

# **Minnesota Pollution Control Agency Report to the Legislature: Future Funding Needs for the Closed Landfill Program and Superfund MERLA**

**February 2009**



**Minnesota Pollution Control Agency**

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## Report Mandate

*By January 15, 2009, the Commissioner of the Minnesota Pollution Control Agency shall report to the House and Senate Finance Committees and divisions with jurisdiction over the environment on whether the Remediation Fund needs additional revenue in order to provide timely cleanup of closed landfills in the state without depleting the Remediation Fund. If the fund needs additional revenue, the commissioner shall include in the report recommendations for revenue sources and amounts that will meet that need.*

-- Rider language in the Omnibus Capital Investment Bill of 2008 in the section authorizing revenue bonds to the MPCA for Closed Landfill Cleanup.

## Executive Summary

Minnesota is a leader in the nation in protecting public health, public safety and water resources through proper landfill closure and oversight. The state's investments in the Closed Landfill Program (CLP) and Superfund program have prevented millions of pounds of methane from entering the atmosphere and millions of gallons of leachate from contaminating ground water.

This Report focuses on two program areas:

- Closed Landfill Program: construction, operations and maintenance; and
- Superfund and Minnesota Environmental Response and Liability Act (MERLA).

These programs depend on funding from the Remediation Fund. Each has equal standing in its need for resources from the fund. The estimated available resources in the Remediation Fund are insufficient to fully fund the needs for CLP and Superfund MERLA. As this Report explains, the gap between available funding and identified need for CLP and Superfund MERLA totals \$89.26 million over five years, FY 2010 to 2014.

An appropriation for \$25 million in revenue bonds, authorized in the 2008 Capital Investment bill, could not be sold to lessen the identified funding gap.

This Report identifies the level of resources needed to fully fund construction cleanup, and ongoing operations and maintenance components of these programs. The Report also compares the need for resources to the projected level of available funding. Further, the MPCA is recommending the following strategy to close the funding gap:

- 1) Lengthen the time horizon to complete the list of CLP construction projects; and
- 2) Use user-financed general obligation (GO) bonds for CLP construction projects.

## Report Outline

- I. Closed Landfill Program
  - a. Cleanup Construction Projects
  - b. Closed Landfill Operations and Maintenance
- II. Superfund MERLA Program
- III. Funding for Cleanup Needs
- IV. Recommendations
- V. Background

## **I. Closed Landfill Program**

### **A. Cleanup Construction Projects**

The CLP manages a construction project list that includes remaining landfill that need covers brought up to current standards or landfill sites with other contamination issues. The CLP has identified 20 sites with known construction needs. In addition, a Landfill Gas to Energy (LGTE) initiative is included as a separate project.

The construction projects in Table 1 are listed according to criteria established by CLP managers. The table includes:

- Site location;
- Funding sources;
- Cost by fiscal year; and
- Total estimated site construction expenditures.

Beginning in late July 2009, the CLP will use a new priority scoring system that better reflects the risks associated with each site. The order of construction projects beginning in FY 2010 may change due to the new scoring system.

Table 1 lists estimated construction expenses in the current fiscal year at 11 sites:

- As of January 2009, the Faribault project is complete.
- Projects in Albert Lea, Mille Lacs County and Western Lake Superior Sanitary District (WLSSD) are under construction.
- The design work for the Washington County project is almost complete, and the project will be bid in April 2009 with construction slated to begin in May 2009.
- Construction is scheduled to begin in the spring of 2009 for the Maple, Bueckers No. 1, Olmsted County, and Waste Disposal Engineering (WDE) sites.
- Design work is in progress for Koochiching County and East Mesaba with construction planned for future fiscal years.

The estimated project costs are subject to change for many reasons, including economic conditions when projects are bid and new information affecting design requirements. Projected construction project costs for FY 2009 are a blend of engineering estimates and construction bids in process. Final project costs are typically within 10 to 15 percent of the engineering projected costs. For any landfill construction project, actual costs may escalate if the contractor encounters site conditions different than anticipated in the engineering and design phases. For example, engineers may identify a larger area of waste outside the assumed waste boundary during final design. As a result, construction costs may exceed the initial engineering estimate.

Table 1 lists the known construction projects through FY 2014. The MPCA Remediation Division considers this plan to be the optimal timeframe to address the risks associated with the remaining closed landfill sites.

