

## CHAPTER 115C

## PETROLEUM TANK RELEASE CLEANUP

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**115C.01 CITATION.**

This chapter may be cited as the "petroleum tank release cleanup act."

*History: 1987 c 389 s 1; 1992 c 490 s 1*

**115C.02 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 1a. **Account.** "Account" means the petroleum tank release cleanup account in the environmental fund.

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

Subd. 3. **Board.** "Board" means the petroleum tank release compensation board.

Subd. 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.

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

Subd. 5a. **Consultant.** "Consultant" means an individual, partnership, association, private corporation, or any other legal entity that provides consulting services. Consulting services include the rendering of professional opinion, advice, or analysis regarding a release.

Subd. 5b. **Contractor.** "Contractor" means an individual, partnership, association, private corporation, or any other legal entity that provides contractor services. Contractor services means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical work, plumbing, carpentry, and equipment.

Subd. 6. MS 1990 [Renumbered subd 1a]

Subd. 7. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of a tank.

Subd. 8. **Owner.** "Owner" means a person who holds title to, controls, or possesses an interest in a tank. "Owner" does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank and fails to take all necessary corrective action as a volunteer under section 115C.09. The state or an agency of the state is not an owner solely because it holds title to a tank or to real property where the tank is located in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

Subd. 9. **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.

Subd. 10. **Petroleum.** "Petroleum" means:

- (1) gasoline and fuel oil as defined in section 296.01, subdivisions 18 and 21;
- (2) crude oil or a fraction of crude oil that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; or
- (3) constituents of gasoline and fuel oil under clause (1) and crude oil under clause (2).

Subd. 10a. **Petroleum refinery.** "Petroleum refinery" means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and indirect heating equipment associated with the refinery.

Subd. 11. **Political subdivision.** "Political subdivision" means a county, a town, or a statutory or home rule charter city.

Subd. 12. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after June 4, 1987, but does not include discharges or designed venting allowed under agency rules.

Subd. 13. **Responsible person.** "Responsible person" means a person who is responsible for a release under section 115C.021.

Subd. 14. **Tank.** "Tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to contain or dispense petroleum.

"Tank" does not include:

- (1) a mobile storage tank used to transport petroleum from one location to another; or
- (2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29.

Subd. 15. **Tank facility.** "Tank facility" means a contiguous area where tanks are located that are under the same ownership or control.

**History:** 1987 c 186 s 15; 1987 c 389 s 2; 1988 c 686 art 1 s 57; 1989 c 335 art 4 s 44; 1990 c 501 s 1,2; 1990 c 586 s 3; 1992 c 414 s 1; 1992 c 490 s 2-4; 1992 c 575 s 53

### 115C.021 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** Except as provided in subdivision 2, a person is responsible for a release from a tank if the person is an owner or operator of the tank at any time during or after the release.

Subd. 2. **Exception of certain tank owners.** An owner of a tank is not responsible for a release from the tank if the owner can establish that:

- (1) the tank was in place but the owner did not know or have reason to know of its existence at the time the owner first acquired right, title, or interest in the tank; and
- (2) the owner did not by failure to report under section 115.061 or other action significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

Subd. 3. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not responsible for a release from a tank solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where the tank is located under chapter 282 and other laws applicable to tax-forfeited land. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 4. **Mortgagees.** (a) A mortgagee is not responsible for a release from a tank solely because the mortgagee becomes an owner of real property on which the tank is located 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 tank is located or a holder of a security interest in a tank is not an operator of the tank for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the tank to protect its security interest.

**History:** 1988 c 686 art 1 s 58; 1990 c 586 s 4; 1992 c 414 s 2

### 115C.03 RESPONSE TO RELEASES.

Subdivision 1. **Corrective action orders.** If there is a release, the commissioner may order a responsible person to take reasonable and necessary corrective actions. The commissioner shall notify the owner of real property where corrective action is ordered to be taken that responsible persons have been ordered to take corrective action and that the owner's cooperation will be required for responsible persons to take that action. When the commissioner has ordered a responsible person to take a corrective action, a political subdivision may not request or order the person to take an action that conflicts with the action ordered by the commissioner.

