1.0 Purpose

When conducting investigations and response actions through the Voluntary Investigation and Cleanup (VIC) Program, regulations administered by other Minnesota Pollution Control Agency (MPCA) programs or state or local agencies may need to be considered. In some cases, VIC Program staff may act as administrative liaisons facilitating the regulatory efforts of more than one regulatory program. In other cases, however, direct contact with the other agencies or regulatory programs is required. Regulatory programs that VIC Program participants may encounter include:

- Programs for administering the Resource, Conservation and Recovery Act (RCRA) Program administered through the MPCA Metro Major Facilities Section or Regular Facilities Section, or metropolitan county hazardous waste ordinances.

- Programs for petroleum storage tank releases administered by the MPCA Site Remediation Section.

- The Solid Waste Program administered by the MPCA Metro Regular Facilities Section.

- Programs for agricultural chemical releases administered by the Agronomy Services Division of the Minnesota Department of Agriculture.

- The Site Assessment Program administered by the MPCA Site Remediation Section.

This document provides guidance regarding the interaction between these programs and the VIC Program.

2.0 Objectives

The objectives of this guidance document are to:
clarify how regulations specific to the programs listed above may apply to response actions approved under the VIC Program;

serve as an introduction to RCRA regulations;

explain the position of the MPCA staff in the VIC Program regarding the potential liability of a purchaser of property contaminated solely by petroleum;

explain the scope of the VIC Program assistance available for petroleum-related contamination and RCRA-regulated hazardous wastes;

identify the solid waste disposal issues under the VIC Program jurisdiction;

serve as an introduction to agricultural chemical regulations; and

provide an introduction to the Site Assessment Program.

3.0 RCRA/VIC Program Interaction

The RCRA Program regulates the management of hazardous waste from the time of generation of the wastes to final disposal of the wastes. The RCRA Program addresses hazardous waste releases from facilities which have a permit to generate hazardous wastes or which are operating under state or county enforcement actions. RCRA regulations are administered by MPCA staff in the Metro Major Facilities Section or Regular Facilities Section and, for the metropolitan counties, by county RCRA staff. In general, all operations within the seven county metropolitan area conducting hazardous waste activities including generating, storing, disposing, and treating must be in compliance with specific ordinances of each individual county. The hazardous waste activities must be approved by county hazardous waste personnel. Non-metropolitan counties are not required by statute to adopt ordinances regulating certain hazardous waste activities within each county. Therefore, hazardous waste activities within non-metropolitan counties must be conducted in accordance with MPCA hazardous waste rules.

The RCRA Program oversees cleanups at sites where a hazardous waste can be identified as having been mismanaged resulting in a release and the initiation of an enforcement action; or when a hazardous waste has been released at a facility which has a permit to generate hazardous waste. In contrast, the VIC Program oversees impacted sites at which the hazardous substance release cannot be attributed to either of these two scenarios.

The goal of both VIC Program response actions and RCRA Program corrective actions is to protect public health, welfare, and the environment by implementing remedies that allow for unrestricted use of all natural resources affected by the contaminants. In accordance with Minn. Stat. § 115B.175, subd. 3(c), voluntary response actions must meet the same standard for protection of public health, welfare, and the environment that apply to Superfund sites.
The primary type of contamination covered under the Minnesota Superfund law, Minnesota Environmental Response and Liability Act (MERLA) under which the VIC Program operates, is a release of a hazardous substance. From time to time media and debris (soil, ground water, clothing, refuse, etc.) at sites are contaminated with listed hazardous waste or exhibit one or more characteristics of a hazardous waste. The contaminated media must be managed as a hazardous waste under RCRA regulations and treated at a RCRA-permitted treatment, storage, and disposal facility (TSDF). According to United States Environmental Protection Agency’s (EPA’s) “contained-in” policy, media that are contaminated with hazardous substances must be managed as if they were hazardous wastes until they no longer “contain” the listed waste, no longer exhibit a characteristic, or until the waste is delisted. The contaminated media can be treated on-site to below a level which is not considered hazardous in order to meet these requirements. EPA has not issued general rules delineating the concentrations of hazardous wastes below which environmental media or debris containing these wastes are no longer considered to “contain” them. The EPA has, however, recognized that environmental media and debris may be significantly different from their hazardous waste component. EPA believes that such levels should be based on risk and determined on a site-specific basis by the staff in the EPA regional offices or the authorized state or local agencies overseeing the cleanup of such media. In Minnesota, the MPCA staff in the VIC Program or Superfund Program oversee these response actions.

