

CHAPTER 115C

PETROLEUM TANK RELEASE CLEANUP

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115C.01 CITATION.

This chapter may be cited as the "Petroleum Tank Release Cleanup Act."

History: 1987 c 389 s 1; 1992 c 490 s 1

115C.02 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 1a. [Repealed, 1995 c 254 art 1 s 97]

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

Subd. 2a. **Applicant.** "Applicant" means a person eligible under section 115C.09 to receive reimbursement from the fund.

Subd. 3. **Board.** "Board" means the Petroleum Tank Release Compensation Board.

Subd. 4. **Corrective action.** "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

Subd. 5a. **Consultant.** "Consultant" means an individual, partnership, association, private corporation, or any other legal entity that actually performs consulting services. Consulting services include the rendering of professional opinion, advice, or analysis regarding a release.

Subd. 5b. **Contractor.** "Contractor" means an individual, partnership, association, private corporation, or any other legal entity that actually performs contractor services. Contractor services means products and services within a scope of work that can be defined by typical written plans and specifications including, but not limited to, excavation, treatment of contaminated soil

and groundwater, soil borings and well installations, laboratory analysis, surveying, electrical work, plumbing, carpentry, and equipment.

Subd. 6. [Renumbered subd 1a]

Subd. 6a. **Fund.** "Fund" means the petroleum tank release cleanup fund.

Subd. 7. **Operator.** "Operator" means a person in control of, or having responsibility for, the daily operation of a tank.

Subd. 8. **Owner.** "Owner" means a person who holds title to, controls, or possesses an interest in a tank. "Owner" does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank and fails to take all necessary corrective action as a volunteer under section 115C.09. The state or an agency of the state is not an owner solely because it holds title to a tank or to real property where the tank is located in trust for taxing districts as a result of forfeiture of title for nonpayment of taxes.

Subd. 9. **Person.** "Person" means an individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state.

Subd. 10. **Petroleum.** "Petroleum" means:

(1) liquid petroleum products as defined in section 296A.01;

(2) new and used lubricating oils; and

(3) new and used hydraulic oils used in lifts to raise motor vehicles or farm equipment and for servicing or repairing motor vehicles or farm equipment.

Subd. 10a. **Petroleum refinery.** "Petroleum refinery" means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oil, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives. "Petroleum refinery" includes fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers, fuel gas combustion devices, and indirect heating equipment associated with the refinery.

Subd. 11. **Political subdivision.** "Political subdivision" means a county, a town, or a statutory or home rule charter city.

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

Subd. 12. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after June 4, 1987, but does not include discharges or designed venting allowed under agency rules.

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

Subd. 13. **Responsible person.** "Responsible person" means a person who is responsible for a release under section 115C.021.

Subd. 14. **Tank.** "Tank" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to

contain, dispense, or store petroleum.

"Tank" does not include:

- (1) mobile tanks, except for tanks in transport; or
- (2) pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, United States Code, title 49, chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, United States Code, title 49, chapter 29.

Subd. 15. **Tank facility.** "Tank facility" means a contiguous area where tanks are located that are under the same ownership or control.

Subd. 16. **Tank in transport.** "Tank in transport" means a liquid fuel cargo tank used to deliver petroleum into storage tanks.

History: 1987 c 186 s 15; 1987 c 389 s 2; 1988 c 686 art 1 s 57; 1989 c 335 art 4 s 44; 1990 c 501 s 1,2; 1990 c 586 s 3; 1992 c 414 s 1; 1992 c 490 s 2-4; 1992 c 575 s 53; 1993 c 341 art 1 s 2,3; 1Sp1993 c 6 s 2; 1995 c 240 art 1 s 1,2; 1995 c 254 art 1 s 67; 1996 c 308 s 1,2; 1998 c 299 s 30; 2002 c 325 s 1,2; 2003 c 128 art 1 s 130; 2010 c 241 s 2,3

115C.021 RESPONSIBLE PERSON.

Subdivision 1. **General rule.** Except as provided in subdivisions 2 to 4, a person is responsible for a release from a tank if the person is an owner or operator of the tank at any time during or after the release.

Subd. 2. **Exception of certain tank owners.** An owner of a tank is not responsible for a release from the tank if the owner can establish that:

- (1) the tank was in place but the owner did not know or have reason to know of its existence at the time the owner first acquired right, title, or interest in the tank; and
- (2) the owner did not by failure to report under section 115.061 or other action significantly contribute to the release after the owner knew or reasonably should have known of the existence of the tank.

Subd. 3. **Tank located on tax-forfeited land.** The state, an agency of the state, or a political subdivision is not responsible for a release from a tank solely as a result of actions taken to manage, sell, or transfer tax-forfeited land where the tank is located under chapter 282 and other laws applicable to tax-forfeited land. This subdivision does not relieve the state, a state agency, or a political subdivision from liability for the daily operation of a tank under its control or responsibility located on tax-forfeited land.

