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Minnesota  
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FY 1995 SUPERFUND

# Minnesota Superfund Legislative Report

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## A Report on the Use of the Minnesota Environmental Response and Liability Act Fund

The Minnesota Environmental Response and Liability Act (MERLA) of 1983 established the Environmental Response, Compensation, and Compliance Fund, and authorized the Minnesota Pollution Control Agency (MPCA) to spend these funds provided for under the Superfund Account (Account) to investigate and clean up releases of hazardous substances or contaminants. The Minnesota Comprehensive Ground Water Protection Act of 1989 amended MERLA to authorize the Minnesota Department of Agriculture (MDA) access to the Account to investigate and clean up incidents involving agricultural chemicals. Account investments are managed by the Minnesota Department of Finance with the interest deposited into the Account. A Hazardous Waste Generator Tax is collected and deposited into the Account by the Minnesota Department of Revenue. Another significant source of income to the Account is reimbursements from responsible parties for MPCA-oversight activity expenditures. Reimbursements to the Account cover 65 percent of the program's administrative costs. These administrative costs represent only 10 percent of all clean-up dollars spent in Minnesota. Another source of Account income includes penalties totaling \$643,000 in Fiscal Year 1995 (FY95) from state Hazardous Waste Program enforcement activities.

The MPCA and MDA use the authorities granted under state and federal Superfund laws to identify, evaluate and clean up, or direct the cleanup of sites that pose hazards to public health, welfare and the environment.

As required by Minnesota Statutes, section 115B.20, subdivision 6, this report details activities for which Account dollars have been spent during FY95 by the MPCA and MDA. The report also sets forth future program directions. The cost of producing this FY95 report was \$9,726.00.

The Superfund Program Expenditures and Income Table details FY95 MERLA programmatic and cumulative expenditures and income. The administrative costs represent salaries for 56 staff as well as travel, equipment, non-site-specific legal costs, and supply expenditures associated with responding to emergencies and implementing site cleanups. FY95 budget figures are current as of August 31, 1995, and are subject to change as expenditures, obligations, fines, and reimbursements are received or paid out. All cumulative income and expenditure figures are approximations.

### Superfund Program Expenditures and Income

Balance Forward 7-1-94	\$ 2,166,000	
Plus Prior Year Adjustment	1,837,000	
Adjusted Balance Forward	\$ 4,003,000	
<b>INCOME TO THE ACCOUNT</b>		
	<b>FY1995</b>	<b>FY1983-1995</b>
Appropriations	\$ 0	\$18,400,000
RP Reimbursement, HW Penalties	3,649,000	23,836,000
Hazardous Waste Generator Tax	1,906,000	11,132,000
Interest	192,000	8,520,000
Less Revenue Refund	(95,000)	(1,493,000)
Total Income to the Fund	\$ 5,692,000	\$60,395,000
<b>EXPENDITURES FROM THE ACCOUNT</b>		
	<b>FY1995</b>	<b>FY1983-1995</b>
Administrative (MDA=\$244,343)	\$4,342,000	
Site-Specific Costs (MDA=\$296,181)	1,598,625	
Site-Specific Support Costs (MDA=\$27,031)	271,373	
HW Generator Loan Program	50,000	
Unliquidated Obligations (MDA=\$60,878)	408,002	
MERLA Fund Expenditures:	\$ 6,670,000	\$57,326,000
Transfer to General Fund	44,000	88,000
Total Expenditures and Obligations	\$ 6,714,000	\$57,414,000
MERLA Account Balance 6-30-95		-\$2,981,000 -

# Future Superfund Challenges

The face of the federal Superfund Program will be changing significantly over the next few months. The U.S. Congress has identified the federal program as broken and has discussed several ideas on how it should be fixed. The changes that Congress makes to the federal program may have significant impacts on how Minnesota conducts the cleanup of hazardous waste sites in the state. Because of the uncertainty of what changes Congress will make to the federal program and their impact on Minnesota, it is not possible at this time to propose changes to the state program.

