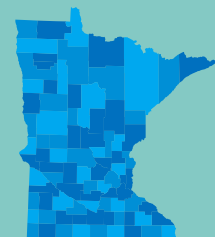


January 2019

# Priority qualified facility spending – Closed Landfill Investment Fund

Report to the Legislature



## Legislative charge

*Laws of Minnesota 2017, chapter 93, article 1, section 2, subdivision 6(e):*

*Notwithstanding Minnesota Statutes, section 115B.421, \$3,000,000 the first year is from the closed landfill investment fund for settling obligations with the federal government, remedial investigations, feasibility studies, engineering, and cleanup-related activities for purposes of environmental response actions at a priority qualified facility under Minnesota Statutes, sections 115B.406 and 115B.407. By January 15, 2018, the commissioner must submit a status report to the chairs and ranking minority members of the House of Representatives and senate committees and divisions with jurisdiction over the environment and natural resources. This is a onetime appropriation and is available until June 30, 2019.*

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## Cover photo

2015 Aerial Photo of the Freeway Landfill

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# Contents

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**Executive summary .....1**

**Introduction .....3**

**Activities since legislation was enacted.....5**

**Future anticipated activities .....7**

# Executive summary

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The 1994 Landfill Cleanup Act (LCA) created Minnesota's Closed Landfill Program (CLP). The CLP is an alternative to Superfund for cleaning up and maintaining closed landfills and was the first such program in the nation. The CLP is unique because it is the only program that gives the Minnesota Pollution Control Agency (MPCA) the responsibility to manage up to 114 closed, state-permitted, mixed municipal solid waste landfills (program landfills) to mitigate risks to the public and the environment.

The Freeway Landfill, located in the City of Burnsville in Dakota County, is one of the 114 facilities. The landfill became a state Superfund site in 1984 and a federal Superfund site in 1986 and was listed on the state Permanent List of Priorities (PLP) and National Priorities List (NPL), respectively. Although the landfill became a qualified facility in 1994, the owner/operator refused entry into the CLP and the site remained on the PLP and NPL. The U.S. Environmental Protection Agency (EPA) sent notices to 182 Potential Responsible Parties (PRPs) associated with the landfill in 2016 to begin the cost-recovery process to clean up the site under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial process. These PRPs responded by seeking indemnity from the state through the legislative process.

The Minnesota Legislature, concerned about multi-party litigation by PRPs, as well as ensuring that risks be addressed effectively at landfills similar to the Freeway Landfill that refuse to enter the CLP, adopted legislative changes in 2017 to give the MPCA additional authority to address environmental concerns at these sites. The Legislature created a new type of qualified facility called a "Priority Qualified Facility". Priority Qualified Facilities are qualified facilities that: 1) are listed on both the NPL and PLP; 2) have not yet become the responsibility of the MPCA by entering into a Landfill Cleanup Agreement; and 3) include PLP-listed, non-permitted, mixed municipal solid waste disposal sites located within 750 feet of the qualified facility and where the MPCA has determined that environmental response action is necessary to protect public health, welfare, and the environment. The legislation also created a pathway for the MPCA to be able to take environmental response actions at the site.

The Minnesota Legislature appropriated \$3,000,000 from the Closed Landfill Investment Fund (CLIF) to be used in Fiscal Years 2018 and 2019 for the purpose of conducting remedial investigations, feasibility studies, cleanup activities, and other environmental response actions at priority qualified facilities, as well as for settling certain financial obligations with the EPA.

Laws of Minnesota 2017, chapter 93, article 1, section 2, subdivision 6(e) requires the MPCA to provide to the Minnesota Legislature, by January 15, 2018, a report on the status of activities taken at priority qualified facilities and of CLIF funds expended since final enactment of the new legislation, May 30, 2017. The MPCA has chosen to submit an additional report by January 2019, as funds are eligible in fiscal year 2019.

