

# CERCLA, RCRA, and MERLA Update 2017 MINNESOTA ENVIRONMENTAL INSTITUTE

CERCLA, RCRA, AND MERLA UPDATE  
APRIL 20, 2017

Presented by  
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& McKay

## Freeport Landfill

- Breakdown of MPA's Settlements
- U.S. EPA Assumes Responsibility
- OLC PRPs Named
- Legislative Fix? Indemnification for PRPs?



## Tanip Property North Carolina

- Property transfer to new owner, limited knowledge and control over site
- Environmental cleanup required after discovery of contamination
- Environmental cleanup required after discovery of contamination
- Environmental cleanup required after discovery of contamination



## Palestine v. Zerk Company Metals

- Toxic exposure in workers that resulted in fatalities
- Plaintiffs argued that metals deposited in ground during operations, into land and air
- Plaintiffs argued that metals deposited in ground during operations, into land and air



## United States v. McGee

- Defendant convicted of multiple crimes including criminal
- Defendant convicted of multiple crimes including criminal
- Defendant convicted of multiple crimes including criminal



## Hazardous Waste Generator Regs

- EPA promulgated new rule for hazardous waste generators
- New rule makes no changes

## Ebert v. General Mills

- Plaintiffs General Mills disposed of spent solvents including TCE at the site in
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## United States v. Sawyer

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## THANK YOU

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## Minnesota Soil Vapor

- Sites used to be monitored for groundwater and soil impacts
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- Sites used to be monitored for groundwater and soil impacts



## City of Lake Elmo v. M Co.

- In 2005, M Co. manufactured PCEs
- In 2005, M Co. manufactured PCEs
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## Ohio Valley Envtl. Coal. v. River Cities Disposal

- Plaintiffs sued to clean up the site and
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## EPA Soil Vapor

- CERCLA Hazard Ranking System (HRS) revised to include evaluation of soil vapor impacts
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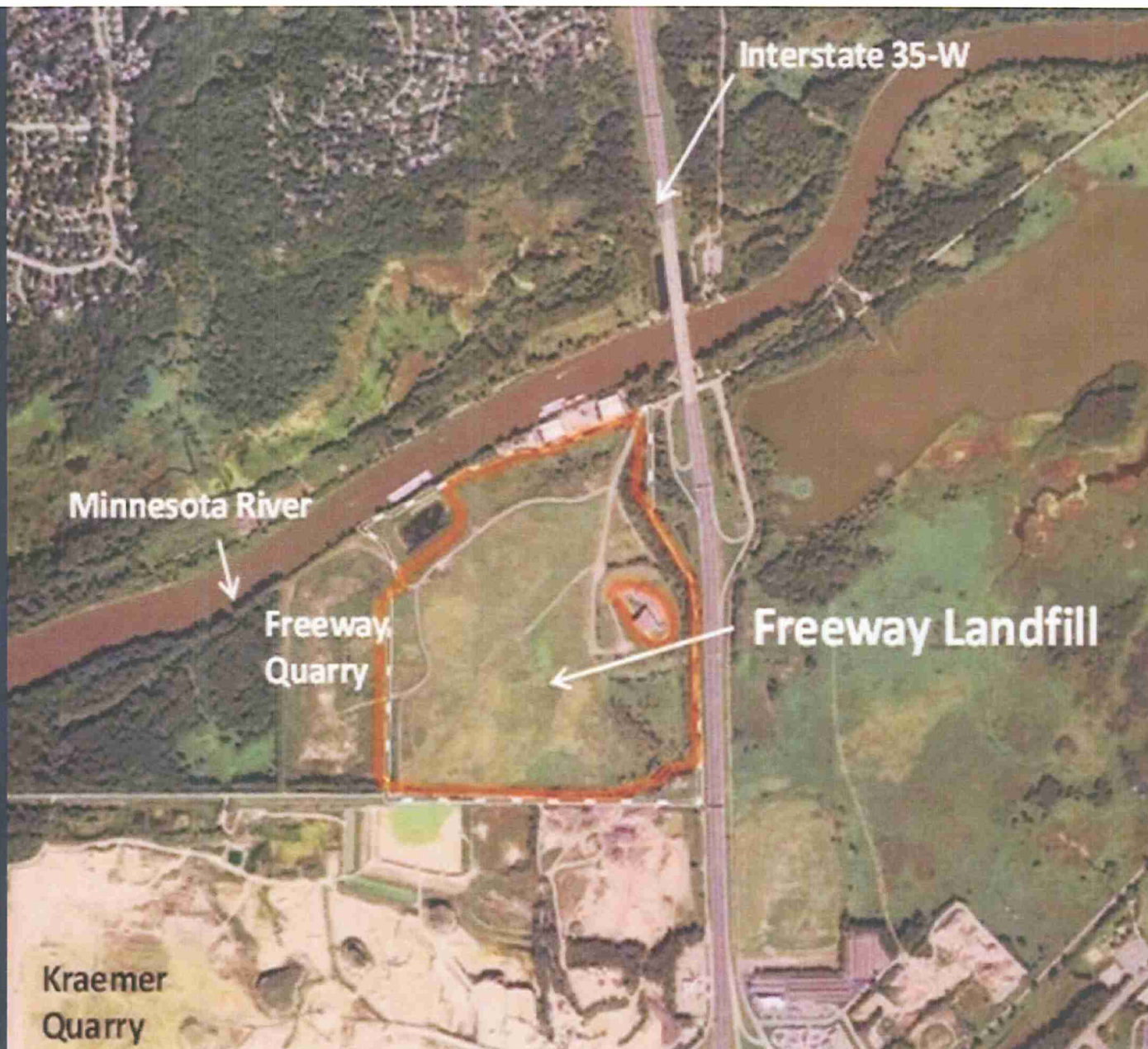
## *Freeway Landfill*

