

**Powder River Basin Resource Council
Joint Transportation, Highways, and Military Affairs Committee
June 2, 2015**

2014 Minnesota Statutes

CHAPTER 115E. OIL AND HAZARDOUS SUBSTANCE DISCHARGE PREPAREDNESS

115E.042 PREPAREDNESS AND RESPONSE FOR CERTAIN RAILROADS.

Subdivision 1. Application.

In addition to the requirements of section 115E.04, a person who owns or operates railroad car rolling stock transporting a unit train must comply with this section.

Subd. 2. Training.

(a) Each railroad must offer training to each fire department having jurisdiction along the route of unit trains. Initial training under this subdivision must be offered to each fire department by June 30, 2016, and refresher training must be offered to each fire department at least once every three years thereafter.

(b) The training must address the general hazards of oil and hazardous substances, techniques to assess hazards to the environment and to the safety of responders and the public, factors an incident commander must consider in determining whether to attempt to suppress a fire or to evacuate the public and emergency responders from an area, and other strategies for initial response by local emergency responders. The training must include suggested protocol or practices for local responders to safely accomplish these tasks.

Subd. 3. Coordination.

Beginning June 30, 2015, each railroad must communicate at least annually with each county or city emergency manager, safety representatives of railroad employees governed by the Railway Labor Act, and a senior fire department officer of each fire department having jurisdiction along the route of a unit train, to ensure coordination of emergency response activities between the railroad and local responders.

Subd. 4. Response capabilities; time limits.

(a) Following confirmation of a discharge, a railroad must deliver and deploy sufficient equipment and trained personnel to contain and recover discharged oil or hazardous substances and to protect the environment and public safety.

(b) Within one hour of confirmation of a discharge, a railroad must provide a qualified company employee to advise the incident commander. The employee may be made available by telephone, and must be authorized to deploy all necessary response resources of the railroad.

(c) Within three hours of confirmation of a discharge, a railroad must be capable of delivering monitoring equipment and a trained operator to assist in protection of responder and public safety. A plan to ensure delivery of monitoring equipment and an operator to a discharge site must be provided each year to the commissioner of public safety.

(d) Within three hours of confirmation of a discharge, a railroad must provide qualified personnel at a discharge site to assess the discharge and to advise the incident commander.

(e) A railroad must be capable of deploying containment boom from land across sewer outfalls, creeks, ditches, and other places where oil or hazardous substances may drain, in order to contain leaked material before it reaches those resources. The arrangement to provide containment boom and staff may be made by:

- (1) training and caching equipment with local jurisdictions;
- (2) training and caching equipment with a fire mutual-aid group;
- (3) means of an industry cooperative or mutual-aid group;
- (4) deployment of a contractor;
- (5) deployment of a response organization under state contract; or
- (6) other dependable means acceptable to the Pollution Control Agency.

(f) Each arrangement under paragraph (e) must be confirmed each year. Each arrangement must be tested by drill at least once every five years.

(g) Within eight hours of confirmation of a discharge, a railroad must be capable of delivering and deploying containment boom, boats, oil recovery equipment, trained staff, and all other materials needed to provide:

(1) on-site containment and recovery of a volume of oil equal to ten percent of the calculated worst case discharge at any location along the route; and

(2) protection of listed sensitive areas and potable water intakes within one mile of a discharge site and within eight hours of water travel time downstream in any river or stream that the right-of-way intersects.

(h) Within 60 hours of confirmation of a discharge, a railroad must be capable of delivering and deploying additional containment boom, boats, oil recovery equipment, trained staff, and all other materials needed to provide containment and recovery of a worst case discharge and to protect listed sensitive areas and potable water intakes at any location along the route.

[See Note.]

Subd. 5. Railroad drills.

Each railroad must conduct at least one oil containment, recovery, and sensitive area protection drill every three years, at a location and time chosen by the Pollution Control Agency, and attended by safety representatives of railroad employees governed by the Railway Labor Act.

[See Note.]

Subd. 6. Prevention and response plans.

(a) By June 30, 2015, a railroad shall submit the prevention and response plan required under section 115E.04, as necessary to comply with the requirements of this section, to the commissioner of the Pollution Control Agency on a form designated by the commissioner.

(b) By June 30 of every third year following a plan submission under this subdivision, a railroad must update and resubmit the prevention and response plan to the commissioner.

History:

2014 c 312 art 10 s 4

NOTE: Subdivisions 4 and 5, as added by Laws 2014, chapter 312, article 10, section 4, are effective July 1, 2015. Laws 2014, chapter 312, article 10, section 4, the effective date.

