

## Brownfield Program Services

The Minnesota Pollution Control Agency's (MPCA) Brownfield Program consists of two integrated programs, the **Petroleum Brownfield 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. 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 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.

Enrollment in the Brownfield Program is through an application submitted through the MPCA's e-services portal; see "To Apply for Help" on the MPCA's [Brownfield Program webpage](#). In accordance with state law, the applicant will be billed for the time spent by staff on the requested services. The current rate is \$150 per hour, with invoices sent to the applicant on a monthly basis. This document provides general information about the services offered by the Brownfield Program.

### Petroleum Brownfield Program services

#### I. Technical assistance for petroleum releases

##### A. Technical Assistance Letter

A Technical Assistance Letter from the Petroleum Brownfield Program communicates the results of MPCA's review of site documents when a non-responsible 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 petroleum was not identified, or in other situations where an independent third-party review of environmental reports is requested.

##### B. Expedited review of petroleum tank 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 Brownfield Program offers an expedited review of the reports required for these leak sites. The Petroleum Brownfield 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 Brownfield 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.

##### C. Review of response action plans (RAP) and construction contingency plans (CCP) for petroleum-impacted media.

All persons must 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 approval of their proposed plans to respond to petroleum contamination encountered during redevelopment projects. See [Brownfield Program Response Action Plans](#) for information about RAP/CCP review and approval. Successful implementation of an MPCA-approved RAP/CCP and subsequent submittal of an Implementation Report may lead to a Petroleum No Action Letter and/or an Implementation Report Approval Letter, which provide MPCA confirmation that the reported management of petroleum-contaminated media was appropriate and in accordance with MPCA requirements.

## **II. Administrative liability assurance for petroleum releases**

### **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. Petroleum No Action Letter (non-tank petroleum releases)**

Petroleum Brownfield Program staff review investigation and corrective action reports for petroleum contamination that did not originate from a storage tank (as defined by Minn. Stat. § 115C). A petroleum no action letter for a non-tank petroleum release is issued when staff concludes that the investigation and/or cleanup has adequately addressed the contamination.

## **III. Statutory liability assurances for petroleum releases**

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 is needed, as well as a Phase I Environmental Site Assessment 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 release.

## Voluntary Investigation and Cleanup (VIC) Program services

Technical assistance and assurance letters provided by the VIC Program address hazardous substances, pollutants, or contaminants, as defined in Minn. Stat. § 115B.02. The VIC Program provides services only to non-responsible parties. Potential responsible parties who submit an application through the MPCA's e-services portal will instead be enrolled in the MPCA's Superfund Program as a cooperative responsible party. See Minn. Stat. § 115B.03 for definition of a "responsible person".

Please note that the VIC Program does not issue assurance letters based on vapor-only investigations. Meaningful soil and/or groundwater data is required, as appropriate for the site, to evaluate potential sources of soil vapor contamination and to provide context for the soil vapor impacts. If there are potential sources of volatile organic compounds (VOCs) at the site, past or present, soil samples should be collected from those areas, and groundwater samples at the site are recommended as well. If the site history is benign and there are no potential on-site sources for soil vapor impacts, groundwater data from the site is more useful than collecting random soil samples for VOC analysis. Since the liability protection provided by a VIC assurance letter is limited to contaminants that have been identified in a specific media, the scope of the sampling effort has a direct influence of the extent of liability protection.

### I. Technical assistance for hazardous substances, pollutants, or contaminant

#### A. Technical Assistance Letter

A Technical Assistance Letter from the VIC Program communicates the results of MPCA's review of site documents when a non-responsible 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 review of environmental reports is requested.

#### B. Review of response action plans (RAP) and construction contingency plans (CCP).

All persons must 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 approval of their proposed plans to respond to contamination encountered during redevelopment projects. See [Brownfield Program Response Action Plans](#) for information about RAP/CCP review and approval. Successful implementation of an MPCA-approved RAP/CCP and subsequent submittal of an Implementation Report may lead to a *No Further Action Letter*, a *Completion of Vapor Mitigation for On-site Building(s) Letter*, or an Implementation Report Approval Letter, which provides MPCA confirmation that the reported management of contaminated media was appropriate and in accordance with MPCA requirements.

#### C. Completion of Soil Vapor Assessment Letter

This letter may be issued to a non-responsible party when a site-wide soil vapor assessment has been completed in accordance with the MPCA's [Vapor investigation and mitigation decision best management practices](#) and it has been demonstrated that vapor mitigation of the on-site building(s) is not necessary, based on current site conditions and land use. The *Completion of Soil Vapor Assessment Letter* is issued in lieu of a No Action Determination for soil vapor when potential unresolved soil vapor impacts extend beyond the boundaries of the voluntary party's site. Two seasonal rounds of sampling at least 30 days apart are necessary to complete the site-wide soil vapor investigation and assess vapor intrusion risk at the site. Please note that the on-site extent and magnitude of the soil vapor release must be delineated to the compound-specific intrusion screening values (ISVs) that are applicable to the adjacent off-site receptor. For example, if the adjacent off-site receptor is a residential building, the investigation on the voluntary party's site must delineate on-site soil vapor impacts in that direction to the compound-specific residential ISVs (not 33-times the residential ISV, unless it is known that a slab attenuation factor is appropriate for the off-site building). Meeting this criteria typically requires the collection of exterior soil vapor samples on the voluntary

party's site, in addition to the sub-slab soil vapor samples that are collected to evaluate on-site buildings for vapor intrusion risk. Care should be taken to ensure that the laboratory's reporting limits for soil vapor analyses (VOCs or methane) are low enough to allow meaningful comparison with the applicable ISV for the contaminant(s) of concern or, in the case of methane, the MPCA's action limit of 10% of the lower explosive limit, which equates to 0.5% methane or 5000 parts per million methane.