- Breakdown of MPCA Negotiations
- U.S. EPA Assumes Responsibility
- 182 PRPs Named
- Legislative Fix? Indemnification for PRPs?



Prezi





# Minnesota Soil Vapor

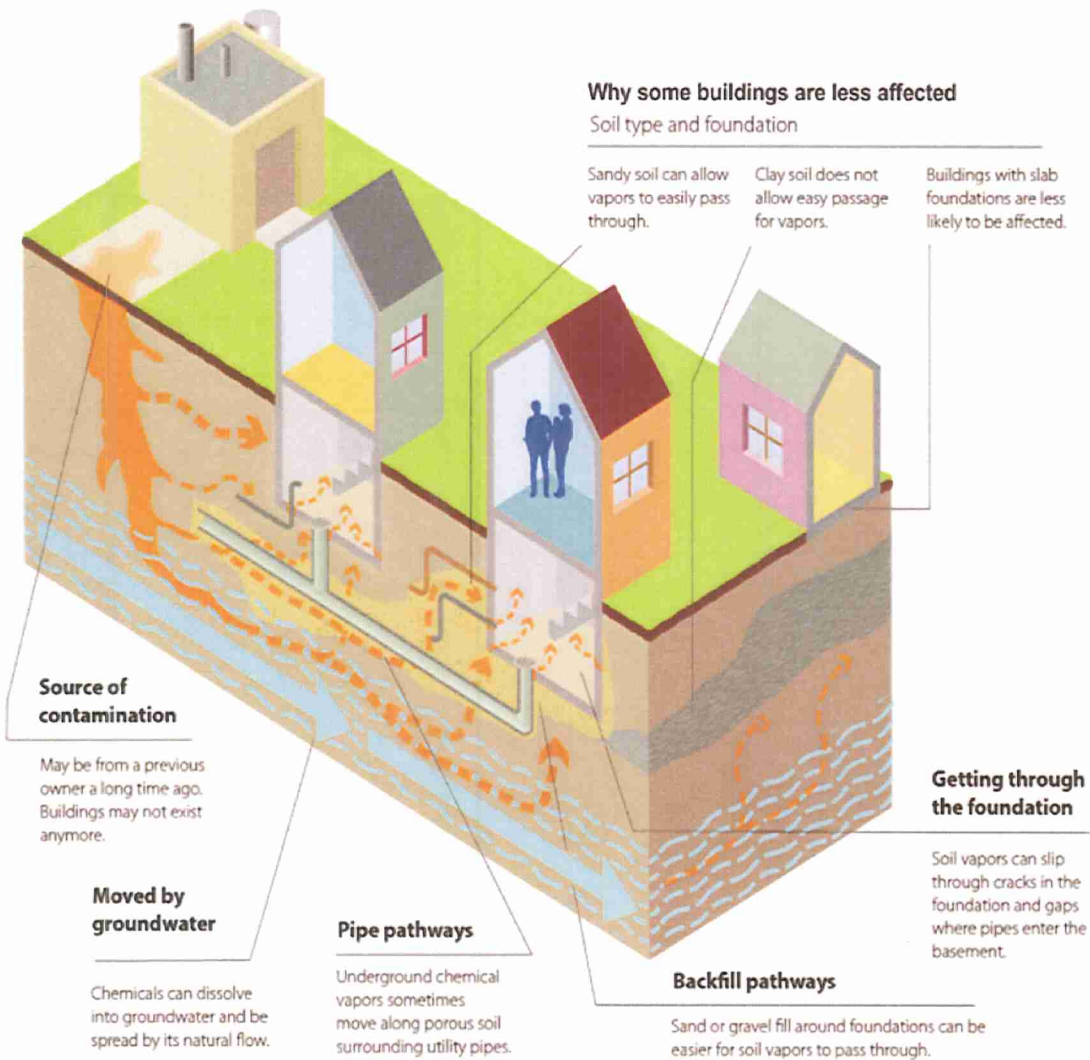
- Sites used to be assessed for groundwater and soil impacts.
- Now soil vapor must be investigated
- Ten (10) new sites added to State PLP.





