

CHAPTER 115B

ENVIRONMENTAL RESPONSE AND LIABILITY

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ENVIRONMENTAL RESPONSE AND LIABILITY ACT

115B.01 CITATION.

Sections 115B.01 to 115B.20 may be cited as the Environmental Response and Liability Act.

History: 1983 c 121 s 1; 2004 c 228 art 1 s 73

115B.02 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 115B.01 to 115B.20, the following terms have the meanings given them.

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 [Repealed, 2003 c 128 art 2 s 56]

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Subd. 2. **Act of God.** “Act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Subd. 3. **Agency.** “Agency” means the commissioner of agriculture for actions, duties, or authorities relating to agricultural chemicals, or for other substances, the Pollution Control Agency.

Subd. 3a. **Agricultural chemical.** “Agricultural chemical” has the meaning given in section 18D.01, subdivision 3.

Subd. 4. **Commissioner.** “Commissioner” means the commissioner of agriculture for actions, duties, or authorities related to agricultural chemicals or the commissioner of the Pollution Control Agency for other substances.

Subd. 5. **Facility.** “Facility” means:

(1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;

(2) any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or

(3) any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

Facility does not include any consumer product in consumer use.

Subd. 6. **Federal Superfund Act.** “Federal Superfund Act” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, United States Code, title 42, section 9601 et seq.

Subd. 7. [Renumbered subd 1a]

Subd. 8. **Hazardous substance.** “Hazardous substance” means:

(1) any commercial chemical designated pursuant to the Federal Water Pollution Control Act, under United States Code, title 33, section 1321(b)(2)(A);

(2) any hazardous air pollutant listed pursuant to the Clean Air Act, under United States Code, title 42, section 7412; and

(3) any hazardous waste.

Hazardous substance does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas, nor does it include petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.

Subd. 9. **Hazardous waste.** “Hazardous waste” means:

(1) any hazardous waste as defined in section 116.06, subdivision 11, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07; and

(2) any hazardous waste as defined in the Resource Conservation and Recovery Act, under United States Code, title 42, section 6903, which is listed or has the characteristics identified under United States Code, title 42, section 6921, not including any hazardous waste the regulation of which has been suspended by act of Congress.

Subd. 9a. **Institutional controls.** “Institutional controls” means legally enforceable restrictions, conditions, or controls on the use of real property, groundwater, or surface water located at or adjacent to a facility where response actions are taken that are reasonably required to assure that the response actions are protective of public health or welfare or the environment. Institutional controls include restrictions, conditions, or controls enforceable by contract, easement, restrictive covenant, statute, ordinance, or rule, including official controls such as zoning, building codes, and official maps. An affidavit required under section 115B.16, subdivision 2, or similar notice of a release recorded with real property records is also an institutional control.

Subd. 10. **Natural resources.** “Natural resources” has the meaning given it in section 116B.02, subdivision 4.

Subd. 11. **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; provided that:

(1) a lessor of real property under a lease which in substance is a financing device and is treated as such under the United States Internal Revenue Code, common law, or statute, is not an owner of the real property;

(2) a public utility holding a public utility easement is an owner of the real property described in the easement only for the purpose of carrying out the specific use for which the easement was granted;

(3) any person holding a remainder or other nonpossessory interest or estate in real property is an owner of the real property beginning when that person's interest or estate in the real property vests in possession or that person obtains the unconditioned right to possession, or to control the use of, the real property; and

(4) the state or an agency of the state is not an owner of real property solely because it holds title to the property in trust for taxing districts as a result of forfeiture of title for non-payment of taxes.

Subd. 12. **Person.** "Person" means any individual, partnership, association, public or private corporation or other entity including the United States government, any interstate body, the state and any agency, department or political subdivision of the state.

Subd. 13. **Pollutant or contaminant.** "Pollutant or contaminant" means any element, substance, compound, mixture, or agent, other than a hazardous substance, which after release from a facility and upon exposure of, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in the organisms or their offspring.

Pollutant or contaminant does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of such synthetic gas and natural gas.

Subd. 14. **Public utility easement.** "Public utility easement" means an easement used for the purposes of transmission, distribution, or furnishing, at wholesale or retail, natural or manufactured gas, or electric or telephone service, by a public utility as defined in section 216B.02, subdivision 4, a cooperative electric association organized under the provisions of chapter 308A, a telephone company as defined in section 237.01, subdivisions 3 and 7, or a municipality producing or furnishing gas, electric, or telephone service.

Subd. 15. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

Release does not include:

(1) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;

(2) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title 42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal Nuclear Regulatory Commission under United States Code, title 42, section 2210;

(3) release of source, by-product or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978; under United States Code, title 42, section 7912(a)(1) or 7942(a); or

(4) any release resulting from the application of fertilizer or agricultural or silvicultural chemicals, or disposal of emptied pesticide containers or residues from a pesticide as defined in section 18B.01, subdivision 18.

Subd. 16. **Remedy or remedial action.** (a) “Remedy” or “remedial action” means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, or a pollutant or contaminant, into the environment, to prevent, minimize or eliminate the release in order to protect the public health or welfare or the environment.

(b) Remedy or remedial action includes, but is not limited to:

(1) actions at the location of the release such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants or contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring and maintenance, and institutional controls reasonably required to assure that these actions protect the public health and welfare and the environment; and

(2) the costs of permanent relocation of residents and businesses and community facilities when the agency determines that, alone or in combination with other measures, relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous substances, or pollutants or contaminants, or may otherwise be necessary to protect the public health or welfare.

(c) Remedy or remedial action does not include offsite transport of hazardous substances, pollutants or contaminants, or contaminated materials or their storage, treatment, destruction, or secure disposition offsite unless the agency determines that these actions:

(1) are more cost-effective than other remedial actions;

(2) will create new capacity to manage hazardous substances in addition to those located at the affected facility, in compliance with section 116.07 and subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq.; or

(3) are necessary to protect the public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of the hazardous substances, pollutants or contaminants, or contaminated materials.

Subd. 17. **Remove or removal.** “Remove” or “removal” means:

(1) the cleanup or removal of a released hazardous substance, or a pollutant or contaminant, from the environment;

(2) necessary actions taken in the event of a threatened release of a hazardous substance, or a pollutant or contaminant, into the environment;

(3) actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance, or a pollutant or contaminant;

(4) disposal or processing of removed material; or

(5) other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threatened release.

Remove or removal includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken pursuant to the Federal Superfund Act, under United States Code, title 42, section 9604(b), and any emergency assistance which may be provided under the Disaster Relief Act of 1974, United States Code, title 42, section 5121 et seq.

Subd. 18. **Respond or response.** “Respond” or “response” means remove, removal, remedy, and remedial action.

Subd. 19. **Water.** “Water” has the meaning given to the term “waters of the state” in section 115.01, subdivision 22.

History: 1983 c 121 s 2; 1987 c 186 s 15; 1989 c 209 art 2 s 1; 1989 c 335 art 4 s 106; 1989 c 356 s 7; 1990 c 586 s 1; 1990 c 597 s 52-54; 1997 c 216 s 99,100

115B.03 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** For the purposes of sections 115B.01 to 115B.20, and except as provided in subdivisions 2 and 3, a person is responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, from a facility if the person:

(1) owned or operated the facility:

(i) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility;

(ii) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or

(iii) during the time of the release or threatened release;

(2) owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or

(3) knew or reasonably should have known that waste the person accepted for transport to a disposal or treatment facility contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

Subd. 2. **Employees and employers.** When a person who is responsible for a release or threatened release as provided in subdivision 1 is an employee who is acting in the scope of employment:

(1) The employee is subject to liability under section 115B.04 or 115B.05 only if the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew that the substance was hazardous and that the conduct, if negligent, could result in serious harm.

(2) The person's employer shall be considered a person responsible for the release or threatened release and is subject to liability under section 115B.04 or 115B.05 regardless of the degree of care exercised by the employee.

Subd. 3. **Owner of real property.** An owner of real property is not a person responsible for the release or threatened release of a hazardous substance from a facility in or on the property unless that person:

(1) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;

(2) knowingly permitted any person to make regular use of the facility for disposal of waste;

(3) knowingly permitted any person to use the facility for disposal of a hazardous substance;

(4) knew or reasonably should have known that a hazardous substance was located in or on the facility at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the release; or

(5) took action which significantly contributed to the release after that person knew or reasonably should have known that a hazardous substance was located in or on the facility.

For the purpose of clause (4), a written warranty, representation, or undertaking, which is set forth in an instrument conveying any right, title or interest in the real property and which is executed by the person conveying the right, title or interest, or which is set forth in any memorandum of any such instrument executed for the purpose of recording, is admissible as evidence of whether the person acquiring any right, title, or interest in the real property knew or reasonably should have known that a hazardous substance was located in or on the facility.

Any liability which accrues to an owner of real property under sections 115B.01 to 115B.15 does not accrue to any other person who is not an owner of the real property merely because the other person holds some right, title, or interest in the real property.

An owner of real property on which a public utility easement is located is not a responsible person with respect to any release caused by any act or omission of the public utility which holds the easement in carrying out the specific use for which the easement was granted.

Subd. 4. Tax–forfeited land. (a) The state, an agency of the state, or a political subdivision that may be considered an owner of tax–forfeited real property is not a person responsible for a release or threatened release from a facility in or on the property under subdivision 3, clause (4).

(b) The state, an agency of the state, or a political subdivision is not an operator of a facility in or on tax–forfeited land solely as a result of actions taken to manage, sell, or transfer the land in accordance with chapter 282 and other laws applicable to tax–forfeited land.

(c) Nothing in this subdivision relieves the state, a state agency, or a political subdivision from liability for causing or significantly contributing to the release of a hazardous substance from a facility in or on the land.

Subd. 5. Eminent domain. (a) The state, an agency of the state, or a political subdivision is not a responsible person under this section solely as a result of the acquisition of property, or as a result of providing funds for the acquisition of such property either through loan or grant, if the property was acquired by the state, an agency of the state, or a political subdivision (1) through exercise of the power of eminent domain, (2) through negotiated purchase in lieu of, or after filing a petition for the taking of the property through eminent domain, (3) after adopting a redevelopment or development plan under sections 469.001 to 469.134 describing the property and stating its intended use and the necessity of its taking, (4) after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking, or (5) through the use of a loan to purchase right–of–way in the seven–county metropolitan area under section 473.167.

(b) A person who acquires property from the state, an agency of the state, or a political subdivision, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the state, agency, or political subdivision through exercise of the power of eminent domain or by negotiated purchase after filing a petition for the taking of the property through eminent domain, after adopting a redevelopment or development plan under sections 469.001 to 469.134 describing the property and stating its intended use and the necessity of its taking, or after adopting a layout plan for highway development under sections 161.15 to 161.241 describing the property and stating its intended use and the necessity of its taking.

Subd. 6. Mortgages. (a) A mortgagee is not a responsible person under this section solely because the mortgagee becomes an owner of real property through foreclosure of the mortgage or by receipt of the deed to the mortgaged property in lieu of foreclosure.

(b) A mortgagee of real property where a facility is located or a holder of a security interest in facility assets or inventory is not an operator of the facility for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the facility to protect its security interest in the real property or assets.

Subd. 7. Contract for deed vendors. A contract for deed vendor who is otherwise not a responsible party for a release or a threatened release of a hazardous substance from a facility is not a responsible person under this section solely as a result of a termination of the contract for deed under section 559.21.

Subd. 8. Trustees. A trustee who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this section solely because the facility is among the trust assets or solely because the trustee has the capacity to direct the operation of the facility.

Subd. 9. Personal representatives of estates. A personal representative, guardian, or conservator of an estate who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person under this section

solely because the facility is among the assets of the estate or solely because the personal representative, guardian, or conservator has the capacity to direct the operation of the facility.

Subd. 10. Contractor. (a) For the purposes of this subdivision, "contractor" means a person who is not otherwise responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, and who, under contract with another person:

(1) performs response actions, including investigative, removal, or remedial actions to address the release or threatened release pursuant to a plan approved by the commissioner; or

(2) performs development actions at the site of the release or threatened release, such as site preparation, engineering, construction, and similar actions with respect to which the commissioner approves a contingency plan or other conditions which the commissioner deems necessary to protect public health or welfare or the environment.

(b) A contractor is not a responsible person for a release or threatened release solely as the result of performing response actions to address that release or threatened release if the contractor performs the response actions in accordance with a plan approved by the commissioner.

(c) A contractor who performs development actions, such as site preparation, engineering, construction, or similar actions, at the site of a release or threatened release is not responsible for the release or threatened release solely as a result of performing the development actions if the contractor complies with a contingency plan or other conditions approved by the commissioner. The contractor must obtain approval from the commissioner for the contingency plan or other conditions:

(1) for a site with a known release or threatened release, before the contractor commences the development actions; or

(2) for a site with a release or threatened release discovered during the contractor's performance of the development actions, before the contractor performs further development actions at the site after discovery of the release or threatened release.

(d) This subdivision shall not apply to a contractor who causes or contributes to a release or threatened release by an act or omission that is negligent, grossly negligent, or that constitutes intentional misconduct.

History: 1983 c 121 s 3; 1986 c 444; 1990 c 586 s 2; 1991 c 223 s 1-3; 1991 c 347 art 2 s 1,2; 1995 c 168 s 1,2; 1996 c 359 s 1; 1997 c 200 art 2 s 1; 1998 c 341 s 1

115B.04 LIABILITY FOR RESPONSE COSTS AND NATURAL RESOURCES; LIMITATIONS AND DEFENSES.

Subdivision 1. Liability. Except as otherwise provided in subdivisions 2 to 12, and notwithstanding any other provision or rule of law, any person who is responsible for a release or threatened release of a hazardous substance from a facility is strictly liable, jointly and severally, for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(1) all reasonable and necessary response costs incurred by the state, a political subdivision of the state or the United States;

(2) all reasonable and necessary removal costs incurred by any person; and

(3) all damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss.

Subd. 2. Liability for pollutant or contaminant excluded. There is no liability under this section for response costs or damages which result from the release of a pollutant or contaminant.

Subd. 3. Liability for a threatened release. Liability under this section for a threatened release of a hazardous substance is limited to the recovery by the agency of reasonable and necessary response costs as provided in section 115B.17, subdivision 6.

Subd. 4. Liability of political subdivisions. (a) The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1, except

when the political subdivision is liable under this section as the owner or operator of a disposal facility as defined in section 115A.03, subdivision 10.

(b) When a political subdivision is liable as an owner or operator of a disposal facility, the liability of each political subdivision is limited to \$400,000 at each facility unless the facility was owned or operated under a valid joint powers agreement by three or more political subdivisions, in which case the aggregate liability of all political subdivisions that are parties to the joint powers agreement is limited to \$1,200,000.

(c) The limits on the liability of a political subdivision for ownership or operation of a disposal facility apply to the costs of response action incurred between the date a request for response action is issued by the agency and the date one year after the construction certificate of completion is approved by the commissioner, excluding the costs of negotiation of a consent order agreement.

(d) When a political subdivision takes response action as the owner or operator of a disposal facility between the dates in paragraph (c), it may receive, after approval by the agency, reimbursement of any amount spent pursuant to an approved work plan that exceeds the applicable liability limit specified in this subdivision.

