within 30 days of the issuance of the order of summary suspension. All hearings must be conducted under chapter 14. After the hearing, the commissioner of commerce shall enter an order disposing of the matter as the facts require. If the registrant or applicant for registration fails to appear at a hearing after having been duly notified of it, the person shall be considered in default, and the proceeding may be determined against the registrant or applicant for registration upon consideration of the order to show cause, the allegations of which may be considered to be true.

**History:** 1996 c 308 s 11

**115C.12 APPEAL OF REIMBURSEMENT DETERMINATION.**

Subdivision 1. **Appeal from determination of commissioner of commerce.** An applicant for reimbursement may appeal to the board a reimbursement determination made by the commissioner of commerce under authority delegated by the board according to section 115C.09, subdivision 10, by submitting a written notice setting forth the specific basis for the appeal. The commissioner of commerce shall send written notification of the reimbursement determination by first class United States mail to the applicant for reimbursement at the applicant's last known address. The applicant for reimbursement must file written notice with the board of an appeal of a reimbursement determination made by the commissioner of commerce within 60 days of the date that the commissioner of commerce sends written notice to the applicant of the reimbursement determination. The board shall consider the appeal within 90 days of receipt of the written notice of appeal by the applicant for reimbursement. The written notice must set forth the specific basis for the appeal.

Subd. 2. **Appeal from decision of the board.** (a) An applicant for reimbursement may appeal a reimbursement determination of the board as a contested case under chapter 14. An applicant for reimbursement must provide written notification to the board of a request for a contested case, setting forth the specific basis for the appeal, within 30 days of the date that the board makes a reimbursement determination.

(b) This subdivision applies to reimbursement determinations made by the board as a result of an appeal to the board under subdivision 1 and reimbursement determinations made by the board when the board has not delegated its authority to make reimbursement determinations.

(c) An appeal of a reimbursement determination may only be made by an applicant as defined by this chapter.

Subd. 3. **Contested case; final decision.** The final decision in a contested case requested by an applicant under subdivision 2 shall be made by the commissioner of commerce.

**History:** 1993 c 341 art 1 s 18; 1995 c 240 art 1 s 11; 1996 c 308 s 12

**NOTE** See section 115C.13 for repealer

**115C.13 REPEALER.**

Sections 115C.01, 115C.02, 115C.021, 115C.03, 115C.04, 115C.045, 115C.05, 115C.06, 115C.065, 115C.07, 115C.08, 115C.09, 115C.092, 115C.10, 115C.11, and 115C.12, are repealed effective June 30, 2005.

**History:** 1993 c 341 art 1 s 26; 1995 c 240 art 1 s 12; 1997 c 200 art 2 s 7