**Table 1. Closed Landfill Program Construction Project Schedule**

Project Funding Source is the Remediation Fund, unless otherwise noted	Budget FY 2009	Budget FY 2010	Budget FY 2011	Budget FY 2012	Budget FY 2013	Budget FY 2014	SITE TOTAL
	In Thousands of Dollars						
Mille Lacs County	1,890	10					1,900
Washington County 3M Settlement	0	4,000	4,000	0	0		8,000
Remediation Fund	1,550	2,000	3,000	9,000	5,270		20,820
Total	1,550	6,000	7,000	9,000	5,270		28,820
WLSSD* – Phase 1 St. Louis County G.O. Bond	262	4,652	0				4,914
Remediation Fund	2,000	3,400	2,000				7,400
Total	2,262	8,052	2,000				12,314
Albert Lea, Freeborn County G.O. Bond	4,750	200					4,950
Faribault County	66						66
Maple, Cass County	300						300
Bueckers 1, Stearns County	110						110
Olmsted County	150						150
WDE, City of Andover, Anoka County	150	350					500
Koochiching County	84				2,500		2,584
East Mesaba, St. Louis County	215	2,300	200				2,715
Chippewa County		150					150
Anoka Ramsey, Anoka County		100	1,900				2,000
Hopkins, Hennepin County		100	1,000	900			2,000
Isanti – Chisago, Isanti County		50	450				500
Paynesville, Stearns County		100	1,300				1,400
Landfill Gas to Energy			3,000	1,500			4,500
Freeway, Dakota County			2,100	18,000	18,000	8,400	46,500
Flying Cloud, Hennepin County			1,400	6,000	5,950		13,350
Wabasha County					500		500
Sun Prairie, LeSueur County					400		400

Subtotals by Funding Source							
G.O. Bonds**	5,012	4,852					9,864
Remediation Fund	6,515	8,560	16,350	35,400	32,620	8,400	107,845
3M Settlement		4,000	4,000				8,000
<b>Annual Totals</b>	<b>11,527</b>	<b>17,412</b>	<b>20,350</b>	<b>35,400</b>	<b>32,620</b>	<b>8,400</b>	<b>125,709</b>

\* Western Lake Superior Sanitary District

\*\* Currently authorized

## **B. Closed Landfill Operations and Maintenance**

The Remediation Fund also pays for CLP operations and maintenance (O&M) expenditures at the 112 closed landfills. The O&M work includes:

- Sampling of the monitoring systems, which includes sample collection and lab analysis of ground water and surface water;
- Monitoring landfill gas systems;
- Operating active remediation systems such as gas collection, ground-water treatment and leachate collection systems;
- General site care and repair, including mowing, access control and minimal building maintenance, and
- Surveys, appraisals, boundary delineations and signage.

The CLP maintains a comprehensive monitoring network for landfill gas, ground water and surface water at each site. This sampling network is essential for monitoring contamination levels and determining risks to the public around these landfills. The MPCA provides contamination, waste location and other information to local units of government to help them determine appropriate zoning and local controls around the landfills.

The CLP currently has 24 sites with active remediation, and systems will likely be installed at three additional sites. Active remediation systems include:

- Landfill gas collection and flaring systems;
- Ground-water treatment such as pump and treatment systems, and
- Leachate collection and disposal, typically at a wastewater treatment facility.

The CLP estimates the overall cost for operations and maintenance of all sites to increase over the next six years, from \$4.9 million in FY 2009 to \$5.7 million in FY 2014, as presented in Table 2. The projected cost increase reflects adding active remediation systems at three large closed landfill sites.

**Table 2. Estimated Closed Landfill Operations and Maintenance Costs**

<b>Tasks</b>	<b>Budget FY 2009</b>	<b>Budget FY 2010</b>	<b>Budget FY 2011</b>	<b>Budget FY 2012</b>	<b>Budget FY 2013</b>	<b>Budget FY 2014</b>	<b>Total</b>
In Thousands of Dollars							
Sampling and Analytical	1,600	1,600	1,550	1,550	1,550	1,550	9,400
Active Remediation, Utilities and Permits	2,450	2,550	2,600	2,700	2,700	2,700	15,700
Site Care, Wells, Mowing and Repair	700	700	750	750	750	750	4,400
Surveys, Appraisals, and Computer Support	150	650	700	700	700	700	3,600
<b>Total</b>	<b>4,900</b>	<b>5,500</b>	<b>5,600</b>	<b>5,700</b>	<b>5,700</b>	<b>5,700</b>	<b>33,100</b>

## **II. Superfund MERLA Program**

Table 3 lists the projects under the MPCA's Superfund Program and Superfund project work led by the Department of Agriculture.

The MPCA's site specific work is broken down into four classes:

- Class A sites involving MERLA emergency site work managed by the Emergency Response Section within the Remediation Division.
- Class B sites are on-going operations and maintenance work at many of the major older Superfund sites.
- Class C sites include remedial design and cleanup action at Superfund sites that have not yet reached a maintenance level.
- Class D sites are those where preliminary investigation and feasibility studies are in process but no cleanup work has started.

Dry cleaner sites are a subset of the Superfund projects. They are listed in Table 3 and tracked separately because:

- MPCA's Superfund Program is eligible to receive reimbursement of response costs from the Drycleaner Environmental Response and Reimbursement Account.
- The Drycleaner Environmental Response and Reimbursement Account is a separate dedicated account in the Remediation Fund.

An additional category, "Other Actions," completes the MPCA's total Superfund MERLA Program expenditures. This category includes:

- Site assessment work, such as vapor investigations;
- Costs for providing bottled water or filtration systems;
- Costs to abandon and seal wells, and
- Reimbursements of eligible claims filed under the Harmful Substances Compensation Program.

