

## CHAPTER 115D

### TOXIC POLLUTION PREVENTION

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#### 115D.01 CITATION.

Sections 115D.01 to 115D.12 may be cited as the "Minnesota Toxic Pollution Prevention Act."

**History:** 1990 c 560 art 1 s 1

#### 115D.02 POLICY.

(a) To protect the public health, welfare, and the environment, the legislature declares that it is the policy of the state to encourage toxic pollution prevention. The preferred means of preventing toxic pollution are techniques and processes that are implemented at the source and that minimize the transfer of toxic pollutants from one environmental medium to another.

(b) The legislature intends that the programs developed under sections 115D.01 to 115D.12 shall encourage and lead to a greater awareness of the need for and benefits of toxic pollution prevention, and to a greater degree of cooperation and coordination among all elements of government, industry, and the public in encouraging and carrying out pollution prevention activities.

**History:** 1990 c 560 art 1 s 2; 1991 c 199 art 1 s 29

#### 115D.03 DEFINITIONS.

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

Subd. 2. **Commission.** "Commission" means the Emergency Response Commission under section 299K.03.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 4. [Repealed, 1Sp2005 c 1 art 2 s 162]

Subd. 5. **Eligible recipients.** "Eligible recipients" means persons who use, generate, or release toxic pollutants, hazardous substances, or hazardous wastes, or individuals or organizations that provide assistance to these persons.

Subd. 6. **Facility.** "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with such person.

Subd. 6a. **Officer of the company.** "Officer of the company" means one of the following:

(1) an owner or sole proprietor;

(2) a partner;

(3) for a corporation incorporated under chapter 300, the president, secretary, treasurer, or other officer as provided for in the corporation's bylaws or certificate of incorporation;

(4) for a corporation incorporated under chapter 302A, an individual exercising the functions of the chief executive officer or the chief financial officer under section 302A.305 or another officer elected or appointed by the directors of the corporation under section 302A.311;

(5) for a corporation incorporated outside this state, an officer of the company as defined by the laws of the state in which the corporation is incorporated;

(6) for a limited liability company organized under chapter 322B, the chief manager or treasurer; or

(7) for a limited liability company organized under chapter 322C, a member of a member-managed company, a manager of a manager-managed company, or any other officer provided for in the limited liability company's operating agreement.

Subd. 7. **Person.** "Person" means any individual, partnership, association, public or private corporation or other entity including the United States government, any interstate body, the state and any agency, department or political subdivision of the state.

Subd. 8. **Pollution prevention or prevent pollution.** "Pollution prevention" or "prevent pollution" means eliminating or reducing at the source the use, generation, or release of toxic pollutants, hazardous substances, and hazardous wastes.

Subd. 9. **Reduce, reducing, or reduction.** "Reduce," "reducing," or "reduction" means lessening the quantity or toxicity of toxic pollutants, hazardous substances, and hazardous wastes used, generated, or released at the source. Methods of reducing pollution include, but are not limited to, process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility.

Subd. 10. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

"Release" does not include:

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

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

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

(4) any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18B.01, subdivision 18.

Subd. 11. **Toxic pollutant.** "Toxic pollutant" means a chemical identified in United States Code, title 42, section 11023(c).

**History:** 1990 c 560 art 1 s 3; 1994 c 639 art 5 s 3; 1995 c 247 art 1 s 29,30; 2016 c 135 art 4 s 5

#### **115D.04 POLLUTION PREVENTION ASSISTANCE PROGRAM.**

Subdivision 1. **Establishment.** The commissioner shall establish a pollution prevention assistance program to assist eligible recipients in preventing pollution. The program must emphasize techniques and processes that minimize the transfer of pollutants from one environmental medium to another and must focus primarily on toxic pollutants.

Subd. 2. **Assistance.** The pollution prevention assistance program must include at least the following:

- (1) a program to assemble, catalog, and disseminate information on pollution prevention;
- (2) a program to provide technical research and assistance, including on-site consultations to identify alternative methods that may be applied to prevent pollution and to provide assistance for planning under section 115D.07, excluding design engineering services; and
- (3) outreach programs including seminars, workshops, training programs, and other similar activities designed to provide pollution prevention information and assistance to eligible recipients and other interested persons.

