



Brownfield Program Services

Petroleum Brownfields and Voluntary Investigation and Cleanup Programs

The Minnesota Pollution Control Agency's (MPCA) Brownfield Program consists of two integrated programs, the Petroleum Brownfields Program that handles petroleum contamination under the Petroleum Tank Release Cleanup Act (Minn. Stat. § 115C) and the Voluntary Investigation and Cleanup (VIC) Program that handles hazardous substance contamination under Minnesota's Environmental Response and Liability Act (Minn. Stat. § 115B).

Brownfield Program services include technical assistance and issuance of liability assurance letters to promote the investigation, cleanup and redevelopment of property that is contaminated with petroleum and/or hazardous substances. This document provides general information about the services offered by the Brownfield Program.

I. Technical assistance

A. Expedited review of petroleum leak sites

The transfer or financing of property with petroleum contamination originating from an on-site storage tank(s) often hinges on MPCA approval of investigations and corrective actions required under the Petroleum Tank Release Cleanup Act (Minn. Stat. § 115C). Because time is a critical factor for some parties, the Petroleum Brownfields Program offers an expedited review of the reports required for these leak sites. The Petroleum Brownfields Program goal is to respond within 30 working days of the receipt of a report. For many properties the quicker review can lead to quicker corrective action approval and/or file closure. Please note that the Petroleum Brownfields Program requires the same site investigation and risk evaluation as the Petroleum Remediation Program (see Guidance Document 1-01 [Petroleum Remediation Program General Policy](#) and other applicable guidance documents).

B. Review of non-tank petroleum releases

Petroleum Brownfields Program staff also review investigation and corrective action reports for petroleum contamination that did not originate from a storage tank (as defined by Minn. Stat. § 115C). Petroleum Brownfields staff will issue a file closure letter for a non-tank petroleum release site when staff concludes that the investigation and/or cleanup has adequately addressed the contamination.

C. Review of Construction Contingency Plans, Soil Management Plans, and Response Action Plans

State law requires that all persons properly manage contaminated soil and water they uncover or disturb, even if they are not the party responsible for the contamination. Improper management of contaminated soil or water can expose a landowner or developer to environmental liability and administrative penalties and/or fines.

Parties can seek Brownfield Program approval of their proposed plans to respond to contamination encountered during redevelopment projects. See Petroleum Brownfield Guidance Document 5-03 Brownfield Program Response Action Plans for additional information Response Action Plan (RAP) approval. Successful implementation of an MPCA-approved Construction Contingency Plan, Soil Management Plan, or RAP and subsequent submittal of an Implementation Report may lead to an Implementation Report Approval Letter, which provides MPCA confirmation that the reported management of contaminated media was appropriate and in accordance with MPCA requirements.

D. Technical Assistance Letter for hazardous substances

A Technical Assistance Letter from the VIC Program communicates the results of MPCA's review of site documents when a party is not interested in or eligible for a liability assurance letter. For example, the MPCA may issue a Technical Assistance Letter in situations where an investigation was conducted, but a release of hazardous substances was not identified or in other situations where an independent third-party reviews of environmental reports is requested.

II. Liability assurances

Voluntary parties often seek documentation from the MPCA showing that they will not be held responsible under state statute for contamination identified at a property and/or confirming that the identified contamination does not pose a risk to human health or the environment, based on the current or proposed property use. *Administrative liability assurances* are based on the MPCA's discretionary enforcement authority and thus, reflect the agency's administrative decision regarding a certain identified release of contaminants. *Statutory liability assurances* are based on specific provisions in Minnesota statute which define the conditions under which a party can be held responsible for contamination at a property.

Administrative liability assurances

A. Petroleum leak site file closure confirmation letter

This letter states that a petroleum tank release occurred at the property and that the file closure status is still valid. To be eligible for this assurance, applicants are required to submit information collected since the original date of leak site closure.

B. No Action or No Further Action Letter for a hazardous substance release

A No Action determination states that the MPCA will take no action with regard to a specific identified release of contaminants. A No Action determination is issued when the MPCA concludes that the extent and magnitude of the release has been defined and that the identified contamination does not pose a risk to human health or the environment, given the current or proposed property use. There are two general types of "no action" determinations, as described below. Each incorporates standard disclaimers, including a reopener clause if new information is received or if site conditions change.

- A *No Action Letter* is issued when the identified contamination does not pose a risk to human health or the environment, and therefore, no response actions are necessary.
- A *No Further Action Letter* is issued after response action implementation has successfully managed risk to human health and the environment.