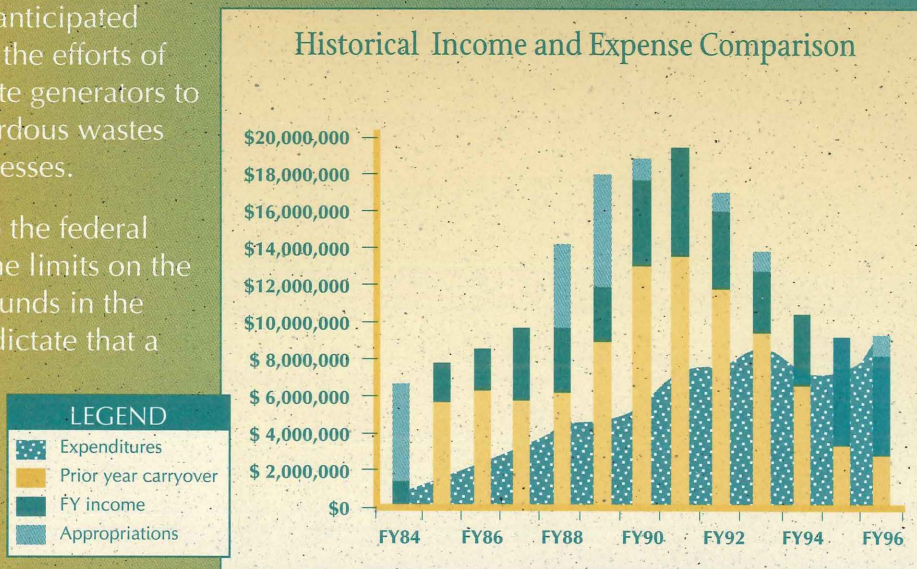
In addition to the changes being proposed to the federal program, funding issues are also arising under the state program. As indicated by the Historical Income and Expense Comparison graph, the Account balance is dwindling as appropriations, reimbursements, fines, and dedicated tax revenue are not keeping pace with the clean-up activities paid out of the Account. The Account is facing insufficient income to continue operating the Superfund Program as it has in the past. The Hazardous Waste Tax was revised in FY94 and was intended to address the demands placed on the Account to conduct clean-up activities. However, it is currently generating only about half the anticipated amount due to the efforts of hazardous waste generators to eliminate hazardous wastes from their processes.

The changes to the federal program and the limits on the availability of funds in the state program dictate that a

new approach to addressing the remaining hazardous waste sites be found. Some of these changes can be made administratively, and the MPCA is currently in the process of re-designing the state Superfund program within the limits of existing state laws. MERLA-fund-financed activities were cut in FY95 and will be cut back in FY96 to levels within available funding. Emphasis is being placed on work completed under the Voluntary Investigation and Cleanup (VIC) Program and on work with responsible parties so the desired outcomes of the program continue to be realized while we await decisions by Congress.

It is noteworthy to acknowledge the financial relief the MDA Agricultural Chemical Response and Reimbursement Account provides to the Superfund Account. For example, in FY95 the MDA reimbursed more than \$1,054,913 in corrective-action costs from the account for agricultural chemical incident remediation. Without the Agricultural Chemical Response and Reimbursement Account, more sites would have demanded the use of MERLA Superfund Account financing.

Historical Income and Expense Comparison



FY 1995 Superfund

# Legislative Report

The Drycleaner Environmental Response and Reimbursement Law, passed during the 1995 Legislative Session, will provide another funding mechanism to address the cleanup of sites contaminated by dry-cleaning operations. This new approach provides a mechanism for the dry-cleaning industry to pay into its own clean-up account, through annual fees and a fee on dry-cleaning solvents collected by the Minnesota Department of Revenue. When a cleanup is required at a dry-cleaning facility, funds from this account will be used by the Superfund Program to conduct the cleanup or to reimburse an owner or operator who conducts the cleanup themselves.

## Other Superfund Activities

### Hazardous Waste Generator Loan Program

The 1993 Minnesota Legislature established a hazardous-waste-generator revolving loan program to assist small business in fulfilling their clean-up responsibilities and in restoring the value of their business properties. The program is managed by the MPCA's Hazardous Waste Division. The loan account was established as a two-year, revolving loan program, with \$250,000 in dedicated MERLA funding. The loans, which can range from \$1,000 to \$50,000, are available from the MPCA for small businesses required to investigate and clean up hazardous waste contamination at their business locations. In FY95, one \$7,205 loan was awarded to Kostal Ford in Park Rapids, Minnesota, to conduct investigations related to a release from a drainfield.

