

## CHAPTER 115B

## ENVIRONMENTAL RESPONSE AND LIABILITY

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**115B.03 RESPONSIBLE PERSON.**

*[For text of subs 1 to 4, see M.S.1990]*

**Subd. 5. Eminent domain.** (a) The state, an agency of the state, or a political subdivision that acquires property through exercise of the power of eminent domain, or through negotiated purchase after filing a petition for the taking of the property through eminent domain, or adopting a redevelopment or development plan under sections 469.001 to 469.134 describing the property and stating its intended use and the necessity of its taking is not a responsible person under this section solely as a result of the acquisition of the property.

(b) A person who acquires property from the state, an agency of the state, or a political subdivision, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the state, agency, or political subdivision through exercise of the power of eminent domain or by negotiated purchase after filing a petition for the taking of the property through eminent domain or adopting a redevelopment or development plan under sections 469.001 to 469.134 describing the property and stating its intended use and the necessity of its taking.

**Subd. 6. Mortgages.** (a) A mortgagee is not a responsible person under this section solely because the mortgagee becomes an owner of real property through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a facility is located or a holder of a security interest in facility assets or inventory is not an operator of the facility for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the facility to protect its security interest in the real property or assets.

**Subd. 7. Contract for deed vendors.** A contract for deed vendor who is otherwise not a responsible party for a release or a threatened release of a hazardous substance from a facility is not a responsible person under this section solely as a result of a termination of the contract for deed under section 559.21.

**History:** 1991 c 223 s 1-3; 1991 c 347 art 2 s 1,2

**115B.04 LIABILITY FOR RESPONSE COSTS AND NATURAL RESOURCES; LIMITATIONS AND DEFENSES.**

*[For text of subs 1 to 3, see M.S.1990]*

**Subd. 4. Liability of political subdivisions.** (a) The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1, except when the political subdivision is liable under this section as the owner or operator of a disposal facility as defined in section 115A.03, subdivision 10.

(b) When a political subdivision is liable as an owner or operator of a disposal facility, the liability of each political subdivision is limited to \$400,000 at each facility unless the facility was owned or operated under a valid joint powers agreement by three or more political subdivisions, in which case the aggregate liability of all political subdivisions that are parties to the joint powers agreement is limited to \$1,200,000.

(c) The limits on the liability of a political subdivision for ownership or operation of a disposal facility apply to the costs of response action incurred between the date a request for response action is issued by the agency and the date one year after the construction certificate of completion is approved by the commissioner, excluding the costs of negotiation of a consent order agreement.

(d) When a political subdivision takes response action as the owner or operator of a disposal facility between the dates in paragraph (c), it may receive, after approval by the agency, reimbursement of any amount spent pursuant to an approved work plan that exceeds the applicable liability limit specified in this subdivision.

*[For text of subs 5 to 12, see M.S.1990]*

**History:** 1991 c 337 s 53

#### **115B.22 HAZARDOUS WASTE GENERATOR TAX.**

*[For text of subs 1 to 7, see M.S.1990]*

Subd. 8. **Review of tax by LCWM.** The legislative commission on waste management shall periodically review the taxes and tax rates imposed under this section and shall recommend to the standing tax committees of both houses of the legislature any changes in the taxes or tax rates which are needed to assist or encourage implementation of the strategies adopted by the state for management of hazardous waste.

**History:** 1991 c 337 s 54

#### **115B.24 TAX ADMINISTRATION AND ENFORCEMENT.**

*[For text of subd 1, see M.S.1990]*

Subd. 2. **Declarations of estimated tax.** For 1983, every generator of hazardous waste required to pay a tax pursuant to section 115B.22 shall make a declaration of estimated hazardous waste generated for the last six months of calendar year 1983 if the tax can reasonably be estimated to exceed \$500. The declaration of the estimated tax shall be filed by October 15, 1983. The amount of estimated tax with respect to which a declaration is required shall be paid in two equal installments by October 15, 1983 and January 15, 1984. For 1984 and subsequent years, every generator of hazardous waste required to pay a tax pursuant to section 115B.22 shall make a declaration of estimated hazardous waste generated for the calendar year if the tax can reasonably be expected to be in excess of \$1,000. The declaration of estimated tax shall be filed by March 15. The amount of estimated tax with respect to which a declaration is required shall be paid in four equal installments on or before the 15th day of March, June, September, and December.

An amendment of a declaration may be filed in any interval between installment dates prescribed above but only one amendment may be filed in each interval. If an amendment of a declaration is filed, the amount of each remaining installment shall be the amount which would have been payable if the new estimate had been made when the first estimate for the calendar year was made, increased or decreased, as the case may be, by the amount computed by dividing

(1) the difference between (A) the amount of estimated tax required to be paid before the date on which the amendment was made, and (B) the amount of estimated tax which would have been required to be paid before that date if the new estimate had been made when the first estimate was made, by

(2) the number of installments remaining to be paid on or after the date on which the amendment is made.

