



H7

Short Subjects

Title: COMPENSATING VICTIMS OF HAZARDOUS WASTE Date: August 28, 1985
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Along with changes in the state "superfund" law made during the 1985 special session, the legislature established a state fund to provide compensation for victims of hazardous waste (Laws 1985, extra session chapter 8). The Hazardous Substance Injury Compensation Fund ("fund") is designed to provide compensation for personal injury and certain property damage caused by the release of a hazardous substance. It establishes an administrative process that allows eligible persons to receive compensation without going through a formal court proceeding. Following is a summary of its major provisions.

ADMINISTRATION OF FUND

The fund will be administered by a five member Hazardous Substance Injury Compensation Board ("board"). The board will serve part time and be appointed by the governor with the advice and consent of the senate. The members must consist of:

- * a physician knowledgeable in toxicology;
- * a member of the bar;
- * a health professional knowledgeable in the area of hazardous substance injuries; and
- * two members of the general public.

Members will be appointed to staggered six year terms. The Commissioner of Employee Relations will establish the members' compensation based on their professional expertise and experience. The Commissioner of Health will provide staff assistance, administrative services, and office space for the board.

ELIGIBILITY FOR COMPENSATION FROM THE FUND

In general, to receive compensation from the fund, the person must be eligible to apply, the injury or damage must be eligible for compensation, and the loss must be compensable.

Eligible Persons:

A person may file a claim with the board for eligible personal injury if the injury could reasonably have resulted from an exposure in Minnesota to a hazardous substance released from a facility.

Eligibility to file a claim for property damage depends on the nature of the damage involved. In the case of damage to a primary source of drinking water, eligibility is the same as for personal injury. However, if the eligible property damage is the depreciated market value of a residence that could reasonably have resulted from the release of a hazardous substance, a person is eligible only if:

- * the persons responsible for the release are unknown or cannot be found; or
- * a judgment would not be satisfied in whole or in part against the persons determined to be responsible for the release.

Eligible Personal Injury:

A personal injury that could reasonably have resulted from exposure to a hazardous substance released from a facility is eligible if:

- * it is a medically verified chronic or progressive disease, illness, or disability; or
- * it is a medically verified acute disease or condition and the responsible persons are unknown, cannot be found, or a judgment would not be satisfied against them.

A personal injury is not eligible if:

- * it is compensable under workers compensation;
- * it arises out of the use of a consumer product;
- * it arises out of an exposure that occurred outside of Minnesota; or
- * it results from the release of a hazardous substance for which the claimant is a responsible person.

Eligible Property Damage:

Damage to real property in Minnesota is eligible for compensation if it results from the presence in or on the property of a hazardous substance released from a facility.

Property damage is not eligible if it results from the release of a hazardous substance for which the claimant is a responsible person.

Compensable Losses:

Personal injury losses are limited to medical expenses, lost wages or income, death benefits to dependents, and the value of lost household labor. Lost wages or income, death benefits, and household labor may not exceed \$2,000 per month or \$24,000 per year.

Property damage losses are limited to the following losses caused by damage to the claimant's principal residence:

- * reasonable cost of replacing or decontaminating the primary source of drinking water, up to a maximum of \$25,000; and
- * losses incurred as a result of the sale of the property at less than market value under circumstances that constitute a hardship to the owner, limited to 75 percent of the difference between the appraised market value and the selling price, and not to exceed \$25,000.

TIME FOR FILING CLAIM

A personal injury claim must be filed within two years after the injury and its connection to exposure to a hazardous substance was or reasonably should have been discovered.

A property damage claim must be filed within six years after the damage was or reasonably should have been discovered.

Claims that would otherwise be barred by these time limits may be filed not later than January 1, 1988.

PROCEDURE FOR FILING CLAIM

A claim must be filed with the board in the form required by the board. It must include evidence that:

- * the claimant is an eligible person;
- * the claimant was exposed to a named hazardous substance;
- * the claimant's exposure could reasonably have been caused or significantly contributed to by the release of a hazardous substance from a facility;
- * the exposure experienced by the claimant can cause or significantly contribute to the injury suffered by the claimant; and
- * the claimant experienced eligible injury or damage and compensable loss.

