

Executive Summary

In certain situations, a broader effort to characterize soil and groundwater quality and potential vapor migration concerns over a larger, multi-property area can give a better picture of how the environmental quality of our communities is affected. ...In many cases, the results from an areawide investigation can provide local units of government, prospective purchasers and developers the ability to streamline the investigation process and reduce the costs of conducting property specific investigations.

Introduction

Using funding provided by the McKnight Foundation, Minnesota Brownfields hired DPRA Incorporated to provide research assistance and prepare a report entitled, *Addressing Areawide Contamination Issues in Minnesota Brownfield Programs*, in April 2009 (Areawide Report). The topic of areawide contamination was selected from a list of topics that were identified by individuals who attended a March 2007 forum sponsored by Minnesota Brownfields. The draft Areawide Report was made available for public review and five government organizations provided written comments, including the Dakota County Economic Development Authority (EDA), Hennepin County, the Minnesota Department of Agriculture (MDA), the Minnesota Pollution Control Agency (MPCA), and the Minnesota Department of Transportation (Mn/DOT). The final Report was published in February 2010.

As described in the Areawide Report, the “study area” for areawide investigations can be defined based on environmental criteria (e.g., the extent of a groundwater plume) or based on development criteria (e.g., the proposed transportation or transit corridor). The study area can also be determined based on political boundaries. For purposes of the research, the types of environmental investigations conducted by voluntary parties (non-responsible parties) that involve multiple properties are referred to as areawide investigations. For purposes of this research, the definition of an areawide investigation excluded multi-property investigations conducted by parties responsible for the contamination in order to comply with regulatory requirements (e.g., Superfund sites or leaking underground storage tank sites).

The Areawide Report provides introductory and background information regarding areawide investigations, summarizes the results of several case studies, and provides conclusions regarding: how areawide investigations are conducted, how environmental data is managed and made available for public use, and the need to address certain incentives or disincentives. The Areawide Report incorporates many of the comments received from Dakota County EDA, Hennepin County, MDA, the MPCA, and Mn/DOT. This Executive Summary presents specific recommendations offered by Minnesota Brownfields, based on the information and conclusions reached in the Areawide Report and based on comments received by members of Minnesota Brownfields Advisory Committee.

Background

As a direct result of the technical and regulatory assistance offered by voluntary cleanup programs since the late 1980's, the liability protections offered by the Land Recycling Act of 1992 and its amendments and the financial incentives provided in the form of brownfield grants since the mid 1990's, the majority of environmental investigations conducted over the past two decades in Minnesota have been conducted by voluntary parties in connection with buying, selling or redeveloping individual properties. Because most are not responsible parties as defined by Superfund, the majority of voluntary parties conducting investigations are arguably not legally required to investigate beyond the property boundary even if, for example, the groundwater contamination on the property is part of a larger groundwater plume affecting other downgradient properties, whereas responsible parties are required to do so. For this reason, the majority of brownfield sites in Minnesota have been and will continue to be investigated using a property-specific approach that is driven by real estate transactions and the redevelopment of individual properties.

There is a growing recognition that there are situations where areawide (multi-property) environmental investigations can provide a more cost-effective, efficient and environmentally beneficial approach to addressing brownfield issues. Data from a single property, taken in isolation from a larger contamination profile, does little to further the understanding of an area-wide problem and does not give a clear picture of the overall risk to human health or the environment. A broader effort to characterize soil and groundwater quality and potential vapor migration concerns over a larger, multi-property area can help identify community-wide environmental issues that would not otherwise be recognized by parcel-specific investigations. An areawide investigation approach also offers a number of advantages to local units of government and other organizations involved in community and transportation planning efforts to help encourage redevelopment in targeted areas.

The information provided by an areawide investigation can be of significant value to both prospective purchasers and developers as they evaluate potential new real estate acquisitions and identify possible redevelopment options. In many cases, the results from an areawide investigation can provide local units of government, prospective purchasers and developers the ability to streamline the investigation process and reduce the costs of conducting property specific investigations. As such, an areawide approach can help facilitate additional redevelopment and support regional development goals. Areawide approaches have been successfully implemented in other states and in a growing number of communities in Minnesota.

There is a significant amount of property-specific data that has been collected and is publically available. Currently, the majority of the data is only available in hard-copy documents, which are stored in files by multiple governmental agencies. Property-specific data will continue to be collected and submitted to the MPCA, MDA and other state and local units of government. It is important that this data is submitted and made available in an electronic format. It is also important that the data be made available in a secure and reliable manner that protects the long-term quality of the data.