Subd. 3a. **Eminent domain.** (a) The Department of Transportation is not responsible for a release from a tank 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 department through exercise of the power of eminent domain, through negotiated purchase in lieu of or after filing a petition for the taking of the property through eminent domain, 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.

(b) A person who acquires property from the department, other than property acquired through a land exchange, is not a responsible person under this section solely as a result of the acquisition of property if the property was acquired by the department through exercise of the power of eminent domain, by negotiated purchase after filing a petition for the taking of the

property through eminent domain, 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. 4. **Mortgagees.** (a) A mortgagee is not responsible for a release from a tank solely because the mortgagee becomes an owner of real property on which the tank is located 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 tank is located or a holder of a security interest in a tank is not an operator of the tank for the purpose of this section solely because the mortgagee or holder has a capacity to influence the operation of the tank to protect its security interest.

History: 1988 c 686 art 1 s 58; 1990 c 586 s 4; 1992 c 414 s 2; 1997 c 200 art 2 s 2; 1999 c 86 art 1 s 23

115C.03 RESPONSE TO RELEASES.

Subdivision 1. **Corrective action orders.** If there is a release, the commissioner may order a responsible person to take reasonable and necessary corrective actions. The commissioner shall notify the owner of real property where corrective action is ordered to be taken that responsible persons have been ordered to take corrective action and that the owner's cooperation will be required for responsible persons to take that action. When the commissioner has ordered a responsible person to take a corrective action, a political subdivision may not request or order the person to take an action that conflicts with the action ordered by the commissioner.

Subd. 1a. **Passive bioremediation.** Passive bioremediation must be used for petroleum tank cleanups whenever an assessment of the site determines that there is a low potential risk to public health and the environment.

Subd. 2. **Agency and compelled performance corrective actions.** The agency may take corrective action or request the attorney general to bring an action to compel performance of a corrective action if:

- (1) a responsible person cannot be identified;
- (2) an identified responsible person cannot or will not comply with the order issued under subdivision 1; or
- (3) an administrative or judicial proceeding on an order issued under subdivision 1 is pending.

Subd. 3. **Emergency corrective action.** To assure an adequate response to a release, the commissioner may take corrective action without following the procedures of subdivision 1 if the commissioner determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment. Before taking an action under this subdivision, the commissioner shall make all reasonable efforts, taking into consideration the urgency of the situation, to order a responsible person to take a corrective action and notify the owner of real property where the corrective action is to be taken.

Subd. 4. **Release is public nuisance.** A release is a public nuisance and may be enjoined in an action, in the name of the state, brought by the attorney general.

Subd. 5. **Investigations.** If the commissioner has reason to believe that a release has

occurred, the commissioner may undertake reasonable investigations necessary to identify the existence, source, nature, and extent of a release, the responsible persons, and the extent of danger to the public health and welfare or the environment.

Subd. 6. Duty to provide information. A person who the commissioner has reason to believe is a responsible person, or the owner of real property where corrective action is ordered to be taken, or who might otherwise have information concerning a release, shall, when requested by the commissioner or any member, employee, or agent of the agency who is authorized by the commissioner, furnish to the commissioner any information that person may have or may reasonably obtain that is relevant to the release.

Subd. 7. Access to information and property. The commissioner or any member, employee, or agent of the agency authorized by the commissioner, may, upon presentation of official agency credentials, take any of the following actions:

(1) examine and copy books, papers, records, memoranda, or data of a person who has a duty to provide information to the commissioner under subdivision 6; and

(2) enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from a person who has a duty to provide the information under subdivision 6, conducting surveys and investigations, and taking corrective action.

Subd. 7a. Review of agency employee decisions. A person aggrieved by a decision made by an employee of the agency relating to the need for or implementation of a corrective action may seek review of the decision by the commissioner. An application for review must state with specificity the decision for which review is sought, the name of the leak site, the leak number, the date the decision was made, the agency employee who made the decision, the ramifications of the decision, and any additional pertinent information. The commissioner shall review the application and schedule a time, date, and place for the aggrieved person to explain the grievance and for the agency employee to explain the decision under review. The commissioner shall issue a decision either sustaining or reversing the decision of the employee. The aggrieved person may appeal the commissioner's decision to the Pollution Control Agency Board in accordance with Minnesota Rules, part 7000.0500, subpart 6.

Subd. 8. Classification of data. Except as otherwise provided in this subdivision, data obtained from a person under subdivision 6 or 7 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 that would tend to adversely affect the competitive position of that person, the commissioner shall classify the data as private or nonpublic data as defined in section 13.02. Data classified as private or nonpublic under this subdivision may be disclosed when relevant in a proceeding under this chapter.

Subd. 9. Requests for review, investigation, and oversight. (a) The commissioner may, upon request:

(1) assist in determining whether a release has occurred;

(2) assist in or supervise the development and implementation of reasonable and necessary corrective actions; and

(3) assist in or supervise the investigation, development, and implementation of actions to minimize, eliminate, or clean up petroleum contamination at sites where it is not certain that the contamination is attributable to a release.

