

CHAPTER 115C

PETROLEUM TANK RELEASE CLEANUP

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115C.02. DEFINITIONS.

[For text of subds 1 to 11, see M.S.2000]

Subd. 11a. [Repealed, 1Sp2001 c 2 s 162]

[For text of subd 12, see M.S.2000]

Subd. 12a. [Repealed, 1Sp2001 c 2 s 162]

[For text of subds 13 to 15, see M.S.2000]

115C.07. PETROLEUM TANK RELEASE COMPENSATION BOARD.

[For text of subds 1 and 2, see M.S.2000]

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 rules requiring certification of environmental consultants.

(c) The board may adopt other rules necessary to implement this chapter.

History: 1Sp2001 c 2 s 129

115C.082 [Repealed, 1Sp2001 c 2 s 162]

115C.09. REIMBURSEMENT.

Subdivision 1. **Reimbursable costs.** (a) The board shall provide reimbursement to eligible applicants for reimbursable costs.

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

(1) corrective action costs incurred by the applicant and documented in a form prescribed by the board, except the costs related to the physical removal of a tank; and

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury, property damage; or corrective action costs incurred by a third party caused by a release where the responsible person's liability for the costs has been established by a court order or court-approved settlement.

(c) A cost for liability to a third party is incurred by the responsible person when an order or court-approved settlement is entered that sets forth the specific costs attributed to the liability. 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.

[For text of subd 2, see M.S.2000]

Subd. 2a. **Application for reimbursement.** (a) Applications for reimbursement may be submitted for consideration by the board at the following stages:

(1) after costs have been incurred, and the associated tasks completed, for excavation basin soil sampling, excavation of contaminated soil, treatment of contaminated soil, or remedial investigation tasks such as soil boring drilling, monitoring well installation, vapor risk assessment, and groundwater receptor survey; corrective action costs relating to the construction and installation of a comprehensive corrective action design system are not reimbursable at this stage; and

(2) after costs have been incurred, and the associated tasks completed, for tasks related to the construction and installation of a comprehensive corrective action design system, but only if the commissioner has approved a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary.

(b) An applicant shall not submit an application for reimbursement more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(c) The commissioner shall review a plan, and provide an approval or disapproval to the applicant 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 (2), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete initial application within 60 days of its submission, and shall consider a complete supplemental application within 120 days of its submission, or the board shall explain for the record why additional time is necessary. Board staff may review applications submitted to the board at the same time the commissioner considers the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(d) 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 an eligible applicant from the fund for 90 percent of the total reimbursable costs incurred at the site, except that the board may reimburse an eligible applicant from the fund for greater than 90 percent of the total reimbursable costs, if the applicant previously qualified for a higher reimbursement rate.

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 fund under this chapter until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund 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 applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the applicant.

(g) If the board reimburses an applicant for costs for which the applicant has insurance coverage, the board is subrogated to the rights of the applicant 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 an applicant of reimbursement constitutes an assignment by the applicant to the board of any rights of the applicant 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 applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the applicant was denied coverage by the insurer.

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

(i) The board may reduce the amount of reimbursement to be made under this chapter if it finds that the applicant has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

- (1) the agency was given notice of the release as required by section 115.061;
- (2) the applicant, to the extent possible, fully cooperated with the agency in responding to the release;
- (3) the state rules applicable after December 22, 1993, to operating an underground storage tank and appurtenances without leak detection;
- (4) the state rules applicable after December 22, 1998, to operating an underground storage tank and appurtenances without corrosion protection or spill and overfill protection; and
- (5) the state rule applicable after November 1, 1998, to operating an aboveground tank without a dike or other structure that would contain a spill at the aboveground tank site.

(j) The reimbursement may be reduced as much as 100 percent for failure by the applicant to comply with the requirements in paragraph (i), clauses (1) to (5). In determining the amount of the reimbursement reduction, the board shall consider:

- (1) the reasonable determination by the agency that the noncompliance poses a threat to the environment;
- (2) whether the noncompliance was negligent, knowing, or willful;
- (3) the deterrent effect of the award reduction on other tank owners and operators;
- (4) the amount of reimbursement reduction recommended by the commissioner; and
- (5) the documentation of noncompliance provided by the commissioner.

