

CHAPTER 18D

CHEMICAL LIABILITY

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18D.01 DEFINITIONS.

Subdivision 1. **Definitions in chapters 18B, 18C, and 18F apply.** The definitions in chapters 18B, 18C, and 18F apply to this chapter.

Subd. 2. **Applicability of definitions in this section.** The definitions in this section apply to this chapter.

Subd. 3. **Agricultural chemical.** "Agricultural chemical" means a pesticide as defined under chapter 18B or a fertilizer, agricultural liming material, plant amendment, or soil amendment as defined under chapter 18C.

Subd. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up an incident.

Subd. 5. **Hazardous waste.** "Hazardous waste" means a substance identified or listed as hazardous waste in the rules adopted under section 116.07, subdivision 4.

Subd. 6. **Incident.** "Incident" means a flood, fire, tornado, transportation accident, storage container rupture, portable container rupture, leak, spill, emission, discharge, escape, disposal, or other event that releases or immediately threatens to release an agricultural chemical accidentally or otherwise into the environment, and may cause unreasonable adverse effects on the environment. Incident does not include a release resulting from the normal use of a product or practice in accordance with law.

Subd. 7. **Owner of real property.** "Owner of real property" means a person who is in possession of, has the right of control, or controls the use of real property, including without limitation a person who may be a fee owner, lessee, renter, tenant, lessor, contract for deed vendee, licensor, licensee, or occupant.

Subd. 8. **Person.** "Person" means an individual, firm, corporation, partnership, association, trust, joint stock company, or unincorporated organization, the state, a state agency, or a political subdivision.

Subd. 9. **Provision of this chapter.** "Provision of this chapter" means a provision of this chapter, chapter 18B, 18C, 18F, or a rule adopted under those chapters.

Subd. 10. **Responsible party.** "Responsible party" means a person who at the time of an incident has custody of, control of, or responsibility for a pesticide, fertilizer, pesticide or fertilizer container, or pesticide or fertilizer rinsate.

History: 1989 c 326 art 7 s 1; 1990 c 561 s 12; 1991 c 250 s 19,20

AGRICULTURAL CHEMICAL APPLICATION LIABILITY

18D.101 LIABILITY FOR APPLICATION.

(a) Notwithstanding other law relating to liability for agricultural chemical use, an

end user or landowner is not liable for the cost of active cleanup, or damages associated with or resulting from agricultural chemicals in groundwater if the person has applied or has had others apply agricultural chemicals in compliance with state law, with any applicable labeling, and orders of the commissioner.

(b) It is a complete defense for liability if the person has complied with the provisions in paragraph (a).

History: 1989 c 326 art 7 s 2

INCIDENTS

18D.103 REPORT OF INCIDENTS REQUIRED.

Subdivision 1. Report to commissioner. A responsible party or an owner of real property must, on discovering an incident has occurred, immediately report the incident to the commissioner. The responsible party must immediately take all reasonable action necessary to minimize or abate the incident and to recover any agricultural chemicals involved in the incident with or without a directive from the commissioner.

Subd. 2. Written report. The responsible party must submit a written report of the incident to the commissioner in the form and by the time prescribed by the commissioner.

Subd. 3. Exception. A responsible party or an owner of real property who is a licensed or certified private or commercial pesticide applicator is not required to report an incident to the commissioner under this section if the amount of pesticide involved in the release plus any other releases which have occurred at the site during the preceding year is less than the maximum amount of the pesticide that, consistent with its label, can be applied to one acre of agricultural crop land unless the release occurred into or near public water or groundwater.

History: 1989 c 326 art 7 s 3; 1990 c 597 s 7; 1993 c 367 s 17

18D.105 CORRECTIVE ACTION ORDERS.

Subdivision 1. Corrective action orders. (a) After determining an incident has occurred, the commissioner may order the responsible party to take reasonable and necessary corrective actions.

(b) The commissioner shall notify the owner of real property where corrective action is ordered that access to the property will be required for the responsible party or the commissioner to take corrective action.

(c) A political subdivision may not request or order any person to take an action that conflicts with the corrective action ordered by the commissioner.

(d) The attorney general on request of the commissioner may bring an action to compel corrective action.

Subd. 2. Commissioner's corrective actions. The commissioner may take corrective action if:

(1) a responsible party cannot be identified; or

(2) an identified responsible party cannot or will not comply with a corrective action order issued under subdivision 1.

