



New Developments in Brownfields MSBA Environmental Institute

Sara J. Peterson
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Topics for Discussion

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- Use of institutional controls at Minnesota brownfield properties
- Offsite reuse of low-level impacted fill
- Brownfield funding opportunities

Minnesota definition of institutional controls:

“legally enforceable restrictions, conditions, or controls on the use of real property, ground water, or surface water located at or adjacent to a facility where response actions are taken that are reasonably required to assure that the response actions are protective of public health or welfare or the environment.”

Minn. Stat. § 115B.02, Subd. 9a.

Real property affidavits –

- used at brownfield properties where:
 - contaminant concentrations are < risk values
 - contaminants only remotely accessible
- provide notice of residual contamination – no affirmative obligations established
- must be filed with the property records at county recorder's office

Change in MPCA policy on recording of affidavits and covenants:

- Effective November 18, 2008, MPCA will no longer approve Response Action Plan (RAP) Implementation Reports or issue assurance letters until after any required Affidavit or Environmental Covenant has been filed on the property deed.

Minnesota adopted the Uniform Environmental Covenant Act in 2007, modifying the national UECA model by:

- broadening definition of “environmental response project”
- declaring federal covenants (e.g., EPA, DOD) ineffective without State approval
- authorizing civil penalties to enforce covenants as well as injunctive orders
- authorizing termination of covenant by consent or agency decision rather than court proceedings

Minn. Stat. §§ 114E.01 – 114E.65 (UECA),

Contents of Standardized Environmental Covenant:

- activity and use limitations
- affirmative obligations
- easement in favor of agency
- obtaining MPCA approval of restricted activities
- termination process

Environmental Covenant issues:

- obtaining signed acknowledgements of parties with interest in or encumbrance on property
- breadth of restrictions on activities
- no modifications to covenant language
- process for obtaining MPCA approval of restricted activities
- lack of state register

Fill Reuse Issue:

- Removal and disposal of low-level impacted fill from brownfield sites takes up considerable brownfield funds and landfill space.
- Reuse of fill would reduce environmental impact of remediation and free up funds for other projects.
- MPCA and other states are exploring regulatory options for promoting appropriate off-site reuse

Barriers to off-site reuse of impacted fill:

- concern regarding potential CERCLA/MERLA liability
- absence of risk-based criteria for Diesel Range Organics, resulting in default criteria of non-detect for unrestricted off-site reuse
- matching local supply of and demand for fill
- stigma of fill from brownfields, even where no contaminants identified

Some states (PA, NJ, CT) have established new rules or policies providing:

- best management practices for off-site reuse of impacted fill
- permitting or approval process for off-site reuse
- liability assurances for importers and exporters of impacted fill

MPCA formed workgroup in 2008 to explore the issue, plans to issue report in spring or summer 2009.

Brownfield Funding Opportunities

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Sources of brownfield funding in Minnesota:

- **DEED**: investigation/RAP development grants, cleanup grants, revolving loan fund (RLF)
- **Met Council Tax Base Revitalization Account (TBRA)**: grants for investigation, RAP development, abatement
- **Petrofund**: reimbursement for investigation and cleanup of releases from petroleum storage tanks
- **MPCA Drycleaner Fund** reimbursement, Brownfield Assessment Program
- **ACCRA**: reimbursement for investigation and cleanup of releases of pesticides, fertilizers, other agricultural materials
- **Hennepin County Environmental Response Fund (ERF)** and RLF
- **Ramsey County ERF** cleanup grants

Status of MN brownfield funding sources:

- Business as usual, for now: **DEED, Hennepin and Ramsey County, ACCRA, Petrofund**
- **Met Council:** pending legislation would authorize temporary transfer of TBRA funds to address transit operating deficits. Spring TBRA cycle canceled.
- **Drycleaner Fund:** currently a 2 yr backlog for reimbursement
- **MPCA Targeted Brownfield Assessment Program:** currently oversubscribed

EPA brownfield-related federal stimulus funds:

- \$600MM for accelerated superfund cleanups (including \$10-25MM for S. Mpls. arsenic cleanup)
- \$200MM for UST cleanup
- \$100MM for brownfield cleanup grants (existing applicants)

Questions or comments?