Subd. 4a. Claims by mixed municipal solid waste disposal facilities. (a) Except as provided in paragraph (b), liability under this section for claims by owners or operators of mixed municipal solid waste disposal facilities that accept waste on or after April 9, 1994, and are not qualified facilities under section 115B.39, subdivision 2, is limited to liability for response costs exceeding the amount of available financial assurance funds required under section 116.07, subdivision 4h.

(b) This subdivision does not affect liability under this section for claims based on the illegal disposal of waste at a facility.

Subd. 5. Transportation of household refuse. A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. Defense to certain claims by political subdivisions and private persons. It is a defense to a claim by a political subdivision or private person for recovery of the costs of its response actions under this section that the hazardous substance released from the facility was placed or came to be located in or on the facility before April 1, 1982, and that the response actions of the political subdivision or private person were not authorized by the agency as provided in section 115B.17, subdivision 12. This defense applies only to response costs incurred on or after July 1, 1983.

Subd. 7. Defense for intervening acts. It is a defense to liability under this section that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act of vandalism or sabotage; or
- (4) an act or omission of a third party or the plaintiff.

“Third party” for the purposes of clause (4) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (3) and (4) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 8. **Intervening acts of public agencies.** When the agency or the federal Environmental Protection Agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 9. **Releases subject to certain permits or standards; federal postclosure fund.** It is a defense to liability under this section that:

(1) the release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(2) the hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(3) the release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(4) the release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(5) the release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(6) liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 10. **Natural resources.** It is a defense to liability under this section, for any injury to, destruction of, or loss of natural resources that:

(1) the natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement, or other comparable approved final environmental analysis for a project or facility which was the subject of a governmental permit or license; and

(2) the project or facility was being operated within the terms of its permit or license.

Subd. 11. **Rendering assistance in response actions.** It is a defense to liability under this section that the response costs or damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the commissioner or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the Federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 12. **Burden of proof for defenses.** Any person claiming a defense provided in subdivisions 6 to 11 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: 1983 c 121 s 4; 1986 c 444; 1987 c 186 s 15; 1989 c 325 s 29; 1991 c 337 s 53; 1994 c 639 art 1 s 1

115B.05 LIABILITY FOR ECONOMIC LOSS, DEATH, PERSONAL INJURY AND DISEASE; LIMITATIONS AND DEFENSES.

Subdivision 1. **Liability.** Except as otherwise provided in subdivisions 2 to 10, and notwithstanding any other provision or rule of law, any person who is responsible for the release of a hazardous substance from a facility is strictly liable for the following damages which result from the release or to which the release significantly contributes:

(1) all damages for actual economic loss including:

(i) any injury to, destruction of, or loss of any real or personal property, including re-location costs;

(ii) any loss of use of real or personal property;

(iii) any loss of past or future income or profits resulting from injury to, destruction of, or loss of real or personal property without regard to the ownership of the property; and

(2) all damages for death, personal injury, or disease including:

(i) any medical expenses, rehabilitation costs or burial expenses;

(ii) any loss of past or future income, or loss of earning capacity; and

(iii) damages for pain and suffering, including physical impairment.

Subd. 2. Liability for pollutant or contaminant excluded. There is no liability under this section for damages which result from the release of a pollutant or contaminant.

Subd. 3. Certain employee claims not covered. Except for a third party who is subject to liability under section 176.061, subdivision 5, there is no liability under this section for the death, personal injury or disease of an employee which is compensable under chapter 176 as an injury or disease arising out of and in the course of employment.

Subd. 4. Liability limitations. The liability of a political subdivision under this section is subject to the limits imposed under section 466.04, subdivision 1.

Subd. 5. Transportation of household refuse. A person who accepts only household refuse for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the refuse. For the purpose of this subdivision, household refuse means garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants and other similar facilities.

Subd. 6. Defense for intervening acts. It is a defense to liability under this section that the release or threatened release was caused solely by:

(1) an act of God;

(2) an act of war;

(3) an act of vandalism or sabotage; or

(4) an act or omission of a third party or the plaintiff.

“Third party” for the purposes of clause (4) does not include an employee or agent of the defendant, or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in clauses (3) and (4) apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

Subd. 7. Intervening acts of public agencies. When the agency or the federal Environmental Protection Agency assumes control over any release or threatened release of a hazardous substance by taking removal actions at the site of the release, the persons responsible for the release are not liable under sections 115B.01 to 115B.15 for any subsequent release of the hazardous substance from another facility to which it has been removed.

Subd. 8. Releases subject to certain permits or standards; federal postclosure fund. It is a defense to liability under this section that:

(1) the release or threatened release was from a hazardous waste facility as defined under section 115A.03, for which a permit had been issued pursuant to section 116.07 or pursuant to subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq., the hazardous substance was specifically identified in the permit, and the release was within the limits allowed in the permit for release of that substance;

(2) the hazardous substance released was specifically identified in a federal or state permit and the release is within the limits allowed in the permit;

(3) the release resulted from circumstances identified and reviewed and made a part of the public record of a federal or state agency with respect to a permit issued or modified under federal or state law, and the release conformed with the permit;

(4) the release was any part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or state permit and was in compliance with control rules or regulations adopted pursuant to state or federal law;

(5) the release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under state and federal law; or

(6) liability has been assumed by the federal postclosure liability fund under United States Code, title 42, section 9607(k).

Subd. 9. Rendering assistance in response actions. It is a defense to liability under this section that the damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the commissioner or agency pursuant to section 115B.17 or in accordance with the national hazardous substance response plan pursuant to the Federal Superfund Act, under United States Code, title 42, section 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.

Subd. 10. Burden of proof for defenses. Any person claiming a defense provided in subdivisions 6 to 9 has the burden to prove all elements of the defense by a preponderance of the evidence.

History: 1983 c 121 s 5; 1Sp1985 c 8 s 1; 1986 c 444; 1987 c 186 s 15

115B.055 EFFECT OF REMOVING AND REPEALING CERTAIN PROVISIONS.

Subdivision 1. Joint and several liability for personal injury. The enactment of Laws 1983, chapter 121, section 5, relating to joint and several liability, and the subsequent amendment of section 115B.05 as provided in this act, shall not be construed in any way as a determination of legislative intent regarding the applicability of joint and several liability in any action brought under section 115B.05. The determination of whether joint and several liability applies in any action brought under section 115B.05 shall be based solely on applicable statutory and common law.

Subd. 2. Causation of personal injury. In any action brought under section 115B.05, or under any other law, to recover damages for death, personal injury, or disease arising out of the release of a hazardous substance, the enactment of Laws 1983, chapter 121, section 7, and subsequent repeal of section 115B.07 under this act, relating to proof of causation, shall not be construed in any way as a determination of legislative intent regarding the legal principles applicable to the proof of the causal connection between the release and the death, injury, or disease. The legal principles applicable to the proof of causation shall be determined solely on the basis of applicable statutory and common law.

History: 1Sp1985 c 8 s 17

115B.06 APPLICATION TO PAST ACTIONS.

Subdivision 1. Application of section 115B.05. Section 115B.05 does not apply to any claim for damages arising out of the release of a hazardous substance which was placed or came to be located in or on the facility wholly before July 1, 1983.

Subd. 2. [Repealed, 1Sp1985 c 8 s 19]

History: 1983 c 121 s 6; 1Sp1985 c 8 s 2

115B.07 [Repealed, 1Sp1985 c 8 s 19]

115B.08 LIABILITY UNDER SECTION 115B.04; APPORTIONMENT AND CONTRIBUTION.

Subdivision 1. **Right of apportionment; factors.** Any person held jointly and severally liable under section 115B.04 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each defendant to show how that defendant's liability should be apportioned. The court shall reduce the amount of damages in proportion to any amount of liability apportioned to the party recovering.

In apportioning the liability of any party under this section, the trier of fact shall consider the following:

- (1) the extent to which that party's contribution to the release of a hazardous substance can be distinguished;
- (2) the amount of hazardous substance involved;
- (3) the degree of toxicity of the hazardous substance involved;
- (4) the degree of involvement of and care exercised by the party in manufacturing, treating, transporting, and disposing of the hazardous substance;
- (5) the degree of cooperation by the party with federal, state, or local officials to prevent any harm to the public health or the environment; and
- (6) knowledge by the party of the hazardous nature of the substance.

Subd. 2. **Contribution.** If a person is held jointly and severally liable under section 115B.04 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.

History: 1983 c 121 s 8; 1986 c 444

115B.09 LIABILITY UNDER SECTION 115B.05; COMPARATIVE FAULT AND CONTRIBUTION.

The provisions of sections 604.01 and 604.02, subdivisions 1 and 2, apply to any action for damages under section 115B.05.

History: 1983 c 121 s 9; 1Sp1985 c 8 s 3

115B.10 NO AVOIDANCE OF LIABILITY; INSURANCE AND SUBROGATION.

An owner or operator of a facility or any other person who may be liable under sections 115B.01 to 115B.15 may not avoid that liability by means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement. Nothing in this section shall be construed:

- (1) to prohibit any party who may be liable under sections 115B.01 to 115B.15 from entering an agreement by which that party is insured, held harmless or indemnified for part or all of that liability;
- (2) to prohibit the enforcement of any insurance, hold harmless or indemnification agreement; or
- (3) to bar any cause of action brought by a party who may be liable under sections 115B.01 to 115B.15 or by an insurer or guarantor, whether by right of subrogation or otherwise.

History: 1983 c 121 s 10

115B.11 STATUTE OF LIMITATIONS.

Subdivision 1. **Construction.** For the purposes of this section, "construction" means actions taken after the selection of remedial action such as excavation, building of structures, installation of equipment or fixtures, and other physical actions to respond to a release or threatened release.

Subd. 2. **Action for recovery of costs.** (a) An action for recovery of response costs under section 115B.04, including recovery of costs and expenses under section 115B.17, subdi-

vision 6, may be commenced any time after costs and expenses have been incurred but must be commenced no later than six years after initiation of physical on-site construction of a response action.

(b) A party prevailing in an action commenced within the time required under paragraph (a) shall be entitled to a declaratory judgment of liability for all future reasonable and necessary costs incurred by that party to respond to the release or threatened release, including costs and expenses under section 115B.17, subdivision 6.

Subd. 3. Action for damages. No person may recover damages pursuant to sections 115B.01 to 115B.15 unless the action is commenced within six years from the date when the cause of action accrues. In determining when the cause of action accrues for an action to recover damages for death, personal injury or disease, the court shall consider factors including the following:

- (1) when the plaintiff discovered the injury or loss;
- (2) whether a personal injury or disease had sufficiently manifested itself; and
- (3) when the plaintiff discovered, or using due diligence should have discovered, a causal connection between the injury, disease, or loss and the release of a hazardous substance.

Subd. 4. Application. Subdivisions 1 to 3 apply to actions for recovery of costs commenced on or after April 1, 1998. Response costs incurred before April 1, 1998, are recoverable in an action commenced on or after April 1, 1998, only if physical on-site construction of the response action was initiated not more than six years before the cost recovery action is commenced. Notwithstanding any provision in Laws 1998, chapter 341, to the contrary, the running of the statute of limitations imposed by subdivisions 1 to 3 with respect to cost recovery actions is suspended until July 1, 1999. Subdivisions 1 to 3 shall not apply to any litigation pending in court on March 31, 1998, if the statute of limitations under this chapter has been contested in the litigation. Subdivisions 1 to 3 shall not be offered by any party as evidence of the intent, meaning, or application of the statute of limitations under this chapter.

History: 1983 c 121 s 11; 1998 c 341 s 2,5

115B.12 OTHER REMEDIES PRESERVED.

Nothing in sections 115B.01 to 115B.15 shall be construed to abolish or diminish any remedy or affect the right of any person to bring a legal action or use any remedy available under any other provision of state or federal law, including common law, to recover for personal injury, disease, economic loss or response costs arising out of a release of any hazardous substance, or for removal or the costs of removal of that hazardous substance. Nothing in sections 115B.01 to 115B.15 shall be construed to limit or restrict in any way the liability of any person under any other state or federal law, including common law, for loss due to personal injury or disease, for economic loss, or for response costs arising out of any release or threatened release of a hazardous substance from a facility regardless of the time at which a hazardous substance was placed or came to be located in or on the facility. The provisions of sections 115B.01 to 115B.15 shall not be considered, interpreted, or construed in any way as reflecting a determination, in whole or in part, of policy regarding the inapplicability of strict liability, or strict liability doctrines under any other state or federal law, including common law, to activities past, present or future, relating to hazardous substances, or pollutants or contaminants, or other similar activities.

History: 1983 c 121 s 12

115B.13 DOUBLE RECOVERY PROHIBITED.

A person who recovers response costs or damages pursuant to sections 115B.01 to 115B.15 may not recover the same costs or damages pursuant to any other law. A person who recovers response costs or damages pursuant to any other state or federal law may not recover for the same costs or damages pursuant to sections 115B.01 to 115B.15.

History: 1983 c 121 s 13

115B.14 AWARD OF COSTS.

Upon motion of a party prevailing in an action under sections 115B.01 to 115B.15 the court may award costs, disbursements and reasonable attorney fees and witness fees to that party.

History: 1983 c 121 s 14

115B.15 APPLICATION OF SECTIONS 115B.01 TO 115B.14.

Sections 115B.01 to 115B.14 apply to any release or threatened release of a hazardous substance occurring on or after July 1, 1983, including any release which began before July 1, 1983, and continued after that date. Sections 115B.01 to 115B.14 do not apply to a release or threatened release which occurred wholly before July 1, 1983, regardless of the date of discovery of any injury or loss caused by the release or threatened release.

History: 1983 c 121 s 15

115B.16 DISPOSITION OF FACILITIES.

Subdivision 1. **Closed disposal facilities; use of property.** No person shall use any property on or in which hazardous waste remains after closure of a disposal facility as defined in section 115A.03, subdivision 10, in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the disposal facility's monitoring systems, unless the agency finds that the disturbance:

(1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

Subd. 2. **Recording of affidavit.** Before any transfer of ownership of any property which the owner knew or should have known was used as the site of a hazardous waste disposal facility as defined in section 115A.03, subdivision 10, or which the owner knew or should have known is subject to extensive contamination by release of a hazardous substance, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

(1) that the land has been used to dispose of hazardous waste or that the land is contaminated by a release of a hazardous substance;

(2) the identity, quantity, location, condition and circumstances of the disposal or contamination to the full extent known or reasonably ascertainable; and

(3) that the use of the property or some portion of it may be restricted as provided in subdivision 1.

An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under clauses (1) to (3) with respect to property for which an affidavit has already been recorded.

If the owner or any subsequent owner of the property removes the hazardous substance, together with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal of the hazardous substance.

Failure to record an affidavit as provided in this subdivision does not affect or prevent any transfer of ownership of the property.

Subd. 3. **Duty of county recorder.** The county recorder shall record all affidavits presented in accordance with subdivision 2. The affidavits shall be recorded in a manner which will assure their disclosure in the ordinary course of a title search of the subject property.

Subd. 4. **Penalties.** (a) Any person who knowingly violates the provisions of subdivision 1 is subject to a civil penalty in an amount determined by the court of not more than \$100,000, and shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance resulting from the violation.

(b) Any person who knowingly fails to record an affidavit as required by subdivision 2 shall be liable under sections 115B.04 and 115B.05 for any release or threatened release of any hazardous substance from a facility located on that property.

