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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2683

05/18/2017 Authored by Hansen
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

1.1 A bill for an act
1.2 relating to environment; providing for cleanup at certain priority solid waste
1.3 disposal facilities; amending Minnesota Statutes 2016, sections 115B.39,
1.4 subdivision 2; 115B.40, subdivision 4; proposing coding for new law in Minnesota
1.5 Statutes, chapter 115B.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 115B.39, subdivision 2, is amended to read:

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

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

1.14 (c) "Closure" means actions to prevent or minimize the threat to public health and the
1.15 environment posed by a mixed municipal solid waste disposal facility that has stopped
1.16 accepting waste by controlling the sources of releases or threatened releases at the facility.
1.17 "Closure" includes removing contaminated equipment and liners; applying final cover;
1.18 grading and seeding final cover; installing wells, borings, and other monitoring devices;
1.19 constructing groundwater and surface water diversion structures; and installing gas control
1.20 systems and site security systems, as necessary. The commissioner may authorize use of
1.21 final cover that includes processed materials that meet the requirements in Code of Federal
1.22 Regulations, title 40, section 503.32, paragraph (a).

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

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

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

2.11 (g) "Custodial" or "custodial care" means actions taken for the care, maintenance, and
 2.12 monitoring of closure actions at a mixed municipal solid waste disposal facility after
 2.13 completion of the postclosure period.

2.14 (h) "Decomposition gases" means gases produced by chemical or microbial activity
 2.15 during the decomposition of solid waste.

2.16 ~~(h)~~ (i) "Dump materials" means nonhazardous mixed municipal solid wastes disposed
 2.17 at a Minnesota waste disposal site other than a qualified facility prior to 1973.

2.18 ~~(i)~~ (j) "Environmental response action" means response action at a qualified facility or
 2.19 priority qualified facility, including corrective action, closure, postclosure care; contingency
 2.20 action; environmental studies, including remedial investigations and feasibility studies;
 2.21 engineering, including remedial design; removal; remedial action; site construction; and
 2.22 other similar cleanup-related activities.

2.23 ~~(j)~~ (k) "Environmental response costs" means:

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

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

2.28 (l) "Owner or operator of a priority qualified facility" means a person, personal
 2.29 representative, trustee, beneficiary, partnership, sole proprietorship, firm, limited liability
 2.30 company, cooperative, association, corporation, or other entity that:

2.31 (1) has possession of, holds title to, or owns a controlling interest in a priority qualified
 2.32 facility;

3.1 (2) participates in decision making related to compliance with federal and state
 3.2 environmental laws and regulations for a priority qualified facility; or

3.3 (3) has authority or control to make decisions regarding state and federal environmental
 3.4 laws and regulations for a priority qualified facility.

3.5 (m) "Priority qualified facility" means:

3.6 (1) a qualified facility:

3.7 (i) that is listed on the National Priorities List pursuant to the federal Comprehensive
 3.8 Environmental Response, Compensation, and Liability Act;

3.9 (ii) that is listed on the Permanent List of Priorities pursuant to the Minnesota
 3.10 Environmental Response and Liability Act;

3.11 (iii) for which a binding agreement pursuant to section 115B.40, subdivision 4, has not
 3.12 been entered into between the owner or operator of the qualified facility and the
 3.13 commissioner; and

3.14 (iv) that is not an excluded facility pursuant to section 115B.405; and

3.15 (2) property near a facility described in clause (1), if the property was used for mixed
 3.16 municipal solid waste disposal that did not occur under a permit from the agency and the
 3.17 commissioner determines that an environmental response action is necessary at the property
 3.18 to protect public health or welfare or the environment in the vicinity of the permitted mixed
 3.19 municipal solid waste disposal facility, as described in the most recent agency permit.

3.20 ~~(n)~~ (n) "Postclosure" or "postclosure care" means actions taken for the care, maintenance,
 3.21 and monitoring of closure actions at a mixed municipal solid waste disposal facility.

3.22 ~~(o)~~ (o) "Qualified facility" means a mixed municipal solid waste disposal facility as
 3.23 described in the most recent agency permit, including adjacent property used for solid waste
 3.24 disposal that did not occur under a permit from the agency, that:

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

3.26 (ii) stopped accepting solid waste, except demolition debris, for disposal by April 9,
 3.27 1994; and

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

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

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

4.7 (ii) stopped accepting waste by January 1, 2019, and is located in a county that meets
4.8 all applicable recycling goals in section 115A.551 and that has arranged for all mixed
4.9 municipal solid waste generated in the county to be delivered to and processed by a resource
4.10 recovery facility located in the county for at least 20 years; or

4.11 (3) is or was permitted by the agency and stopped accepting waste for disposal by January
4.12 1, 2009, and for which the postclosure care period ended on July 26, 2013.

