

CHAPTER 115B

ENVIRONMENTAL RESPONSE AND LIABILITY

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115B.02 DEFINITIONS.

[For text of subd 1, see M.S.2002].

Subd. 1a. [Repealed, 2003 c 128 art 2 s 56]

[For text of subds 2 to 19, see M.S.2002].

115B.17 STATE RESPONSE TO RELEASES.

[For text of subds 1 to 5, see M.S.2002].

Subd. 6. **Recovery of expenses.** Any reasonable and necessary expenses incurred by the agency or commissioner pursuant to this section, including all response costs, and administrative and legal expenses, may be recovered in a civil action brought by the attorney general against any person who may be liable under section 115B.04 or any other law. The agency's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. Any expenses incurred pursuant to this section which are recovered by the attorney general pursuant to section 115B.04 or any other law, including any award of attorneys fees, shall be deposited in the remediation fund.

Subd. 7. **Actions relating to natural resources.** For the purpose of this subdivision, the state is the trustee of the air, water and wildlife of the state. An action pursuant to section 115B.04 for damages with respect to air, water or wildlife may be brought by the attorney general in the name of the state as trustee for those natural resources. Any damages recovered by the attorney general pursuant to section 115B.04 or any other law for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance, or a pollutant or contaminant, shall be deposited in the remediation fund.

[For text of subds 9 to 13, see M.S.2002].

Subd. 14. **Requests for review, investigation, and oversight.** (a) The commissioner may, upon request, assist a person in determining whether real property has been the site of a release or threatened release of a hazardous substance, pollutant, or contaminant. The commissioner may also assist in, or supervise, the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, and review and approval of a requester's investigation plans and reports and response action plans and implementation.

(b) Except as otherwise provided in this paragraph, the person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. A state agency, political subdivision, or other public entity is not required to pay for the agency's cost to review agency records and files. Money received by the agency for assistance under this section must be deposited in the remediation fund and is exempt from section 16A.1285.

(c) When a person investigates a release or threatened release in accordance with an investigation plan approved by the commissioner under this subdivision, the investigation does not associate that person with the release or threatened release for the purpose of section 115B.03, subdivision 3, clause (4).

[For text of subd 15, see M.S.2002]

Subd. 16. Disposition of property acquired for response action. (a) If the commissioner determines that real or personal property acquired by the agency for response action is no longer needed for response action purposes, the commissioner may:

(1) transfer the property to the commissioner of administration to be disposed of in the manner required for other surplus property subject to conditions the commissioner determines necessary to protect the public health and welfare or the environment, or to comply with federal law;

(2) transfer the property to another state agency, a political subdivision, or special purpose district as provided in paragraph (b); or

(3) if required by federal law, take actions and dispose of the property as required by federal law.

(b) If the commissioner determines that real or personal property acquired by the agency for response action must be operated, maintained, or monitored after completion of other phases of the response action, the commissioner may transfer ownership of the property to another state agency, a political subdivision, or special purpose district that agrees to accept the property. A state agency, political subdivision, or special purpose district is authorized to accept and implement the terms and conditions of a transfer under this paragraph. The commissioner may set terms and conditions for the transfer that the commissioner considers reasonable and necessary to ensure proper operation, maintenance, and monitoring of response actions, protect the public health and welfare and the environment, and comply with applicable federal and state laws and regulations. The state agency, political subdivision, or special purpose district to which the property is transferred is not liable under this chapter solely as a result of acquiring the property or acting in accordance with the terms and conditions of the transfer.

(c) If the agency acquires property under subdivision 15, the commissioner may lease or grant an easement in the property to a person during the implementation of response actions if the lease or easement is compatible with or necessary for response action implementation.

(d) The proceeds of a sale, lease, or other transfer of property under this subdivision by the commissioner or by the commissioner of administration shall be deposited in the remediation fund. Any share of the proceeds that the agency is required by federal law or regulation to reimburse to the federal government is appropriated from the account to the agency for that purpose. Except for section 94.16, subdivision 2, the provisions of section 94.16 do not apply to real property sold by the commissioner of administration which was acquired under subdivision 15.