(c) A civil penalty may be imposed and recovered by an action brought by a county attorney or by the attorney general in the district court of the county in which the property is located.

(d) Any civil fines recovered under this subdivision shall be deposited in the remediation fund.

History: 1983 c 121 s 16; 1986 c 444; 1989 c 335 art 4 s 106; 2004 c 228 art 1 s 24

115B.17 STATE RESPONSE TO RELEASES.

Subdivision 1. **Removal and remedial action.** Whenever there is a release or substantial threat of release from a facility of any pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or whenever a hazardous substance is released or there is a threatened release of a hazardous substance from a facility:

(a) The agency may take any removal or remedial action relating to the hazardous substance, or pollutant or contaminant, which the agency deems necessary to protect the public health or welfare or the environment. Before taking any action the agency shall:

(1) Request any responsible party known to the agency to take actions which the agency deems reasonable and necessary to protect the public health or welfare or the environment, stating the reasons for the actions, a reasonable time for beginning and completing the actions taking into account the urgency of the actions for protecting the public health or welfare or the environment, and the intention of the agency to take action if the requested actions are not taken as requested;

(2) Notify the owner of real property where the facility is located or where response actions are proposed to be taken, if the owner is not a responsible party, that responsible parties have been requested to take response actions and that the owner's cooperation will be required in order for responsible parties or the agency to take those actions; and

(3) Determine that the actions requested by the agency will not be taken by any known responsible party in the manner and within the time requested.

(b) The commissioner may take removal action which the commissioner deems necessary to protect the public health or welfare or the environment if the commissioner determines that the release or threatened release constitutes an emergency requiring immediate action to prevent, minimize or mitigate damage to the public health or welfare or the environment. Before taking any action the commissioner shall make reasonable efforts in light of the urgency of the action to follow the procedure provided in clause (a).

No removal action taken by any person shall be construed as an admission of liability for a release or threatened release.

Subd. 2. **Other actions.** Whenever the agency or commissioner is authorized to act pursuant to subdivision 1 or whenever the agency or commissioner has reason to believe that a release of a hazardous substance, or a pollutant or contaminant, has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, or a pollutant or contaminant, the agency or commissioner may undertake investigations, monitoring, surveys, testing, and other similar activities necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, or pollutants or contaminants, and the extent of danger to the public health or welfare or the environment. In addition, the agency may undertake planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action, and to enforce the provisions of sections 115B.01 to 115B.18.

Subd. 2a. **Cleanup standards.** In determining the appropriate standards to be achieved by response actions taken or requested under this section to protect public health and welfare and the environment from a release or threatened release, the commissioner shall consider the planned use of the property where the release or threatened release is located.

Subd. 2b. **Public notice of proposed response actions.** Before selecting a remedial action to respond to a release or threatened release listed pursuant to subdivision 13, the com-

missioner shall give written notice of the proposed remedial action to the public by publication of a notice in a newspaper of general circulation in the affected area, and provide an opportunity for submission of comments on the proposed remedial action. The notice shall also be given by certified mail to all persons known to the commissioner at the time of the notice who the commissioner has reason to believe are responsible for the release or threatened release, including all persons who have previously received a request for response action under subdivision 1 with respect to the release or threatened release.

Subd. 3. Duty to provide information. Any person who the agency has reason to believe is responsible for a release or threatened release as provided in section 115B.03, or who is the owner of real property where the release or threatened release is located or where response actions are proposed to be taken, when requested by the agency, or any member, employee or agent thereof who is authorized by the agency, shall furnish to the agency any information which that person may have or may reasonably obtain which is relevant to the release or threatened release.

Subd. 4. Access to information and property. The agency or any member, employee or agent thereof authorized by the agency, upon presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda or data of any person who has a duty to provide information to the agency under subdivision 3; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized by this section including obtaining information from any person who has a duty to provide the information under subdivision 3, conducting surveys or investigations, and taking removal or remedial action.

Subd. 5. Classification of data. Except as otherwise provided in this subdivision, data obtained from any person pursuant to subdivision 3 or 4 is public data as defined in section 13.02. Upon certification by the subject of the data that the data relates to sales figures, processes or methods of production unique to that person, or information which would tend to affect adversely the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Notwithstanding any other law to the contrary, data classified as private or nonpublic under this subdivision may be disclosed when relevant in any proceeding under sections 115B.01 to 115B.18, or to other public agencies concerned with the implementation of sections 115B.01 to 115B.18.

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.

Subd. 8. [Repealed, 1990 c 597 s 73]

Subd. 9. Actions relating to occupational safety and health. The agency, commissioner, and the commissioner of labor and industry shall make reasonable efforts to coordinate any actions taken under this section and under sections 182.65 to 182.674 to avoid duplication or conflict of actions or requirements with respect to a release or threatened release affecting the safety of any conditions or place of employment.

Subd. 10. **Actions relating to health.** The agency and commissioner shall make reasonable efforts to coordinate and consult with the commissioner of health in planning and directing response actions with respect to a release or threatened release affecting the public health. If the commissioner of health, upon the request of the agency, takes any actions authorized under this section, the agency shall reimburse the commissioner of health from the fund for the reasonable and necessary expenses incurred in taking those actions and may recover any amount spent from the fund under subdivision 6.

Subd. 11. **Limit on actions by political subdivisions.** When the agency or commissioner has requested a person who is responsible for a release or threatened release to take any response action under subdivision 1, no political subdivision shall request or order that person to take any action which conflicts with the action requested by the agency or commissioner of the Pollution Control Agency.

Subd. 12. **Authorization of certain response actions.** For the purpose of permitting a political subdivision or private person to recover response costs as provided in section 115B.04, subdivision 6, the agency may authorize the political subdivision to take removal or remedial actions or may authorize the private person to take removal actions with respect to any release of a hazardous substance which was placed or came to be located in the facility before April 1, 1982. The authorization shall be based on application of the criteria in the rules of the agency adopted under subdivision 13 or, if the rules have not been adopted, under the criteria set forth in subdivision 13 on which the rules are required to be based. The authorization shall not be inconsistent with the criteria. This subdivision shall not be construed to prohibit a political subdivision or private person from taking removal or remedial actions without the authorization of the agency.

Subd. 13. **Priorities; rules.** By November 1, 1983, the Pollution Control Agency shall establish a temporary list of priorities among releases or threatened releases for the purpose of taking remedial action and, to the extent practicable consistent with the urgency of the action, for taking removal action under this section. The temporary list, with any necessary modifications, shall remain in effect until the Pollution Control Agency adopts rules establishing state criteria for determining priorities among releases and threatened releases. The Pollution Control Agency shall adopt the rules by July 1, 1984. After rules are adopted, a permanent priority list shall be established, and may be modified from time to time, according to the criteria set forth in the rules. Before any list is established under this subdivision the Pollution Control Agency shall publish the list in the State Register and allow 30 days for comments on the list by the public.

The temporary list and the rules required by this subdivision shall be based upon the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the administrative and financial capabilities of the Pollution Control Agency, and other appropriate factors.

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).

Subd. 15. Acquisition of property. The agency may acquire, by purchase or donation, an interest in real property, including easements, restrictive covenants, and leases, that the agency determines is necessary for response action. The validity and duration of a restrictive covenant or nonpossessory easement acquired under this subdivision shall be determined in the same manner as the validity and duration of a conservation easement under chapter 84C, unless the duration is otherwise provided in the agreement. The agency may acquire an easement by condemnation only if the agency is unable, after reasonable efforts, to acquire an interest in real property by purchase or donation. The provisions of chapter 117 govern condemnation proceedings by the agency under this subdivision. A donation of an interest in real property to the agency is not effective until the agency executes a certificate of acceptance. The state is not liable under this chapter solely as a result of acquiring an interest in real property under this subdivision.

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.

Subd. 17. Settlements; general authority. In addition to the general authority vested in the agency to settle any claims under sections 115B.01 to 115B.18, the agency may exercise the settlement authorities provided in subdivisions 17 to 20. If the agency does not obtain complete relief for all of its claims under sections 115B.01 to 115B.18, pursuant to a settle-

ment, the agency may bring claims under those sections against any person who is not a party to the settlement, but the settlement shall reduce the liability of any person who is not a party to the settlement by the amount of the settlement.

Subd. 18. Contribution protection for settlors. Notwithstanding anything to the contrary in section 115B.08 or any other law, a person who resolves its liability to the agency under sections 115B.01 to 115B.18 in a settlement shall not be liable for any claim for contribution regarding matters addressed in the settlement. Except as otherwise provided in the settlement, a party to a settlement retains any right under section 115B.08 or any other law to bring a claim for contribution against any person who is not a party to the settlement. Any claim for contribution against a person who is not a party to the settlement shall be subordinate to any claim asserted against such person by the agency.

Subd. 19. Reimbursement under certain settlements. (a) When the agency determines that some but not all persons responsible for a release are willing to implement response actions, the agency may agree, pursuant to a settlement of its claims under sections 115B.01 to 115B.18, to reimburse the settling parties for response costs incurred to take the actions. The agency may agree to reimburse any amount which does not exceed the amount that the agency estimates may be attributable to the liability of responsible persons who are not parties to the settlement. Reimbursement may be provided only for the cost of conducting remedial design and constructing remedial action pursuant to the terms of the settlement. Reimbursement under this subdivision shall be paid only upon the agency's determination that the remedial action approved by the agency has been completed in accordance with the terms of the settlement. The agency may use money appropriated to it for actions authorized under section 115B.20, subdivision 2, clause (2), to pay reimbursement under this subdivision.

(b) The agency may agree to provide reimbursement under a settlement only when all of the following requirements have been met:

(1) the agency has made the determination under paragraph (c) regarding persons who are not participating in the settlement, and has provided written notice to persons identified under paragraph (c), clauses (1) and (2), of their opportunity to participate in the settlement or in a separate settlement under subdivision 20;

(2) the release addressed in the settlement has been assigned a priority pursuant to agency rules adopted under subdivision 13, and the priority is at least as high as a release for which the agency would be allowed to allocate funds for remedial action under the rules;

(3) an investigation of the release addressed in the settlement has been completed in accordance with a plan approved by the agency; and

(4) the agency has approved the remedial action to be implemented under the settlement.

(c) Before entering into a settlement providing for reimbursement under this subdivision, the agency shall determine that there are one or more persons who meet any of the following criteria who are not participating in the settlement:

(1) persons identified by the agency as responsible for the release addressed in the settlement but who are likely to have only minimal involvement in actions leading to the release, or are insolvent or financially unable to pay any significant share of response action costs;

(2) persons identified by the agency as responsible for the release other than persons described in clause (1) and who are unwilling to participate in the settlement or to take response actions with respect to the release;

(3) persons whom the agency has reason to believe are responsible for the release addressed in the settlement but whom the agency has been unable to identify; or

(4) persons identified to the agency by a party to the proposed settlement as persons who are potentially responsible for the release but for whom the agency has insufficient information to determine responsibility.

(d) Except as otherwise provided in this subdivision, a decision of the agency under this subdivision to offer or agree to provide reimbursement in any settlement, or to determine the

amount of reimbursement it will provide under a settlement, is a matter of agency discretion in the exercise of its enforcement authority. In exercising discretion in this matter, the agency may consider, among other factors, the degree of cooperation with the agency that has been shown prior to the settlement by the parties seeking reimbursement.

(e) The agency may require as a term of settlement under this subdivision that the parties receiving reimbursement from the agency waive any rights they may have to bring a claim for contribution against persons who are not parties to the settlement.

(f) Notwithstanding any provision to the contrary in paragraphs (a) to (e), until June 30, 2001, the agency may use the authority under this subdivision to enter into agreements for the implementation of a portion of an approved response action plan and to provide funds in the form of a grant for the purpose of implementing the agreement. The amount paid for implementing a portion of an approved response action plan may not exceed the proportion of the costs of the response action plan which are attributable to the liability of responsible persons who are not parties to the agreement.

(g) A decision of the agency under paragraph (f) to offer or agree to provide funds in any agreement or to determine the specific remedial actions included in any agreement to implement an approved action plan or the amount of funds the agency will provide under an agreement is a matter of agency discretion in the exercise of its enforcement authority.

Subd. 20. Settlements with de minimis parties and parties with limited financial resources. (a) The agency may agree to separately settle its claims under sections 115B.01 to 115B.18 with any persons:

(1) whose liability for response costs or response actions, in the determination of the agency, is minimal in comparison with the liability of other persons responsible for the release; or

(2) who are responsible for a release but, in the determination of the agency, are insolvent or financially unable to pay any significant share of their liability for the response costs.

(b) A settlement under this subdivision may require the parties to pay a fixed amount in money or in kind toward the implementation of response actions, and may include a premium for the risk of additional future response costs or response action requirements. The agency may require as a term of a settlement under this subdivision that the settling responsible persons waive any rights they may have to bring a claim for contribution against persons who are not parties to the settlement.

(c) All amounts paid to the agency under a settlement entered into pursuant to this subdivision shall be deposited in the account and are appropriated to the agency to pay for response actions and associated administrative and legal costs related to the release addressed in the settlement, including reimbursement for response costs under subdivision 19.

History: 1983 c 121 s 17; 1986 c 444; 1987 c 186 s 15; 1988 c 685 s 23; 1989 c 325 s 30; 1989 c 335 art 4 s 36; 1990 c 528 s 1; 1990 c 597 s 69; 1992 c 512 s 1; 1995 c 168 s 3; 1997 c 216 s 101-106; 1998 c 254 art 1 s 26; 1998 c 341 s 3; 2000 c 376 s 1; 2003 c 128 art 2 s 7-10

115B.175 VOLUNTARY RESPONSE ACTIONS; LIABILITY PROTECTION; PROCEDURES.

Subdivision 1. Protection from liability; scope. (a) Subject to the provisions of this section, a person who is not otherwise responsible under sections 115B.01 to 115B.18 for a release or threatened release will not be responsible under those sections for the release or threatened release if the person undertakes and completes response actions to remove or remedy all known releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

(b) The liability protection provided under this subdivision applies to releases or threatened releases at the identified property that are not required to be removed or remedied by the approved voluntary response action plan if the requirements of subdivision 2 are met.

Subd. 2. Partial response action plans; criteria for approval. (a) The commissioner may approve a voluntary response action plan submitted under this section that does not re-

quire removal or remedy of all releases and threatened releases at an identified area of real property if the commissioner determines that all of the following criteria have been met:

(1) if reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that meets the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2;

(2) the response actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan, and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

(3) the owner of the property agrees to cooperate with the commissioner or other persons acting at the direction of the commissioner in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.

(b) Under paragraph (a), clause (3), an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:

(1) to provide access to the property to the commissioner and the commissioner's authorized representatives;

(2) to allow the commissioner, or persons acting at the direction of the commissioner, to undertake reasonable and necessary activities at the property including placement of borings, wells, equipment, and structures on the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment; and

(3) to grant easements or other interests in the property to the agency for any of the purposes provided in clause (1) or (2).

(c) An agreement under paragraph (a), clause (3), 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.

Subd. 3. Submission and approval of voluntary response action plans. (a) A person shall submit a voluntary response action plan to the commissioner under section 115B.17, subdivision 14. The commissioner may provide assistance to review voluntary response action plans or supervise response action implementation under that subdivision.

(b) A voluntary response action plan submitted for approval of the commissioner must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified area of real property. The commissioner must not approve the voluntary response action plan unless the commissioner determines that the nature and extent of the releases and threatened releases at the identified area of real property have been adequately identified and evaluated in the investigation report.