Activities since May 30, 2017, include the following:

- MPCA pursued a Landfill Cleanup Agreement with the Freeway Landfill owner/operator upon notification that the Landfill is a priority qualified facility, including providing a draft of the agreement
- The Freeway owner/operator failed to meet the 60-day deadline to sign the Landfill Cleanup Agreement, resulting in MPCA having authority to take response actions per the new legislation
- MPCA retained Barr Engineering, Inc. to conduct a remedial investigation, consisting of multiple field sampling events, of the Freeway Landfill and Freeway Dump to aid in designing a remedy

- MPCA sent Freeway Landfill owner/operator an access agreement to allow Barr Engineering access to the property to conduct the first field sampling event, after which the owner/operator denied Barr Engineering access to the site
- MPCA and Attorney General's Office filed the necessary documents to request a court order for access to the site to conduct the remedial investigation
- The owner/operator signed an access agreement prior to a scheduled court hearing to allow MPCA and its contractor access to the Freeway Landfill and Freeway Dump to conduct the first field sampling event of the remedial investigation
- The first field sampling event was conducted in March and April of 2018, including soil/waste borings, groundwater sampling, waste pits excavations, and landfill gas sampling
- The Amended Deferral Agreement between EPA and MPCA was signed regarding Qualified Municipal Waste Landfills and recognizing priority qualified facilities under the Minnesota Cleanup Law
- Barr Engineering issued the Freeway Landfill and Freeway Dump Investigation Report summarizing the first field sampling work conducted during March and April 2018
- EPA sent letter to potentially responsible parties (PRPs) notifying the PRPs of the Deferral Agreement, which serves to notify the PRPs that EPA has no plans to pursue enforcement actions against the PRPs for response actions at Freeway Landfill
- MPCA made payment of \$354,110.56 to EPA for costs incurred for Freeway Landfill as outlined in the Deferral Agreement
- MPCA requested work plans from Barr Engineering for the second field sampling event for the remedial investigation at Freeway Landfill and Freeway Dump
- MPCA drafted additional site access agreements to the property owners surrounding Freeway Landfill and Freeway Dump to allow for the second field sampling event of Freeway Landfill and Freeway Dump properties

# Introduction

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## Background

Identifying PRPs and apportioning financial responsibility between hundreds of PRPs for cleanup at landfills has traditionally been a challenge for both state and federal Superfund programs. In some cases, third party litigation, legal costs, and administrative expenditures under these programs have resulted in significant costs and delays in addressing the risks these landfills pose to public health and the environment. The Minnesota Legislature took bold steps in 1994 to address these concerns based on the premise that the problems associated with these landfills belonged to all of Minnesota – individuals, municipal and state government, as well as corporations. The Legislature’s adoption of the LCA created Minnesota’s CLP so the state could effectively protect human health, safety, and the environment associated with closed, state-permitted, mixed municipal solid waste landfills throughout Minnesota.

Currently, there are 114 landfills that are in the CLP or have the potential to enter the CLP.

The program’s goals to help achieve this outcome include managing the risks associated with human exposure to landfill contaminants and methane gas, and mitigating the degradation of groundwater and surface water. Managing these risks is best accomplished by implementing certain strategies, including:

1. Understanding the extent and magnitude of contaminant and methane gas impacts, as well as the overall risks, at each site;
2. Maintaining the landfills and operating any remediation systems;
3. Implementing construction-related response actions to reasonably address contaminant and methane gas migration issues; and
4. Working with local governments to manage on-site and nearby land use.

The Freeway Landfill (SW-57), located in Burnsville, Minnesota (Figure 1), became a qualified facility at the inception of the CLP in 1994. The landfill is both a state Superfund and federal Superfund site since 1984 and 1986, respectively, and is listed on both the state PLP and federal NPL. For years, the groundwater pumping operations at the adjacent quarry have inadvertently helped control the contaminated groundwater from the landfill. However, once the quarry dewatering ceases, contaminated groundwater will likely impact the nearby Minnesota River and the adjacent quarry that becomes a lake, which is the drinking water source for the cities of Burnsville and Savage. The owner/operator of the Freeway Landfill, after multiple attempts by the MPCA to enter into an agreement, has refused to transfer responsibility to the MPCA for the landfill cleanup and operation and maintenance. Instead, the landfill has remained on the PLP and NPL and has been subject to state and federal Superfund authority. Upon EPA’s mailing of notices to 182 PRPs in 2016, alerting them to their potential participation in helping pay for cleanup costs, the PRPs sought indemnity from the state for these costs through the legislative process.