115E.08 COORDINATION.

Subdivision 1. Appointment.

The commissioner of public safety shall coordinate state agency preparedness for response to discharges of oil or hazardous substances.

Subd. 2.Duties.

The commissioner of public safety shall at least annually assess the preparedness of each state agency for carrying out its responsibilities under sections 115E.01 to 115E.09 and shall chair regular meetings of representatives of each agency to prepare for coordinated response. The commissioner shall develop an incident command system for use by state agency responders in consultation with the affected state agencies. Following each major incident, the commissioner shall review the performance of each responding agency and the adequacy of the overall response and shall report to the agencies involved and the governor. The commissioner shall also identify opportunities for state agencies to coordinate with federal departments and agencies and political subdivisions of the state for preparedness and response actions.

Subd. 3.Jurisdiction.

Except as otherwise provided, the following agencies have primary responsibility for the specified areas in carrying out the duties and authorities of this chapter:

- (1) the Department of Agriculture, for agricultural chemicals;
- (2) the Department of Public Safety, for public safety and protection of property;
- (3) the Department of Natural Resources, for assessment and rehabilitation of water resources;
- (4) the Pollution Control Agency, for all other matters subject to this chapter; and
- (5) the Department of Transportation, with respect to requirements related to the packaging, labeling, placarding, routing, and written reporting on releases of hazardous materials that are being transported.

Subd. 3a.Railroad preparedness; pollution control.

The Pollution Control Agency shall carry out environmental protection activities related to railroad discharge preparedness. Duties under this subdivision include, but are not limited to:

- (1) assisting local emergency managers and fire officials in understanding the hazards of oil and hazardous substances, as well as general strategies for containment and environmental protection;
- (2) assisting railroads to identify natural resources and sensitive areas, and to devise strategies to contain and recover oil and hazardous substances from land and waters along routes;
- (3) facilitating cooperation between railroads for mutual aid arrangements that provide training, staff, and equipment as required by this chapter;
- (4) participating in drills and training sessions;
- (5) reviewing each railroad's prevention and response plan for compliance with the requirements of this chapter, and assessing each railroad's readiness to protect the environment;
- (6) conducting inspections and drills as necessary to determine the railroad's compliance with the requirements of this chapter and ability to protect the environment;
- (7) conducting follow-up corrective action directives, orders, and enforcement as necessary based on a finding of inadequate environmental protection preparedness; and
- (8) soliciting involvement and advice concerning preparedness activities and requirements from safety representatives of railroad employees governed by the Railway Labor Act.

Subd. 3b.Railroad and pipeline preparedness; public safety.

The commissioner of public safety shall carry out public safety protection activities related to railroad and pipeline spill and discharge preparedness. Duties under this subdivision include, but are not limited to:

(1) assisting local emergency managers and fire officials to understand the hazards of oil and hazardous substances, as well as general strategies for hazard identification, initial isolation, and other actions necessary to ensure public safety;

(2) assisting railroads and pipeline companies to develop suggested protocols and practices for local first responder use in protecting the public's safety;

(3) facilitating cooperation between railroads, pipeline companies, county and city emergency managers, and other public safety organizations;

(4) participating in major exercises and training sessions;

(5) assisting local units of government to incorporate railroad and pipeline hazard and response information into local emergency operations plans;

(6) monitoring the public safety-related training and planning requirements of section 115E.03; and

(7) referring noncompliance with section 115E.03 to the Pollution Control Agency.

Subd. 4. Annual report.

The commissioner shall annually report to the appropriate committees of the legislature on the readiness of state government to respond appropriately to discharges of oil or hazardous substances.

History:

1991 c 305 s 8; 2014 c 312 art 10 s 5,6

CHAPTER 219. RAILROAD SAFETY AND EMPLOYMENT

219.015 STATE RAIL SAFETY INSPECTOR.

Subdivision 1. Positions established; duties.

(a) The commissioner of transportation shall establish three state rail safety inspector positions in the Office of Freight and Commercial Vehicle Operations of the Minnesota Department of Transportation. On or after July 1, 2015, the commissioner may establish a fourth state rail safety inspector position following consultation with railroad companies. The commissioner shall apply to and enter into agreements with the Federal Railroad Administration (FRA) of the United States Department of Transportation to participate in the federal State Rail Safety Participation Program for training and certification of an inspector under authority of United States Code, title 49, sections 20103, 20105, 20106, and 20113, and Code of Federal Regulations, title 49, part 212.

