

"Responsible Persons"

1. Current Owners and Operators
2. Former Owners and Operators
3. Generators and Arrangers
4. Transporters



"Hazardous Substances"

Excluded from "Hazardous Substances"

1. Petroleum
2. Natural Gas
3. Natural Gas Liquids
4. Liquified Natural Gas
5. Synthetic Gas Usable For Fuel

"Facility"

Any Location Where Hazardous
Substances Come to be Located



Recoverable Costs

1. Removal Costs
2. Remedial Costs
3. Costs of Health Assessment
or Health Effect Studies
4. Natural Resource Damages
(NRD)

Nature of CERCLA Liability

1. Strict
2. Retroactive
3. Joint and Several

Contribution

"Any person may seek contribution from any other person who is liable or potentially liable under section 107(c)." Section 113(f).



Statute of Limitations

- **Removal Action:** Within 3 years of completion of removal action.
- **Remedial Action:** Within 6 years of physical on-site construction of remedial action.
- **Contribution Action:** Within 3 years after date of judgement in action for recovery of costs, or entry of judicially approved settlement.
- **Natural Resource Damages:** Within 3 years after discovery of loss.



Contribution

"Any person may seek contribution from any other person who is liable or potentially liable under section 107(a)." Section 113(f).



Statute of Limitations

- **Removal Action:** Within 3 years of completion of removal action.
- **Remedial Action:** Within 6 years of physical on-site construction of remedial action.
- **Contribution Action:** Within 3 years after date of judgement in action for recovery of costs, or entry of judicially approved settlement.
- **Natural Resource Damages:** Within 3 years after discovery of loss.

Hessian

Defenses

1. Act of God
2. Act of War
3. Act of Third Party

Elements of Third Party Defense

1. No Relationship Contractual or Otherwise Between Landowner and Third Party Who Allegedly Caused Contamination;
2. Landowner Exercised Due Care;
3. Landowner Took Precautions Against Act of Third Party.



Development of Third Party Defense

- Third-Party Defense (1980)(Sec. 9607(b)).
 - No Contractual Relationship
- Innocent purchaser Defense(1986)(Sec. 9601(35))
 - "Did not know or have reason to know..."
- Bona Fide Purchaser (2002)(Sec. 9607(r))
 - Abate and corporate
- Contiguous Property Owner Defense (2002) (Sec. 9607(q))
 - Abate and cooperate

Elements of Third Party Defense

1. No Relationship Contractual or Otherwise Between Landowner and Third Party Who Allegedly Caused Contamination;
2. Landowner Exercised Due Care;
3. Landowner Took Precautions Against Act of Third Party.

No Contractual Relationship

1. Landowner did not know or have reason to know about the hazardous substance.
2. Landowner is government agent who acquired the property by eminent domain, involuntary transfer or exercise of eminent domain, or
3. Landowner acquired property by intestate succession.

Landowner Exercised Due Care

- Conduct Phase I Environmental Site Assessment by Environmental Professional within 180 days prior to acquisition of real property
 - Interviews
 - Review Records
 - Visual Inspection
 - Professional Declaration
- 40 C.F.R. 312.50



- Third-Party
- No C
- Innocent
- 9601(35
- "Dic
- Bona Fide
- Aba
- Contigu
- (Sec. 96
- Aba

No Contractual Relationship

1. Landowner did not know or have reason to know about the hazardous substances;
2. Landowner is Government agent who acquired the property by escheat, involuntary transfer or exercise of eminent domain; or
3. Landowner acquired property by inheritance or bequest.

Landowner Exercised Due Care

- Conduct Phase I Environmental Site Assessment by Environmental Professional within 180 days prior to acquisition of real property
 - Interview
 - Review Records
 - Visual Inspection
 - Professional Declaration
- 40 C.F.R 312.50

Development of Third Party Defense

- Third-Party Defense (1980) (Sec. 9607(b)).
 - No Contractual Relationship
- Innocent purchaser Defense (1986) (Sec. 9601(35))
 - "Did not know or have reason to know..."
- Bona Fide Purchaser (2002) (Sec. 9607(r))
 - Abate and corporate
- Contiguous Property Owner Defense (2002) (Sec. 9607(q))
 - Abate and cooperate



Reporting Requirement

Facility Owners and Operators Must Report Releases of "Reportable Quantities" of "Hazardous Substances" to the National Response Center



Investigative Powers

EPA may investigate if it has a reasonable basis to conclude there may be a release or threatened release of a hazardous substance or pollutant. CERCLA Sec. 104(e).