4.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.14 Sec. 2. Minnesota Statutes 2016, section 115B.40, subdivision 4, is amended to read:

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

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

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

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

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

5.7 (5) in the case of qualified facilities defined in section 115B.39, subdivision 2, paragraph
5.8 (o), clause (3), transfer to the commissioner of revenue for deposit in the remediation fund
5.9 established in section 116.155 an amount of cash that is equal to the sum of their approved
5.10 current contingency action cost estimate and any funds required for proof of financial
5.11 responsibility under section 116.07, subdivision 4h, that remain after facility closure and
5.12 any postclosure and custodial care and response action undertaken by the owner or operator
5.13 at the facility.

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

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

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

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

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

5.32 (iii) refrain from developing or altering the use of property described in any permit for
5.33 the facility except after consultation with the commissioner and in conformance with any

6.1 conditions established by the commissioner for that property, including use restrictions, to
6.2 protect public health and welfare and the environment.

6.3 (c) The owner or operator of a qualified facility defined in section 115B.39, subdivision
6.4 2, paragraph ~~(h)~~ (o), clause (1), that is a political subdivision may use a portion of any funds
6.5 established for response at the facility, which are available directly or through a financial
6.6 instrument or other financial arrangement, for closure or postclosure care at the facility if
6.7 funds available for closure or postclosure care are inadequate and shall assign the rights to
6.8 any remainder to the commissioner.

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

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

6.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.18 **Sec. 3. [115B.406] PRIORITY QUALIFIED FACILITIES.**

6.19 **Subdivision 1. Legislative findings.** The legislature recognizes the need to protect the
6.20 public health and welfare and the environment at priority qualified facilities. To implement
6.21 a timely and effective cleanup and prevent multiparty litigation, the legislature finds it is in
6.22 the public interest to direct the commissioner of the Pollution Control Agency to take
6.23 environmental response actions that the commissioner deems reasonable and necessary to
6.24 protect the public health or welfare or the environment at priority qualified facilities and to
6.25 acquire real property interests at priority qualified facilities to ensure the completion and
6.26 long-term effectiveness of environmental response actions.

6.27 **Subd. 2. Notifying owner or operator of priority qualified facility.** Within 30 days
6.28 after the effective date of this section, or within 30 days after section 115B.39, subdivision
6.29 2, paragraph (m), applies to a facility, whichever is later, the commissioner must notify the
6.30 owner or operator of a qualified facility that the facility is a priority qualified facility under
6.31 section 115B.39, subdivision 2, paragraph (m). Within 60 days after being notified under
6.32 this subdivision, the owner or operator of a priority qualified facility must enter into a

7.1 binding agreement with the commissioner according to section 115B.40, subdivision 4,
7.2 paragraph (b).

7.3 Subd. 3. **State response.** If the owner or operator of a priority qualified facility fails to
7.4 enter into a binding agreement according to subdivision 2 and the commissioner determines
7.5 that environmental response actions are reasonable and necessary to protect public health
7.6 or welfare or the environment:

7.7 (1) the commissioner must assume all obligations of the owner or operator for
7.8 environmental response actions under the federal Superfund Act and any federal or state
7.9 cleanup orders and undertake further action under section 115B.40, subdivision 1, at or
7.10 related to the priority qualified facility that the commissioner deems reasonable and
7.11 necessary;

7.12 (2) the commissioner must not seek recovery against responsible persons who are not
7.13 the owner or operator of a priority qualified facility of any costs incurred by the commissioner
7.14 for environmental response action at or related to the facility, except as provided under
7.15 section 115B.40, subdivision 7, paragraph (b), clause (2), item (i) or (ii); and

7.16 (3) the commissioner and the attorney general must communicate with the United States
7.17 Environmental Protection Agency regarding the manner and procedure for the state's
7.18 assumption of federal obligations at the priority qualified facility.

7.19 Subd. 4. **Civil penalty.** An owner or operator of a priority qualified facility is subject
7.20 to a civil penalty in an amount to be determined by the court of not more than \$20,000 per
7.21 day for each day that the owner or operator fails to comply with subdivision 2. The penalty
7.22 ceases to accrue when the owner or operator enters into a binding agreement with the
7.23 commissioner according to section 115B.40, subdivision 4, paragraph (b), and a payment
7.24 agreement for environmental response costs incurred by the commissioner at or related to
7.25 the priority qualified facility. The civil penalty may be recovered by an action brought by
7.26 the attorney general in the name of the state in connection with an action to recover expenses
7.27 of the agency under subdivision 7 or by a separate action in the District Court of Ramsey
7.28 County. All penalties recovered under this subdivision must be deposited in the remediation
7.29 fund.

7.30 Subd. 5. **Disqualification; permits.** If an owner or operator of a priority qualified facility
7.31 that is not a local government unit fails to comply with subdivision 2, the owner or operator
7.32 is ineligible to obtain or renew a state or local permit or license to engage in a business that
7.33 manages solid waste. Failure of an owner or operator of a priority qualified facility that is
7.34 not a local government unit to comply with subdivision 2 is prima facie evidence of the

8.1 lack of fitness of the owner or operator to conduct any solid waste business and is grounds
8.2 for revocation of any solid waste permit or license held by the owner or operator.