In addition, the claim must include information regarding any collateral sources of compensation.

When death is claimed as a compensable injury, the claim may be brought by the claimant's estate for medical expenses and by the claimant's trustee for death benefits for dependents.

DETERMINATION OF CLAIM

Decision by Board:

The chairman of the board assigns a claim to one of the board members, other than the members representing the general public, who makes a preliminary decision. The preliminary decision is circulated first to the other board members and then to the claimant. If it is not challenged, it becomes a final decision of the board. If it is challenged, the claimant appears before the board and may present further evidence or witnesses. The board makes a final decision after the appearance based on all available information.

The appearance before the board is not a contested case hearing and is not intended to be like a formal court proceeding, although the board must give effect to evidence that possesses reasonable probative value and must recognize the accepted rules of privilege.

A final decision of the board is conclusive and there is no right to judicial review.

Standard for Board Decision:

Personal injury:

The board will grant compensation to a claimant who shows that it is more likely than not that:

- * the claimant suffers a medically verified injury that is eligible for compensation and that has resulted in compensable loss;
- * the claimant has been exposed to a hazardous substance;
- * the release of the substance from a facility where it was placed or came to be located could reasonably have resulted in the claimant's exposure; and
- * the claimant's injury can be caused or significantly contributed to by exposure in an amount and duration experienced by the claimant.

Property damage:

The board will grant compensation to a claimant who shows that it is more likely than not that:

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

Investigative Powers of Board:

The board will have the power to investigate claims for compensation and may require the claimant and request any other person to provide information relevant to determination of a claim. It may

issue a subpoena for the production of information relevant to the release of a hazardous substance and petition the district court for the production of other information relevant to a claim. The board's investigative powers are subject to applicable privileges and it must reimburse the actual cost of reproducing documents.

Protected Information:

Certain information provided to the board by third parties will be protected by limiting access to the information by the claimant or other persons. Information provided to the board by third parties that is relevant to exposure to or the release of a hazardous substance, or the connection between exposure and an injury or damage, may be revealed only under limited circumstances. If the board relies on protected information to deny a claim, the claimant will be allowed access to that portion of the information for the purpose of providing additional evidence.

AMOUNT AND FORM OF PAYMENT

If the board decides to grant compensation, it will determine the net uncompensated loss incurred by the claimant by subtracting any compensation received from other sources. Compensation may be awarded in a lump sum or in installments at the discretion of the board.

No claimant may receive more than \$250,000, and in the case of a death, the total paid to all persons on behalf of a claimant may not exceed that amount.

OTHER ACTIONS

Exclusive Remedy in Certain Cases:

A person who has settled a claim or received a court judgment for an eligible injury or damage may not file a claim with the fund for the same injury or damage, unless a judgment cannot be satisfied against the responsible persons.

A person who has received and accepted an award from the board may not bring an action in court for the same eligible injury or damage (a claimant would have the option of refusing to accept an award from the board to leave open the possibility of going to court).

A person who files a claim with the board must include all known claims eligible for compensation in one proceeding, and may not file another claim with the board for the same injury or damage.

A person may not bring an action in court and before the board for the same injury or damage at the same time.

Subrogation by State:

The state has subrogation rights to pursue any claim in court against the responsible persons or to pursue the claimant's right to recover from any other source if an award is made from the fund.

ATTORNEYS

Although the administrative procedure for compensation before the board is intended to be less formal than a court proceeding, it is anticipated that most claimants will use an attorney to present their claim. The board is given authority to by rule limit the fee charged by any attorney for representing a claimant before the board.

FUNDING

The fund received a \$2,000,000 appropriation from the general fund, up to \$250,000 of which may be used for administrative expenses of the board. In addition, any money recovered in a subrogation action would be deposited in the fund.