

Minnesota Pollution Control Agency Voluntary Investigation and Cleanup

Guidance Document #1

Introduction to the Voluntary Investigation and Cleanup Program

1.0 Introduction

Minnesota was the first state to address, through statutes, both the liability and technical issues associated with buying, selling or developing property contaminated by hazardous substances. Because of the potential for liability as an owner of property contaminated with hazardous substances, property owners and other participants in property transactions (buyers, developers and their financial institutions) frequently need to determine if the subject property is contaminated. For this reason, participants in property transactions often wish to seek the Minnesota Pollution Control Agency's (MPCA's) assessment of technical issues that are part of the investigation and cleanup of property.

When contamination is discovered, participants in property transactions may also be concerned about the MPCA's ability to take enforcement actions or to recover cleanup costs. Under the Land Recycling Act of 1992, persons not otherwise responsible for the contamination at the property are eligible for future liability protection when they voluntarily undertake and complete response actions approved by the MPCA Commissioner.

Property owners not currently interested in selling or developing property may also voluntarily investigate and clean up property with assistance from the MPCA. Property owners may request assistance from the MPCA in anticipation of future property transactions, to obtain financing or simply to avoid being required to investigate and clean up property under the Superfund enforcement process. Under the Land Recycling Act, future liability protection is available to eligible parties (lenders and purchasers of property) when response actions approved by the MPCA Commissioner are conducted by property owners who may be responsible persons as defined by the Minnesota Superfund law.

2.0 Background

In response to the growing need for MPCA review and oversight of voluntary investigations and response actions, primarily involving property transactions, the Property Transfer Program was established in 1988, pursuant to Minn. Stat. § 115B.17, subd. 14 (1988). The specific language of this statute, as well as a summary of other relevant laws, is provided in Guidance Document #3.

The Property Transfer Program originally consisted of two distinct components. The first component, known as the File Evaluation Program no longer exists.

The second component, originally referred to as the Property Transfer/Technical Assistance Program, is the current Voluntary Investigation and Cleanup (VIC) Program. The VIC Program is administered by remediation staff in each of the MPCA's districts (i.e. North, South and Metro Districts).

3.0 Questions and Answers

What are the key functions of the VIC Program?

The key functions of the VIC Program are to provide guidance for a site investigation; to provide MPCA review of the adequacy and completeness of such investigation; and to approve cleanup plans (response action plans) to address identified contamination. By obtaining MPCA approval of investigation and response action plans, landowners, lenders and potential developers can be reasonably confident that they know the extent of any environmental problems on the property, can determine the most appropriate cleanup action, and can calculate the cost of cleanup measures needed to satisfy statutory requirements. The voluntary investigation and cleanup process provides the kind of information needed to make sensible financial decisions about developing or transferring contaminated or potentially contaminated property.

The VIC Program has developed guidance documents to provide a phased approach by which parties that voluntarily conduct an approved investigation or cleanup can obtain various written MPCA assurances. These assurances can be provided in the form of a technical approval letter; a No Action letter; or a No Action or Voluntary Response Action agreement signed by the MPCA Commissioner and the voluntary party. If the voluntary party is eligible for protection under the Land Recycling Act, and has conducted an investigation and approved response actions, the assurances could be incorporated into a Certificate of Completion. Eligible parties may also receive liability protection under the Land Recycling Act in the form of a No Association determination based on the environmental conditions and past or future uses of the property. The VIC Program also provides a process by which voluntary parties can obtain assurances with respect to properties affected by confirmed contamination originating from off-site. For more information about the liability protection that may be provided to eligible parties under applicable laws, see Guidance Document #3, *Summary of Applicable Laws*. For more information about the assurances related to the VIC Program, see Guidance Document #4, *Types of Written Assurances*.

The voluntary nature of the VIC Program benefits owners, real estate sellers, real estate purchasers, lending institutions and developers. At the same time, the voluntary nature of the VIC Program benefits the environment and the public interest by the resulting identification and cleanup of contaminated property.

What will happen if I withdraw from the VIC Program?

A voluntary party can terminate their participation at any point by written notification to the appropriate VIC Program project staff.

If a voluntary party decides to terminate participation, then the MPCA staff will assess site information (e.g., extent and nature of contamination) and make a decision about whether further investigation and cleanup is warranted to protect human health and the environment. If the voluntary party is the owner of the property, they will be required to cooperate with the MPCA or the responsible party(ies) so that the MPCA or responsible party(ies) can complete additional investigation and response actions. Such cooperation includes granting access to the property. Use of the property by the voluntary party who decides to discontinue participation in the VIC Program may be limited until all the response actions are determined to be completed by the MPCA staff. Such limitations may be needed to ensure that the voluntary party does not aggravate or contribute to the releases, or does not interfere with or substantially increase the costs of the necessary response actions.

What is expected of the voluntary party?

Parties seeking assistance under the VIC Program are expected to cooperate and adhere to established guidance in the investigation of the extent and nature of contamination, and the evaluation, selection, and implementation of response actions. In addition, the parties requesting MPCA staff review and oversight are required by statute to reimburse the MPCA's costs of providing assistance.