(b) Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports and corrective action plans and implementation.

(c) Assistance may include the issuance of a written determination that an owner or prospective buyer of real property will not be a responsible person under section 115C.021, if the commissioner finds the release came from a tank not located on the property. The commissioner may also issue a written confirmation that the real property was the site of a release and that the tank from which the release occurred has been removed or that the agency has issued a site closure letter and has not revoked that status. The issuance of the written determination or confirmation applies to tanks not on the property or removed only and does not affect liability for releases from tanks that are on the property at the time of purchase. The commissioner may also issue site closure letters and nonresponsible person determinations for sites contaminated by petroleum where it is not certain that the contamination is attributable to a release. The written determination or confirmation extends to the successors and assigns of the person to whom it originally applied, if the successors and assigns are not otherwise responsible for the release.

(d) The person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. Money received by the agency for assistance under this subdivision must be deposited in the state treasury and credited to an account in the special revenue fund. Money in this account is annually appropriated to the commissioner for purposes of administering the subdivision.

Subd. 10. **Corrective action records.** A contractor or consultant who has billed for corrective action services must prepare and retain all records related to the corrective action services for a minimum of seven years from the date the corrective action services are performed, including, but not limited to, invoices submitted to applicants, subcontractor invoices, receipts for equipment rental, and all other goods rented or purchased, personnel time reports, mileage logs, and expense accounts. An applicant must obtain and retain records necessary to document costs submitted in a claim for reimbursement for corrective action services for seven years from the date the claim is submitted to the board.

History: 1987 c 186 s 15; 1987 c 389 s 3; 1989 c 226 s 1; 1990 c 426 art 1 s 15; 1992 c 490 s 5; 1993 c 341 art 1 s 4,5; 1994 c 639 art 4 s 2; 1995 c 220 s 103; 1995 c 240 art 1 s 3; 1996 c 308 s 3; 1997 c 200 art 2 s 3

115C.04 LIABILITY FOR RESPONSE COSTS.

Subdivision 1. **Corrective action liability.** (a) A responsible person is liable for the cost of the corrective action taken by the agency under section 115C.03, subdivisions 2 and 3, including the cost of investigating the release and administrative and legal expenses, if:

(1) the responsible person has failed to take a corrective action ordered by the commissioner and the agency has taken the action;

(2) the agency has taken corrective action in an emergency under section 115C.03, subdivision 3; or

(3) the agency has taken corrective action because a responsible person could not be identified.

(b) A responsible person is liable for the reimbursement paid by the Petroleum Tank Release Compensation Board under section 115C.09, subdivision 3a, to the extent the reimbursement is

for corrective action that the responsible person could have been ordered to perform under section 115C.03, subdivision 1.

Subd. 2. Avoidance of liability. (a) A responsible person may not avoid the liability by means of a conveyance of any right, title, or interest in real property; or by any indemnification, hold harmless agreement, or similar agreement.

(b) This subdivision does not:

(1) prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;

(2) prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

(3) bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

Subd. 3. Cost recovery; subrogation. Reasonable and necessary expenses incurred by the agency in taking a corrective action, including costs of investigating a release, administrative and legal expenses, and reimbursement costs described in subdivision 1, paragraph (b), may be recovered in a civil action in district court brought by the attorney general on behalf of the board against a responsible person. The agency's certification of expenses is prima facie evidence that the expenses are reasonable and necessary. If the responsible person has petroleum tank leakage or spill insurance coverage that insures against the liability provided in this section, the board is subrogated to the rights of the responsible person with respect to that insurance coverage, to the extent of the expenses incurred by the agency and described in this subdivision. The board may request the attorney general to bring an action in district court against the insurer to enforce this subrogation right. Expenses that are recovered under this section must be deposited in the fund.

History: 1987 c 186 s 15; 1987 c 389 s 4; 1988 c 683 s 2,3; 1989 c 335 art 4 s 106; 1991 c 294 s 1; 1995 c 220 s 130; 2008 c 296 art 1 s 1

115C.045 KICKBACKS.

A consultant or contractor, as a condition of performing services, may not agree to pay or forgive the nonreimbursable portion of an application for reimbursement submitted under this chapter. An applicant may not accept forgiveness or demand payment from a consultant or contractor for the nonreimbursable portion of an application for reimbursement submitted under this chapter.

History: 1992 c 490 s 6

115C.05 CIVIL PENALTY.

The agency may enforce section 115C.03 using the actions and remedies authorized under sections 115.071, subdivision 3, and 116.072. The civil penalties recovered by the state must be credited to the fund.

History: 1987 c 389 s 5; 1991 c 347 art 1 s 7

115C.06 EFFECT ON OTHER LAW.

Subdivision 1. **Actions under chapter 115B.** This chapter does not limit any actions initiated by the agency under chapter 115B.

Subd. 2. **Duty to notify and take action for release.** This chapter does not limit a person's

duty to notify the agency and take action related to a release as provided in section 115.061.