8.3 Subd. 6. **Duty to provide information.** Any person that the commissioner determines
8.4 has information regarding the priority qualified facility or the owner or operator of the
8.5 priority qualified facility must furnish to the commissioner any information that person may
8.6 have or may reasonably obtain that is relevant to the priority qualified facility or the owner
8.7 or operator of the priority qualified facility. The commissioner upon presentation of
8.8 credentials may examine and copy any books, papers, records, memoranda, or data of a
8.9 person that has a duty to provide information to the commissioner and may enter upon any
8.10 property, public or private, to take any action authorized by this section, including obtaining
8.11 information from a person that has a duty to provide the information.

8.12 Subd. 7. **Recovering expenses.** Any reasonable and necessary expenses incurred by the
8.13 commissioner pursuant to this section, including all environmental response costs and
8.14 administrative and legal expenses, may be recovered in a civil action brought by the attorney
8.15 general against the owner or operator of a priority qualified facility. The commissioner's
8.16 certification of expenses is prima facie evidence that the expenses are reasonable and
8.17 necessary. Any expenses incurred pursuant to this section that are recovered by the attorney
8.18 general, including any award of attorney fees, must be deposited in the remediation fund.

8.19 Subd. 8. **Claims prohibited.** The owner or operator of a priority qualified facility is
8.20 barred from bringing any claim based on contract, tort, or statute or using any remedy
8.21 available under any other provision of state or federal law, including common law, for
8.22 personal injury, disease, economic loss, environmental response costs incurred by the owner
8.23 or operator, environmental response costs incurred by the state, or legal and administrative
8.24 expenses arising out of a release or threat of release of any hazardous substance, pollutant,
8.25 contaminant, or decomposition gases related to the priority qualified facility.

8.26 Subd. 9. **Environmental response costs; liens.** All environmental response costs,
8.27 including administrative and legal expenses, incurred by the commissioner at a priority
8.28 qualified facility constitute a lien in favor of the state upon any real property located in the
8.29 state, other than homestead property, owned by the owner or operator of the priority qualified
8.30 facility who is subject to the requirements of section 115B.40, subdivision 4 or 5. A lien
8.31 under this subdivision attaches when the environmental response costs are first incurred.
8.32 Notwithstanding section 514.672, a lien under this subdivision continues until the lien is
8.33 satisfied or six years after completion of construction of the final environmental response
8.34 action, not including operation and maintenance. Notice, filing, and release of the lien are
8.35 governed by sections 514.671 to 514.676, except where those requirements specifically are

9.1 related to only cleanup action expenses as defined in section 514.671. Relative priority of
 9.2 a lien under this subdivision is governed by section 514.672, except that a lien attached to
 9.3 property that was included in any permit for the priority qualified facility takes precedence
 9.4 over all other liens regardless of when the other liens were or are perfected. Amounts received
 9.5 to satisfy all or a part of a lien must be deposited in the remediation fund.

9.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.7 **Sec. 4. [115B.407] ACQUISITION AND DISPOSITION OF REAL PROPERTY AT**
 9.8 **PRIORITY QUALIFIED FACILITIES.**

9.9 (a) The commissioner may acquire interests in real property by donation or eminent
 9.10 domain at all or a portion of a priority qualified facility. Condemnation under this section
 9.11 includes acquisition of fee title or an easement. After acquiring an interest in real property
 9.12 under this section, the commissioner must take environmental response actions at the priority
 9.13 qualified facility according to sections 115B.39 to 115B.414 after the legislature makes an
 9.14 appropriation for that purpose.

9.15 (b) The commissioner may dispose of real property acquired under this section according
 9.16 to section 115B.17, subdivision 16.

9.17 (c) Chapter 117 governs condemnation proceedings by the commissioner under this
 9.18 section. The exceptions under section 117.189 apply to the use of eminent domain authority
 9.19 under this section.

9.20 (d) The state is not liable under this chapter solely as a result of acquiring an interest in
 9.21 real property under this section.

9.22 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.23 **Sec. 5. [115B.408] DEPOSIT OF PROCEEDS.**

9.24 All amounts paid to the state under sections 115B.406 and 115B.407 must be deposited
 9.25 in the state treasury and credited to the remediation fund.

9.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.27 **Sec. 6. REVISOR'S INSTRUCTION.**

9.28 In Minnesota Statutes and Minnesota Rules, the revisor of statutes shall replace all
 9.29 references to Minnesota Statutes, section 115B.39, subdivision 2, paragraph (l), with
 9.30 Minnesota Statutes, section 115B.39, subdivision 2, paragraph (o), and shall make all other

- 10.1 necessary changes to preserve the meaning of the text and to conform with the paragraph
- 10.2 relettering in this act.