The Department of Agriculture (MDA) is also responsible for working on MERLA sites. MERLA divides authority to respond to releases between the MPCA and MDA, based on the pollutant or chemical released. MDA has statutory authority and responsibility for overseeing investigations and cleanup of sites related to the release of agricultural chemicals, such as fertilizers and pesticides. With the authority to clean up Superfund sites is assigned to two agencies, statutes mandate the commissioners of both agencies agree on the distribution of the resources available from the Remediation Fund for purposes of site cleanup.

Table 3 shows estimated expenditures for projects through FY 2014. The MPCA's Remediation Division considers this the optimal plan to address the risks associated with these projects.

The Remediation Division estimates annual Superfund cleanup expenditures will increase over the five-year period, FY 2010 through FY 2014. Class B operations and maintenance will increase because the MPCA must pay a higher percentage of annual maintenance costs at several federal Superfund sites according to agreements with the United States Environmental Protection Agency. Class D remedial investigation costs are projected to increase because of additional contaminant investigations at vapor intrusion sites and at locations where foam containing perfluorochemicals (PFCs) was used in firefighter training.

**Table 3. Superfund MERLA Construction Project Schedule**

Projects or Category	Budget FY 2009	Budget FY 2010	Budget FY 2011	Budget FY 2012	Budget FY 2013	Budget FY 2014	Total
	In Thousands of Dollars						
Minnesota Pollution Control Agency							
Class A: Emergencies	750	750	750	750	750	750	4,500
Class B: Operations and maintenance	1,431	1,135	1,250	1,250	1,500	1,500	8,066
Class C: Remedial action and design	3,015	1,105	1,250	1,500	1,750	2,000	10,620
Class D: Remedial investigation and feasibility studies	465	590	1,250	1,500	1,500	1,750	7,055
Other Superfund actions	1,706	1,200	1,350	1,400	1,600	1,500	8,756
Dry Cleaner sites	460	370	0	0	0	0	830
Subtotal MPCA MERLA	7,827	5,150	5,850	6,400	7,100	7,500	39,827
Minnesota Department of Agriculture							
Multiple sites\ Subtotal MDA MERLA	2,013	2,540	2,500	2,500	2,500	2,500	14,553
TOTAL both MPCA and MDA Superfund/MERLA	9,840	7,690	8,350	8,900	9,600	10,000	54,380



### III. Funding for Cleanup Needs

The Environmental Fund and the Remediation Fund are closely linked. The state deposits receipts from a variety of sources to the Environmental Fund, including:

- Solid waste tax;
- Motor vehicle transfer fee;
- Air and water fees;
- Hazardous waste fees;
- Landfill abatement fee;
- Pollution prevention fees; and
- Other revenue such as penalties, loan repayments, interest income and miscellaneous fees.

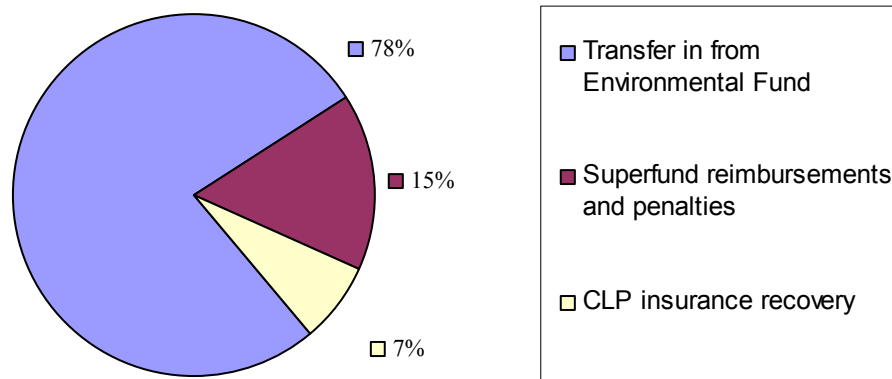
About \$81 million in receipts deposited annually to the Environmental Fund lose the “source identity” and become part of the total “unrestricted” resources used to fund environmental programs. The majority of the unrestricted resources in the Environmental Fund are needed for direct appropriations, as authorized by the Legislature, to agencies listed in Table 4. The remaining resources are available for transfer from the Environment Fund to the Remediation Fund. Table 4 outlines the flow of this funding.

**Table 4. Environment Fund Transfers**

Environment Fund		Remediation Fund
Funds restricted for specific uses	Direct appropriations authorized by the Legislature: <ul style="list-style-type: none"> <li>• MPCA</li> <li>• Attorney General’s Office</li> <li>• Dept. of Revenue</li> <li>• Dept. of Public Safety</li> </ul>	Direct appropriations authorized by the Legislature: <ul style="list-style-type: none"> <li>• MPCA</li> <li>• DEED</li> <li>• Dept. of Ag</li> <li>• Dept. of Health</li> <li>• Attorney General’s Office</li> <li>• Dept. of Natural Resources</li> </ul>
	Available for transfer to the Remediation Fund	Remaining funds can go toward: <ul style="list-style-type: none"> <li>• CLP construction</li> <li>• CLP O &amp; M</li> <li>• Superfund MERLA</li> </ul>

Figure 1 shows the majority of available resources in the Remediation Fund originate from Environmental Fund transfers.

