

the Minnesota housing finance agency may accept applications between June 1, 1995, and June 7, 1995.

Sec. 16. **REPEALER.**

Minnesota Statutes 1994, sections 462C.02, subdivision 2; 462C.03, subdivisions 1 and 5; and 462C.04, subdivision 1, are repealed.

Sec. 17. **EFFECTIVE DATE.**

Sections 8 and 15 are effective the day following final enactment, provided that section 8, paragraph (g), applies to allocations made on or after the day following final enactment. Section 12 is effective January 1, 1996.

Presented to the governor May 12, 1995

Signed by the governor May 15, 1995, 10:04 a.m.

CHAPTER 168—H.F.No. 1479

An act relating to the environment; establishing an environmental improvement pilot program to promote voluntary compliance with environmental requirements; modifying provisions relating to the voluntary investigation and cleanup program; amending Minnesota Statutes 1994, sections 115B.03, by adding subdivisions; 115B.17, by adding a subdivision; 115B.175, subdivisions 2 and 3; 115B.178, subdivision 1; and 116.02.

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

Section 1. Minnesota Statutes 1994, section 115B.03, is amended by adding a subdivision to read:

Subd. 8. TRUSTEES. A trustee who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this section solely because the facility is among the trust assets or solely because the trustee has the capacity to direct the operation of the facility.

Sec. 2. Minnesota Statutes 1994, section 115B.03, is amended by adding a subdivision to read:

Subd. 9. PERSONAL REPRESENTATIVES OF ESTATES. A personal representative of an estate who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this section solely because the facility is among the assets of the estate or solely because the personal representative has the capacity to direct the operation of the facility.

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Sec. 3. Minnesota Statutes 1994, section 115B.17, is amended by adding a subdivision to read:

Subd. 2a. CLEANUP STANDARDS. In determining the appropriate standards to be achieved by response actions taken or requested under this section to protect public health and welfare and the environment from a release or threatened release, the commissioner shall consider the planned use of the property where the release or threatened release is located.

Sec. 4. Minnesota Statutes 1994, section 115B.175, subdivision 2, is amended to read:

Subd. 2. PARTIAL RESPONSE ACTION PLANS; CRITERIA FOR APPROVAL. (a) The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all releases and threatened releases at an identified area of real property if the commissioner determines that all of the following criteria have been met:

(1) if reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that ~~protects public health and welfare and the environment~~ meets the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2;

(2) the response actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan, and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

(3) the owner of the property agrees to cooperate with the commissioner or other persons acting at the direction of the commissioner in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.

(b) Under paragraph (a), clause (3), an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:

(1) to provide access to the property to the commissioner and the commissioner's authorized representatives;

(2) to allow the commissioner, or persons acting at the direction of the commissioner, to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and

(3) to grant easements or other interests in the property to the agency for any of the purposes provided in clause (1) or (2).

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(c) An agreement under paragraph (a), clause (3), 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.

Sec. 5. Minnesota Statutes 1994, section 115B.175, subdivision 3, is amended to read:

Subd. 3. SUBMISSION AND APPROVAL OF VOLUNTARY RESPONSE ACTION PLANS. (a) A person shall submit a voluntary response action plan to the commissioner under section 115B.17, subdivision 14. The commissioner may provide assistance to review voluntary response action plans or supervise response action implementation under that subdivision.

(b) A voluntary response action plan submitted for approval of the commissioner must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified area of real property. The commissioner must not approve the voluntary response action plan unless the commissioner determines that the nature and extent of the releases and threatened releases at the identified area of real property have been adequately identified and evaluated in the investigation report.

(c) Response actions required in a voluntary response action plan under this section must meet the same standards for protection of ~~public health and welfare and the environment~~ that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2.

(d) When the commissioner approves a voluntary response action plan, the commissioner may include in the approval an acknowledgment that, upon certification of completion of the response actions as provided in subdivision 5, the person submitting the plan will receive the protection from liability provided under this section.

Sec. 6. Minnesota Statutes 1994, 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 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).

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(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 requesting the determination with the release or threatened release for purposes of section 115B.03, subdivision 3, clause (d). The person requesting a determination under this paragraph shall conduct an investigation approved by the commissioner that identifies the nature and extent of the release or threatened release or shall take response actions in accordance with a response action plan approved by the commissioner. 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. 7. Minnesota Statutes 1994, section 116.02, is amended to read:

116.02 POLLUTION CONTROL AGENCY, CREATION.

Subdivision 1. A pollution control agency, designated as the Minnesota pollution control agency, is hereby created. The agency shall consist of ~~nine~~ the commissioner and eight members appointed by the governor, by and with the advice and consent of the senate. One of such members shall be a person knowledgeable in the field of agriculture.