(k) An applicant 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 or consultant 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 applicant, the identity of the assignee, the dollar amount of the assignment, and the location of the corrective action. An assignment signed by the

applicant 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 applicant and to one or more assignees by a multiparty check. The board has no liability to an applicant for a payment under an assignment meeting the requirements of this paragraph.

[For text of subs 3a to 3e, see M.S.2000]

Subd. 3g. [Repealed, 1Sp2001 c 2 s 162]

Subd. 3h. **Reimbursement; aboveground tanks in bulk plants.** (a) As used in this subdivision, "bulk plant" means an aboveground or underground tank facility with a storage capacity of more than 1,100 gallons but less than 1,000,000 gallons that is used to dispense petroleum into cargo tanks for transportation and sale at another location.

(b) Notwithstanding any other provision in this chapter and any rules adopted pursuant to this chapter, the board shall reimburse 90 percent of an applicant's cost for bulk plant upgrades or closures completed between June 1, 1998, and November 1, 2003, to comply with Minnesota Rules, chapter 7151, provided that the board determines the costs were incurred and reasonable. The reimbursement may not exceed \$10,000 per bulk plant.

(c) For corrective action at a bulk plant located on what is or was railroad right-of-way, the board shall reimburse 90 percent of total reimbursable costs on the first \$40,000 of reimbursable costs and 100 percent of any remaining reimbursable costs when the applicant can document that more than one bulk plant was operated on the same section of right-of-way, as determined by the commissioner of commerce.

[For text of subs 4 to 10, see M.S.2000]

History: 1Sp2001 c 2 s 130-133

115C.091 [Repealed, 1Sp2001 c 2 s 162]

115C.092 [Repealed, 1995 c 240 art 1 s 12; 1Sp2001 c 2 s 162]

115C.093 CORRECTIVE ACTION PERFORMANCE AUDITS.

The board may contract for performance audits of corrective actions for which reimbursement is sought under section 115C.09, and may contract for audits of other corrective actions.

Money in the fund is appropriated to the board for the purposes of this section.

History: 1Sp2001 c 2 s 134

NOTE: See section 115C.13 for repealer.

115C.112 CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING ON AND AFTER MARCH 14, 1996.

The commissioner of commerce may by order deny a registration, censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this section and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

- (1) has engaged 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) has participated in a kickback scheme prohibited under section 115C.045;
- (3) has engaged in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;

(4) has committed fraud, embezzlement, theft, forgery, bribery, falsified or destroyed records, made false statements, received stolen property, made false claims, or obstructed justice;

(5) is the subject of an order revoking, suspending, restricting, limiting, or imposing other disciplinary action against the contractor's or consultant's license or certification in another state or jurisdiction;

(6) if the person is a consultant, has failed to comply with any of the ongoing obligations for registration as a consultant in section 115C.11, subdivision 1;

(7) has failed to comply with any provision or any rule or order under this chapter or chapter 45;

(8) has engaged in anticompetitive activity;

(9) has performed corrective action without having an accurate and complete registration on file with the board or has allowed another to perform corrective action when that party does not have a complete registration on file with the board;

(10) has been shown to be incompetent, untrustworthy, or financially irresponsible;

(11) has made or assisted another in making any material misrepresentation or omission to the board, commissioner, commissioner of commerce, or upon reasonable request has withheld or concealed information from, or refused to furnish information to, the board, commissioner, or commissioner of commerce; or

(12) has failed to reasonably supervise its employees or representatives to assure their compliance with this chapter and Minnesota Rules, chapter 2890.

History: *1Sp2001 c 2 s 135*

NOTE: See section 115C.13 for repealer.

115C.13 REPEALER.

Sections 115C.01, 115C.02, 115C.021, 115C.03, 115C.04, 115C.045, 115C.05, 115C.06, 115C.065, 115C.07, 115C.08, 115C.09, 115C.093, 115C.10, 115C.11, 115C.111, 115C.112, 115C.12, and 115C.13, are repealed effective June 30, 2005.

History: *1Sp2001 c 2 s 136*