

A payment received by an accelerated mortgage payment provider from or on behalf of a client shall be held by the accelerated mortgage payment provider in a separate trust account clearly designated for client funds. The account shall be in a bank or other depository institution authorized or chartered under the laws of any state or of the United States. The accelerated mortgage payment provider shall not commingle funds held for payment to lenders with its own property or funds.

Sec. 6. SERVICE PROVISION STUDY.

The commissioner of commerce shall report by January 15, 1995, to the commerce and consumer protection committee in the senate and the financial institutions and insurance committee in the house, on the feasibility of requiring financial institutions to offer to mortgagors the option of making their payments on a semimonthly, biweekly, or other accelerated basis, at no additional charge or fee, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness.

Sec. 7. EFFECTIVE DATE.

Sections 1 to 6 are effective the day following final enactment.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:54 p.m.

CHAPTER 639—H.F.No. 3086

An act relating to the environment; establishing an environmental cleanup program for landfills; providing for buy-outs for insurers; increasing the solid waste generator fee; transferring the balance in the metropolitan landfill contingency action trust fund; authorizing the sale of bonds; renaming the office of waste management as the office of environmental assistance and providing for appointment of the director; transferring certain personnel, powers, and duties to the office of environmental assistance; transferring solid and hazardous waste management personnel, powers, and duties of the metropolitan council to the office of environmental assistance; expanding the authority of the commissioner of the pollution control agency to issue determinations regarding liability for releases of hazardous substances and petroleum; requiring environmental review of certain projects; authorizing rules; providing penalties; appropriating money; amending Minnesota Statutes 1992, sections 115A.055; 115B.04, by adding a subdivision; 115B.42, subdivision 1; 115C.03, subdivision 9; 116G.15; and 281.17; Minnesota Statutes 1993 Supplement, sections 115B.178, subdivision 1; 115B.42, subdivision 2; 116.07, subdivision 10; and 281.13; proposing coding for new law in Minnesota Statutes, chapters 115B; and 116G.

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

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ARTICLE 1

Section 1. Minnesota Statutes 1992, section 115B.04, is amended by adding a subdivision to read:

Subd. 4a. CLAIMS BY MIXED MUNICIPAL SOLID WASTE DISPOSAL FACILITIES. (a) Except as provided in paragraph (b), liability under this section for claims by owners or operators of mixed municipal solid waste disposal facilities that accept waste on or after April 9, 1994, and are not qualified facilities under section 115B.39, subdivision 2, is limited to liability for response costs exceeding the amount of available financial assurance funds required under section 116.07, subdivision 4h.

(b) This subdivision does not affect liability under this section for claims based on the illegal disposal of waste at a facility.

Sec. 2. [115B.39] LANDFILL CLEANUP PROGRAM; ESTABLISHMENT.

Subdivision 1. ESTABLISHMENT. The landfill cleanup program is established to provide environmental response at qualified facilities and is to be administered by the commissioner.

Subd. 2. DEFINITIONS. (a) In addition to the definitions in this subdivision, the definitions in sections 115A.03 and 115B.02 apply to sections 115B.39 to 115B.46, except as specifically modified in this subdivision.

(b) "Cleanup order" means a consent order between responsible persons and the agency or an order issued by the United States Environmental Protection Agency under section 106 of the Federal Superfund Act.

(c) "Closure" means actions to prevent or minimize the threat to public health and the environment posed by a mixed municipal solid waste disposal facility that has stopped accepting waste by controlling the sources of releases or threatened releases at the facility. "Closure" includes removing contaminated equipment and liners; applying final cover; grading and seeding final cover; installing wells, borings, and other monitoring devices; constructing groundwater and surface water diversion structures; and installing gas control systems and site security systems, as necessary. The commissioner may authorize use of final cover that includes processed materials that meet the requirements in Code of Federal Regulations, title 40, section 503.32, paragraph (a).

(d) "Contingency action" means organized, planned, or coordinated courses of action to be followed in case of fire, explosion, or release of solid waste, waste by-products, or leachate that could threaten human health or the environment.

(e) "Corrective action" means steps taken to repair facility structures including liners, monitoring wells, separation equipment, covers, and aeration devices and to bring the facility into compliance with design, construction, groundwater, surface water, and air emission standards.

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(f) "Decomposition gases" means gases produced by chemical or microbial activity during the decomposition of solid waste.

(g) "Environmental response action" means response action at a qualified facility, including corrective action, closure, postclosure care; contingency action; environmental studies, including remedial investigations and feasibility studies; engineering, including remedial design; removal; remedial action; site construction; and other similar cleanup-related activities.

(h) "Environmental response costs" means:

(1) costs of environmental response action, not including legal or administrative expenses; and

(2) costs required to be paid to the federal government under section 107(a) of the federal Superfund Act, as amended.

(i) "Postclosure" or "postclosure care" means actions taken for the care, maintenance, and monitoring of closure actions at a mixed municipal solid waste disposal facility.

(j) "Qualified facility" means a mixed municipal solid waste disposal facility, including adjacent property used for solid waste disposal, that:

(1) is or was permitted by the agency;

(2) stopped accepting solid waste, except demolition debris, for disposal by April 9, 1994; and

(3) stopped accepting demolition debris for disposal by June 1, 1994, except that demolition debris may be accepted until May 1, 1995, at a permitted area where disposal of demolition debris is allowed, if the area where the demolition debris is deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid waste was deposited.

Sec. 3. [115B.40] PROGRAM.

Subdivision 1. RESPONSE TO RELEASES. The commissioner may take any environmental response action, including emergency action, related to a release or threatened release of a hazardous substance, pollutant or contaminant, or decomposition gas from a qualified facility that the commissioner deems reasonable and necessary to protect the public health or welfare or the environment under the standards required in sections 115B.01 to 115B.24. The commissioner may undertake studies necessary to determine reasonable and necessary environmental response actions at individual facilities. The commissioner may develop general work plans for environmental studies, presumptive remedies, and generic remedial designs for facilities with similar characteristics. Prior to selecting environmental response actions for a facility, the commissioner shall hold at least one public informational meeting near the facility and provide for receiving and responding to comments related to the selection. The commissioner shall design, implement, and provide oversight consistent with the actions selected under this subdivision.

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Subd. 2. PRIORITY LIST. (a) The commissioner shall establish a priority list for preventing or responding to releases of hazardous substances, pollutants and contaminants, or decomposition gases at qualified facilities. The commissioner shall periodically revise the list to reflect changing conditions at facilities that affect priority for response actions. The initial priority list must be established by January 1, 1995.

(b) The priority list required under this subdivision must be based on the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facility, the potential for contamination of drinking water supplies, the potential for direct human contact, and the potential for destruction of sensitive ecosystems.

Subd. 3. NOTIFICATION. By September 1, 1994, the commissioner shall notify the owner or operator of, and persons subject to a cleanup order at, each qualified facility of whether the requirements of subdivision 4 or 5 have been met. If the requirements have not been met at a facility, the commissioner, by the earliest practicable date, shall notify the owner or operator and persons subject to a cleanup order of what actions need to be taken.

