

CHAPTER 2890
DEPARTMENT OF COMMERCE
PETROLEUM TANK RELEASE COMPENSATION
BOARD

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2890.0010 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the terms in this part have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subp. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subp. 5. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subp. 6. **Responsible person.** "Responsible person" means a person who is an owner or operator of a tank at any time during or after the release, except as provided in Minnesota Statutes, section 115C.021, subdivision 2.

Subp. 7. **Volunteer.** "Volunteer" means a person who:

A. is not a responsible person under Minnesota Statutes, section 115C.02;

B. holds legal or equitable title to the property where a release occurred;
 and

C. incurs reimbursable costs on or after May 22, 1989.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 13 SR 496; 14 SR 1928*

2890.0020 BOARD MEETINGS; TIME, PLACE, NOTICE.

Subpart 1. **Regular meetings.** A regular meeting of the board must be scheduled at least four times a year. A scheduled meeting may be canceled if there is insufficient business.

Subp. 2. **Special meetings.** A special meeting may be called by the chair or by written request of three board members.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0030 VICE-CHAIR.

A vice-chair shall be elected by the board. The vice-chair shall preside at regular and special meetings in the absence of the chair and perform other duties assigned by the board.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

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2890.0040 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** A quorum shall consist of three board members.

Subp. 2. **Minutes.** Meetings shall be tape recorded and minutes prepared by staff.

Subp. 3. **Parliamentary procedure.** Except as specifically provided by statute or negotiation, Robert's Rules of Order shall govern questions that may arise at a meeting of the board.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0050 CONFLICT OF INTEREST.

A member of the board who has a direct or indirect financial or employment interest relating to a matter before the board, which interest is reasonably likely to affect impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. The abstention of a board member or members shall not prevent the remaining members from conducting a legal vote.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0060 REIMBURSEMENT OF COSTS.

Subpart 1. **Generally.** Each responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, and each volunteer who has incurred reimbursable costs on or after May 22, 1989, in response to a release, may apply to the board for partial reimbursement of eligible costs.

Subp. 2. **Conditions for reimbursement.** A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release in terms of public health, welfare, and the environment.

Subp. 2a. **Amount of reimbursement.** The board shall reimburse a responsible person or volunteer who is eligible for 90 percent of the portion of the total reimbursable costs less than \$250,000.

Subp. 2b. **Reduced reimbursement.** The board shall reduce the amount of reimbursement to be made under this part if it finds that the responsible person or volunteer has not complied with one or more of the following requirements:

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

B. the agency was given notice of the release as required by Minnesota Statutes, section 115.061;

C. the responsible person or volunteer, to the extent possible, fully cooperated with the agency in responding to the release;

D. if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures; and

E. the reimbursement shall be reduced as much as 100 percent for failure by the responsible person or volunteer to comply with items A to D. In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subp. 3. Multiple responsible persons. If there is more than one responsible person or volunteer who incurs reimbursable costs for a single release or at a single corrective action site, each responsible person or volunteer must apply separately for reimbursement. Not more than \$250,000 may be reimbursed for cost associated with a single release, regardless of the number of persons eligible for reimbursement.

Subp. 4. Eligibility of other persons. Notwithstanding Minnesota Statutes, section 115.09, subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

A. the person took the corrective action in response to a request or order of the commissioner made under Minnesota Statutes, chapter 115C;

B. the commissioner has determined that the person was not a responsible person or volunteer under Minnesota Statutes, section 115C.02; and

C. the costs for which reimbursement is requested were actually incurred and were reasonable.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 13 SR 496; 14 SR 1928*

2890.0070 ELIGIBLE COSTS.

Subpart 1. Reimbursable corrective actions. Costs associated with the following corrective actions may be eligible for reimbursement from the fund:

A. Emergency response and initial site hazard mitigation. Costs may include, but are not limited to, those necessary to abate acute risks to human health, safety, and the environment.

B. Temporary site hazard control measures. Costs may include, but are not limited to, temporary provision of drinking water and housing, initial abatement of vapors, and removal of free product.

C. Investigation and source identification including, but not limited to, collecting and analyzing soil samples, testing the groundwater, testing adjacent drinking water supplies, tank integrity testing, and engineering services.

D. Development of a corrective action plan in accordance with the commissioner's requirements.

E. Clean up of releases including, but not limited to, removal, treatment, or disposal of surface and subsurface contamination and provision of a permanent alternative water supply. Clean up must be performed in accordance with a corrective action plan approved by the commissioner.

F. Removal or closure in place of the tank that is the source of the release.

Subp. 2. Documentation of reasonableness. It is the responsibility of the applicant to prove the reasonableness of all incurred eligible costs. Upon request of the board or the board's staff, the applicant shall document the reasonableness of any costs included on the reimbursement application by providing one or more of the following:

A. evidence that the work was performed by a person or persons whose services were solicited through a competitive bidding procedure;

B. evidence that the cost is substantially equivalent to that charged by comparable person or persons in the same geographical area;

C. evidence that there was only one party reasonably available to perform the necessary work; or

D. evidence that there was only one party reasonably qualified to perform the necessary work.

The board shall reimburse only those costs which it determines to be reasonable.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 14 SR 1928*

2890.0080 INELIGIBLE COSTS.

All costs associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment are ineligible costs. Ineligible costs include, but are not limited to, any costs related to the permanent repair or replacement of a tank, upgrading tanks, loss of income, attorney's fees, permanent relocation of residents, decreased property values, reimbursement for the responsible person's own time spent in planning and administering a corrective action plan, aesthetic improvements, or any work performed that is not in compliance with safety codes including but not limited to Occupational Safety and Health Administration requirements, well codes, and fire codes.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0090 APPLICATION PROCESS.