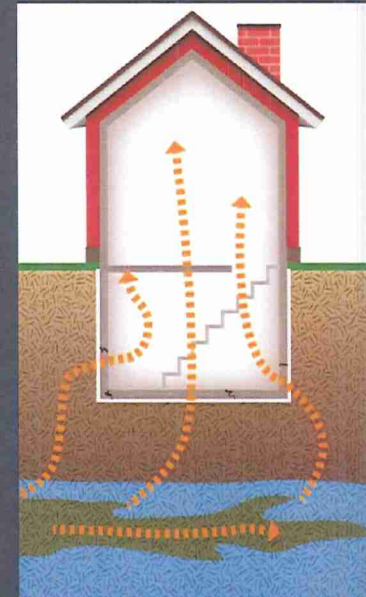
nted  
PLP.

## How vapor intrusion happens: a complex path



## *EPA Soil Vapor*

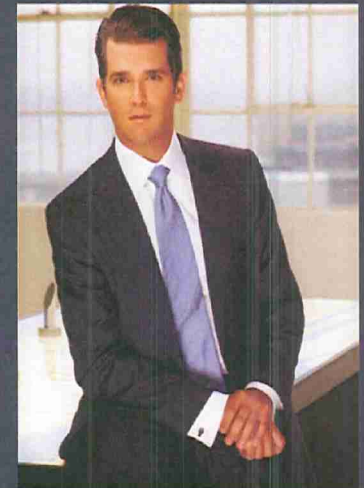
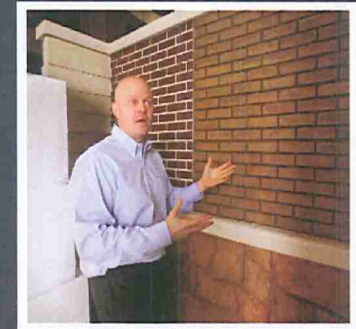
- CERCLA Hazard Ranking Score (HRS) revised to include evaluation of soil vapor impacts.
- Proposed regulation "frozen" by President Trump until May 20th.





# *Trump Property North Carolina*

- Property bought by Titan Atlas – Donald Trump Jr. and Jeremy Blackburn.
- Deutsche Bank demanded payment.
- Trump Organization created DB Pace, foreclosed on Titan Atlas and applied for Brownfield Liability Protections.
- North Carolina denied application due to similarity of entities.







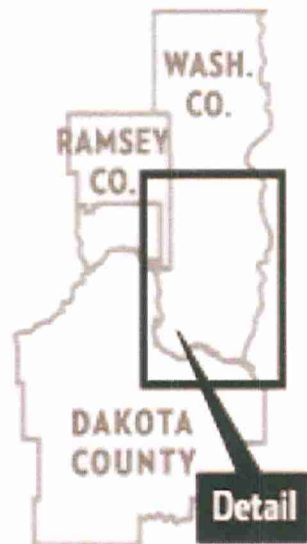
## *City of Lake Elmo v 3M Co.*

- In 1950s 3M manufactured PFCs.
- In 2004 -2011 MPCA conducted sampling and found groundwater contamination.
- Lake Elmo filed to join State's NRD action against 3M for damage to drinking water supply.
- The court determined Lake Elmo had Article III standing.