For further information, contact the VIC Program staff at (651) 296-7291.

4.0 Interaction With the LUST Program

The Leaking Underground Storage Tank (LUST) Program in the MPCA Site Remediation Section addresses petroleum releases under the Petroleum Tank Release Cleanup Act. According to the Petroleum Tank Release Cleanup Act, a person is responsible for a petroleum release and cleanup of the release, if the person owned or operated the leaking tank. Therefore, a person can purchase property and, if the leaking tanks have been removed and corrective actions have been conducted as approved by the MPCA, that person would not be considered a responsible person and would not be required by the MPCA to cleanup the release.

The MPCA Site Remediation Section is authorized to provide assistance to voluntary parties for petroleum releases similar to the assistance provided by the VIC Program for non-petroleum releases. The MPCA Voluntary Petroleum Investigation and Cleanup (VPIC) Program provides technical assistance and expedited review of investigation and cleanup reports for petroleum release sites.

As mentioned earlier in Section 3.0, the VIC Program operates under the Minnesota Superfund law, MERLA. The primary type of contamination covered under MERLA is a release of a hazardous substance. The MERLA definition of hazardous substance excludes “petroleum, including crude oil or any fraction thereof which is not otherwise a hazardous waste.” Petroleum and petroleum-derived compounds may be categorized as a “pollutant or contaminant” under MERLA. Examples of petroleum-derived compounds that may constitute a hazardous waste or
hazardous substance include tank bottom sludges and certain waste oils containing other contaminants such as heavy metals or acids. However, the MPCA has limited authority under MERLA to take action regarding releases of pollutants and contaminants. The MPCA can require cleanup of a pollutant or contaminant only if there is an imminent and substantial danger to the public health, welfare, or the environment. Consequently, if the cleanup of the petroleum release is outside the scope of MERLA, MPCA staff in the VIC Program believes the voluntary party would not be subject to MERLA cleanup liability for the identified petroleum release. Therefore, VIC Program liability assurances ordinarily do not deal with contamination caused by petroleum unless the petroleum release constitutes a hazardous waste or is mixed with a hazardous substance or the petroleum release poses an imminent and substantial danger to public health, welfare, or the environment.

Examples of facilities that could involve petroleum releases that might be addressed by the VIC Program include refineries or large petroleum storage tank farms. In addition, the VIC Program could deal with situations where the petroleum is mixed with a hazardous waste. Voluntary parties wishing to receive liability assurances pursuant to MERLA will be required to follow the VIC Program guidance documents.

Upon completion of a petroleum tank release corrective action approved by the Site Remediation Section staff, a letter is issued closing the petroleum release site. The VIC Program does not review petroleum tanks release corrective actions and does not issue liability assurances connected with such actions. However, the completion of an MPCA-approved tank release corrective action for a release consisting solely of petroleum makes it highly unlikely that any remaining petroleum at the leak site could pose an imminent and substantial danger, and thereby minimizes any risk of future action under MERLA.

Once the Site Remediation Section staff issues the petroleum release closure letter, if non-petroleum contamination remains at the site, the site file will be transferred to the VIC Program. The party receiving the closure letter will be given an opportunity to participate in the VIC Program. However, if participation in the VIC Program is not selected, the site may be referred to the Site Assessment Program staff and placed on the Comprehensive Environmental Response, Compensation Liability Information System (CERCLIS) list. The CERCLIS database identifies properties as potential hazardous waste sites. To enter the VIC Program, the VIC Program Request for Assistance application form must be completed and returned to the MPCA within 90 days of having received the Site Remediation Section closure letter. For more information regarding these Site Remediation Section programs, call (651) 297-8583.

5.0 Interaction with the Solid Waste Program

The MPCA Solid Waste Program regulates investigation and cleanup activities related to permitted solid waste facilities, both open and closed. Closed facilities are handled by the Site Remediation Section and open facilities are handled by the Regular Facilities Section. Many old solid waste facilities, known as abandoned dumps, were not permitted by the MPCA. The VIC Program has been designated as the primary contact and lead group at the MPCA to address
issues related to investigation, monitoring, closure, and redevelopment of abandoned unpermitted
dumps. The MPCA Solid Waste staff may become involved when technical assistance is
requested from the VIC Program staff, for instance, engineering review of a remedial cap design
or assistance regarding a response action which includes redepositing wastes in a permitted solid
waste disposal site.

For further information, contact VIC Program staff at (651) 296-7291.