Site Management and Remedy Selection

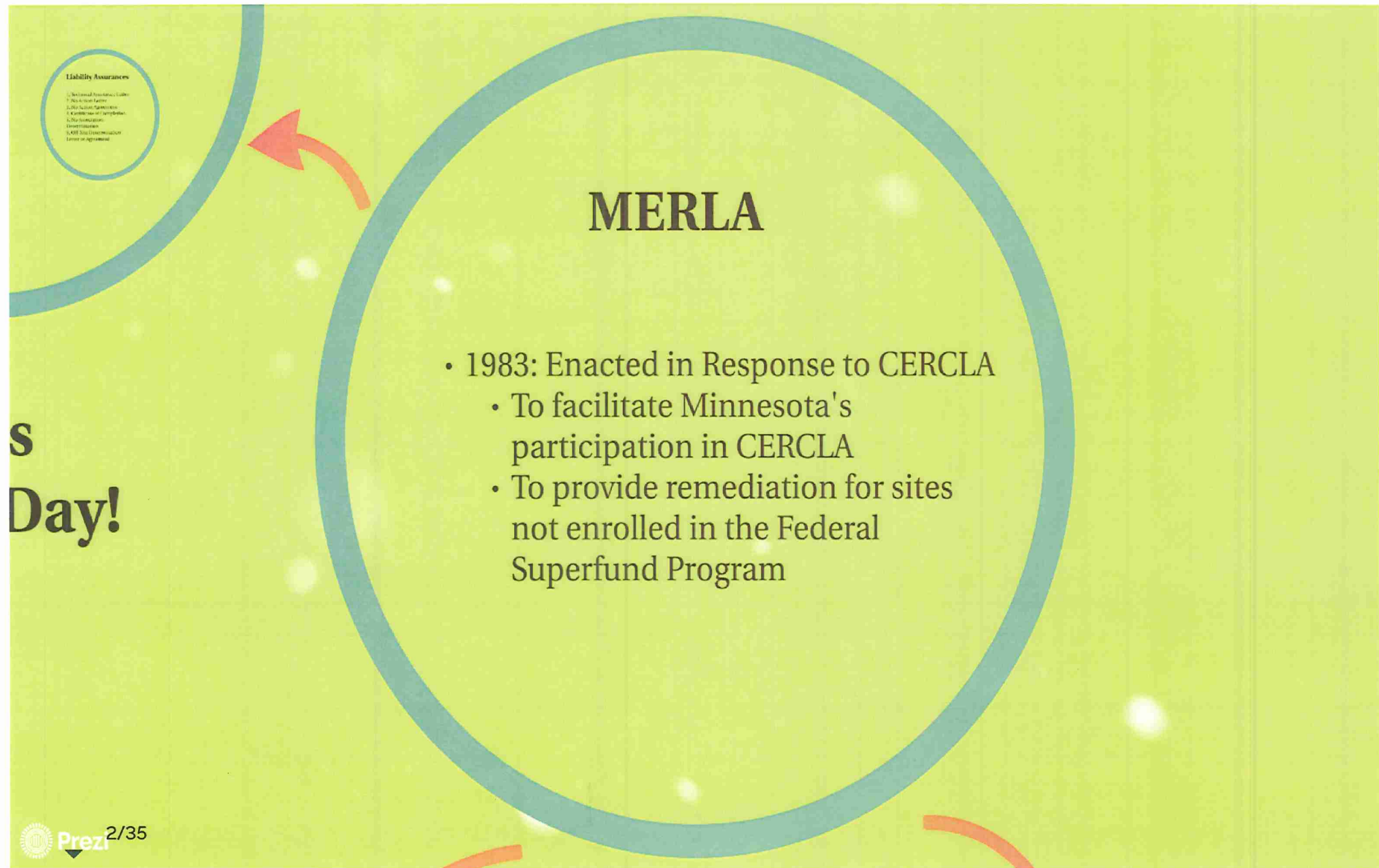
National Contingency Plan (NPC): Procedures for discovering and ranking sites, and selecting and implementing remedial actions.

National Priority List (NPL): List of high priority cleanup sites.

**Comprehensive Environmental Responses
Compensation and Liability Information
System (CERCLIS):** List of all sites brought to
EPA's attention.

Cleanup Standards

1. EPA chooses cleanup level that meets or exceeds "applicable or relevant and appropriate requirements" of federal environmental laws (ARARs)
2. EPA selects a technology to meet the ARARs based on the following factors
 - a. Cost effectiveness
 - b. Long term and short term effectiveness
 - c. Permanence of remedy
 - d. Reduction of toxicity
 - e. Ease of implementation
 - f. State of acceptance
 - g. Community acceptance



"Responsible Parties"

1. Facility Owners and Operators
2. Generators
3. Transporters

Minn. Stat. 115B.03 subd. 1

Owners and Operators

Persons who own or operate a facility that is a source of hazardous waste.