## MPCA Community Relations in Superfund

Through the MPCA's community relations efforts, the agency has brought more citizens than ever before into the decision-making process involving Superfund sites. In addition to setting up Community Work Groups at a number of sites, the agency has responded to an estimated 300 calls and 50 information requests per month about the state and federal Superfund programs.

MDA gave presentations at numerous environmental and agricultural business conferences and seminars. They covered the unique and successful combination of MERLA authority, the Agricultural Chemical Response and Reimbursement Account reimbursement incentive, and a voluntary clean-up program.

## Looking Ahead

The goal of the state Superfund Program is to protect the public health and environment from releases of hazardous substances, pollutants, and contaminants from hazardous-waste sites. It is a clean-up program that is being evaluated for its success and future needs.

It is clear that the Superfund Program has to change its way of doing business to be successful in moving toward its goal. The program today is at a crossroads and the next year's events will be critical in determining its future role in identifying, addressing, and remediating contaminated Superfund sites across the state. The MPCA and MDA believe it will be necessary to come to the Legislative Session in 1997 to discuss changes to the Superfund Program that will make it successful into the future. By that time the actions of Congress will be known and the state program can be designed to complement the federal program.

# FY 1995 Superfund

## MERLA Superfund Responsibilities

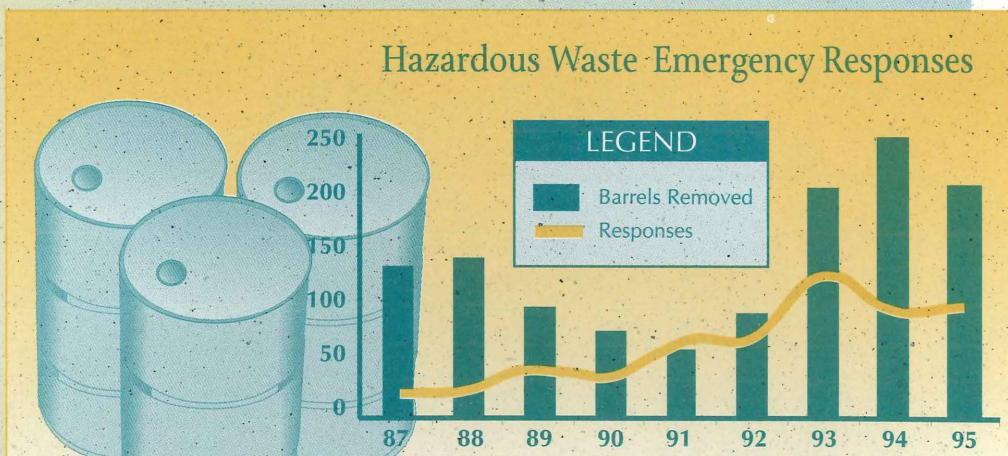
The MPCA and MDA Superfund program fulfills MERLA requirements for the 181 sites listed on the state's Permanent List of Priorities as well as requirements in the Land Recycling Act of 1992 for the Voluntary Investigation and Cleanup (VIC) Program site list. The MPCA also works with the U.S. Environmental Protection Agency (EPA) on enforcement and fund-financed activities for the 41 federal Superfund sites in Minnesota listed on the National Priorities List. MPCA is the lead agency for most of the investigation and cleanups at the federal Superfund sites in Minnesota under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 and the Superfund Amendments and Reauthorization Act of 1986. MPCA and MDA Superfund responsibilities consist of five basic components:

### 1. Responding to Emergency Situations

Superfund Account dollars are used to respond to emergency situations, such as contaminated drinking-water supplies, drum removal, or other situations that have been declared "emergencies" by the Commissioner of the MPCA or MDA, or which have been determined to be imminent health hazards by the Minnesota Department of Health. In FY95, the MPCA Commissioner declared two emergencies: the Little Fork Ground Water Site and the Jerry's Tank Service Site. Since 1983, the MPCA has responded to 45 Commissioner-declared emergencies. Three of these continued into FY95 and involved contaminated drinking-water supplies where the MPCA took action to provide affected residences with alternate drinking-water supplies.

