CHAPTER 18E

AGRICULTURAL CHEMICAL RESPONSE AND REIMBURSEMENT

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18E.01 CITATION.

This chapter may be cited as the "Agricultural Chemical Response and Reimbursement Law."

History: *1989 c 326 art 8 s 1*

18E.02 DEFINITIONS.

Subdivision 1. **Definitions.** The definitions contained in this section apply to this chapter. Except for terms defined in this section, the definitions contained in chapters 18B, 18C, and 18D apply to this chapter.

Subd. 2. **Account.** "Account" means the agricultural chemical response and reimbursement account.

Subd. 3. **Agricultural chemical.** "Agricultural chemical" means pesticide, fertilizer, plant amendment, or soil amendment but does not include nitrate and related nitrogen from a natural source.

Subd. 4. **Board.** "Board" means the Agricultural Chemical Response Compensation Board.

Subd. 5. **Eligible person.** "Eligible person" means:

(1) a responsible party or an owner of real property, but does not include the state, a state agency, or a political subdivision of the state, except as provided in clause (2); common carriers, as defined by section 218.011, subdivision 10; motor carriers as defined by section 221.012, subdivision 25, while transporting agricultural chemicals except as provided in clause (3); or the federal government or an agency of the federal government;

(2) the owners of municipal airports in Minnesota where a licensed aerial pesticide applicator has caused an incident through storage, handling, or distribution operations for agricultural chemicals if (i) the commissioner has determined that corrective action is necessary and (ii) the commissioner determines, and the Agricultural Chemical Response Compensation Board concurs, that based on an affirmative showing made by the owner, a responsible party cannot be identified or the identified responsible party is unable to comply with an order for corrective action; or

(3) a person involved in a transaction relating to real property who is not a responsible party or owner of the real property and who voluntarily takes corrective action on the property in response to a request or order for corrective action from the commissioner.

Subd. 5a. **Emergency incident.** "Emergency incident" means an incident resulting from a flood, fire, tornado, transportation accident, storage container rupture, or other event as determined by the commissioner that immediately, uncontrollably, and unpredictably releases agricultural chemicals into the environment and that may cause unreasonable adverse effects on the public health or the environment.

Subd. 5b. **Recontamination.** "Recontamination" means an agricultural chemical incident that occurs in a specific land area where corrective actions were taken to address a previous incident. Recontamination does not include an emergency incident.

Subd. 6. **Single site.** "Single site" for purposes of this chapter means all land and water areas, including air space, and all plants, animals, structures, buildings, contrivances, and machinery whether fixed or mobile including anything used for transportation within a one-half mile radius of a discovered or reported incident where agricultural chemical handling, storage, disposal, and distribution activities have occurred or are now occurring.

Subd. 7. **Incident.** "Incident" means a flood, fire, tornado, transportation accident, storage container rupture, leak, spill, emission discharge, escape, disposal, or other event that releases an agricultural chemical accidentally or otherwise into the environment and may cause unreasonable adverse effects on the environment. Incident does not include a release from the normal use of a product or practice in accordance with law.

History: *1989 c 326 art 8 s 2; 1992 c 500 s 15; 1995 c 182 s 1; 1996 c 407 s 15; 1999 c 231 s 41; 2002 c 373 s 10,11; 2007 c 45 art 1 s 31-33*

18E.03 AGRICULTURAL CHEMICAL RESPONSE AND REIMBURSEMENT ACCOUNT.

Subdivision 1. **Establishment.** The agricultural chemical response and reimbursement account is established as an account in the agricultural fund.

Subd. 2. **Expenditures.** (a) Money in the agricultural chemical response and reimbursement account may only be used:

(1) to pay for the commissioner's responses to incidents under chapters 18B, 18C, and 18D that are not eligible for payment under section 115B.20, subdivision 2;

(2) to pay for emergency responses that are otherwise unable to be funded;

(3) to reimburse and pay corrective action costs under section 18E.04; and

(4) to reimburse the commissioner for board staff and other administrative costs and the commissioner's incident response program costs related to eligible incident sites, up to $450,000 per fiscal year.

(b) Money in the agricultural chemical response and reimbursement account is appropriated to the commissioner to make payments as provided in this subdivision.

Subd. 3. **Determination of response and reimbursement fee.** (a) The commissioner shall determine the amount of the response and reimbursement fee under subdivision 4 after a public hearing based on:

(1) the amount needed to maintain an unencumbered balance in the account of $2,000,000;

(2) the amount estimated to be needed for responses to incidents as provided in subdivision 2, clauses (1) and (2); and

(3) the amount needed for payment and reimbursement under section 18E.04.