Subd. 3. **Administration.** (a) The pollution prevention assistance program must be coordinated with other public and private programs that provide management and technical assistance to eligible recipients.

(b) The commissioner may make grants to public or private entities to operate elements of the program. Grantees shall provide periodic reports on their efforts to assist eligible recipients to reduce pollution.

(c) A person, when operating or participating in elements of the technical assistance program pursuant to a grant or contract with the office under this section or other law, is an employee of the state, certified to be acting within the scope of employment, for purposes of the indemnification provisions of section 3.736, subdivision 9, for claims that arise out of the information, assistance, and recommendations covered by the grant or contract. The state is not obligated to defend or indemnify a grantee or contractor under this subdivision to the extent of the grantee's or contractor's liability insurance. The grantee's or contractor's right to indemnity is not a waiver of limitations, defenses, and immunities available to either the grantee or contractor or the state by law.

**History:** 1990 c 560 art 1 s 4; 1992 c 513 art 2 s 31; 1Sp2005 c 1 art 2 s 134,161

#### **115D.05 [Repealed, 1996 c 470 s 28]**

#### **115D.06 GOVERNOR'S AWARD FOR EXCELLENCE IN POLLUTION PREVENTION.**

The governor may issue annual awards in the form of a commendation for excellence in pollution prevention. Applications for these awards shall be administered by the commissioner.

**History:** 1990 c 560 art 1 s 6; 1Sp2005 c 1 art 2 s 161

**115D.07 TOXIC POLLUTION PREVENTION PLANS.**

Subdivision 1. **Requirement to prepare and maintain plan.** (a) Persons who operate a facility required by United States Code, title 42, section 11023, or section 299K.08, subdivision 3, to submit a toxic chemical release form shall prepare a toxic pollution prevention plan for that facility. A facility that is required to submit a toxic chemical release form but does not release a toxic chemical is exempt from the requirements of this subdivision. The plan must contain the information listed in subdivision 2.

(b) Except as provided in paragraphs (d) and (e), for facilities that release a total of 10,000 pounds or more of toxic pollutants annually, the plan must be completed as follows:

(1) on or before July 1, 1991, for facilities having a two-digit standard industrial classification of 35 to 39;

(2) by January 1, 1992, for facilities having a two-digit standard industrial classification of 28 to 34; and

(3) by July 1, 1992, for all other persons required to prepare a plan under this subdivision.

(c) Except as provided in paragraphs (d) and (e), facilities that release less than a total of 10,000 pounds of toxic pollutants annually must complete their plans by July 1, 1992.

(d) For the following facilities, the plan must be completed as follows:

(1) by January 1, 1995, for facilities required to report under section 299K.08, subdivision 3, that have a two-digit standard industrial classification of 01 to 50; and

(2) by January 1, 1996, for facilities required to report under section 299K.08, subdivision 3, that have a two-digit standard industrial classification of 51 to 99.

(e) For facilities that become subject to this subdivision after July 1, 1993, the plan must be completed by six months after the first submittal for the facility under United States Code, title 42, section 11023, or section 299K.08, subdivision 3.

(f) Each plan must be updated by January 1 of every even-numbered year and must be maintained at the facility to which it pertains.

Subd. 2. **Contents of plan.** (a) Each toxic pollution prevention plan must establish a program identifying the specific technically and economically practicable steps that could be taken during at least the three years following the date the plan is due, to eliminate or reduce the generation or release of toxic pollutants reported by the facility. Toxic pollutants resulting solely from research and development activities need not be included in the plan.

