

## New Laws Encourage Redevelopment of Polluted Land

*By Joseph G. Maternowski  
Shareholder, Moss & Barnett, P.A.*

The Highway 280 corridor, located between Minneapolis and St. Paul, has long been the site of industrial operations including a scrap yard, a zinc coating, trucking depots and several manufacturers. Over time, these operations created contamination of one kind or another that spread over a large area.

With the passage of federal and state Superfund laws in the 1980s, the entire area seemed to stagnate. When businesses moved out or closed their doors, buildings were boarded up and abandoned. Fears of environmental liability meant that there was absolutely no interest in buying or redeveloping any of these tainted properties.

Today the area has a new, revitalized look. The aging industrial landscape has been replaced by new multi-use buildings. Polluted sites in the Highway 280 corridor and in other former industrial zones throughout the Twin Cities and across the country are now buzzing with activity.

What has changed?

Minnesota and other states have enacted voluntary cleanup laws that modify the onerous Superfund liability scheme. In Minnesota, parties may enter the Voluntary Investigation and Cleanup program to address contamination caused by hazardous substances or petroleum constituents. Parties who voluntarily undertake a cleanup of site may now obtain liability assurances from state environmental agencies. Soil or groundwater contamination that once stymied redevelopment can now be left in place.

Lingering concerns about liability have been minimized. Minnesota has entered into a memorandum of Agreement with the U. S. Environmental Protection Agency (EPA) that designates the MPCA as the lead agency. This means that the EPA does not review or approve the investigation or cleanup of these sites. Parties who complete a State-approved cleanup will not be subject to liability under the federal Superfund law.

Minnesota's voluntary cleanup programs offer private parties a range of liability assurances including:

- A **Technical Assistance Approval Letter** can help a party obtain input from the MPCA prior to seeking other types of liability assurances.
- A **No Action Letter** contains an assurance that no further cleanup is needed. A party may redevelop a property and leave contaminated soils in place.
- An **Off-Site Determination Letter** documents that pollution is from an adjoining property and provides that the Minnesota Pollution Control Agency (MPCA) will take no action against a party.
- A **No Association Determination** provides that a party had no connection to contamination when it acquired the property.
- A **Certificate of Completion** may be issued after a party has implemented an approved cleanup program.

In Minnesota, and most other states with voluntary cleanup programs, participants must reimburse the State for costs associated with review of Work Plans and the issuance of the requested assurances. Generally, the process begins with the submittal of an application followed by a Phase I Environmental Site Assessment and a Phase II Site Investigation Work Plan. After the MPCA approves the work, a party may proceed and submit the results.

The emergence of State voluntary cleanup programs has helped create new opportunities in urban industrial areas. Private parties can now design creative solutions to reuse long-ignored industrial sites. Cleanup grants and loans are also available to economic development authorities to spur redevelopment of Brownfields.

Joseph G. Maternowski is a shareholder at Moss & Barnett, P.A., in Minneapolis, practicing in the areas of environmental and administrative law. He advises clients about compliance with environmental health and safety laws and regulations in areas ranging from commercial and real estate transactions to litigation, enforcement and permitting matters. He can be reached at (612) 347-0286 and [MaternowskiJ@moss-barnett.com](mailto:MaternowskiJ@moss-barnett.com).

This article provides general information only and is not intended to be legal advice or opinion on any specific facts, issues or circumstances. Readers with specific legal questions should consult their attorney.

410480/1