(b) The commissioner shall determine the response and reimbursement fee so that the total balance in the account does not exceed $6,500,000.

(c) Money from the response and reimbursement fee shall be deposited in the treasury and credited to the agricultural chemical response and reimbursement account.

Subd. 4. **Fee.** (a) The response and reimbursement fee consists of the surcharges and any adjustments made by the commissioner in this subdivision and shall be collected by the commissioner. The amount of the response and reimbursement fee shall be determined and imposed annually by the commissioner as required to satisfy the requirements in subdivision 3. The commissioner shall adjust the amount of the surcharges imposed in proportion to the amount of the surcharges listed in this subdivision. License application categories under paragraph (d) must be charged in proportion to the amount of surcharges imposed up to a maximum of 50 percent of the license fees set under chapters 18B and 18C.

(b) The commissioner shall impose a surcharge on pesticides registered under chapter 18B to be collected as a surcharge on the gross sales under section 18B.26, subdivision 3, that is equal to 0.1 percent of sales of the pesticide in the state and sales of pesticides for use in the state during the previous calendar year, except the surcharge may not be imposed on pesticides that are sanitizers or disinfectants as determined by the commissioner. No surcharge is required if the surcharge amount based on percent of annual gross sales of a nonagricultural pesticide is less than $10. Sales of pesticides in the state for use outside of the state are exempt from the surcharge in this paragraph if the registrant, agricultural pesticide dealer, or pesticide dealer properly documents the sale location and the distributors.

(c) The commissioner shall impose a ten cents per ton surcharge on the inspection fee under section 18C.425, subdivision 6, for fertilizers, soil amendments, and plant amendments.

(d) The commissioner shall impose a surcharge on the license application of persons licensed under chapters 18B and 18C consisting of:

(1) a $75 surcharge for each site where pesticides are stored or distributed, to be imposed as a surcharge on pesticide dealer application fees under section 18B.31, subdivision 5, and the agricultural pesticide dealer application fee under section 18B.316, subdivision 10;

(2) a $75 surcharge for each site where a fertilizer, plant amendment, or soil amendment is distributed, to be imposed on persons licensed under sections 18C.415 and 18C.425;

(3) a $50 surcharge to be imposed on a structural pest control applicator license application under section 18B.32, subdivision 6, for business license applications only;

(4) a $20 surcharge to be imposed on commercial applicator license application fees under section 18B.33, subdivision 7; and

(5) a $20 surcharge to be imposed on noncommercial applicator license application fees under section 18B.34, subdivision 5, except a surcharge may not be imposed on a noncommercial applicator that is a state agency, political subdivision of the state, the federal government, or an agency of the federal government.

(e) A $1,000 fee shall be imposed on each site where pesticides are stored and sold for use outside of the state unless:

(1) the distributor properly documents that it has less than $2,000,000 per year in wholesale value of pesticides stored and transferred through the site; or

(2) the registrant pays the surcharge under paragraph (b) and the registration fee under section 18B.26, subdivision 3, for all of the pesticides stored at the site and sold for use outside of the state.

(f) Paragraphs (c) to (e) apply to sales, licenses issued, applications received for licenses, and inspection fees imposed on or after July 1, 1990.

Subd. 5. MS 1992 [Repealed, 1993 c 367 s 41]

Subd. 6. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to the agricultural chemical response and reimbursement account:

(1) the proceeds of the fees imposed by subdivisions 3 and 4;

(2) money recovered by the state for expenses paid with money from the account;

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

(4) money received by the commissioner in the form of gifts, grants other than federal grants, reimbursements, and appropriations from any source intended to be used for the purposes of the account.

Subd. 7. **Appropriation and reimbursement.** The amount of the response and reimbursement fee imposed under subdivisions 3 and 4 is appropriated from the general fund to the agricultural chemical response and reimbursement account to be reimbursed when the fee is collected.

History: *1989 c 326 art 8 s 3; 1990 c 597 s 10-13; 1991 c 355 s 1,2; 1993 c 367 s 19-23; 1995 c 233 art 2 s 36; 1996 c 330 s 22; 1997 c 7 art 1 s 9; 1999 c 231 s 42; 2002 c 373 s 12; 1Sp2005 c 1 art 1 s 27; 2007 c 45 art 1 s 34; 2009 c 94 art 1 s 66,67; 2011 c 14 s 11; 2022 c 95 art 2 s 12*

18E.035 FINANCIAL SECURITY; MUNICIPAL AIRPORTS.