Subd. 2. **Agency and compelled performance corrective actions.** The agency may take corrective action or request the attorney general to bring an action to compel performance of a corrective action if:

- (1) a responsible person cannot be identified;
- (2) an identified responsible person cannot or will not comply with the order issued under subdivision 1; or
- (3) an administrative or judicial proceeding on an order issued under subdivision 1 is pending.

Subd. 3. **Emergency corrective action.** To assure an adequate response to a release, the commissioner may take corrective action without following the procedures of subdivision 1 if the commissioner determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment. Before taking an action under this subdivision, the commissioner shall make all reasonable efforts, taking into consideration the urgency of the situation, to order a responsible person to take a corrective action and notify the owner of real property where the corrective action is to be taken.

Subd. 4. **Release is a public nuisance.** A release is a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

Subd. 5. **Investigations.** If the commissioner has reason to believe that a release has occurred, the commissioner may undertake reasonable investigations necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health and welfare or the environment.

Subd. 6. **Duty to provide information.** A person who the commissioner has reason to believe is a responsible person, or the owner of real property where corrective action is ordered to be taken, or who might otherwise have information concerning a release, shall, when requested by the commissioner or any member, employee, or agent of the agency who is authorized by the commissioner, furnish to the commissioner any information that person may have or may reasonably obtain that is relevant to the release.

Subd. 7. **Access to information and property.** The commissioner or any member, employee, or agent of the agency authorized by the commissioner, may, upon presentation of official agency credentials, take any of the following actions:

- (1) examine and copy books, papers, records, memoranda, or data of a person who has a duty to provide information to the commissioner under subdivision 6; and
- (2) enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from a person who has a duty

to provide the information under subdivision 6, conducting surveys and investigations, and taking corrective action.

**Subd. 8. Classification of data.** Except as otherwise provided in this subdivision, data obtained from a person under subdivision 6 or 7 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information that would tend to adversely affect the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Data classified as private or nonpublic under this subdivision may be disclosed when relevant in a proceeding under sections 115C.03 to 115C.10.

**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 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) 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.

**Subd. 10. Retention of records.** A person who applies for reimbursement under this chapter and a contractor or consultant who has billed the applicant for services that are part of the claim for reimbursement must maintain all records related to the claim for reimbursement for a minimum of five years from the date the claim for reimbursement is submitted to the board.

**History:** 1987 c 186 s 15; 1987 c 389 s 3; 1989 c 226 s 1; 1990 c 426 art 1 s 15; 1992 c 490 s 5

#### **115C.04 LIABILITY FOR RESPONSE COSTS.**

**Subdivision 1. Corrective action liability.** (a) A responsible person is liable for the cost of the corrective action taken by the agency under section 115C.03, subdivisions 2 and 3, including the cost of investigating the release and administrative and legal expenses, if:

(1) the responsible person has failed to take a corrective action ordered by the commissioner and the agency has taken the action;

(2) the agency has taken corrective action in an emergency under section 115C.03, subdivision 3; or

(3) the agency has taken corrective action because a responsible person could not be identified.

(b) A responsible person is liable for the reimbursement paid by the petroleum tank release compensation board under section 115C.09, subdivision 3a, to the extent the reimbursement is for corrective action that the responsible person could have been ordered to perform under section 115C.03, subdivision 1.

**Subd. 2. Avoidance of liability.** (a) A responsible person may not avoid the liability by means of a conveyance of any right, title, or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

(b) This subdivision does not:

(1) prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;

(2) prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

(3) bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

**Subd. 3. Agency cost recovery; subrogation.** Reasonable and necessary expenses incurred by the agency in taking a corrective action, including costs of investigating a release, administrative and legal expenses, and reimbursement costs described in subdivision 1, paragraph (b), may be recovered in a civil action in district court brought by the attorney general against a responsible person. The agency's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. If the responsible person has petroleum tank leakage or spill insurance coverage that insures against the liability provided in this section, the agency is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the expenses incurred by the agency and described in this subdivision. The agency may request the attorney general to bring an action in district court against the insurer to enforce this subrogation right. Expenses that are recovered under this section must be deposited in the account.