[For text of subds 17 to 20, see M.S.2002]

History: 2003 c 128 art 2 s 7-10

115B.19 PURPOSE OF FUND.

In establishing the remediation fund in section 116.155 it is the purpose of the legislature to:

(1) encourage treatment and disposal of hazardous waste in a manner that adequately protects the public health or welfare or the environment;

(2) encourage responsible parties to provide the response actions necessary to protect the public and the environment from the effects of the release of hazardous substances;

(3) encourage the use of alternatives to land disposal of hazardous waste including resource recovery, recycling, neutralization, and reduction;

(4) provide state agencies with the financial resources needed to prepare and implement an effective and timely state response to the release of hazardous substances, including investigation, planning, removal and remedial action;

(5) compensate for increased governmental expenses and loss of revenue and to provide other appropriate assistance to mitigate any adverse impact on communities in which commercial hazardous waste processing or disposal facilities are located under the siting process provided in chapter 115A;

(6) recognize the environmental and public health costs of land disposal of solid waste and of the use and disposal of hazardous substances and to place the burden of financing state hazardous waste management activities on those whose products and services contribute to hazardous waste management problems and increase the risks of harm to the public and the environment.

History: 2003 c 128 art 2 s 11

115B.20 ACTIONS USING MONEY FROM REMEDIATION FUND.

Subdivision 1. [Repealed by amendment, 2003 c 128 art 2 s 12]

Subd. 2. **Purposes for which money may be spent.** Money appropriated from the remediation fund under section 116.155, subdivision 2, paragraph (a), clause (1), may be spent only for the following purposes:

(1) preparation by the agency and the commissioner of agriculture for taking removal or remedial action under section 115B.17, or under chapter 18D, including investigation, monitoring and testing activities, enforcement and compliance efforts relating to the release of hazardous substances, pollutants or contaminants under section 115B.17 or 115B.18, or chapter 18D;

(2) removal and remedial actions taken or authorized by the agency or the commissioner of the Pollution Control Agency under section 115B.17, or taken or authorized by the commissioner of agriculture under chapter 18D including related enforcement and compliance efforts under section 115B.17 or 115B.18, or chapter 18D, and payment of the state share of the cost of remedial action which may be carried out under a cooperative agreement with the federal government pursuant to the federal Superfund Act, under United States Code, title 42, section 9604(c)(3) for actions related to facilities other than commercial hazardous waste facilities located under the siting authority of chapter 115A;

(3) reimbursement to any private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency or the commissioner of agriculture and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance;

(4) assessment and recovery of natural resource damages by the agency and the commissioners of natural resources and administration, and planning and implementation by the commissioner of natural resources of the rehabilitation, restoration, or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance; before implementing a project to rehabilitate, restore, or acquire natural resources under this clause, the commissioner of natural resources shall provide written notice of the proposed project to the chairs of the senate and house of representatives committees with jurisdiction over environment and natural resources finance;

(5) acquisition of a property interest under section 115B.17, subdivision 15;

(6) reimbursement, in an amount to be determined by the agency in each case, to a political subdivision that is not a responsible person under section 115B.03, for reasonable and necessary expenditures resulting from an emergency caused by a release or threatened release of a hazardous substance, pollutant, or contaminant; and

(7) reimbursement to a political subdivision for expenditures in excess of the liability limit under section 115B.04, subdivision 4.

Subd. 3. **Limit on certain expenditures.** The commissioner of agriculture or the Pollution Control Agency or the agency may not spend any money under subdivision 2, clause (2), for removal or remedial actions to the extent that the costs of those actions may be compensated from any fund established under the Federal Superfund Act, United States Code, title 42, section 9600 et seq. The commissioner of agriculture or the Pollution Control Agency or the agency shall determine the extent to which any of the costs of those actions may be compensated under the federal act based on the likelihood that the compensation will be available in a timely fashion. In making this determination the commissioner of agriculture or the Pollution Control Agency or the agency shall take into account:

(1) the urgency of the removal or remedial actions and the priority assigned under the Federal Superfund Act to the release which necessitates those actions;

(2) the availability of money in the funds established under the Federal Superfund Act; and

(3) the consistency of any compensation for the cost of the proposed actions under the Federal Superfund Act with the national contingency plan, if such a plan has been adopted under that act.

