

Introduction to the Agricultural Voluntary Investigation & Cleanup (AgVIC) Program

Guidance Document 5

The Minnesota Department of Agriculture (MDA) provides liability assurance for agricultural chemical contamination on real estate property, for use in property transactions and other purposes. Through the Agricultural Voluntary Investigation and Cleanup (AgVIC) program, MDA staff will provide adequate review of the environmental investigation and (if needed) cleanup work on properties with agricultural chemical contamination. After the site work is complete, the AgVIC program can issue liability assurance letters documenting that state requirements have been met.

Why would I need a liability assurance letter?

Liability assurance letters from the MDA will limit liability as assigned by the state for agricultural chemical contamination at sites in Minnesota. Buyers, sellers, property owners, developers, lending institutions, and insurers will often require liability assurance letters as protection from investing in or divesting from property that is contaminated and may need to be cleaned up, or to document that the site is "clean" at the time of sale as a measure of protection against potential future liability.

In order to maintain an "innocent landowner defense" in environmental liability, most property transfers involve Environmental Site Assessments (ESAs), including a Phase I AgESA and a Limited Phase II ESA, as outlined by ASTM standards E 1527 and E 1903 (see MDA guidance document [GD14 The Property Transfer Environmental Site Assessment \(ESA\) at Operating and Non-Operating Agricultural Facilities](#)). A property transfer ESA is conducted to evaluate the actual or potential environmental problems at a given property. The AgVIC program can offer assistance in the ESA stage, or after agricultural chemical contamination has been documented.

While a well-written purchase agreement may provide some protection from liability between private parties, the purchase agreement has no bearing on liability assigned by state or federal regulatory programs for environmental contamination. For such liability protection from the State of Minnesota, the AgVIC program offers liability assurance letters to interested parties after a property with agricultural chemical contamination is investigated and cleaned up to state-accepted criteria. Refer to MDA guidance document [GD7 Agricultural Voluntary Investigation & Cleanup—Types of Written Assurances](#) for further explanation on the written assurances available.

Landowners and operators who are not selling but are aware of documented agricultural chemical contamination on their site can also enter the AgVIC program for an accelerated cleanup. Through routine inspections or other means, contamination may be documented on a property. Once contamination is documented, any construction, improvement or soil disturbance in the contaminated area may affect liability issues and possibly increase the costs of a cleanup. In order to avoid these limitations on property use or management, an expedited cleanup of the contaminated area may be completed through the AgVIC program, so that activities on the site are not limited. Liability assurance letters could be provided after the environmental cleanup is complete.

Is other assistance available for agricultural chemical environmental cleanups?

Financial assistance for costs for conducting the actions needed for the environmental investigation and cleanup is available through the Agricultural Chemical Response and Reimbursement Account (ACRRA).

Why is the MDA involved?

The 1989 Minnesota Comprehensive Ground Water Protection Act authorized the Minnesota Department of Agriculture (MDA) to utilize the Minnesota Environmental Response and Liability Act (MERLA) to establish a voluntary program for sites contaminated with agricultural chemicals (pesticides and fertilizers). The MDA is the lead state agency regulatory authority for agricultural chemical investigations and cleanups. The agricultural chemical cleanup program is located in the Incident Response Unit, Pesticide and Fertilizer Management Division of the MDA.

The MDA Incident Response Unit operates under the authorities of:

- the Agricultural Chemical Liability Act (Minnesota Statutes Chapter 18D), and
- the Minnesota Environmental Response and Liability Act (MERLA) (Minnesota Statutes Chapter 115B).

What's the first thing to do when I discover agricultural chemical contamination?

If laboratory analysis of soil or water samples documents agricultural chemical contamination, or if you observe any contamination such as stains or residues in soil that you suspect to be agricultural chemicals, you are required by law to immediately notify the Minnesota Duty Officer. Doing so also preserves your eligibility for reimbursement through ACRRRA. Call the 24-hour Duty Officer at (651) 649-5451 (Twin Cities) or 1-800-422-0798 to report the suspected incident. The Duty Officer will automatically send this information to several agencies as their procedures require. We recommend that you ask the Duty Officer to also forward the information to MDA, so that the MDA may offer guidance on the next step.

If you choose not to immediately address the contamination that is reported, then the details of the incident are referred to Incident Response Unit technical staff who assesses the relative priority (risk) of the release (see MDA guidance document [GD8 MDA Incident Response Program Overview](#)). Depending on staff workload and completeness of information available, it can take several months for a site to be scored and fully evaluated. High priority sites will be requested, and if necessary ordered, to conduct an investigation and clean up. Low priority sites will be activated when MDA staff resources are available.