(b) At a minimum, each plan must include:

(1) a policy statement articulating upper management support for eliminating or reducing the generation or release of toxic pollutants at the facility;

(2) a description of the current processes generating or releasing toxic pollutants that specifically describes the types, sources, and quantities of toxic pollutants currently being generated or released by the facility;

(3) a description of the current and past practices used to eliminate or reduce the generation or release of toxic pollutants at the facility and an evaluation of the effectiveness of these practices;

(4) an assessment of technically and economically practicable options available to eliminate or reduce the generation or release of toxic pollutants at the facility, including options such as changing the raw materials, operating techniques, equipment and technology, personnel training, and other practices used at the facility. The assessment may include a cost-benefit analysis of the available options;

(5) a statement of objectives based on the assessment in clause (4) and a schedule for achieving those objectives. Wherever technically and economically practicable, the objectives for eliminating or reducing the generation or release of each toxic pollutant at the facility must be expressed in numeric terms based on a specified base year that is no earlier than 1987. Otherwise, the objectives must include a clearly stated list of actions designed to lead to the establishment of numeric objectives as soon as practicable;

(6) an explanation of the rationale for each objective established for the facility;

(7) a listing of options that were considered not to be economically and technically practicable; and

(8) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting to the accuracy of the information in the plan.

**History:** 1990 c 560 art 1 s 7; 1993 c 172 s 72; 1995 c 247 art 1 s 32,33

## **115D.08 PROGRESS REPORTS.**

Subdivision 1. **Requirement to submit progress report.** (a) All persons required to prepare a toxic pollution prevention plan under section 115D.07 shall submit an annual progress report to the commissioner of public safety that may be drafted in a manner that does not disclose proprietary information. Progress reports are due on July 1 of each year. The first progress reports are due in 1992.

(b) At a minimum, each progress report must include:

(1) a summary of each objective established in the plan, including the base year for any objective stated in numeric terms, and the schedule for meeting each objective;

(2) a summary of progress made during the past year, if any, toward meeting each objective established in the plan including the quantity of each toxic pollutant eliminated or reduced;

(3) a statement of the methods through which elimination or reduction has been achieved;

(4) if necessary, an explanation of the reasons objectives were not achieved during the previous year, including identification of any technological, economic, or other impediments the facility faced in its efforts to achieve its objectives; and

(5) a certification, signed and dated by the facility manager and an officer of the company under penalty of section 609.63, attesting that a plan meeting the requirements of section 115D.07 has been prepared and also attesting to the accuracy of the information in the progress report.

Subd. 2. **Reviewing progress reports.** (a) The commissioner of public safety shall review all progress reports to determine if they meet the requirements of subdivision 1. If the commissioner of public safety determines that a progress report does not meet the requirements, the commissioner of public safety shall notify the facility in writing and shall identify specific deficiencies and specify a reasonable time period of not less than 90 days for the facility to modify the progress report.

(b) The commissioner of public safety shall be given access to a facility plan required under section 115D.07 if the commissioner of public safety determines that the progress report for that facility does not

meet the requirements of subdivision 1. Twenty-five or more persons living within ten miles of the facility may submit a petition to the commissioner of public safety that identifies specific deficiencies in the progress report and requests the commissioner of public safety to review the facility plan. Within 30 days after receipt of the petition, the commissioner of public safety shall respond in writing. If the commissioner of public safety agrees that the progress report does not meet requirements of subdivision 1, the commissioner of public safety shall be given access to the facility plan.

(c) After reviewing the plan and the progress report with any modifications submitted, the commissioner of public safety shall state in writing whether the progress report meets the requirements of subdivision 1. If the commissioner of public safety determines that a modified progress report still does not meet the requirements of subdivision 1, the commissioner of public safety shall schedule a public meeting. The meeting shall be held in the county where the facility is located. The meeting is not subject to the requirements of chapter 14.

(d) The facility shall be given the opportunity to amend the progress report within a period of not less than 30 days after the public meeting.

(e) If the commissioner of public safety determines that a modified progress report still does not meet the requirements of subdivision 1, action may be taken under section 115.071 to obtain compliance with sections 115D.01 to 115D.12.