(c) Response actions required in a voluntary response action plan under this section must meet the same standards for protection that apply to response actions taken or requested under section 115B.17, subdivision 1 or 2.

(d) When the commissioner approves a voluntary response action plan, the commissioner may include in the approval an acknowledgment that, upon certification of completion of the response actions as provided in subdivision 5, the person submitting the plan will receive the protection from liability provided under this section.

Subd. 4. Performance of response actions does not associate persons with release. Persons specified in subdivision 6 or 6a, paragraph (c), do not associate themselves with, or aggravate or contribute to, any release or threatened release identified in an approved voluntary response action plan for the purpose of subdivision 7, clause (1), or section 115B.03, subdivision 3, clause (4), as a result of performance of the response actions required in accor-

dance with the plan and the direction of the commissioner. Nothing in this section relieves a person of any liability for failure to exercise due care in performing a response action.

Subd. 5. Certification of completion of response actions. (a) Response actions taken under an approved voluntary response action plan are not completed until the commissioner certifies completion in writing.

(b) Certification of completion of response actions taken under a voluntary response action plan that does not require removal or remedy of all releases and threatened releases is subject to compliance by the owner, and the owner's successors and assigns, with the terms of the agreement required under subdivision 2, paragraph (a), clause (3).

Subd. 6. Persons protected from liability. In addition to the person who undertakes and completes response actions, and subject to the provisions of subdivision 7, the liability protection provided by this section applies to the following persons when the commissioner issues the certificate of completion of response actions under subdivision 5:

(1) the owner of the identified property, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;

(2) a person providing financing to the person who undertakes and completes the response actions, or who acquires or develops the identified property; and

(3) a successor or assign of any person to whom the liability protection applies.

Subd. 6a. Voluntary response actions by responsible persons. (a) Notwithstanding subdivision 1, paragraph (a), when a person who is responsible for a release or threatened release under sections 115B.01 to 115B.18 undertakes and completes response actions, the protection from liability provided by this section applies to persons described in paragraph (c) if the response actions are undertaken and completed in accordance with this subdivision.

(b) The response actions must be undertaken and completed in accordance with a voluntary response action plan approved as provided in subdivision 3. Notwithstanding subdivision 2, a voluntary response action plan submitted by a person who is responsible for the release or threatened release must require remedy or removal of all releases and threatened releases at the identified area of real property. The identified area of real property must correspond to the boundaries of a parcel that is either separately platted or is the entire parcel.

(c) Subject to the provisions of subdivision 7, when the commissioner issues a certificate of completion under subdivision 5 for response actions completed at an identified area of real property in accordance with this subdivision, the liability protection under this section applies to:

(1) a person who acquires the identified real property after approval of the voluntary response action plan;

(2) a person providing financing for response actions or development at the identified real property after approval of the response action plan, whether the financing is provided to the person undertaking the response actions or other person who acquires or develops the property; and

(3) a successor or assign of a person to whom the liability protection applies under this paragraph.

(d) When the commissioner issues a certificate of completion for response actions completed by a responsible person, the commissioner and the responsible person may enter into an agreement that resolves the person's future liability to the agency under sections 115B.01 to 115B.18 for the release or threatened release addressed by the response actions.

Subd. 7. Persons not protected from liability. The protection from liability provided by this section does not apply to:

(1) a person who aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan;

(2) a person who was responsible under sections 115B.01 to 115B.18 for a release or threatened release identified in the approved voluntary response action plan before taking an action that would have made the person subject to the protection under subdivision 6 or 6a; or

(3) a person who obtains approval of a voluntary response action plan for purposes of this section by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the protection under subdivision 6 or 6a.

Subd. 8. **Other rights and authorities not affected.** Nothing in this section affects the authority of the agency or commissioner to exercise any powers or duties under this chapter or other law with respect to any release or threatened release, or the right of the agency, the commissioner, or any other person to seek any relief available under this chapter against any party who is not subject to the liability protection provided under this section.

History: 1992 c 512 s 2; 1993 c 287 s 1-3; 1995 c 168 s 4,5; 1997 c 216 s 107,108

115B.177 OWNER OF REAL PROPERTY AFFECTED BY OFF-SITE RELEASE.

Subdivision 1. **Determination or agreement by commissioner.** (a) The commissioner may issue a written determination or enter into an agreement to take no action under sections 115B.01 to 115B.18 against a person who owns real property subject to a release of a hazardous substance, or pollutant or contaminant, if the commissioner finds that the release originates from a source on adjacent or nearby real property and that the person is not otherwise responsible for the release.

(b) A determination issued or agreement entered into under this section must be conditioned upon the following:

(1) agreement by the person to allow entry upon the property to the commissioner and the authorized representatives of the commissioner to take response actions to address the release, including in appropriate cases an agreement to grant easements to the state for that purpose;

(2) agreement by the person to avoid any interference with the response actions to address the release taken by or at the direction of the agency or the commissioner, and to avoid actions that contribute to the release;

(3) invalidation of the determination or agreement if the commissioner receives new information indicating that the property owned by the person is a source of the release or that the person is otherwise responsible for the release; and

(4) any other condition that the commissioner deems reasonable and necessary to ensure that the agency and commissioner can adequately respond to the release.

Subd. 2. **Scope and effect of determination or agreement.** (a) A determination issued or agreement entered into under this section may extend to the successors and assigns of the person to whom it originally applies, if the successors and assigns are not otherwise responsible for the release and are bound by the conditions in the determination or agreement.

(b) Issuance of a determination or execution of an agreement under this section does not affect the authority of the agency or commissioner to take any response action under sections 115B.01 to 115B.18 with respect to the release subject to the determination or agreement, or to take administrative or judicial action under those sections with respect to persons not bound by the determination or agreement.

History: 1992 c 512 s 3

115B.178 ASSOCIATION WITH RELEASE; COMMISSIONER'S DETERMINATION.

Subdivision 1. **Determination.** (a) The commissioner may issue determinations that certain actions proposed to be taken at real property subject to a release or threatened release of a hazardous substance or pollutant or contaminant will not constitute conduct associating the person with the release or threatened release for the purpose of section 115B.03, subdivision 3, clause (4). Proposed actions that may be covered by a determination under this section include response actions approved by the commissioner to address the release or threatened release, actions to improve or develop the real property, loans secured by the real property, or other similar actions. A determination may be subject to terms and conditions deemed rea-

sonable by the commissioner. When a person takes actions in accordance with a determination issued under this subdivision, the actions do not associate the person with the release for the purpose of section 115B.03, subdivision 3, clause (4).

(b) The commissioner may also issue a determination under paragraph (a) that certain actions taken in the past at the real property did not constitute conduct associating the person requesting the determination with the release or threatened release for purposes of section 115B.03, subdivision 3, clause (4). The person requesting a determination under this paragraph shall conduct an investigation approved by the commissioner that identifies the nature and extent of the release or threatened release or shall take response actions in accordance with a response action plan approved by the commissioner. Any such determination shall be limited to the represented facts of the past actions and shall not apply to actions that are not represented or disclosed. The determination may be subject to such other terms and conditions as the commissioner deems reasonable.

Subd. 2. Scope and effect of determination. Section 115B.177, subdivision 2, applies to a determination by the commissioner under this section.

History: 1993 c 287 s 4; 1994 c 639 art 4 s 1; 1995 c 168 s 6

115B.179 COMMISSIONER'S AUTHORITY NOT LIMITED.

The commissioner's authority to make a determination or enter into an agreement under section 115B.177 and to make a determination under section 115B.178 does not limit or preclude any other authority of the commissioner under any law.

History: 1993 c 287 s 5

115B.18 FAILURE TO TAKE REQUESTED ACTIONS; CIVIL PENALTIES; ACTION TO COMPEL PERFORMANCE; INJUNCTIVE RELIEF.

Subdivision 1. Civil penalties. Any person responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility shall forfeit and pay to the state a civil penalty in an amount to be determined by the court of not more than \$20,000 per day for each day that the person fails to take reasonable and necessary response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3.

The penalty provided under this subdivision may be recovered by an action brought by the attorney general in the name of the state in connection with an action to recover expenses of the agency under section 115B.17, subdivision 6, or by a separate action in the District Court of Ramsey County. All penalties recovered under this subdivision shall be deposited in the remediation fund.

Subd. 2. Action to compel performance. When any person who is responsible for a release or threatened release from a facility of a pollutant or contaminant which presents an imminent and substantial danger to the public health or welfare or the environment or for a release or threatened release of a hazardous substance from a facility, fails to take response actions or to make reasonable progress in completing response actions requested as provided in subdivision 3, the attorney general may bring an action in the name of the state to compel performance of the requested response actions. If any person having any right, title, or interest in and to the real property where the facility is located or where response actions are proposed to be taken is not a person responsible for the release or threatened release, the person may be joined as an indispensable party in an action to compel performance in order to assure that the requested response actions can be taken on that property by the responsible parties.

Subd. 3. Requests for response actions. A request for emergency removal action shall be made by the commissioner of the Pollution Control Agency. Other requests for response actions shall be made by the agency. A request shall be in writing, shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed taking into account the urgency of the action for protection of the public health or welfare or the environment.

Subd. 4. **Injunctive relief.** The release or threatened release of a hazardous substance, or a pollutant or contaminant, shall constitute a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

History: 1983 c 121 s 18; 1987 c 186 s 15; 2004 c 228 art 1 s 25

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: 1983 c 121 s 19; 1989 c 335 art 4 s 106; 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 commissioner of natural resources for administration, planning, and implementation by the com-

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missioner 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: 1983 c 121 s 20; 1987 c 186 s 15; 1989 c 325 s 31; 1989 c 326 art 8 s 7; 1989 c 335 art 1 s 269; art 4 s 37–39,106; 1990 c 597 s 55; 1993 c 4 s 14; 1994 c 557 s 25; 1995 c 220 s 98; 1995 c 247 art 2 s 54; 1996 c 470 s 27; 1997 c 7 art 1 s 31,32; 1999 c 86 art 1 s 22; art 3 s 13; 2002 c 379 art 1 s 32–34; 2003 c 128 art 2 s 12; 2005 c 10 art 1 s 23

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]

115B.223 [Repealed, 1993 c 172 s 93; 1997 c 216 s 160]

115B.224 [Repealed, 1993 c 172 s 93; 1997 c 216 s 160]

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

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

115B.241 [Repealed, 2004 c 228 art 1 s 76]

HARMFUL SUBSTANCE COMPENSATION

115B.25 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 115B.25 to 115B.37.

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

Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subd. 3. **Compensable loss.** "Compensable loss" means a loss that is compensable under section 115B.34.

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

Subd. 5. **Eligible personal injury.** "Eligible personal injury" means personal injury that is eligible for compensation under section 115B.30.

Subd. 6. **Eligible property damage.** "Eligible property damage" means property damage that is eligible for compensation under section 115B.30.

Subd. 6a. **Facility.** "Facility" has the meaning given it in section 115B.02, subdivision 5.

Subd. 7. [Renumbered subd 1a]

Subd. 7a. **Harmful substance.** "Harmful substance" means:

(1) any commercial chemical designated under the Federal Water Pollution Control Act, United States Code, title 33, section 1321(b)(2)(A);

(2) any hazardous air pollutant listed under the Clean Air Act, United States Code, title 42, section 7412;

(3) any hazardous waste;

(4) petroleum as defined in section 115C.02, subdivision 10; and

(5) pesticide as defined in chapter 18B, or fertilizer, plant amendment, or soil amendment as defined in chapter 18C.

Subd. 7b. **Hazardous waste.** "Hazardous waste" has the meaning given in section 115B.02, subdivision 9.

Subd. 7c. **Person.** "Person" has the meaning given in section 115B.02, subdivision 12.

Subd. 8. **Protected information.** "Protected information" means information provided to the board by a nongovernmental third party, or information provided to the board by a governmental party if access to that information is protected under other law, that is relevant to a determination required of the board under section 115B.33, subdivisions 1, clauses (2) to (4), and 2, clause (2).

Subd. 9. **Release.** "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur.

“Release” does not include:

- (a) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, watercraft, or pipeline pumping station engine;
- (b) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, under United States Code, title 42, section 2014, if the release is subject to requirements with respect to financial protection established by the federal Nuclear Regulatory Commission under United States Code, title 42, section 2210;
- (c) release of source, by-product, or special nuclear material from any processing site designated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, under United States Code, title 42, section 7912(a)(1) or 7942(a);
- (d) discharges or designed venting of petroleum from a tank allowed under the rules of the Pollution Control Agency; or
- (e) the use of a pesticide, fertilizer, plant amendment, or soil amendment in accordance with its labeling.

History: *1Sp1985 c 8 s 4; 1989 c 325 s 32–39; 1989 c 335 art 4 s 42; 1991 c 199 art 1 s 19; 1995 c 220 s 99; 1998 c 254 art 1 s 27; 2002 c 379 art 2 s 3; 2003 c 128 art 2 s 14,15*

115B.26 PAYMENT OF CLAIMS.

Subdivision 1. [Repealed, 1995 c 220 s 141]

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: *1Sp1985 c 8 s 5; 1989 c 325 s 40; 1989 c 335 art 4 s 43; 1991 c 199 art 1 s 20,21; 1995 c 220 s 100; 1995 c 254 art 1 s 96; 2002 c 379 art 2 s 4; 2003 c 128 art 2 s 16*

115B.27 [Repealed, 2002 c 379 art 2 s 24]

115B.28 POWERS AND DUTIES OF AGENCY.

Subdivision 1. **Duties.** In addition to performing duties specified in sections 115B.25 to 115B.37 or in other law, and subject to the limitations on disclosure contained in section 115B.35, the agency shall:

- (1) adopt rules, including rules governing practice and procedure before the agency, the form and procedure for applications for compensation, and procedures for claims investigations;
- (2) publicize the availability of compensation and application procedures on a state-wide basis with special emphasis on geographical areas surrounding sites identified by the agency as having releases from a facility where a harmful substance was placed or came to be located prior to July 1, 1983;
- (3) collect, analyze, and make available to the public, in consultation with the Department of Health, the Pollution Control Agency, the University of Minnesota Medical and Public Health Schools, and the medical community, data regarding injuries relating to exposure to harmful substances; and
- (4) prepare and transmit by December 31 of each year to the governor and the legislature an annual report to include (a) a summary of agency activity under clause (3); (b) data deter-

mined by the agency from actual cases, including but not limited to number of cases, actual compensation received by each claimant, types of cases, and types of injuries compensated, as they relate to types of harmful substances as well as length of exposure, but excluding identification of the claimants; (c) all administrative costs associated with the business of the agency; and (d) agency recommendations for legislative changes, further study, or any other recommendation aimed at improving the system of compensation.

Subd. 2. Powers. In addition to exercising any powers specified in sections 115B.25 to 115B.37 or in other law, the agency may:

(1) in reviewing a claim, consider any information relevant to the claim, in accordance with the evidentiary standards contained in section 115B.35;

(2) contract for consultant or other services necessary to carry out the agency's duties under sections 115B.25 to 115B.37;

(3) grant reasonable partial compensation on an emergency basis pending the final decision on a claim if the claim is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made;

(4) limit access to information collected and maintained by the agency and take any other action necessary to protect not public data as defined in section 13.02, subdivision 8a, and protected information, in accordance with the limitations contained in section 115B.35.

