

CHAPTER 115E

OIL AND HAZARDOUS SUBSTANCE DISCHARGE PREPAREDNESS

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115E.01 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter. Terms that are not defined have the meanings given in the Oil Pollution Act of 1990.

Subd. 2. **Agricultural chemical.** "Agricultural chemical" has the meaning given in section 18D.01, subdivision 3.

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

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

Subd. 3a. **Damages.** "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of hazardous substances or oil.

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

Subd. 5. **Facility.** "Facility" means a structure, group of structures, equipment, or device, other than a vessel, that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil or a hazardous substance. Facility includes a motor vehicle, rolling stock, or pipeline used for one or more of these purposes. A facility may be in, on, or under land, or in, on, or under waters of the state as defined in section 115.01, subdivision 22.

Subd. 6. **Hazardous substance.** "Hazardous substance" has the meaning given in section 115B.02, subdivision 8.

Subd. 7. **Lead agency.** "Lead agency" means:

- (1) the Department of Agriculture, with respect to agricultural chemicals; or
- (2) the Pollution Control Agency, for other hazardous substances or oil.

Subd. 8. **Oil.** "Oil" means oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoils; and also includes petroleum as defined in section 115C.02, subdivision 10.

Subd. 9. **Oil Pollution Act of 1990.** "Oil Pollution Act of 1990" means the Oil Pollution Act of 1990, Statutes at Large, volume 104, pages 484 to 575.

Subd. 10. **Person.** "Person" has the meaning given in section 115B.02, subdivision 12.

Subd. 11. **Response.** "Response" has the meaning given in section 115B.02, subdivision 18, and the meaning of corrective action given in section 115C.02, subdivision 4. Response includes restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources affected by the discharge of hazardous substances or oil.

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

Subd. 11b. **Response costs.** "Response costs" means the costs of response that are incurred after a discharge of oil or hazardous substances has occurred, or, where there is a substantial threat of discharge of oil or hazardous substances, the costs to prevent, minimize, or mitigate a discharge.

Subd. 11c. **Responsible party.** "Responsible party" means a responsible party as defined in section 1001 of the Oil Pollution Act of 1990.

Subd. 12. **Vessel.** "Vessel" means a watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. It includes a vessel that is constructed or adapted to carry, or that carried, oil or hazardous substances in bulk as cargo or cargo residue.

Subd. 13. **Worst case discharge.** "Worst case discharge" means:

(1) in the case of a vessel, sudden loss of the entire contents of the vessel in weather conditions that impede cleanup;

(2) for each tank of a storage tank facility, sudden loss of the entire contents of the tank in weather conditions that impede cleanup;

(3) in the case of railroad rolling stock facilities, sudden loss of the contents of the maximum expected number of the railcars containing oil or hazardous substance of a train onto land or into water in weather conditions that impede cleanup;

(4) in the case of truck and trailer rolling stock facilities, sudden loss of the entire contents of the truck or trailer onto land or into water in weather conditions that impede cleanup;

(5) in the case of a pipeline facility, sudden loss of the contents of the pipeline which would be expected from complete failure of the pipeline onto land or into water in weather conditions that impede cleanup;

(6) in the case of oil or hazardous substance transfer facilities, sudden loss of the largest volume which could occur during transfer into or out of a facility; or

(7) the worst case discharge for the facility as described by regulations under the Oil Pollution Act of 1990 if the regulations, when adopted, describe a discharge worse than one described in clauses (1) to (6).

History: 1991 c 305 s 1; 1995 c 240 art 2 s 2-5

115E.02 DUTY TO PREVENT DISCHARGES.

A person who owns or operates a vessel or facility transporting, storing, or otherwise handling hazardous substances or oil or who is otherwise in control of hazardous substances or oil shall take reasonable steps to prevent the discharge of those materials in a place or manner that might cause pollution of the land, waters, or air of the state or that might threaten the public's safety or health.

History: 1991 c 305 s 2

115E.03 DUTY TO PREPARE FOR RESPONSE TO DISCHARGES.