Subd. 4. QUALIFIED FACILITY NOT UNDER CLEANUP ORDER; DUTIES. (a) The owner or operator of a qualified facility that is not subject to a cleanup order shall:

(1) complete closure activities at the facility, or enter into a binding agreement with the commissioner to do so, as provided in paragraph (d), within one year from the date the owner or operator is notified by the commissioner under subdivision 3 of the closure activities that are necessary to properly close the facility in compliance with facility's permit, closure orders, or enforcement agreement with the agency, and with the solid waste rules in effect at the time the facility stopped accepting waste;

(2) undertake or continue postclosure care at the facility until the date of notice of compliance under subdivision 7;

(3) transfer to the commissioner of revenue for deposit in the landfill cleanup account established in section 115B.42 any funds required for proof of financial responsibility under section 116.07, subdivision 4h, that remain after facility closure and any postclosure care and response action undertaken by the owner or operator at the facility including, if proof of financial responsibility is provided through a letter of credit or other financial instrument or mechanism that does not accumulate money in an account, the amount that would have accumulated had the owner or operator utilized a trust fund, less any amount used for closure, postclosure care, and response action at the facility;

(4) provide the commissioner with a copy of all applicable comprehensive general liability insurance policies and other liability policies relating to property damage, certificates, or other evidence of insurance coverage held during the life of the facility; and

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(5) enter into a binding agreement with the commissioner to:

(i) take any actions necessary to preserve the owner or operator's rights to payment or defense under insurance policies included in clause (4); cooperate with the commissioner in asserting claims under the policies; and, within 60 days of a request by the commissioner, but no earlier than July 1, 1996, assign only those rights under the policies related to environmental response costs;

(ii) cooperate with the commissioner or other persons acting at the direction of the commissioner in taking additional environmental response actions necessary to address releases or threatened releases and to avoid any action that interferes with environmental response actions, including allowing entry to the property and to the facility's records and allowing entry and installation of equipment; and

(iii) refrain from developing or altering the use of property described in any permit for the facility except after consultation with the commissioner and in conformance with any conditions established by the commissioner for that property, including use restrictions, to protect public health and welfare and the environment.

(b) The owner or operator of a qualified facility that is a political subdivision may use a portion of any funds established for response at the facility, which are available directly or through a financial instrument or other financial arrangement, for closure or postclosure care at the facility if funds available for closure or postclosure care are inadequate and shall assign the rights to any remainder to the commissioner.

(c) The agreement required in paragraph (a), clause (5), must be in writing and must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

(d) A binding agreement entered into under paragraph (a), clause (1), may include a provision that the owner or operator will reimburse the commissioner for the costs of closing the facility to the standard required in that clause.

Subd. 5. QUALIFIED FACILITY UNDER CLEANUP ORDER; DUTIES.

(a) For a qualified facility that is subject to a cleanup order, persons identified in the order shall complete construction of the remedy required under the cleanup order and:

(1) for a federal order, receive a concurrent determination of the United States Environmental Protection Agency and the agency or commissioner that the remedy is functioning properly and is performing as designed; or

(2) for a state order, receive acknowledgment from the agency or commissioner that the obligations under the order for construction of the remedy have been met.

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(b) The owner or operator of a qualified facility that is subject to a cleanup order, in addition to any applicable requirement in paragraph (a), shall comply with subdivision 4, paragraph (a), clauses (3) to (5).

Subd. 6. COMMISSIONER; DUTIES. (a) If the owner or operator of a qualified facility fails to comply with subdivision 4, paragraph (a), clause (1) or (2), the commissioner shall:

(1) undertake or complete closure activities at the facility in compliance with the solid waste rules in effect at the time the commissioner takes action under this clause; and

(2) undertake or continue postclosure care at the facility as required under subdivision 2.

(b) If a facility has been properly closed under subdivision 4, but the applicable closure requirements are less environmentally protective than closure requirements in the solid waste rules in effect on January 1, 1993, the commissioner shall determine whether the facility should be closed to the higher standards and, if so, shall undertake additional closure activities at the facility to meet those standards. The commissioner may determine that additional closure activities are unnecessary only if it is likely that response actions will be taken in the near future and that those response actions will result in removal or significant alteration of the closure activities or render the closure activities unnecessary.

Subd. 7. NOTICE OF COMPLIANCE; EFFECTS. (a) The commissioner shall provide written notice of compliance to the appropriate owner or operator or person subject to a cleanup order when:

(1) the commissioner determines that the requirements of subdivision 4 or 5 have been met; and

(2) the person who will receive the notice has submitted to the commissioner a written waiver of any claims the person may have against any other person for recovery of any environmental response costs related to a qualified facility that were incurred prior to the date of notice of compliance.

(b) Beginning on the date of the notice of compliance:

(1) the commissioner shall assume all obligations of the owner or operator or person for environmental response actions under the federal Superfund Act and any federal or state cleanup orders and shall undertake all further action under subdivision 1 at or related to the facility that the commissioner deems appropriate and in accordance with the priority list; and

(2) the commissioner may not seek recovery against the owner or operator of the facility or any responsible person of any costs incurred by the commissioner for environmental response action at or related to the facility, except:

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(i) to the extent of insurance coverage held by the owner or operator or responsible person; or

(ii) as provided in section 115B.402.

(c) The commissioner and the attorney general shall communicate with the United States Environmental Protection Agency addressing the manner and procedure for the state's assumption of federal obligations under paragraph (b), clause (1).

Subd. 8. STATUTES OF LIMITATIONS. (a) With respect to claims for recovery of environmental response costs related to qualified facilities, the running of all applicable periods of limitation under state law is suspended until July 1, 2004.

(b) A waiver of claims for recovery of environmental response costs under this section or section 115B.43 is extinguished for that portion of reimbursable costs under section 115B.43 that have not been reimbursed by July 1, 2004.

Sec. 4. [115B.402] ILLEGAL ACTIONS AT QUALIFIED FACILITIES.

The commissioner may recover under section 115B.17, subdivision 6, that portion of the costs of response actions at any qualified facility attributable to a person who otherwise would be responsible for the release or threatened release under section 115B.03, and whose actions related to the release or threatened release were in violation of federal or state hazardous waste management laws in effect at the time of those actions. The commissioner's determination of the portion of the costs of a response action attributable to a person under this section, based on the volume and toxicity of waste in the facility associated with the person and other factors reasonably related to the contribution of the person to a release or threatened release, is prima facie evidence that those costs are attributable to the person.

Sec. 5. [115B.405] EXCLUDED FACILITIES.

Subdivision 1. APPLICATION. The owner or operator of a qualified facility may apply to the commissioner for exclusion from the landfill cleanup program under sections 115B.39, 115B.40, 115B.41, 115B.412, and 115B.43. Applications must be received by the commissioner by February 1, 1995. The owner or operator of a qualified facility that is subject to a federal cleanup order or that includes any portion that is tax-forfeited may not apply for exclusion under this section. In addition to other information required by the commissioner, an application must include a disclosure of all financial assurance accounts established for the facility. Applications for exclusion must:

(1) show that the operator or owner is complying with the agency's rules adopted under section 116.07, subdivision 4h, and is complying with a financial assurance plan for the facility that the commissioner has approved after determining that the plan is adequate to provide for closure, postclosure care, and contingency action;

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(2) demonstrate that the facility is closed or is in compliance with a closure schedule approved by the commissioner; and

(3) include a waiver of all claims for recovery of costs incurred under sections 115B.01 to 115B.24 and the federal Superfund Act at or related to a qualified facility.

Subd. 2. EVALUATION OF EXCLUSION STATUS. Within 90 days after the commissioner has received a complete application for exclusion, the commissioner shall notify the owner or operator if the facility is excluded. If the commissioner finds that the facility does not satisfy the requirements for exclusion, the commissioner shall notify the owner or operator of that fact.

Subd. 3. RESTRICTION ON USE OF PROPERTY AT EXCLUDED FACILITIES. (a) A person may not use any property described in the most recent agency permit issued for an excluded facility in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the facility's monitoring systems, unless the agency finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(b) Before any transfer of ownership of property described in paragraph (a), the owner must obtain approval from the commissioner. The commissioner shall approve a transfer if the owner can demonstrate to the satisfaction of the commissioner that persons and property will not be exposed to undue risk from releases of hazardous substances or pollutants or contaminants.

(c) After obtaining approval from the commissioner, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

(1) that the land has been used as a mixed municipal solid waste disposal facility;

(2) the identity, quantity, location, condition, and circumstances of the disposal and any release of hazardous substances or pollutants or contaminants from the facility to the full extent known or reasonably ascertainable; and

(3) that the use of the property or some portion of it may be restricted as provided in paragraph (a).

(d) An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under paragraph (c), with respect to property for which an affidavit has already been recorded. If the owner or any subsequent owner of the property removes the waste from the facility together

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with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal. Failure to record an affidavit as provided in this paragraph does not affect or prevent any transfer of ownership of the property.