(b) A state rail safety inspector shall inspect mainline track, secondary track, and yard and industry track; inspect railroad right-of-way, including adjacent or intersecting drainage, culverts, bridges, overhead structures, and traffic and other public crossings; inspect yards and physical plants; review and enforce safety requirements; review maintenance and repair records; and review railroad security measures.

(c) A state rail safety inspector may perform, but is not limited to, the duties described in the federal State Rail Safety Participation Program. An inspector may train, be certified, and participate in any of the federal State Rail Safety Participation Program disciplines, including: track, signal and train control, motive power and equipment, operating practices compliance, hazardous materials, and highway-rail grade crossings.

(d) To the extent delegated by the Federal Railroad Administration and authorized by the commissioner, an inspector may issue citations for violations of this chapter, or to ensure railroad employee and public safety and welfare.

Subd. 2. Railroad company assessment; account; appropriation.

(a) As provided in this subdivision, the commissioner shall annually assess railroad companies that are (1) defined as common carriers under section 218.011; (2) classified by federal law or regulation as Class I Railroads, Class I Rail Carriers, Class II Railroads, or Class II Carriers; and (3) operating in this state.

(b) The assessment must be by a division of state rail safety inspector program costs in equal proportion between carriers based on route miles operated in Minnesota, assessed in equal amounts for 365 days of the calendar year. The commissioner shall assess all start-up or re-establishment costs, all related costs of initiating the state rail safety inspector program, and ongoing state rail inspector duties.

(c) The assessments must be deposited in a special account in the special revenue fund, to be known as the state rail safety inspection account. Money in the account is appropriated to the commissioner for the establishment and ongoing responsibilities of the state rail safety inspector program.

Subd. 3. Work site safety coaching program.

The commissioner may exempt a common carrier not federally classified as Class I from violations for a period of up to two years if the common carrier applies for participation in a work site safety coaching program, such as the "MNSharp" program administered by the Minnesota Department of Labor and Industry, and the commissioner determines such participation to be preferred enforcement for safety or security violations.

Subd. 4. Appeal.

Any person aggrieved by an assessment levied under this section may appeal within 90 days any assessment, violation, or administrative penalty to the Office of Administrative Hearings, with further appeal and review by the district court.

History:

2008 c 287 art 1 s 76; 2014 c 312 art 10 s 7,8

CHAPTER 299A. DEPARTMENT OF PUBLIC SAFETY

299A.55 RAILROAD AND PIPELINE SAFETY; OIL AND OTHER HAZARDOUS MATERIALS.

Subdivision 1. Definitions.

(a) For purposes of this section, the following terms have the meanings given them.

(b) "Applicable rail carrier" means a railroad company that is subject to an assessment under section 219.015, subdivision 2.

(c) "Hazardous substance" has the meaning given in section 115B.02, subdivision 8.

(d) "Oil" has the meaning given in section 115E.01, subdivision 8.

(e) "Pipeline company" means any individual, partnership, association, or public or private corporation who owns and operates pipeline facilities and is required to show specific preparedness under section 115E.03, subdivision 2.

Subd. 2. Railroad and pipeline safety account.

(a) A railroad and pipeline safety account is created in the special revenue fund. The account consists of funds collected under subdivision 4 and funds donated, allotted, transferred, or otherwise provided to the account.

(b) \$104,000 is annually appropriated from the railroad and pipeline safety account to the commissioner of the Pollution Control Agency for environmental protection activities related to railroad discharge preparedness under chapter 115E.

(c) Following the appropriation in paragraph (b), the remaining money in the account is annually appropriated to the commissioner of public safety for the purposes specified in subdivision 3.

Subd. 3. Allocation of funds.

(a) Subject to funding appropriated for this subdivision, the commissioner shall provide funds for training and response preparedness related to (1) derailments, discharge incidents, or spills involving trains carrying oil or other hazardous substances, and (2) pipeline discharge incidents or spills involving oil or other hazardous substances.

(b) The commissioner shall allocate available funds as follows:

(1) \$100,000 annually for emergency response teams; and

(2) the remaining amount to the Board of Firefighter Training and Education under section 299N.02 and the Division of Homeland Security and Emergency Management.

(c) Prior to making allocations under paragraph (b), the commissioner shall consult with the Fire Service Advisory Committee under section 299F.012, subdivision 2.

(d) The commissioner and the entities identified in paragraph (b), clause (2), shall prioritize uses of funds based on:

(1) firefighter training needs;

(2) community risk from discharge incidents or spills;

(3) geographic balance; and

(4) recommendations of the Fire Service Advisory Committee.