Subdivision 1. **General preparedness.** A person who owns or operates a vessel or facility transporting, storing, or otherwise handling hazardous substances or oil or who is otherwise in control of hazardous substances or oil shall be prepared at all times to rapidly and thoroughly recover discharged hazardous substances or oil that were under that person's control and to take all other actions necessary to minimize or abate pollution of land, waters, and air of the state and to protect the public's safety and health.

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

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

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

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

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

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

(6) persons required to demonstrate preparedness under section 115E.05.

Subd. 3. **Level of preparedness.** A person described in subdivision 2 shall maintain a level of preparedness that ensures that effective response can reliably be made to worst case discharges.

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

(1) adequate response personnel and equipment in the usual employ of the person;

(2) adequate response personnel and equipment available from for-hire cleanup contractors with arrangements made for their deployment;

(3) adequate response personnel and equipment from a response cooperative or community awareness and emergency response organization meeting guidelines prepared by the lead agency with arrangements made for their deployment; or

(4) adequate response personnel and equipment of local, state, or federal public sector response organizations with arrangements made for their deployment.

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

History: 1991 c 305 s 3; 1993 c 341 art 2 s 1

115E.04 PREVENTION AND RESPONSE PLANS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 2. **Timing.** (a) A person required to be prepared under section 115E.03, other than a person who owns or operates a motor vehicle, rolling stock, or a facility that stores less than 250,000 gallons of oil or a hazardous substance, shall complete the response plan required by this section by March 1, 1993, unless one of the commissioners orders the person to demonstrate preparedness at an earlier date under section 115E.05.

(b) A person who owns or operates a motor vehicle, rolling stock, or a facility that stores less than 250,000 gallons of oil or a hazardous substance shall complete the response plan required by this section by January 1, 1994.

(c) Plans required under section 115E.04 or 115E.045 must be updated every three years. Plans must be updated before three years following a significant discharge, upon significant change in vessel or facility operation or ownership, upon significant change in the national or area contingency plans under the Oil Pollution Act of 1990, or upon change in the capabilities or role of a person named in a plan who has an important response role.

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

- (1) submission of the plan to the federal government;
- (2) granting of exemptions or extensions of time by the federal government for submission of the plan; or
- (3) completion of the plan if submission to the federal government is not required.

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

- (1) a description of the facility or vessel;
- (2) a description of the activities involving oil or hazardous substances;
- (3) a description of the types of materials being handled, including whether agricultural chemicals are involved; and
- (4) other information required by the commissioner.

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

Subd. 4. **Review of prevention and response plan.** (a) A person required to show specific preparedness under section 115E.03, subdivision 2, must submit a copy of the prevention and response plan to any of the commissioners who request it and to an official of a political subdivision with appropriate jurisdiction upon the official's request, or the plan and equipment and material named in the plan may be examined upon the request of an authorized agent of a commissioner or official.

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

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

History: 1991 c 305 s 4; 1992 c 593 art 2 s 1; 1993 c 341 art 2 s 2; 1995 c 240 art 2 s 6

115E.045 RESPONSE PLANS FOR TRUCKS AND CERTAIN TANK FACILITIES.

Subdivision 1. **Response plan for trucks.** (a) By June 1, 1994, a person who owns or operates trucks or cargo trailer rolling stock transporting an average monthly aggregate total of more than 10,000 gallons of oil or hazardous substances as bulk cargo in this state shall prepare and maintain a prevention and response plan in accordance with this subdivision. The plan must include:

- (1) the name and business and nonbusiness telephone numbers of the individual or individuals having full authority to implement response action;
- (2) the telephone number of the local emergency response organizations, as defined in section 299K.01, subdivision 3, if the organizations cannot be reached by calling 911;
- (3) a description of the type of rolling stock and the maximum potential discharge that could occur from the equipment;
- (4) the telephone number of the single answering point system established under section 115E.09;
- (5) the telephone number of an individual or company with adequate personnel and equipment available to respond to a discharge, along with evidence that the individual or company and the individual responsible for preparing the plan have made arrangements for such response;
- (6) a description of the training that the owner or operator's truck or cargo trailer operators have received in handling hazardous materials and the emergency response information available in the vehicle; and
- (7) a description of the action that will be taken by a truck or cargo trailer owner or operator in response to a discharge.