**Figure 1. Unrestricted Resources in the Remediation Fund (FY 2008-09)**



The unrestricted resources in the general portion of the Remediation Fund offer the greatest flexibility in use. Unrestricted resources can be used to fund CLP construction, CLP operations and maintenance and Superfund MERLA needs. In contrast, authorized GO bonds may only be used to fund eligible CLP construction projects.

About 22 percent of the unrestricted resources in the Remediation Fund come from Superfund reimbursements and penalties and from CLP insurance recovery receipts. More information on these receipts is provided in the Background section of this Report.

Not all of the unrestricted resources in the Remediation Fund can be used for remediation cleanup and on-going maintenance. Resources must first be used for the authorized direct appropriations. Table 5 lists the direct appropriations to six state agencies, as authorized by the Legislature for the current biennium.

**Table 5. Direct Appropriations from the Remediation Fund**

Minnesota State Agencies	FY 2008 Actual	FY 2009 Budget
	In Thousands of Dollars	
Pollution Control Agency	7,309	7,359
Department of Employment and Economic Development	700	700
Department of Agriculture	388	388
Department of Health	252	252
Attorney General's Office	250	250
Department of Natural Resources	100	100
<b>Total Direct Appropriations to State Agencies</b>	<b>8,999</b>	<b>9,049</b>

After totaling the direct appropriations, the MPCA takes the following steps, as outlined in Table 6, to calculate the amount available within the Remediation Fund for CLP and Superfund MERLA cleanup projects and on-going site maintenance.

**Table 6. Calculating Available Resources from the Remediation Fund for Cleanup**

<b>Calculation Steps</b>	<b>FY 2008 Actual</b>	<b>FY 2009 Budget</b>
Beginning balance – unrestricted resources	1,900	902
Add: unrestricted receipts (insurance recovery, Superfund reimbursements and penalties)	9,377	3,817
Add: transfer in from Environmental Fund	19,012	25,594
<b>Total available unrestricted fund resources</b>	<b>30,289</b>	<b>30,313</b>
Less: total direct appropriations – six state agencies	<u>(8,999)</u>	<u>(9,049)</u>
<b>Total unrestricted fund resources for cleanup</b>	<b>21,290</b>	<b>21,264</b>
<b>Cleanup Expenditures by Program</b>		
CLP Construction	7,241	6,515
CLP Operations and maintenance	5,798	4,909
MPCA - Superfund MERLA	7,310	7,827
AG – Superfund MERLA	<u>941</u>	<u>2,013</u>
<b>Total spent / budgeted for cleanup</b>	<b>21,290</b>	<b>21,264</b>

The figures in Table 6 above indicate the unrestricted resources from the Remediation Fund were sufficient in FY 2008 and will be sufficient in FY 2009 to meet planned expenditures on cleanup activities. The MPCA also spent \$2.25 million in FY 2008 and \$5.012 million in FY 2009 from authorized GO bonds for CLP construction, which is an additional source of funding not shown in Table 6.

Table 7 shows the gap between available funding and program needs, based on the Remediation Division's preferred plan.

**Table 7. Comparison of Available Resources to Program Needs**

Programs	Budget FY 2009	Budget FY 2010	Budget FY 2011	Budget FY 2012	Budget FY 2013	Budget FY 2014	Totals
In Thousands of Dollars							
<b>Closed Landfill Construction</b>							
Available resources:							
Remediation Fund	6,515	8,310	5,000	5,000	5,000	5,000	34,825
General Obligation Bonds	5,012	4,852	0	0	0	0	9,864
3M Settlement	0	4,000	4,000	0	0	0	8,000
Total available resources	11,527	17,162	9,000	5,000	5,000	5,000	52,689
Program need	11,527	17,412	20,350	35,400	32,620	8,400	125,709
Difference	0	(250)*	(11,350)	(30,400)	(27,620)	(3,400)	(73,020)**
<b>Closed Landfill Operations and Maintenance</b>							
Available resources:							
Remediation Fund	4,909	4,500	4,500	4,500	4,500	4,500	27,409
Program need	4,909	5,500	5,600	5,700	5,700	5,700	33,109
Difference	0	(1,000)	(1,100)	(1,200)	(1,200)	(1,200)	(5,700)
<b>Superfund Cleanup - MPCA</b>							
Available resources:							
Remediation Fund	7,827	4,800	4,800	4,800	4,800	4,800	31,827
Program need	7,827	5,150	5,850	6,400	7,100	7,500	39,327
Difference	0	(350)	(1,050)	(1,600)	(2,300)	(2,700)	(8,000)
<b>Superfund Cleanup – Dept. of Agriculture</b>							
Available resources:							
Remediation Fund	2,013	2,000	2,000	2,000	2,000	2,000	12,013
Program need	2,013	2,540	2,500	2,500	2,500	2,500	14,553
Difference	0	(540)	(500)	(500)	(500)	(500)	(2,540)
<b>All Cleanup Programs</b>							
Total available resources:							
Remediation Fund	21,264	19,610	19,500	19,500	19,500	19,500	106,074
General Obligation Bonds	5,012	4,852	0	0	0	0	9,864
3M Settlement	0	4,000	4,000	0	0	0	8,000
Total available resources	26,276	28,462	23,500	19,500	19,500	19,500	123,938
All cleanup program needs	26,276	30,602	34,300	50,000	47,920	24,100	213,198
<b>Total Annual Difference</b>	<b>0</b>	<b>(2,140)</b>	<b>(14,000)</b>	<b>(33,700)</b>	<b>(31,620)</b>	<b>(7,800)</b>	<b>(89,260)***</b>
<b>Total Cumulative Difference</b>	<b>0</b>	<b>(2,140)</b>	<b>(16,140)</b>	<b>(49,840)</b>	<b>(81,460)</b>	<b>(89,260)</b>	