Subd. 2. The membership terms, compensation, removal of members, and filling of vacancies on the agency shall be as provided in section 15.0575.

Subd. 3. The membership of the pollution control agency shall be broadly representative of the skills and experience necessary to effectuate the policy of sections 116.01 to 116.075, except that no member ~~appointed other than the~~ commissioner shall be an officer or employee of the state or federal government. Only two members at one time may be officials or employees of a municipality or any governmental subdivision, but neither may be a member ex officio or otherwise on the management board of a municipal sanitary sewage disposal system.

Subd. 4. The commissioner shall serve as chair of the agency. The agency shall elect a ~~chair and~~ such other officers as it deems necessary.

Subd. 5. The pollution control agency is the successor of the water pollution control commission, and all powers and duties now vested in or imposed upon said commission by chapter 115, or any act amendatory thereof or supplementary thereto, are hereby transferred to, imposed upon, and vested in the Minnesota pollution control agency, except as to those matters pending before the commission in which hearings have been held and evidence has been adduced. The water pollution commission shall complete its action in such pending matters not later than six months from May 26, 1967. The water pollution control commission, as heretofore constituted, is hereby abolished, (a) effective upon completion of its action in the pending cases, as hereinbefore provided for; or (b) six months from May 26, 1967, whichever is the earlier.

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Sec. 8. ENVIRONMENTAL IMPROVEMENT PILOT PROGRAM ESTABLISHED.

An environmental improvement pilot program is established to promote voluntary compliance with environmental requirements.

Sec. 9. DEFINITIONS.

Subdivision 1. APPLICABILITY. As used in this act, the terms defined in this section have the meanings given.

Subd. 2. AGENCY. "Agency" means the pollution control agency.

Subd. 3. ENVIRONMENTAL REQUIREMENT. "Environmental requirement" means a requirement in (1) a law administered by the agency, a rule adopted by the agency, a permit or order issued by the agency, an agreement entered into with the agency, or a court order issued pursuant to any of the foregoing; or (2) an ordinance or other legally binding requirement of a local government unit under authority granted by state law relating to environmental protection, including solid and hazardous waste management.

Subd. 4. ENVIRONMENTAL AUDIT. "Environmental audit" means a systematic, documented, and objective review by a regulated entity of one or more facility operations and practices related to compliance with one or more environmental requirements and, if deficiencies are found, a plan for corrective action. The final audit document must be designated as an "audit report" and must include the date of the final written report of finding for the audit.

Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of the pollution control agency.

Subd. 6. FACILITY. "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person.

Subd. 7. LOCAL GOVERNMENTAL UNIT. "Local governmental unit" means a county, a statutory or home rule city, a town, a sanitary district, or the metropolitan area.

Subd. 8. MAJOR FACILITY. "Major facility" means an industrial or municipal wastewater discharge major facility as defined in rules of the agency; a feedlot that is permitted for 1,000 or more animal units; a large quantity hazardous waste generator as defined in rules of the agency; a hazardous waste treatment, storage, or disposal facility that is required to have a permit under the federal Resource Conservation and Recovery Act, United States Code, title 42, section 6925; a major stationary air emission source as defined in rules of the agency; an air emission source that emits 50 or more tons per year of any air pollutant regulated under rules of the agency; or an air emission source that emits 75 tons or more per year of all air pollutants regulated under rules of the agency.

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Subd. 9. POLLUTION PREVENTION. "Pollution prevention" means the elimination or reduction at the source of the use, generation, or release of pollutants.

Subd. 10. REGULATED ENTITY. "Regulated entity" means a public or private organization that is subject to environmental requirements.

Subd. 11. SELF-EVALUATION. "Self-evaluation" means a systematic, documented, and objective review by a regulated entity of one or more facility operations and practices related to compliance with one or more environmental requirements, based upon an evaluation form prescribed or approved by the commissioner.

Subd. 12. STATE. "State" means the pollution control agency, the attorney general, and all local governmental units.

Sec. 10. AUDITS OR SELF-EVALUATIONS.