Subd. 4. [Repealed by amendment, 2003 c 128 art 2 s 12]

Subd. 5. [Repealed by amendment, 2003 c 128 art 2 s 12]

Subd. 6. **Report to legislature.** Each year, the commissioner of agriculture and the agency shall submit to the senate Finance Committee, the house Ways and Means Committee, the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance, and the Environmental Quality Board a report detailing the activities for which money has been spent pursuant to this section during the previous fiscal year.

History: 2003 c 128 art 2 s 12

115B.21 [Repealed, 1993 c 172 s 93]

115B.22 Subdivision 1. [Repealed, 1993 c 172 s 93]

Subd. 1a. [Repealed, 1993 c 172 s 93]

Subd. 2. [Repealed, 1993 c 172 s 93]

Subd. 2a. [Repealed, 1993 c 172 s 93]

Subd. 3. [Repealed, 1993 c 172 s 93]

Subd. 3a. [Repealed, 1993 c 172 s 93]

Subd. 4. [Repealed, 1993 c 172 s 93]

Subd. 4a. [Repealed, 1993 c 172 s 93]

Subd. 5. [Repealed, 1993 c 172 s 93]

Subd. 6. [Repealed, 1993 c 172 s 93]

Subd. 7. [Repealed, 1993 c 172 s 93]

Subd. 8. [Repealed, 1993 c 172 s 93; 2001 c 7 s 91]

NOTE: Subdivision 7 was also amended by Laws 2003, chapter 128, article 2, section 13, to read as follows:

"Subd. 7. **Disposition of proceeds.** After reimbursement to the Department of Revenue for costs incurred in administering sections 115B.22 and 115B.24, the proceeds of the taxes imposed under this section including any interest and penalties shall be deposited in the environmental fund."

115B.23 [Repealed, 1993 c 172 s 93]

115B.24 [Repealed, 1993 c 172 s 93]

NOTE: Subdivision 8 was also amended by Laws 2003, chapter 127, article 7, section 1, to read as follows:

"Subd. 8. **Penalties; enforcement.** The audit, penalty and enforcement provisions applicable to corporate franchise taxes imposed under chapter 290 apply to the taxes imposed under section 115B.22 and those provisions shall be administered by the commissioner."

115B.25 DEFINITIONS.

[For text of subd 1, see M.S.2002]

Subd. 1a. **Fund.** Except when another fund or account is specified, "fund" means the remediation fund established in section 116.155.

[For text of subds 2 and 3, see M.S.2002]

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

[For text of subds 5 to 9, see M.S.2002]

History: 2003 c 128 art 2 s 14,15

115B.26 PAYMENT OF CLAIMS.

Subd. 2. **Appropriation.** The amount necessary to pay claims of compensation granted by the agency under sections 115B.25 to 115B.37 must be directly appropriated to the agency from the fund by the legislature. The agency shall submit claims for compensation to the legislature at the next legislative session.

Subd. 3. [Repealed by amendment, 2003 c 128 art 2 s 16]

Subd. 4. **Transfer request.** At the end of each fiscal year, the agency shall submit a request to the Petroleum Tank Release Compensation Board for transfer to the fund from the petroleum tank release cleanup fund under section 115C.08, subdivision 5, of an amount equal to the compensation granted by the agency for claims related to petroleum releases plus administrative costs related to determination of those claims.

History: 2003 c 128 art 2 s 16

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 fund 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).

Subd. 2. **Eligible property damage.** Damage to real property in Minnesota owned by the claimant is eligible for compensation from the fund if the damage results from the presence in or on the property of a harmful substance released from a facility where it was placed or came to be located. Damage to property is not eligible for compensation from the fund if it results from the release of a harmful substance for which the claimant is a responsible person.

Subd. 3. **Time for filing claim.** (a) A claim is not eligible for compensation from the fund unless it is filed with the agency within the time provided in this subdivision.

(b) A claim for compensation for personal injury must be filed within two years after the injury and its connection to exposure to a harmful substance was or reasonably should have been discovered.

(c) A claim for compensation for property damage must be filed within two years after the full amount of compensable losses can be determined.