Subd. 3. Emergency corrective action. (a) To assure an adequate response to an incident, the commissioner may take corrective action without following the procedures of subdivision 1 if the commissioner determines that the incident constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment.

(b) Before taking an action under this subdivision, the commissioner must make all reasonable efforts, taking into consideration the urgency of the situation, to order a responsible party to take a corrective action and notify the owner of real property where the corrective action is to be taken.

Subd. 3a. Passive bioremediation. Passive bioremediation must be considered for

pesticide cleanups whenever an assessment of the site determines that there is a low potential risk to public health and the environment. The assessment may include the soil types involved, leaching potential, underlying geology, proximity to ground and surface water, and the soil half-life of the pesticides.

Subd. 4. Agriculture is lead agency. The department of agriculture is the lead state agency in taking corrective action for incidents.

History: 1989 c 326 art 7 s 4; 1993 c 367 s 18

18D.1051 RESPONSE TO AGRICULTURAL CHEMICAL INCIDENTS.

The commissioner of agriculture may take corrective action under this chapter, or response and remedial action under chapter 115B, or both, as provided under those chapters, in responding to an agricultural chemical incident, release, or threatened release.

History: 1990 c 597 s 72

18D.111 LIABILITY FOR COSTS.

Subdivision 1. Corrective action costs. (a) A responsible party is liable for the costs, including for a corrective action administrative cost incurred after the corrective action order has been issued, or for emergency corrective action, all costs. The commissioner may issue an order for recovery of the costs.

(b) A responsible party is liable for the costs of any destruction to wildlife. Payments of costs for wildlife destruction shall be deposited in the game and fish fund of the state treasury.

Subd. 2. Owner of real property. An owner of real property is not a responsible party for an incident on the owner's property unless that owner:

(1) was engaged in manufacturing, formulating, transporting, storing, handling, applying, distributing, or disposing of an agricultural chemical on the property;

(2) knowingly permitted any person to make regular use of the property for disposal of agricultural chemicals; or

(3) violated this chapter in a way that contributed to the incident.

Subd. 3. Liability for employees. A person licensed under chapter 18B or 18C is civilly liable for violations of this chapter, chapter 18B, or 18C by the person's employees and agents.

Subd. 4. Avoidance of liability. (a) A responsible party may not avoid liability by means of a conveyance of a right, title, or interest in real property, or by an 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. 5. Defense. As a defense to a penalty or liability for damages, a person may prove that a violation was caused solely by an act of God, an act of war, or an act or failure to act that constitutes sabotage or vandalism, or a combination of these defenses.

History: 1989 c 326 art 7 s 5

18D.115 APPORTIONMENT OF LIABILITY AND CONTRIBUTION.

Subdivision 1. Right of apportionment. (a) A responsible party held liable under this chapter has the right to have the trier of fact apportion liability among the responsible parties as provided in this section. The burden is on each responsible party to show

how that responsible party's liability should be apportioned. The trier of fact shall reduce the amount of damages in proportion to the amount of liability apportioned to the party recovering.

(b) In apportioning the liability of a party under this section, the trier of fact shall consider the following:

- (1) the extent to which that responsible party contributed to the incident;
- (2) the amount of agricultural chemical involved;
- (3) the degree of toxicity of the agricultural chemical involved;
- (4) the degree of involvement of and care exercised by the responsible party in manufacturing, formulating, handling, storing, distributing, transporting, applying, and disposing of the agricultural chemical;
- (5) the degree of cooperation by the responsible party with federal, state, or local officials to prevent any harm to the public health or the environment; and
- (6) knowledge by the responsible party of the hazardous nature of the agricultural chemical.

Subd. 2. Contribution. If a responsible party is held liable under this chapter and establishes a proportionate share of the aggregate liability, the provisions of section 604.02, subdivisions 1 and 2, shall apply with respect to contribution and reallocation of any uncollectible amounts, except that an administrative law judge may also perform the functions of a court identified in section 604.02, subdivision 2.

History: 1989 c 326 art 7 s 6

INSPECTION

18D.201 INSPECTION, SAMPLING, ANALYSIS.

Subdivision 1. Access and entry. (a) The commissioner, upon presentation of official department credentials, must be granted access at reasonable times without delay to sites:

- (1) where a person manufactures, formulates, distributes, uses, disposes of, stores, or transports an agricultural chemical; or
- (2) which the commissioner reasonably believes are affected, or possibly affected, by the use of an agricultural chemical, agricultural chemical container, agricultural chemical rinsate, or agricultural chemical device in violation of this chapter.