Subd. 3. Investigation; obtaining information. The agency may investigate any claim for compensation and for this purpose it may require from the claimant and request from any person information regarding any matter, fact, or circumstance which is relevant to determination of a claim under section 115B.33. In exercising its powers under this subdivision, the agency may collect information reasonably calculated to lead to the discovery of evidence admissible under section 115B.35. The agency shall reimburse the person requested to provide information the actual cost of copies of documents, papers, samples, or other tangible items necessary to respond to the request from the agency. In order to obtain this information the agency, subject to any applicable privilege, may:

(a) request any person to produce documents, papers, books, or other tangible things in the possession, custody, or control of that person;

(b) request the sworn testimony of any person as to any relevant fact or opinion;

(c) direct written questions to any person and request written answers and objections;

(d) request a mental or physical examination of the claimant or autopsy of any deceased person whose death is the basis of the claim, provided that notice is given to the claimant and the claimant receives a copy of the report; and

(e) request a waiver of medical privilege by the claimant.

The agency shall give written notice of any request under this subdivision at least 15 days before the person is expected to comply with the request. If a person fails or refuses to comply with a request for information relevant to the release of a harmful substance, the agency may issue a subpoena for the production of the information and may petition the district court for an order enforcing the subpoena. If a person fails or refuses to comply with a request for other information relevant to determination of the claim, the agency may petition the district court for an order to compel compliance with the request. If the claimant refuses to comply with a request by the agency for information relevant to the claim, the agency may dismiss the claim.

Subd. 4. Information from state agencies. In order to perform its duties, the agency may request information from the supervising officer of any state agency or state institution of higher education. When requesting health data as defined in section 13.3805, subdivision 1, or sections 144.671 to 144.69, the agency must submit a written release signed by the subject of the data or, if the subject is deceased, a representative of the deceased, authorizing release of the data in whole or in part. The supervising officer shall comply with the agency's request to the extent possible considering available agency or institution appropriations and may assign agency or institution employees to assist the agency in performing its duties under sections 115B.25 to 115B.37.

History: *1Sp1985 c 8 s 7; 1987 c 209 s 1; 1989 c 325 s 42,78; 1991 c 199 art 2 s 1; 1999 c 227 s 22; 2002 c 379 art 2 s 5*

115B.29 ELIGIBLE PERSONS.

Subdivision 1. **Personal injury and certain property claims.** A person may file a claim with the agency pursuant to this section for compensation for an eligible injury, or for eligible property damage that could reasonably have resulted from an exposure in Minnesota to a harmful substance released from a facility.

Subd. 2. [Repealed, 1989 c 325 s 77]

History: *1Sp1985 c 8 s 8; 1989 c 325 s 43; 2002 c 379 art 2 s 6*

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: *1Sp1985 c 8 s 9; 1989 c 325 s 44,78; 1989 c 335 art 4 s 106; 1991 c 199 art 1 s 22; 2002 c 379 art 2 s 7; 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 fund 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.

Subd. 2. Use of protected information and agency findings. The findings and decision of the agency are inadmissible in any court action. Protected information may not be used in any court action except to the extent that the information is otherwise available to a party or discovered under the applicable Rules of Civil or Criminal Procedure.

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: *1Sp1985 c 8 s 10; 1986 c 444; 1989 c 325 s 78; 1991 c 199 art 1 s 23; 2002 c 379 art 2 s 8-10; 2003 c 128 art 2 s 18-20; 2004 c 228 art 1 s 26*

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.

Subd. 2. Required information. A claimant must provide the following information as part of the claim, provided that nothing in this chapter shall be construed to require the claimant to initiate a court action before filing a claim:

(1) a sworn verification by the claimant of the facts set forth in the claim to the best of the claimant's knowledge;

- (2) evidence that the claimant is an eligible person;
- (3) evidence of the claimant's exposure to a named harmful substance;
- (4) evidence that the claimant's exposure to the substance in the amount and duration experienced by the claimant could reasonably have been caused or significantly contributed to by the release of a harmful substance from a facility where the substance was placed or came to be located, to the extent the information is available to the claimant;
- (5) evidence that the exposure experienced by the claimant can cause or can significantly contribute to the injury suffered by the claimant;
- (6) evidence of the injury eligible for compensation suffered by the claimant and the compensable losses resulting from the injury;
- (7) evidence of any property damage eligible for compensation and the amount of compensable losses resulting from the damage;
- (8) information regarding any collateral sources of compensation; and
- (9) other information required by the rules of the agency.

Subd. 3. **Death claims.** In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

History: *1Sp1985 c 8 s 11; 1989 c 325 s 78; 1991 c 199 art 1 s 24; 2002 c 379 art 2 s 11; 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.

Subd. 2. **Standard for property damage.** The agency shall grant compensation to a claimant who shows that it is more likely than not that:

- (1) the claimant has suffered property damage that is eligible for compensation and that has resulted in compensable loss; and
- (2) the presence of the harmful substance in or on the property could reasonably have resulted from the release of the harmful substance from a facility where the substance was placed or came to be located.

History: *1Sp1985 c 8 s 12; 1989 c 325 s 78; 1991 c 199 art 1 s 25; 2002 c 379 art 2 s 12; 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: *1Sp1985 c 8 s 13; 1989 c 325 s 45; 1991 c 199 art 1 s 26; 2002 c 379 art 2 s 13; 2003 c 128 art 2 s 23*

115B.35 DETERMINATION OF CLAIMS.

Subdivision 1. [Repealed, 2002 c 379 art 2 s 24]

Subd. 2. Treatment of protected information. In making a final decision under this section, the agency shall examine protected information outside of the presence of the claimant, the claimant's attorney, or any other person except agency staff. The agency, the agency's staff, and any other person who obtains access to protected information under this section may not reveal protected information to any person except as provided in this section.

Subd. 3. Evidence admissible in claim proceedings. In the determination of a claim, the agency may admit and give probative effect to evidence that possesses probative value

commonly accepted by reasonable and prudent persons in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law. The agency may exclude incompetent, irrelevant, immaterial, and repetitious evidence.

Subd. 4. **Preliminary decision.** The agency shall review all materials filed in support of the claim and may cause an investigation to be conducted into the validity of the claim. The agency may make a preliminary decision on the basis of the papers filed in support of the claim and the report of any investigation of it. The decision must be in writing and include the reasons for the decision, subject to the limitations on disclosure of protected information.

Subd. 5. [Repealed, 2002 c 379 art 2 s 24]

Subd. 6. [Repealed, 2002 c 379 art 2 s 24]

Subd. 7. **Record.** Any appearance by a claimant or witnesses must be tape recorded but a formal record pursuant to chapter 14 is not required.

Subd. 8. **Appeal.** A final decision of the agency made under this section is conclusive on all matters decided. There is no right to judicial review of a final decision of the agency.

Subd. 9. **Remedies and penalties.** An agency member, agency staff person, or other person who reveals protected information in violation of this section is subject to the civil remedies contained in section 13.08 and the penalties in section 13.09.

History: *1Sp1985 c 8 s 14; 1986 c 444; 2002 c 379 art 2 s 14–18*

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: *1Sp1985 c 8 s 15; 1991 c 199 art 1 s 27; 2002 c 379 art 2 s 19; 2003 c 128 art 2 s 24*

115B.37 ATTORNEY FEES.

The agency may by rule limit the fee charged by any attorney for representing a claimant before the agency.

History: *1Sp1985 c 8 s 16; 2002 c 379 art 2 s 20*

LANDFILL CLEANUP PROGRAM

115B.39 LANDFILL CLEANUP PROGRAM; ESTABLISHMENT.

Subdivision 1. **Establishment.** The landfill cleanup program is established to provide environmental response at qualified facilities and is to be administered by the commissioner.

Subd. 2. **Definitions.** (a) In addition to the definitions in this subdivision, the definitions in sections 115A.03 and 115B.02 apply to sections 115B.39 to 115B.445, except as specifically modified in this subdivision.

(b) “Cleanup order” means a consent order between responsible persons and the agency or an order issued by the United States Environmental Protection Agency under section 106 of the federal Superfund Act.

(c) “Closure” means actions to prevent or minimize the threat to public health and the environment posed by a mixed municipal solid waste disposal facility that has stopped accepting waste by controlling the sources of releases or threatened releases at the facility.

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“Closure” includes removing contaminated equipment and liners; applying final cover; grading and seeding final cover; installing wells, borings, and other monitoring devices; constructing groundwater and surface water diversion structures; and installing gas control systems and site security systems, as necessary. The commissioner may authorize use of final cover that includes processed materials that meet the requirements in Code of Federal Regulations, title 40, section 503.32, paragraph (a).

(d) “Closure upgrade” means construction activity that will, at a minimum, modify an existing cover so that it satisfies current rule requirements for mixed municipal solid waste land disposal facilities.

(e) “Contingency action” means organized, planned, or coordinated courses of action to be followed in case of fire, explosion, or release of solid waste, waste by-products, or leachate that could threaten human health or the environment.

(f) “Corrective action” means steps taken to repair facility structures including liners, monitoring wells, separation equipment, covers, and aeration devices and to bring the facility into compliance with design, construction, groundwater, surface water, and air emission standards.

(g) “Decomposition gases” means gases produced by chemical or microbial activity during the decomposition of solid waste.

(h) “Dump materials” means nonhazardous mixed municipal solid wastes disposed at a Minnesota waste disposal site other than a qualified facility prior to 1973.

(i) “Environmental response action” means response action at a qualified facility, including corrective action, closure, postclosure care; contingency action; environmental studies, including remedial investigations and feasibility studies; engineering, including remedial design; removal; remedial action; site construction; and other similar cleanup-related activities.

(j) “Environmental response costs” means:

(1) costs of environmental response action, not including legal or administrative expenses; and

(2) costs required to be paid to the federal government under section 107(a) of the federal Superfund Act, as amended.

(k) “Postclosure” or “postclosure care” means actions taken for the care, maintenance, and monitoring of closure actions at a mixed municipal solid waste disposal facility.

(l) “Qualified facility” means a mixed municipal solid waste disposal facility as described in the most recent agency permit, including adjacent property used for solid waste disposal that did not occur under a permit from the agency, that:

(1)(i) is or was permitted by the agency;

(ii) stopped accepting solid waste, except demolition debris, for disposal by April 9, 1994; and

(iii) stopped accepting demolition debris for disposal by June 1, 1994, except that demolition debris may be accepted until May 1, 1995, at a permitted area where disposal of demolition debris is allowed, if the area where the demolition debris is deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid waste was deposited; or

(2)(i) is or was permitted by the agency; and

(ii) stopped accepting waste by January 1, 2000, except that demolition debris, industrial waste, and municipal solid waste combustor ash may be accepted until January 1, 2001, at a permitted area where disposal of such waste is allowed, if the area where the waste is deposited is at least 50 feet from the fill boundary of the area where mixed municipal solid waste was deposited.

History: 1994 c 639 art 1 s 2; 1997 c 7 art 1 s 33; 1998 c 306 s 1; 1999 c 231 s 133

115B.40 PROGRAM.

Subdivision 1. **Response to releases.** The commissioner may take any environmental response action, including emergency action, related to a release or threatened release of a

hazardous substance, pollutant or contaminant, or decomposition gas from a qualified facility that the commissioner deems reasonable and necessary to protect the public health or welfare or the environment under the standards required in sections 115B.01 to 115B.20. The commissioner may undertake studies necessary to determine reasonable and necessary environmental response actions at individual facilities. The commissioner may develop general work plans for environmental studies, presumptive remedies, and generic remedial designs for facilities with similar characteristics. Prior to selecting environmental response actions for a facility, the commissioner shall hold at least one public informational meeting near the facility and provide for receiving and responding to comments related to the selection. The commissioner shall design, implement, and provide oversight consistent with the actions selected under this subdivision.

Subd. 2. Priority list. (a) The commissioner shall establish a priority list for preventing or responding to releases of hazardous substances, pollutants and contaminants, or decomposition gases at qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1). The commissioner shall periodically revise the list to reflect changing conditions at facilities that affect priority for response actions. The initial priority list must be established by January 1, 1995.

(b) The priority list required under this subdivision must be based on the relative risk or danger to public health or welfare or the environment, taking into account to the extent possible the population at risk, the hazardous potential of the hazardous substances at the facility, the potential for contamination of drinking water supplies, the potential for direct human contact, and the potential for destruction of sensitive ecosystems.

Subd. 3. Notification. By September 1, 1994, the commissioner shall notify the owner or operator of, and persons subject to a cleanup order at, each qualified facility defined in section 115B.39, subdivision 2, paragraph (1), clause (1), of whether the requirements of subdivision 4 or 5 have been met. If the requirements have not been met at a facility, the commissioner, by the earliest practicable date, shall notify the owner or operator and persons subject to a cleanup order of what actions need to be taken.

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 (l), 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 (l), 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 (l), 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.

Subd. 5. Qualified facility under cleanup order; duties. (a) For a qualified facility that is subject to a cleanup order, persons identified in the order shall complete construction of the remedy required under the cleanup order and:

(1) for a federal order, receive a concurrent determination of the United States Environmental Protection Agency and the agency or commissioner that the remedy is functioning properly and is performing as designed; or

(2) for a state order, receive acknowledgment from the agency or commissioner that the obligations under the order for construction of the remedy have been met.

(b) The owner or operator of a qualified facility that is subject to a cleanup order, in addition to any applicable requirement in paragraph (a), shall comply with subdivision 4, paragraphs (a), clause (3) or (4); and (b).

Subd. 6. Commissioner; duties. (a) If the owner or operator of a qualified facility that is subject to the requirements of subdivision 4, paragraph (a), fails to comply with subdivision 4, paragraph (a), clause (1) or (2), the commissioner shall:

(1) undertake or complete closure activities at the facility in compliance with the solid waste rules in effect at the time the commissioner takes action under this clause; and

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(2) undertake or continue postclosure care at the facility as required under subdivision 2.

(b) If a facility has been properly closed under subdivision 4, but the applicable closure requirements are less environmentally protective than closure requirements in the solid waste rules in effect on January 1, 1993, the commissioner shall determine whether the facility should be closed to the higher standards and, if so, shall undertake additional closure activities at the facility to meet those standards. The commissioner may determine that additional closure activities are unnecessary only if it is likely that response actions will be taken in the near future and that those response actions will result in removal or significant alteration of the closure activities or render the closure activities unnecessary.

Subd. 7. Notice of compliance; effects. (a) The commissioner shall provide written notice of compliance to the appropriate owner or operator or person subject to a cleanup order when:

(1) the commissioner determines that the requirements of subdivision 4 or 5 have been met; and

(2) the person who will receive the notice has submitted to the commissioner a written waiver of any claims the person may have against any other person for recovery of any environmental response costs related to a qualified facility that were incurred prior to the date of notice of compliance.

(b) Beginning on the date of the notice of compliance:

(1) the commissioner shall assume all obligations of the owner or operator or person for environmental response actions under the federal Superfund Act and any federal or state cleanup orders and shall undertake all further action under subdivision 1 at or related to the facility that the commissioner deems appropriate and in accordance with the priority list; and

(2) the commissioner may not seek recovery against the owner or operator of the facility or any responsible person of any costs incurred by the commissioner for environmental response action at or related to the facility, except:

(i) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), to the extent of insurance coverage held by the owner or operator or responsible person; or

(ii) as provided in section 115B.402.