(d) Notwithstanding the provisions of this subdivision, claims for compensation that would otherwise be barred by any statute of limitations provided in sections 115B.25 to 115B.37 may be filed not later than January 1, 1992.

History: 2003 c 128 art 2 s 17

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 fund 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 agency or its predecessor, the Harmful Substance Compensation Board, may not file another claim with the agency for the same eligible injury or damage, unless the claim was inactivated by the agency or board as provided in section 115B.32, subdivision 1.

(b) A person who has filed a claim with the agency or board for an eligible injury or damage, and who has received and accepted an award from the agency or 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 agency for personal injury or property damage must include all known claims eligible for compensation in one proceeding before the agency.

[For text of subd 2, see M.S.2002]

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 fund 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 fund. 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 fund during the time that a claim is pending before the agency. A person may not file a claim with the agency 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: 2003 c 128 art 2 s 18-20

115B.32 CLAIM FOR COMPENSATION.

Subdivision 1. **Form.** A claim for compensation from the fund must be filed with the agency in the form required by the agency. When a claim does not include all the

information required by subdivision 2 and applicable agency rules, the agency 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 agency 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 agency may decide not to inactivate a claim under this subdivision if it finds serious extenuating circumstances.

[For text of subds 2 and 3, see M.S.2002]

History: 2003 c 128 art 2 s 21

115B.33 DETERMINATION OF CLAIM.

Subdivision 1. **Standard for personal injury.** The agency 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 fund 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.2002]

History: 2003 c 128 art 2 s 22

115B.34 COMPENSABLE LOSSES.

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

- (1) medical expenses directly related to the claimant's injury;
- (2) up to two-thirds of the claimant's lost wages not to exceed \$2,000 per month or \$24,000 per year;
- (3) up to two-thirds of a self-employed claimant's lost income, not to exceed \$2,000 per month or \$24,000 per year;
- (4) death benefits to dependents which the agency shall define by rule subject to the following conditions:
 - (i) the rule adopted by the agency 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;
 - (ii) the total benefits paid to all dependents of a claimant must not exceed \$2,000 per month;
 - (iii) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;
 - (iv) payment of benefits is subject to the limitations of section 115B.36; and
- (5) 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 fund 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 agency 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 agency approval. The agency may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision.

History: 2003 c 128 art 2 s 23

115B.36 AMOUNT AND FORM OF PAYMENT.

If the agency 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 agency. The agency 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 fund may be awarded in a lump sum or in installments at the discretion of the agency.

History: 2003 c 128 art 2 s 24

115B.40 PROGRAM.

[For text of subs 1 to 3, see M.S.2002]

Subd. 4. **Qualified facility not under cleanup order; duties.** (a) The owner or operator of a qualified facility that is not subject to a cleanup order shall:

(1) complete closure activities at the facility, or enter into a binding agreement with the commissioner to do so, as provided in paragraph (e), within one year from the date the owner or operator is notified by the commissioner under subdivision 3 of the closure activities that are necessary to properly close the facility in compliance with facility's permit, closure orders, or enforcement agreement with the agency, and with the solid waste rules in effect at the time the facility stopped accepting waste;

(2) undertake or continue postclosure care at the facility until the date of notice of compliance under subdivision 7;

(3) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 any funds required for proof of financial responsibility under section 116.07, subdivision 4h, that remain after facility closure and any postclosure care and response action undertaken by the owner or operator at the facility including, if proof of financial responsibility is provided through a letter of credit or other financial instrument or mechanism that does not accumulate money in an account, the amount that would have accumulated had the owner or operator utilized a trust fund, less any amount used for closure, postclosure care, and response action at the facility; and

(4) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (2), transfer to the commissioner of revenue for deposit in the remediation fund established in section 116.155 an amount of cash that is equal to the sum of their approved current contingency action cost estimate and the present value of their approved estimated remaining postclosure care costs required for proof of financial responsibility under section 116.07, subdivision 4h.