6.0 Interaction with Minnesota Department of Agriculture

The Minnesota Department of Agriculture (MDA) has lead authority in the state of Minnesota
for the regulation of agricultural chemicals. This authority extends to the oversight of
investigation and cleanup of sites contaminated by the release of agricultural chemicals. By
legislative definition, the term “agricultural chemical” encompasses all fertilizer products and
other soil amendments, and all pesticide products, including pesticides, herbicides, germicides,
fungicides, rodenticides, and wood preservatives.

The Incident Response Unit, located in the Agronomy Services Division of the MDA, regulates
the investigation and cleanup of sites contaminated with agricultural chemicals. The Incident
Response Unit maintains a program addressing emergency spill response, comprehensive site
investigation and remediation, and voluntary site investigation and remediation.

The Incident Response Unit identifies and prioritizes sites contaminated with agricultural
chemicals. For sites of moderate to high priority, responsible parties are identified and are
required to investigate, and, if necessary, remediate all agricultural chemical releases. All site
work must be conducted under the oversight and review of the Incident Response Unit staff. Site
work requested and approved by the Incident Response Unit staff may be eligible for partial
reimbursement by the Agricultural Chemical Response and Reimbursement Account (ACRRA)
fund.

The MDA Agriculture Voluntary Investigation and Cleanup Program (AgVIC) was created to
provide technical assistance to parties involved in property transactions and parties who simply
wish to initiate the investigation and cleanup of a site which is not currently being addressed by
the Incident Response Unit. The AgVIC Program provides technical assistance in the form of
review and oversight of site investigations and corrective actions at sites contaminated by
agricultural chemicals. Parties requesting assistance under the AgVIC Program are required to
reimburse the MDA’s costs of providing assistance. The AgVIC Program offers an expedited
review process relative to the Incident Response program. The AgVIC review and oversight
process may result in the receipt of MERLA liability protection in the form of written
assurances. The MDA Commissioner has the authority, under Minn. Stat. § 115B, to issue
written assurances for releases of agricultural chemicals similar to those issued for non-
agricultural chemicals by the MPCA Commissioner. Corrective action costs associated with
AgVIC sites may be eligible for partial reimbursement by ACRRA, if certain conditions are met.
There must be significant contamination identified at the site; significant contamination is any level of contamination which presents an unreasonable risk to human health or the environment. The areas investigated must be areas of high risk for agricultural chemical contamination. Lastly, investigation and cleanup costs must be consistent with MDA guidance. Costs for any site work which was not requested or approved by MDA staff will not be recommended for ACRRA reimbursement, and costs for review and oversight by MDA AgVIC staff are not eligible for ACRRA reimbursement.

The ACRRA fund was created by the 1989 Minnesota Ground Water Protection Act. The ACRRA fund provides partial reimbursement for investigation and cleanup costs associated with agricultural chemical releases, provided that: a) the MDA was given proper notice of the release as required under Minn. Stat. § 18D; b) costs of the investigation and cleanup were reasonable and necessary; and c) that MDA staff have approved all site work prior to its conduct. The ACRRA fund is administered by the Agricultural Chemical Compensation Board (ACRRA Board). The ACRRA Board determines and orders reimbursements or payments from the fund to eligible persons. In making decisions on reimbursement issues on a site, the ACRRA Board depends, in part, upon the recommendations of MDA project staff.

For sites which are contaminated with, or suspected of being contaminated with, agricultural chemicals in addition to non-agricultural chemicals, MPCA staff and MDA AgVIC Program staff will work together to ensure consistent interpretation and application of the guidelines for both the MPCA Programs and MDA AgVIC Program. In situations where staff from both the VIC Program and the MDA AgVIC program spend time on review and oversight, the voluntary party will be billed by both programs.

For more information about AgVIC, call (651) 297-4981, or for additional information about the ACRRA Fund call (651) 297-3490.

7.0 Interaction with the Site Assessment Program

When the MPCA is notified of a release of a substance under MERLA jurisdiction, the property owner or other affected parties are given an opportunity (one opportunity) to enter the VIC Program. As briefly discussed in Guidance Document #1, Introduction to the Voluntary Investigation and Cleanup Program, if the release is not addressed by a voluntary party in a timely manner, the VIC Program will refer the property to the Site Assessment Program. Sites may also be referred to the Site Assessment Program if the voluntary party does not reimburse the MPCA for oversight costs or does not adequately demonstrate the willingness or ability to conduct the necessary response actions in a timely manner. MPCA established the Site Assessment Program to assess potential hazardous waste sites in Minnesota. The Site Assessment Program has been designated to verify the presence of hazardous substances at a particular site and to assess a site’s potential for harming human health and the environment. The Site Assessment Program represents the initial phases of a hazardous waste site investigation under state and federal Superfund Programs.
The Site Assessment Program currently consists of the following four phases: an Initial Site Evaluation (ISE) phase; an Integrated Assessment (IA) phase; an Expanded Site Inspection (ESI) phase; and Hazard Ranking System (HRS) II scoring. A detailed discussion of each phase is provided below.