(b) The response plan must be retained on file at the person's principal place of business.

Subd. 2. **Response plan for tank facilities with between 10,000 and 1,000,000 gallons of storage.** (a) By June 1, 1994, a person who owns or operates a facility that stores more than 10,000 gallons but less than 1,000,000 gallons of oil or hazardous substances in aboveground tanks shall prepare and maintain a prevention and response plan in accordance with this subdivision. The abbreviated plan must include:

- (1) the name and business and nonbusiness telephone numbers of the individual or individuals having full authority to implement response action;
- (2) the telephone number of the local emergency response organizations, as defined in section 299K.01, subdivision 3, if the organizations cannot be reached by calling 911;
- (3) a description of the facility, tank capacities, spill prevention and secondary containment measures at the facility, and the maximum potential discharge that could occur at the facility;
- (4) the telephone number of the single answering point system established under section 115E.09;
- (5) documentation that adequate personnel and equipment will be available to respond to a discharge, along with evidence that prearrangements for such response have been made;
- (6) a description of the training employees at the facility receive in handling hazardous materials and in emergency response information; and
- (7) a description of the action that will be taken by the facility owner or operator in response to a discharge.

(b) The response plan must be retained on file at the person's principal place of business.

Subd. 3. **Notice of plan completion.** A person required to prepare a response plan under this section shall notify the commissioner of public safety when the plan has been completed. Upon request, the person shall provide a copy of the plan to the commissioner of the Pollution Control Agency.

Subd. 4. **Agricultural chemicals exempt.** This section does not apply to agricultural chemicals, as defined in section 18D.01, subdivision 3, that are subject to chapter 18B or 18C.

History: 1993 c 341 art 2 s 3; 1994 c 589 s 2

115E.05 ORDERS AND INJUNCTIONS; ENFORCEMENT.

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

Subd. 2. **Compliance.** If oil or a hazardous substance is discharged while it is under the control of a person not identified in section 115E.03, subdivision 2, any one of the commissioners may by order require the person to comply with the prevention and response plan requirements of sections 115E.03 and 115E.04 in a timely manner if:

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

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

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

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

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

(d) This subdivision may be enforced by the ordering commissioner under section 115.071.

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

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

History: 1991 c 305 s 5

115E.06 GOOD SAMARITAN.

(a) A person listed in this paragraph who is rendering assistance in response to a discharge of a hazardous substance is not liable for response costs that result from actions taken or failed to be taken in the course of the assistance unless the person is grossly negligent or engages in willful misconduct:

(1) a member of a cooperative or community awareness and emergency response group in compliance with standards in rules adopted by the Pollution Control Agency;

(2) an employee or official of the political subdivision where the response takes place, or a political subdivision that has a mutual aid agreement with that subdivision;

(3) a member or political subdivision sponsor of a hazardous materials incident response team or special chemical assessment team designated by the commissioner of the Department of Public Safety;

(4) a person carrying out the directions of: (i) the commissioner of the Pollution Control Agency, the commissioner of agriculture, the commissioner of natural resources, or the commissioner of public safety; or (ii) the United States Coast Guard or Environmental Protection Agency on-scene coordinator consistent with a national contingency plan under the Oil Pollution Act of 1990; and

(5) a for-hire response contractor.

(b) This section does not exempt from liability responsible persons with respect to the discharge under chapter 115B or 115C or responsible parties with respect to the discharge under chapter 18B or 18D.

History: 1991 c 305 s 6; 1995 c 240 art 2 s 7

115E.061 RESPONDER IMMUNITY; OIL DISCHARGES.

