

MDA Incident Response Program Overview

Guidance Document 8

Each component of the Minnesota Department of Agriculture (MDA) Incident Response Program is briefly described in this program overview.

The MDA is lead agency for response to, and cleanup of, agricultural chemical contamination (pesticides and fertilizers) in Minnesota. This lead role was an outcome of the 1989 Minnesota Groundwater Protection Act which provided the MDA authority for agricultural chemical contamination under the Minnesota Environmental Response and Liability Act (MERLA-the Minnesota "Superfund") and created a reimbursement fund for the partial reimbursement of agricultural chemical cleanup costs (Agricultural Chemical Response and Reimbursement Account - ACRRA). The program operates under the primary authorities of Minnesota Statutes Chapters 18D, the Agricultural Chemical Liability, Incident, and Enforcement Law and 115B (MERLA).

The MDA Incident Response Program focuses on three major areas of work: The Agricultural Voluntary Investigation & Cleanup (AgVIC) Program, the Comprehensive Program, and the Superfund Program. The Incident Response Unit provides guidance documents which describe the sampling requirements, work plans, reports and other documents that are typically required for an investigation and cleanup.

The Incident Response Program uses a risk-based approach to determine cleanup requirements. Program investigations assesses the potential contaminant migration pathways (groundwater, surface water, direct soil exposure, etc.) and the potential receptors (people, potable wells, regional aquifers, the environment, etc.) at each site. Actions taken to clean up a site often include contamination source removal through excavation, soil and ground water treatment and other technologies. Cleanup goals are based on the potential threat from contamination at each site. Passive degradation of contaminants may be an acceptable corrective action at some sites.

DISCOVERY OF SITE AND SITE PRIORITIZATION

New incident site are identified in a variety of ways including sampling of a spill, pre-construction sampling by a facility, site assessment sampling by a facility or a potential buyer, routine sampling by MDA inspectors, or third party reports of contamination such as dead vegetation on or adjacent to a facility, or sampling results of water supply wells. In addition, the MDA invites agricultural chemical facilities to enter the AgVIC Program when the facilities are decommissioned.

Once contamination has been identified, the facility owner or other potentially responsible party is provided with the sampling results and offered the option to enter the AgVIC Program to address the contamination. If the potentially responsible party chooses not to enter the AgVIC Program, the site is evaluated for prioritization. The MDA prioritizes incident sites using both quantitative and qualitative considerations. The EPA Hazard Ranking System (HRS-2) Preliminary Assessment (PA) Scoresheet, using standard pesticide and regional data, is used to assure a systematic approach to assessing site specific risk. This approach provides a general measure of risk for the groundwater, surface water, soil vapor and direct soil exposure pathways; however, it does not consider important risk factors such as the quantity of products used at a site, the length of operations at a site, the amount and quality of the data, and the extent and magnitude of soil contamination. Therefore, the final assessment of risk is always site specific based on MDA staff professional judgment.

AGRICULTURAL VOLUNTARY INVESTIGATION & CLEANUP (AgVIC) PROGRAM

Contaminated sites may be addressed on a voluntary basis by either responsible or voluntary parties through the AgVIC Program. A responsible party may wish to address a site prior to a property transaction, while a voluntary party may choose to clean up a site prior to redevelopment.

In the AgVIC Program, the voluntary party can limit the investigation to the area of contamination or a portion of the facility and is not required to investigate the entire site including areas where agricultural chemicals were stored, produced, transported, distributed or handled. The voluntary party can proceed at their own pace during the investigation, however, areas of contamination must be investigated and cleaned up, if required, within a reasonable timeframe. Sites that do not make adequate progress may be removed from the AgVIC Program and placed in the Comprehensive Program.

If certain criteria are met, AgVIC staff can provide binding written assurances from MERLA liability including No Further Action and Limited No Further Action Letters, No Association Determinations, Off-Site Source Determinations, Technical Assistance Approval Letters and Certificates of Completion.

Minnesota Statutes require voluntary parties to pay for time MDA staff spend working on AgVIC sites. Therefore, voluntary parties must agree to reimburse AgVIC staff costs at the beginning of the AgVIC project.

COMPREHENSIVE PROGRAM

In the Comprehensive Program, the MDA requires that an entire site be investigated and cleaned up, if necessary. Many of the sites addressed through the MDA Comprehensive Program include current and former agricultural chemical retail facilities in rural Minnesota which supply pesticides and fertilizers to support agriculture.

The MDA will send a formal letter requesting an investigation to the responsible party and recommend that an environmental consultant be hired to conduct an investigation. The MDA will also request that an Agricultural Environmental Site Assessment (AgESA) be completed and submitted to the MDA. The AgESA compiles and reviews historical aerial photographs, agricultural chemical inventories, past and current facility practices, past inspections, investigations and cleanups, the surrounding land use and other information about the site.

Once the AgESA has been reviewed, the MDA will arrange a site visit with the facility manager and the environmental consultant to identify high risk areas for soil sampling. High risk areas may include mix and load areas, storage areas, load-in and load-out areas, runoff areas, water fill areas and other areas of suspected or known contamination. Soil and groundwater sampling may be conducted in phases until the extent of soil and groundwater contamination has been determined. Other environmental media such as surface water may also need to be sampled. Corrective actions will likely be required for contaminated soil that exceeds site specific soil cleanup goals.

If a responsible party does not make adequate progress or is unwilling to continue with the request for investigation and cleanup, the MDA may issue a Corrective Action Order to compel performance of an investigation or complete corrective actions. The order may include penalties, and if the order is not complied with, the MDA may go to court to enforce the order.

SUPERFUND PROGRAM

Sites contaminated by hazardous waste may be addressed through the Superfund program under MERLA authorities. Some of the sites addressed in the MDA Superfund Program include former wood treatment, pesticide manufacturing and pesticide storage facilities. Sites are scored according to the risk posed to human health and the environment and are then added to the Permanent List of Priorities (PLP), Minnesota's State Superfund list. Cleaning up hazardous waste Superfund sites is often a multi-phase process.

The MDA will send a Request for Information to potentially responsible parties (PRPs) for information on business operations, practices and other details. Depending on review of that response as well as other available information, the MDA will issue a Commissioner's Notice Letter to the PRPs stating why the MDA believes that the PRPs

are responsible parties for the site. Unless information is provided which indicates that a PRP is not responsible under MERLA, the MDA will send a Request for Response Action (RFRA) which includes investigation and cleanup requirements and provides a schedule for completion of these requirements.

Alternatively, a responsible party can negotiate a Consent Order with the MDA. The Consent Order is signed by both parties and provides an investigation and cleanup process and schedule that is similar to the RFRA.

If there is no responsible party willing to do the work or if there is no viable responsible party, the MDA can conduct the investigation and cleanup with Minnesota Superfund monies, if funds are available.

Once a site has been investigated and remediated to appropriate cleanup goals, the site can be de-listed from the PLP.

Minnesota Statutes require responsible parties to pay for time MDA staff spend working on Superfund sites.

ACRRA REIMBURSEMENT

The Agricultural Chemical Response and Reimbursement Account (ACRRA) was created to partially reimburse persons for costs incurred in cleaning up agricultural chemical (pesticide and fertilizer) incidents.

The ACRRA fund is administered by the Agricultural Chemical Compensation Board (Board). The Board determines the amount of reimbursements from the fund based on information a person provides on an application. If you have questions, or require further clarification about the ACRRA program, please contact the ACRRA Administrator directly at 651201-6490 or Jennie.Andryski@state.mn.us