

CHAPTER 115C

PETROLEUM TANK RELEASE CLEANUP

115C.02	Definitions.	115C.094	Abandoned underground storage tanks.
115C.08	Petroleum tank fund.	115C.11	Consultants and contractors; sanctions.
115C.09	Reimbursement.		

115C.02 DEFINITIONS.

[For text of subs 1 to 13, see M.S.2002]

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, dispense, store, or transport petroleum.

"Tank" does not include 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.

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

History: 2003 c 128 art 1 s 130

115C.08 PETROLEUM TANK FUND.

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

Subd. 4. **Expenditures.** (a) Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in this chapter;

(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;

(6) for reimbursement of the environmental response, compensation, and compliance account under subdivision 5 and section 115B.26, subdivision 4;

(7) for administrative and staff costs as set by the board to administer the petroleum tank release program established in this chapter;

(8) for corrective action performance audits under section 115C.093;

(9) for contamination cleanup grants, as provided in paragraph (c); and

(10) to assess and remove abandoned underground storage tanks under section 115C.094 and, if a release is discovered, to pay for the specific consultant and contractor services costs necessary to complete the tank removal project, including, but not limited to, excavation soil sampling, groundwater sampling, soil disposal, and completion of an excavation report.

(b) Except as provided in paragraph (c), money in the fund is appropriated to the board to make reimbursements or payments under this section.

(c) \$6,200,000 is annually appropriated from the fund to the commissioner of employment and economic development for contamination cleanup grants under section 116J.554. Of this amount, the commissioner may spend up to \$180,000 annually for administration of the contamination cleanup grant program. The appropriation does not cancel and is available until expended. The appropriation shall not be

withdrawn from the fund nor the fund balance reduced until the funds are requested by the commissioner of employment and economic development. The commissioner shall schedule requests for withdrawals from the fund to minimize the necessity to impose the fee authorized by subdivision 2. Unless otherwise provided, the appropriation in this paragraph may be used for:

- (1) project costs at a qualifying site if a portion of the cleanup costs are attributable to petroleum contamination; and
- (2) the costs of performing contamination investigation if there is a reasonable basis to suspect the contamination is attributable to petroleum.

[For text of subd 5, see M.S.2002]

History: 2003 c 128 art 1 s 131; art 13 s 4; 1Sp2003 c 4 s 1

115C.09 REIMBURSEMENT.

[For text of subds 1 to 2a, see M.S.2002]

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. For costs associated with a release from a tank in transport, the board may reimburse 90 percent of costs over \$10,000, with the maximum reimbursement not to exceed \$100,000.

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 overflow 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 request that the board issue a multiparty check that includes each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. This request 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 lender, contractor, or consultant, the dollar amount, and the location of the corrective action. The applicant must submit a request for the issuance of a multiparty check for each application submitted to the board. Payment under this paragraph does not constitute the assignment of the applicant's right to reimbursement to the consultant, contractor, or lender. The board has no liability to an applicant for a payment issued as a multiparty check that meets the requirements of this paragraph.

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

Subd. 3i. Reimbursement; natural disaster area. (a) As used in this subdivision, "natural disaster area" means a geographical area that has been declared a disaster by the governor and President of the United States.

(b) Notwithstanding subdivision 3, paragraph (a), the board may reimburse:

- (1) up to 50 percent of an applicant's pre-natural-disaster estimated building market value as recorded by the county assessor; or

(2) if the applicant conveys title of the real estate to local or state government, up to 50 percent of the pre-natural-disaster estimated total market value, not to exceed one acre, as recorded by the county assessor.

(c) Paragraph (b) applies only if the applicant documents that:

(1) the natural disaster area has been declared eligible for state or federal emergency aid;

(2) the building is declared uninhabitable by the commissioner because of damage caused by the release of petroleum from a petroleum storage tank; and

(3) the applicant has submitted a claim under any applicable insurance policies and has been denied benefits under those policies.

(d) In determining the percentage for reimbursement, the board shall consider the applicant's eligibility to receive other state or federal financial assistance and determine a lesser reimbursement rate to the extent that the applicant is eligible to receive financial assistance that exceeds 50 percent of the applicant's pre-natural-disaster estimated building market value or total market value.

Subd. 3j. **Retail locations and transport vehicles.** (a) As used in this subdivision, "retail location" means a facility located in the metropolitan area as defined in section 473.121, subdivision 2, where gasoline is offered for sale to the general public for use in automobiles and trucks. "Transport vehicle" means a liquid fuel cargo tank used to deliver gasoline into underground storage tanks during 2002 at a retail location.