To meet these expectations and provide useful direction to voluntary parties, the MPCA staff has developed various guidance documents. The guidance documents provide information about the VIC Program and describe the phased approach for conducting investigations and any necessary response actions. For a listing of these documents, contact the VIC Program at (651) 296-7291, or the Internet at <http://www.pca.state.mn.us/cleanup/vic.html>.

The data generated during each phase of the investigation will assist the voluntary party in determining the types of information needed during the next phase. Following the procedures outlined in the guidance documents will expedite MPCA staff's review and provide the necessary information to determine whether response actions at the property are required. In addition, following the procedures in the guidance documents will provide the necessary information to determine the nature and extent of contamination, select appropriate cleanup criteria and prepare a response action plan for the Site. Selecting a consultant who is familiar with the technical procedures of the VIC Program is recommended. Parties seeking assistance are expected to actively participate in conducting the necessary work and follow the schedules identified in Guidance Document #7, *Schedule for Conducting Investigations and Response Actions*.

Who should I call with questions?

The MPCA has reorganized its structure to provide better services throughout the state. MPCA staff for the regulatory and remediation programs are now located in three Districts. Questions

concerning the various MPCA remediation programs in the Metro District can be directed to the following:

Voluntary Investigation and Cleanup	651-296-7212
Superfund	651-297-8609
Resource Conservation and Recovery Act (RCRA).....	651-297-8380
Underground Storage Tanks.....	651-297-8583
Aboveground Storage Tanks	651-297-8610
Closed Landfills	651-297-1780
Brownfields	651-296-6139

Questions concerning site cleanups for all of the above listed programs in the North District should be directed to the following:

Duluth Office.....	218-524-6267
Brainerd and Detroit Lakes Offices.....	218-828-6117

Questions concerning site cleanups for all of the listed programs in the four offices of the South District (Rochester, Mankato, Willmar and Marshall) should be directed to 507-280-5539.

Calls to report spills throughout the State should be directed to the State Duty Officer at 1-800-422-0798 or 651-649-5451. Follow-up questions regarding Emergency Response activities by the MPCA can be directed to 651-297-8610.

The MPCA Customer Assistance Center is available to help answer general and regulatory questions in the areas of air quality, tanks (above and below ground), water quality, and hazardous waste. Staff will either answer questions or refer you to appropriate staff. The Customer Assistance Center can be reached directly at 651-297-2274, or through the main MPCA number at 651-296-6300 or 1-800-657-3864. General and regulatory questions can also be directed to the appropriate MPCA Area Offices serving the county in which you live or work.

Other frequently called numbers include:

Air Quality Complaint Hotline.....	651-296-7300
Asbestos Helpline.....	651-297-8685
Water Quality Complaints.....	651-296-7367
Noise Complaints	651-296-7898
Public Information	651-296-6619
Low Level Radioactive Waste.....	651-296-7275

More information about these is also available on the MPCA's Web Page at www.pca.state.mn.us.

The Minnesota Department of Health should be contacted with questions concerning radon and public health assessments at contaminated sites. Inquires about radon can be directed to 651-215-0909. Questions pertaining to public health assessments can be directed to the Environmental Health Division at 651-215-0700.

The Minnesota Department of Agriculture should be contacted regarding agricultural chemical releases, including those from wood treatment facilities. That number to call is 651-282-2697.

Are there other eligibility requirements?

If the MPCA staff determines that a property has been contaminated by a hazardous substance with demonstrated characteristics that make the site a high priority for protection of public health or the environment, assistance under the VIC Program may be denied or terminated and the situation will be referred to the MPCA Site Assessment Program. For example, if there is ground water contamination exceeding relevant health criteria and the contamination has entered a drinking water supply, the MPCA staff may refer the property to the Superfund Site Assessment Program. However, VIC Program staff do manage such high priority sites as well.

Referral to the Site Assessment Program would also take place if the voluntary party no longer chooses to participate in the VIC Program and the property is the site of a release or potential release of a hazardous substance that requires further investigation or cleanup. Finally, referral to the Site Assessment Program would take place if it becomes evident that the voluntary party is unable to continue, or demonstrates a lack of cooperation in dealing with the MPCA staff or is not completing the necessary investigative activities and response actions in a timely manner.

Questions regarding the Superfund Site Assessment Program in Minnesota and inquiries concerning properties listed on the U.S. Environmental Protection Agency (EPA) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) list can be directed to 651-296-6139.

What happens if I find contamination at the site?

Any person who has knowledge of the discharge of any substance or material under that person's control which, if not recovered, may cause pollution of any water, has a legal duty to immediately notify the MPCA of the discharge under Minn. Stat. § 115.061 (1990). The person responsible for the discharge also has the duty under this statute to recover the substance or material and to abate any water pollution caused by the discharge.

When contamination is discovered during an investigation, the property owner or other person in control of the property is expected to immediately inform the MPCA by calling the 24-hour Division of Emergency Management Duty Officer at 651-649-5451 (Metro Counties) or 1-800-422-0798 (Greater Minnesota). If the person wishes to conduct a voluntary investigation or response action under the VIC Program, the MPCA staff will inquire about the nature of the release and help the voluntary party to determine if they are eligible to participate in the VIC Program.