1. When the hazardous substance is generated or stored in the facility.
2. When the hazardous substance is transported or received in the facility.
3. When the hazardous substance is disposed in the facility.

Minn. Stat. 115B.03 subd. 1

Intermediate Landowner

Persons who own or operate a facility that is a source of hazardous waste.

1. When the hazardous substance is generated or stored in the facility.
2. When the hazardous substance is transported or received in the facility.
3. When the hazardous substance is disposed in the facility.

Generators

Persons who generate hazardous waste.

1. When the hazardous substance is generated or stored in the facility.
2. When the hazardous substance is transported or received in the facility.
3. When the hazardous substance is disposed in the facility.



Transporters

Persons who transport hazardous waste.

1. When the hazardous substance is transported or received in the facility.
2. When the hazardous substance is disposed in the facility.



Owners and Operators

Persons who owned or Operated the facility"

1. When the hazardous substance or pollutant or contaminant was placed or came to be located in or on the facility;
2. When the hazardous substance or pollutant or contaminant was located in or on the facility but before the release; OR
3. During the time of the release or threatened release.

Minn. Stat. 115B.03 subd. 1.

Own

1. Eng
treatin
dispos
permi
2. Kno
use of
substa
3. Kno
substa
acquir
4. Too
releas
shoul
locate

Innocent Landowner

Owner is not Responsible Party Unless:

1. Engaged in generating, transporting, storing, treating, or disposing of hazardous substance or disposing of waste at facility, or knowingly permitted others to do so.
2. Knowingly permitted any person to make regular use of facility or disposal of waste or hazardous substances.
3. Knew or should have known hazardous substance was located in or on facility when they acquired facility.
4. Took action which significantly contributed to release after that person knew or reasonably should have known hazardous substance was located in or on facility.