The Spills Units of the MPCA's Hazardous Waste Division and the MDA Agronomy Services Division are on call 24 hours a day to respond to the estimated 1,700 incidents reported each year. In FY95, \$36,492 in MERLA Superfund Account dollars were used by the MPCA and \$6,810 by MDA to respond to approximately 100 emergency incidents, including abandonment cases involving more than 221 barrels of dumped hazardous substances. Emergency actions were also undertaken in seven other instances where either petroleum or other toxic vapors seeped into sewers, buildings or wells, or where vehicles overturned, spilling contaminants.

Hazardous Waste Emergency Responses



## 2. Discovering and Assessing Sites for Possible Addition to the State or Federal Superfund Lists

Potential Superfund sites that are identified by or reported to the MPCA, and for which property owners do not step forward to conduct voluntary actions, enter a formal assessment process for addition to the state Permanent List of Priorities or the federal National Priorities List. Data collected during a site investigation is used to determine eligibility and to establish relative priorities among sites on the Permanent List of Priorities and/or the National Priorities List.

### Site Assessment Program Accomplishments

DESCRIPTION OF SITES	FY 1995	FY1983-1995
Final Site Determinations	16	464
Scoring Packages to EPA	1	48
Added to the Federal National Priorities List	1	47
Delisted from the Federal National Priorities List	4	7
Added to the State Permanent List of Priorities	5	215
Delisted from the State Permanent List of Priorities	3	34

MDA's program also prioritizes sites. Responsible parties that choose not to

conduct voluntary actions are requested to conduct cleanups under MDA guidance. Responsible parties usually qualify for partial reimbursement of clean-up costs from the Agricultural Chemical Response and Reimbursement Account. If responsible parties are unwilling or unable to perform cleanups, MDA formally assesses the site for listing on the Permanent List of Priorities and/or the National Priorities List.

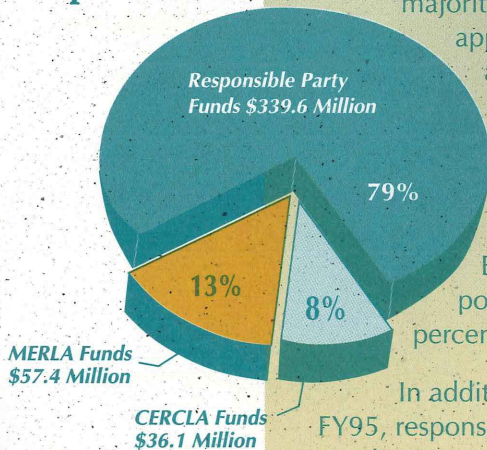
## 3. Overseeing Responsible Parties in the Investigation and Cleanup of Superfund Sites

The state's Superfund approach has been that of "enforcement first," focusing on the identification of responsible parties to undertake voluntary cleanup of hazardous waste sites. This approach resulted in the vast majority of cleanups being implemented using private dollars. Of approximately \$35 million spent on clean-up activities in FY95, about \$26.3 million, or 75 percent of the total, was spent by responsible parties.

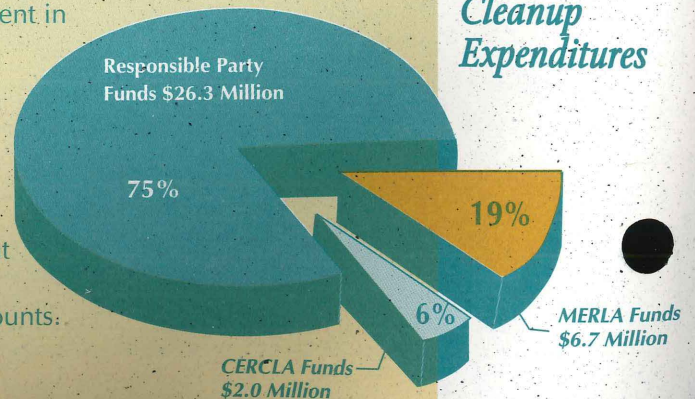
The FY95 Site Cleanup Expenditures chart compares funds expended by responsible parties, CERCLA, and MERLA at traditional Superfund sites. The FY83-95 Site Cleanup Expenditures chart shows long-term cumulative expenditures, portraying that responsible parties have spent approximately 79 percent of the \$433.1 million total expenses to date.