The commissioner of revenue may grant a reasonable extension of time for filing any declaration but the extension shall not be for more than six months.

If the aggregate amount of estimated tax payments made during a fiscal year ending June 30 is equal to or exceeds \$80,000, all estimated tax payments in the subsequent

calendar year must be paid by means of a funds transfer as defined in section 336.4A-104, paragraph (a). The funds transfer payment date, as defined in section 336.4A-401, must be on or before the date the estimated tax payment is due. If the date the estimated tax payment is due is not a funds transfer business day, as defined in section 336.4A-105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the estimated tax payment is due.

*[For text of subs 3 to 10, see M.S.1990]*

**History:** 1991 c 291 art 17 s 1

#### 115B.25 DEFINITIONS.

*[For text of subs 1 to 3, see M.S.1990]*

**Subd. 4. Eligible person.** "Eligible person" means a person who is eligible to file a claim with the account under section 115B.29.

*[For text of subs 5 to 9, see M.S.1990]*

**History:** 1991 c 199 art 1 s 19

#### 115B.26 HARMFUL SUBSTANCE COMPENSATION ACCOUNT.

**Subdivision 1. Establishment.** A harmful substance compensation account is in the environmental fund in the state treasury. Earnings, such as interest, dividends, and any other earnings arising from account assets, must be credited to the account.

*[For text of subs 2 and 3, see M.S.1990]*

**Subd. 4. Account transfer request.** At the end of each fiscal year, the board shall submit a request to the petroleum tank release compensation board for transfer to the harmful substance compensation account from the petroleum tank release cleanup account under section 115C.08, subdivision 5, of an amount equal to the compensation granted by the board for claims related to petroleum releases plus administrative costs related to determination of those claims.

**History:** 1991 c 199 art 1 s 20,21

#### 115B.30 ELIGIBLE INJURY AND DAMAGE.

**Subdivision 1. Eligible personal injury.** (a) A personal injury which could reasonably have resulted from exposure to a harmful substance released from a facility where it was placed or came to be located is eligible for compensation from the account if:

(1) it is a medically verified chronic or progressive disease, illness, or disability such as cancer, organic nervous system disorders, or physical deformities, including malfunctions in reproduction, in humans or their offspring, or death; or

(2) it is a medically verified acute disease or condition that typically manifests itself rapidly after a single exposure or limited exposures and the persons responsible for the release of the harmful substance are unknown or cannot with reasonable diligence be determined or located or a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release of the harmful substance.

(b) A personal injury is not compensable from the account if:

(1) the injury is compensable under the workers' compensation law, chapter 176;

(2) the injury arises out of the claimant's use of a consumer product;

(3) the injury arises out of an exposure that occurred or is occurring outside the geographical boundaries of the state;

(4) the injury results from the release of a harmful substance for which the claimant is a responsible person; or

(5) the injury is an acute disease or condition other than one described in paragraph (a).

*[For text of subs 2 and 3, see M.S.1990]*

**History:** 1991 c 199 art 1 s 22

### 115B.31 OTHER ACTIONS.

**Subdivision 1. Subsequent action or claim prohibited in certain cases.** (a) A person who has settled a claim for an eligible injury or eligible property damage with a responsible person, either before or after bringing an action in court for that injury or damage, may not file a claim with the account for the same injury or damage. A person who has received a favorable judgment in a court action for an eligible injury or eligible property damage may not file a claim with the account for the same injury or damage, unless the judgment cannot be satisfied in whole or in part against the persons responsible for the release of the harmful substance. A person who has filed a claim with the board may not file another claim with the board for the same eligible injury or damage, unless the claim was inactivated by the board as provided in section 115B.32, subdivision 1.

(b) A person who has filed a claim with the board for an eligible injury or damage, and who has received and accepted an award from the board, is precluded from bringing an action in court for the same eligible injury or damage.

(c) A person who files a claim with the board for personal injury or property damage must include all known claims eligible for compensation in one proceeding before the board.

**Subd. 2. Use of protected information and board findings.** The findings and decision of the board are inadmissible in any court action. Protected information may not be used in any court action except to the extent that the information is otherwise available to a party or discovered under the applicable rules of civil or criminal procedure.

**Subd. 3. Subrogation by state.** The state is subrogated to all the claimant's rights under statutory or common law to recover losses compensated from the account from other sources, including responsible persons as defined in section 115B.03. The state may bring a subrogation action in its own name or in the name of the claimant. The state may not bring a subrogation action against a person who was a party in a court action by the claimant for the same eligible injury or damage, unless the claimant dismissed the action prior to trial. Money recovered by the state under this subdivision must be deposited in the account. Nothing in sections 115B.25 to 115B.37 shall be construed to create a standard of recovery in a subrogation action.