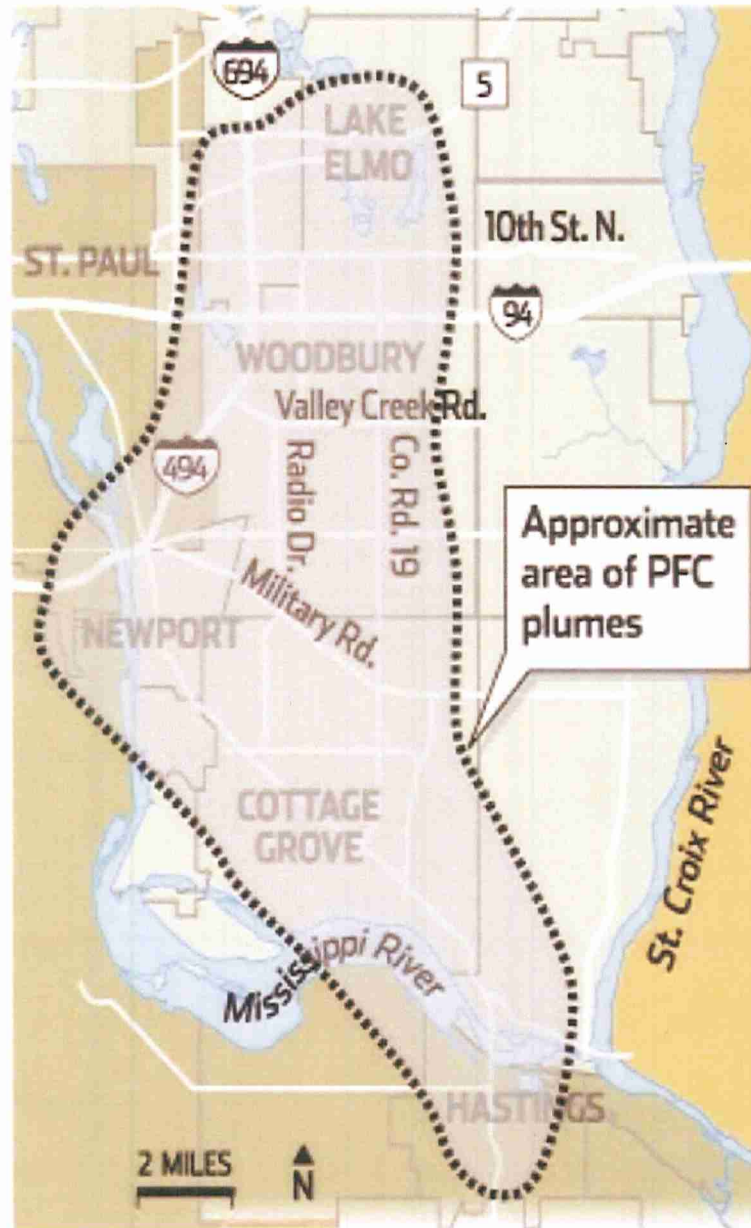


## A long legal battle

Five years ago, the first of several perfluorochemicals made by 3M was discovered in Washington County drinking water.