(e) The county recorder shall record all affidavits presented in accordance with paragraphs (c) and (d). The affidavits must be recorded in a manner that will ensure their disclosure in the ordinary course of a title search of the subject property.

(f) This subdivision is enforceable under sections 115.071 and 116.072.

Subd. 4. CLOSURE. If the commissioner determines that the owner or operator of an excluded facility did not complete the terms of an approved closure plan by the date in the plan, the commissioner shall complete closure at the facility and may seek cost recovery against the owner or operator under section 115B.17, subdivision 6.

Sec. 6. [115B.41] ALLOCATION OF COSTS; FAILURE TO COMPLY.

Subdivision 1. ALLOCATION AND RECOVERY OF COSTS. (a) A person who is subject to the requirements in section 115B.40, subdivision 4, or subdivision 5, paragraph (b), is responsible for all environmental response costs incurred by the commissioner at or related to the facility until the date of notice of compliance under section 115B.40, subdivision 7. The commissioner may use any funds available for closure, postclosure care, and response action established by the owner or operator. If those funds are insufficient or if the owner or operator fails to assign rights to them to the commissioner, the commissioner may seek recovery of environmental response costs against the owner or operator in the county of Ramsey or in the county where the facility is located or where the owner or operator resides.

(b) In an action brought under this subdivision in which the commissioner prevails, the court shall award the commissioner reasonable attorney fees and other litigation expenses incurred by the commissioner to bring the action. All costs, fees, and expenses recovered under this subdivision must be deposited in the environmental fund and credited to the landfill cleanup account established in section 115B.42.

Subd. 2. ENVIRONMENTAL RESPONSE COSTS; LIENS. All environmental response costs, including administrative and legal expenses, incurred by the commissioner at a qualified facility before the date of notice of compliance under section 115B.40, subdivision 7, constitute a lien in favor of the state upon any real property located in the state, other than homestead property, owned by the owner or operator who is subject to the requirements of section 115B.40, subdivision 4 or 5. A lien under this subdivision attaches when the environmental response costs are first incurred and continues until the lien is satisfied or becomes unenforceable as for an environmental lien under section 514.672. Notice, filing, and release of the lien are governed by sections 514.671 to

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514.676, except where those requirements specifically are related to only cleanup action expenses as defined in section 514.671. Relative priority of a lien under this subdivision is governed by section 514.672, except that a lien attached to property that was included in any permit for the solid waste disposal facility takes precedence over all other liens regardless of when the other liens were or are perfected. Amounts received to satisfy all or a part of a lien must be deposited in the landfill cleanup account.

Subd. 3. LOCAL GOVERNMENT AID; OFFSET. If an owner or operator fails to comply with section 115B.40, subdivision 4, or 5, paragraph (b), fails to remit payment of environmental response costs incurred by the commissioner before the date of notice of compliance under section 115B.40, subdivision 7, and is a local government unit, the commissioner may seek payment of the costs from any state aid payments, except payments made under section 115A.557, subdivision 1, otherwise due the local government unit. The commissioner of revenue, after being notified by the commissioner that the local government unit has failed to pay the costs and the amount due, shall pay an annual proportionate amount of the state aid payment otherwise payable to the local government unit into the landfill cleanup account that will, over a period of no more than five years, satisfy the liability of the local government unit for the costs.

Subd. 4. DISQUALIFICATION; PERMITS. If an owner or operator of a qualified facility that is not a local government unit does not undertake closure or postclosure care in compliance with section 115B.40, subdivision 4, the owner or operator is ineligible to obtain or renew a state or local permit or license to engage in a business that manages solid waste. Failure of an owner or operator that is not a local government unit to complete closure or postclosure care at a qualified facility is prima facie evidence of the lack of fitness of that owner or operator to conduct any solid waste business and is grounds for revocation of any solid waste business permit or license held by that owner or operator.

For the purposes of this subdivision and subdivision 2, "owner or operator" means a person, partnership, firm, limited liability company, cooperative, association, corporation, or other entity and includes any entity in which the owner or operator owns a controlling interest.

Subd. 5. EXPEDITED CLOSURE. To expedite compliance with section 115B.40, subdivision 4, a person other than an owner or operator may undertake closure or postclosure care in compliance with that subdivision under an agreement with the commissioner.

Sec. 7. [115B.412] PROGRAM OPERATION.

Subdivision 1. DUTY TO PROVIDE INFORMATION. Any person who the commissioner has reason to believe has or may obtain information related to the generation, composition, transportation, treatment, or disposal of waste in a qualified facility or who has or may obtain information related to the ownership or operation of a facility shall furnish to the commissioner or the commissioner's designee any information that person may have or may reasonably obtain that is relevant to a release or threatened release at a qualified facility.

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Subd. 2. ACCESS TO INFORMATION AND PROPERTY. The commissioner or a person designated by the commissioner, on presentation of credentials, may:

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

(2) enter upon any property, public or private, for the purpose of taking any action authorized by sections 115B.39 to 115B.43 including obtaining information from any person who has a duty to provide the information under subdivision 1, conducting surveys or investigations, and taking response action.

This subdivision and subdivision 1 are enforceable under sections 115.071 and 116.072. If the commissioner prevails in an enforcement action under this subdivision, the commissioner may recover all costs, including court costs, attorney fees, and administrative costs, related to the enforcement action.

Subd. 3. ACQUISITION AND DISPOSITION OF REAL PROPERTY. The commissioner may acquire and dispose of real property the commissioner deems reasonably necessary for environmental response actions at or related to a qualified facility under section 115B.17, subdivisions 15 and 16.

Subd. 4. AFFECTED REAL PROPERTY; NOTICE. (a) The commissioner shall provide to affected local government units, to be available as public information, and shall make available to others, on request, a description of the real property described in the original and any revised permits for a qualified facility, along with a description of activities that will be or have been taken on the property under sections 115B.39 to 115B.43 and a reasonably accurate description of the types, locations, and potential movement of hazardous substances, pollutants and contaminants, or decomposition gases related to the facility. The commissioner shall provide and make this information available at the time the facility is placed on the priority list under section 115B.40, subdivision 2; shall revise, provide, and make the information available when response actions, other than long-term maintenance actions, have been completed; and shall revise the information over time if significant changes occur that make the information obsolete or misleading.

(b) A local government unit that receives information from the commissioner under paragraph (a) shall incorporate that information in any land use plan that includes the affected property and shall notify any person who applies for a permit related to development of the affected property of the existence of the information and, on request, provide a copy of the information.

Subd. 5. ENVIRONMENTAL LIEN. An environmental lien for environmental response costs incurred, including reimbursements made under section 115B.43, by the commissioner under sections 115B.39 to 115B.46 attaches in the same manner as a lien under sections 514.671 to 514.676, to all the real property described in the original and any revised permits for a qualified facility

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and any adjacent property owned by the facility owner or operator from the date the first assessment, closure, postclosure care, or response activities related to the facility are undertaken by the commissioner. For the purposes of filing an environmental lien under this subdivision, the term "cleanup action" as used in sections 514.671 to 514.676 includes all of the costs incurred by the commissioner to assess, close, maintain, monitor, and respond to releases at qualified facilities under sections 115B.39 to 115B.46. Notwithstanding section 514.672, subdivision 4, a lien under this paragraph takes precedence over all other liens on the property regardless of when the other liens were or are perfected. For the purpose of this subdivision, "owner or operator" has the meaning given it in section 115B.41, subdivision 4.

Subd. 6. CONTRACTS. The commissioner shall, to the extent practicable, ensure that contracts for activities or consulting services under this section are entered into with contractors or consultants located within the region where the facility subject to the contracts is located. The commissioner shall tailor specifications in requests for proposals to the types of activities or services that need to be undertaken at a specific facility or group of facilities located in the same region and shall not include specifications that require specialized expertise or laboratory work not available within the region unless it is necessary to do so to meet the requirements of this section.

Subd. 7. SEPARATE ACCOUNTING. The commissioner shall maintain separate accounting for each qualified facility regarding:

(1) the amount of financial assurance funds transferred under section 115B.40, subdivisions 4 and 5; and

(2) costs of response actions taken at the facility.