Subpart 1. Applications. A person who requests compensation from the fund shall complete, sign, and submit to the board a written application. The application shall be made on a form prescribed by the board and shall contain at least the following:

- A. the name of the person making the application;
- B. a description of the site of the release;
- C. a copy of the corrective action plan and the commissioner's approval of the plan; and
- D. an itemized list of all corrective actions taken, the eligible costs associated with the actions, and the name of the engineer, contractor, or subcontractor who performed the action.

Subp. 2. Time of application. The application and all accompanying documentation must be received by the board's office 30 days before a board meeting in order for reimbursement to be considered at that meeting. The board may waive the 30-day requirement, if it finds that undue financial hardship to the applicant will result if action is delayed until the next regular meeting.

Subp. 3. Subsequent applications. An eligible responsible person or volunteer who has already obtained partial reimbursement from the board and who has incurred additional or continuing eligible costs due to the same release may reapply if:

- A. the amount of the person's original reimbursement was less than 90 percent of the eligible costs up to \$250,000.
- B. the eligible costs submitted on a subsequent application are not related to any new releases at the site.

The total reimbursement to a responsible person or volunteer for a release shall not exceed 90 percent of the total eligible costs up to \$250,000 regardless of the number of applications for reimbursement submitted by the responsible person or volunteer.

Subp. 4. Signatures. An application must be signed as follows:

- A. for a corporation, by a principal executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for the overall operation of the facility that is the subject of the application or a person whom the board of directors designates by means of a corporate resolution;
- B. for a partnership, sole proprietorship or individual, by a general partner, the proprietor, or individual respectively; or

C. for a municipality, state, federal, or other public agency, by either a principal, executive officer, or ranking elected official.

Subp. 5. **Certification.** A person who signs an application for reimbursement shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that I have the authority to submit this application on behalf of _____."

Subp. 6. **Report of the commissioner.** Upon notification by the board's staff that a complete application has been received, the commissioner shall, in a timely manner, provide the board with a written report on the applicant's compliance or noncompliance with Minnesota Statutes, section 115C.09, subdivision 2, paragraph (b), clauses (1) to (5). The report shall include documentation supporting the commissioner's findings. The commissioner shall file the report with the board no later than 15 days after notification.

In addition, the board may, as it deems necessary, request additional information from the commissioner or can request participation of agency staff at a board meeting. All responses to requests for information shall be delivered in a timely manner. The board may delegate these powers to its staff.

Statutory Authority: *MS s 46.023; 115C.07*

History: *12 SR 2142; 14 SR 1928*

2890.0100 REVIEW AND DETERMINATION.

Subpart 1. **Review.** The board's staff shall review all applications. If the staff finds that the application is incomplete or otherwise deficient, the staff shall promptly advise the applicant of the incompleteness or deficiency. Further processing of the application affected by the deficiency shall be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A complete application and the corresponding report of the commissioner constitutes the written record.

Subp. 2. **Staff recommendation.** After a reimbursement application is complete and the commissioner has provided the information relevant to the application, the board's staff shall make a recommendation as to the eligibility of the applicant and the costs specified in the application.

Subp. 3. **Board determination.** The board shall determine the amount of the reimbursement based on those costs it finds are eligible, actually incurred, and reasonable. The determination shall be made on the basis of the written record. The board may also allow supplemental information explaining the application to be presented orally. The board may establish a fair and reasonable limit on time allowed for oral presentation.

The applicant shall be notified in writing within ten days of the board's decision. If the board rejects any portion of the request for reimbursement, a statement of the reasons for rejection shall be included with the notification.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0110 RIGHT TO APPEAL.

A decision of the board is to be considered a final order, decision, or judgment for purposes of Rule 103.3 of the Rules of Civil Appellate Procedure.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0120 FUNDING OF MPCA ACTIONS.

In accordance with Minnesota Statutes, section 115C.10, subdivision 1, paragraph (a), the agency may apply to the board for money to pay for actions taken under Minnesota Statutes, section 115C.03, if all other state and federal funds appropriated for such actions have been exhausted. The application shall consist of a written statement of proposed corrective actions, an itemized estimate of costs for the proposed actions, and documentation that applicable state appropriations and federal awards have been exhausted by actions authorized under Minnesota Statutes, section 115C.03.

The board shall pay the agency the cost of the proposed actions if the board determines that:

- A. applicable state and federal funds are exhausted;
- B. the agency's proposed actions are authorized under Minnesota Statutes, section 115C.03; and
- C. an adequate amount exists in the fund to pay for the proposed actions.

Statutory Authority: *MS s 115C.07 subd 3*

History: *12 SR 2142*

2890.0130 ACTION ON NOTICE OF LIEN FILING.

In accordance with Minnesota Statutes, section 514.673, the commissioner shall send written notice of intent to file an environmental lien notice to each board member. If a regular meeting of the board is to be held within 30 days of receipt of the commissioner's notice, the approval of the lien filing must be considered at the next regular meeting. If no regular meeting is scheduled within the 30 day period, a special meeting to consider approval of the lien filing shall be scheduled at the request of at least one board member. If the board takes no action on the matter within the 30 day period, the commissioner may file the lien notice.

Statutory Authority: *MS s 115C.07 subd 3*

History: *13 SR 496*