## New legislation

The resulting new 2017 legislation gave the MPCA additional authority to address the risks at landfills similar to the Freeway Landfill in a timely manner while, at the same time, helped prevent multi-party litigation by the PRPs. The legislation created a new category of qualified facility called a “Priority Qualified Facility”. Priority qualified facilities are qualified facilities that:

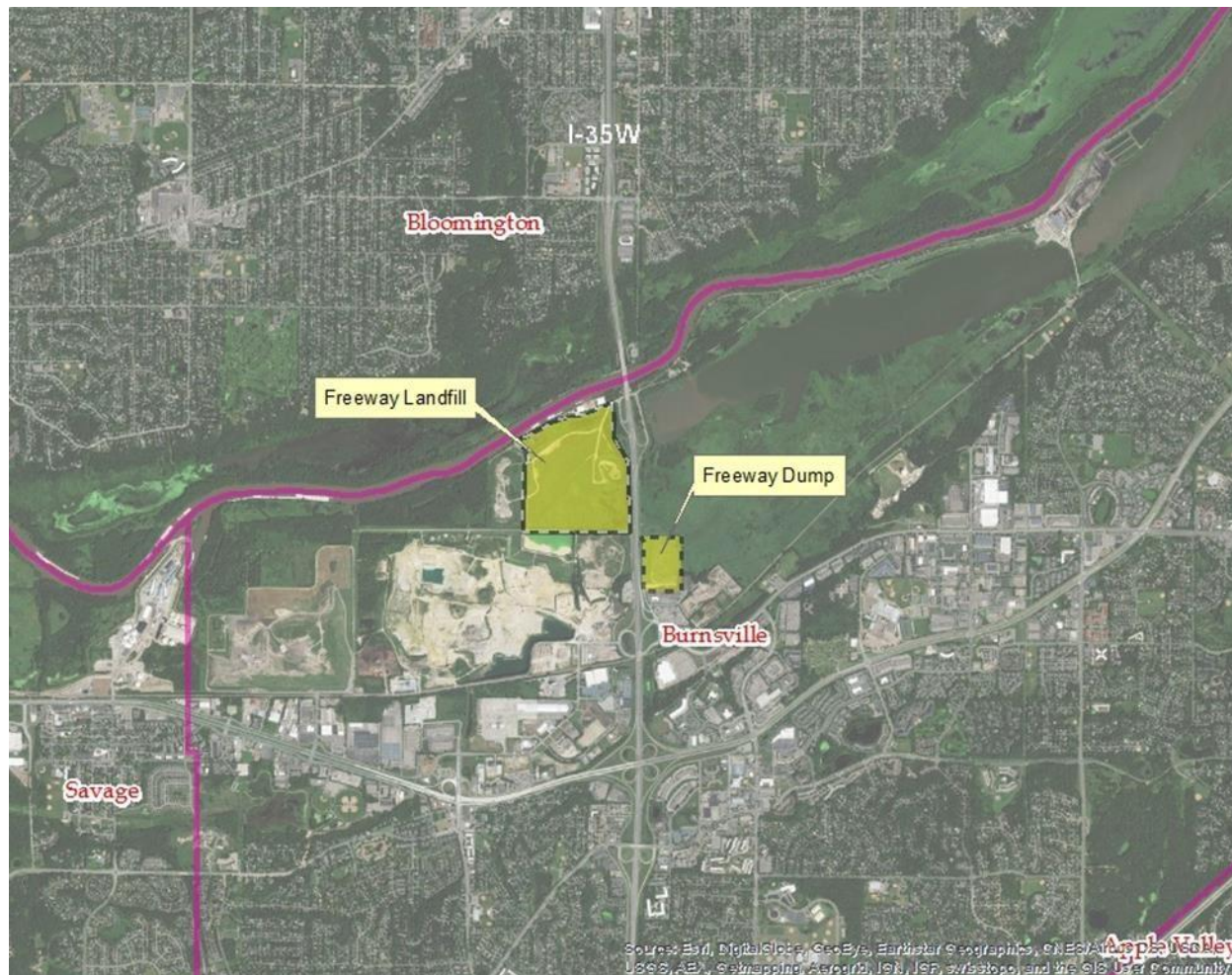
1. Are listed on the NPL and PLP;



