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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3487

03/23/2016 Authored by Swedzinski, Fabian, Zerwas, Torkelson and Ecklund
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to environment; modifying Petroleum Tank Release Cleanup Act;
1.3 amending Minnesota Statutes 2014, section 115C.09, subdivisions 1, 3.

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

1.5 Section 1. Minnesota Statutes 2014, section 115C.09, subdivision 1, is amended to read:

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

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

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

1.11 Corrective action costs incurred by the applicant include costs for physical removal of
1.12 a tank when the physical removal is part of a corrective action, regardless of whether
1.13 the tank is leaking at the time of removal, and the removal is directed or approved by
1.14 the commissioner;

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

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

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

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

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

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

2.21 Sec. 2. Minnesota Statutes 2014, section 115C.09, subdivision 3, is amended to read:

2.22 Subd. 3. **Reimbursements; subrogation; appropriation.** (a) The board shall
2.23 reimburse an eligible applicant from the fund for 90 percent of the total reimbursable costs
2.24 incurred at the site, except that the board may reimburse an eligible applicant from the
2.25 fund for greater than 90 percent of the total reimbursable costs, if the applicant previously
2.26 qualified for a higher reimbursement rate. For costs associated with a release from a tank
2.27 in transport, the board may reimburse a maximum of \$100,000.

2.28 ~~Not more than \$1,000,000 may be reimbursed for costs associated with a single~~
2.29 ~~release, regardless of the number of persons eligible for reimbursement, and not more than~~
2.30 ~~\$2,000,000 may be reimbursed for costs associated with a single tank facility release.~~

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

2.34 (c) When an applicant has obtained responsible competitive bids or proposals
2.35 according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs

3.1 for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal
3.2 are presumed to be reasonable by the board, unless the costs of the low bid or proposal are
3.3 substantially in excess of the average costs charged for similar tasks, procedures, services,
3.4 materials, equipment, and tests in the same geographical area during the same time period.

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

3.10 (e) Costs incurred for change orders executed as prescribed in rules promulgated
3.11 under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below
3.12 the maximums set forth in the rules, unless the costs in the change order are above those in
3.13 the original bid or proposal or are unsubstantiated and inconsistent with the process and
3.14 standards required by the rules.

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

3.20 (g) If the board reimburses an applicant for costs for which the applicant has
3.21 insurance coverage, the board is subrogated to the rights of the applicant with respect to
3.22 that insurance coverage, to the extent of the reimbursement by the board. The board may
3.23 request the attorney general to bring an action in district court against the insurer to enforce
3.24 the board's subrogation rights. Acceptance by an applicant of reimbursement constitutes
3.25 an assignment by the applicant to the board of any rights of the applicant with respect to
3.26 any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this
3.27 paragraph, the board may instead request a return of the reimbursement under subdivision
3.28 5 and may employ against the applicant the remedies provided in that subdivision, except
3.29 where the board has knowingly provided reimbursement because the applicant was denied
3.30 coverage by the insurer.

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

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

4.1 (1) the agency was given notice of the release as required by section 115.061;

4.2 (2) the applicant, to the extent possible, fully cooperated with the agency in
4.3 responding to the release;

4.4 (3) the state rules applicable after December 22, 1993, to operating an underground
4.5 storage tank and appurtenances without leak detection;

4.6 (4) the state rules applicable after December 22, 1998, to operating an underground
4.7 storage tank and appurtenances without corrosion protection or spill and overflow
4.8 protection; and

4.9 (5) the state rule applicable after November 1, 1998, to operating an aboveground
4.10 tank without a dike or other structure that would contain a spill at the aboveground tank site.

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

4.14 (1) the reasonable determination by the agency that the noncompliance poses a
4.15 threat to the environment;

4.16 (2) whether the noncompliance was negligent, knowing, or willful;

4.17 (3) the deterrent effect of the award reduction on other tank owners and operators;

4.18 (4) the amount of reimbursement reduction recommended by the commissioner; and

4.19 (5) the documentation of noncompliance provided by the commissioner.

4.20 (k) An applicant may request that the board issue a multiparty check that includes each
4.21 lender who advanced funds to pay the costs of the corrective action or to each contractor
4.22 or consultant who provided corrective action services. This request must be made by filing
4.23 with the board a document, in a form prescribed by the board, indicating the identity of the
4.24 applicant, the identity of the lender, contractor, or consultant, the dollar amount, and the
4.25 location of the corrective action. The applicant must submit a request for the issuance
4.26 of a multiparty check for each application submitted to the board. Payment under this
4.27 paragraph does not constitute the assignment of the applicant's right to reimbursement
4.28 to the consultant, contractor, or lender. The board has no liability to an applicant for a
4.29 payment issued as a multiparty check that meets the requirements of this paragraph.