Subdivision 1. QUALIFICATION TO PARTICIPATE IN PROGRAM. For a facility to qualify for participation in the environmental improvement program, more than one year must have elapsed since the initiation of an enforcement action that resulted in the imposition of a penalty involving the facility. In addition, a regulated entity must:

- (1) conduct an environmental audit or a self-evaluation;
- (2) for a major facility, prepare a pollution prevention plan and submit progress reports in accordance with Minnesota Statutes, sections 115D.07 to 115D.09;
- (3) for a facility that is not a major facility, examine pollution prevention opportunities at the facility; and
- (4) submit a report in accordance with subdivision 2.

Subd. 2. REPORT. A regulated entity must submit a report to the commissioner, and to a local governmental unit if the report identifies a violation of an ordinance enacted by the local governmental unit or of another legally binding requirement imposed by the local governmental unit, within 45 days after the date of the final written report of findings for an environmental audit or within 45 days after the completion of a self-evaluation. The report must contain:

- (1) a certification by the owner or operator of the facility that the applicable requirements of subdivision 1, clauses (1) to (4), have been met;
- (2) a disclosure of all violations of environmental requirements that were identified in the environmental audit or self-evaluation and a brief description of proposed actions to correct the violations;
- (3) a commitment signed by the owner or operator of the facility to correct the violations as expeditiously as possible under the circumstances;

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(4) if more than 90 days will be required to correct the violations, a performance schedule that identifies the time that will be needed to correct the violations and a brief statement of the reasons that support the time periods set out in the performance schedule; and

(5) a description of the steps the owner or operator has taken or will take to prevent recurrence of the violations.

Sec. 11. PUBLIC DISCLOSURE.

The commissioner shall publish quarterly the names and locations of the facilities for which a report has been submitted under section 10, subdivision 2, and, if a performance schedule has been submitted, the proposed time period for completing performance.

Sec. 12. REVIEW OF PERFORMANCE SCHEDULES.

(a) A reasonable performance schedule prepared under section 10, subdivision 2, clause (4), must be approved by the commissioner. In reviewing the reasonableness of a performance schedule, the commissioner shall take into account information supplied by the regulated entity, any public comments, and information developed by agency staff. The decision about whether a performance schedule is reasonable must be based on the following factors:

- (1) the nature of the violations;
- (2) the environmental and public health consequences of the violations;
- (3) the economic circumstances of the facility;
- (4) the availability of equipment and material; and

(5) the time needed to implement pollution prevention opportunities as an alternative to pollution control approaches to remedying the violations. Information submitted to the commissioner that is trade secret information, as that term is defined in Minnesota Statutes, section 13.37, is nonpublic data under Minnesota Statutes, chapter 13.

(b) In the event of a dispute over approval of the performance schedule, the regulated entity may request a hearing under the procedures in Minnesota Rules, parts 1400.8510 to 1400.8612. A performance schedule may be amended by written agreement between the commissioner and the regulated entity.

Sec. 13. ENFORCEMENT.

Subdivision 1. DEFERRED ENFORCEMENT. The state must defer for at least 90 days to enforce an environmental requirement against the owner or operator of a facility if a report that meets the requirements of section 10, subdivision 2, has been submitted to the commissioner. If the report includes a performance schedule, and the performance schedule is approved under section 12, the state must defer enforcement for the term of the approved performance

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schedule unless the owner or operator of the facility fails to meet an interim performance date contained in the schedule.

Subd. 2. PENALTIES WAIVED. If, within 90 days after the report required in section 10, subdivision 2, is received by the commissioner or within the time specified in an approved performance schedule, the owner or operator of a facility corrects the violations identified in the audit or self-evaluation and certifies to the commissioner that the violations have been corrected, the state may not impose any administrative, civil, or criminal penalties against the owner or operator of the facility for the reported violations.

Subd. 3. EXCEPTIONS. Notwithstanding subdivisions 1 and 2, the state may at any time bring:

(1) a criminal enforcement action against any person who knowingly commits a violation under Minnesota Statutes, section 609.671;

(2) a civil or administrative enforcement action, which may include a penalty, under Minnesota Statutes, section 115.071 or 116.072, against the owner or operator of a facility if:

(i) less than one year has elapsed since the final resolution of a notice of violation, an administrative penalty order, or a civil or criminal lawsuit that resulted in an enforcement action being taken against the owner or operator of a facility for a violation of a requirement that was also shown as having been violated in the report required under section 10, subdivision 2; or

(ii) a violation caused serious harm to public health or the environment; or

(3) an action against the owner or operator of a facility to enjoin an imminent threat to public health or the environment.