2. Are absent a Landfill Cleanup Agreement between the operator/owner and the MPCA Commissioner that would transfer responsibility to the MPCA; and
3. Include property located within 750 feet of the priority qualified facility that is listed on the PLP, where mixed municipal solid waste was disposed of but was not permitted by the MPCA, and where the Commissioner of the MPCA has determined that environmental response action is necessary to protect public health, welfare, and the environment. The Freeway Landfill meets the definition of a priority qualified facility, including the nearby Freeway Dump.

The legislation also created a process to ensure that the MPCA would be able to take timely and effective environmental response actions at priority qualified facilities, including the following:

**Figure 1. Location of the Freeway Landfill and Freeway Dump**



1. The owner/operator of a priority qualified facility must enter into a Landfill Cleanup Agreement within 60 days after being notified that the landfill is a priority qualified facility.
2. If the owner/operator of a priority qualified facility fails to enter into an agreement, the MPCA must assume all obligations for environmental response actions, cannot seek cost recovery against responsible parties that are not the owner/operator for environmental response actions, and must communicate with the EPA how it is undertaking these obligations.



3. The owner/operator of a priority qualified facility is subject to a civil penalty for each day beyond the 60-day deadline for entering into a Landfill Cleanup Agreement until such an agreement is signed.
4. An owner/operator of a priority qualified facility that fails to comply with the 60-day deadline is ineligible to obtain or renew a state or local license or permit for any solid-waste business they are engaged in.
5. Any person having information relevant to the priority qualified facility, and/or the owner/operator of the facility, must furnish the MPCA with that information.
6. Any reasonable and necessary expenses incurred by the MPCA, including environmental response costs, as well as legal and administrative costs, may be recovered in a civil action against the owner/operator of a priority qualified facility.
7. The owner/operator of a priority qualified facility is prohibited from bringing any claim for personal injury, disease, economic loss, environmental response actions incurred by the owner/operator or the state, or legal and administrative costs arising out of a release of any hazardous substance, pollutant, contaminant, or decomposition gases.
8. All environmental response costs incurred by the state at a priority qualified facility, including administrative and legal expenses, constitute a lien in favor of the state upon any real property in the state owned by the owner/operator, other than homestead property.
9. The Commissioner of the MPCA may acquire an interest in real property at all or part of a priority qualified facility by donation or eminent domain, and has the authority to condemn such property for fee title or easement.

The Legislature appropriated \$3,000,000 from the CLIF to fund the CLP’s remedial investigations, feasibility studies, cleanup activities, and other environmental response actions at the Freeway Landfill and Freeway Dump. Once the Landfill became the responsibility of the CLP, the appropriation was used to reimburse the EPA for certain past financial commitments it made.

## Activities since legislation was enacted

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Below is a list of activities completed and milestones met since the new legislation became effective – May 30, 2017. Because the Freeway Landfill is currently the only priority qualified facility that is affected by the new legislation, the events below are strictly related to the Freeway Landfill and the nearby Freeway Dump. As of December 12, 2018, \$812,212 of the CLIF appropriation has been expended to begin a remedial investigation of the landfill and the dump and reimburse the EPA.

June 27, 2017	MPCA issued a notice to the owner/operator of the Freeway Landfill (R.B. McGowan Company, Inc., Freeway Transfer, Inc., the Richard B. McGowan Family Irrevocable Trust under Agreement dated October 22, 1997, and Michael McGowan) that the Freeway Landfill, together with the Freeway Dump, is a priority qualified facility
July 12, 2017	MPCA met with EPA to discuss implementation of the new legislation and how it would affect the Freeway Landfill
July 14, 2017	MPCA met with the owner/operator and provided them a draft Landfill Cleanup Agreement to enter the Freeway Landfill into the CLP
July - August 2017	MPCA and the owner/operator exchanged comments on the draft Landfill Cleanup Agreement