What happens if my site is not high in priority or I am in the middle of a property transaction and need a quick response from the MDA?

In these situations, the MDA will, upon request and application, provide review services for voluntary investigations and cleanup plans. This assistance may include review and approval of a requester's environmental investigation plans and reports, and corrective action plans and implementation. The person requesting assistance under the AgVIC program agrees to pay for the department's costs of providing assistance. Money received by the department for assistance under this program must be deposited in the Remediation Fund.

The AgVIC program, originally referred to as the Voluntary Cleanup and Technical Assistance Program, was established in January 1993 in response to the growing need for MDA review and oversight of voluntary investigations and corrective actions involving real property.

Who is eligible for the AgVIC Program?

Any individual or firm that is willing to conduct an investigation and possible cleanup of a property is eligible to enter the AgVIC program. The AgVIC program staff routinely provides assistance in the investigation and cleanup of properties that are not sufficiently high in priority for the MDA to address in the ordinary administration of the Incident Response program, as well as those properties that are in the process of a property transaction and do not want to wait for the prioritization process.

Do I have to follow the guidance documents exactly?

The MDA has a series of guidance documents to assist with the environmental investigation and cleanup process. Closely following the guidance is advised in completing an investigation or other action if the voluntary party is seeking an expedited approval of the action by the MDA. We do understand that in some situations another approach may be more effective. To help with the expedited approval, all reports or proposals that describe deviations from the guidance

documents should include a justification for the change. We recommend discussing any possible deviations with AgVIC staff before submission of the report or proposal.

What about due diligence?

The guidance documents are not intended to describe the inquiry that may be necessary for a person to satisfy any legal definition of due diligence. However, by following the guidelines and conducting the field investigations after approval of the work plan by MDA staff, a voluntary party may show intent to discover all potential problems associated with a property.

How much time does it take for review of a report or submittal?

The amount of time required to review a document submitted to the AgVIC staff will vary depending upon the scope and quality of the document, and the volume and complexity of the information the document contains. The AgVIC staff will make every effort to review and respond to documents within 30 to 45 days following submittal. If you need a very quick review, make sure AgVIC staff are aware of that need.

How much does the AgVIC program cost?

Program staff costs are estimated at approximately \$110.00 per hour. Because the related costs of overhead will vary and the amount of time required to review documents depends on the complexity of the project, it is not possible to provide an overall cost figure.

Am I eligible for ACRRRA reimbursement if I enter AgVIC?

Once an incident is documented and properly reported, the costs incurred in conducting the actions needed for an AgVIC approved investigation and cleanup generally are eligible for ACRRRA reimbursement. Certain costs are not eligible under the ACRRRA Program. For example, MDA AgVIC oversight and review costs would not be considered eligible for reimbursement, as these are not the actions of actually performing the cleanup. Also, costs for Phase I and Limited Phase II ESAs may not be eligible because the incident has not yet been documented and reported. Refer to MDA Guidance Document [GD6 Agricultural Voluntary Investigation & Cleanup \(AgVIC\) -ACRRRA Relationship](#) and the ACRRRA Guidance Document [ACRRRA.OOI Reimbursement of Costs for Agricultural Chemical Incident Cleanups](#) for further explanation on the relationship between the ACRRRA program and the AgVIC program. Government subdivisions and certain other parties are not eligible to apply for ACRRRA reimbursement.

How do I pay for assistance received from the AgVIC staff?

Voluntary parties are invoiced by the MDA on a quarterly basis. Voluntary parties should submit full payment to the Minnesota Department of Agriculture within 30 days of the date of the invoice.

How do I apply for the program?

In order to request assistance from the MDA AgVIC program, it is first necessary to complete the Agricultural Voluntary Investigation & Cleanup (AgVIC) Application. There is no application fee. The Phase I AgESA and Phase II reports should be included with the AgVIC application. It is important that the appropriate person sign the application, as the application does obligate the signatory or the signatory's employer to pay fees associated with MDA assistance on the project. The application should be submitted to:

Minnesota Department of Agriculture
Pesticide and Fertilizer Management Division
Incident Response Unit
625 Robert Street North
St. Paul, MN 55155-2538

General AgVIC Information

For more information, contact Greg Hanson, Incident Response, at (651) 201-6681 or greg.hanson@state.mn.us
All MDA guidance documents can be found at our Web Page Address: <http://www.mda.state.mn.us/pesticide-fertilizer/spills-cleanup>