(c) The commissioner and the attorney general shall communicate with the United States Environmental Protection Agency addressing the manner and procedure for the state's assumption of federal obligations under paragraph (b), clause (1).

Subd. 8. Statutes of limitations. (a) With respect to claims for recovery of environmental response costs related to qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), the running of all applicable periods of limitation under state law is suspended until July 1, 2004.

(b) A waiver of claims for recovery of environmental response costs under this section or section 115B.43 is extinguished for that portion of reimbursable costs under section 115B.43 that have not been reimbursed by July 1, 2004.

History: 1994 c 639 art 1 s 3; 1995 c 220 s 130; 1999 c 231 s 134–140; 2003 c 128 art 2 s 25; 2004 c 228 art 1 s 73

115B.402 ILLEGAL ACTIONS AT QUALIFIED FACILITIES.

The commissioner may recover under section 115B.17, subdivision 6, that portion of the costs of response actions at any qualified facility attributable to a person who otherwise would be responsible for the release or threatened release under section 115B.03, and whose actions related to the release or threatened release were in violation of federal or state hazardous waste management laws in effect at the time of those actions. The commissioner's determination of the portion of the costs of a response action attributable to a person under this section, based on the volume and toxicity of waste in the facility associated with the person

and other factors reasonably related to the contribution of the person to a release or threatened release, is prima facie evidence that those costs are attributable to the person.

History: 1994 c 639 art 1 s 4

115B.403 ACCEPTANCE OF DUMP MATERIALS TO AUGMENT CLOSURE OR CLOSURE UPGRADE ACTIVITIES AT QUALIFIED FACILITIES.

(a) The commissioner may allow dump materials at qualified facilities from sites that have been in public ownership on or after January 1, 1998, provided that the commissioner finds that:

(1) accepting the dump materials will not significantly increase the potential environmental impacts of the qualified facility;

(2) accepting the dump materials will benefit the qualified facility by improving final slopes, or in some other tangible manner, and the materials will be provided to the qualified facility according to a schedule consistent with closure or closure upgrade activities at the qualified facility;

(3) the owner of the site where the dump materials were disposed complies with the requirements of paragraph (b) and agrees to:

(i) pay any costs of screening and inspection needed at point of excavation or point of deposit to ensure that unacceptable materials are not delivered to the qualified facility;

(ii) secure any permissions necessary from the owner of the property containing the qualified facility;

(iii) transport the dump materials to the qualified facility according to a process and schedule acceptable to the commissioner and, at owner's cost, pay all transportation costs related to the activity; and

(iv) complete cleanup, final grading, seeding, and other related activities for the area where the dump existed.

(b) In order to qualify for consideration for disposal of dump materials at qualified facilities, the owner of the site where the dump materials were disposed shall notify the commissioner, in writing, at least six months before closure activity at the qualified facility indicating the owner's desire to dispose of the dump material at the qualified facility in order to allow adequate time for construction planning and public information activities. The commissioner shall consider requests based on the schedule of closure and closure upgrade activities at qualified facilities. The commissioner shall require the owner of the site to submit, at the owner's expense, physical and chemical evaluation data regarding the dump material including any necessary coring, excavation, or other sampling data at least six months before closure construction to assist the commissioner in making the determination whether or not to accept the material.

(c) The commissioner may reject any and all requests to dispose of dump materials at qualified facilities.

(d) Nothing in this section shall be construed as allowing unpermitted disposal facilities to be included as qualified facilities in the closed landfill program.

History: 1998 c 306 s 2

115B.405 EXCLUDED FACILITIES.

Subdivision 1. **Application.** The owner or operator of a qualified facility may apply to the commissioner for exclusion from the landfill cleanup program under sections 115B.39, 115B.40, 115B.41, 115B.412, and 115B.43. Applications for qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1), must be received by the commissioner by February 1, 1995. Applications for qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (2), must be received by the commissioner by December 31, 1999. The owner or operator of a qualified facility that is subject to a federal cleanup order or that includes any portion that is tax-forfeited may not apply for exclusion under this

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section. In addition to other information required by the commissioner, an application must include a disclosure of all financial assurance accounts established for the facility. Applications for exclusion must:

(1) show that the operator or owner is complying with the agency's rules adopted under section 116.07, subdivision 4h, and is complying with a financial assurance plan for the facility that the commissioner has approved after determining that the plan is adequate to provide for closure, postclosure care, and contingency action;

(2) demonstrate that the facility is closed or is in compliance with a closure schedule approved by the commissioner; and

(3) include a waiver of all claims for recovery of costs incurred under sections 115B.01 to 115B.20 and the federal Superfund Act at or related to a qualified facility.

Subd. 2. Evaluation of exclusion status. Within 90 days after the commissioner has received a complete application for exclusion, the commissioner shall notify the owner or operator if the facility is excluded. If the commissioner finds that the facility does not satisfy the requirements for exclusion, the commissioner shall notify the owner or operator of that fact.

Subd. 3. Restriction on use of property at excluded facilities. (a) A person may not use any property described in the most recent agency permit issued for an excluded facility in any way that disturbs the integrity of the final cover, liners, or any other components of any containment system, or the function of the facility's monitoring systems, unless the agency finds that the disturbance:

(1) is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

(2) is necessary to reduce a threat to human health or the environment.

(b) Before any transfer of ownership of property described in paragraph (a), the owner must obtain approval from the commissioner. The commissioner shall approve a transfer if the owner can demonstrate to the satisfaction of the commissioner that persons and property will not be exposed to undue risk from releases of hazardous substances or pollutants or contaminants.

(c) After obtaining approval from the commissioner, the owner shall record with the county recorder of the county in which the property is located an affidavit containing a legal description of the property that discloses to any potential transferee:

(1) that the land has been used as a mixed municipal solid waste disposal facility;

(2) the identity, quantity, location, condition, and circumstances of the disposal and any release of hazardous substances or pollutants or contaminants from the facility to the full extent known or reasonably ascertainable; and

(3) that the use of the property or some portion of it may be restricted as provided in paragraph (a).

(d) An owner must also file an affidavit within 60 days after any material change in any matter required to be disclosed under paragraph (c), with respect to property for which an affidavit has already been recorded. If the owner or any subsequent owner of the property removes the waste from the facility together with any residues, liner, and contaminated underlying and surrounding soil, that owner may record an affidavit indicating the removal. Failure to record an affidavit as provided in this paragraph does not affect or prevent any transfer of ownership of the property.

(e) The county recorder shall record all affidavits presented in accordance with paragraphs (c) and (d). The affidavits must be recorded in a manner that will ensure their disclosure in the ordinary course of a title search of the subject property.

(f) This subdivision is enforceable under sections 115.071 and 116.072.

Subd. 4. Closure. If the commissioner determines that the owner or operator of an excluded facility did not complete the terms of an approved closure plan by the date in the plan,

the commissioner shall complete closure at the facility and may seek cost recovery against the owner or operator under section 115B.17, subdivision 6.

History: 1994 c 639 art 1 s 5; 1999 c 231 s 141; 2004 c 228 art 1 s 73

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.

Subd. 4. **Disqualification; permits.** If an owner or operator of a qualified facility that is not a local government unit does not undertake closure or postclosure care in compliance with section 115B.40, subdivision 4, the owner or operator is ineligible to obtain or renew a state or local permit or license to engage in a business that manages solid waste. Failure of an owner or operator that is not a local government unit to complete closure or postclosure care at a qualified facility is prima facie evidence of the lack of fitness of that owner or operator to conduct any solid waste business and is grounds for revocation of any solid waste business permit or license held by that owner or operator.

For the purposes of this subdivision and subdivision 2, "owner or operator" means a person, partnership, firm, limited liability company, cooperative, association, corporation,

or other entity and includes any entity in which the owner or operator owns a controlling interest.

Subd. 5. **Expedited closure.** To expedite compliance with section 115B.40, subdivision 4, a person other than an owner or operator may undertake closure or postclosure care in compliance with that subdivision under an agreement with the commissioner.

History: 1994 c 639 art 1 s 6; 1995 c 220 s 101,130; 2003 c 128 art 2 s 26–28

115B.412 PROGRAM OPERATION.

Subdivision 1. **Duty to provide information.** Any person who the commissioner has reason to believe has or may obtain information related to the generation, composition, transportation, treatment, or disposal of waste in a qualified facility or who has or may obtain information related to the ownership or operation of a facility shall furnish to the commissioner or the commissioner's designee any information that person may have or may reasonably obtain that is relevant to a release or threatened release at a qualified facility.

Subd. 2. **Access to information and property.** The commissioner or a person designated by the commissioner, on presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda, or data of any person who has a duty to provide information to the agency under subdivision 1; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized by sections 115B.39 to 115B.43 including obtaining information from any person who has a duty to provide the information under subdivision 1, conducting surveys or investigations, and taking response action.

This subdivision and subdivision 1 are enforceable under sections 115.071 and 116.072. If the commissioner prevails in an enforcement action under this subdivision, the commissioner may recover all costs, including court costs, attorney fees, and administrative costs, related to the enforcement action.

Subd. 3. **Acquisition and disposition of real property.** The commissioner may acquire and dispose of real property the commissioner deems reasonably necessary for environmental response actions at or related to a qualified facility under section 115B.17, subdivisions 15 and 16.

Subd. 4. **Affected real property; notice.** (a) The commissioner shall provide to affected local government units, to be available as public information, and shall make available to others, on request, a description of the real property described in the original and any revised permits for a qualified facility, along with a description of activities that will be or have been taken on the property under sections 115B.39 to 115B.43 and a reasonably accurate description of the types, locations, and potential movement of hazardous substances, pollutants and contaminants, or decomposition gases related to the facility. The commissioner shall provide and make this information available at the time the facility is placed on the priority list under section 115B.40, subdivision 2; shall revise, provide, and make the information available when response actions, other than long-term maintenance actions, have been completed; and shall revise the information over time if significant changes occur that make the information obsolete or misleading.

(b) A local government unit that receives information from the commissioner under paragraph (a) shall incorporate that information in any land use plan that includes the affected property and shall notify any person who applies for a permit related to development of the affected property of the existence of the information and, on request, provide a copy of the information.

Subd. 5. **Environmental lien.** An environmental lien for environmental response costs incurred, including reimbursements made under section 115B.43, by the commissioner under sections 115B.39 to 115B.445 attaches in the same manner as a lien under sections 514.671 to 514.676 to all the real property described in the original and any revised permits for a qualified facility and any adjacent property owned by the facility owner or operator from the date the first assessment, closure, postclosure care, or response activities related to

the facility are undertaken by the commissioner. For the purposes of filing an environmental lien under this subdivision, the term "cleanup action" as used in sections 514.671 to 514.676 includes all of the costs incurred by the commissioner to assess, close, maintain, monitor, and respond to releases at qualified facilities under sections 115B.39 to 115B.445. Notwithstanding section 514.672, subdivision 4, a lien under this paragraph takes precedence over all other liens on the property regardless of when the other liens were or are perfected. For the purpose of this subdivision, "owner or operator" has the meaning given it in section 115B.41, subdivision 4.

Subd. 6. Contracts. The commissioner shall, to the extent practicable, ensure that contracts for activities or consulting services under this section are entered into with contractors or consultants located within the region where the facility subject to the contracts is located. The commissioner shall tailor specifications in requests for proposals to the types of activities or services that need to be undertaken at a specific facility or group of facilities located in the same region and shall not include specifications that require specialized expertise or laboratory work not available within the region unless it is necessary to do so to meet the requirements of this section.

Subd. 7. Separate accounting. The commissioner shall maintain separate accounting for each qualified facility regarding:

- (1) the amount of financial assurance funds transferred under section 115B.40, subdivisions 4 and 5; and
- (2) costs of response actions taken at the facility.

Subd. 8. Transfer of title. The owner of a qualified facility may, as part of the owner's activities under section 115B.40, subdivision 4 or 5, offer to transfer title to all the property described in the facility's most recent permit, including any property adjacent to that property the owner wishes to transfer, to the commissioner. The commissioner may accept the transfer of title if the commissioner determines that to do so is in the best interest of the state.

Subd. 9. Land management plans. The commissioner shall develop a land use plan for each qualified facility. All local land use plans must be consistent with a land use plan developed under this subdivision. Plans developed under this subdivision must include provisions to prevent any use that disturbs the integrity of the final cover, liners, any other components of any containment system, or the function of any monitoring systems unless the commissioner finds that the disturbance:

- (1) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
- (2) is necessary to reduce a threat to human health or the environment.

Before completing any plan under this subdivision, the commissioner shall consult with the commissioner of finance regarding any restrictions that the commissioner of finance deems necessary on the disposition of property resulting from the use of bond proceeds to pay for response actions on the property, and shall incorporate the restrictions in the plan.

Subd. 10. Report. By December 1 of each year, the commissioner shall report to the environment and natural resources committees and to the appropriate finance committees of the senate and the house of representatives on the commissioner's activities under sections 115B.39 to 115B.43 and the commissioner's anticipated activities during future fiscal years.

Subd. 11. Rules. The commissioner may adopt rules necessary to implement sections 115B.39 to 115B.43.

History: 1994 c 639 art 1 s 7; 1996 c 470 s 27; 1997 c 7 art 1 s 34; 1997 c 216 s 109

115B.414 THIRD-PARTY CLAIMS; MEDIATION; DEFENSE.

Subdivision 1. Third-party claims; definition. For the purposes of this section, "third-party claims" means claims made against mixed municipal solid waste generators by a responsible person or group of responsible persons under state or federal law for payment of response costs and related costs at a qualified facility, when the claimant or claimants do

not produce evidence, other than statistical or circumstantial evidence, that the persons against whom the claims are made ever arranged for disposal or transported for disposal mixed municipal solid waste containing a hazardous substance or pollutant or contaminant to the facility.

Subd. 2. **Mediation.** A third-party claim or group of third-party claims that all arise from the same facility may be submitted to the Minnesota Office of Dispute Resolution for mediation under the Minnesota Civil Mediation Act, sections 572.31 to 572.40. The costs of mediation must be allocated equally between the person or persons against whom the claims are made and the person or persons making the claims.

Subd. 3. **Partial reimbursement.** A person or persons against whom one or more third-party claims are made may seek reimbursement from the commissioner of one-half of the costs of mediation allocated to the person or persons under subdivision 2. The commissioner shall reimburse the person or persons that request reimbursement unless the commissioner finds that the mediation was not entered into and conducted in good faith by the person or persons seeking reimbursement.

Subd. 4. **Defense costs.** If a person or persons against whom one or more third-party claims are made request the person or persons making the claims to submit the claims to mediation and the claimants refuse to submit to mediation or if the person or persons against whom third-party claims are made enter into and conduct the mediation in good faith but the mediation fails to resolve the claims, the person or persons, in cooperation with other persons against whom third-party claims have been made that arise from the same facility, may retain legal counsel to defend them against the claims and may seek partial reimbursement from the commissioner for reasonable attorney fees. The commissioner shall provide partial reimbursement for reasonable attorney fees under this subdivision of \$75 per hour for a maximum number of hours to be established by the commissioner by rule. The maximum number of hours for reimbursement must increase as the number of persons who collectively retain legal counsel to defend against related claims increases but need not increase proportionately to the increase in the number of persons seeking collective defense. Under no circumstances may a person or group of persons receive reimbursement of more than 75 percent of their reasonable attorney fees under this subdivision.

