

# Cleanup readiness at priority qualified facilities

Recover taxpayers' investment in environmental cleanup and ensure fairness for all stakeholders.

## The challenge

Priority qualified facilities are a special category of closed landfills – listed as both state and federal Superfund sites — whose owners refuse to clean them up to remove human health and environmental risks, but also refuse to let the state to do this critical cleanup work. In 2017, the Minnesota Legislature authorized the use of condemnation authority to acquire priority qualified facilities, to clean up the sites and protect the environment and human health. But a few changes are needed to ensure the law is protecting taxpayers and the landfill owners.

Under the current law, the state can pay the owner to acquire the property through condemnation or the owner maintains their ownership through the cleanup process. If the state buys the property, it cannot collect cleanup expenses from the owner until after the work is done, often years later, when the owner's financial situation may have changed. By that time, the money from the state's purchase may be spent or out of the state's reach.

If an owner retains the property, the state can place a lien on it, but may not be able to collect on the lien if the property is generating income, under current law. A landfill owner could then sidestep their obligation to repay cleanup expenses entirely. Or the state could be forced to collect only a portion of its expenses under the six-year statute of limitations, if an owner has limited ability to pay or the property's value has dipped in that timeframe. Loopholes in the current law could allow an uncooperative landfill owner to benefit financially from the state's efforts to clean up their property.



*Excavating garbage at a closed Minnesota landfill*

## Proposal

Modify state law to allow the state to acquire the property and recover remediation costs at the same time, if the state acquires the property using condemnation. Also, protect landfill owners from double liability: Paying cleanup costs and, during the condemnation process, being reimbursed only for the value of the property as contaminated.

In situations where the facility owner continues ownership: Allow the state to collect on its lien even if the property is earning income, and remove the six-year time limit on the lien. Establish a windfall lien option so that the state, not the property owner, would recoup the financial rewards from the state's investment in environmental cleanup. The windfall lien would return to the state an amount equal to the difference between the fair market value of the property before the cleanup, and its increased value – due to the cleanup – afterwards.

## Why it's important

The Closed Landfill Program was created by the Legislature in 1994 to provide a way to clean up contaminated closed landfill sites without involving the complex legal-liability framework of the Superfund process. Closed landfill owners who have willingly entered the Closed Landfill Program turn over responsibility for cleanup work, closure construction, and perpetual care of the landfills to the state. In exchange for this relief, these landfill owners agree to:

- Turn over their insurance policies
- Allow the state to do the necessary cleanup work on the property

Under current law, uncooperative landfill owners get the benefits of the closed landfill program while avoiding some of the responsibilities required of cooperative owners. They may also benefit financially by forcing the state to pay both to condemn their property and to do the cleanup. Uncooperative landfill owners should not receive a windfall, at the expense of Minnesota taxpayers, that cooperative landfill owners have not received. Minnesota taxpayers – not a single private party -- should receive the benefits of state-funded clean up at a facility, both the environmental and public health benefits and the financial gains.

## For more information

Greta Gauthier  
Assistant Commissioner for Legislative and Intergovernmental Relations  
Minnesota Pollution Control Agency  
greta.gauthier@state.mn.us  
Office: 651-757-2031 • Mobile: 651-338-8955

## Care and maintenance of closed landfills

Add environmental covenants to the toolbox for working with landfill owners to ensure proper landfill care and to prevent pollution.

### The challenge

There are about 150 closed landfills scattered across the state, older sites that were not eligible for the Closed Landfill Program and permitted landfills more recently closed. To protect public health and the environment, the MPCA works to ensure that protective covers and other measures are maintained on these sites. If a property with a closed landfill is sold, however, new owners may inadvertently damage the landfill's protective covers and risk damage to the environment or human health.

At other cleanup sites in the state where contamination is contained and left in place, the MPCA can negotiate with the landowner to place an environmental covenant on the property that ensures pollution-prevention measures are maintained. For 150 closed landfills in Minnesota, current rules only allow the agency to place a non-binding note in the real property records.



*Covers and liners help keep contaminants in landfills from affecting groundwater and other natural resources. The MPCA is requesting authority to negotiate covenants to help protect such measures.*

### Proposal

Provide the tool of legally binding agreements, or environmental covenants, to ensure long-term care and maintenance of closed landfills. The agreements could be subsequently modified with the consent of both parties. The proposed new authority would create consistency across cleanup programs, and make the legal tools offered by the Uniform Environmental Covenants Act available to the solid waste program.

### Why it's important

Being able to create environmental covenants for Minnesota's closed landfill sites would ensure that structures and practices meant to protect the environment would be maintained, regardless of changes in property ownership. The covenants would also ensure that future owners were fully informed about the waste buried on their property. Recently, old dumps have been disturbed for new construction or new land activity, exposing the public and the environment to risk from contamination and necessitating cleanup processes.

## For more information

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Assistant Commissioner for Legislative and Intergovernmental Relations

Minnesota Pollution Control Agency

[greta.gauthier@state.mn.us](mailto:greta.gauthier@state.mn.us)

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# Update priority criteria for Superfund cleanups

Ensure that the MPCA's site ranking is consistent with federal guidelines.