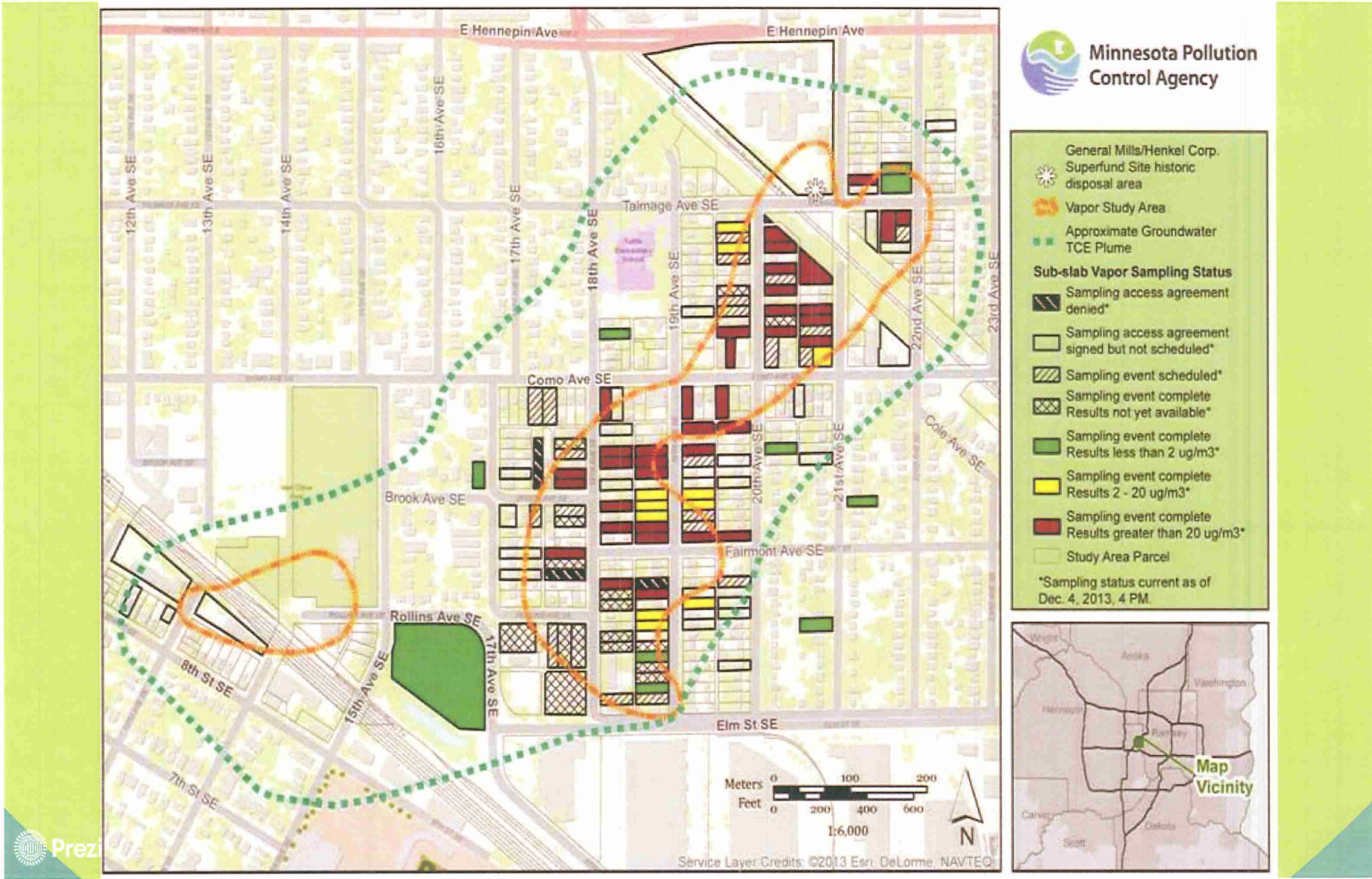
Generators

Persons who owned or possessed the hazardous substance or pollutant or contaminant and arranged by contract, agreement, or otherwise for the disposal, treatment, or hazardous substance, or pollutant or contaminant.



Persons who
known the
transport
hazardous
contaminant
which it was
manner of





the
or
tract,
sposal,
e, or

Persons who knew or reasonably should have known that the waste the person accepted for transport to a disposal facility contained a hazardous substance, or pollutant, or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law



MERLA does NOT impose liability on current land owners and operators who were not involved in the facility until after release occurred.

- Annual Value Added Tax (VAT) on all transactions
- Exempt from VAT: health insurance, postal services
- EU VAT Harmonization Principles
 - Neutrality
 - Proportionate Tax Burden
 - Uninterrupted Tax Chain
 - Avoidance of Double Taxation
 - Uniformity
 - Effective and Efficient Taxation
- Member States: 26 (27) countries

7. **Supply and Demand Curves**
8. **Market Equilibrium**
9. **Economic Surplus**
 - a. Producer Surplus
 - b. Consumer Surplus
 - c. Total surplus and Pareto efficiency
10. **Deadweight Loss**
 - a. Market Equilibrium
 - b. Monopoly
 - c. Perfect Competition
 - d. Tax and Subsidy
 - e. Price Ceiling
 - f. Price Discrimination

3446 Use 11/04 Edition

Removal and Reintegration Costs: ten years after admission to play school, one out of every six children

Damage: Six years later, during the school years, children are

More: 11 out of 12 children

MERLA Hazardous Substance

- Clean Water Act Commercial Chemicals
- Clean Air Act hazardous air pollutants
- RCRA Hazardous Wastes
- Excluded
 - Natural Gas Liquids
 - Liquified Natural Gas
 - Synthetic Gas
 - Petroleum
 - Crude Oil and its Fractions
- Minn. Stat. 115B.02 subd. 8

MERLA Damages

1. Removal and Response Costs
 2. Natural Resource Damages
 3. Economic Loss
 - a. Property Damage
 - b. Relocation losses
 - c. Loss of past and future income or profits
 4. Death, Personal Injury, Disease
 - a. Medical expenses
 - b. Rehabilitation costs
 - c. Burial expenses
 - d. Loss of future income
 - e. Pain and suffering
 - f. Physical impairment
- Minn. Stat. 115B.05 subd. 1

Statute of Limitations

Removal and Response Costs: Six years after institution of physical on-site construction

Damages: Six years from date on which cause of action accrues

Minn. Stat. 115B.11 subd. 2-3



MERLA Defenses

1. Act of God
2. Act of War
3. Act of Vandalism or Sabotage (if exercised due care)
4. Act or Omission of Third Party

Brownfields Program - Voluntary Cleanup

Purpose: Provide protection from future liability to property owners, lenders, lenders and investors and owners.

Eligible Parties: Persons who are not responsible parties, that have a clean-up agreement, voluntary or required, and who do not already know of contamination.

Fee For Services Program

Liability Assurances

1. Technical Assistance Letter
2. No Action Letter
3. No Action Agreement
4. Certificate of Completion
5. No Association Determination
6. Off Site Determination Letter or Agreement

Brownfields Program - Voluntary Cleanup

Purpose: Provide protection from future liability to property owners, financiers, lenders and successors and assigns

Eligible Parties: Persons who are not Responsible Parties, but undertake approved voluntary response actions to remedy known contamination

Fee For Services Program

Liability Assurances

1. Technical Assistance Letter
2. No Action Letter
3. No Action Agreement
4. Certificate of Completion
5. No Association
Determination
6. Off-Site Determination
Letter or Agreement