In addition to the clean-up commitment in FY95, responsible parties have made reimbursements of nearly \$3 million to the Account to cover costs incurred by the MPCA and MDA in administering and overseeing clean-up activities. Reimbursements will continue to be remitted, depending on established payment plans and MPCA and MDA enforcement activities (i.e., litigation) on delinquent accounts.

### FY 83-95 Site Cleanup Expenditures



### FY 95 Site Cleanup Expenditures



### Traditional Superfund Program Accomplishments

DESCRIPTION OF SITES	FY 1995	FY1983-1995
Investigation and/or Cleanup Underway	162	N/A
Responsible Party RAs Initiated	14	149
MERLA-Funded RAs Initiated	3	39
Federally-Funded RAs Initiated	1	26
Records of Decision Executed	1	68
MPCA Involved in Lawsuits	6	45
Declared Emergencies	2	30
Abandoned Barrels and Drums Secured	221	1,272
Emergency Response Incidents	103	590

## 4. Investigating and Cleaning Up Superfund Sites Using Account Funds

If MPCA and MDA staff cannot identify responsible parties that have contributed to a release or threatened release of hazardous substances, pollutants, or contaminants at identified Superfund sites, or the responsible parties are unable or unwilling to take appropriate action, the MPCA and MDA may use the Account to conduct an investigation and cleanup. After cleanup is complete, the

site is delisted from the Permanent List of Priorities or the National Priorities List. Where applicable, cost recovery is sought.

During FY95, \$2,284,000 of MERLA Superfund Account dollars were used by the MPCA and MDA to cover site-specific costs and the costs of contracting to respond to releases of hazardous substances, pollutants, or contaminants at 18 sites on the Permanent List of Priorities. As mentioned earlier, the Account was also used to respond to emergency incidents and abandoned barrels.

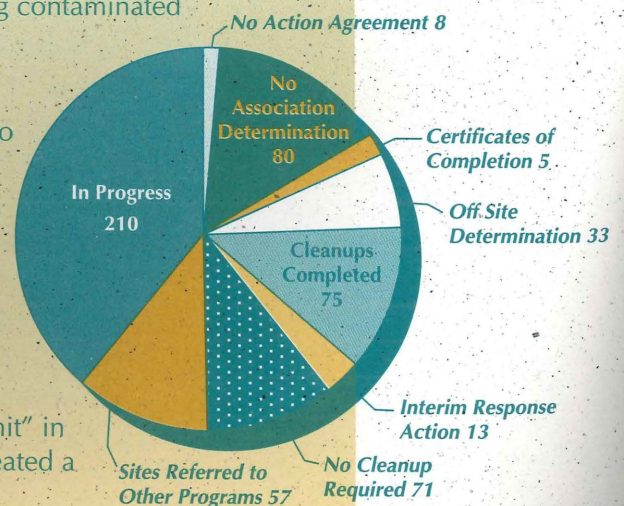
## 5. Providing Technical Assistance and Legal Assurances to Voluntary Parties Conducting Investigations and Cleanups of Contaminated Property to Return It to Productive Use

The key functions of the MPCA's VIC Program are to review the adequacy of site investigations and approve clean-up plans. By obtaining MPCA approval of investigation and response-action plans, landowners, lenders, and potential developers can be reasonably confident that they know the extent of any environmental problems on the property. They can then determine the most appropriate cleanup, and can estimate the cost of cleanup needed to satisfy statutory requirements. The voluntary investigation and cleanup process provides the information needed to make financial decisions about developing or transferring contaminated or potentially contaminated property.

The VIC Program was reimbursed at a rate of 91.5 percent, or \$1,079,000 of the total amount billed to voluntary parties for FY95 activities.