Subd. 8. TRANSFER OF TITLE. The owner of a qualified facility may, as part of the owner's activities under section 115B.40, subdivision 4 or 5, offer to transfer title to all the property described in the facility's most recent permit, including any property adjacent to that property the owner wishes to transfer, to the commissioner. The commissioner may accept the transfer of title if the commissioner determines that to do so is in the best interest of the state.

Subd. 9. LAND MANAGEMENT PLANS. The commissioner shall develop a land use plan for each qualified facility. All local land use plans must be consistent with a land use plan developed under this subdivision. Plans developed under this subdivision must include provisions to prevent any use that disturbs the integrity of the final cover, liners, any other components of any containment system, or the function of any monitoring systems unless the commissioner finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

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Before completing any plan under this subdivision, the commissioner shall consult with the commissioner of finance regarding any restrictions that the commissioner of finance deems necessary on the disposition of property resulting from the use of bond proceeds to pay for response actions on the property, and shall incorporate the restrictions in the plan.

Subd. 10. REPORT. By October 1 of each year, the commissioner shall report to the legislative commission on waste management and to the appropriate finance committees of the senate and the house of representatives on the commissioner's activities under sections 115B.39 to 115B.43 and the commissioner's anticipated activities during future fiscal years.

Subd. 11. RULES. The commissioner may adopt rules necessary to implement sections 115B.39 to 115B.43.

Sec. 8. [115B.414] THIRD-PARTY CLAIMS; MEDIATION; DEFENSE.

Subdivision 1. THIRD-PARTY CLAIMS; DEFINITION. For the purposes of this section, "third-party claims" means claims made against mixed municipal solid waste generators by a responsible person or group of responsible persons under state or federal law for payment of response costs and related costs at a qualified facility, when the claimant or claimants do not produce evidence, other than statistical or circumstantial evidence, that the persons against whom the claims are made ever arranged for disposal or transported for disposal mixed municipal solid waste containing a hazardous substance or pollutant or contaminant to the facility.

Subd. 2. MEDIATION. A third-party claim or group of third-party claims that all arise from the same facility may be submitted to the Minnesota office of dispute resolution for mediation under the Minnesota civil mediation act, sections 572.31 to 572.40. The costs of mediation must be allocated equally between the person or persons against whom the claims are made and the person or persons making the claims.

Subd. 3. PARTIAL REIMBURSEMENT. A person or persons against whom one or more third-party claims are made may seek reimbursement from the commissioner of one-half of the costs of mediation allocated to the person or persons under subdivision 2. The commissioner shall reimburse the person or persons that request reimbursement unless the commissioner finds that the mediation was not entered into and conducted in good faith by the person or persons seeking reimbursement.

Subd. 4. DEFENSE COSTS. If a person or persons against whom one or more third-party claims are made request the person or persons making the claims to submit the claims to mediation and the claimants refuse to submit to mediation or if the person or persons against whom third-party claims are made enter into and conduct the mediation in good faith but the mediation fails to resolve the claims, the person or persons, in cooperation with other persons against whom third-party claims have been made that arise from the same facility, may retain legal counsel to defend them against the claims and may seek

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partial reimbursement from the commissioner for reasonable attorney fees. The commissioner shall provide partial reimbursement for reasonable attorney fees under this subdivision of \$75 per hour for a maximum number of hours to be established by the commissioner by rule. The maximum number of hours for reimbursement must increase as the number of persons who collectively retain legal counsel to defend against related claims increases but need not increase proportionately to the increase in the number of persons seeking collective defense. Under no circumstances may a person or group of persons receive reimbursement of more than 75 percent of their reasonable attorney fees under this subdivision.

Sec. 9. **[115B.43] REIMBURSABLE PARTIES AND EXPENSES.**

Subdivision 1. GENERALLY. Environmental response costs at qualified facilities for which a notice of compliance has been issued under section 115B.40, subdivision 7, are reimbursable as provided in this section.

Subd. 2. REIMBURSABLE PERSONS. (a) Except as provided in paragraphs (b) to (d), the following persons are eligible for reimbursement under this section:

(1) owners or operators, after the owners or operators have agreed to waive all claims for recovery of environmental response costs against any other persons and have agreed to reimburse, on a proportionate basis from each reimbursement received, each person from whom the applicant has collected funds towards reimbursable costs; and

(2) persons, other than owners and operators after the persons have agreed to:

(i) reimburse, on a proportionate basis from each reimbursement payment received, each person from whom the applicant has collected funds towards reimbursable costs; and

(ii) waive all claims for environmental response costs related to the facility and all other qualified facilities, against all other persons.

(b) A person is not eligible for reimbursement under this section if the person is an owner or operator who failed to properly close the qualified facility within the time specified in the facility's permit or the solid waste rules in effect at the time the facility stopped accepting waste.

(c) A person is not eligible for reimbursement under this section for environmental response costs at a facility if the person's actions relating to a release or threatened release at the facility were in violation of federal or state hazardous waste management laws in effect at the time of those actions.

(d) A person is not eligible for reimbursement under this section if, after June 15, 1994, the person files or continues to pursue an action asserting a claim for recovery of environmental response costs relating to a qualified facility, or otherwise seeks contributions for these costs, from another person.

New language is indicated by underline; deletions by ~~strikeout~~.

Subd. 3. REIMBURSABLE EXPENSES. (a) Environmental response costs are eligible for reimbursement under this section to the extent that they:

(1) exceed:

(i) for each political subdivision that is an owner or operator of the facility, \$250,000; and

(ii) for a private owner or operator, or a political subdivision that jointly owned or operated the facility with two or more other political subdivisions under a valid joint powers agreement, \$750,000;

(2) are documented with billings or other proof of project cost; and

(3) if the commissioner finds that they were reasonable and necessary under the circumstances. The commissioner may request further documentation from those requesting reimbursement if it is necessary in the commissioner's judgment.

(b) For owners or operators, the following costs are not reimbursable:

(1) costs attributable to normal operations of the facility or to activities required under the facility permit and applicable solid waste rules, including corrective action, closure, postclosure, and contingency action; and

(2) the acquisition of real property if required of the owner or operator in order to carry out requirements of the facility permit or applicable solid waste rules.

Subd. 4. REIMBURSEMENT PLAN. The commissioner shall prepare a reimbursement plan and present it by October 1, 1995, to the legislative commission on waste management, the chairs of the senate finance committee and environment and natural resources finance division and the committees on ways and means and environment and natural resources finance of the house of representatives, and owners and operators of, and persons subject to a cleanup order at, qualified facilities. The plan shall identify sites where reimbursement will occur and the estimated dollar amount for each site, and shall set out priorities and payment schedules. The plan must give first priority for reimbursement to persons who are not owners or operators of qualified facilities.

Subd. 5. REIMBURSEMENT TIMING. The commissioner shall not issue reimbursement payments before October 15, 1995. The commissioner shall not issue reimbursements for expense statements filed after October 15, 1996, and shall approve or deny all reimbursement requests by October 15, 1997. The commissioner shall fully reimburse all persons eligible for reimbursement no later than six years after the date of notice of compliance for the facility under section 115B.40, subdivision 7.

Subd. 6. REIMBURSEMENT CEILING. The commissioner shall not issue reimbursements in an amount exceeding \$7,000,000 per fiscal year.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 10. Minnesota Statutes 1993 Supplement, section 281.13, is amended to read:

281.13 NOTICE OF EXPIRATION OF REDEMPTION.

Every person holding a tax certificate after expiration of three years, or the redemption period specified in section 281.17 if shorter, after the date of the tax sale under which the same was issued, may present such certificate to the county auditor; and thereupon the auditor shall prepare, under the auditor's hand and official seal, a notice, directed to the person or persons in whose name such lands are assessed, specifying the description thereof, the amount for which the same was sold, the amount required to redeem the same, exclusive of the costs to accrue upon such notice, and the time when the redemption period will expire. If, at the time when any tax certificate is so presented, such lands are assessed in the name of the holder of the certificate, such notice shall be directed also to the person or persons in whose name title in fee of such land appears of record in the office of the county recorder. The auditor shall deliver such notice to the party applying therefor, who shall deliver it to the sheriff of the proper county for service. Within 20 days after receiving it, the sheriff shall serve such notice upon the persons to whom it is directed, if to be found in the sheriff's county, in the manner prescribed for serving a summons in a civil action; if not so found, then upon the person in possession of the land, and make return thereof to the auditor. In the case of land held in joint tenancy the notice shall be served upon each joint tenant. If one or more of the persons to whom the notice is directed cannot be found in the county, and there is no one in possession of the land, of each of which facts the return of the sheriff so specifying shall be prima facie evidence, service shall be made upon those persons that can be found and service shall also be made by two weeks' published notice, proof of which publication shall be filed with the auditor.