**History:** 1987 c 186 s 15; 1987 c 389 s 4; 1988 c 683 s 2,3; 1989 c 335 art 4 s 106; 1991 c 294 s 1

#### **115C.045 KICKBACKS.**

A consultant or contractor, as a condition of performing services, may not agree to pay or forgive the nonreimbursable portion of an application for reimbursement submitted under this chapter. An applicant may not accept forgiveness or demand payment from a consultant or contractor for the nonreimbursable portion of an application for reimbursement submitted under this chapter.

**History:** 1992 c 490 s 6

#### **115C.05 CIVIL PENALTY.**

The agency may enforce section 115C.03 using the actions and remedies authorized under sections 115.071, subdivision 3, and 116.072. The civil penalties recovered by the state must be credited to the fund.

**History:** 1987 c 389 s 5; 1991 c 347 art 1 s 7

#### **115C.06 EFFECT ON OTHER LAW.**

**Subdivision 1. Actions under chapter 115B.** Sections 115C.03 to 115C.10 do not limit any actions initiated by the agency under chapter 115B.

**Subd. 2. Duty to notify and take action for release.** Sections 115C.03 to 115C.10 do not limit a person's duty to notify the agency and take action related to a release as provided in section 115.061.

**History:** 1987 c 389 s 6

#### **115C.065 CONSULTANT'S OR CONTRACTOR'S DUTY TO NOTIFY.**

A consultant or contractor involved in the removal of a petroleum tank shall immediately notify the agency if field instruments or laboratory tests indicate the presence of any petroleum contamination in excess of state guidelines.

**History:** 1992 c 490 s 7

#### **115C.07 PETROLEUM TANK RELEASE COMPENSATION BOARD.**

**Subdivision 1. Establishment.** The petroleum tank release compensation board consists of the commissioner of the pollution control agency, the commissioner of commerce, two representatives from the petroleum industry, and one representative from the insurance industry. The governor shall appoint the members from the insurance and petroleum industry. The filling of positions reserved for industry representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by section 15.0575. The governor shall designate the chair of the board.

**Subd. 2. Staff.** The commissioner of commerce shall provide staff to support the activities of the board.

**Subd. 3. Rules.** (a) The board shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

(b) The board may adopt emergency rules under this subdivision for one year after June 4, 1987.

(c) The board shall adopt emergency rules within four months of May 25, 1991, and permanent rules within one year of May 25, 1991, designed to ensure that costs submitted to the board for reimbursement are reasonable. The rules shall include a requirement that persons taking corrective action solicit competitive bids, based on unit service costs, except in circumstances where the board determines that such solicitation is not feasible.

(d) The board may adopt rules requiring certification of environmental consultants.

**History:** 1987 c 186 s 15; 1987 c 389 s 7; 1991 c 175 s 2

### 115C.08 PETROLEUM TANK RELEASE CLEANUP ACCOUNT.

**Subdivision 1. Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank release cleanup account in the environmental fund in the state treasury:

- (1) the proceeds of the fee imposed by subdivision 3;
- (2) money recovered by the state under sections 115C.04, 115C.05, and 116.491, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;
- (3) interest attributable to investment of money in the account;
- (4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the account; and
- (5) fees charged for the operation of the tank installer certification program established under section 116.491.

**Subd. 2. Imposition of fee.** The board shall notify the commissioner of revenue if the unencumbered balance of the account falls below \$2,000,000, and within 60 days after receiving notice from the board, the commissioner of revenue shall impose the fee established in subdivision 3 on the use of a tank for four calendar months, with payment to be submitted with each monthly distributor tax return.

**Subd. 3. Petroleum tank release cleanup fee.** A petroleum tank release cleanup fee is imposed on the use of tanks that contain petroleum products defined in section 296.01. On products other than gasoline, the fee must be paid in the manner provided in section 296.14 by the first licensed distributor receiving the product in Minnesota, as defined in section 296.01. When the product is gasoline, the distributor responsible for payment of the gasoline tax is also responsible for payment of the petroleum tank cleanup fee. The fee must be imposed as required under subdivision 3, at a rate of \$10 per 1,000 gallons of petroleum products, rounded to the nearest 1,000 gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 296.15.