\* The Remediation Division's budget plan in FY 2010 for CLP construction totals \$17.4 million, with a total of \$17.2 million estimated to be available:

- \$8.3 million from the Remediation Fund;
- \$4.9 million from GO bonds, and
- \$4.0 million from a legal settlement with 3M.

The end result is a gap of \$250,000.

\*\* The gap between available funding and identified need for CLP construction becomes substantial; across the five fiscal years from FY 2010 to FY 2014 the difference totals \$73.02 million.

\*\*\* Cleanup needs in all categories across the five fiscal years FY 2010 to FY 2014 increase the difference, a total of \$89.26 million.

The funding gap of \$89.26 million has resulted from several factors such as:

- Construction costs have increased significantly since 1994.
- The Legislature approved the addition of four sites into the CLP, adding about \$18 million in construction needs.
- Several large projects currently under construction or proposed will significantly exceed the original engineering estimates by about \$50 million. The four projects include:
  - Western Lake Superior Sanitation District (WLSSD)
  - Washington County
  - Freeway
  - Flying Cloud

Operating and maintenance costs in both the CLP and Superfund programs have not decreased as expected. The lack of decrease in cost stems from additional problems and issues discovered at sites that require continued effort and resources, such as PFC investigation and cleanup.

Compounding the gap between need and available resources is that bonds authorized by the 2008 Legislature could not be sold because of questions over characteristics of the revenue stream identified to pay off the bond issue.

In 2008, the Legislature authorized the Commissioner of Finance, as requested by the MPCA Commissioner, to initiate the sale of \$25 million in revenue bonds to fund the construction needs of the Closed Landfill Program (CLP). The bonds would be repaid from two sources:

- Motor vehicle transfer fee; and
- Other revenues pledged to payment of the bonds.

The *Laws 2008, Chapter 179, Section 36* state, “Bonds issued under this section are not public debt, and the full faith, credit and taxing powers of the state are not pledged for their payment.” Further, “The bonds may not be paid, directly in whole or in part, from a tax of statewide application on any class of property, income, transaction or privilege.”

Following the MPCA Commissioner’s request in July 2008 to start the sale of the revenue bonds, the Finance Commissioner asked the state’s bond counsel to review the revenue bond authorization. In its response, bond counsel wrote that the motor vehicle transfer fee, the source of bond repayment, is a tax of statewide application, and the sale of the bonds would indeed be considered public debt. Therefore, bond counsel could not provide an unqualified legal opinion on the validity of the revenue bonds; in short, the bonds could not be sold.

## IV. Recommendations

The MPCA offers the following recommendations to resolve the difference between available resources in the Remediation Fund and the level of need for the cleanup programs. Option 3 is the recommendation of the Agency.