When the records in the office of the county recorder show that any lot or tract of land is encumbered by an unsatisfied mortgage or other lien, and show the post office address of the mortgagee or lienee, or if the same has been assigned, the post office address of the assignee, the person holding such tax certificate shall serve a copy of such notice upon such mortgagee, lienee, or assignee by certified mail addressed to such mortgagee, lienee, or assignee at the post office address of the mortgagee, lienee, or assignee as disclosed by the records in the office of the county recorder, at least 60 days prior to the time when the redemption period will expire.

The notice herein provided for shall be sufficient if substantially in the following form:

"NOTICE OF EXPIRATION OF REDEMPTION

Office of the County Auditor

County of, State of Minnesota.

New language is indicated by underline, deletions by ~~strikeout~~.

To

You are hereby notified that the following described piece or parcel of land, situated in the county of, and State of Minnesota, and known and described as follows:

....., is now assessed in your name; that on the day of May,,, at the sale of land pursuant to the real estate tax judgment, duly given and made in and by the district court in and for said county of

....., on the day of March,, in proceedings to enforce the payment of taxes delinquent upon real estate for the year for said county of, the above described piece or parcel of land was sold for the sum of \$....., and the amount required to redeem such piece or parcel of land from such sale, exclusive of the cost to accrue upon this notice, is the sum of \$....., and interest at the rate of percent per annum from said day of,, to the day such redemption is made, and that the tax certificate has been presented to me by the holder thereof, and the time for redemption of such piece or parcel of land from such sale will expire 60 days after the service of this notice and proof thereof has been filed in my office.

Witness my hand and official seal this day of,

.....

(OFFICIAL SEAL)

County Auditor of

..... County, Minnesota.”

Sec. 11. Minnesota Statutes 1992, section 281.17, is amended to read:

281.17 PERIOD FOR REDEMPTION.

The period of redemption for all lands sold to the state at a tax judgment sale shall be three years from the date of sale to the state of Minnesota if the land is within an incorporated area unless it is: (a) nonagricultural homesteaded land as defined in section 273.13, subdivision 22; (b) homesteaded agricultural land as defined in section 273.13, subdivision 23, paragraph (a); or (c) seasonal recreational land as defined in section 273.13, subdivision 22, paragraph (c), or 25, paragraph (c), clause (5), for which the period of redemption is five years from the date of sale to the state of Minnesota.

The period of redemption for homesteaded lands as defined in section 273.13, subdivision 22, located in a targeted neighborhood as defined in Laws 1987, chapter 386, article 6, section 4, and sold to the state at a tax judgment sale is three years from the date of sale. The period of redemption for all lands located in a targeted neighborhood as defined in Laws 1987, chapter 386, article 6, section 4, except (1) homesteaded lands as defined in section 273.13, subdivi-

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sion 22, and (2) for periods of redemption beginning after June 30, 1991, but before July 1, 1996, lands located in the Loring Park targeted neighborhood on which a notice of lis pendens has been served, and sold to the state at a tax judgment sale is one year from the date of sale.

The period of redemption for all real property constituting a mixed municipal solid waste disposal facility that is a qualified facility under section 115B.39, subdivision 1, is one year from the date of the sale to the state of Minnesota.

The period of redemption for all other lands sold to the state at a tax judgment sale shall be five years from the date of sale, except that the period of redemption for nonhomesteaded agricultural land as defined in section 273.13, subdivision 23, paragraph (b), shall be two years from the date of sale if at that time that property is owned by a person who owns one or more parcels of property on which taxes are delinquent, and the delinquent taxes are more than 25 percent of the prior year's school district levy.

Sec. 12. EFFECTIVE DATES.

Sections 1 to 7 and 9 are effective June 1, 1994. Sections 10 and 11 are effective for taxes deemed delinquent after December 31, 1994.

ARTICLE 2

Section 1. [115B.44] INVESTIGATION AND PURSUIT OF INSURANCE CLAIMS.

Subdivision 1. COMMISSIONER TO INVESTIGATE. The commissioner may conduct investigations to identify responsible persons at qualified facilities. At the commissioner's request, a responsible person identified under this subdivision shall provide the commissioner with a copy of all applicable comprehensive general liability insurance policies, certificates, or other evidence of insurance coverage held while the person engaged in actions making the person a potential responsible person; take any actions necessary to preserve the person's rights to payment or defense under the policies; cooperate with the commissioner in asserting claims; and, within 60 days of the commissioner's request, assign only those rights under the policies related to environmental response costs at or related to qualified facilities. The commissioner may not request assignment of rights under this subdivision before May 1, 1996.

Subd. 2. ATTORNEY GENERAL TO PURSUE ASSIGNED CLAIMS. The attorney general shall pursue available insurance claims under rights assigned under subdivision 1 or section 115B.40 and may contract for legal services for this purpose. All money recovered under this subdivision must be credited to the landfill cleanup account.

Sec. 2. [115B.45] VOLUNTARY BUY-OUT FOR INSURERS.

New language is indicated by underline, deletions by ~~strikeout~~.

In full satisfaction of any rights assigned to the state under sections 115B.40 and 115B.44, an insurer may tender to the commissioner before January 1, 1998, the voluntary buy-out amount calculated under section 115B.46. In consideration of the amount tendered to the commissioner, an insurer shall be released by the state from liability for defense or indemnification relating to environmental response costs incurred by the commissioner at qualified facilities, except that no liability protection exists under this section until the commissioner has received buy-out commitments totaling \$30,000,000. Any amounts received by the commissioner must be credited to the landfill cleanup account.

Sec. 3. **[115B.46] VOLUNTARY BUY-OUT AMOUNT.**

Subdivision 1. CALCULATION. The voluntary buy-out amount for an insurer must be calculated in accordance with this section.

Subd. 2. VOLUNTARY BUY-OUT SHARE. An insurer's unadjusted voluntary buy-out share is equal to that insurer's combined Minnesota written premium for the commercial multiperil line of insurance for calendar years 1970 through 1973, the liability other than auto line for calendar years 1970 and 1971, and the miscellaneous liability line for calendar years 1972 and 1973, as defined by the National Association of Insurance Commissioners' annual statement instructions during the applicable periods, divided by the aggregate written premium for all insurers for these lines during these same time periods. The commissioner of commerce shall calculate the unadjusted shares for individual insurers from data published by A.M. Best for the applicable periods. The commissioner shall advise each insurer with an unadjusted share calculated pursuant to this subdivision of the amount of their unadjusted share. The commissioner shall also request from the insurers data to support an adjustment under subdivision 3. The commissioner shall so advise insurers by May 1, 1996.

Subd. 3. ADJUSTMENTS. An insurer may adjust its share by providing the commissioner of commerce with evidence that the insurer's Minnesota written premium liability other than auto written premium for calendar years 1970 and 1971 and miscellaneous liability for calendar years 1972 and 1973 included professional or medical malpractice insurance written premiums. The evidence may be provided by written documents or electronically imaged and reproduced documents, contemporaneous with the period of the adjustment, reflecting the insurer's professional or medical malpractice insurance written premium for these periods. The evidence may include an affidavit from an officer of the insurer testifying to the veracity of the data. An insurer's share must be adjusted by the amount of the insurer's professional or medical malpractice insurance Minnesota written premium for calendar years 1970 through 1973 subtracted from the insurer's aggregate liability other than auto and miscellaneous liability written premium for calendar years 1970 through 1973. The commissioner of commerce shall reduce the aggregate liability other than auto and miscellaneous liability written premium for all insurers by the amount of total adjustments for all insurers under this subdivision prior to the final calculation of each insurer's

New language is indicated by underline, deletions by ~~strikeout~~.

share. The commissioner shall recalculate each insurer's share using the method provided in subdivision 1 subject to the adjustment provided by this subdivision.