History: 1994 c 639 art 1 s 8

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: 1992 c 513 art 2 s 26; 1993 c 172 s 71; 1994 c 639 art 3 s 1,2; 1995 c 185 s 3; 1995 c 220 s 102; 1997 c 7 art 1 s 35; 1999 c 231 s 142; 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: 1999 c 231 s 143; 2003 c 128 art 2 s 30

115B.43 REIMBURSABLE PARTIES AND EXPENSES.

Subdivision 1. **Generally.** Environmental response costs at qualified facilities defined in section 115B.39, subdivision 2, paragraph (l), clause (1), for which a notice of compliance has been issued under section 115B.40, subdivision 7, are reimbursable as provided in this section.

Subd. 2. **Reimbursable persons.** (a) Except as provided in paragraphs (b) to (d), the following persons are eligible for reimbursement under this section:

(1) owners or operators, after the owners or operators have agreed to waive all claims for recovery of environmental response costs against any other persons and have agreed to reimburse, on a proportionate basis from each reimbursement received, each person from whom the applicant has collected funds towards reimbursable costs; and

(2) persons, other than owners and operators after the persons have agreed to:

(i) reimburse, on a proportionate basis from each reimbursement payment received, each person from whom the applicant has collected funds towards reimbursable costs; and

(ii) waive all claims for environmental response costs related to the facility and all other qualified facilities, against all other persons.

(b) A person is not eligible for reimbursement under this section if the person is an owner or operator who failed to properly close the qualified facility within the time specified in the facility's permit or the solid waste rules in effect at the time the facility stopped accepting waste.

(c) A person is not eligible for reimbursement under this section for environmental response costs at a facility if the person's actions relating to a release or threatened release at the facility were in violation of federal or state hazardous waste management laws in effect at the time of those actions.

(d) A person is not eligible for reimbursement under this section if, after June 15, 1994, the person files or continues to pursue an action asserting a claim for recovery of environmental response costs relating to a qualified facility, or otherwise seeks contributions for these costs, from another person.

Subd. 3. **Reimbursable expenses.** (a) Environmental response costs are eligible for reimbursement under this section to the extent that they:

(1) exceed:

(i) for each political subdivision that is an owner or operator of the facility, \$250,000; and

(ii) for a private owner or operator, or a political subdivision that jointly owned or operated the facility with two or more other political subdivisions under a valid joint powers agreement, \$750,000;

(2) are documented with billings or other proof of project cost; and

(3) if the commissioner finds that they were reasonable and necessary under the circumstances. The commissioner may request further documentation from those requesting reimbursement if it is necessary in the commissioner's judgment.

(b) For owners or operators, the following costs are not reimbursable:

(1) costs attributable to normal operations of the facility or to activities required under the facility permit and applicable solid waste rules, including corrective action, closure, post-closure, and contingency action; and

(2) the acquisition of real property if required of the owner or operator in order to carry out requirements of the facility permit or applicable solid waste rules.

Subd. 4. Reimbursement plan. The commissioner shall prepare a reimbursement plan and present it by October 1, 1995, to the Legislative Commission on Waste Management, the chairs of the senate Finance Committee and Environment and Natural Resources Finance Division and the committees on Ways and Means and Environment and Natural Resources Finance of the house of representatives, and owners and operators of, and persons subject to a cleanup order at, qualified facilities. The plan shall identify sites where reimbursement will occur and the estimated dollar amount for each site and shall set out priorities and payment schedules. The plan must give first priority for reimbursement to persons who are not owners or operators of qualified facilities.

Subd. 5. Reimbursement timing. The commissioner shall not issue reimbursement payments before October 15, 1995. The commissioner shall not issue reimbursements for expense statements filed after October 15, 1996, and shall approve or deny all reimbursement requests by October 15, 1997. The commissioner shall fully reimburse all persons eligible for reimbursement no later than six years after the date of notice of compliance for the facility under section 115B.40, subdivision 7.

Subd. 6. Reimbursement ceiling. The commissioner shall not issue reimbursements in an amount exceeding \$7,000,000 per fiscal year.

History: 1994 c 639 art 1 s 9; 1999 c 231 s 144

115B.44 [Repealed, 1996 c 370 s 7]

115B.441 INSURANCE CLAIMS SETTLEMENT AND RECOVERY PROCESS; FINDINGS AND PURPOSE.

(a) The legislature finds that:

(1) insurers have issued certain insurance policies to their policyholders that may have provided coverage for environmental response costs related to qualified facilities for which their policyholders bear legal responsibility;

(2) because the commissioner is required by law to take over responsibility for environmental response actions relating to all qualified facilities, any rights to coverage based upon the insurers' contractual obligations to their policyholders to pay environmental response costs that are assumed by the state related to these facilities, to the extent the obligations may exist, are rights that should fairly accrue to the state; and

(3) the resolution of these potential insurance coverage rights should provide a fair share of the cost to the state of taking over these environmental responsibilities consistent with the insurers' potential coverage obligations to their policyholders.

(b) The purposes of sections 115B.441 to 115B.445 are:

(1) to provide the means for the state and insurers to resolve claims of the state for environmental response costs related to qualified facilities that may be covered by insurance policies of persons who bear legal responsibility for those costs; and

(2) to create a fair and efficient settlement process that provides insurers with an opportunity to settle claims based upon a reasonable approximation of the insurers' potential cov-

erage exposure and a fair opportunity for the state to recover claims by legal action from non-settling insurers.

History: 1996 c 370 s 1

115B.442 SETTLEMENT PROCESS; INFORMATION GATHERING.

Subdivision 1. **Selection of qualified facilities.** The commissioner and the attorney general shall select qualified facilities for which they intend to make offers of settlement to insurers under section 115B.443. The first group of qualified facilities, consisting of not less than ten facilities, must be selected within 60 days after March 27, 1996. Upon selection of a qualified facility under this subdivision, the commissioner shall commence reasonable efforts to identify potential insurance policyholders and insurance coverage for the qualified facility in accordance with this section.

Subd. 1a. **Definition of qualified facilities.** For the purposes of sections 115B.441 to 115B.445, "qualified facility" means only those qualified facilities defined in section 115B.39, subdivision 2, paragraph (1), clause (1).

Subd. 2. **Potential insurance policyholder.** For the purpose of this section, "potential insurance policyholder" means a person who may bear legal responsibility for environmental response costs related to a qualified facility including the following:

(1) a person who has been the subject of a request for response action under section 115B.17, or an order under section 106 of the Federal Superfund Act with respect to a qualified facility;

(2) an owner or operator of a qualified facility;

(3) a person who engaged in commercial, industrial, or other activities generally known to produce waste containing a hazardous substance, or pollutant or contaminant, and whose waste was disposed of at a qualified facility; and

(4) a person who engaged in the business of hauling waste for disposal and who accepted waste from one or more persons of the type described in clause (3) for transport to a qualified facility.

Subd. 3. **Identification of potential insurance policyholders.** The commissioner may request information from a person that the commissioner has reason to believe is a potential insurance policyholder or has information needed to identify potential insurance policyholders. The recipient of the request shall provide to the commissioner any information in the person's possession, or which the person can reasonably obtain, that the commissioner requires to identify potential insurance policyholders for a qualified facility and to explain to the commissioner the person's efforts to discover and provide the information. An owner or operator of a qualified facility shall retain and preserve all documents and other information relevant to the identification of potential insurance policyholders for the qualified facility.

Subd. 4. **Identification of potential insurance coverage.** The commissioner may request a person that the commissioner has reason to believe is a potential insurance policyholder to provide, and the recipient of the request shall provide to the commissioner, any information in the person's possession, or which the person can reasonably obtain, regarding the person's potential liability insurance coverage for environmental response costs related to a qualified facility. A potential insurance policyholder for which evidence of potential coverage has been identified shall cooperate with reasonable requests of the commissioner or the attorney general for assistance in preparing for and negotiating a settlement under this section or in preparing or pursuing a claim under section 115B.444 related to that policyholder's potential coverage. Nothing in this subdivision relieves a potential insurance policyholder of any duties imposed upon it pursuant to the terms, conditions, and provisions of its insurance policy, including any duty to cooperate with its insurer in the investigation, negotiation, and settlement of claims or demands, or the defense of suits. The commissioner may contract for the services of persons to assist in reconstructing insurance policies and potential coverage from incomplete insurance information. The commissioner may authorize the attorney general to carry out all or a portion of the authority provided in this section.

Subd. 5. **Identification of potential coverage by insurers.** The commissioner may request an insurer to make reasonable efforts to identify or confirm potential insurance coverage of any potential insurance policyholder identified under subdivision 4, or may direct the potential insurance policyholder to make this request of an insurer. An insurer that is requested to identify or confirm potential coverage of a potential insurance policyholder under this subdivision has 90 days after receiving the request to confirm coverage or to provide all information in the possession of the insurer that may assist in identifying potential coverage, and to explain the insurer's efforts to discover and provide such information. An insurer requested to provide information under this subdivision shall preserve all information relevant to the request until any claim relating to the request is resolved.

Subd. 6. **Enforcement.** Subdivisions 3 to 5 are enforceable under sections 115.071 and 116.072.

History: 1996 c 370 s 2; 1999 c 231 s 145

115B.443 SETTLEMENT PROCESS.

Subdivision 1. **Determination of facility costs.** Beginning not later than one year after selection of a qualified facility under section 115B.442, subdivision 1, the commissioner shall determine the current total estimated amount of environmental response costs incurred and to be incurred by the state for the qualified facility under sections 115B.39 to 115B.43, including reimbursement under section 115B.43.

Subd. 2. **Settlement offers.** The attorney general and the commissioner shall select one or more insurers who have been identified by the commissioner as providing potential coverage to persons identified under section 115B.442 as potential insurance policyholders for a qualified facility and shall make settlement offers with respect to one or more of the qualified facilities to the selected insurers. The attorney general and the commissioner shall base the settlement offer on their evaluation of the potential coverage available for environmental response costs under policies issued by the insurer to persons identified as potential insurance policyholders for that qualified facility and on the total estimated costs for the qualified facility, as determined under subdivision 1. The attorney general shall provide written notice of the settlement to the insurer together with a written explanation of how the offer was calculated. The attorney general may exclude from a settlement offer claims relating to policyholders who are known by the attorney general to have claims against the insurer for coverage for environmental liabilities at locations other than qualified facilities, or who are actively litigating or settling claims against their insurers relating to any qualified facility.

Subd. 3. **Settlement negotiations; mediation.** An insurer shall have 60 days after receipt of a settlement offer and written explanation from the state to evaluate the offer, after which the insurer, the commissioner, and the attorney general shall commence negotiations to attempt to reach a settlement with respect to the potential insurance coverage and qualified facilities subject to the settlement offer. The insurer shall have 180 days to negotiate and commit to a settlement with the state before the attorney general may commence an action under section 115B.444, unless the commissioner and the attorney general agree to extend the negotiation period upon request by the insurer made before expiration of the 180-day period. Any extension shall be limited to one additional 60-day period.

The attorney general, commissioner, and the insurer may agree to use any method of alternative dispute resolution for all or a portion of the issues in the negotiation, or may agree to negotiate all matters directly among themselves. If the parties do not agree in writing on the manner in which they will negotiate a settlement within 60 days after commencement of the negotiation period, the parties shall submit the negotiation of the settlement to mediation by an independent and neutral mediator selected by the Minnesota Office of Dispute Resolution. The attorney general shall submit on behalf of all parties a request to the Office of Dispute Resolution to appoint a mediator for the negotiations. The cost of mediation under this subdivision shall be divided equally between the state and the insurer.

Any settlement offer or any proposal, statement, or view expressed or document prepared in the course of negotiation under this section shall not be considered an admission by

any party and shall not be admissible in evidence in any judicial proceeding affecting matters subject to settlement negotiation, provided that any matter otherwise admissible in a judicial proceeding is not made inadmissible by virtue of its use in negotiation under this section.

Subd. 4. Participation by affected policyholders. (a) Within 30 days of notifying an insurer of a settlement offer, the attorney general shall make reasonable efforts to notify policyholders who may be affected by settlement negotiations under subdivision 3. The notification shall inform the policyholder of the commencement of negotiations between the state and the insurer and the manner in which a policyholder, with agreement of the insurer, may participate in the negotiation process. If the insurer and the state reach a settlement of the state's claims, the attorney general shall provide notice of any proposed settlement to any affected policyholder who makes a written request for such notice.

(b) Subject to the limitations of this paragraph, an insurer to whom a settlement offer is made under subdivision 3, and any policyholder who may be affected by the negotiation, may agree to negotiate a resolution of any other outstanding environmental claims, related to the qualified facility or facilities that are subject to the state's settlement offer, within the settlement negotiation process provided under this section. Environmental claims unrelated to the qualified facility or facilities that are subject to the state settlement offer may be included within the settlement negotiation process provided under this section at the discretion of the attorney general, provided that the state will not bear any costs of mediation or alternative dispute resolution arising from the unrelated claims. The agreement of the insurer and affected policyholders to negotiate must be reached by the time that the insurer and the state commence negotiations as provided under subdivision 3. The policyholder shall not participate in the selection of the method of negotiation by the state and the insurer under subdivision 3. If the attorney general in the attorney general's discretion determines, at any time after the first 60 days of the negotiation period, that continued participation of the policyholders in the negotiation process with the state and the insurer is detrimental to the effective negotiation of a settlement between the state and the insurer, the attorney general shall so notify the insurer and the policyholders. After such notification by the attorney general, the insurer and policyholders may continue to negotiate separately from the negotiation between the insurer and the state, and may use the same mediator or other person who is facilitating negotiation between the state and the insurer. Policyholders shall be responsible for an equitable share of any costs of mediation or other alternative dispute resolution process in which they participate. Notwithstanding a determination to discontinue negotiations involving policyholders, the attorney general may engage in an additional 30 days of negotiation with the insurer and policyholders if, within the time limit for committing to a settlement provided under subdivision 3, the attorney general finds, in the discretion of the attorney general, that participation by the policyholders in a settlement between the state and the insurer would be beneficial to that settlement.

Inability of the insurer or the state to reach a settlement with policyholders under this subdivision shall not preclude a settlement between the state and the insurer.

Subd. 5. Adjustment for retrospective premiums. A settlement that includes payment of any amount under a policy subject to a retrospective premium plan shall include terms which assure that the settlement does not result in the imposition of any retrospective premium on any policyholder. In negotiating with respect to any state offer of settlement which is based in whole or in part on coverage known to the insurer to be subject to a retrospective premium plan:

(1) the insurer shall calculate the amount of any retrospective premium that would result from payment of the state's settlement offer amount and shall disclose the calculation and the basis for it to the attorney general and the commissioner; and

(2) the attorney general and commissioner may reduce the settlement offer amount by the amount of the retrospective premium or agree to assume the obligation to pay the retrospective premium in order to assure that no retrospective premium is imposed on the policyholder.

Subd. 6. **Option to settle natural resource damages.** An insurer who has received a settlement offer may request the attorney general and the commissioner to address in any settlement under this section natural resource damages related to qualified facilities subject to the settlement offer. The attorney general and the commissioner, after receiving a request under this subdivision, shall determine an amount to be added to the state's settlement offer that would be sufficient to address and resolve in the settlement any state claims for natural resource damages related to the qualified facilities subject to the settlement.