(b) The owner or operator of a qualified facility that is not subject to a cleanup order shall:

(1) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), provide the commissioner with a copy of all applicable comprehensive general liability insurance policies and other liability policies relating to property damage, certificates, or other evidence of insurance coverage held during the life of the facility; and

(2) enter into a binding agreement with the commissioner to:

(i) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), take any actions necessary to preserve the owner or operator's rights to payment or defense under insurance policies included in clause (1); cooperate with the commissioner in asserting claims under the policies; and, within 60 days of a request by the commissioner, but no earlier than July 1, 1996, assign only those rights under the policies related to environmental response costs;

(ii) cooperate with the commissioner or other persons acting at the direction of the commissioner in taking additional environmental response actions necessary to address releases or threatened releases and to avoid any action that interferes with environmental response actions, including allowing entry to the property and to the facility's records and allowing entry and installation of equipment; and

(iii) refrain from developing or altering the use of property described in any permit for the facility except after consultation with the commissioner and in conformance with any conditions established by the commissioner for that property, including use restrictions, to protect public health and welfare and the environment.

(c) The owner or operator of a qualified facility defined in section 115B.39, subdivision 2, paragraph (1), clause (1), that is a political subdivision may use a portion of any funds established for response at the facility, which are available directly or through a financial instrument or other financial arrangement, for closure or postclosure care at the facility if funds available for closure or postclosure care are inadequate and shall assign the rights to any remainder to the commissioner.

(d) The agreement required in paragraph (b), clause (2), must be in writing and must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the commissioner that summarizes the agreement, with the county recorder or registrar of titles of the county where the property is located.

(e) A binding agreement entered into under paragraph (a), clause (1), may include a provision that the owner or operator will reimburse the commissioner for the costs of closing the facility to the standard required in that clause.

[For text of subds 5 to 8, see M.S.2002]

History: 2003 c 128 art 2 s 25

115B.41 ALLOCATION OF COSTS; FAILURE TO COMPLY.

Subdivision 1. **Allocation and recovery of costs.** (a) A person who is subject to the requirements in section 115B.40, subdivision 4 or 5, paragraph (b), is responsible for all environmental response costs incurred by the commissioner at or related to the facility until the date of notice of compliance under section 115B.40, subdivision 7. The commissioner may use any funds available for closure, postclosure care, and response action established by the owner or operator. If those funds are insufficient or if the owner or operator fails to assign rights to them to the commissioner, the commissioner may seek recovery of environmental response costs against the owner or operator in the county of Ramsey or in the county where the facility is located or where the owner or operator resides.

(b) In an action brought under this subdivision in which the commissioner prevails, the court shall award the commissioner reasonable attorney fees and other litigation expenses incurred by the commissioner to bring the action. All costs, fees, and expenses recovered under this subdivision must be deposited in the remediation fund established in section 116.155.

Subd. 2. **Environmental response costs; liens.** All environmental response costs, including administrative and legal expenses, incurred by the commissioner at a qualified facility before the date of notice of compliance under section 115B.40, subdivision 7, constitute a lien in favor of the state upon any real property located in the state, other than homestead property, owned by the owner or operator who is subject to the requirements of section 115B.40, subdivision 4 or 5. A lien under this subdivision attaches when the environmental response costs are first incurred and continues until the lien is satisfied or becomes unenforceable as for an environmental lien under section 514.672. Notice, filing, and release of the lien are governed by sections 514.671 to 514.676, except where those requirements specifically are related to only cleanup action expenses as defined in section 514.671. Relative priority of a lien under this subdivision is governed by section 514.672, except that a lien attached to property that was included in any permit for the solid waste disposal facility takes precedence over all other liens regardless of when the other liens were or are perfected. Amounts received to satisfy all or a part of a lien must be deposited in the remediation fund.

Subd. 3. **Local government aid; offset.** If an owner or operator fails to comply with section 115B.40, subdivision 4, or 5, paragraph (b), fails to remit payment of environmental response costs incurred by the commissioner before the date of notice of compliance under section 115B.40, subdivision 7, and is a local government unit, the commissioner may seek payment of the costs from any state aid payments, except payments made under section 115A.557, subdivision 1, otherwise due the local government unit. The commissioner of revenue, after being notified by the commissioner that the local government unit has failed to pay the costs and the amount due, shall pay an annual proportionate amount of the state aid payment otherwise payable to the local government unit into the remediation fund that will, over a period of no more than five years, satisfy the liability of the local government unit for the costs.

