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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **2212**

03/07/2017 Authored by Peterson, Rosenthal, Christensen and West
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to environment; modifying landfill cleanup program; amending Minnesota
1.3 Statutes 2016, sections 115B.41, subdivisions 1, 2; 115B.42, subdivision 2;
1.4 proposing coding for new law in Minnesota Statutes, chapter 115B.

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

1.6 Section 1. Minnesota Statutes 2016, section 115B.41, subdivision 1, is amended to read:

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

1.16 (b) In an action brought under this subdivision in which the commissioner prevails, the
1.17 court shall award the commissioner reasonable attorney fees and other litigation expenses
1.18 incurred by the commissioner to bring the action. All costs, fees, and expenses recovered
1.19 under this subdivision must be deposited in the remediation fund established in section
1.20 116.155.

2.1 Sec. 2. Minnesota Statutes 2016, section 115B.41, subdivision 2, is amended to read:

2.2 Subd. 2. **Environmental response costs; liens.** All environmental response action costs,
2.3 including administrative and legal expenses, incurred by the commissioner at a qualified
2.4 facility before the date of notice of compliance under section 115B.40, subdivision 7,
2.5 constitute a lien in favor of the state upon any real property located in the state, other than
2.6 homestead property, owned by the owner or operator who is subject to the requirements of
2.7 section 115B.40, subdivision 4 or 5. A lien under this subdivision attaches when the
2.8 environmental response costs are first incurred and continues until the lien is satisfied or
2.9 becomes unenforceable as for an environmental lien under section 514.672. Notice, filing,
2.10 and release of the lien are governed by sections 514.671 to 514.676, except where those
2.11 requirements specifically are related to only cleanup action expenses as defined in section
2.12 514.671. Relative priority of a lien under this subdivision is governed by section 514.672,
2.13 except that a lien attached to property that was included in any permit for the solid waste
2.14 disposal facility takes precedence over all other liens regardless of when the other liens
2.15 were or are perfected. Amounts received to satisfy all or a part of a lien must be deposited
2.16 in the remediation fund.

2.17 Sec. 3. Minnesota Statutes 2016, section 115B.42, subdivision 2, is amended to read:

2.18 Subd. 2. **Expenditures.** The commissioner may spend money from the remediation fund
2.19 under section 116.155, subdivision 2, paragraph (a), clause (2), to:

2.20 (1) inspect permitted mixed municipal solid waste disposal facilities to:

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

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

2.24 (iii) determine the boundaries of fill areas;

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

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

2.28 (4) recover costs under section 115B.39;

2.29 (5) administer, including providing staff and administrative support for, sections 115B.39
2.30 to 115B.445;

2.31 (6) enforce sections 115B.39 to 115B.445;

3.1 (7) pay for private water supply well monitoring and health assessment costs of the
 3.2 commissioner of health in areas affected by unpermitted mixed municipal solid waste
 3.3 disposal facilities;

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

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

3.8 (10) perform environmental assessments, up to \$1,000,000, at unpermitted mixed
 3.9 municipal solid waste disposal facilities; and

3.10 (11) make expenditures on behalf of indemnified parties under section 115B.431.

3.11 **Sec. 4. [115B.431] INDEMNIFYING RESPONSIBLE PERSONS.**

3.12 Subdivision 1. **Indemnification.** In the case of a qualified facility as defined in section
 3.13 115B.39, subdivision 2, paragraph (1), clause (1), when the owner or operator has received
 3.14 notice under section 115B.40, subdivision 3, and within 15 years after receiving the notice
 3.15 has not entered into an agreement with the commissioner of the Pollution Control Agency,
 3.16 the commissioner may enter into an indemnification agreement, under which the
 3.17 commissioner indemnifies an eligible person under subdivision 2 and holds the eligible
 3.18 person harmless for liability related to the qualified facility under the federal Superfund
 3.19 program.

3.20 Subd. 2. **Eligible persons.** A person who is not an owner or operator of a qualified
 3.21 facility is eligible to enter into an indemnification agreement with the commissioner provided
 3.22 the person agrees to:

3.23 (1) waive all claims for environmental response costs related to the facility against all
 3.24 persons other than the owner or operator;

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

3.28 (3) enter into a binding agreement with the commissioner to take any actions necessary
 3.29 to preserve the person's rights to payment or defense under insurance policies, cooperate
 3.30 with the commissioner in asserting the claims under the policies, and assign those rights
 3.31 under the policies related to environmental response costs.

4.1 Subd. 3. **Terms of indemnification.** (a) In consideration of the indemnitee's agreement
4.2 to enter into an agreement under this section, the commissioner covenants not to sue or take
4.3 administrative action against the indemnitee and further agrees to indemnify and hold the
4.4 indemnitee harmless from all claims or liability for state or federal environmental response
4.5 costs at the qualified facility that is the subject of the agreement, including natural resource
4.6 damages if addressed in the agreement, and claims made by a responsible person or group
4.7 of responsible persons under state or federal law for payment of response costs and related
4.8 costs at the qualified facility.

4.9 (b) To the extent allowed under applicable law, a person who enters into an
4.10 indemnification agreement under this section is not liable for claims for contribution
4.11 regarding matters addressed in the agreement. As a condition of the agreement, the person
4.12 must waive the person's rights to seek contribution for any amounts paid on the person's
4.13 behalf under the agreement. This section does not limit the state's ability to seek contribution
4.14 on the person's behalf.