(a) Notwithstanding any other law, a person who is rendering care, assistance, or advice in response to a discharge or threat of discharge of oil is not liable for response costs or damages that result from actions taken or failed to be taken in the course of rendering the care, assistance, or advice consistent with the national contingency plan under the Oil Pollution Act of 1990, or as otherwise directed by the federal on-scene coordinator, the commissioner of the Pollution Control Agency, the commissioner of agriculture, the commissioner of natural resources, or the commissioner of public safety.

(b) Paragraph (a) does not apply:

(1) to a responsible party;

(2) with respect to personal injury or wrongful death;

(3) if the person rendering assistance is grossly negligent or engages in willful misconduct;

or

(4) to a discharge that occurs outside the response area or after the response.

(c) Nothing in this section relieves a responsible party from liability the responsible party otherwise has for the initial discharge or threat of discharge that necessitated the response.

(d) Nothing in this section relieves a responsible party from the following duties:

(1) to take steps to prevent discharges under section 115E.02;

(2) to be prepared for discharges under section 115E.03, subdivision 1; or

(3) duties under section 115.061.

(e) A responsible party is liable for any response costs and damages that another person is relieved of under paragraph (a).

History: 1993 c 341 art 2 s 4; 1995 c 240 art 2 s 8

115E.07 COOPERATION BETWEEN PRIVATE AND PUBLIC RESPONDERS.

Political subdivisions and state agencies may arrange with persons to provide resources of state and local government so that the persons may comply with section 115E.03, subdivision 4.

History: 1991 c 305 s 7

115E.08 COORDINATION.

Subdivision 1. **Appointment.** The commissioner of public safety shall coordinate state agency preparedness for response to discharges of oil or hazardous substances.

Subd. 2. **Duties.** The commissioner of public safety shall at least annually assess the preparedness of each state agency for carrying out its responsibilities under sections 115E.01 to 115E.09 and shall chair regular meetings of representatives of each agency to prepare for coordinated response. The commissioner shall develop an incident command system for use by state agency responders in consultation with the affected state agencies. Following each major incident, the commissioner shall review the performance of each responding agency and the adequacy of the overall response and shall report to the agencies involved and the governor. The commissioner shall also identify opportunities for state agencies to coordinate with federal departments and agencies and political subdivisions of the state for preparedness and response actions.

Subd. 3. **Jurisdiction.** Except as otherwise provided, the following agencies have primary responsibility for the specified areas in carrying out the duties and authorities of this chapter:

(1) the Department of Agriculture, for agricultural chemicals;

(2) the Department of Public Safety, for public safety and protection of property;

(3) the Department of Natural Resources, for assessment and rehabilitation of water resources;

(4) the Pollution Control Agency, for all other matters subject to this chapter; and

(5) the Department of Transportation, with respect to requirements related to the packaging, labeling, placarding, routing, and written reporting on releases of hazardous materials that are being transported.

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

History: 1991 c 305 s 8

115E.09 SINGLE ANSWERING POINT SYSTEM.

The commissioner of public safety shall establish a single answering point system for use by persons responsible for reporting emergency incidents and conditions involving hazardous substances or oil to agencies of the state. The single answering point system must include personnel on duty 24 hours a day and equipment adequate to support communication to and from the parties responsible for an incident and all state agencies responsible for state response to the incident. The persons at the answering point must be trained in the jurisdictions, responsibilities, and capabilities of each state agency and basic hazardous substance hazard recognition and response procedures. All state agencies shall cooperate with the commissioner by including the single answering point system telephone number in files, permits, correspondence, and similar written material, and by appointing staff to coordinate the receipt of reports with the staff of the single answering point system.

History: 1991 c 305 s 9

115E.11 DISPOSITION OF PENALTIES.

Penalties collected for violations of this chapter or section 115.061 that are related to discharges or threatened discharges of petroleum must be deposited in the state treasury and credited to the petroleum tank release cleanup fund.

History: 1993 c 341 art 2 s 5; 1995 c 254 art 1 s 96