**Subd. 4. Expenditures.** Money in the account may only be spent:

- (1) to administer the petroleum tank release cleanup program established in sections 115C.03 to 115C.10;
- (2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;
- (3) for costs of recovering expenses of corrective actions under section 115C.04;
- (4) for training, certification, and rulemaking under sections 116.46 to 116.50;
- (5) for agency administrative costs of enforcing rules governing the construction,

installation, operation, and closure of aboveground and underground petroleum storage tanks; and

(6) for reimbursement of the harmful substance compensation account under sections 115B.26, subdivision 4; and 115C.08, subdivision 5.

**Subd. 5. Account transfer.** The board shall authorize the commissioner of finance to transfer to the harmful substance compensation account the amount requested by the harmful substance compensation board under section 115B.26, subdivision 4. Transfer of the amount must be made at the earliest practical date after authorization by the board. If the unencumbered balance in the account is less than \$2,000,000, the transfer must be made at the earliest practical date after the unencumbered balance in the account exceeds that amount.

**History:** 1987 c 389 s 8; 1989 c 209 art 1 s 10; 1989 c 226 s 2; 1989 c 325 s 46,47; 1989 c 335 art 4 s 45,106; 1990 c 501 s 3,4; 1991 c 199 art 1 s 28; 1992 c 597 s 2

### 115C.09 REIMBURSEMENT TO RESPONSIBLE AND OTHER PERSONS.

**Subdivision 1. Reimbursable costs.** (a) The board shall provide partial reimbursement to eligible responsible persons for reimbursable costs incurred after June 4, 1987.

(b) The following costs are reimbursable for purposes of this section:

(1) corrective action costs incurred by the responsible person, except the costs related to the physical removal of a tank;

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury or property damage caused by a release if the responsible person's liability for the costs has been established by a court order or a consent decree; and

(3) up to 180 days worth of interest costs, incurred after May 25, 1991, associated with the financing of corrective action. Interest costs are not eligible for reimbursement to the extent they exceed two percentage points above the adjusted prime rate charged by banks, as defined in section 270.75, subdivision 5, at the time the financing contract was executed.

(c) A cost for liability to a third party is incurred by the responsible person when an order or consent decree establishing the liability is entered. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

**Subd. 2. Responsible person eligibility.** (a) A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board. The board may consider applications for reimbursement at the following stages:

(1) after the commissioner approves a plan for corrective action related to soil contamination;

(2) after the commissioner determines that the corrective action plan described in clause (1) has been fully constructed or installed;

(3) after the commissioner approves a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary;

(4) after the commissioner determines that the corrective action necessary to adequately address the release has been fully constructed or installed; and

(5) periodically afterward as the corrective action continues operation, but no more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(b) The commissioner shall review a plan, and provide an approval or disapproval to the responsible person and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (3), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete application within 60 days of submission of the application under paragraph (a), clauses (1) and (2), and within 120 days of submission of the application under paragraph (a), clauses (3) and (4), or the board shall explain for the record why additional time is necessary. For purposes of the preceding sentence, board consideration of an application is timely if it occurs at the regularly scheduled meeting following the deadline. Board staff may review applications submitted to the board simultaneous to the commissioner's consideration of the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(c) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

**Subd. 3. Reimbursements; subrogation; appropriation.** (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the account for 90 percent of the portion of the total reimbursable costs or \$1,000,000, whichever is less. Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the account under this subdivision until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) A reimbursement may not be made from the account under this subdivision in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the responsible person has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the responsible person under this subdivision.

(d) If the board reimburses a responsible person for costs for which the responsible person has petroleum tank leakage or spill insurance coverage, the board is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by a responsible person of reimbursement constitutes an assignment by the responsible person to the board of any rights of the responsible person with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the responsible party the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the responsible person was denied coverage by the insurer.

(e) Money in the account is appropriated to the board to make reimbursements under this section. A reimbursement to a state agency must be credited to the appropriation account or accounts from which the reimbursed costs were paid.

(f) The board shall reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with one or more of the following requirements:

(1) 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;

(2) the agency was given notice of the release as required by section 115.061;

(3) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

(4) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

(g) The reimbursement shall be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (f), clauses (1) to (4). 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.

(h) A responsible person may assign the right to receive reimbursement to each lender, who advanced funds to pay the costs of the corrective action, or to each contractor, who provided corrective action services. An assignment must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the responsible person, the identity of the assignee, the dollar amount of the assignment and the location of the corrective action. An assignment signed by the responsible person is valid unless terminated by filing a termination with the board, in a form prescribed by the board, which must include the written concurrence of the assignee. The board shall maintain an index of assignments filed under this paragraph. The board shall pay the reimbursement to the responsible person and to one or more assignees by a multiparty check. The board has no liability to a responsible person for a payment under an assignment meeting the requirements of this paragraph.