PIONEER PRESS



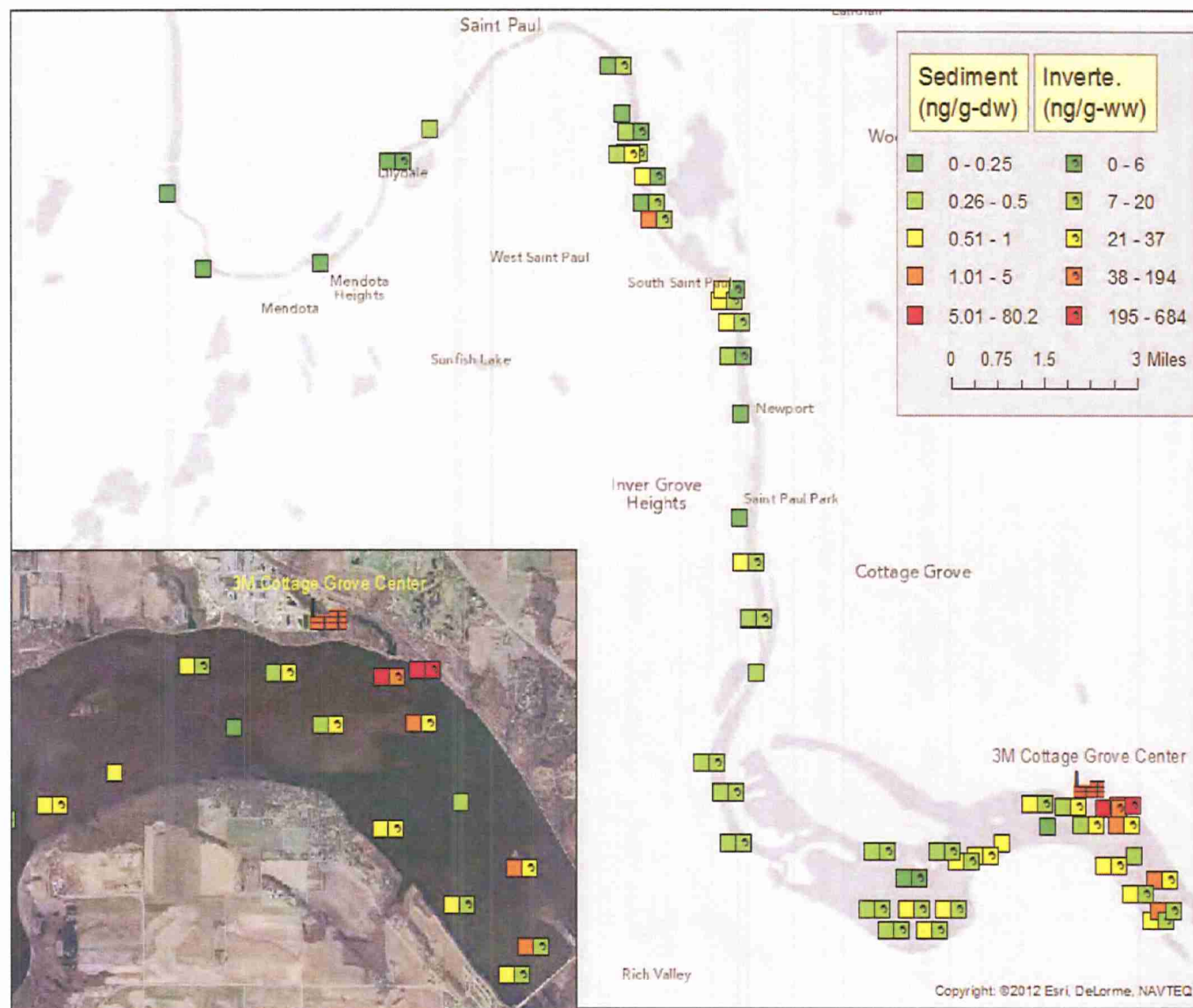


Figure 8. PFOS concentrations in sediment (ng/g dry weight) and benthic macroinvertebrates (ng/g wet weight)

# *Ebert v. General Mills*

- 1947–62 General Mills disposed of spent solvents including TCE at its research laboratory.
- In 2013, class action started.
- The 8th Circuit Court of Appeals overturned class certification. and implied. Property-by-property assessment would be required.





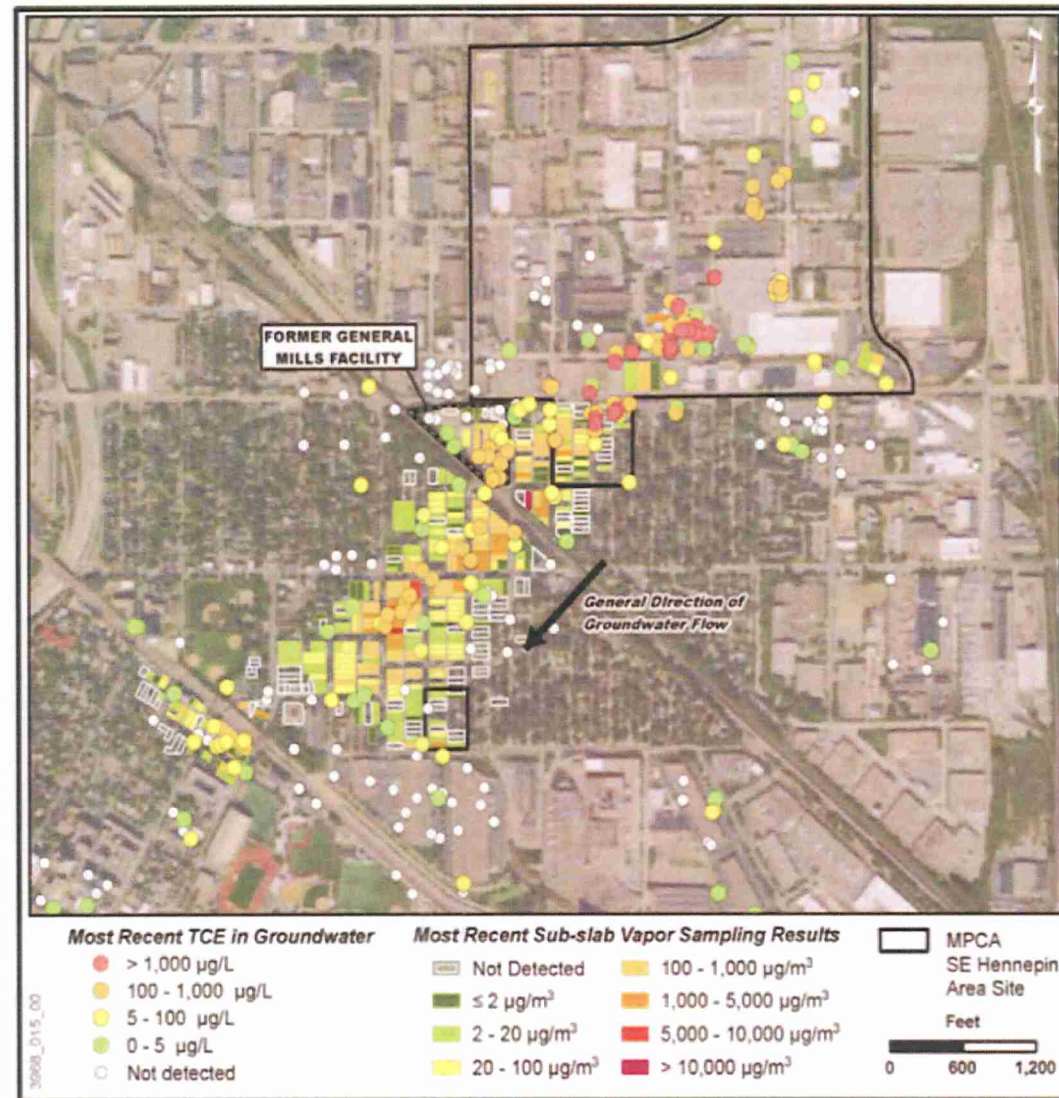
# Soil Vapor: Como Neighborhood – Minneapolis Building Mitigation Status