As a condition for the use of space or facilities for the storage, handling, or distribution of agricultural chemicals on the grounds of a municipal airport, a licensed aerial pesticide applicator shall hold the owner of the airport harmless for any expenses to cover necessary corrective actions caused by the applicator.

History: *1999 c 231 s 43*

18E.04 REIMBURSEMENT OR PAYMENT OF RESPONSE COSTS.

Subdivision 1. **Reimbursement of response costs.** The commissioner shall reimburse an eligible person from the agricultural chemical response and reimbursement account for the reasonable and necessary costs incurred by the eligible person in taking corrective action as provided in subdivision 4, if the board determines:

(1) the eligible person takes all reasonable action necessary to minimize and abate an incident and the action is subsequently approved by the commissioner;

(2) the eligible person complies with any reasonable requests for corrective action issued to the eligible person by the commissioner;

(3) the eligible person complied with corrective action orders if issued to the eligible person by the commissioner; and

(4) the incident was reported as required in chapters 18B, 18C, and 18D.

Subd. 2. **Payment of corrective action costs.** (a) On request by an eligible person, the board may pay the eligible person for the reasonable and necessary cash disbursements for corrective action costs incurred by the eligible person as provided under subdivision 4 if the board determines:

(1) the eligible person pays the first $1,000 of the corrective action costs;

(2) the eligible person provides the board with a sworn affidavit and other convincing evidence that the eligible person is unable to pay additional corrective action costs;

(3) the eligible person continues to assume responsibility for carrying out the requirements of corrective action orders issued to the eligible person or that are in effect;

(4) the incident was reported as required in chapters 18B, 18C, and 18D; and

(5) the eligible person submits an application for payment or reimbursement to the department, along with associated invoices, within three years of (i) performance of the eligible work, or (ii) approval of the related corrective action design or plan for that work, whichever is later.

(b) An eligible person is not eligible for payment or reimbursement and must refund amounts paid or reimbursed by the board if false statements or misrepresentations are made in the affidavit or other evidence submitted to the commissioner to show an inability to pay corrective action costs.

(c) The board may pay the eligible person and one or more designees by multiparty check.

Subd. 2a. **Ineligibility for reimbursement or payment.** Pesticides that are sanitizers and disinfectants and are exempt from surcharges are ineligible for reimbursement or payment under this section.

Subd. 3. **Partial reimbursement.** (a) If the unencumbered balance of the account drops below $3,000,000, the board may only pay or reimburse an eligible person up to $100,000 within the same fiscal year.

(b) If the board determines that an incident was caused by a violation of chapter 18B, 18C, or 18D, the board may reimburse or pay a portion of the corrective action costs of the eligible person based on the culpability of the eligible person and the percentage of the costs not attributable to the violation.

Subd. 4. **Reimbursement payments.** (a) The board shall pay a person that is eligible for reimbursement or payment under subdivisions 1, 2, and 3 from the agricultural chemical response and reimbursement account for 80 percent of the total reasonable and necessary corrective action costs greater than $1,000 and less than or equal to $550,000.

(b) A reimbursement or payment may not be made until the board has determined that the costs are reasonable and are for a reimbursement of the costs that were actually incurred.

(c) The board may make periodic payments or reimbursements as corrective action costs are incurred upon receipt of invoices for the corrective action costs.

(d) Money in the agricultural chemical response and reimbursement account is appropriated to the commissioner to make payments and reimbursements directed by the board under this subdivision.

(e) The board may not make reimbursement greater than the maximum allowed under paragraph (a) for all incidents on a single site which:

(1) were not reported at the time of release but were discovered and reported after July 1, 1989; and

(2) may have occurred prior to July 1, 1989, as determined by the commissioner.

(f) The board may only reimburse an eligible person for separate incidents within a single site if the commissioner determines that each incident is completely separate and distinct in respect of location within the single site or time of occurrence.

(g) Except for an emergency incident, the board may not reimburse or pay for more than 60 percent of the corrective action costs of an eligible person or for an incident within five years of a previous incident at a single site resulting from a site recontamination.

(h) The deduction of $1,000 and 20 percent from the $550,000 remuneration may be waived by the board if the incident took place on or after August 18, 2007, and was caused by flooding associated with Presidential Declaration of Major Disaster DR-1717.

Subd. 5. **Reimbursement or payment decisions.** (a) The board may issue a letter of intent on whether a person is eligible for payment or reimbursement. The letter is not binding on the board.