(b) The commissioner may enter sites for:

- (1) inspection of equipment for the manufacture, formulation, blending, distribution, disposal, or application of agricultural chemicals and the premises on which the equipment is stored;
- (2) sampling of sites actually or reportedly exposed to agricultural chemicals;
- (3) inspection of storage, handling, distribution, use, or disposal areas of agricultural chemicals or their containers;
- (4) inspection or investigation of complaints of injury to the environment;
- (5) sampling of agricultural chemicals;
- (6) observation of the use and application of an agricultural chemical;
- (7) inspection of records related to the manufacture, distribution, storage, handling, use, or disposal of an agricultural chemical;
- (8) investigating the source, nature, and extent of an incident, and the extent of the adverse effects on the environment; and
- (9) other purposes necessary to implement this chapter, chapter 18B, or 18C.

(c) The commissioner may enter any public or private premises during or after regular business hours without a notice of inspection when a suspected incident may threaten public health or the environment.

Subd. 2. Notice of inspection samples and analyses. (a) The commissioner shall

provide the owner, operator, or agent in charge with a receipt describing any samples obtained. If requested, the commissioner shall split any samples obtained and provide them to the owner, operator, or agent in charge. If an analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge within 30 days after an analysis has been performed. If an analysis is not performed, the commissioner must notify the owner, operator, or agent in charge within 30 days of the decision not to perform the analysis.

(b) The methods of sampling and analysis must be those adopted by the United States Environmental Protection Agency or the association of official analytical chemists. In cases not covered by those methods, or in cases where methods are available in which improved applicability has been demonstrated, the commissioner may adopt appropriate methods from other sources.

(c) In sampling a lot of agricultural chemical that is registered, a single package may constitute the official sample.

Subd. 3. Inspection requests by others. (a) A person who believes that a violation of this chapter has occurred may request an inspection by giving notice to the commissioner of the violation. The notice must be in writing, state with reasonable particularity the grounds for the notice, and be signed by the person making the request.

(b) If after receiving a notice of violation the commissioner reasonably believes that a violation has occurred, the commissioner shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if a violation has occurred.

(c) An inspection conducted pursuant to a notice under this subdivision may cover an entire site and is not limited to the portion of the site specified in the notice. If the commissioner determines that reasonable grounds to believe that a violation occurred do not exist, the commissioner must notify the person making the request in writing of the determination.

Subd. 4. Order to enter after refusal. After a refusal or an anticipated refusal based on a prior refusal to allow entrance on a prior occasion by an owner, operator, or agent in charge to allow entry as specified in this chapter, the commissioner may apply for an order in the district court in the county where a site is located, that compels a person with authority to allow the commissioner to enter and inspect the site.

Subd. 5. Violator liable for inspection costs. (a) The cost of reinspection and reinvestigation may be assessed by the commissioner if the person subject to the corrective action order or remedial action order does not comply with the order in a reasonable time as provided in the order.

(b) The commissioner may enter an order for recovery of the inspection and investigation costs.

Subd. 6. Investigation authority. (a) In making inspections under this chapter, the commissioner may administer oaths, certify official acts, issue subpoenas to take and cause to be taken depositions of witnesses, and compel the attendance of witnesses and production of papers, books, documents, records, and testimony.

(b) If a person fails to comply with a subpoena, or a witness refuses to produce evidence or to testify to a matter about which the person may be lawfully questioned, the district court shall, on application of the commissioner, compel obedience proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify in court.

History: 1989 c 326 art 7 s 7

ENFORCEMENT

18D.301 ENFORCEMENT.

Subdivision 1. Enforcement required. (a) The commissioner shall enforce this chapter and chapters 18B, 18C, and 18F.

(b) Violations of chapter 18B, 18C, or 18F or rules adopted under chapter 18B, 18C, or 18F are a violation of this chapter.

(c) Upon the request of the commissioner, county attorneys, sheriffs, and other officers having authority in the enforcement of the general criminal laws shall take action to the extent of their authority necessary or proper for the enforcement of this chapter or special orders, standards, stipulations, and agreements of the commissioner.

