



# What Environmental Attorneys Should Know About Brownfield Redevelopment

MN State Bar Association CLE  
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# MPCA mission

Protect and improve the environment and enhance human health.

# MPCA's Brownfield Program

## Two Integrated Programs



### Petroleum Brownfields Program (PBP)

- MN Statute § 115.C, the Petroleum Tank Release Cleanup Act
- Petroleum related contaminants



### Voluntary Investigation & Cleanup (VIC) Program

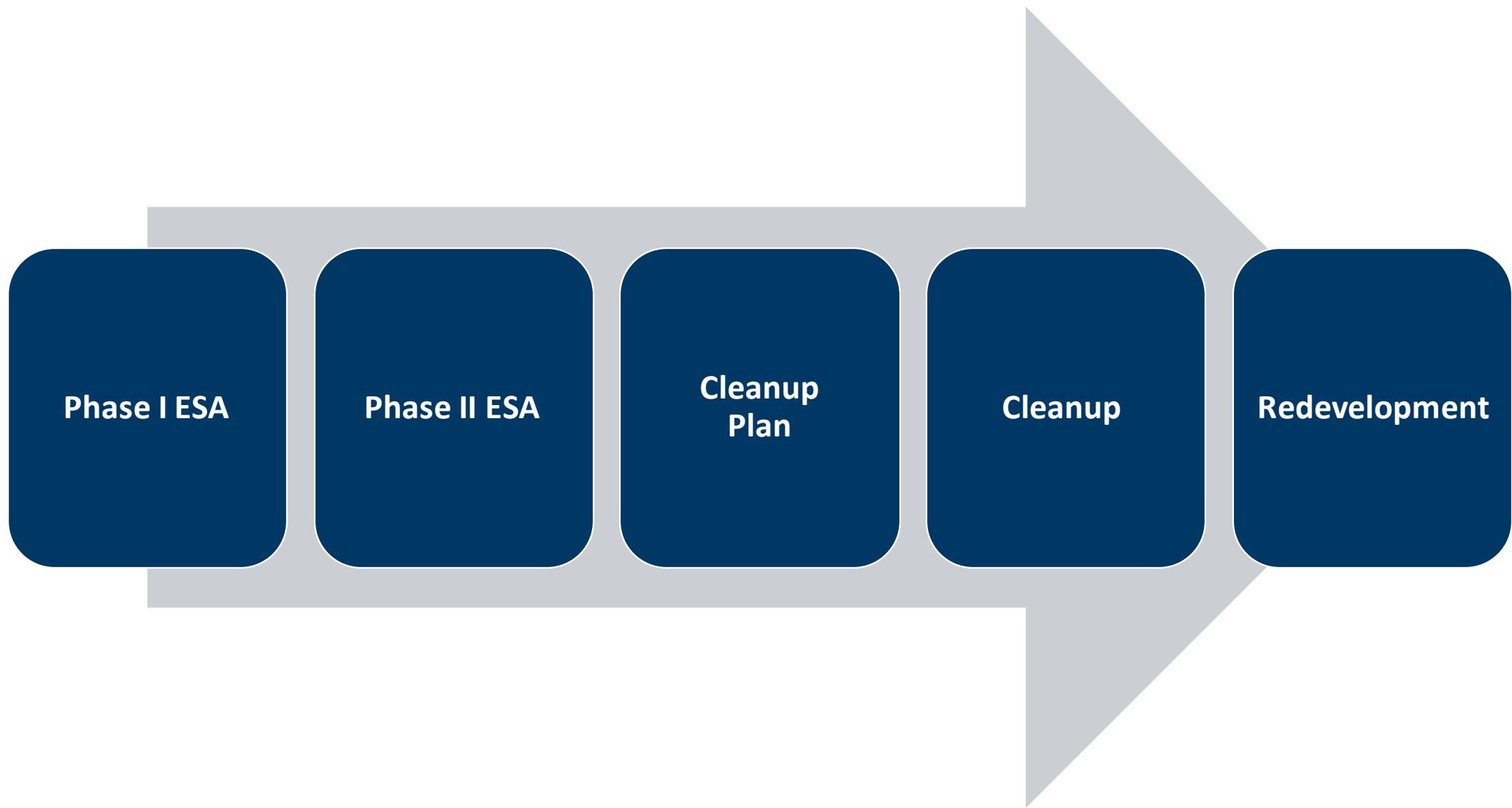
- MN Statute § 115.B, the Minnesota Environmental Response & Liability Act (MERLA)
- Hazardous substance contamination

# Purpose of the Brownfield Program

Created by the legislature to address liability concerns & provide technical oversight for voluntary parties

## **Voluntary Parties include:**

- Developers
- Local Units of Government
- Lenders
- Property/Business Owners
- Non-Profit Organizations
- Anyone involved in buying, selling, financing, or redeveloping contaminated property