If the site investigation and/or cleanup was limited in area or scope, the No Action/No Further Action Letter will clearly define the limitations and qualifiers associated with the MPCA's administrative "No Action" decision. For example, if the site investigation and/or cleanup was limited to one media (e.g. soil or groundwater) or to a certain portion of the property (e.g. a proposed building expansion area), or if the list of analytes did not include all contaminants of potential concern, the MPCA's "No Action" decision will be qualified accordingly.

Statutory liability assurances for petroleum

The following types of liability assurances are based on provisions in Minn. Stat. § 115C which define the conditions under which a party can be held responsible for petroleum contamination at a property. These letters also cover successive purchasers of the property, as long as they were not in some way responsible or involved with the original release.

A. General Liability Letter

This letter states the definition of a "responsible party" in accordance with Minn. Stat. 115C and cites special provisions of the statute as they relate to mortgagees, if applicable. This letter states that if a person comes into possession of property after the tanks have been removed, and where a petroleum tank release attributable to those tank(s) had previously occurred, that person is not a responsible party and cannot be ordered to take corrective action.

B. Leak Site Tank Removal Verification Letter

This letter verifies removal of the petroleum storage tank(s) that caused the petroleum contamination. It states that the property was the site of a petroleum tank release and that the prospective buyer or lender will not be a responsible party for the release under Minn. Stat. 115C because the tank(s) from which the release occurred has/have been removed. To obtain this letter, it must be documented that the tank(s) has/have been removed.

C. Off-site source determination

This letter identifies an adjacent or nearby property as the source of the petroleum contamination and states that the owner of the affected property is not a responsible party for the contamination. To obtain this letter, a complete site investigation and risk evaluation (in accordance with Guidance Document 1-01 [Petroleum Remediation Program General Policy](#) and other applicable guidance documents) and a Phase I Environmental Site Assessment are needed to show that there is not an on-site source for the petroleum contamination and that the contamination migrated to the property from an off-site tank.

III. Statutory liability assurances for hazardous substances, pollutants, and contaminants

The following types of liability assurances are based on provisions in Minn. Stat. § 115B which define the conditions under which a party can be held responsible for a release of hazardous substances, pollutants or contaminants. See Minn. Stat. § 115B.02 for the definitions of "hazardous substance" and "pollutant or contaminant". As per Minnesota statute, voluntary parties and their contractors who are not otherwise responsible parties do not incur liability for investigation (Minn. Stat. § 115B.17, subd. 14) or response actions (Minn. Stat. § 115B.175, subd. 1) as long as those actions are conducted in accordance with a work plan or response action plan reviewed and approved by the VIC Program.

A. Lender Letter

This letter explains the liability protection provided to lenders under Minn. Stat. § 115B.03, subds. 6 and 7. A Lender Letter reiterates that under State statute, a lender does not become a responsible party solely by providing financing or acquiring a property through foreclosure, receipt of deed in lieu of foreclosure, or termination of a contract-for-deed. This letter differs from the Lender No Association Determination, described below, in that the statutory liability protection referenced in a Lender Letter is discussed in general terms; no environmental assessment, identified release, or proposed actions are necessary to obtain a Lender Letter.

B. No Association Determination

When a voluntary party performs actions at a site contaminated with a hazardous substance, pollutant or contaminant, the voluntary party could under some circumstances become a responsible party for the contamination under Minn. Stat. § 115B.03, subd. 3(4). The No Association Determination (NAD) provides protection from this liability. The NAD is a determination from the MPCA that the specific actions proposed by the voluntary party will not associate them with the identified contamination for the purpose of Minn. Stat. § 115B.03, subd. 3(4). To be eligible for a NAD, the following criteria must be met:

- The property must have an identified release of a hazardous substance, pollutant, or contaminant in soil, groundwater, soil gas, surface water, or sediment. For a naturally-occurring compound, the concentration must be above typical background concentrations.
- The voluntary party must have an ownership interest in the property, as defined by Minn. Stat. § 115B.02, subd. 11. Examples of parties with an ownership interest include prospective purchasers, parties who intend to rent, lease or operate at the property, and parties holding an easement in the area of the Identified Release.
- The voluntary party cannot store or use the chemicals that are included in the Identified Release at the property, or allow others to do so.
- The voluntary party must not be a responsible party for the contamination, as defined in Minn. Stat. § 115B.03.
- The voluntary party requesting the NAD must provide a Proposed Actions Letter summarizing the identified release of contaminants and describing the specific actions to be taken at the site in the near future. Typical proposed actions include purchase of the property, environmental investigation and/or response actions, and detailed actions relating to the improvement, redevelopment, operation, and/or maintenance of the property.
- Any potential risk to human health or the environment that may be created by implementing the proposed actions must be managed in accordance with an MPCA approved response action plan.