(b) The board must issue an order granting or denying a request within 30 days following the board meeting at which the board votes to grant or deny a request for reimbursement or for payment under subdivision 1, 2, or 3.

(c) After an initial request is made for reimbursement, notwithstanding subdivisions 1 to 4, the board may deny additional requests for reimbursement.

(d) An eligible person adversely affected by the board's disapproval of a reimbursement or payment application under paragraph (b) or a partial reimbursement under subdivision 3 may, within 60 days of receipt of the board's order, request a hearing of determination before the board. A request for a hearing must be made in writing and specify the grounds for the request.

(e) Within 30 days of the receipt of a request for hearing under paragraph (d), the eligible person must be notified either as to the date of the hearing for determination or of the denial of the request for a hearing. A hearing must be scheduled immediately following the next regularly scheduled board meeting as determined by the notification letter.

(f) If a dispute related to the disapproval of a reimbursement is not resolved after a hearing under paragraph (e) or if a request is denied, the eligible person may appeal the decision as a contested case hearing under chapter 14. A request for a contested case hearing must be submitted in writing to the board within 30 days of the date of the hearing or within 30 days of the receipt of notification of denial of the hearing request under paragraph (e).

Subd. 6. **Subrogation.** (a) If a person other than a responsible party is paid or reimbursed from the response reimbursement account as a condition of payment or reimbursement, the state is subrogated to the rights of action the person paid or reimbursed has against the responsible party. The commissioner shall collect the amounts from the responsible party and on request of the commissioner on behalf of the board the attorney general shall bring an action to enforce the collection.

(b) Amounts collected under this subdivision must be credited to the agricultural chemical response and reimbursement account.

History: *1989 c 326 art 8 s 4; 1990 c 597 s 14; 1991 c 355 s 3,4; 1993 c 367 s 24; 1995 c 182 s 2,3; 2000 c 477 s 22; 2000 c 488 art 3 s 10; 1Sp2001 c 2 s 38-40; 2002 c 373 s 13-15; 1Sp2007 c 2 art 3 s 5; 2008 c 297 art 1 s 9; 2022 c 95 art 2 s 13,14*

18E.05 AGRICULTURAL CHEMICAL RESPONSE COMPENSATION BOARD.

Subdivision 1. **Membership.** (a) The Agricultural Chemical Response Compensation Board is created to consist of the commissioner of agriculture, the commissioner of commerce, and three private industry members consisting of: one representative of agricultural chemical manufacturers and wholesalers; one

representative of farmers; and one representative of dealers who sell the agricultural chemicals at retail. The governor shall appoint the private industry members. Appointment, vacancies, removal, terms, and payment of compensation and expenses of members, but not expiration of the board itself, are governed by section 15.0575.

(b) The commissioner of agriculture shall provide staff to support the activities of the board.

(c) The board shall adopt rules regarding its practices and procedures, the application form and procedures for determining eligibility for and the amount of reimbursement, and procedures for investigation of claims.

Subd. 2. **Duties.** The board shall:

(1) accept applications for reimbursement from the account;

(2) determine the eligibility of applicants for reimbursement;

(3) determine the amount of reimbursement due each eligible applicant and the reimbursement payment schedule where applicable; and

(4) order reimbursement and notify the commissioner of the eligible person, the amount of reimbursement due, and the payment schedule, if any.

Subd. 3. **Procedures.** The board must receive a completed application at least 30 days before a board meeting in order for a request for reimbursement or payment to be considered at that meeting, unless the applicant and the commissioner agree to a longer time period. The board may waive the 30-day requirement if it determines that undue financial hardship to the applicant will result if action is delayed until the next regular meeting. The board must act upon a completed application request at the next regular board meeting, unless additional information is required from the applicant or the commissioner. If the board denies reimbursement or payment, its decision may be appealed in a contested case proceeding under chapter 14.

History: *1989 c 326 art 8 s 5; 1991 c 355 s 5; 1996 c 305 art 2 s 3*

18E.06 REPORT.

By December 1 of each year, the Agricultural Chemical Response Compensation Board and the commissioner shall submit to the house of representatives Committee on Ways and Means, the senate Committee on Finance, the house of representatives and senate committees with jurisdiction over the environment, natural resources, and agriculture, and the Environmental Quality Board a report detailing the board's activities and reimbursements and the expenditures and activities associated with the commissioner's incident response program for which money from the account has been spent during the previous year.

History: *1989 c 326 art 8 s 6; 1993 c 4 s 13; 1994 c 557 s 10; 1999 c 86 art 3 s 6; 2002 c 373 s 16; 2009 c 94 art 1 s 68*