The Areawide Report presents certain conclusions regarding areawide investigations including the following:

1) A concise and publicly available policy accompanied by guidance and/or rules regarding the conduct and use of areawide assessments would be beneficial for Brownfield transactions and redevelopments. The policy should help facilitate efficient and effective use of resources aimed at investigating and addressing contamination issues within a defined area encompassing multiple parcels. The MPCA has indicated that they are in the process of developing policies and guidance documents for areawide investigations. MDA has indicated that they will review the policies and guidance developed by the MPCA and may adopt similar policy. The policies and guidance are being developed as the MPCA works with Hennepin County on two areawide studies. The policy should identify the expectations of the voluntary cleanup programs regarding areawide investigations and cleanups and any limitations on the use of an areawide approach. The policy and guidance documents should provide flexibility to allow voluntary parties and the voluntary cleanup programs to respond to individual site circumstances.

2) A legal opinion from the Minnesota Office of Attorney General's (Minnesota AG's Office) concerning the statutory authority granted to the voluntary cleanup programs to use investigation data collected during areawide investigations when processing a written assurance request would benefit voluntary parties and the property owners located within the areawide study area. This clarification of authority would enable the efficient use of areawide assessment data in the provision of liability assurances, thus reducing liability risks and barriers to redevelopment in a cost-effective manner. If the Minnesota AG's Office determines that the MPCA and MDA are not currently authorized to use areawide data to obtain liability assurance when no property-specific data is provided, then legislation should be considered to provide this authority.

3) Although local units of government helped fund portions of the work, the EPA Brownfield Grant Program was the only dedicated source of funding used to pay for areawide investigations identified during the research for this report. The EPA funding, although helpful, does not provide an adequate source of funding to maximize the benefits of areawide investigations, nor does it address funding for long-term monitoring and maintenance activities. Recently, EPA has focused increased attention on areawide planning, which is encouraging and supported by Minnesota Brownfields. In addition, efforts should be made to identify and develop long-term funding sources and a plan to establish dedicated local and state funding sources that could be used to conduct areawide investigations. In the short-term, it would be beneficial to educate communities and voluntary parties about the types of funds that are currently available, and provide guidance on how to apply for such funds.

4) The most practical way to manage areawide investigations may be with programs administered through local units of government (cities, counties, watershed districts).

Providing resources to these institutions to administer the programs and, if possible to serve as the lead in providing financial incentives to property owners located within the study area would be beneficial. It does not appear that it would be practical at this time to have the MPCA or MDA delegate authority to a local unit of government to issue written assurances to voluntary parties that have an ownership interest in properties located within the boundaries of an areawide investigation.

5) The MPCA “What’s In My Neighborhood?” and MDA WIMN-Ag databases have been enhanced a great deal during the past year, but could be further refined to provide additional detail regarding locations of recognized environmental conditions, sampling locations and analytical results (using a geographic information system [GIS] format), boundaries of liability assurances, conditions of liability assurances, and characterization of known contamination.

6) Investigation reports, response action plans institutional controls and written assurances could be made available online. Providing PDF copies of documents on the website, as is done for some sites by MDA, would be helpful. However, as previously stated, it would be most helpful to have the available environmental data included in a GIS database as part of the MPCA “What’s In My Neighborhood?” and MDA WIMN-Ag databases.

7) Data acquisition methods and data conventions should be defined in the policy and/or the guidance document referenced above to ensure uniformity and facilitate transfer of data between systems.

8) Expectations regarding presentation of data should be defined and limitations on use of data managed outside the MPCA or MDA should be identified in the policy and/or guidance document referenced above.

9) Property-specific data across the state should be presented in a manner to facilitate the proactive identification of candidates for areawide approaches.

Recommendations

To encourage the use of areawide investigations for more voluntary parties and to more fully utilize the environmental data submitted to the various governmental agencies, Minnesota Brownfields offers the following recommendations:

- 1) Minnesota Brownfields supports the efforts of the MPCA and other government agencies, including EPA, Hennepin County and MDA, to promote the use of areawide investigations when possible and to develop a comprehensive policy and guidelines for areawide investigations. Minnesota Brownfields recommends that efforts to develop policy and guidelines include a public participation process that involves a wide range of interested and affected stakeholders in a meaningful way and that can be completed in a timely manner. Minnesota Brownfields encourages the MPCA to develop a concise policy regarding the liability assurances available

to private landowners and potential buyers associated with properties located in an areawide investigation area. This policy will serve to encourage cooperation from the property landowners and potential buyers to the maximum extent possible. To have maximal impact, the policy should identify expectations regarding the design, conduct and data quality of areawide investigations and any limitations on the use of an areawide approach. Minnesota Brownfields believes it is important that the policy and corresponding guidance document be drafted to provide flexibility to enable reasoned and justified responses to specific communities and project circumstances as opposed to use of a one-size-fits-all approach.