History: 1987 c 389 s 6; 1996 c 308 s 4

115C.065 CONSULTANT'S OR CONTRACTOR'S DUTY TO NOTIFY.

A consultant or contractor involved in the removal of a petroleum tank shall immediately notify the agency if field instruments or laboratory tests indicate the presence of any petroleum contamination in excess of state guidelines.

History: 1992 c 490 s 7

115C.07 PETROLEUM TANK RELEASE COMPENSATION BOARD.

Subdivision 1. **Establishment.** The Petroleum Tank Release Compensation Board consists of the commissioner of the Pollution Control Agency, the commissioner of commerce, one representative from the petroleum industry, one public member, and one person with experience in claims adjustment. The governor shall appoint the members of the board. The filling of positions, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by section 15.0575. The governor shall designate the chair of the board.

Subd. 2. **Staff.** The commissioner of commerce shall provide staff to support the activities of the board at the board's request.

Subd. 3. **Rules.** (a) The board shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims and specifying the costs that are eligible for reimbursement from the fund.

(b) The board may adopt rules requiring certification of environmental consultants.

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

(d) The board may use section 14.389 to adopt rules specifying the competitive bidding requirements for consultant services proposals.

(e) The board may use section 14.389 to adopt rules specifying the written proposal and invoice requirements for consultant services.

(f) Upon written notification from the board of the adjusted dollar amounts determined pursuant to rules of the board, the revisor of statutes must adjust the dollar amounts in appropriate rules of the board to reflect the adjustments announced and published by the board.

History: 1987 c 186 s 15; 1987 c 389 s 7; 1991 c 175 s 2; 1993 c 341 art 1 s 6; 1996 c 305 art 2 s 24; 1Sp2001 c 2 s 129; 1Sp2005 c 1 art 4 s 10; 2010 c 241 s 4

115C.08 PETROLEUM TANK FUND.

Subdivision 1. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank fund:

(1) the proceeds of the fee imposed by subdivision 3;

(2) money recovered by the state under sections 115C.04, 115C.05, and 116.491, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;

(3) interest attributable to investment of money in the fund;

(4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund;

(5) fees charged for the operation of the tank installer certification program established under section 116.491;

(6) money obtained from the return of reimbursements, civil penalties, or other board action under this chapter; and

(7) the proceeds from the sales of all properties acquired by the agency under subdivision 4.

Subd. 2. Imposition of fee. The board shall notify the commissioner of revenue if the unencumbered balance of the fund falls below \$4,000,000, and within 60 days after receiving notice from the board, the commissioner of revenue shall impose the fee established in subdivision 3 on the use of a tank for four calendar months, with payment to be submitted with each monthly distributor tax return.

Subd. 3. Petroleum tank release cleanup fee. A petroleum tank release cleanup fee is imposed on the use of tanks that contain petroleum products defined in section 296A.01. On products other than gasoline, the fee must be paid in the manner provided in section 296A.15 by the first licensed distributor receiving the product in Minnesota, as defined in section 296A.01. When the product is gasoline, the distributor responsible for payment of the gasoline tax is also responsible for payment of the petroleum tank cleanup fee. The fee must be imposed as required under subdivision 2, at a rate of \$20 per 1,000 gallons of petroleum products, rounded to the nearest 1,000 gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 296A.22.

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

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

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

(3) for costs of recovering expenses of corrective actions under section 115C.04;

(4) for training, certification, and rulemaking under sections 116.46 to 116.50;

(5) for agency administrative costs of enforcing rules governing the construction, installation, operation, and closure of aboveground and underground petroleum storage tanks;

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

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

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

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

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

(11) for property acquisition by the agency when the agency has determined that purchasing a property where a release has occurred is the most appropriate corrective action. The acquisition of all properties is subject to approval by the board.

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

(c) In fiscal years 2010 and 2011, \$3,700,000 is annually appropriated from the fund to the commissioner of employment and economic development for contamination cleanup grants under section 116J.554. Beginning in fiscal year 2012 and each year thereafter, \$6,200,000 is annually appropriated from the fund to the commissioner of employment and economic development for contamination cleanup grants under section 116J.554. Of this amount, the commissioner may spend up to \$225,000 annually for administration of the contamination cleanup grant program. The appropriation does not cancel and is available until expended. The appropriation shall not be withdrawn from the fund nor the fund balance reduced until the funds are requested by the commissioner of employment and economic development. The commissioner shall schedule requests for withdrawals from the fund to minimize the necessity to impose the fee authorized by subdivision 2. Unless otherwise provided, the appropriation in this paragraph may be used for:

(1) project costs at a qualifying site if a portion of the cleanup costs are attributable to petroleum contamination or new and used tar and tar-like substances, including but not limited to bitumen and asphalt, but excluding bituminous or asphalt pavement, that consist primarily of hydrocarbons and are found in natural deposits in the earth or are distillates, fractions, or residues from the processing of petroleum crude or petroleum products as defined in section 296A.01; and

(2) the costs of performing contamination investigation if there is a reasonable basis to suspect the contamination is attributable to petroleum or new and used tar and tar-like substances, including but not limited to bitumen and asphalt, but excluding bituminous or asphalt pavement, that consist primarily of hydrocarbons and are found in natural deposits in the earth or are distillates, fractions, or residues from the processing of petroleum crude or petroleum products as defined in section 296A.01.