Subd. 2. Commissioner's discretion. If minor violations of this chapter, chapter 18B, 18C, or 18F occur or when the commissioner believes the public interest will be best served by a suitable notice of warning in writing, this chapter does not require the commissioner to:

- (1) report the violation for prosecution;
- (2) institute seizure proceedings; or
- (3) issue a withdrawal from distribution or stop-sale order.

Subd. 3. Civil actions. Civil judicial enforcement actions may be brought by the attorney general in the name of the state on behalf of the commissioner. A county attorney may bring a civil judicial enforcement action upon the request of the commissioner and agreement by the attorney general.

Subd. 4. Injunction. The commissioner may apply to a court with jurisdiction for a temporary or permanent injunction to prevent, restrain, or enjoin violations of this chapter.

Subd. 5. Criminal actions. For a criminal action, the county attorney from the county where a criminal violation occurred is responsible for prosecuting a violation of this chapter. If the county attorney refuses to prosecute, the attorney general on request of the commissioner may prosecute.

Subd. 6. Agent for service of process. All nonresident commercial and structural pest control applicator licensees licensed as individuals must appoint the commissioner as the agent upon whom all legal process may be served and service upon the commissioner is deemed to be service on the licensee.

History: 1989 c 326 art 7 s 8; 1991 c 250 s 21,22

18D.305 ADMINISTRATIVE ACTION.

Subdivision 1. Administrative remedies. The commissioner may seek to remedy violations by a written warning, administrative meeting, cease and desist, stop-use, stop-sale, removal, correction order, or other special order, seizure, stipulation, agreement, or administrative penalty, if the commissioner determines that the remedy is in the public interest.

Subd. 2. Revocation and suspension. The commissioner may, after written notice and hearing, revoke, suspend, or refuse to grant or renew a registration, permit, license, or certification if a person violates a provision of this chapter or has a history within the last three years of violations of this chapter.

Subd. 3. Cancellation of registration. (a) The commissioner may cancel the registration of a specialty fertilizer, soil amendment, or plant amendment or refuse to register a brand of specialty fertilizer, soil amendment, or plant amendment after receiving satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this chapter.

(b) Registration may not be revoked until the registrant has been given opportunity for a hearing by the commissioner.

Subd. 4. Cancellation of license. (a) The commissioner may cancel a license issued under this chapter after receiving satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasion or attempted evasion of the provisions of this chapter.

(b) A license may not be revoked until the licensee has been given opportunity for a hearing by the commissioner.

Subd. 5. Cancellation of facility and equipment approval. (a) The commissioner may cancel the approval of a facility or equipment if:

(1) hazards to people's lives, adjoining property, or the environment exist; or
 (2) there is satisfactory evidence that the person to whom the approval was issued has used fraudulent or deceptive practices to evade or attempt to evade the provisions of this chapter.

(b) An approval may not be canceled until the person has been given an opportunity for a hearing by the commissioner.

Subd. 6. **Service of order or notice.** (a) If a person is not available for service of an order, the commissioner may attach the order to the agricultural chemical container, rinsate, equipment, or device or facility and notify the owner, custodian, other responsible party, or registrant.

(b) The agricultural chemical container, rinsate, equipment, or device may not be sold, used, or removed until the agricultural chemical container, rinsate, equipment, or device has been released under conditions specified by the commissioner, by an administrative law judge, or by a court.

History: 1989 c 326 art 7 s 9

18D.311 DAMAGES AGAINST STATE FOR ADMINISTRATIVE ACTION WITHOUT CAUSE.

If the commissioner did not have probable cause for an administrative action, including the issuance of a stop-sale, stop-use, or removal order, a court may allow recovery for damages caused by the administrative action.

History: 1989 c 326 art 7 s 10

18D.315 ADMINISTRATIVE PENALTIES.

Subdivision 1. **Assessment.** (a) In determining the amount of the administrative penalty, the commissioner shall consider the economic gain received by the person allowing or committing the violation, the gravity of the violation in terms of actual or potential damage to human health and the environment, and the violator's culpability, good faith, and history of violations.

(b) The commissioner may assess an administrative penalty of up to \$1,500 per day for a violation of a corrective action order or remedial action order.

(c) An administrative penalty may be assessed if the person subject to a corrective action order or remedial action order does not comply with the order in the time provided in the order. The commissioner must state the amount of the administrative penalty in the corrective action order or remedial action order.