- General Mills/Henkel Corp.  
Superfund Site historic disposal area
- Approximate groundwater TCE plume
- No mitigation required.
- Mitigation system required - not yet installed.
- Vapor mitigation system has been installed.
- Mitigation will be offered but is not required based on sampling results.
- Sampling access denied.
- Soil gas monitoring area  
Long-term soil gas monitoring will be conducted in the public right-of-way.

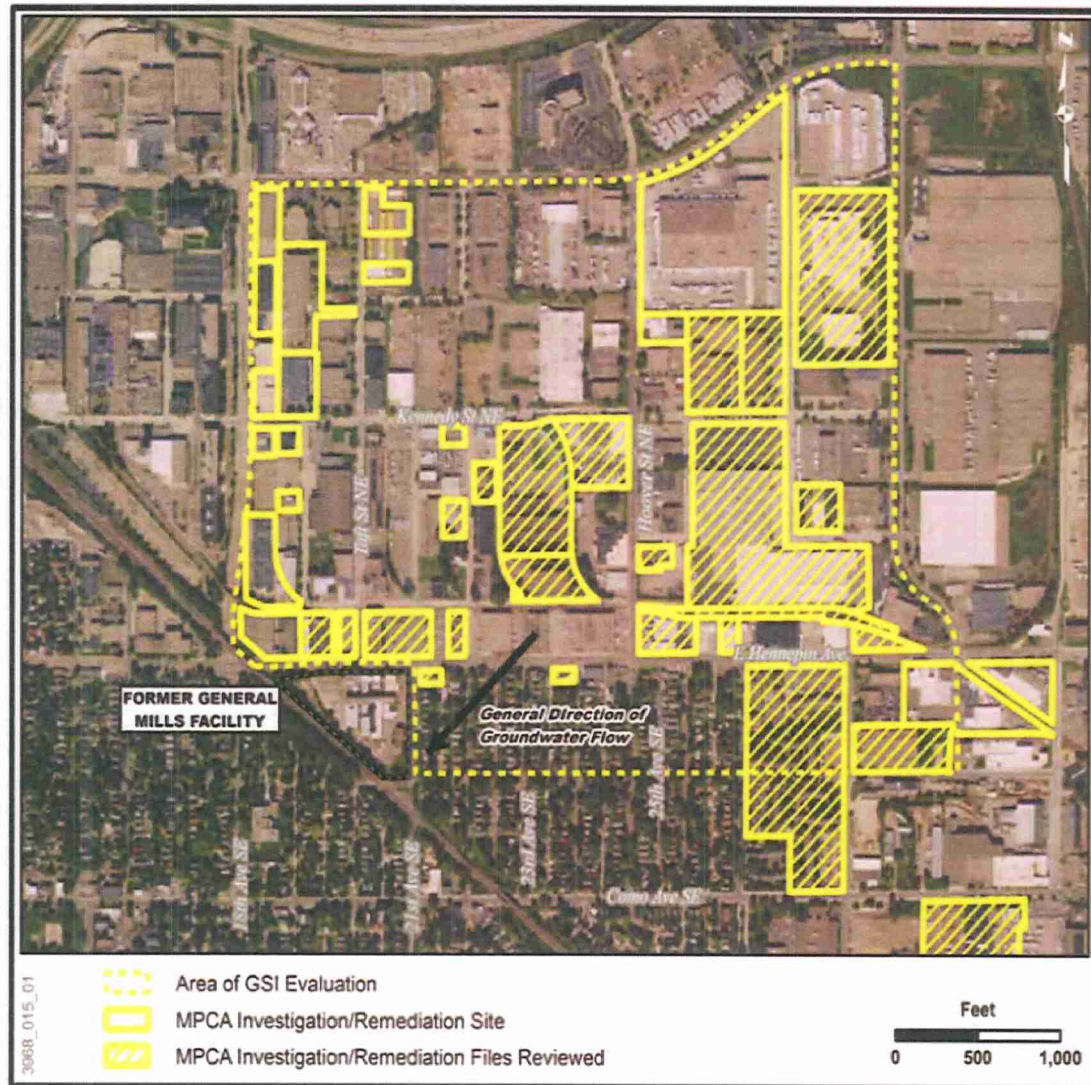
All properties within the mitigation area will be offered a vapor mitigation system.