Subd. 5. **Account transfer.** The board shall authorize the commissioner of management and budget to transfer to the environmental response, compensation, and compliance account the amount requested by the Pollution Control Agency under section 115B.26, subdivision 4. Transfer of the amount must be made at the earliest practical date after authorization by the board. If the unencumbered balance in the account is less than \$2,000,000, the transfer must be made at the earliest practical date after the unencumbered balance in the account exceeds that amount.

History: 1987 c 389 s 8; 1989 c 209 art 1 s 10; 1989 c 226 s 2; 1989 c 325 s 46,47; 1989 c 335 art 4 s 45,106; 1990 c 501 s 3,4; 1991 c 199 art 1 s 28; 1992 c 597 s 2; 1993 c 341 art 1 s 7-10; 1995 c 186 s 119; 1995 c 220 s 130; 1995 c 254 art 1 s 68-70; 1996 c 397 s 1; 1997 c 200 art 2 s 4; 1998 c 299 s 30; 1998 c 408 s 1; 1999 c 203 s 1; 2002 c 379 art 2 s 21,22; 2003 c 128 art 1 s 131; art 13 s 4; 1Sp2003 c 4 s 1; 2009 c 78 art 6 s 7; 2009 c 101 art 2 s 109; 2010 c 215 art 8 s 1; 2010 c 347 art 6 s 25,26

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

115C.09 REIMBURSEMENT.

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

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

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

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

(3) up to 180 days of interest costs associated with the financing of corrective action and incurred by the applicant in a written extension of credit or loan that has been signed by the applicant and executed after July 1, 2002, provided that the applicant documents that:

(i) the interest costs are incurred as a result of an extension of credit or loan from a financial institution; and

(ii) the board has not considered the application within the applicable time frame specified in subdivision 2a, paragraph (c).

Interest costs meeting the requirements of this clause are eligible only when they are incurred between the date a complete initial application is received by the board, or the date a complete supplemental application is received by the board, and the date that the board first notifies the applicant of its reimbursement determination. An application is complete when the information reasonably required or requested by the board's staff from the applicant has been received by the board's staff. Interest costs are not eligible for reimbursement to the extent they exceed two percentage points above the adjusted prime rate charged by banks, as defined in section 270C.40, subdivision 5, at the time the extension of credit or loan was executed.

(c) A cost for liability to a third party is incurred by the responsible person when an order or court-approved settlement is entered that sets forth the specific costs attributed to the liability. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

Subd. 2. Responsible person eligibility. A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for reimbursement under subdivision 3.

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

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

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

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

(c) The commissioner shall review a plan, and provide an approval or disapproval to the applicant and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (2), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete initial application within 60 days of its submission, and shall consider a complete supplemental application within 120 days of its submission, or the board shall explain for the record why additional time is necessary. Board staff may review applications submitted to the board at the same time the commissioner considers the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(d) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

Subd. 3. Reimbursements; subrogation; appropriation. (a) The board shall reimburse an eligible applicant from the fund for 90 percent of the total reimbursable costs incurred at the site, except that the board may reimburse an eligible applicant from the fund for greater than 90 percent of the total reimbursable costs, if the applicant previously qualified for a higher reimbursement rate. For costs associated with a release from a tank in transport, the board may reimburse 90 percent of costs over \$10,000, with the maximum reimbursement not to exceed \$100,000.

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the fund under this chapter until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

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

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

(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set

forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the applicant.

(g) If the board reimburses an applicant for costs for which the applicant has insurance coverage, the board is subrogated to the rights of the applicant with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by an applicant of reimbursement constitutes an assignment by the applicant to the board of any rights of the applicant with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the applicant was denied coverage by the insurer.

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

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

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

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

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

(k) An applicant may request that the board issue a multiparty check that includes each lender who advanced funds to pay the costs of the corrective action or to each contractor or

consultant who provided corrective action services. This request must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the applicant, the identity of the lender, contractor, or consultant, the dollar amount, and the location of the corrective action. The applicant must submit a request for the issuance of a multiparty check for each application submitted to the board. Payment under this paragraph does not constitute the assignment of the applicant's right to reimbursement to the consultant, contractor, or lender. The board has no liability to an applicant for a payment issued as a multiparty check that meets the requirements of this paragraph.

Subd. 3a. **Eligibility of other persons.** A person who has taken corrective action may apply to the board for reimbursement under subdivision 3 if the board determines that:

(1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;

(2) the commissioner has determined that the person was not a responsible person as defined in this chapter;

(3) the board has determined the person was not a volunteer under subdivision 3b; and

(4) the person incurs reimbursable costs on or after June 4, 1987.