Whether or not a voluntary party participates in the VIC Program, it is expected that the party discovering the contamination will follow the telephone call with a written submittal to the MPCA staff, providing data related to the nature and extent of the contamination.

Do I have to follow the guidance exactly?

Participation in the VIC Program and adherence to guidance documents is strictly voluntary. However, adherence with the guidance documents is recommended in completing an

investigation, a report, a response action or other action if the voluntary party is seeking VIC Program staff approval. In order to obtain liability protections provided by statute, owners and other parties must obtain VIC Program staff approval of the actions. VIC Program approval is required before response actions are taken to ensure eligibility to receive liability protection under the Land Recycling Act.

Are public meetings required?

Public meetings are not always required. However, community involvement can be an essential component of the VIC Program. The MPCA staff works with the MPCA Public Information Office to identify and notify the appropriate local residents, community groups, and governmental representatives to request their input. This notification will generally occur when the Phase II Investigation Report has been submitted and the review has been completed by the MPCA staff. In addition to public meetings, public involvement may involve news releases, presentations at a city council meeting or simply contacting the local governmental representatives by telephone. The type and degree of public participation will be determined on a site-specific basis, based on the needs and requests expressed by the community or local government officials. When response actions are necessary the voluntary parties are encouraged to take an active role in informing the public of their proposed response and redevelopment plans and actions.

In the VIC Program, the voluntary parties, along with local officials and local government officials, are often asked to take the lead for community relations. The voluntary parties are strongly encouraged to provide early and frequent opportunities for public participation.

Health concerns are most likely the motivation for the public to become involved, but they may also be interested in issues such as the scope of the proposed development activity, employment opportunities, environmental justice issues, or impacts on their property values.

Will strictly following these guidelines prove that I have exercised due diligence before acquiring property?

The process outlined in the guidance documents is not necessarily the same as the inquiry that may be necessary for a person to satisfy the legal definition of due diligence. However, by following the guidelines and conducting the field investigations in accordance with VIC Program-approved work plans, a voluntary party can show intent to take all actions deemed reasonable by the MPCA staff to investigate potential environmental problems associated with a property. However, in general, the level of care outlined in VIC Program guidance meets or exceeds requirements outlined under ASTM Practice E 1527-94, which has become the industry standard for due diligence considerations.

How much time does the voluntary process take?

The amount of time required to review a document by the MPCA staff will vary depending upon MPCA staff workload, the scope and quality of the document, and the volume and complexity of the information the document contains. Given the various types of documents that may be

submitted and the range of circumstances encountered at different properties, it is not possible to provide a specific turnaround time for requested services. However, as described in Guidance Document #7, the MPCA staff will make every effort to review and respond to documents within 30 to 60 days following submittal. More importantly, VIC Program staff understand the transactional considerations facing many property owners, and if reasonable expectations are communicated, staff take great pride in delivering timely and accurate work products.

How much does it cost to receive assistance from the VIC Program?

Because the amount of time required to provide oversight by the MPCA staff will vary for the reasons described above, it is not possible to provide a specific total cost figure. The current cost is \$150.00 per hour. Please refer to Guidance Document #20, *Program Costs*, for more information.

How will I be asked to pay for assistance received from the VIC Program staff?

The voluntary party will receive a reimbursement invoice on a quarterly basis. No application fee is required. Upon receipt of the invoice, the voluntary party has thirty (30) days to reimburse the MPCA. When necessary, the MPCA staff will refer non-payment situations to a collection agency and the staff of the Office of the Attorney General. Non-payment situations will result in the termination of MPCA staff assistance. In addition, other services from the MPCA, such as File Evaluation Assistance, will be terminated.

What is the role of the EPA?

The VIC Program is strictly administered under the authority of the Minnesota Superfund law. In Minnesota, EPA's site specific involvement is limited to enforcement actions at federal Superfund sites (sites of the National Priorities List [NPL]) and certain emergency response activities.

Under a Memorandum of Agreement with the EPA, dated May 2, 1995, the MPCA is designated the lead agency for VIC Program sites. EPA has no role in the VIC Program in terms of review, oversight or approval of investigation activities and response actions; however, sites for which "no association" determinations are issued, and additional characterization or cleanup may be necessary are outside the scope of the Memorandum of Agreement. These sites may be referred to the Superfund Site Assessment Program for possible listing on CERCLIS.

How do I apply for the VIC Program?

To obtain assistance from the VIC Program, it is first necessary to complete and submit a Request for Assistance Form. It is important that an appropriate person sign the Request for Assistance Form, as it obligates the signatory or signatory's employer financially. It is also important that the voluntary party accurately and clearly specify the type of assistance being requested. Questions should be directed to the MPCA staff in the VIC Program by calling (651) 296-7291. The application is also available via the Internet at our web site: <http://www.pca.state.mn.us/cleanup/vic.html>.