## The challenge

The MPCA uses the U.S. EPA's Hazard Ranking System, adopted in 1990, to score contaminated sites based on the risks they pose to the environment and human health. However, the 1990 ranking system is outdated and was updated by the EPA in 2018. Current state rules cite the 1990 system, which is now out of date and does not account for risks from vapor intrusion. The science of vapor intrusion has advanced in recent years, and we now know that some contaminated air vapors can move upward through soils and into home and businesses, causing indoor air pollution. The MPCA wants to use these new criteria so state and federal scoring of contaminated sites is consistent.



*Testing for the presence of harmful soil vapors under a basement floor at a site in St. Louis Park.*

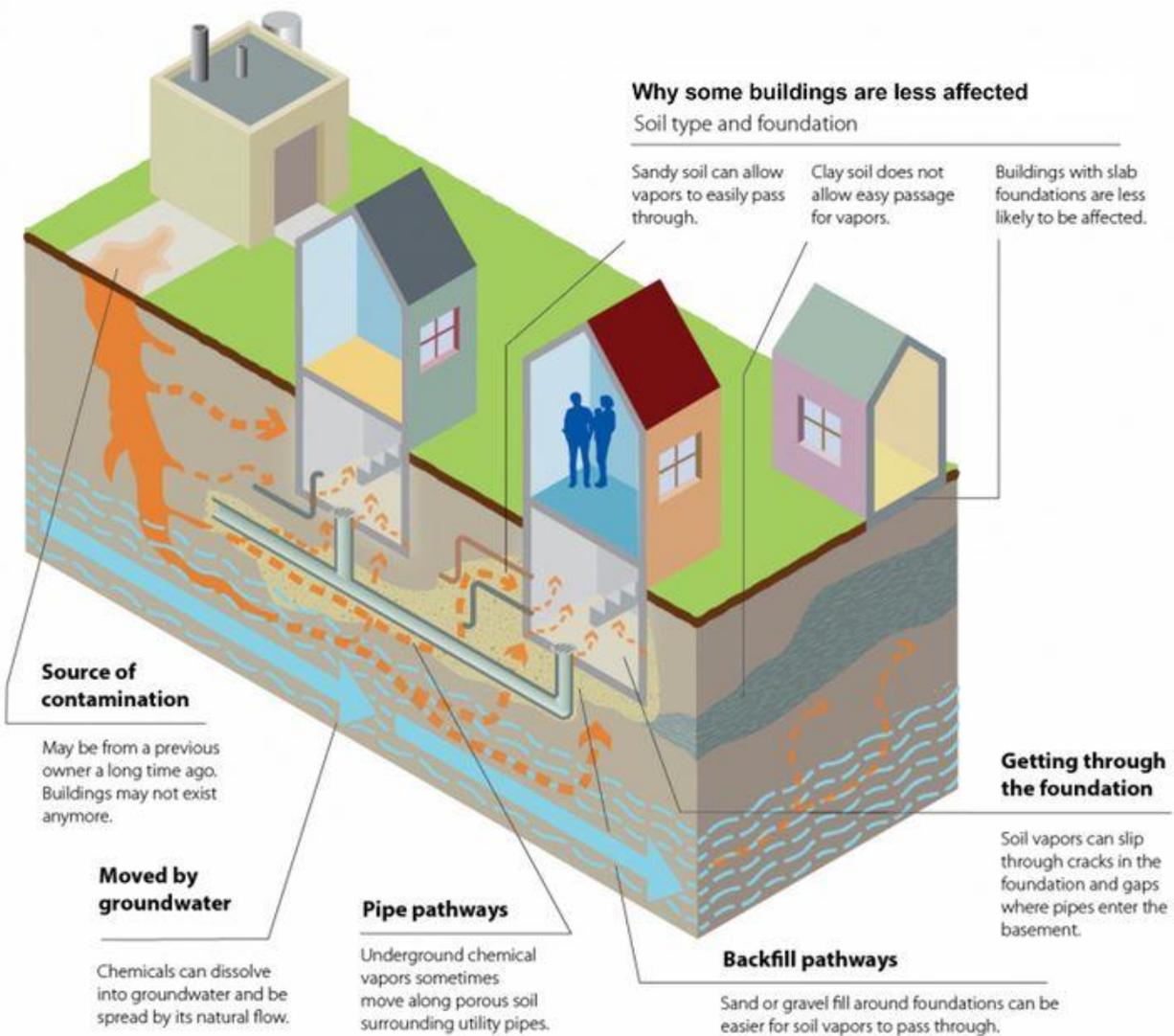
## Proposal

Authorize rule changes so the MPCA can use the most current federal guidance and tools available. In the short term, the agency would employ the new Hazard Ranking System Quickscore tool, adopted by the U.S. EPA in 2018, which accounts for the risks of vapor intrusion. Using the new tool would ensure that the agency considered vapor intrusion as an important risk factor to the communities where these sites are located. In the long term, the rule change would allow the agency to use new scientific and regulatory tools as they are developed.

## Why It's important

Having access to the most advanced tools and information would allow the MPCA to more effectively account for harmful contamination at sites around the state.

## How vapor intrusion happens: a complex path



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