Notwithstanding subdivision 3, paragraph (a), a person eligible for reimbursement under this subdivision shall receive 100 percent of total reimbursable costs up to \$1,000,000.

Subd. 3b. **Volunteer eligibility.** (a) A person may apply to the board for reimbursement under subdivision 3 if the board determines that:

(1) the person is not a responsible person as defined in this chapter;

(2) holds legal or equitable title to the property where a release occurred; and

(3) incurs reimbursable costs on or after May 23, 1989.

(b) The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with subdivision 3, paragraph (i), except that the board may not reduce the reimbursement under this provision to a mortgagee who acquires title to the property through foreclosure or receipt of a deed in lieu of foreclosure.

Subd. 3c. **Release at refineries and tank facilities not eligible for reimbursement.** (a) Reimbursement may not be made under this chapter for costs associated with a release:

(1) from a tank located at a petroleum refinery; or

(2) from a tank facility, including a pipeline terminal, with more than 1,000,000 gallons of total petroleum storage capacity at the tank facility.

(b) Paragraph (a), clause (2), does not apply to reimbursement for costs associated with a release from a tank facility:

(1) owned or operated by a person engaged in the business of mining iron ore or taconite;

(2) owned by a political subdivision, a housing and redevelopment authority, an economic development authority, or a port authority that acquired the tank facility prior to May 23, 1989; or

(3) owned by a person:

(i) who acquired the tank facility prior to May 23, 1989;

(ii) who did not use the tank facility for the bulk storage of petroleum; and

(iii) who is not affiliated with the party who used the tank facility for the bulk storage of petroleum.

Subd. 3d. **Political subdivision eligibility.** (a) A political subdivision that has taken corrective action may apply to the board for reimbursement under subdivision 3 if the board determines that:

- (1) the political subdivision is not a responsible person as defined by this chapter;
- (2) is not a volunteer under subdivision 3b; and
- (3) incurs reimbursable costs on or after April 8, 1992.

(b) A political subdivision eligible for reimbursement under this subdivision may only apply for reimbursement if the identified responsible person has failed to take a corrective action ordered by the commissioner.

Subd. 3e. **Department of Transportation eligibility.** The Department of Transportation may apply to the board and is eligible for reimbursement of reimbursable costs associated with property that the department has acquired under section 115C.021, subdivision 3a, if corrective action pursuant to a plan reviewed and approved by the commissioner of the Pollution Control Agency in accordance with applicable rules and guidance documents was taken on the entire property so acquired. Notwithstanding subdivision 3, paragraph (a), the Department of Transportation shall receive 100 percent of total reimbursable costs associated with a single release up to \$1,000,000.

Subd. 3f. [Expired, 1997 c 246 s 12]

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 3j. [Repealed, 2008 c 296 art 1 s 35]

Subd. 3k. **PVC piping at residential locations.** (a) This subdivision is to assist homeowners who have installed PVC fill piping as part of the heating oil system at their residences. Replacement of the PVC piping with metal piping is intended to avoid the catastrophic release of heating oil, as well as the ensuing cleanup costs, that can occur at residences where the PVC piping fails.

(b) As used in this subdivision:

(1) "residential locations" means a storage tank and appurtenances for heating oil that are used to heat a single-family residence; and

(2) "qualified person" means someone who is registered as a contractor under section 115C.11 and, as part of the person's trade or business, installs or repairs nonpressure piping, heating systems, air conditioning systems, or storage tank systems.

(c) Notwithstanding any other provision of this chapter or any rules adopted under this chapter, the board shall reimburse a qualified person 90 percent of the cost for replacing PVC fill piping with metal piping at residential locations between May 1, 2008, and September 1, 2011, provided that the board determines the costs were incurred and reasonable. The reimbursement may not exceed \$250 per residential location. The maximum expenditure from the fund may not exceed \$1,500,000.

(d) A heating oil vendor is not a responsible person for a heating oil spill inside a residential location if the spill was caused solely by the failure of a tank or appurtenance to a tank owned by the homeowner.

Subd. 4. **Reimbursement does not affect other liability.** The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

Subd. 5. **Return of reimbursement.** (a) The board may demand the complete or partial return of any reimbursement made under this chapter if the applicant for reimbursement:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this chapter;

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release, unless the reimbursement was made under subdivision 3a;

(3) fails to reimburse a person for agreed-to amounts for corrective actions taken in response to a request by the applicant; or

(4) has entered an agreement to settle or compromise any portion of the incurred costs, in which case the amount returned must be prorated in proportion to the amount of the settlement or compromise.

(b) If a reimbursement under this chapter is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the applicant. If the board's demand for return of the reimbursement is based on willful actions of the applicant, the applicant shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

Subd. 6. **Fraud.** If a person, with intent to defraud, issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to the board for reimbursement:

(1) that person shall be considered to have presented a false claim to a public body under section 609.465; and

(2) the board may demand that the person return any money received as a result of a reimbursement made on the basis of the false invoice or other demand for payment. If the money is not returned upon demand by the board, the board may recover the money, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the person. The person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the money received by the person on the basis of the false invoice or other demand for payment.