The VIC Program received one of 10 national Innovations in State and Local Government Awards. This award provided \$100,000, which helped the MPCA educate hundreds of interested parties about the MPCA's creative approach. For example, VIC program staff helped organize and facilitate the first EPA Regional Brownfields "Summit" in Chicago in the spring of 1995. The award also created a

### MPCA/MDA VIC Sites' Status



grant program for nonprofit organizations to conduct site investigations on their property, allowing for its continued use and development.

Work has continued on a voluntary clean-up pilot project under the Preliminary Assessment/Site Investigation Cooperative Agreement with EPA, the nation's first EPA-funded voluntary clean-up project. The VIC Program also signed one of the nation's first Memoranda of Agreement with EPA, ensuring that EPA need not concur on MPCA approvals or become involved in sites being addressed by the VIC Program.

The MDA's VIC Program focuses on sites contaminated by agricultural chemicals. The MDA's VIC Program is relatively new and growing. A total of 48 voluntary parties have enrolled in MDA's program, with 17 of these sites already cleaned up. The MDA's VIC Program was reimbursed at a rate of 96 percent of the total amount billed to the voluntary parties for FY95 activities. An added incentive to enroll in the program is that most voluntary parties can receive reimbursements of their eligible corrective-action costs from the Agricultural Chemical Response and Reimbursement Account.

During FY95, the MPCA's File Evaluation Program performed 1,200 routine reimbursable file evaluations for outside clients. A file evaluation includes a review of various lists, maps, or databases that identify sites at or within one mile of the property being investigated.

### Voluntary Cleanup Program Accomplishments

DESCRIPTION OF SITES	FY 1995	FY1989-1995
MPCA Property Transfer File Evaluation Requests	1,200	12,429
Voluntary Sites MPCA/MDA Added	234	642
Site Completion Activities	118	285

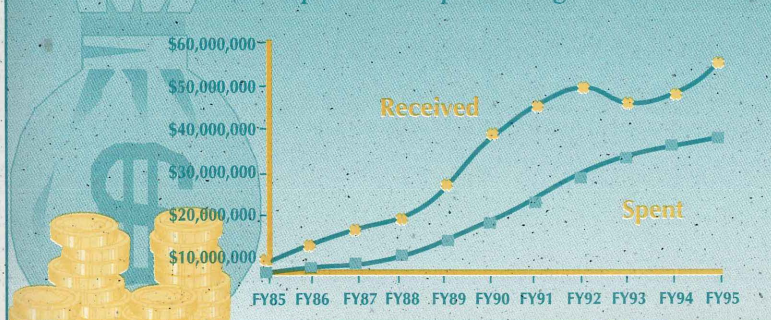
## Use of Federal Fund Dollars

The Cumulative Federal Funds table notes current and historical totals of federal Superfund dollars received and spent under CERCLA. During FY95, the MPCA received an additional \$8,697,661 which can be spent over several fiscal years. These dollars are received for: responding to emergencies; conducting preliminary assessments and investigations on Minnesota's Comprehensive Environmental Response, Compensation, and Liability Information System sites; contracting activities at federally-funded sites; and administrative support activities.

The 41 National Priorities List sites are eligible for federal funding of clean-up activities based on national priority. State funds are needed to match 10 percent of the amount received from federal Superfund for site-specific remedial actions.

The MPCA spent \$1,994,032 in federal funding in FY95. Of this amount, \$564,641 was spent on site-specific clean-up actions at seven sites; \$48,453 on enforcement clean-up actions at three sites; and \$1,380,938 on programmatic activities.

Cumulative Federal Superfund Cooperative Agreement Funds



# Legislative Report

# Minnesota's Superfund Program

*The public knows it as "Superfund," the program established by the federal government in 1980 and by the Minnesota Legislature in 1983 to address old hazardous-waste sites where contamination threatens public health or the environment. The Minnesota Environmental Response and Liability Act, Minnesota's Superfund law, gives the Minnesota Pollution Control Agency and the Minnesota Department of Agriculture the authority to request those responsible for the contamination to undertake investigation and cleanup. Superfund law also allows state funding to be used for environmental emergencies or cleanup of sites when the responsible party is unknown, unable to pay or unwilling to undertake cleanup.*

*FY 1995 Minnesota Superfund Legislative*

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