- 2) As part of the process to have the MPCA develop a policy regarding the liability assurances available to private property landowners and potential buyers, Minnesota Brownfields recommends that the Minnesota AG's Office formally determine if the current statutory language limits or disallows the use of areawide investigation data to define an "identified release" for the purposes of a No Action Determination, an Off-Site Source Determination, or a No Association Determination. Minnesota Brownfields believes that the ability to provide liability protections and other written assurances relative to an "identified areawide release" is key to providing meaningful incentives for voluntary parties to participate in an areawide investigation. If the Minnesota AG's Office determines that written assurances relative to areawide identified releases are not authorized by current statutes, then legislation should be considered to provide the necessary levels of assurances to encourage an areawide investigation approach. In doing this, Minnesota Brownfields recommends that the Minnesota AG's Office, the MPCA and MDA consider creating a new type of No Further Action and/or No Association Determination for non-responsible voluntary parties who have an ownership interest in property within an areawide investigation area.
- 3) Minnesota Brownfields recommends that additional funding sources be made available to help pay for areawide investigations, including increasing the amount of funding for EPA Brownfield Community-wide Assessment grants. In Minnesota, areawide investigations should be eligible for brownfield grants from the Minnesota Department of Employment and Economic Development (DEED), the Metropolitan Council, Hennepin County and Ramsey County. Depending upon the contamination sources involved, the use of reimbursement-based cleanup funds, such as the Agricultural Chemical Response and Reimbursement Account, Petrofund, and the Drycleaner Environmental Response & Reimbursement Account should also be considered. As part of the process to identify potential additional sources of funding for areawide investigations, Minnesota Brownfields recommends that the granting authorities, including DEED and the Metropolitan Council, as well as other local units of government, help identify if there are additional ways that would provide incentives (financial assistance or new grant award criteria) to voluntary parties that have an ownership interest in property located in an areawide investigation area that could leverage private investment.

- 4) Minnesota Brownfields recommends that all environmental data submitted to a Minnesota government agency (data from areawide investigations, property specific investigations conducted by voluntary parties and regulatory sites) be provided in a secure, electronic format and that each of the government agencies provide access to the electronic data (using GIS database and an internet/web-based platform). Minnesota Brownfields also recommends that the MPCA serve as the repository/clearinghouse for all areawide investigation data collected in Minnesota.

- 5) Minnesota Brownfields encourages local units of governments that are interested in conducting areawide investigations and any eligible applicant applying for EPA Brownfields Assessment Grants to include in the project budget reasonable costs to have historic environmental data retrieved and reasonable costs to have that data entered into an up-to-date electronic format. In addition, Minnesota Brownfields recommends that the MPCA consider the use of funding from EPA to retrieve and enter groundwater data from previous property specific investigations so that this data is also available to the public in an electronic format. The previous data that would be entered would be selected based on input from the MPCA VIC Program and Petroleum Brownfields staff and at the request of staff from local units of government, with a priority given to properties that are strong candidates for being part of an areawide investigation.

Action Steps

Based on the information presented in the Areawide Report and taking into consideration the recommendations offered in this document, Minnesota Brownfields intends to direct resources to effect the following actions associated with facilitating areawide investigations throughout Minnesota:

- 1) A copy of the Areawide Report and this Executive Summary will be posted on the Minnesota website, and emailed to interested and affected parties, including key legislators and representatives of governmental agencies involved in brownfield activities.

- 2) Representatives from Minnesota Brownfields will meet with key legislative representatives and other policy makers over the next six months to discuss the Areawide Report and the recommendations presented in this Executive Summary.

- 3) Representatives of Minnesota Brownfields will contact and, when appropriate, meet with representatives of EPA, state governmental agencies, including but not limited to, the MPCA, MDA, DEED, and local units of governmental agencies actively involved in areawide investigation initiatives and projects during the next year. During this time, Minnesota Brownfields will track and, via our monthly newsletters and other forums, report on the development of guidance documents, changes to funding programs and policy initiatives related to areawide investigations.