## **The Brownfield Redevelopment Process**

# Brownfield Guidance Updates

<b>Guidance</b>	<b>Status</b>
<b>Phase I Environmental Site Assessment</b>	Complete
<b>Phase II Environmental Site Assessment</b>	In Progress
<b>Response Action Plan</b>	In Progress
<b>Best Management Practices for Development on or Near Former Dumps</b>	In Progress

## Phase I ESA Report for Brownfield Program enrollment

This guidance document provides a general overview of the Phase I Environmental Site Assessment (Phase I ESA) process and information about how to prepare a Phase I ESA report that best meets the needs of the Minnesota Pollution Control Agency (MPCA) Brownfield Program. It is intended for a general audience who may not be familiar with the content and purpose of a Phase I ESA, as well as for environmental professionals preparing to enroll a site in the MPCA Brownfield Program. Most services requested from the MPCA Brownfield Program require, at the time of program enrollment, submittal of a Phase I ESA report completed within the last year. This requirement reflects the importance of the report as a foundation for program decisions about liability, assurance letters, potential development plans, and the need for and scope of an environmental investigation.

### I. What is a Phase I ESA?

A Phase I ESA evaluates readily available information from a variety of standard sources about historical use(s), regulatory involvement, and the current condition of a site for the purpose of identifying potential *recognized environmental conditions* (REC). The Phase I ESA report provides conclusions and recommendations based on the information collected. Sampling of soil, groundwater, and/or soil vapor is not typically conducted during a Phase I ESA; the evaluation is primarily a desktop review, supplemented by interviews and a site visit to visually inspect the site for potential sources of contamination and signs of any release(s) of contaminants. Typical entities who commission a Phase I ESA report for a property include potential purchasers or tenants, current property owners, and lenders. The entity who commissions a specific Phase I ESA report is referred to in the report as the "User".

The Phase I ESA must be completed by a qualified environmental professional who has the specific education, training, and relevant experience necessary to develop opinions and conclusions regarding conditions indicative of releases or threatened releases at or to the site. Sound professional judgement is key when preparing a Phase I ESA report, as many aspects of it rely on the interpretation and evaluation of site information and observations.

### II. Why is a Phase I ESA important?

Conducting a thorough Phase I ESA is the first step of environmental due diligence when planning a property transaction. A Phase I ESA may identify conditions that the User would want to understand prior to acquiring or leasing the property, or providing financing, including conditions that could result in liability or which present a risk to human health if not properly addressed. For example:

- By being aware of known or likely areas of contamination at a site, a new owner can avoid activities that would expose them to liability under [Minnesota Statute 115B](#), such as spreading of soil contamination during earthmoving activities.

# Other Remediation Guidance Status

## Guidance Document (All Working Titles)

- MERLA Groundwater Investigations
- MERLA Site Decision Guidance
- MERLA Remedy Selection
- MERLA Soil Investigation
- Offsite Reuse of Fill Guidance
- Petroleum Soil Treatment and Disposal
- Property Use and Institutional Control
- Remediation Methane Guidance
- Remediation PFAS Guidance
- Surface Water Guidance



# PFAS Considerations

- MPCA Remediation is currently operating under the PFAS Monitoring Plan (MP) that was released in March of 2022 [PFAS Monitoring Plan \(state.mn.us\)](https://state.mn.us/pfas-monitoring-plan)
- The Monitoring plan provides guidance for monitoring PFAS at:
  - Solid waste, wastewater and stormwater facilities
  - Hazardous waste landfills
  - Facilities with air emissions
  - Superfund and brownfield sites
- The PFAS Monitoring Plan does not establish facility-specific requirements, but outlines how the MPCA plans to prioritize locations for PFAS monitoring and what the monitoring will entail
- The PFAS Monitoring Plan will remain in effect for Remediation until the release of the Remediation PFAS Guidance Document anticipated to be released in late March of 2024



# Liability Assurances



Lender No Association Determination

No Association Determination (NAD)

No (Further) Action Determination

Off-Site Source Determination

Certificate of Completion (COC)



Leak Site Tank Removal Verification

Leak Site File Closure Confirmation

Off-Site Tank Release Determination

General Liability (GL) Letter

# Environmental Justice & Brownfields

## Understanding environmental justice in Minnesota

Learn more at MPCA website [f](#) [t](#) [l](#)  MINNESOTA POLLUTION CONTROL AGENCY