Subd. 2. **Collection of penalty.** (a) If a person subject to an administrative penalty fails to pay the penalty, which must be part of a final order by the commissioner, by 30 days after the final order is issued, the commissioner may commence a civil action for double the assessed penalty plus attorney fees and costs.

(b) An administrative penalty may be recovered in a civil action in the name of the state brought in the district court of the county where the violation is alleged to have occurred or the district court where the commissioner has an office.

History: 1989 c 326 art 7 s 11

18D.321 APPEAL OF COMMISSIONER'S ORDERS.

Subdivision 1. **Notice of appeal.** (a) After service of an order, a person has 45 days from receipt of the order to notify the commissioner in writing that the person intends to contest the order.

(b) If the person fails to notify the commissioner that the person intends to contest the order, the order is a final order of the commissioner and not subject to further judicial or administrative review.

Subd. 2. **Administrative review.** If a person notifies the commissioner that the person intends to contest an order issued under this chapter, the state office of administrative hearings shall conduct a hearing in accordance with the applicable provisions of

chapter 14 for hearings in contested cases. For contested corrective action orders, the state office of administrative hearings shall conduct an administrative hearing not later than 14 days after notification that a corrective action order is contested.

Subd. 3. **Judicial review.** Judicial review of a final decision in a contested case is available as provided in chapter 14.

History: 1989 c 326 art 7 s 12; 1990 c 597 s 8

18D.323 CREDITING OF PENALTIES, FEES, AND COSTS.

Except for money repaid to the agricultural chemical response and reimbursement account under section 18E.04, subdivision 6, penalties, cost reimbursements, fees, and other moneys collected under this chapter must be deposited into the state treasury and credited to the appropriate pesticide or fertilizer regulatory account.

History: 1990 c 597 s 9

18D.325 CIVIL PENALTIES.

Subdivision 1. **General penalty.** Except as provided in subdivisions 2 and 3, a person who violates this chapter, chapter 18B, 18C, or 18F or a special order, standard, stipulation, agreement, or schedule of compliance of the commissioner is subject to a civil penalty of up to \$7,500 per day of violation as determined by the court.

Subd. 2. **Disposal that becomes hazardous waste.** A person who violates a provision of this chapter, chapter 18B, 18C, or 18F or a special order, standard, stipulation, agreement, or schedule of compliance of the commissioner that relates to disposal of agricultural chemicals so that they become hazardous waste, is subject to the penalties in section 115.071.

Subd. 3. **Defense to civil remedies and damages.** As a defense to a civil penalty or claim for damages under subdivisions 1 and 2, the defendant may prove that the violation was caused solely by an act of God, an act of war, or an act or failure to act that constitutes sabotage or vandalism, or any combination of these defenses.

Subd. 4. **Actions to compel performance.** In an action to compel performance of an order of the commissioner to enforce a provision of this chapter, the court may require a defendant adjudged responsible to perform the acts within the person's power that are reasonably necessary to accomplish the purposes of the order.

Subd. 5. **Recovery of penalties by civil action.** The civil penalties and payments provided for in this section may be recovered by a civil action brought by the county attorney or the attorney general in the name of the state.

History: 1989 c 326 art 7 s 13; 1991 c 250 s 23,24

18D.331 CRIMINAL PENALTIES.

Subdivision 1. **General violation.** Except as provided in subdivisions 2 and 3, a person is guilty of a misdemeanor if the person violates a provision of this chapter, chapter 18B, 18C, or 18F or a special order, standard, stipulation, agreement, or schedule of compliance of the commissioner.

Subd. 2. **Violation endangering humans.** A person is guilty of a gross misdemeanor if the person violates a provision of this chapter, chapter 18B, 18C, or 18F or a special order, standard, stipulation, agreement, or schedule of compliance of the commissioner, and the violation endangers humans.

Subd. 3. **Violation with knowledge.** A person is guilty of a gross misdemeanor if the person knowingly violates a provision of this chapter, chapter 18B, 18C, or 18F or a standard, special order, stipulation, agreement, or schedule of compliance of the commissioner.

Subd. 4. **Disposal that becomes hazardous waste.** A person who knowingly disposes of an agricultural chemical in violation of this chapter, chapter 18B or 18C, or a standard, special order, stipulation agreement, or schedule of compliance of the commissioner and the agricultural chemical is hazardous waste is subject to the penalties in section 609.671, subdivision 4.

History: 1989 c 326 art 7 s 14; 1991 c 250 s 25-27; 1991 c 347 art 3 s 1