**Initial Site Evaluation** – During the Initial Site Evaluation phase of the site assessment process, MPCA staff conduct a general review of readily accessible information to characterize and determine if the site warrants further Superfund action. The information gathered during an ISE includes: a site history (type of industrial or commercial activities and owner/operator relationships), known or alleged hazardous substances present (quantity, characteristics, method of disposal), and the potential effect the contamination may have on the nearby population and environment. A limited number of samples may also be collected at this time to assist staff in determining potential or actual threats. Sampling during the ISE phase is usually limited to potential receptor points, such as residential wells.

If there does not appear to be a release that is a threat to the public or environment, the site will be assigned to a No Further Action (NFA) status for future Superfund action. This NFA status is not meant to indicate that there is no contamination present at the site; rather, based on the available information, the site does not appear to warrant additional Superfund action at that time. If new information becomes available regarding the site, MPCA staff will re-evaluate the site’s status.

If the site appears to warrant further Superfund action, the Site Assessment Unit determines if there is a potential Voluntary or Responsible Party who may be interested in entering the VIC program for the purpose of conducting any necessary investigation. If a potential Voluntary or Responsible Party is not found or if that party fails to enter the VIC program to conduct any necessary investigation, Site Assessment staff may enter the site into EPA’s Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS). This system is a listing of all potential and actual hazardous waste sites reported to the EPA nationwide. Entering a site into CERCLIS enables MPCA staff to utilize Federal Superfund money for any necessary additional investigation. Sites may also be referred to the MPCA’s State Superfund Enforcement program for follow-up action, or referred to the appropriate program if it appears the site falls under that program’s jurisdiction (i.e., MDA for agricultural chemical releases).

**Integrated Assessment** – An IA is conducted to verify the presence of contaminants and to provide a sufficient data base to determine if a more expanded investigation is necessary for ranking the site according to its actual or potential hazard. To accomplish these objectives, site specific data on the hazardous substances present, pollutant dispersal pathways, types of receptors, and site management practices are obtained. An IA typically includes the following tasks:
• a review of owner/operator records;

• a survey to document site topography, surface drainage, boundaries, roads, access points, structures, monitoring wells, lagoons, drums, bulk tanks, etc.;

• documenting the location of potentially affected potable wells, affected homes, public buildings, schools and day care enters, sensitive environments, public fisheries, and recreational areas;

• collection and analysis of a limited number of ground water, surface water, soil, sediment, soil gas, or air samples; and

• the possible installation of ground water monitoring wells.

At the present time, IAs are being conducted by either the MPCA staff or a contractor working for the MPCA.

If a release of hazardous substances has been documented at the site, the site may then be added to the State’s Permanent List of Priorities (PLP) or State Superfund List. A Remedial Investigation/Feasibility Study (RI/FS) is then conducted for the site to determine the extent of contamination and to evaluate response action alternatives. After the RI/FS is completed, appropriate response actions (i.e., source removal, ground water pumping, etc.) are undertaken at the site.

A site may also be rated “No Further Remedial Action Planned” (NFRAP) after the IA phase. This is an EPA designation and indicates that the site is not eligible for listing on the National Priorities List (NPL) or Federal Superfund List. As with the NFA designation after the ISE phase, a site that has been designated as NFRAP for further Federal Superfund action may have contamination present at the site. A site with the Federal NFRAP status designation may still warrant some State Superfund action. It should be noted that these ratings are subject to change as more information becomes available.

**Expanded Site Investigation** – An ESI is conducted on a site which is likely to make EPA’s NPL, but more data is needed in order to arrive at a more defined HRS II score. An ESI typically includes the tasks conducted at an IA, however, much more data is collected and typically include installing ground water monitoring wells.

**Hazard Ranking System II Scoring** – If, as a result of the preliminary investigative activities, a site is verified as a hazardous waste site, the site is ranked as to its relative severity against other sites. This is accomplished by using the HRS II scoring model which uses the information gathered during the ISE, IA, and ESI. HRS scoring is required for all sites being listed on the PLP and NPL. HRS scores are used to assist in establishing priorities among sites and to determine a site’s eligibility for federal or state Superfund moneys for response actions.