Subd. 7. **Settlement option for all qualified facilities.** If an insurer has entered settlements with the state under this section with respect to qualified facilities for which the aggregate amount of total estimated environmental response costs equals at least 60 percent of the total estimated environmental response costs for all qualified facilities as determined by the commissioner, the attorney general and the commissioner, upon request of the insurer, may settle with the insurer with respect to the remaining qualified facilities for the amount determined in this subdivision. The amount of the settlement for the remaining qualified facilities must be the amount that bears the same proportion to the total estimated costs for the remaining facilities that the amount payable under all of the insurer's existing settlements under this section bears to the aggregate of the total estimated costs for the qualified facilities subject to those settlements.

Subd. 8. **Scope of release by state; effect of settlement.** Except for any claims excluded from the settlement process under subdivision 2, a settlement under this section shall release a settling insurer, and its policyholders to the extent of their insurance coverage under policies of that insurer, from all liability for all environmental response costs incurred and to be incurred by the state related to the qualified facility or facilities that are the subject of the settlement, including natural resource damages if addressed in the settlement. Except for claims excluded under subdivision 2, the settlement shall release a settling insurer and its policyholders from liability as described in this subdivision under all insurance policies issued by the insurer, regardless of whether the policies or policyholders were identified by the commissioner or attorney general under section 115B.442.

Subd. 9. **Other settlement terms.** (a) An insurer who enters a settlement under this section is not liable for claims for contribution regarding matters addressed in the settlement. As a condition of settlement, an insurer shall waive its rights to seek contribution for any amounts paid in the settlement or to bring a subrogation action against any other person for any amounts paid in the settlement.

(b) Settlement under this section does not discharge the liability of an insurer that has not entered a settlement under this section nor of a person to whom a nonsettling insurer has issued insurance coverage to the extent of that coverage.

(c) No settlement offer, settlement, or negotiation under this section shall affect any joint and several liability for environmental response costs or damages related to the facility of any person whose liability has not been settled under this section.

(d) A settlement under this section or section 115B.444, subdivision 2, paragraph (b), reduces the state's claims for environmental response costs, and natural resource damages if addressed in the settlement, related to qualified facilities subject to the settlement by the amounts paid to the state under the settlement for the facilities.

(e) A settlement agreement approved by the attorney general and the commissioner under this section shall be presumed to be a reasonable settlement of the state's claims.

Subd. 10. **Reduction of outstanding coverage.** Any amounts paid by an insurer pursuant to a judgment under section 115B.444 or settlement under this section reduce the outstanding coverage available under policies of the insurer to the extent permitted under applicable law and policy provisions.

History: 1996 c 370 s 3

115B.444 STATE ACTION AGAINST INSURERS.

Subdivision 1. **State action.** The state, by the attorney general, may bring a state action against any insurer for recovery of all environmental response costs incurred and to be in-

curred by the state, which costs are related to qualified facilities for which the state has assumed response action obligations or responsibilities under sections 115B.39 to 115B.43, and for which costs policyholders of the insurer may be liable. No assignment of any rights of a policyholder to the state and no judgment against the policyholder is required as a condition for the state bringing an action under this subdivision. The state shall make reasonable efforts to notify affected policyholders of the state's commencement of an action under this section. An affected policyholder may intervene in an action under this section. For purposes of this section, an "affected policyholder" means a policyholder whose rights under an insurance policy relevant to an action under this section may be affected by the action. All defenses available to a policyholder to any claim of liability for environmental response costs asserted or which could be asserted against it shall be available to the insurer in an action brought by the state under this subdivision. In any action under this subdivision, the claim of the state shall be limited by the applicable terms, conditions, and provisions of the relevant insurance policy under which coverage may be provided, and the state shall have no greater rights than the rights of the policyholder under its insurance policy subject to the statutory and common law that applies to the determination of those rights. Nothing in sections 115B.441 to 115B.445 shall be construed to relieve any policyholder of liability for environmental response costs to the extent of any insurance coverage of the policyholder by reason of the assumption of obligations or responsibilities by the state for environmental response actions under sections 115B.39 to 115B.43. Before the attorney general may commence an action against an insurer under this subdivision, for any claims with respect to a qualified facility, the attorney general and the commissioner shall present to the insurer a written settlement offer, and shall provide the insurer with an opportunity to negotiate and enter a settlement with the state as provided in section 115B.443. In any action under this subdivision, the state shall have the same rights as individual policyholders to recover its reasonable expenses and costs of litigation, including attorney fees.

Subd. 2. Actions by policyholders; state approval of settlements. (a) Except as provided in paragraph (b), nothing in sections 115B.441 to 115B.444 affects the right of a policyholder to bring or pursue any action against, or enter any settlement with, an insurer for any claims for which the state has a right of action against the insurer under this section and that have not been resolved by a settlement or judgment under this section. The state may intervene in an action in which a policyholder seeks to recover a claim for which the state has a right of action under this section.

(b) A policyholder may not enter a settlement that releases an insurer from any claims for which the state has an action under subdivision 1, unless the attorney general has given prior written approval to the settlement and the policyholder agrees to assign to the state any amounts recovered under the settlement from the insurer that are attributable to the resolution of the claims.

History: 1996 c 370 s 4

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: 1996 c 370 s 5; 2003 c 128 art 2 s 31

115B.45 [Repealed, 1996 c 370 s 7]

115B.46 [Repealed, 1996 c 370 s 7]

DRY CLEANER ENVIRONMENTAL RESPONSE AND REIMBURSEMENT LAW

115B.47 CITATION.

Sections 115B.47 to 115B.51 may be cited as the "Dry Cleaner Environmental Response and Reimbursement Law."

History: 1995 c 252 s 1

115B.48 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in section 115B.02 and this section apply to sections 115B.47 to 115B.51.

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.

Subd. 3. **Dry cleaning facility.** “Dry cleaning facility” means a facility located in this state that is or has been used for a dry cleaning operation, other than:

- (1) a coin-operated dry cleaning operation;
- (2) a facility located on a United States military base;
- (3) a uniform service or linen supply facility;
- (4) a prison or other penal institution;
- (5) a facility on the national priorities list established under the federal Superfund Act;

or

(6) a facility at which a response action has been taken or started before July 1, 1995, except as authorized in a settlement agreement approved by the commissioner by July 1, 1997.

Subd. 4. **Dry cleaning operation.** “Dry cleaning operation” means commercial cleaning of apparel and household fabrics for the general public, using one or more dry cleaning solvents.

Subd. 5. **Dry cleaning solvent.** “Dry cleaning solvent” means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including, but not limited to:

- (1) perchloroethylene and its degradation products; and
- (2) petroleum-based solvents and their degradation products.

Subd. 6. **Environmental response costs.** “Environmental response costs” means those costs described in section 115B.17, subdivision 6.

Subd. 7. **Facility.** “Facility” means one or more buildings or parts of a building and the equipment, installations, and structures contained in the building, located on a single site or on contiguous or adjacent sites. Facility includes any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise comes to be located.

Subd. 8. **Full-time equivalence.** “Full-time equivalence” means 2,000 hours worked by employees, owners, and others in a dry cleaning facility during a 12-month period beginning July 1 of the preceding year and running through June 30 of the year in which the annual registration fee is due. For those dry cleaning facilities that were in business less than the 12-month period, full-time equivalence means the total of all of the hours worked in the dry cleaning facility, divided by 2,000 and multiplied by a fraction, the numerator of which is 50 and the denominator of which is the number of weeks in business during the reporting period. For the purposes of section 115B.49, an owner working 2,000 hours or more shall be considered as one full-time equivalent.

History: 1995 c 252 s 2; 1996 c 471 art 2 s 1,2; 1997 c 216 s 110,111; 2002 c 324 s 1; 2003 c 128 art 2 s 32; 1Sp2005 c 1 art 2 s 133; 2006 c 281 art 5 s 2

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.

Subd. 2. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to the account:

- (1) the proceeds of the fees imposed by subdivision 4;

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- (2) interest attributable to investment of money in the account;
- (3) penalties and interest collected under subdivision 4, paragraph (c); and
- (4) money received by the commissioner for deposit in the account in the form of gifts, grants, and appropriations.

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).

Subd. 4. Registration; fees. (a) The owner or operator of a dry cleaning facility shall register on or before October 1 of each year with the commissioner of revenue in a manner prescribed by the commissioner of revenue and pay a registration fee for the facility. The amount of the fee is:

- (1) \$500, for facilities with a full-time equivalence of fewer than five;
- (2) \$1,000, for facilities with a full-time equivalence of five to ten; and
- (3) \$1,500, for facilities with a full-time equivalence of more than ten.

The registration fee must be paid on or before October 18 or the owner or operator of a dry cleaning facility may elect to pay the fee in equal installments. Installment payments must be paid on or before October 18, on or before January 18, on or before April 18, and on or before June 18. All payments made after October 18 bear interest at the rate specified in section 270C.40.

(b) A person who sells dry cleaning solvents for use by dry cleaning facilities in the state shall collect and remit to the commissioner of revenue in a manner prescribed by the commissioner of revenue, on or before the 20th day of the month following the month in which the sales of dry cleaning solvents are made, a fee of:

- (1) \$3.50 for each gallon of perchloroethylene sold for use by dry cleaning facilities in the state;
- (2) 70 cents for each gallon of hydrocarbon-based dry cleaning solvent sold for use by dry cleaning facilities in the state; and
- (3) 35 cents for each gallon of other nonaqueous solvents sold for use by dry cleaning facilities in the state.

(c) The audit, assessment, appeal, collection, enforcement, and administrative provisions of chapters 270C and 289A apply to the fee imposed by this subdivision. To enforce this subdivision, the commissioner of revenue may grant extensions to file returns and pay fees, impose penalties and interest on the annual registration fee under paragraph (a) and the monthly fee under paragraph (b), and abate penalties and interest in the manner provided in chapters 270C and 289A. The penalties and interest imposed on taxes under chapter 297A apply to the fees imposed under this subdivision. Disclosure of data collected by the commissioner of revenue under this subdivision is governed by chapter 270B.

Subd. 4a. [Repealed, 2005 c 10 art 1 s 82; 2005 c 157 s 2]

Subd. 4b. Fee adjustment. Notwithstanding section 16A.1285, each fiscal year the commissioner shall adjust the fees in subdivision 4 as necessary to maintain an annual income to the account of \$650,000.

History: 1995 c 252 s 3; 1996 c 471 art 2 s 3,4; 1997 c 216 s 112; 1999 c 250 art 3 s 14,15; 2000 c 333 s 1,2; 1Sp2001 c 2 s 128; 2002 c 324 s 2; 2003 c 128 art 2 s 33,34; 2005 c 151 art 2 s 2; 2005 c 157 s 1; 2006 c 259 art 7 s 1

115B.491 DRY CLEANING FACILITY USE FEE; FACILITIES TO FILE RETURN.

Subdivision 1. **Use fee.** A dry cleaning facility that purchases dry cleaning solvents for use in Minnesota without paying the seller of dry cleaning solvents the fee under section 115B.49, subdivision 4, paragraph (b), is subject to an equivalent fee. Liability for the fee is incurred when dry cleaning solvents are received in Minnesota by the dry cleaning facility.

Subd. 2. **Return required.** On or before the 20th of each calendar month, every dry cleaning facility that has purchased dry cleaning solvents for use in this state during the preceding calendar month, upon which the fee imposed by section 115B.49, subdivision 4, paragraph (b), has not been paid to the seller of the dry cleaning solvents, shall file a return with the commissioner of revenue showing the quantity of solvents purchased and a computation of the fee under section 115B.49, subdivision 4, paragraph (c). The fee must accompany the return. The return must be made upon a form furnished and prescribed by the commissioner of revenue and must contain such other information as the commissioner of revenue may require.

Subd. 3. **Applicability.** All of the provisions of section 115B.49, subdivision 4, paragraph (c), apply to this section.

History: 1996 c 471 art 2 s 5; 1999 c 250 art 3 s 16,17

115B.492 ALLOCATION OF PAYMENT.

In the discretion of the commissioner of revenue, payments received for fees may be credited first to the oldest liability not secured by a judgment or lien. For liabilities to which payments are applied, the commissioner of revenue may credit payments first to penalties, next to interest, and then to the fee due.

History: 1996 c 471 art 2 s 6

115B.50 RESPONSE ACTIONS.

Subdivision 1. **Response actions by the commissioner.** (a) In accordance with the priority list established under section 115B.17, subdivision 13, the commissioner shall take all response actions at or related to a dry cleaning facility that the commissioner determines are reasonable and necessary to protect the public health or welfare or the environment under the standards required in sections 115B.01 to 115B.20. The commissioner shall review and approve any investigation and response action plan submitted by an owner or operator of a dry cleaning facility who is taking response actions under subdivision 2 and shall oversee the implementation of the approved plans. In carrying out the duties under this subdivision, the commissioner may take emergency removal actions as provided in section 115B.17, subdivision 1, paragraph (b), and may exercise the authority provided in section 115B.17, subdivisions 2 to 5, 15, and 16.

(b) The commissioner may not seek recovery against a current or former owner or operator of a dry cleaning facility of any environmental response costs in excess of \$10,000 incurred by the commissioner at the facility, except:

(1) to the extent of insurance coverage, in excess of \$10,000, held by the owner or operator; or

(2) as provided in section 115B.51.

If the commissioner seeks recovery of environmental response costs against an owner or operator pursuant to this paragraph, the owner or operator shall act as directed by the commissioner to assert any rights of the owner or operator to any insurance coverage applicable to those costs and, if coverage is denied, to assign those rights to the commissioner.

(c) Before taking a response action under this subdivision, the commissioner shall notify the owner or operator of the facility. Except for emergency removal actions under section 115B.17, subdivision 1, paragraph (b), the commissioner shall not take response actions under this subdivision at a dry cleaning facility where an owner or operator of the facility is taking response actions under subdivision 2 in accordance with an investigation or response action plan approved by the commissioner.

Subd. 2. Response actions by owners or operators; reimbursement. (a) At the request of the owner or operator of a dry cleaning facility who takes response actions at the facility in accordance with a response action plan approved by the commissioner, the commissioner shall reimburse the owner or operator for all but \$10,000 of the environmental response costs incurred by the owner or operator if the commissioner determines that the costs are reasonable and were actually incurred. If a request for reimbursement is denied, the owner or operator may appeal the decision as a contested case under chapter 14.

(b) If the commissioner reimburses an owner or operator for environmental response costs under this subdivision for which the owner or operator has insurance coverage, the commissioner is subrogated to the rights of the owner or operator with respect to that insurance coverage to the extent of the reimbursement. Acceptance of reimbursement under this subdivision constitutes an assignment by the owner or operator with respect to any insurance coverage applicable to the costs that are reimbursed.

Subd. 3. Limitation on amount that may be spent. The commissioner may not, in a single fiscal year, make expenditures from the account related to a single dry cleaning facility that exceed 20 percent of the balance in the account at the beginning of the fiscal year.

History: 1995 c 252 s 4; 2004 c 228 art 1 s 73

115B.51 ILLEGAL ACTIONS.

The commissioner may recover under section 115B.17, subdivision 6, that portion of the environmental response costs at a dry cleaning facility that is attributable to a person who otherwise would be responsible for the release or threatened release under section 115B.03, and whose actions related to the release or threatened release were in violation of federal or state hazardous waste management laws in effect at the time of those actions.

History: 1995 c 252 s 5