Subd. 4. CREDITS. An insurer may receive a credit of 25 percent for each of the calendar years 1970, 1971, 1972, and 1973 that the insurer can demonstrate that sudden and accidental qualified pollution exclusions were endorsed to or included in all its comprehensive general liability insurance policies issued during these years. To support a claim for credits under this subdivision, an insurer may provide the commissioner of commerce with an affidavit from an officer or former officer testifying as to the business practice of the insurer during the year or years in question. An insurer may obtain a 25 percent credit for each of the years 1970, 1971, 1972, and 1973 that the exclusions were endorsed to or included in these policies.

Subd. 5. FINAL CALCULATION. An insurer's voluntary buy-out amount is equal to the multiplication of the insurer's adjusted share by \$90,000,000 minus the amount of the insurer's credits under subdivision 4. The commissioner of commerce shall notify each insurer of its buy-out amount calculated under this section by September 30, 1996. An insurer that elects to buy out under this section may pay the amount calculated under this subdivision in ten equal annual installments.

Subd. 6. NONPUBLIC DATA. All information obtained by the commissioner of commerce from insurers under this section is nonpublic data under section 13.02, subdivision 9.

Subd. 7. HEARING. An insurer who disagrees with the calculation of its voluntary buy-out amount may request that the commissioner of commerce reconsider. An insurer requesting reconsideration shall supply the commissioner with information that supports the insurer's position within 30 days of receipt of the notification under subdivision 4. The commissioner shall reconsider the insurer's calculation based upon the information supplied within 30 days of receipt of the information. An insurer may appeal the decision of the commissioner as a contested case under chapter 14.

Subd. 8. MINIMUM AMOUNT. An insurer's voluntary buy-out amount may not be less than \$200,000.

Subd. 9. RULES. The commissioner of commerce may adopt rules to implement this section.

Sec. 4. FEDERAL INSURANCE TRUST FUND.

The commissioner of the pollution control agency shall monitor developments relating to the establishment of a federal insurance trust fund, or a similar fund, as part of the reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, United States Code, title 42, section 9601 et seq., and shall take actions, including communicating with Congress and the United States Environmental Protection Agency,

New language is indicated by underline, deletions by ~~strikeout~~.

to maximize the amount of money available from the federal fund for payments relating to mixed municipal solid waste disposal facilities in this state. By January 15, 1995, the commissioner shall submit to the legislative commission on waste management, the senate environment and natural resources finance division, and the house committee on environment and natural resources finance a report containing:

- (1) a summary of federal developments and the commissioner's actions under this section; and
- (2) any recommendations for legislation.

Sec. 5. VOLUNTARY INSURANCE BUY-OUT PROGRAM; EVALUATION AND RECOMMENDATIONS BY ATTORNEY GENERAL.

(a) The attorney general shall evaluate the voluntary insurance buy-out program established in sections 115B.45 and 115B.46 in light of the legislature's intent to maximize the net revenue to the state under the program. By January 15, 1996, the attorney general shall report on the evaluation to the legislative commission on waste management and the appropriate committees of the legislature. The report must include:

(1) recommendations on changes to the program, including any recommendations for changes to the years to be considered in calculating the voluntary buy-out amount under section 115B.46, subdivision 2; the adjustments and credits allowed under section 115B.46, subdivisions 3 and 4; the \$90,000,000 amount in section 115B.46, subdivision 5; and any other element of the program; and

(2) a detailed explanation of the process by which the attorney general's recommendations, if any, were formulated, including a summary of the comments of each of the entities listed in paragraph (b).

(b) In preparing the report, the attorney general shall consult with:

(1) representatives of the department of commerce and the pollution control agency;

(2) representatives of insurers at the state and national levels; and

(3) representatives of insureds.

(c) The attorney general may request of any person, including an insurer, any documents, records, or other information that the attorney general deems necessary to perform its responsibilities under this section. A person, including an insurer, shall comply with such requests of the attorney general within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the attorney general. In the case of a refusal to comply with a request for information under this section, the attorney general may apply to the district court for an order directing the person to comply with the

New language is indicated by underline, deletions by ~~strikeout~~.

request. A person shall not be required to provide any information that is subject to the attorney-client privilege or work product privilege. An insurer shall not be required to provide information specific to a particular insured unless the attorney general deems such information necessary to confirm summary information provided by an insurer. With respect to information obtained under this paragraph that is specific to a particular insured, the attorney general shall, pursuant to standard legal practice, take steps necessary to assure that such information is not discussed with, or available to, any attorney general staff involved in evaluating or pursuing assigned claims under section 115B.44, subdivision 2. Nothing in this paragraph prevents the attorney general from independently obtaining the information as otherwise allowed by law to evaluate or pursue assigned claims under section 115B.44, subdivision 2.

(d) Upon request of the attorney general, the commissioners of the pollution control agency and commerce shall cooperate with the attorney general in carrying out the authority under this section.

Sec. 6. **APPROPRIATION.**

\$150,000 is appropriated from the landfill cleanup account to the attorney general for the purposes of sections 1 and 5.

Sec. 7. **EFFECTIVE DATE.**

Section 1, subdivision 2, is effective January 1, 1997.

ARTICLE 3

Section 1. Minnesota Statutes 1992, section 115B.42, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHMENT; APPROPRIATION; SEPARATE ACCOUNTING.** (a) The landfill cleanup account is established in the environmental fund in the state treasury. The account consists of money credited to the account and interest earned on the money in the account. Except as provided in section 115B.42, subdivision 2, clause (9), money in the account is annually appropriated to the commissioner for the purposes listed in subdivision 2.

(b) The commissioner of finance shall separately account for revenue deposited in the account from financial assurance funds or other mechanisms, the metropolitan landfill contingency action trust fund, and all other sources of revenue.

Sec. 2. Minnesota Statutes 1993 Supplement, section 115B.42, subdivision 2, is amended to read:

Subd. 2. **EXPENDITURES.** ~~Subject to appropriation;~~ (a) Money in the account may be spent for by the commissioner to:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) ~~inspection of~~ inspect permitted mixed municipal solid waste disposal facilities to:

(i) evaluate the adequacy of final cover, slopes, vegetation, and erosion control;

(ii) determine the presence and concentration of hazardous substances, pollutants or contaminants, and decomposition gases; and

(iii) determine the boundaries of fill areas; ~~and~~

(2) ~~response actions at mixed municipal solid waste disposal facilities under this chapter.~~

(2) monitor and take, or reimburse others for, environmental response actions, including emergency response actions, at qualified facilities;

(3) acquire and dispose of property under section 115B.412, subdivision 3;

(4) recover costs under sections 115B.39 and 115B.46;

(5) administer, including providing staff and administrative support for, sections 115B.39 to 115B.46;

(6) enforce sections 115B.39 to 115B.46;

(7) subject to appropriation, administer the agency's groundwater and solid waste management programs;

(8) reimburse persons under section 115B.43; and

(9) reimburse mediation expenses up to a total of \$250,000 annually or defense costs up to a total of \$250,000 annually for third-party claims for response costs under state or federal law as provided in section 115B.414.

Sec. 3. Minnesota Statutes 1993 Supplement, section 116.07, subdivision 10, is amended to read:

Subd. 10. **SOLID WASTE ASSESSMENTS.** (a) For the purposes of this subdivision, "assessed waste" means mixed municipal solid waste as defined in section 115A.03, subdivision 21, infectious waste as defined in section 116.76, subdivision 12, pathological waste as defined in section 116.76, subdivision 14, industrial waste as defined in section 115A.03, subdivision 13a, and construction debris as defined in section 115A.03, subdivision 7.