Potential off-site soil vapor impacts will be referred to the MPCA's Site Assessment Program for further evaluation. An institutional control may be necessary to document releases of hazardous substances that remain on the site (per Minn. Stat. 115B.16)

#### **D. Completion of Vapor Mitigation for On-site Building(s) Letter**

This letter may be issued to a non-responsible party when a site-wide soil vapor assessment has been completed (as described above) and any necessary vapor intrusion mitigation activities for the on-site building(s) have been completed, in accordance with the MPCA's [Vapor mitigation best management practices](#) (BMP). The *Completion of Vapor Mitigation for On-site Building(s) Letter* is issued in lieu of a No Further Action Determination for soil vapor when potential unresolved soil vapor impacts extend beyond the boundaries of the voluntary party's site.

Once the vapor mitigation system is installed in the site building(s), verification testing is necessary as described in the Vapor mitigation BMP to confirm the mitigation system is effectively preventing vapor intrusion. A mitigation system Operation and Maintenance Plan and an Environmental Covenant are necessary to ensure the long-term effectiveness of the mitigation system and to provide notice to future property owners.

Potential off-site soil vapor impacts will be referred to the MPCA's Site Assessment Program for further evaluation.

## **II. Administrative liability assurance for hazardous substances, pollutants, or contaminants**

### **A. No Action or No Further Action Letter**

These letters state that the MPCA will take no action (or no further action) with regard to a specific identified release of contaminants. They are 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 risk-based values or 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.

## **III. Statutory liability assurances for hazardous substances, pollutants, or 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. As per Minnesota statute, voluntary parties and their contractors who are not otherwise responsible parties do not incur liability for investigation activities (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 (NAD)**

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 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 criteria listed below must be met. Please note that issuance of a NAD is discretionary on the part of the MPCA, and there may be site-specific circumstances that preclude issuance of a NAD to a voluntary party.

- The property must have an identified release of a hazardous substance, pollutant, or contaminant in soil, groundwater, soil vapor, surface water, or sediment. For a naturally-occurring compound, the concentration must be above typical background concentrations. For soil vapor, the detected volatile organic compounds (VOCs) must reflect a likely release at the site, versus VOCs that are ubiquitous in type and concentration.
- 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 who intend to hold an easement in the area of the Identified Release.
- Under certain circumstances, a NAD for proposed actions may be issued to a current owner of the property (as opposed to prospective purchaser). In determining the appropriateness of doing so, the MPCA evaluates the factors listed below. It's important to note that the NAD, if issued, would provide liability protection only from the date of the letter forward. If liability protection extending back to date of purchase is desired, a Retroactive No Association Determination should be requested.
  - Length of ownership (e.g. weeks/months versus years). This affects the MPCA's degree of certainty about the current owner's past actions.
  - Whether the current owner has taken any actions at the property (e.g. operated at the property, leased to others, began redevelopment, etc.) versus merely holding a vacant property for pending redevelopment.
  - Nature of any past actions taken (e.g. benign past actions such as leasing to residential tenants or operating a grocery store, etc. versus operating or leasing to a business that likely used or stored chemicals).
- 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. If the chemicals included in the Identified

Release are known to be commonly used in a particular business sector, this may preclude issuance of a NAD to a party whose proposed actions include operating or leasing to that type of business.

- 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 (Lender NAD)**

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 (Retroactive NAD)**

A Retroactive NAD is a determination from the MPCA that a party's past actions at a property have not associated them with the identified contamination for the purpose of Minn. Stat. § 115B.03, subd. 3(4). Issuance of a Retroactive NAD is discretionary on the part of the MPCA, and there may be site-specific circumstances that preclude issuance of a Retroactive NAD to a voluntary party. 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, as described above.
- The party must have a current and 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 at the property must not have included the storage, use, or disposal 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 party must not have ignored or failed to address in a timely manner known contamination on the property, thereby putting receptors at potential risk.
- The environmental investigation at the site must identify and evaluate all potential sources 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, groundwater, and soil vapor investigation (including monitoring wells) must be conducted at the property.
- The extent and magnitude of all releases must be fully defined, including groundwater and soil vapor contamination extending off-site.
- 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 non-responsible party seeking a Certificate of Completion must submit an affidavit to the MPCA documenting their status as a non-responsible party.

## **For more information**

For more information about the MPCA Brownfield Program, or if you have questions about the transfer or redevelopment of property contaminated with petroleum or hazardous substances, visit our [Brownfield Program webpage](#) or call the MPCA at 651-296-6300 and ask to speak with staff in the Petroleum Brownfield or VIC Programs.