Subd. 7. **Duty to provide information.** (a) A person who submits an application to the board for reimbursement, or who has issued invoices or other demands for payment which are the basis of an application, shall furnish to the board copies of any financial records which the board requests and which are relevant to determining the validity of the costs listed in the application, or shall make the financial records reasonably available to the board for inspection and auditing. The board may obtain access to information required to be made available under this chapter in the manner provided in section 115C.03, subdivision 7.

(b) After reimbursement has been granted, an agreement to settle or compromise any portion of the incurred costs must be reported to the board by the parties to the agreement.

Subd. 8. **Limitation on reimbursement obligation.** The amount of the state's obligation to make reimbursement under this chapter is limited to the amount available. Notwithstanding any other provisions of this chapter, there shall be no obligation to the general fund to make a reimbursement if there are not sufficient funds in the petroleum tank fund.

Subd. 9. **Insufficient funds.** The board may not approve an application for reimbursement if there are insufficient funds available to pay the reimbursement.

Subd. 10. **Delegation of board's powers.** The board may delegate to the commissioner of commerce its powers and duties under this chapter.

History: 1987 c 186 s 15; 1987 c 389 s 9; 1988 c 683 s 4-6; 1989 c 226 s 3; 1989 c 335 art 4 s 106; 1990 c 501 s 5-7; 1991 c 175 s 3-9; 1991 c 233 s 52; 1991 c 294 s 2; 1992 c 414 s 3,4; 1992 c 490 s 8,9; 1993 c 341 art 1 s 11-16; 1994 c 632 art 4 s 44; 1995 c 220 s 130; 1995 c 240 art 1 s 4-7; 1996 c 308 s 5; 1996 c 397 s 2; 1997 c 200 art 2 s 5,6; 1997 c 246 s 12,35; 1Sp1998 c 1 art 3 s 16,17; 1999 c 203 s 2,3; 1Sp2001 c 2 s 130-133; 2002 c 325 s 3;

2003 c 128 art 1 s 132-134; 2005 c 151 art 2 s 17; 1Sp2005 c 1 art 4 s 11,12; 2006 c 252 s 3; 2006 c 281 art 4 s 4; 2008 c 296 art 1 s 2,3

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

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

115C.093 CORRECTIVE ACTION PERFORMANCE AUDITS.

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

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

History: *1996 c 397 s 3; 1Sp2001 c 2 s 134*

115C.094 ABANDONED UNDERGROUND STORAGE TANKS.

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

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

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

(b) The board may contract for:

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

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

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

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

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

History: *2003 c 128 art 1 s 135*

115C.10 FUNDING OF AGENCY ACTIONS.

Subdivision 1. **Payment from fund; subrogation; appropriation.** (a) If the cost of authorized actions under section 115C.03 exceeds the amount appropriated to the agency for the actions and amounts awarded to the agency from the federal government, the agency may apply to the board for money to pay for the actions from the fund. The board shall pay the agency the cost of the proposed actions under section 115C.03 if the board finds that the conditions for the agency to be paid from the fund have been met, and that an adequate amount exists in the fund to pay for the corrective action. If the board pays the agency for the cost of authorized actions for which there is insurance coverage, the board is subrogated to the agency's rights with respect to the insurance, to the extent of the board's payment of costs for which insurance coverage exists, subject to the limitations on an agency cost recovery action set forth in section 115C.04,

subdivision 3. The board may request the attorney general to bring an action in district court against the responsible person, the applicant, or the insurer to enforce the board's subrogation rights. Acceptance of a payment from the board by the agency constitutes an assignment to the board of the subrogation rights specified in this subdivision.

(b) Money in the fund is appropriated to the board for the purpose of this subdivision.

Subd. 2. **Federal funds.** The commissioner shall take actions needed to obtain federal funding to carry out the provisions of the Petroleum Tank Release Cleanup Act.

History: 1987 c 186 s 15; 1987 c 389 s 10; 1989 c 335 art 4 s 106; 1991 c 294 s 3; 1995 c 220 s 130; 1996 c 308 s 7

115C.11 CONSULTANTS AND CONTRACTORS; SANCTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Registration for consultants under this section remains in force until the expiration date of the professional liability coverage, including pollution impairment liability, required under paragraph (a), clause (4), or until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. Registration for contractors under this section expires

each year on the anniversary of the effective date of the contractor's most recent registration and must be renewed on or before expiration. Prior to its annual expiration, a registration remains in force until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. All registrants must comply with registration criteria under this section.

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

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

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

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

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

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

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

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

Subd. 2. [Repealed, 1996 c 308 s 13]

Subd. 3. [Repealed, 1996 c 308 s 13]

Subd. 4. [Repealed, 1996 c 308 s 13]

History: 1992 c 490 s 10; 1993 c 341 art 1 s 17; 1995 c 220 s 130; 1995 c 240 art 1 s 9,10; 1996 c 308 s 8; 2002 c 325 s 4; 2003 c 128 art 1 s 136; 1Sp2003 c 23 s 3

115C.111 CONSULTANT AND CONTRACTOR SANCTIONS; ACTIONS BASED ON CONDUCT OCCURRING BEFORE MARCH 14, 1996.

