

accident unless the vehicle: (1) has been inspected by a state trooper or other person authorized to conduct inspections under section 169.781, subdivision 3, paragraph (a), who is an employee of the department of public safety or transportation, and the person inspecting the vehicle has determined that the vehicle may safely be operated; or (2) a waiver has been granted under subdivision 2.

Sec. 8. Minnesota Statutes 1990, section 171.02, is amended by adding a subdivision to read:

Subd. 2a. HAZARDOUS MATERIALS; EXCEPTION. Notwithstanding subdivision 2, a hazardous materials endorsement is not required to operate a motor vehicle with a gross weight of not more than 26,000 pounds, carrying in bulk tanks a total of not more than 200 gallons of petroleum products or liquid fertilizer or pesticide.

Sec. 9. Laws 1990, chapter 563, section 11, is amended to read:

Sec. 11. **EFFECTIVE DATE.**

(a) Section 1, subdivisions 1 and 3 to 8, and sections 2 to 10 are effective July 1, 1990.

(b) Except as provided in paragraph (c), section 1, subdivision 2, is effective April suspended until July 1, 1991.

(c) Section 1, subdivision 2, is effective April 1, 1992, for any registered farm truck with a registered gross weight of not more than 57,000 pounds while being operated within a radius of 75 miles of the home post office of the owner.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 8 are effective the day following final enactment. Section 9 is effective retroactively to April 1, 1991.

Presented to the governor May 21, 1991

Signed by the governor May 24, 1991, 4:40 p.m.

CHAPTER 175—H.F.No. 744

An act relating to the environment; petrofund; amending Minnesota Statutes 1990, sections 115C.07, subdivision 3; 115C.09, subdivisions 1, 2, 3, 3b, 5, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 103I.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[103I.222] USE OF POLYVINYL CHLORIDE.**

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The department shall adopt emergency rules within six months, and permanent rules within one year, of the effective date of this section designed to allow use of flush threaded polyvinyl chloride casing and screens used for leak detection and monitoring wells at underground or aboveground petroleum storage tank sites.

Sec. 2. Minnesota Statutes 1990, section 115C.07, subdivision 3, is amended to read:

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) The board may adopt emergency rules under this subdivision for one year after June 4, 1987.

(c) The board shall adopt emergency rules within four months of the effective date of this section, and permanent rules within one year of the effective date of this section, designed to ensure that costs submitted to the board for reimbursement are reasonable. The rules shall include a requirement that persons taking corrective action solicit competitive bids, based on unit service costs, except in circumstances where the board determines that such solicitation is not feasible.

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

Sec. 3. Minnesota Statutes 1990, section 115C.09, subdivision 1, is amended to read:

Subdivision 1. **REIMBURSABLE COSTS.** (a) The board shall provide partial reimbursement to eligible responsible persons for reimbursable costs incurred after June 4, 1987.

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

(1) corrective action costs incurred by the responsible person, except the costs related to the physical removal of a tank; ~~and~~

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury or property damage caused by a release if the responsible person's liability for the costs has been established by a court order or a consent decree; and

(3) up to 180 days worth of interest costs, incurred after the effective date of this section, associated with the financing of corrective action. 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.

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(c) A cost for liability to a third party is incurred by the responsible person when an order or consent decree establishing the liability is entered. 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.

Sec. 4. Minnesota Statutes 1990, section 115C.09, subdivision 2, is amended to read:

Subd. 2. **RESPONSIBLE PERSON ELIGIBILITY.** (a) A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board. ~~The board may consider applications for reimbursement after the commissioner has approved a design for corrective action that the commissioner determines will adequately address the release. The board may also consider applications when the corrective action has been fully constructed or installed and periodically afterward as the corrective action continues operation: at the following stages:~~

(1) after the commissioner approves a plan for corrective action related to soil contamination;

(2) after the commissioner determines that the corrective action plan described in clause (1) has been fully constructed or installed;

(3) after the commissioner approves a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary;

(4) after the commissioner determines that the corrective action necessary to adequately address the release has been fully constructed or installed; and

(5) periodically afterward as the corrective action continues operation, but no 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 responsible person 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 (3), 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), clauses (1) and (2), and within 120 days of submission of the application under paragraph (a), clauses (3) and (4), or the board shall explain for the record why additional time is necessary. For purposes of the preceding

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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 simultaneous to the commissioner's consideration of the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

~~(b) (c) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release was appropriate in terms of protecting public health, welfare, and the environment.~~

~~(e) The board shall reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with one or more of the following requirements:~~

~~(1) at the time of the release the tank was in substantial compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility;~~

~~(2) the agency was given notice of the release as required by section 115.061;~~

~~(3) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and~~

~~(4) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.~~

~~(d) The reimbursement shall be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (e), clauses (1) to (4). In determining the amount of the reimbursement reduction, the board shall consider:~~

~~(1) the likely environmental impact of the noncompliance;~~

~~(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.~~

Sec. 5. Minnesota Statutes 1990, section 115C.09, subdivision 3, is amended to read:

Subd. 3. **REIMBURSEMENT.** (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the account for 90 percent of the portion of the total reimbursable costs or \$1,000,000, whichever is less. Not

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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 account under this subdivision until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

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

(d) The board shall reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with one or more of the following requirements:

(1) at the time of the release the tank was in substantial compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility;

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

(3) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

(4) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

(e) The reimbursement shall be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (d), clauses (1) to (4). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(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.

(f) A responsible person 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, who provided corrective action services. An assignment must

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be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the responsible person, the identity of the assignee, the dollar amount of the assignment and the location of the corrective action. An assignment signed by the responsible person 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 responsible person and to one or more assignees by a multi-party check. The board has no liability to a responsible person for a payment under an assignment meeting the requirements of this paragraph.

Sec. 6. Minnesota Statutes 1990, section 115C.09, subdivision 3b, is amended to read:

Subd. 3b. **VOLUNTEER ELIGIBILITY.** (a) Notwithstanding subdivisions 1 to 3, a person may apply to the board for partial reimbursement under subdivision 3 who:

(1) is not a responsible person under section 115C.02;

(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) A person eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.

(c) 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 the provisions of subdivision ~~2~~ 3, paragraph ~~(e)~~ (d).

Sec. 7. Minnesota Statutes 1990, section 115C.09, subdivision 5, is amended to read:

Subd. 5. **RETURN OF REIMBURSEMENT.** (a) The board may demand the complete or partial return of any reimbursement made under this section if the ~~responsible person applicant for reimbursement:~~

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

(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; or

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

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(b) If a reimbursement under this subdivision 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 ~~responsible person~~ applicant. If the board's demand for return of the reimbursement is based on willful actions of the ~~responsible person~~ applicant, the ~~responsible person~~ 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.

Sec. 8. Minnesota Statutes 1990, section 115C.09, is amended by adding a subdivision to read:

Subd. 6. CONSULTANT AND CONTRACTOR 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.

Sec. 9. Minnesota Statutes 1990, section 115C.09, is amended by adding a subdivision to read:

Subd. 7. DUTY TO PROVIDE INFORMATION. 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.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective on the day following final enactment, except for section 4, subdivision 2, paragraph (b), which is effective on October 1, 1991.

Presented to the governor May 21, 1991

Signed by the governor May 24, 1991, 5:40 p.m.

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