(b) Notwithstanding any other provision in this chapter, and any rules adopted under this chapter, the board shall reimburse 90 percent of an applicant's cost for retrofits of retail locations and transport vehicles completed between January 1, 2001, and January 1, 2006, to comply with section 116.49, subdivisions 3 and 4, provided that the board determines the costs were incurred and reasonable. The reimbursement may not exceed \$3,000 per retail location and \$3,000 per transport vehicle.

[For text of subds 4 to 10, see M.S.2002]

History: 2003 c 128 art 1 s 132-134

115C.094 ABANDONED UNDERGROUND STORAGE TANKS.

(a) As used in this section, an abandoned underground petroleum storage tank means an underground petroleum storage tank that was:

(1) taken out of service prior to December 22, 1988; or

(2) taken out of service on or after December 22, 1988, if the current property owner did not know of the existence of the underground petroleum storage tank and could not have reasonably been expected to have known of the tank's existence at the time the owner first acquired right, title, or interest in the tank.

(b) The board may contract for:

(1) a statewide assessment in order to determine the quantity, location, cost, and feasibility of removing abandoned underground petroleum storage tanks;

(2) the removal of an abandoned underground petroleum storage tank; and

(3) the removal and disposal of petroleum-contaminated soil if the removal is required by the commissioner at the time of tank removal.

(c) Before the board may contract for removal of an abandoned petroleum storage tank, the tank owner must provide the board with written access to the property and release the board from any potential liability for the work performed.

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

History: 2003 c 128 art 1 s 135

115C.11 CONSULTANTS AND CONTRACTORS; SANCTIONS.

Subdivision 1. **Registration.** (a) All consultants and contractors who perform corrective action services must register with the board. In order to register, consultants must meet and demonstrate compliance with the following criteria:

(1) provide a signed statement to the board verifying agreement to abide by this chapter and the rules adopted under it and to include a signed statement with each claim that all costs claimed by the consultant are a true and accurate account of services performed;

(2) provide a signed statement that the consultant shall make available for inspection any records requested by the board for field or financial audits under the scope of this chapter;

(3) certify knowledge of the requirements of this chapter and the rules adopted under it;

(4) obtain and maintain professional liability coverage, including pollution impairment liability; and

(5) agree to submit to the board a certificate or certificates verifying the existence of the required insurance coverage.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors.

(c) All corrective action services must be performed by registered consultants and contractors.

(d) Reimbursement for corrective action services performed by an unregistered consultant or contractor is subject to reduction under section 115C.09, subdivision 3, paragraph (i).

(e) Corrective action services performed by a consultant or contractor prior to being removed from the registration list may be reimbursed without reduction by the board.

(f) If the information in an application for registration becomes inaccurate or incomplete in any material respect, the registered consultant or contractor must promptly file a corrected application with the board.

(g) Registration is effective 30 days after a complete application is received by the board. The board may reimburse without reduction the cost of work performed by an unregistered contractor if the contractor performed the work within 60 days of the effective date of registration.

(h) Registration for consultants under this section remains in force until the expiration date of the professional liability coverage, including pollution impairment liability, required under paragraph (a), clause (4), or until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. Registration for contractors under this section expires each year on the anniversary of the effective date of the contractor's most recent registration and must be renewed on or before expiration. Prior to its annual expiration, a registration remains in force until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. All registrants must comply with registration criteria under this section.

(i) The board may deny a consultant or contractor registration or request for renewal under this section if the consultant or contractor:

(1) does not intend to or is not in good faith carrying on the business of an environmental consultant or contractor;

(2) has filed an application for registration that is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, contains any misrepresentation, or is false, misleading, or fraudulent;

(3) has engaged in any fraudulent, coercive, deceptive, or dishonest act or practice whether or not the act or practice involves the business of environmental consulting or contracting;

(4) has forged another's name to any document whether or not the document relates to a document approved by the board;

(5) has been convicted, whether by pleading guilty, with or without admitting guilt, or pleading nolo contendere, of any of the following offenses: any felony; any gross misdemeanor; or a misdemeanor involving: (i) assault; (ii) harassment; (iii) moral turpitude; or (iv) conduct similar to items (i) to (iii);

(6) has been subject to disciplinary action in another state or jurisdiction; or

(7) has not paid subcontractors hired by the consultant or contractor after they have been paid in full by the applicant.

History: 2003 c 128 art 1 s 136; 1Sp2003 c 23 s 3

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.094, 115C.10, 115C.11, 115C.111, 115C.112, 115C.113, 115C.12, and 115C.13, are repealed effective June 30, 2007.

History: 2003 c 128 art 1 s 137