**Subd. 3a. Eligibility of other persons.** Notwithstanding the provisions of subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

- (1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;
- (2) the commissioner has determined that the person was not a responsible person under section 115C.02; and
- (3) the costs for which reimbursement is requested were actually incurred and were reasonable.

**Subd. 3b. Volunteer eligibility.** (a) Notwithstanding subdivisions 1 to 3, a person may apply to the board for partial reimbursement under subdivision 3 who:

- (1) is not a responsible person under section 115C.02;
- (2) holds legal or equitable title to the property where a release occurred; and
- (3) incurs reimbursable costs on or after May 23, 1989.

(b) A person eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.

(c) The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with the provisions of subdivision 3, paragraph (f), except that the board may not reduce the reimbursement to a mortgagee who acquires title to the property through foreclosure or receipt of a deed in lieu of foreclosure.

**Subd. 3c. Release at refineries and tank facilities not eligible for reimbursement.** Notwithstanding other provisions of subdivisions 1 to 3b, a reimbursement may not be made under this section for costs associated with a release:

- (1) from a tank located at a petroleum refinery; or
- (2) from a tank facility, including a pipeline terminal, with more than 1,000,000 gallons of total petroleum storage capacity at the tank facility.

**Subd. 3d. Political subdivision eligibility.** (a) Notwithstanding the provisions of subdivisions 1 to 3, a political subdivision may apply to the board for partial reimbursement under subdivision 3 where the political subdivision:

- (1) is not a responsible person under section 115C.02; and
- (2) incurs reimbursable costs on or after April 8, 1992.

(b) A political subdivision eligible for reimbursement under this subdivision may only apply for reimbursement if the identified responsible person has failed to take a corrective action ordered by the commissioner.

(c) A political subdivision eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.

**Subd. 4. Reimbursement does not affect other liability.** The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

**Subd. 5. Return of reimbursement.** (a) The board may demand the complete or partial return of any reimbursement made under this section if the applicant for reimbursement:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this section;

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release, unless the reimbursement was made under subdivision 3a;

(3) fails to reimburse a person for agreed-to amounts for corrective actions taken in response to a request by the applicant; or

(4) has entered an agreement to settle or compromise any portion of the incurred costs, in which case the amount returned must be prorated in proportion to the amount of the settlement or compromise.

(b) If a reimbursement under this subdivision is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the applicant. If the board's demand for return of the reimbursement is based on willful actions of the applicant, the applicant shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

**Subd. 6. Consultant and contractor fraud.** If a person, with intent to defraud, issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the board for reimbursement:

(1) that person shall be considered to have presented a false claim to a public body under section 609.465; and

(2) the board may demand that the person return any money received as a result of a reimbursement made on the basis of the false invoice or other demand for payment. If the money is not returned upon demand by the board, the board may recover the money, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the person. The person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the money received by the person on the basis of the false invoice or other demand for payment.

**Subd. 7. Duty to provide information.** (a) A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing. The board may obtain access to information required to be made available under this subdivision in the manner provided in section 115C.03, subdivision 7.

(b) After reimbursement has been granted, an agreement to settle or compromise any portion of the incurred costs must be reported to the board by the parties to the agreement.

**Subd. 8. Limitation on reimbursement obligation.** The amount of the state's obliga-

tion to make reimbursement under this chapter is limited to the amount available. Notwithstanding any other provisions of this chapter, there shall be no obligation to the general fund to make a reimbursement if there are not sufficient funds in the petroleum tank release cleanup account.