**Table 8. Options to Achieve Adequate Funding for CLP Construction Needs**

<b>Option 1:</b>  Maintain six-year plan; generate new revenue to Environmental Fund; user-financed GO bonds for CLP construction	<ul style="list-style-type: none"><li>• This option strives to maintain the optimal six-year timeline identified by the Remediation Division (Table 1).</li><li>• The \$42 million needed for CLP construction after FY 2011 would be user-financed GO bonds, with the debt service paid from the Environmental Fund.</li><li>• The GO bonds would be characterized as user-financed, with the debt service paid from the Environmental Fund. This type of GO bond authorization allows the MPCA to better manage the project planning schedule.</li><li>• The two CLP construction projects (Freeway and Flying Cloud) not currently eligible for bond funding have an estimated cost of \$59.85 million. About \$15 million per fiscal year would be required from the Remediation Fund for these two projects to be completed between FY 2011 and FY 2014.</li><li>• An estimated \$40 million in additional revenues would be required in the Remediation Fund over four years, FY 2011 to FY 2014. This is in addition to the \$20 million (\$5 million per year) currently available to be allocated to the two bond ineligible construction projects.</li><li>• Additional revenues, \$10 million annually, would need to be generated, either from an increase in the solid waste tax rates or from increasing the percentage of solid waste tax deposited to the Environmental Fund.</li><li>• An incremental increase in the solid waste tax to the Environmental Fund would not be the specific source of bond repayment. Rather, the debt service on the user-financed GO bonds would be paid from non-dedicated receipts deposited to the Environmental Fund.</li></ul>
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<p><b>Option 2:</b></p> <p>Use GO bonds as primary source for CLP construction</p>	<ul style="list-style-type: none"> <li>• MPCA would request funding for CLP construction projects through the biennial capital bonding process. Capital bonding would be the primary source for construction projects at bond-eligible CLP sites.</li> <li>• To be eligible for bonding, the closed landfill site must be publicly owned, which is currently the case for 18 of the 20 sites.</li> <li>• The two CLP construction projects not currently eligible for bond funding (Freeway and Flying Cloud) have an estimated cost of \$59.85 million. If a maximum of \$5 million per fiscal year is available from the Remediation Fund for CLP construction, the timeframe for these two projects would expand to more than 12 years. This option would require that fund reserve balances be built up and dedicated to these projects before construction begins.</li> <li>• The need for GO bonding is about \$42 million and would be needed starting in FY 2011. The amount of GO bonds authorized would dictate the timeframe for bond eligible CLP construction. The distribution of funding would need to be considered to ensure \$9 million is available for Washington County Landfill in FY 2012 to keep the project on schedule.</li> <li>• Since inception of the CLP, the MPCA has received bond authorization for only a portion of the construction projects requested through the bonding process. Of the total amount spent on CLP construction over the last six years, 65 percent has come from bond funding.</li> <li>• A greater reliance on capital bonding introduces greater uncertainty to short and long-term planning for CLP construction projects.</li> <li>• This option also does not introduce any new resources to the Remediation Fund. Rather, it segments a portion of the cleanup need identified and asserts that portion would be met through GO bonding.</li> <li>• This option does not allocate sufficient resources from the Remediation Fund to cover the funding gap for Superfund MERLA and CLP O&amp;M.</li> </ul>
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<p><b>Option 3:</b></p> <p>Lengthen time horizon; user-financed GO bonds for CLP construction</p>	<ul style="list-style-type: none"> <li>• This option is similar to Option 2, with several key differences.</li> <li>• This option strives to lay out the funding and financing framework for stability in planning for CLP construction.</li> <li>• The \$42 million needed for CLP construction after FY 2011 would be user-financed GO bonds, with the debt service to be paid from the Environmental Fund. This type of GO bond authorization allows the MPCA to better manage the project planning schedule.</li> <li>• As in Option 2, a maximum of \$5 million annually from the Remediation Fund for CLP construction would be needed to fund the two sites (Freeway and Flying Cloud) not eligible for GO bonding and would require about a 12-year timeframe. This option would require that fund balances be reserved and dedicated to these projects before construction begins.</li> <li>• The amount of user-financed GO bonds authorized, as one or more authorizations, would dictate the time horizon for the \$42 million in bond eligible CLP construction projects. . The distribution of funding would need to be considered to ensure \$9 million is available for Washington County Landfill in FY 2012 to keep the project on schedule.</li> <li>• This option would reduce the annual transfer of resources to the Remediation Fund from the Environmental Fund by \$3.2 million per year starting in FY 2011. By keeping more money in the Environmental Fund, the balance in the fund would be sufficient to repay the GO bonds.</li> <li>• This option does not allocate sufficient resources in the Remediation Fund to cover the funding gap for Superfund MERLA and CLP O&amp;M.</li> </ul>
<p><b>Footnotes:</b> The Governor’s recommended biennial budget plan for the MPCA released in late January 2009 shows a reduction in the transfer to the Remediation Fund from the Environmental Fund of \$6.9 million starting in FY 2011 and a reduction of \$4.0 million per year in FY 2012 and thereafter.</p> <p>The reason for this difference is the MPCA’s biennial budget plan requests annual appropriation authority of \$4.5 million from the Environmental Fund but its budget plan does not recognize an anticipated revenue stream to the Environmental Fund intended to offset the appropriation request. If the revenue stream (a fee proposal moving through the administrative rule process) is not approved and implemented, the MPCA would not spend the requested \$4.5 million in appropriations. The MPCA anticipates the transfer to the Remediation Fund to decrease only by the \$3.2 million starting in FY 2011.</p>	



