

Agricultural Voluntary Investigation & Cleanup (AgVIC) Services

Guidance Document 7

The Minnesota Department of Agriculture's (MDA) Agricultural Investigation and Cleanup (AgVIC) Program handles agricultural chemical contamination under Minnesota's Environmental Response and Liability Act (Minn. Stat. § 115B). This document provides general information about the services offered by the AgVIC Program.

AgVIC Program services include technical assistance and issuance of liability assurance letters to promote the investigation, cleanup and redevelopment of property that is contaminated with agricultural chemicals. All investigations and response actions for agricultural chemical investigations must be reviewed and approved by MDA Incident Response Unit (IRU) staff for parties seeking technical assistance or liability assurances.

State law requires that all persons 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.

Technical Assistance

Technical Assistance Letter for Agricultural Chemicals

A voluntary party may enter the AgVIC Program requesting MDA review of documents relating to the investigation or cleanup of a contaminated property. A Technical Assistance Letter from the MDA AgVIC Program communicates the results of the MDA's review of site documents when the party is not interested in or eligible for a liability assurance letter. The MDA may issue a Technical Assistance Letter in situations where an investigation was conducted, but a release of agricultural chemicals was not identified or in other situations where an independent third-party review of environmental reports is requested. Technical Assistance Letters will list the documents included in the review and will include MDA comments concerning the proposed or completed work.

Liability Assurances

Voluntary parties who are not also responsible parties under Minn. Stat. § 18D or 115B often seek documentation from the MDA stating 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 MDA's discretionary enforcement authority and thus, reflect the agency's administrative decision regarding a certain identified release of contaminants or incident. *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.

Administrative Liability Assurances

No Action Letters for Agricultural Chemicals

A No Action Determination states that the MDA will take no action with regard to a specific identified release of agricultural chemicals. A No Action Determination is issued when the MDA 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.

A No Action Letter is issued when the identified contamination does not pose a risk to human health or the environment as determined by the MDA, and therefore, no corrective actions are necessary.

No Further Action Letters for Agricultural Chemicals

A No Further Action Determination states that the MDA will take no further action with regard to a specific identified release of agricultural chemicals. A No Further Action Determination is issued when the MDA concludes that the extent and magnitude of the release has been defined and the response actions have reduced or eliminated contaminant concentrations so that remaining contamination does not pose a risk to human health or the environment, given the current or proposed property use, and therefore, no further corrective actions are necessary.

Limited No Further Action Letters for Agricultural Chemicals

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 with the MDA's administrative "No Action" or "No Further Action" decision. Examples of cases where Limited No Action Letters may be issued are:

- Sites where the investigation or cleanup is limited to one media (e.g. soil or groundwater) and MDA staff believe there is a potential for impacts to other media, but the voluntary party declines to investigate all potentially impacted media.
- Sites where only a discrete area of the property is investigated and remediated. An example of this would be an investigation or cleanup limited to the excavation for a new building or other site development.
- Sites where only a limited number of contaminants which does not include all contaminants of potential concern are investigated or cleaned up.

Limited No Further Action Letters contain disclaimers explaining the limitations of the investigation and/or cleanup. Please note that sites with potential impacts (determined by MDA staff) that are unaddressed/not investigated, by decision of the voluntary party, will be forwarded to the MDA technical staff for prioritization, which may lead to required follow-up and requested work at some point in the future.

Note about disclaimers: All No Action and No Further Action Letters incorporate important standard disclaimers and limitations which define the application of MDA assurances to the specific circumstances addressed in the letter. An example of a disclaimer is the "new information" provision reserving the authority of MDA to take other action if new information obtained after issuance of the letter warrants such action, or if site conditions change.

Statutory Liability Assurances

Lender Letter

This letter explains the liability protection provided to lenders under Minn. Stat. § 115B.03, subs. 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.

No Association Determination Letters

When a voluntary party performs actions at a site contaminated with an agricultural chemical, 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 No Association Determination (NAD) provides protection from this liability. The NAD is a determination from the MDA 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 following criteria must be met:

- The property must have an identified release of an agricultural chemical, hazardous substance, pollutant, or contaminant in soil, groundwater, soil gas, surface water, or sediment. For a naturally-occurring compound, the concentration must be above typical background concentrations.
- 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 holding an easement in the area of the Identified Release.
- 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.
- 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 MDA approved response action plan.

Lender No Association Determination

Although lenders already benefit from the statutory liability protection provided by Minn. Stat. § 115B.03, Minn. Stat. § 115B.178 allows the MDA 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.

Retroactive No Association Determination

A Retroactive NAD is a determination from the MDA 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). To be eligible for a Retroactive NAD, the following criteria must be met:

- The property must have an Identified Release of an agricultural chemical, hazardous substance, pollutant, or contaminant in soil, groundwater, soil gas, surface water, or sediment. For a naturally occurring compound, the concentration must be above typical background concentrations.
- The party must have a current or 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 must not have included the storage, use, or disposal at the property 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 environmental investigation at the site must identify and evaluate all potential source areas of contamination. The extent and magnitude of the release(s) must be defined within the site boundaries.

Off-Site Source Determination Letters

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 for the groundwater contamination.

As stated in 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.

Certificates of Completion

Minn. Stat. § 115B.175 allows the MDA to issue a Certificate of Completion to persons who complete cleanup actions under an MDA approved voluntary corrective 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 AgVIC Program. A significant investment of time and effort is needed in order to fulfill the following requirements:

- A complete soil and groundwater investigation (including monitoring wells) must be conducted at the property.
- The extent and magnitude of all releases must be fully defined, including groundwater contamination extending off-site at concentrations greater than the health risk limits established by the Minnesota Department of Health.
- 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 MDA-approved Voluntary Corrective 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 partial Certificate of Completion (available only to non-responsible parties) must be paired with a Voluntary Corrective Action Agreement which binds the property owner to cooperate with any response actions deemed necessary to address the remaining releases at the property and to avoid any action that interferes with the response actions.
- A non-responsible party seeking a Certificate of Completion must submit an affidavit to the MDA documenting their status as a non-responsible party.

General AgVIC Information

For more information about AgVIC Services, contact Greg Hanson, Incident Response Project Manager, at (651) 201-6681 or Greg.Hanson@state.mn.us

All MDA guidance documents, including applications to the AgVIC Program, can be found at our Web Page Address: <http://www.mda.state.mn.us/pesticide-fertilizer/spills-cleanup>