\*Sampling status current as of May 31, 2016.

**Figure 3: TCE Concentrations in the Glacial Drift Aquifer and in Sub-slab Samples**

Notes: 1) Figure shows most recent concentration measured at each investigation location between 1990 and December 2016. 2) MPCA SE Hennepin Area Site outline from MPCA (2017).



**Figure 4: Area of GSI Evaluation of MPCA Investigation/Remediation Sites**

**Key Point:** A large number of MPCA-oversight investigation sites are present upgradient of the Facility. The investigation results from these sites provide an improved understanding of TCE concentrations in the Glacial Drift aquifer.

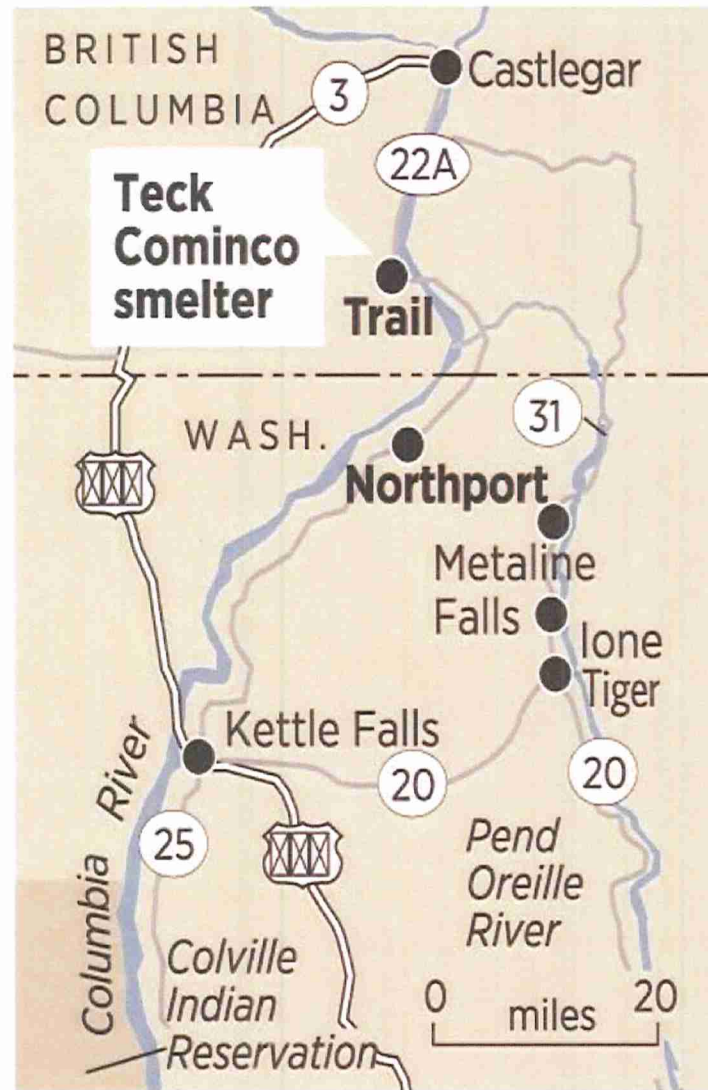


## *Pakootas v. Teck Cominco Metals*

- Teck operated a smelter that emitted air pollutants.
- Plaintiffs argued Teck aurally deposited hazardous substance into land and are liable under CERCLA.
- Court of Appeals held Teck did not "deposit" the contaminants.