(e) The following are permissible uses of funds provided under this subdivision:

(1) training costs, which may include, but are not limited to, training curriculum, trainers, trainee overtime salary, other personnel overtime salary, and tuition;

(2) costs of gear and equipment related to hazardous materials readiness, response, and management, which may include, but are not limited to, original purchase, maintenance, and replacement;

(3) supplies related to the uses under clauses (1) and (2); and

(4) emergency preparedness planning and coordination.

(f) Notwithstanding paragraph (b), clause (2), from funds in the railroad and pipeline safety account provided for the purposes under this subdivision, the commissioner may retain a balance in the account for budgeting in subsequent fiscal years.

Subd. 4. Assessments.

(a) The commissioner of public safety shall annually assess \$2,500,000 to railroad and pipeline companies based on the formula specified in paragraph (b). The commissioner shall deposit funds collected under this subdivision in the railroad and pipeline safety account under subdivision 2.

(b) The assessment for each railroad is 50 percent of the total annual assessment amount, divided in equal proportion between applicable rail carriers based on route miles operated in Minnesota. The assessment for each pipeline company is 50 percent of the total annual assessment amount, divided in equal proportion between companies based on the yearly aggregate gallons of oil and hazardous substance transported by pipeline in Minnesota.

(c) The assessments under this subdivision expire July 1, 2017.

History:

2014 c 312 art 10 s 9

Laws of Minnesota 2014, Chapter 312, Article 10, Section 10.

IMPROVEMENTS STUDY ON GRADE CROSSINGS AND RAIL SAFETY FOR OIL AND OTHER HAZARDOUS MATERIALS TRANSPORTATION.

(a) The commissioner of transportation shall conduct a study on highway-rail grade crossing improvement for oil and other hazardous materials transported by rail, and on rail safety. At a minimum, the study must:

- (1) provide information that assists in risk management associated with transportation of oil and other hazardous materials by rail;
- (2) develop criteria to prioritize needs and improvements at highway-rail grade crossings;
- (3) consider alternatives for safety improvements, including but not limited to active warning devices such as gates and signals, closings, and grade separation;
- (4) provide findings and recommendations that serve to direct accelerated investments in highway-rail grade crossing safety improvements; and
- (5) analyze state inspection activities and staffing for track and hazardous materials under Minnesota Statutes, section 219.015.underline end

(b) The commissioner shall submit an interim update on the study by August 31, 2014, and a final report by October 31, 2014, to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation policy and finance.

Laws of Minnesota 2014, Chapter 312, Article 10, Section 11.

REPORTS ON INCIDENT PREPAREDNESS FOR OIL TRANSPORTATION.

Subdivision 1. Report on response preparedness. By January 15, 2015, the commissioner of public safety shall submit a report on emergency response preparedness in the public and private sectors for incidents involving transportation of oil to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation and public safety policy and finance. At a minimum, the report must:

- (1) summarize the preparedness and emergency response framework in the state;
- (2) provide an assessment of costs and needs of fire departments and other emergency first responders for training and equipment to respond to discharge or spill incidents involving transportation of oil;
- (3) develop a comprehensive public and private response capacity inventory that, to the extent feasible, includes statewide identification of major emergency response equipment, equipment staging locations, mutual aid agreements, and capacities across industries involved in transportation and storage of oil;
- (4) provide information and analysis that forms the basis for allocation of funds under Minnesota Statutes, section 299A.55;
- (5) develop benchmarks or assessment criteria for the evaluation under subdivision 2;
- (6) assist in long-range oil transportation incident preparedness planning; and
- (7) make recommendations for any legislative changes.

Subd. 2. Evaluation of response preparedness and funding. By January 15, 2017, the commissioner of public safety shall submit an evaluation of safety preparedness and funding related to incidents involving transportation of oil to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation and public safety policy and finance. At a minimum, the evaluation must:

- (1) provide an update to the report under subdivision 1 that identifies notable changes and provides updated information as appropriate;
- (2) evaluate the effectiveness of training and response preparedness activities under Minnesota Statutes, section 299A.55, using the criteria established under subdivision 1, clause (5);
- (3) identify current sources of funds, funding levels, and any unfunded needs for preparedness activities;

(4) analyze equity in the distribution of funding sources for preparedness activities, which must include but is not limited to (i) examination of the public-private partnership financing model, and (ii) review of balance across industries involved in storage and distribution of oil; and

(5) make recommendations for any programmatic or legislative changes.

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