[For text of subs 4 and 5, see M.S.2002]

History: 2003 c 128 art 2 s 26-28

115B.42 SOLID WASTE FUND.

Subdivision 1. [Repealed, 2003 c 128 art 2 s 56]

Subd. 2. **Expenditures.** The commissioner may spend money from the remediation fund under section 116.155, subdivision 2, paragraph (a), clause (2), to:

- (1) inspect permitted mixed municipal solid waste disposal facilities to:
 - (i) evaluate the adequacy of final cover, slopes, vegetation, and erosion control;
 - (ii) determine the presence and concentration of hazardous substances, pollutants or contaminants, and decomposition gases; and
 - (iii) determine the boundaries of fill areas;

- (2) monitor and take, or reimburse others for, environmental response actions, including emergency response actions, at qualified facilities;
- (3) acquire and dispose of property under section 115B.412, subdivision 3;
- (4) recover costs under section 115B.39;
- (5) administer, including providing staff and administrative support for, sections 115B.39 to 115B.445;
- (6) enforce sections 115B.39 to 115B.445;
- (7) pay for private water supply well monitoring and health assessment costs of the commissioner of health in areas affected by unpermitted mixed municipal solid waste disposal facilities;
- (8) reimburse persons under section 115B.43;
- (9) reimburse mediation expenses up to a total of \$250,000 annually or defense costs up to a total of \$250,000 annually for third-party claims for response costs under state or federal law as provided in section 115B.414; and
- (10) perform environmental assessments, up to \$1,000,000, at unpermitted mixed municipal solid waste disposal facilities.

History: 2003 c 128 art 2 s 29

115B.421 CLOSED LANDFILL INVESTMENT FUND.

The closed landfill investment fund is established in the state treasury. The fund consists of money credited to the fund, and interest and other earnings on money in the fund. The commissioner of finance shall transfer an initial amount of \$5,100,000 from the balance in the solid waste fund beginning in fiscal year 2000 and shall continue to transfer \$5,100,000 for each following fiscal year, ceasing after 2003. Beginning July 1, 2003, funds must be deposited as described in section 115B.445. The fund shall be managed to maximize long-term gain through the State Board of Investment. Money in the fund may be spent by the commissioner after fiscal year 2020 in accordance with sections 115B.39 to 115B.444.

History: 2003 c 128 art 2 s 30

115B.445 DEPOSIT OF PROCEEDS.

All amounts paid to the state by an insurer pursuant to any settlement under section 115B.443 or judgment under section 115B.444 must be deposited in the state treasury and credited equally to the remediation fund and the closed landfill investment fund.

History: 2003 c 128 art 2 s 31

115B.48 DEFINITIONS.

[For text of subd 1, see M.S.2002]

Subd. 2. **Dry cleaner environmental response and reimbursement account; account.** "Dry cleaner environmental response and reimbursement account" or "account" means the dry cleaner environmental response and reimbursement account in the remediation fund established in sections 115B.49 and 116.155.

[For text of subds 3 to 8, see M.S.2002]

History: 2003 c 128 art 2 s 32

115B.49 DRY CLEANER ENVIRONMENTAL RESPONSE AND REIMBURSEMENT ACCOUNT.

Subdivision 1. **Establishment.** The dry cleaner environmental response and reimbursement account is established as an account in the remediation fund.

[For text of subd 2, see M.S.2002]

Subd. 3. **Expenditures.** (a) Money in the account may be used:

(1) for environmental response costs incurred by the commissioner under section 115B.50, subdivision 1;

(2) for reimbursement of amounts spent by the commissioner from the remediation fund for expenses described in clause (1);

(3) for reimbursements under section 115B.50, subdivision 2; and

(4) for administrative costs of the commissioner of revenue.

(b) Money in the account is appropriated to the commissioner for the purposes of this subdivision. The commissioner shall transfer funds to the commissioner of revenue sufficient to cover administrative costs pursuant to paragraph (a), clause (4).

[For text of subs 4 and 4a, see M.S.2002]

History: 2003 c 128 art 2 s 33,34