C. Lender No Association Determination

Although lenders already benefit from the statutory liability protection provided by Minn. Stat. § 115B.03, Minn. Stat. § 115B.178 allows the MPCA to issue a NAD specifically to lenders whose sole proposed action is to provide financing or to acquire a property through foreclosure, receipt of deed in lieu of foreclosure, or termination of a contract-for-deed. A Lender NAD cites the same statute as the Lender Letter, but it references a specific identified release and proposed action at the property.

D. Retroactive No Association Determination

A Retroactive NAD is a determination from the MPCA that a party's past actions at a property has not associated them with the identified contamination for the purpose of Minn. Stat. § 115B.03, subd. 3(4). To be eligible for a Retroactive NAD, the following criteria must be met:

- The property must have an Identified Release of a hazardous substance, pollutant, or contaminant in soil, groundwater, soil gas, surface water, or sediment. For a naturally occurring compound, the concentration must be above typical background concentrations.
- The party must have a current or past ownership interest in the property, as defined by Minn. Stat. § 115B.02, subd. 11.
- The party must not be a responsible party for the contamination, as defined in Minn. Stat. § 115B.03.
- The party's past actions must not have included the storage, use, or disposal at the property of chemicals in the Identified Release or any other conduct associating them with the release. The party requesting the Retroactive NAD must submit a Past Actions Letter and a non-responsible party Affidavit which document their connection and past actions with respect to the property. Any determination will be limited to the represented facts of the past actions and will not apply to actions that are not identified.
- The environmental investigation at the site must identify and evaluate all potential source areas of contamination. The extent and magnitude of the release(s) must be defined within the site boundaries.

E. Off-Site Source Determination

An Off-Site Source Determination may be issued if groundwater contamination at a property originates from a source located on an adjacent or nearby property. The site history and environmental investigation at the property must demonstrate that there are no on-site sources causing or contributing to the identified groundwater contamination. The groundwater flow direction must be clearly defined and the extent and magnitude of groundwater contamination must support an off-site source origin.

As per Minn. Stat. § 115B.177, an Off-Site Source Determination will be contingent upon the property owner cooperating with the investigation and cleanup of the release, including providing access to the property and avoiding interference with any necessary response actions.

F. Certificate of Completion

Minn. Stat. § 115B.175 allows the MPCA to issue a Certificate of Completion to persons who complete cleanup actions under an MPCA approved voluntary response action plan. Upon issuance of the Certificate of Completion, the following parties receive liability protection for releases identified at the property, providing they are not legally responsible for the contamination under Minn. Stat. 115B: The party who performed the response actions, the property owner, lenders providing financing for the cleanup, purchase, and redevelopment of the property, and the successors and assigns of these parties. If the Certificate of Completion is issued to a responsible party, the liability protection applies only to the non-responsible parties referenced above.

A Certificate of Completion is the highest level of assurance offered by the VIC Program. A significant investment of time and effort is needed in order to fulfill the following requirements:

- A complete soil and groundwater investigation (including monitoring wells) must be conducted at the property.
- The extent and magnitude of all releases must be fully defined, including groundwater contamination extending off-site at concentrations greater than the health risk limits established by the Minnesota Department of Health.
- A significant cleanup must be conducted at the property. For a full Certificate of Completion, all known releases warranting cleanup must be remediated in accordance with an MPCA-approved Voluntary Response Action Plan. For a partial Certificate of Completion (available only to non-responsible parties), the cleanup can be limited to one media (e.g. soil or groundwater) or to a certain legally-described subset of a large property.

- A partial Certificate of Completion (available only to non-responsible parties) must be paired with a Voluntary Response Action Agreement which binds the property owner to cooperate with any response actions deemed necessary to address the remaining releases at the property and to avoid any action that interferes with the response actions.
- A non-responsible party seeking a Certificate of Completion must submit an affidavit to the MPCA documenting their status as a non-responsible party.

IV. Application and billing

To request any of the Brownfields Program services, complete and submit the [Voluntary Brownfields Program Enrollment Application Form](#) and a current Phase I Environmental Site Assessment. In accordance with state law, the applicant will be billed for the time spent by staff to provide the requested service(s). The current fee is \$125.00 per hour.

V. For more information

For more information about services offered through the MPCA Brownfield Program, or if you have questions about the transfer or redevelopment of property contaminated with petroleum or hazardous substances, visit our website at <http://tinyurl.com/MPCA-Brownfield-Program> or call the MPCA at 651-296-6300 and ask to speak with staff in the VIC or Petroleum Brownfields Programs.