(b) A person that collects ~~mixed municipal solid~~ assessed waste shall collect and remit to the commissioner of revenue a solid waste assessment from each of the person's customers as provided in paragraphs ~~(b)~~ (c) and ~~(e)~~ (d).

~~(b)~~ (c) The amount of the assessment for each residential customer is \$2 per year. Each waste collector shall collect the assessment annually from each resi-

New language is indicated by underline, deletions by ~~strikeout~~.

dential customer that is receiving waste collection service on July 1 of each year and shall remit the amount collected along with the collector's first remittance of the sales tax on solid waste collection services, described in section 297A.45, made after October 1 of each year. Any amount of the assessment that is received by the waste collector after October 1 of each year must be remitted along with the collector's next remittance of sales tax after receipt of the assessment.

(e) ~~(d)~~ The amount of the assessment for each nonresidential customer is ~~±2~~ 60 cents per noncompacted cubic yard of periodic waste collection capacity purchased by the customer. Each waste collector shall collect the assessment from each nonresidential customer as part of each statement for payment of waste collection charges and shall remit the amount collected along with the next remittance of sales tax after receipt of the assessment.

~~(d)~~ (e) A person who transports assessed waste generated by that person or by another person without compensation shall pay an assessment of 60 cents per noncompacted cubic yard or the equivalent to the operator of the facility to which the waste is delivered. The operator shall remit the assessments collected under this paragraph to the commissioner of revenue as though they were sales taxes under chapter 297A. This paragraph does not apply to a person who transports industrial waste generated by that person to a facility owned and operated by that person.

~~(f)~~ (f) The commissioner of revenue shall redesign sales tax forms for solid waste collectors to accommodate payment of the assessment. The commissioner of revenue shall deposit The amounts remitted under this subdivision ~~in the environmental fund and shall credit four-sevenths of the receipts must be deposited in the state treasury and credited~~ to the landfill cleanup account established in section 115B.42.

~~(e)~~ (g) For the purposes of this subdivision, a "person that collects mixed municipal solid waste" means each person that pays is required to pay sales tax on solid waste collection services under section 297A.45, or would pay sales tax under that section if the assessed waste was mixed municipal solid waste.

~~(f)~~ (h) The audit, penalty, enforcement, and administrative provisions applicable to taxes imposed under chapter 297A apply to the assessments imposed under this subdivision.

(i) If less than \$25,000,000 is projected to be available in any fiscal year after fiscal year 1996 for expenditure from all sources for landfill cleanup and reimbursement costs under sections 115B.39 to 115B.46, by April 1 before the next fiscal year in which the shortfall is projected the agency shall certify to the commissioner of revenue the amount of the shortfall. To provide for the shortfall, the commissioner of revenue shall increase the assessment under paragraphs (d) and (e) effective the following July 1 and provide notice of the increased assessment to affected waste generators by May 1 following certification.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 4. APPROPRIATION; TRANSFER.

Subdivision 1. APPROPRIATION. \$90,000,000 is appropriated from the bond proceeds fund to the commissioner of the pollution control agency for capital costs of environmental response actions at eligible facilities.

Subd. 2. TRANSFER. The balance in the metropolitan landfill contingency action trust fund established under Minnesota Statutes, section 473.845, on the effective date of this section is transferred to the landfill cleanup account established under Minnesota Statutes, section 115B.42.

Sec. 5. BOND SALE.

(a) To provide the money appropriated in this act from the state bond proceeds fund, the commissioner of finance, on request of the governor, shall sell and issue bonds of the state in an amount up to \$90,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, the Minnesota Constitution, article XI, sections 4 to 7, and paragraph (b).

(b) Bonds may not be issued under this section in total amounts exceeding the following:

- (1) by June 30, 1996, \$10,000,000;
- (2) by June 30, 1998, \$35,000,000;
- (3) by June 30, 2000, \$55,000,000; and
- (4) by June 30, 2002, \$75,000,000.

Sec. 6. EFFECTIVE DATE

Section 3 is effective January 1, 1995.

ARTICLE 4

Section 1. Minnesota Statutes 1993 Supplement, section 115B.178, subdivision 1, is amended to read:

Subdivision 1. **DETERMINATION.** (a) The commissioner may issue determinations that certain actions proposed to be taken at real property subject to a release or threatened release of a hazardous substance or pollutant or contaminant will not constitute conduct associating the person with the release or threatened release for the purpose of section 115B.03, subdivision 3, clause (d). Proposed actions that may be covered by a determination under this section include response actions approved by the commissioner to address the release or threatened release, actions to improve or develop the real property, loans

New language is indicated by underline, deletions by ~~strikeout~~.

secured by the real property, or other similar actions. A determination may be subject to terms and conditions deemed reasonable by the commissioner. When a person takes actions in accordance with a determination issued under this subdivision, the actions do not associate the person with the release for the purpose of section 115B.03, subdivision 3, clause (d).

(b) If a person requesting a determination proposes to take response actions at real property, the commissioner may also issue a determination under paragraph (a) that certain actions taken in the past at the real property did not constitute conduct associating the person with the release or threatened release for purposes of section 115B.03, subdivision 3, clause (d). Any such determination shall be limited to the represented facts of the past actions and shall not apply to actions that are not represented or disclosed. The determination may be subject to such other terms and conditions as the commissioner deems reasonable.

Sec. 2. Minnesota Statutes 1992, section 115C.03, subdivision 9, is amended to read:

Subd. 9. **REQUESTS FOR REVIEW, INVESTIGATION, AND OVERSIGHT.** (a) The commissioner may, upon request:

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

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

(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 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.

(e) (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 the account.

New language is indicated by underline, deletions by ~~strikeout~~.

ARTICLE 5

Section 1. Minnesota Statutes 1992, section 115A.055, is amended to read:

115A.055 OFFICE OF WASTE MANAGEMENT ENVIRONMENTAL ASSISTANCE.

The office of ~~waste management environmental~~ assistance is an agency in the executive branch headed by a director appointed by the ~~governor~~ commissioner of the pollution control agency, with the advice and consent of the senate, to serve in the unclassified service. The director may appoint two assistant directors in the unclassified service and may appoint other employees, as needed, in the classified service. The office is a department of the state only for purposes of section 16B.37, subdivision 2.

Sec. 2. OFFICE OF ENVIRONMENTAL ASSISTANCE; RETURN AND TRANSFER OF RESPONSIBILITIES.

(a) The personnel, powers, duties, and furniture and equipment of the office of waste management transferred from it by reorganization order number 169 under Minnesota Statutes, section 16B.37, are hereby transferred to the office of environmental assistance subject to Minnesota Statutes, section 16B.37, subdivision 3.

(b) The solid and hazardous waste management personnel, powers, and duties of the metropolitan council under Minnesota Statutes, chapters 115A and 473, are transferred from the council to the office of environmental assistance subject to Minnesota Statutes, section 16B.37, subdivision 3.

(c) By February 15, 1995, the legislative commission on waste management shall propose legislation to conform existing statutes to the transfer in paragraph (b).

(d) Employees of the metropolitan council currently performing the duties under Minnesota Statutes, sections 473.149, 473.151, and 473.801 to 473.849 shall be given the option of filling positions to perform these duties at the office of environmental assistance. Employees so transferred shall not suffer a reduction in salary as a result of the transfer to state employment. For job seniority and benefit calculation purposes, the date of first employment with the state is the date on which services were first performed by the employee for the metropolitan council. Any sick leave, vacation time, or severance pay benefits accumulated by the affected employees under the policies of the metropolitan council shall carry over to state service. For positions transferred from the metropolitan council to the office of waste management, the commissioner of employee relations shall determine which positions are to be placed in the classified service and which are to be placed in the unclassified service, in accordance with Minnesota Statutes, chapter 43A. The commissioner shall allocate positions to appropriate classes in the state classification plan. Positions transferred with their incumbents do not create vacancies in state service. Employees transferred

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to unlimited classified positions are transferred to state service without examination. Employees transferred to unclassified positions must receive unclassified appointments under the provisions of Minnesota Statutes, chapter 43A. The commissioner of employee relations shall provide employees of the metropolitan council who are transferred to the office of waste management open enrollment in all state employee health and dental insurance plans with no limitation on preexisting conditions except as specified in existing state employee certificates of coverage. The commissioner of employee relations shall provide employees of the metropolitan council who are transferred to the office of waste management the opportunity to purchase optional life and disability insurance in amounts equivalent to amounts previously purchased by a transferred employee or provided by the employer.