**Subd. 4. Simultaneous claim and court action prohibited.** A claimant may not commence a court action to recover for any injury or damage for which the claimant seeks compensation from the account during the time that a claim is pending before the board. A person may not file a claim with the board for compensation for any injury or damage for which the claimant seeks to recover in a pending court action. The time for filing a claim under section 115B.30 or the statute of limitations for any civil action is suspended during the period of time that a claimant is precluded from filing a claim or commencing an action under this subdivision.

**History:** 1991 c 199 art 1 s 23

### 115B.32 CLAIM FOR COMPENSATION.

**Subdivision 1. Form.** A claim for compensation from the account must be filed with the board in the form required by the board. When a claim does not include all the information required by subdivision 2 and applicable board rules, the board staff shall notify the claimant of the absence of the required information within 14 days of the filing of the claim. All required information must be received by the board not later than 60 days after the claimant received notice of its absence or the claim will be inactivated and may not be resubmitted for at least one year following the date of inactivation. The board may decide not to inactivate a claim under this subdivision if it finds serious extenuating circumstances.

*[For text of subs 2 and 3, see M.S.1990]*

**History:** 1991 c 199 art 1 s 24

**115B.33 DETERMINATION OF CLAIM.**

Subdivision 1. **Standard for personal injury.** The board shall grant compensation to a claimant who shows that it is more likely than not that:

- (1) the claimant suffers a medically verified injury that is eligible for compensation from the account and that has resulted in a compensable loss;
- (2) the claimant has been exposed to a harmful substance;
- (3) the release of the harmful substance from a facility where the substance was placed or came to be located could reasonably have resulted in the claimant's exposure to the substance in the amount and duration experienced by the claimant; and
- (4) the injury suffered by the claimant can be caused or significantly contributed to by exposure to the harmful substance in an amount and duration experienced by the claimant.

*[For text of subd 2, see M.S.1990]*

**History:** 1991 c 199 art 1 s 25

**115B.34 COMPENSABLE LOSSES.**

Subdivision 1. **Personal injury losses.** Losses compensable by the account for personal injury are limited to:

- (a) medical expenses directly related to the claimant's injury;
- (b) up to two-thirds of the claimant's lost wages not to exceed \$2,000 per month or \$24,000 per year;
- (c) up to two-thirds of a self-employed claimant's lost income, not to exceed \$2,000 per month or \$24,000 per year;
- (d) death benefits to dependents which the board shall define by rule subject to the following conditions:
  - (1) the rule adopted by the board must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;
  - (2) the total benefits paid to all dependents of a claimant must not exceed \$2,000 per month;
  - (3) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;
  - (4) payment of benefits is subject to the limitations of section 115B.36; and
  - (e) the value of household labor lost due to the claimant's injury or disease, which must be determined in accordance with a schedule established by the board by rule, not to exceed \$2,000 per month or \$24,000 per year.

Subd. 2. **Property damage losses.** (a) Losses compensable by the account for property damage are limited to the following losses caused by damage to the principal residence of the claimant:

- (1) the reasonable cost of replacing or decontaminating the primary source of drinking water for the property not to exceed the amount actually expended by the claimant or assessed by a local taxing authority, if the department of health has confirmed that the remedy provides safe drinking water and advised that the water not be used for drinking or determined that the replacement or decontamination of the source of drinking water was necessary, up to a maximum of \$25,000;
- (2) losses incurred as a result of a bona fide sale of the property at less than the appraised market value under circumstances that constitute a hardship to the owner, limited to 75 percent of the difference between the appraised market value and the selling price, but not to exceed \$25,000; and
- (3) losses incurred as a result of the inability of an owner in hardship circumstances to sell the property due to the presence of harmful substances, limited to the increase in costs associated with the need to maintain two residences, but not to exceed \$25,000.

(b) In computation of the loss under paragraph (a), clause (3), the board shall offset the loss by the amount of any income received by the claimant from the rental of the property.

(c) For purposes of paragraph (a), the following definitions apply:

(1) "appraised market value" means an appraisal of the market value of the property disregarding any decrease in value caused by the presence of a harmful substance in or on the property; and

(2) "hardship" means an urgent need to sell the property based on a special circumstance of the owner including catastrophic medical expenses, inability of the owner to physically maintain the property due to a physical or mental condition, and change of employment of the owner or other member of the owner's household requiring the owner to move to a different location.

(d) Appraisals are subject to board approval. The board may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision.

**History:** 1991 c 199 art 1 s 26

### 115B.36 AMOUNT AND FORM OF PAYMENT.

If the board decides to grant compensation, it shall determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of insurance and social security and any emergency award made by the board. The board shall pay compensation in the amount of the net uncompensated loss, provided that no claimant may receive more than \$250,000. In the case of a death, the total amount paid to all persons on behalf of the claimant may not exceed \$250,000.

Compensation from the account may be awarded in a lump sum or in installments at the discretion of the board.

**History:** 1991 c 199 art 1 s 27