**History:** 1987 c 186 s 15; 1987 c 389 s 9; 1988 c 683 s 4-6; 1989 c 226 s 3; 1989 c 335 art 4 s 106; 1990 c 501 s 5-7; 1991 c 175 s 3-9; 1991 c 233 s 52; 1991 c 294 s 2; 1992 c 414 s 3,4; 1992 c 490 s 8,9

#### 115C.10 FUNDING OF AGENCY ACTIONS.

**Subdivision 1. Payment from account; subrogation; appropriation.** (a) If the cost of authorized actions under section 115C.03 exceeds the amount appropriated to the agency for the actions and amounts awarded to the agency from the federal government, the agency may apply to the board for money to pay for the actions from the account. The board shall pay the agency the cost of the proposed actions under section 115C.03 if the board finds that the conditions for the agency to be paid from the account have been met, and that an adequate amount exists in the account to pay for the corrective action. If the board pays the agency for the cost of authorized actions for which a responsible person has petroleum tank leakage or spill insurance coverage, the board is subrogated to the agency's rights with respect to the responsible person and the responsible person's insurer, to the extent of the board's payment of costs for which the responsible person has insurance coverage, subject to the limitations on an agency cost recovery action set forth in section 115C.04, subdivision 3. The board may request the attorney general to bring an action in district court against the responsible person or that person's insurer to enforce the board's subrogation rights. Acceptance of a payment from the board by the agency constitutes an assignment to the board of the subrogation rights specified in this subdivision.

(b) Money in the account is appropriated to the board for the purpose of this subdivision.

**Subd. 2. Federal funds.** The commissioner shall take actions needed to obtain federal funding to carry out the provisions of the petroleum tank release cleanup act.

**History:** 1987 c 186 s 15; 1987 c 389 s 10; 1989 c 335 art 4 s 106; 1991 c 294 s 3

#### 115C.11 CONSULTANTS AND CONTRACTORS; SANCTIONS.

**Subdivision 1. Registration.** (a) All consultants and contractors must register with the board in order to participate in the petroleum tank release cleanup program.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors including an identification of the services offered.

(c) An applicant who applies for reimbursement must use a registered consultant and contractor in order to be eligible for reimbursement.

(d) The commissioner must inform any person who notifies the agency of a release under section 115.061 that the person must use a registered consultant or contractor to qualify for reimbursement and that a list of registered consultants and contractors is available from the board.

(e) Work performed by an unregistered consultant or contractor is ineligible for reimbursement.

(f) Work performed by a consultant or contractor prior to being removed from the registration list may be reimbursed by the board.

**Subd. 2. Disqualification.** (a) The board must automatically remove from the registration list for five years a consultant or contractor who is convicted in a criminal proceeding for submitting false or fraudulent bills that are part of a claim for reimbursement under section 115C.09. The board may, in addition, impose one or more of the sanctions in paragraph (c).

(b) The board may impose sanctions under paragraph (c) on a consultant or contractor for any of the following reasons:

(1) engaging in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) participating in a kickback scheme prohibited under section 115C.045;

(3) engaging in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;

(4) commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(5) revocation, suspension, restriction, limitation, or other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction.

(c) The board may impose one or more of the following sanctions:

(1) remove a consultant or contractor from the registration list for up to five years;

(2) publicly reprimand or censure the consultant or contractor;

(3) place the consultant or contractor on probation for a period and upon terms and conditions the board prescribes;

(4) require payment of all costs of proceedings resulting in an action instituted under this paragraph; or

(5) impose a civil penalty of not more than \$10,000, in an amount that the board determines will deprive the consultant or contractor of any economic advantage gained by reason of the consultant's or contractor's conduct or to reimburse the board for the cost of the investigation and proceeding.

(d) In deciding whether a particular sanction is appropriate, the board must consider the seriousness of the consultant's or contractor's acts or omissions and any mitigating factors.

(e) Civil penalties recovered by the state under this section must be credited to the account.

**Subd. 3. Notice of sanction.** The board must notify a consultant or contractor of a proposed sanction at least 30 days before the board meeting at which the proposed sanction will be considered. The notice must advise the consultant or contractor of:

(1) the fact that sanctions are being considered;

(2) the reasons for the proposed sanctions in terms sufficient to put the consultant or contractor on notice of the conduct on which the proposed sanctions are based;

(3) the reasons relied on under subdivision 2 for the proposed sanctions;

(4) the right to request a contested case hearing under chapter 14; and

(5) the potential effect of sanctions.

**Subd. 4. Sanction order.** The board may impose sanctions after a hearing before the board if a contested case hearing has not been requested. The board's sanction order is final. The sanctions are effective 30 days after the board issues its order.

**History:** 1992 c 490 s 10