

3M settlement: financial framework

The State of Minnesota and the 3M Company came to an agreement to settle the state's natural resource damage lawsuit on February 20, 2018. Under the terms of the agreement, 3M will make an \$850 million grant to the state to be used for clean drinking water and natural resource projects, and the state's lawsuit expenses. After legal and other expenses are paid, about \$720 million will be invested in drinking water and natural resource projects in the Twin Cities east metropolitan region.

In bringing this action, the Minnesota Department of Natural Resources (DNR) and Minnesota Pollution Control Agency (MPCA) followed the process and authority established by the Legislature as part of the Minnesota Environmental Response and Liability Act (MERLA) — **Minn. Stat. ch. 115B**. This is the state law companion to the federal Superfund program. The law governs how MPCA and DNR respond to situations where a responsible party has caused pollution or contamination from hazardous substances.

Statutory basis for recovery of natural resource damages

MERLA makes responsible persons strictly liable not only to cleanup contamination from hazardous substances (i.e. Superfund), but also to pay damages to the state for the resulting harm to natural resources. By establishing a legal cause of action to recover for natural resource damages, MERLA recognizes the value of the state's natural resources and the importance of restoring them as much as possible for the benefit of the public — **Minn. Stat. § 115B.04, subd. 1(3)**. For more than three decades, the state has been separately pursuing cleanup actions and natural resource damage claims from responsible parties as part of bringing final resolution to contaminated sites.

Under MERLA, the state is the trustee for natural resources, such as air, water and wildlife, and the Attorney General is authorized to sue in the name of the state — **Minn. Stat. § 115B.17, subd. 7**. The MPCA and the DNR have consistently been authorized by successive Governors' executive orders to act as co-trustees on behalf of the state to recover natural resource damages.

All moneys recovered for natural resource damages under MERLA go into the general portion of the Remediation Fund — **Minn. Stat. §§ 115B.17, subd. 7 and 116.155, subd. 3(1) and (3)**. For the 3M settlement, the MPCA and DNR are establishing distinct accounting measures in SWIFT to ensure additional transparency in the use of the funds.

Uses of settlement money

Money in the Remediation Fund is appropriated to the MPCA and DNR to be spent for a variety of purposes, including taking remedial actions and rehabilitating and restoring natural resources — **Minn. Stat. §§ 116.155, subd. 2(a)(1) and 115B.20, subd. 2(2) and (4)**. Historically, in implementing these statutes, the MPCA and DNR have generally spent recovered natural resource damage money to restore or replace natural resources in the geographic area where the harm to natural resources has occurred.

The state's agreement with 3M focuses the use of the money in the east metropolitan area where natural resources have been damaged. The priorities under the agreement include restoring access to clean drinking water to meet current and future needs, improving the sustainability of groundwater through activities such as

promoting water conservation or preserving open spaces to help recharge drinking water sources, and restoring and enhancing other natural resources such as fish and wildlife habitat, and public access to such resources.

The Remediation Fund statute also allows use of the fund to enforce cleanup compliance or reimbursement and to recover natural resource damages, both of which would include payment of attorneys’ fees and litigation costs spent to enforce cleanup and/or to recover natural resource damages — **Minn. Stat. § 115B.20, subd. 2(2) and (4)**.

For more information

For additional information on the settlement with 3M, see document titled “3M settlement: key facts.”

3M Water Quality and Sustainability Agreement