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## *Pakootas v. Teck Cominco Metals*

- Court of Appeals held Teck did not "deposit" the contaminants.





## *United States v. McGee*

- Defendant convicted of manufacturing methamphetamine.
- Sentenced to 234 months in prison.
- Court applied enhancement because Defendant violated RCRA.



## *United States v. Sawyer*

- Plant contained ACM and was contaminated.
- EPA intervened to clean up the site
- Court held that EPA can be considered a "victim."
- Court held EPA does not need to use CERCLA cost recovery action first.

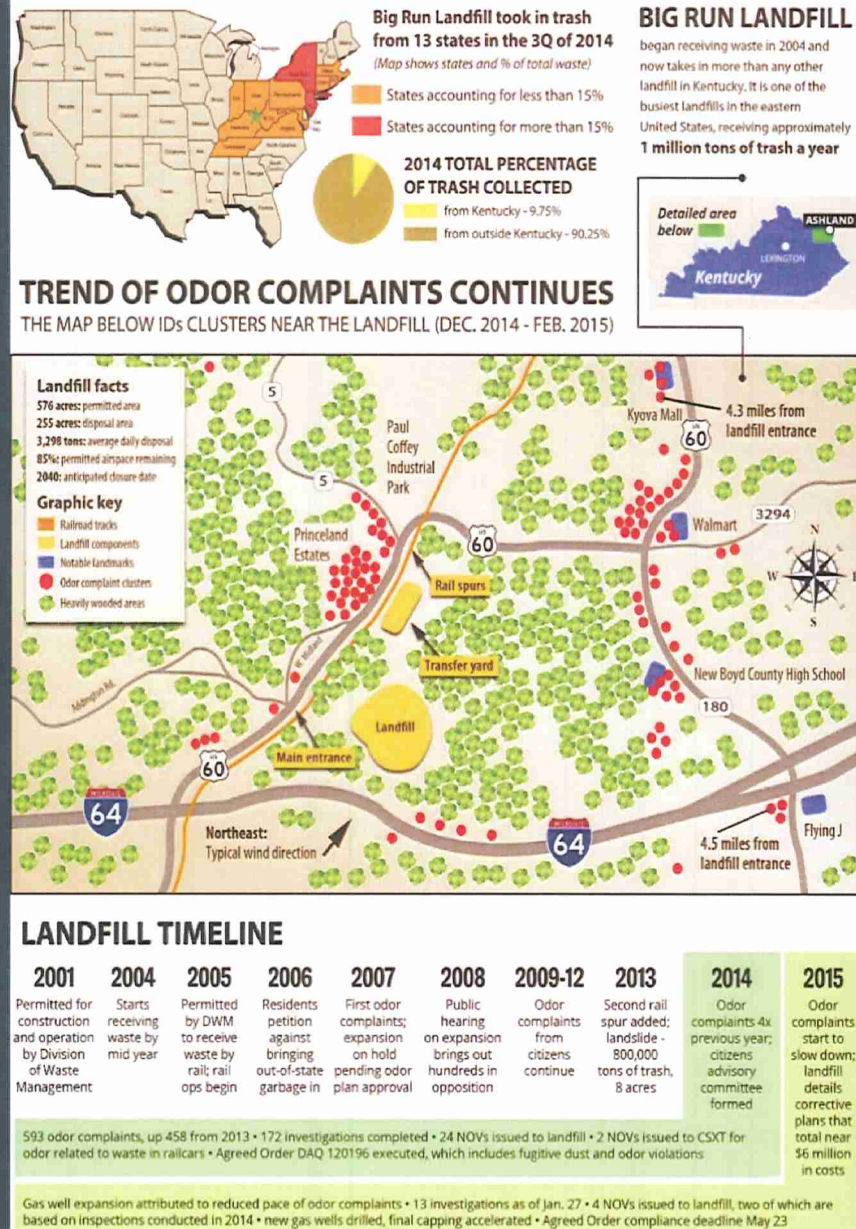




## *Ohio Valley Envtl. Coal. v. River Cities Disposal*

- Citizen suit action under Clean Air Act with RCRA component.
- If matter is in front of state or administrative agency, the court will apply *Burford* abstention doctrine.







# *Hazardous Waste Generator Regulations*

- EPA promulgated new rule for hazardous waste generators.
- New rule makes 60 changes.



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