<p><b>Option 4:</b></p> <p>Generate new revenue to Environmental Fund; user-financed GO bonds for CLP construction</p>	<ul style="list-style-type: none"> <li>• This option also strives to lay out the funding and financing framework over a specified timeframe for stability in planning for CLP construction.</li> <li>• The GO bonds would be characterized as user-financed, with the debt service paid from the Environmental Fund. This type of GO bond authorization allows the MPCA to better manage the project planning schedule.</li> <li>• The \$42 million needed for CLP construction after FY 2011 would be user-financed GO bonds, with the debt service to be paid from the Environmental Fund. . The distribution of funding would need to be considered to ensure \$9 million is available for Washington County Landfill in FY 2012 to keep the project on schedule.</li> <li>• The two CLP construction projects (Freeway and Flying Cloud) not currently eligible for bond funding have an estimated cost of \$59.85 million. If a maximum of \$5 million per fiscal year is available from the Remediation Fund for CLP construction, the timeframe for these two projects would be about 12 years starting in FY 2011. This option would require that fund balances be reserved and dedicated to these projects before construction begins.</li> <li>• Additional revenues would be generated for deposit to the Environmental Fund from an increase in the solid waste tax rates. The intent is to increase rates—either in all sectors or to specify a particular category—to generate an increase in tax revenues of about \$2.0 million per year. The incremental revenue increase would be deposited in total to the Environmental Fund.</li> <li>• This incremental increase in the solid waste tax cannot be the specific source of bond repayment. Rather, the debt service on the user-financed GO bonds would be paid from non-dedicated receipts deposited to the Environmental Fund</li> <li>• This option comes closest to allocating sufficient resources from the Remediation Fund to cover the funding gap for Superfund MERLA and CLP O&amp;M.</li> </ul>
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<p><b>Option 5:</b></p> <p>Triple the timeframe for remediation</p>	<ul style="list-style-type: none"> <li>• Rather than the six-year workplan presented in Table 1, the Remediation Division would prepare a plan for CLP construction projects that spans 18 years.</li> <li>• Likewise extend the timeframe for Superfund MERLA cleanup projects where possible without compromising environmental protection or endangering human health.</li> <li>• Permanently scale back areas where the MPCA and MDA determine that a reduced level of activity would not compromise remedial actions and environment protections; applies to the on-going operations and maintenance effort in both CLP and Superfund MERLA.</li> <li>• This option does not introduce any new resources to the Remediation Fund and manages the cleanup needs based on current funding estimates. However, it would take about three times as long to complete the current CLP construction project list.</li> <li>• Large projects would take more than double the number of years to complete, and only one large project would be under construction at a time.</li> <li>• Under this option, the division of resources in FY 2012 between CLP construction, O&amp;M and Superfund would have to be assessed to ensure an estimated \$9 million is allocated to the Washington County Landfill project to keep that cleanup project on schedule.</li> <li>• Under this option, the proposed Freeway and Flying Cloud projects would require that fund reserve balances be built up and dedicated to these projects before construction begins.</li> </ul>
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## V. BACKGROUND

### History of Programs

#### Closed Landfill Program

The Closed Landfill Program (CLP) is Minnesota's alternative to using the authorities of state and federal Superfund programs to clean up landfills. The program was created by the 1994 Landfill Cleanup Act and was the first such program in the nation.

The purpose of the CLP is to protect public health, safety and the environment from problems such as ground water contamination and uncontrolled methane. CLP manages these risks by:

- Implementing response actions that address contamination issues;
- Performing operation and maintenance tasks to adequately control risks; and
- Developing land-use plans to assist local governmental units in responsible land-use management at and around these sites.

The CLP provides authority and funding to the MPCA to manage cleanup and long-term care of closed landfills. The program also authorizes the Agency to collect reimbursement of cleanup costs from insurance carriers that provided coverage to businesses and individuals who owned, operated, hauled waste to or used the landfills.

An emerging issue for the CLP has been ground water contaminated by PFCs. These chemicals are a family of manmade chemicals that have been used for decades to make products that resist heat, oil, stains, grease, and water. The chemical structures of PFCs make them extremely resistant to breakdown in the environment.

The MPCA began sampling for PFCs in ground water near the Washington County Landfill (Lake Elmo, Washington County) in the spring of 2004 after learning that 3M disposed of PFCs at the landfill in the past. The MPCA and Minnesota Department of Health collaborated to do extensive monitoring of the ground water in the area.

For more information, go to:

*Closed Landfill Web Page* at [www.pca.state.mn.us/cleanup/closedlandfills.html](http://www.pca.state.mn.us/cleanup/closedlandfills.html).

*Closed Landfill Annual Reports at*

[www.pca.state.mn.us/cleanup/closedlandfills.html#legislative](http://www.pca.state.mn.us/cleanup/closedlandfills.html#legislative) reports.

### **Superfund MERLA**

The MPCA also oversees Superfund sites in Minnesota. Superfund programs at the state and federal levels focus on investigating and cleaning up old waste sites that pose a threat or potential threat to public health and the environment. Superfund programs involve specific processes and funds for these sites. Superfund programs rely primarily on responsible parties to do cleanups.

Under federal law, states must provide a 10 percent match to federal funds for investigating and cleaning up Superfund sites. To fulfill this commitment, the Minnesota Legislature passed the Minnesota Environmental Response and Liability Act (MERLA) in 1983.