Sec. 3. INSTRUCTION TO REVISOR.

The revisor of statutes shall make the following changes, with appropriate stylistic corrections, in Minnesota Statutes 1994 and subsequent editions of the statutes:

(1) change the words "office of waste management" and "office" to "director" and change "its," when it refers to the office of waste management, to "the director's" in Minnesota Statutes, sections 115A.06, subdivisions 13 and 14; 115A.072; 115A.152; 115A.154; 115A.156; 115A.165; 115A.45; 115A.48; 115A.51; 115A.52; 115A.54, subdivision 3; 115A.541; 115A.55; 115A.551; 115A.552; 115A.553; 115A.557; 115A.58; 115A.59; 115A.63; 115A.64; 115A.66; 115A.71; 115A.72; 115A.84; 115A.86; 115A.9162; 115A.917; 115A.961; 115A.97; and 115A.991;

(2) change the word "reviewing authority" to "director" in Minnesota Statutes, sections 115A.83, subdivision 2; 115A.84, subdivisions 4 and 5; 115A.86, subdivisions 2, 3, and 5; 115A.87; 115A.89; 115A.893, subdivisions 3 and 4;

(3) change the word "its," when it refers to the reviewing authority, to "the director's" in Minnesota Statutes, sections 115A.84, subdivision 4, paragraph (c); and 115A.89, clause (3);

(4) change the word "it" to "the director" in Minnesota Statutes, section 115A.84, subdivision 4, paragraphs (a) and (c);

(5) delete the words "the office or" and delete "acting on behalf of the office" in Minnesota Statutes, section 115A.06, subdivisions 8 to 10;

(6) change the word "board" to "director" in Minnesota Statutes, section 115A.97, subdivision 5;

(7) delete the word "office" in Minnesota Statutes, section 115A.551, subdivision 7; and

(8) change the words "waste management" to "environmental assistance" in Minnesota Statutes, sections 115A.03, subdivisions 8a and 22a; 115D.03, subdivision 4; and 116C.03, subdivision 2.

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ARTICLE 6

Section 1. Minnesota Statutes 1992, section 116G.15, is amended to read:

116G.15 MISSISSIPPI RIVER CRITICAL AREA.

The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The governor shall review the existing Mississippi river critical area plan and specify any additional standards and guidelines to affected communities in accordance with section 116G.06, subdivision 2, paragraph (b), clauses (3) and (4), needed to insure preservation of the area pending the completion of the federal plan.

The results of an environmental impact statement prepared under chapter 116D and completed after the effective date of this section for a proposed project that is located in the Mississippi river critical area north of the United States Army Corps of Engineers lock and dam number one must be submitted in a report to the chairs of the environment and natural resources policy and finance committees of the house of representatives and the senate prior to the issuance of any state or local permits and the authorization for an issuance of any bonds for the project. A report made under this paragraph must list alternatives to the project that are environmentally superior to the proposed project and identify any legislative actions that may assist in the implementation of environmentally superior alternatives. This paragraph does not apply to a proposed project to be carried out by the metropolitan council or a metropolitan agency as defined in section 473.121.

Sec. 2. [116G.15] REQUIRED ENVIRONMENTAL ASSESSMENT WORKSHEET; FACILITIES IN MISSISSIPPI RIVER AREA.

(a) Until completion of an environmental assessment worksheet that complies with the rules of the environmental quality board and this section, a state or local agency may not issue a permit for construction or operation of a metal materials shredding project with a processing capacity in excess of 20,000 tons per month that would be located in the Mississippi river critical area, as described in section 116G.15, upstream from United States Corps of Engineers Lock and Dam Number One.

(b) The pollution control agency is the responsible governmental unit for the preparation of an environmental assessment worksheet required under this section.

(c) In addition to the contents required under law and rule, an environmental assessment worksheet completed under this section must also include the following major categories:

(1) effects of operation of the project, including vibrations and airborne particulates and dust, on the Mississippi river;

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(2) effects of operation of the project, including vibrations and airborne particulates and dust, on adjacent businesses and on residents and neighborhoods;

(3) effects of operation of the project on barge and street traffic;

(4) discussion of alternative sites considered by the project proposer for the proposed project, possible design modifications including site layout, and the magnitude of the project;

(5) mitigation measures that could eliminate or minimize any adverse environmental effects of the proposed project;

(6) impact of the proposed project on the housing, park, and recreational use of the river;

(7) effects of waste and implication of the disposal of waste generated from the proposed project;

(8) effects on water quality from the project operations, including wastewater generated from operations of the proposed project;

(9) potential effects from fugitive emissions, fumes, dust, noise, and vibrations from project operations;

(10) compatibility of the existing operation and proposed operation with other existing uses;

(11) the report of the expert required by paragraph (g).

(d) In addition to the publication and distribution provisions relating to environmental assessment worksheets under law and rule, notice of environmental assessment worksheets performed by this section shall also be published in a newspaper of general circulation as well as community newspapers in the affected neighborhoods.

(e) A public meeting in the affected communities must be held on the environmental assessment worksheet prepared under this section. After the public meeting on the environmental assessment worksheet, there must be an additional 30-day period for review and comment on the environmental assessment worksheet.

(f) If the pollution control agency determines that information necessary to make a reasonable decision about potential of significant environmental impacts is insufficient, the agency shall make a positive declaration and proceed with an environmental impact statement.

(g) The pollution control agency shall retain an expert in the field of toxicology who is capable of properly analyzing the potential effects and content of any airborne particulates, fugitive emissions, and dust that could be produced by a metal materials shredding project. The pollution control agency shall obtain any existing reports or documents from a governmental entity or project proposer

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that analyzes or evaluates the potential hazards of airborne particulates, fugitive emissions, or dust from the construction or operation of a metal materials shredding project in preparing the environmental assessment worksheet. The agency and the expert shall prepare, as part of the report, a risk assessment of the types of metals permitted to be shredded as compared to the types of materials that are likely to be processed at the facility. In performing the risk assessment, the agency and the expert must consider any actual experience at similar facilities. The report must be included as part of the environmental assessment worksheet.

(h) If the pollution control agency determines that under the rules of the environmental quality board an environmental impact statement should be prepared, the pollution control agency shall be the responsible governmental unit for preparation of the environmental impact statement.

Sec. 3. APPROPRIATION.

\$75,000 is appropriated in fiscal year 1995 from the general fund to the commissioner of the pollution control agency to hire the consultant required under section 2, and to prepare the environmental assessment worksheet required by section 2. The proposer will bear all other costs associated with the preparation of the environmental assessment worksheet.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 4:40 p.m.

CHAPTER 640—H.F.No. 3230

An act relating to transportation; imposing surcharge for violation of state highway work zone speed limit; allowing commissioner of transportation to transfer money from state airports fund to hangar construction revolving account; allowing metropolitan council to make loans for major river crossing projects; requiring studies; appropriating money; amending Minnesota Statutes 1992, sections 169.14, subdivision 5d; 360.305, subdivision 4; and 473.167, subdivision 2.

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

Section 1. Minnesota Statutes 1992, section 169.14, subdivision 5d, is amended to read:

Subd. 5d. **SPEED ZONING IN WORK ZONES; SURCHARGE.** (a) The commissioner, on trunk highways and temporary trunk highways, and local authorities, on streets and highways under their jurisdiction, may authorize the use of reduced maximum speed limits in highway work zones. The commissioner or local authority is not required to conduct an engineering and traffic investigation before authorizing a reduced speed limit in a highway work zone.

New language is indicated by underline, deletions by ~~strikeout~~.