Subdivision 1. **Application.** This section applies to administrative actions based on conduct that occurred before March 14, 1996.

Subd. 2. **Authority.** The commissioner of commerce may by order censure, suspend, or revoke a registrant and require payment of all costs of proceedings resulting in an action instituted under this subdivision and impose a civil penalty of not more than \$10,000 if the commissioner of commerce finds: (i) that the order is in the public interest; and (ii) that the registrant or, in the case of a registrant that is not a natural person, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the registrant:

(1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) has participated in a kickback scheme prohibited under section 115C.045;

(3) has engaged in conduct likely to deceive or defraud, or demonstrated a willful or careless disregard for public health or the environment;

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

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

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

Subd. 3. **Amount of civil penalty.** The civil penalty that may be imposed under subdivision 2 shall be in an amount that the commissioner of commerce determines will deprive the consultant or contractor of any economic advantage gained by reason of the consultant's or contractor's conduct or to reimburse the board for the cost of the investigation and proceeding.

History: 1996 c 308 s 9

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

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

(1) has engaged in conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing engineering, hydrogeological, or other technical practices within the reasonable control of the consultant or contractor;

(2) has participated in a kickback scheme prohibited under section 115C.045;

(3) has engaged in conduct likely to deceive or defraud, or demonstrating a willful or careless disregard for public health or the environment;

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

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

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

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

(8) has engaged in anticompetitive activity;

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

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

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

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

History: 1996 c 308 s 10; 1Sp2001 c 2 s 135

115C.113 ORDERS.

The commissioner of commerce may issue an order requiring a registrant or applicant for registration to show cause why the registration should not be revoked or suspended, the registrant censured, the application denied, or other sanction imposed under section 115C.111 or 115C.112. The order must be calculated to give reasonable notice of the time and place for hearing on the matter, and must state the reasons for the entry of the order. The commissioner of commerce may by order summarily suspend a registration pending final determination of an order to show cause. A hearing on the merits must be held within 30 days of the issuance of the order of summary suspension. All hearings must be conducted under chapter 14. After the hearing, the commissioner of commerce shall enter an order disposing of the matter as the facts require. If the registrant or applicant for registration fails to appear at a hearing after having been duly notified of it, the person shall be considered in default, and the proceeding may be determined against the registrant or applicant for registration upon consideration of the order to show cause, the allegations of which may be considered to be true.

History: 1996 c 308 s 11

115C.12 APPEAL OF REIMBURSEMENT DETERMINATION.

Subdivision 1. **Appeal from determination of commissioner of commerce.** An applicant for reimbursement may appeal to the board a reimbursement determination made by the commissioner of commerce under authority delegated by the board according to section 115C.09, subdivision 10, by submitting a written notice setting forth the specific basis for the appeal. The commissioner of commerce shall send written notification of the reimbursement determination by first class United States mail to the applicant for reimbursement at the applicant's last known address. The applicant for reimbursement must file written notice with the board of an appeal of a reimbursement determination made by the commissioner of commerce within 60 days of the date that the commissioner of commerce sends written notice to the applicant of the reimbursement determination. The board shall consider the appeal within 90 days of receipt of the written notice of appeal by the applicant for reimbursement. The written notice must set forth the specific basis for the appeal.

Subd. 2. **Appeal from decision of board.** (a) An applicant for reimbursement may appeal a reimbursement determination of the board as a contested case under chapter 14. An applicant for reimbursement must provide written notification to the board of a request for a contested case,

setting forth the specific basis for the appeal, within 30 days of the date that the board makes a reimbursement determination.

(b) This subdivision applies to reimbursement determinations made by the board as a result of an appeal to the board under subdivision 1 and reimbursement determinations made by the board when the board has not delegated its authority to make reimbursement determinations.

(c) An appeal of a reimbursement determination may only be made by an applicant as defined by this chapter.

Subd. 3. **Contested case; final decision.** The final decision in a contested case requested by an applicant under subdivision 2 shall be made by the commissioner of commerce.

History: 1993 c 341 art 1 s 18; 1995 c 240 art 1 s 11; 1996 c 308 s 12

115C.13 REPEALER.

Sections 115C.01, 115C.02, 115C.021, 115C.03, 115C.04, 115C.045, 115C.05, 115C.06, 115C.065, 115C.07, 115C.08, 115C.09, 115C.093, 115C.094, 115C.10, 115C.11, 115C.111, 115C.112, 115C.113, 115C.12, and 115C.13, are repealed effective June 30, 2012.

History: 1993 c 341 art 1 s 26; 1995 c 240 art 1 s 12; 1997 c 200 art 2 s 7; 1Sp2001 c 2 s 136; 2003 c 128 art 1 s 137; 1Sp2005 c 1 art 4 s 13