Superfund responsibilities fall into three main categories:

- Emergency response;
- Investigation and cleanup; and
- Working with voluntary parties.

According to the Fiscal Year 2007 Superfund Report to the Legislature, the Minnesota Superfund program oversees:

- 77 sites on the state's Permanent List of Priorities
- More than 800 projects under voluntary investigation and cleanup programs
- 19 other sites not listed at this time

For more information, go to: Superfund Annual Reports at

[http://www.pca.state.mn.us/programs/superf\\_p.html#report](http://www.pca.state.mn.us/programs/superf_p.html#report)

## **History of Funding**

### **Receipts Deposited to Remediation Fund**

The Remediation Fund is the only source of funding for CLP operations and maintenance and for the Superfund MERLA programs in both the MPCA and Department of Agriculture. CLP construction projects can also be funded through the Remediation Fund, but this category of the program can use GO bonds as an additional funding source. Financial assurance and insurance recovery were cited as sources of revenue to the Remediation Fund on pages 7-8 of this Report. The following paragraphs provide additional background on these specific receipts.

### **Financial Assurance**

Minn. R. 7035.2665 requires owners of mixed municipal solid waste landfills remaining in operation after July 1, 1990, to set aside funds to pay for the:

- Cost of facility closure;
- Post-closure care, and
- Contingency action.

Several of the landfills that entered the CLP were still in operation as of July 1, 1990. Thus, the Landfill Closure Act required the owners of these landfills, upon entering the CLP, to transfer their financial assurance balances to the MPCA after having met closure requirements. To date, the State has received \$15.4 million in financial assurance payments for 25 closed landfills. Unless legislative changes allow additional sites to qualify for the CLP and require the landfills to transfer remaining financial assurance funds, no additional financial assurance dollars are expected in the future.

### **Insurance Recovery**

The Landfill Closure Act authorizes the MPCA and the Attorney General's office to seek recovery of a fair share of the State's landfill cleanup costs from insurance carriers, based upon insurance policies issued to responsible parties who are liable for clean-up costs under the state Superfund law. These parties include insurance policyholders who:

- Owned or operated the landfills;
- Hauled waste containing hazardous substances to the landfills; or
- Arranged for the disposal of waste containing hazardous substances at landfills.

Under state law, the MPCA and Attorney General may negotiate coverage settlements directly with insurance carriers. If a carrier had an opportunity to settle with the State and failed to do so, the state may sue the carrier directly to recover cleanup costs to the extent of the insurance coverage issued to responsible parties.

The State has filed six lawsuits against 66 insurance companies, with assistance from specially appointed attorneys. Four of those lawsuits have been resolved, including settlements with 41 insurance carriers. In the fifth lawsuit, four of the five defendants have entered global settlements with the state. Global settlements resolve all of an insurance carrier's liability for all landfills covered by the 1994 Landfill Cleanup Act. To date, \$75.9 million has been deposited into the State Treasury through insurance money recovered by lawsuits.

In 2003, the Legislature changed the way that MPCA deposits insurance recovery funds. Prior to this change, all insurance recovery funds were deposited into the Solid Waste Fund. The Legislature repealed the law creating the Solid Waste Fund and replaced it with a new, consolidated Remediation Fund to finance most of the MPCA's cleanup-related programs.

After accounting for costs and fees due to the Special Attorneys who represent the State on the insurance claims, 50 percent of the net proceeds are transferred into the Closed Landfill Investment Fund, which is dedicated to long-term funding of the Closed Landfill Program.

### **General Obligation Bonds Authorized for CLP Construction**

In addition to resources from the Remediation Fund, construction work on CLP sites has historically also been funded with General Obligation (GO) bonds. In 1994, the Legislature authorized \$90 million in general obligation bonds to be appropriated over 10 years. This money was for construction of remedial systems at publicly-owned, closed landfills.

In 2000, Minn. Stat. § 16A.642 cancelled all unused bonds more than four years old, regardless of program need or original legislative intent. This resulted in the cancellation of approximately \$56 million of bonding authority for the Closed Landfill Program.

Starting in 2001, the Legislature again authorized general obligation funds for CLP construction. GO bonds totaling \$51.5 million have been authorized since 2001. Minnesota has 93 closed landfills that are publicly owned and are eligible for bonds. The total of all bond authorizations to date, including the amount authorized for the Albert Lea Dump, is nearly \$85 million.

### **3M Settlement Agreement and Consent Order**

In addition to the four previously discussed income sources, the MPCA executed a Settlement Agreement and Consent Order with the 3M Company in May 2007 that authorizes 3M to take response actions to address releases of PFCs at three disposal sites. As part of this agreement, 3M also agreed to provide to the MPCA up to \$8 million for implementing remedial actions at the Washington County Landfill selected by the MPCA.

For more information about the agreement and consent order, go to:  
[www.pca.state.mn.us/publications/pfc-3mchemolite-consent.pdf](http://www.pca.state.mn.us/publications/pfc-3mchemolite-consent.pdf).