September 1, 2017	MPCA provided a draft deferral agreement to EPA to allow for assumption of obligations for priority qualified facilities
September 6, 2017	MPCA notified the owner/operator that the 60-day period lapsed without a signed Landfill Cleanup Agreement, which, according to the new legislation, allowed MPCA to take environmental response actions at the site
September 28, 2017	MPCA selected Barr Engineering to conduct a remedial investigation of the Freeway Landfill and Freeway Dump for design of a remedy
October 2, 2017	EPA provided MPCA suggested revisions to the draft deferral agreement
October 13, 2017	MPCA received draft work plan for the first field sampling event of the proposed remedial investigation from Barr Engineering
November 6, 2017	MPCA sent an access agreement to the owner/operator to allow access to the landfill and the dump to begin the first field sampling event
November 13, 2017	MPCA sent EPA additional revisions to the deferral agreement
November 17, 2017	MPCA discussed outstanding deferral agreement terms with EPA
November 17, 2017	MPCA issued Barr Engineering a work order to begin its remedial investigation
November 20, 2017	Owner/operator denied access to the property to conduct the first field sampling event for the remedial investigation and raised a conflict of interest challenge with the MPCA's intended use of Barr Engineering because this firm represented the owner/operator's interest over 30 years ago
December 7, 2017	MPCA and the Attorney General's Office prepared the declarations and other documents to request a court order for access to conduct the remedial investigation
December 11, 2017	The Attorney General's Office filed pleadings for the access request to be heard at Dakota County District Court
December 27, 2017	The owner/operator signed the access agreement to allow MPCA and its contractor access to the Freeway Landfill and Freeway Dump to conduct the first field sampling event
January 2018	The owner/operator declined to pursue additional actions with regards to his conflict of interest claim with Barr Engineering performing work for the MPCA at the sites
February 2018	Owner/Operator made additional demands in regards to access, and additional details were agreed to that were satisfactory to both parties
March/April 2018	Field sampling activities, including soil/waste boring, groundwater sampling/analytical, waste test pit excavations, and landfill gas sampling, were conducted
May 2018	Site restoration work was completed to areas disturbed during field sampling activities

June 2018	Amended Deferral Agreement between EPA and MPCA was signed regarding Qualified Municipal Waste Landfills under the Minnesota Cleanup Act
June 2018	Barr Engineering issued Freeway Landfill and Freeway Dump Investigation Report summarizing the 2018 spring sampling event
August 2018	EPA sent letter to potentially responsible parties (PRPs) notifying the PRPs of the new Deferral Agreement, which served to notify the PRPs that EPA has no plans to pursue enforcement actions against the PRPs for response actions at Freeway Landfill
October 2018	MPCA sent payment of \$354,110.56 to EPA for costs incurred with Freeway Landfill as outlined in the Deferral Agreement for work performed during the time period of 2016-2017
October 2018	MPCA drafted an access agreement to allow the second field sampling event of the remedial investigation, including adjacent properties surrounding Freeway Landfill and Freeway Dump
November 2018	MPCA requested works plans from contractors for drilling, waste borings, test pits, and sampling and analytical work for the second field sampling event for the remedial investigation. Field sampling is expected to start winter of 2019.

## Future anticipated activities

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MPCA and EPA have agreed to follow the Federal Superfund Process as we continue our work effort in calendar year 2019 and beyond. Our schedule of work activities for 2019 include:

Remedial Investigation	February 2018-May 2019
Draft Feasibility Study	June 2018-June 2019
EPA Feasibility Study Review	June-August 2019
30% Remedial Design	March 2019
Public Information Meeting	June 2019
60% Remedial Design	August 2019
Proposed Plan/Interim Record of Decision (ROD) Process	August-December 2019
Receive necessary Permits (USACOE, FEMA, DNR, SWCD, City)	October 2018-December 2019

MPCA staff is open to continuing to negotiate a Binding Agreement with the owner/operator of Freeway Landfill and Freeway Dump during calendar year 2019 if the landfill owner is willing to negotiate in a good faith effort to resolve all environmental issues with the former landfills. The MPCA also is requesting during the 2019 legislative session that the \$3 million appropriation from the Closed Landfill Investment Fund be available until the funds are expended.