**History:** 1990 c 560 art 1 s 8; 1995 c 247 art 1 s 34; 2012 c 272 s 71

#### **115D.09 CONFIDENTIALITY.**

Information and techniques developed under section 115D.04, the reduction information and techniques under section 115A.0716, and the progress reports required under section 115D.08 are public data under chapter 13. The plans required under section 115D.07 are nonpublic data under chapter 13.

**History:** 1990 c 560 art 1 s 9; 1996 c 470 s 18

#### **115D.10 TOXIC POLLUTION PREVENTION EVALUATION REPORT.**

The commissioner, in cooperation with the commission, shall report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance on progress being made in achieving the objectives of sections 115D.01 to 115D.12. The report must be done in conjunction with the report required under section 115A.121.

**History:** 1990 c 560 art 1 s 10; 1993 c 172 s 73; 1995 c 247 art 1 s 35; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161; 2013 c 114 art 4 s 86

#### **115D.12 POLLUTION PREVENTION FEES.**

Subdivision 1. **Imposition.** The pollution prevention fees in this section are imposed on persons and facilities under subdivision 2, paragraphs (a) and (b).

Subd. 2. **Fees.** (a) Persons required by United States Code, title 42, section 11023, to submit a toxic chemical release form to the commission, and owners or operators of facilities listed in section 299K.08, subdivision 3, shall pay a pollution prevention fee of \$150 for each toxic pollutant reported released plus a fee based on the total pounds of toxic pollutants reported as released from each facility. Facilities reporting less than 25,000 pounds annually of toxic pollutants released per facility shall be assessed a fee of \$500.

Facilities reporting annual releases of toxic pollutants in excess of 25,000 pounds shall be assessed a graduated fee at the rate of two cents per pound of toxic pollutants reported.

(b) Persons who generate more than 1,000 kilograms of hazardous waste per month but who are not subject to the fee under paragraph (a) must pay a pollution prevention fee of \$500 per facility. Hazardous waste as used in this paragraph has the meaning given it in section 116.06, subdivision 11, and Minnesota Rules, chapter 7045.

(c) Fees required under this subdivision must be paid to the commissioner by January 1 of each year. The fees shall be deposited in the state treasury and credited to the environmental fund.

(d) The fees under this subdivision are exempt from section 16A.1285.

**History:** 1990 c 560 art 1 s 11; 1992 c 546 s 1; 1993 c 172 s 74; 2003 c 128 art 2 s 35; 1Sp2005 c 1 art 2 s 161

#### 115D.14 DEFINITIONS.

Subdivision 1. **Scope.** As used in this section and section 115D.15, the terms defined in this section have the meanings given.

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Integrity of aquatic or terrestrial ecosystems.** "Integrity of aquatic or terrestrial ecosystems" means the maintenance of mutually beneficial species of plants and animals and of other natural characteristics so that the biological viability of the ecosystem is ensured.

Subd. 4. **Toxic air contaminant.** "Toxic air contaminant" means an air contaminant that may cause or contribute to an increase in mortality or an increase in a chronic or an acute illness, or which may pose a present or potential hazard to human health or the integrity of aquatic or terrestrial ecosystems.

**History:** 1993 c 172 s 75

#### 115D.15 REPORTS TO LEGISLATURE.

Subdivision 1. **Initial report.** By January 1, 1995, the agency must submit to the environment and natural resources committees of the legislature a report that includes:

(1) a five-year regulatory strategy to protect the public health and the environment from emissions of toxic air contaminants; and

(2) a list prioritizing and categorizing facilities emitting toxic air contaminants.

Subd. 2. **Continuing reports.** Beginning January 1, 1997, and every two years thereafter, the agency shall submit to the legislative committees with jurisdiction over environment and natural resource issues a report that provides an update of the following:

(1) an analysis of the achievements, shortfalls, and resource needs for implementing the agency's strategy under subdivision 1, clause (1);

(2) an analysis of the data collected from the agency's statewide monitoring and inventory program under section 116.454;

(3) an analysis of reductions in emissions of toxic air contaminants; and

(4) an updated list prioritizing and categorizing facilities emitting toxic air contaminants.

**History:** *1993 c 172 s 76*