Subd. 4. GOOD FAITH CONSIDERATION. If the state finds that one of the conditions in subdivision 3 exists, the state must take into account the good faith efforts of the regulated entity to comply with environmental requirements in deciding whether to pursue an enforcement action, whether an enforcement action should be civil or criminal, and what, if any, penalty should be imposed. In determining whether the regulated entity has acted in good faith, the state must consider whether:

(1) when noncompliance was discovered, the regulated entity took corrective action that was timely under the circumstances;

(2) the regulated entity exercised reasonable care in attempting to prevent the violations and ensure compliance with environmental requirements;

(3) the noncompliance resulted in significant economic benefit to the regulated entity;

(4) prior to implementing the audit or self-evaluation program, the regulated entity had a history of good faith efforts to comply with the environmental requirements;

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(5) the regulated entity demonstrated good faith efforts to achieve compliance since implementing an environmental auditing or self-evaluation program; and

(6) the regulated entity has demonstrated efforts to implement pollution prevention opportunities.

Subd. 5. VIOLATIONS DISCOVERED BY THE STATE. Nothing in this act precludes the state from taking any enforcement action the state is authorized to take with respect to violations discovered by the state prior to the time a regulated entity has submitted to the commissioner a report that meets the requirements of section 10, subdivision 2.

Sec. 14. GREEN STAR EMBLEM.

A regulated entity may display at a facility a "green star" emblem designed by the commissioner if:

(1) the regulated entity qualifies for participation in the environmental improvement program under section 10;

(2) the regulated entity certifies that all violations that were identified in the audit or self-evaluation of the facility were corrected within 90 days or within the time specified in an approved performance schedule or certifies that no violations were identified in the audit or self-evaluation; and

(3) at least one year has elapsed since the final resolution of a notice of violation, an administrative penalty order, or a civil or criminal enforcement action involving the regulated entity. The emblem may be displayed for a period of two years from the time that the commissioner determines that the requirements of this section have been met.

Sec. 15. ACCESS TO DOCUMENTS.

Subdivision 1. PUBLIC ACCESS. The state may not request, inspect, or seize a final audit report, draft audit papers, a self-evaluation form, the notes or papers prepared by the auditor or the person conducting the self-evaluation in connection with the audit or self-evaluation, or the internal documents of a regulated entity establishing, coordinating, or responding to the audit or self-evaluation, other than the report required in section 10, subdivision 2, except in accordance with the agency's policy on environmental auditing, as adopted by the agency on January 24, 1995.

Subd. 2. THIRD-PARTY ACCESS. After receipt by the commissioner of a report that complies with section 10, subdivision 2, the final audit report, draft audit reports, the self-evaluation form, any notes or papers prepared by the auditor or by the person conducting the self-evaluation in connection with the audit or self-evaluation, and the internal documents of a regulated entity establishing, coordinating, or responding to the audit or self-evaluation covered by the report are privileged as to all persons other than the state provided that the regulated entity is in compliance with its commitments under sections 10 and 12.

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Subd. 3. NONWAIVER OF PROTECTIONS. Participation by a regulated entity in the environmental improvement program does not waive, minimize, reduce, or otherwise adversely affect the level of protection or confidentiality that exists, under current or developing common or statutory law, with respect to any other documents relating to an environmental audit or self-evaluation.

Sec. 16. NO EFFECT ON OTHER RIGHTS.

Sections 8 to 18 do not affect, impair, or alter:

(1) rights of a regulated entity that chooses not to participate, or is not eligible to participate, in the environmental improvement pilot program; or

(2) rights of other persons relative to the matters addressed by the environmental improvement pilot program.

Sec. 17. REPORTING REQUIRED BY LAW.

Nothing in this act alters the obligation of any regulated entity to report releases, violations, or other matters that are required to be reported by state or federal law, rule, permit, or enforcement action.

Sec. 18. SURVIVAL OF RIGHTS AND PROTECTIONS.

All rights and protections provided under this act shall survive the repeal of the act with respect to any report filed under section 10, subdivision 2, that is submitted before July 1, 1999.

Sec. 19. REPEALER.

Sections 8 to 18 are repealed effective July 1, 1999.

Sec. 20. REPORT.

The commissioner, in consultation with the attorney general, shall submit a report to the chairs of the environment and natural resources committees of the senate and the house of representatives by January 15, 1999, that evaluates the effectiveness of the environmental improvement pilot program and recommends whether the program should be extended.

Sec. 21. EFFECTIVE DATE.

Section 7 is effective June 1, 1995.

Presented to the governor May 15, 1995

Signed by the governor May 17, 1995, 1:52 p.m.

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