Environmental Justice - Overview of areas of concern

People in poverty

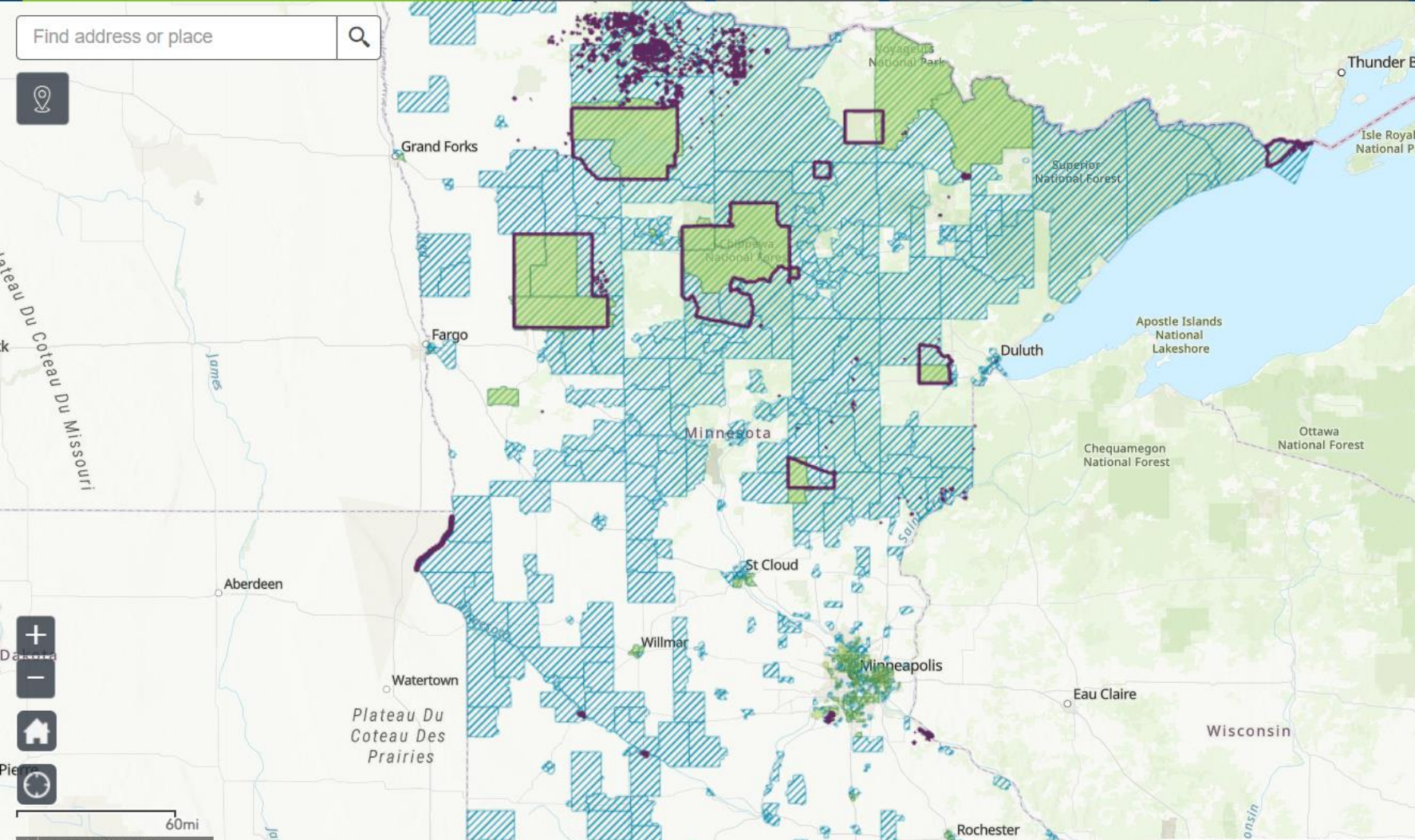
People of color

Tribal areas

Language




MPCA Air Pollution Score

MPCA What's in my neighborhood sites



The MPCA is committed to making sure that pollution does not have a disproportionate impact on any group of people — the principle of environmental justice. This means that all people — regardless of their race, color, national origin or income — benefit from equal levels of environmental protection and have opportunities to participate in decisions that may affect their environment or health.

The MPCA considers tribal areas and census tracts with higher concentrations of low income residents, people of color, or limited English proficiency as areas of increased concern for environmental justice. This screening tool allows users to identify census tracts where additional consideration or effort is warranted to ensure meaningful community engagement and to evaluate the potential for disproportionate adverse impacts using four criteria:

-  At least 35% of people reported income less than 200% of the federal poverty level
-  40% or more people of color
-  Federally recognized Indian Tribes
-  At least 40% of people have limited English proficiency

[Click to restore the map extent and layers](#)

# MPCA Brownfield Assessment Grants

- Phase I and Phase II Environmental Site Assessments
- Hazardous Materials testing
- Response Action Plan (cleanup) preparation & MPCA fees

# MPCA Brownfield Assessment Grants - Priorities

- Environmental Justice Areas of Concern
- Emerging developers (5 projects or less)
- Redevelopment: affordable housing, jobs, etc.
- Evidence of community support

# Brownfields Community Outreach & Engagement Unit

- Proactive – community facing
- Marketing BF assessment funding
- Environmental Justice communities
- Emerging Developers





MINNESOTA POLLUTION  
CONTROL AGENCY

## Thank You

Martha Faust

651-757-2275

[martha.faust@state.mn.us](mailto:martha.faust@state.mn.us)

Brownfield Grants Team

651-757-2904

[brownfieldgrants.mpca@state.mn.us](mailto:brownfieldgrants.mpca@state.mn.us)