

State of Minnesota
Department of Commerce

In the Matter of the Proposed
Rules Relating To Petroleum
Tank Release Compensation Board.

**STATEMENT OF NEED
AND REASONABLENESS**

STATEMENT OF AUTHORITY

Minnesota Statute Chapter 115C, the **Petroleum Tank Release Clean-Up Act** (hereinafter the "Act"), provides a mechanism for persons who take corrective action in response to petroleum tank releases to receive partial compensation for the cost of the corrective action. Minn. Stat. § 115C.07, subd. 3(a) stipulates that the Petroleum Tank Release Compensation Board (hereinafter the "Board") shall adopt rules regarding its practices and procedures. The rules as proposed amend Minn. Rule 2890 by incorporating amendments made to Chapter 115C by the 1990 Minnesota Legislature.

Further Minn. Stat. § 115C.09, subd. 2 direct the Board to reduce reimbursement of responsible persons for noncompliance. The rules as proposed set forth the criteria for determining the amount of reduction to be applied based upon the statutory mandate.

FACTS ESTABLISHING NEED AND REASONABLENESS

Part 2890.0010 Definitions.

In 1989, Chapter 115C was amended to allow a property owner to volunteer to clean up a release site in the absence of

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the responsible person and be eligible for reimbursement. A volunteer is eligible to receive reimbursements for costs incurred after May 23, 1989. The rule is amended to reflect the proper effective date of May 23, 1989 rather than May 22, 1989.

Part 2890.0060 Reimbursement of Costs.

Subpart 2a and Subpart 3. Amount of Reimbursement.

In 1990, Minn. Stat. § 115C.09 was amended to permit reimbursement up to \$1 million. These sections only incorporate the statutory language as amended.

Part 2890.0065 Reduction of Reimbursement Amount

Subpart 1. Amount of Reduction.

Pursuant to Minn. Stat. § 115C.09, subd. 2, the Board is directed to reduce the amount of reimbursement to a noncompliant responsible person. In order to insure uniformity and systematic application of reductions, the Board has established a percentage range of reduction that the Board will apply for a failure to comply with each of the factors listed in Minn. Stat. § 115C.09, subd. 2(c)(1-4).

Subpart 2. Cumulative Application.

This section is added only to make it clear that reductions under Subpt. 1, (A-D) are to be added together to arrive at a final total reduction.

Subpart 3. Deviations.

Minn. Stat. § 115C.09, subd. 2(d)(1-4) directs the Board to consider certain factors in determining the amount of the

reimbursement reduction. This section permits the Board to deviate from the reductions set forth in subpt. 1 if consideration of the statutory factors warrants it. This section permits the Board some flexibility to take into account the individual facts of each application as they relate to the statutory factors.

Part 2890.0090. Application Process.

Subpart 5. Certification.

The Board has been notified that in certain cases responsible persons who have received reimbursement from the Petroleum Tank Release Compensation Fund ("Fund") have failed to pay contractors or consultants for outstanding cleanup costs. The Board feels this practice subverts the purpose of the Act and so proposes that responsible parties must certify that outstanding invoices will be paid. This added certification language makes it clear to responsible parties that they are required to pay all outstanding invoices within thirty (30) days of receipt of their reimbursement from the Fund. The Board's authority to recover payment under Minn. Stat. § 115C.09, subd. 5 is also outlined in this section.

Subpart 6. Report of the Commissioner.

In 1989, Minn. Stat. § 115C., subd. 2(b) was amended and renumbered. This section only incorporates the statutory renumbering.

Part 2890.0110. Right of Appeal.

The Act does not state the specific procedural basis for an appeal of the decision of the Board. The Board proposes this change because an adequate factual record for an appeal to the Court of Appeals is not presently created when the Board makes a decision on a particular application. By providing for a contested case hearing, both the responsible party and the Board's staff will have an opportunity to present factual evidence to support their respective positions. This will enable both the Board and, ultimately the Court of Appeals, to review the Board's initial decision with full presentation of the facts.

Small Business Consideration

Minnesota Statutes 14.115 requires that the impact of the rules upon small businesses be considered in regard to any rulemaking procedure. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered.

The EPA requires that certain tank owners show financial responsibility of \$1 million. Many small businesses are unable to satisfy that requirement. The statute now provides assistance in meeting the financial responsibility requirement.

The Board has the authority to make reimbursement reductions for non-compliant responsible persons. In order to insure uniformity, a schedule for making reductions has been proposed. The purpose of these reductions is to encourage compliance with state pollution control laws. If the Board were

to adopt a lower schedule of reimbursement reductions for small businesses, it would undermine these laws.

The certification section of the rules makes it clear that any outstanding invoices are to be paid within thirty (30) days of receipt of payment from the Fund. Because the responsible person is not expected to pay until he or she has received the money from the Fund, this requirement should not impose any hardship on small businesses. In fact, it may make it easier for small businesses to get credit because banks, contractors, consultants, etc. will have more assurance that they will be paid.

The proposed change in the appeal process does not impact compliance standards or reporting requirements.

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