

# Frequently Asked Questions: Buying and Selling Contaminated Property in Minnesota

The purpose of this Frequently Asked Questions (FAQ) is to help potential buyers and sellers of property in Minnesota understand how the presence of environmental contamination may affect the transaction and future use of the property. This FAQ contains general information and links to additional information and resources.

## Buying contaminated property: Environmental due diligence

- 1. I'm thinking about buying a property – should I be concerned about environmental contamination?** Any property developed for commercial or industrial purposes, now or in the past, has the potential for environmental concerns, up to and including the presence of environmental contamination due to a release of petroleum or hazardous substances, pollutants, or contaminants. While certain types of properties – such as those used for automotive repair, metal plating, drycleaners, gas stations, etc. – have obvious possible sources of contamination, it is also important to understand the history of a property even if it is currently vacant, as contamination and contaminant sources are not always visible.
- 2. How do I know if the property is contaminated?** You can find out if a property has a previous or current relationship with the MPCA by checking the MPCA's [What's in My Neighborhood](#) interactive map. [For tips on how to use WIMN to find information about a specific property see Section 3.C. of the MPCA guidance document [Phase I ESA Report for Brownfield Program Enrollment](#)]. This can help you understand if the property has contamination that was detected and reported to the MPCA, but not if the property has unreported or unknown contamination. It is also important to remember that contamination doesn't stop at property lines – a property adjacent to or in the vicinity of a property where a release occurred could in some circumstances pose an environmental risk to neighboring or nearby properties. The best way to understand if contamination may be present is to hire an environmental consultant to conduct an environmental assessment (see question 4).
- 3. What if the MPCA has no record of contamination at the property?** That does not necessarily mean it is free from environmental concerns. The best way to understand whether the property you are considering for purchase has past or present environmental concerns is to complete an environmental assessment.
- 4. What is an environmental assessment?** An environmental assessment, or environmental site assessment (ESA), is done by an environmental professional, also known as an environmental consultant, and helps to identify past and present environmental concerns at a property. The standard and widely accepted environmental assessments are the Phase I ESA and the Phase II ESA. The main goal of the Phase I ESA is to identify potential environmental concerns through a search of historical property and government records, interviews with people with knowledge of the past and present site activities, and a visual inspection of the property. If environmental concerns are identified in the Phase I ESA, it should be followed by a Phase II ESA. The main goal of a Phase II ESA is to evaluate potential sources of contamination, through environmental sampling and analysis, to determine whether a release has occurred. The following fact sheets published by the Association of State and Territorial Solid Waste Management Officials provide more information about each type of ESA:

- a. [Phase I Assessments and All Appropriate Inquiry](#)
  - b. [Phase II Assessments](#)
5. **The property has an MPCA ID number related to contamination – does that mean I can’t reuse or redevelop it?** Most properties can be reused or redeveloped provided proper actions are taken to address any contamination that may pose a risk to people using the property. It is important to know that some properties that have worked with the MPCA’s Remediation programs have institutional controls applied to them. Institutional controls are administrative or legal tools that help minimize the potential for exposure to contamination by restricting certain activities and/or requiring certain actions to be taken by the property owner. As a prospective buyer of a property, you would want to know if there was one of these applied at the property, and you can find out here: [Institutional Controls in Minnesota](#).
  6. **Is an environmental assessment legally required?** While there is no legal requirement to conduct an environmental assessment, lenders and grantors often require it as a condition of financing.
  7. **When should I have an environmental assessment completed?** Investigating past uses of a property *before you purchase it* can help you identify and avoid potential liability issues provided you take the proper steps to protect yourself, and your lender if applicable. If you purchase property prior to conducting an environmental assessment, you run a greater risk of associating yourself with contamination present at the property and exposing yourself to environmental liability.
  8. **Can I reduce or limit my legal liability for contamination on property I want to buy?** Understanding if contamination is present, the extent of contamination, and who is ultimately responsible for cleanup may allow the MPCA to issue liability protection to you and your lender, when appropriate. The MPCA may be able to issue you a liability assurance letter that, depending on your circumstances, documents that you are not responsible under state statute for contamination identified at the property. Types of liability assurances and other services available in the MPCA’s Brownfield Program are outlined in our [Brownfield Program Services](#) document. Program enrollment and other information can be found on our [Brownfield redevelopment guidance](#) web page.
  9. **Why doesn’t the seller hire a consultant to complete the environmental assessment?** They can, and sometimes they do. This can be something you discuss with them as part of purchase negotiations.
  10. **Isn’t the seller required to disclose all environmental concerns? Why would I need an environmental assessment in addition to that disclosure?** While there are legal disclosure requirements in Minnesota for many environmental and other conditions (see *Selling contaminated property: environmental disclosure* section below), there are limitations to this process that a buyer should be aware of. For example, the seller may be unaware of certain environmental conditions and thus not disclose them. In addition, some types of liability protection require a buyer to follow the [“all appropriate inquiries” \(AAI\) process](#), which cannot be satisfied by solely relying on the seller to disclose environmental conditions of which they are aware.
  11. **How do I know if my plan for reuse of the property will be safe for future property users and won’t expose me to liability?** Most contaminated properties can be reused provided the location and extent of contamination is well understood and well documented, and there is a plan for reuse that accounts for the contamination – how it will be managed during demolition or construction activities and how the property reuse will be completed so that people’s exposure to any remaining contamination is eliminated or mitigated. You must properly manage contaminated soil and water you uncover or disturb during redevelopment activities, even if you are not the party responsible for the contamination; not doing so can expose you to liability and fines. You can request approval of your plan to respond to contamination encountered during your project by [enrolling in the MPCA’s Brownfield Program](#).

# Selling contaminated property: Environmental disclosure

1. **I'm thinking about selling a property – should I be concerned about environmental contamination?**

Any property developed for commercial or industrial purposes, now or in the past, has the potential for environmental contamination due to a release of petroleum or hazardous substances, pollutants, or contaminants. As a seller, if you are aware of, or in some cases should be aware of, environmental concerns at your property, you may be legally required to disclose them before transferring ownership of the property.

2. **What are the Minnesota requirements to disclose environmental contamination?** There are numerous environmental and other disclosure requirements that apply to sellers under Minnesota law. Following are some of the disclosure requirements; it is plausible that there are others. We recommend you work with an experienced real estate professional and/or legal counsel to ensure you meet all disclosure requirements.

- a. **Minnesota's residential disclosure requirements** are found in Minn. Stat. § 513.52-513.61 (see [Ch. 513 MN Statutes](#)). Many residential transactions use a standard purchase agreement form that contains disclosures. Please consult your real estate professional and/or legal counsel if you have questions about residential disclosure requirements.
- b. **Minnesota's other disclosure requirements related to environmental contamination or contamination sources.** There may be other requirements for your property depending on its usage; please consult with your real estate professional and/or legal counsel about your specific property, circumstances, and applicable requirements. If you believe a rule or statute referenced below may apply to you, please click on the link to read the law.
  - i. **Aboveground or underground tanks.** [Sec. 116.48 MN Statutes](#) requires a seller to record an affidavit in the property records to inform a purchaser of the presence and, in certain cases, the previous presence of a tank.
  - ii. **Hazardous substances and hazardous waste contamination.**
    1. [Sec. 115B.16 MN Statutes](#) requires a seller to record an affidavit in the property records to disclose extensive contamination by a release of a hazardous substance and disclosure if a property was used as the site of a hazardous waste disposal facility.
    2. [7045.0496 - MN Rules Part](#) requires disclosure in the property records of land use and restrictions at a hazardous waste disposal unit.
  - iii. **Wells.** [Sec. 103I.235 MN Statutes](#) requires seller to disclose the status and location of all known wells on the property.
  - iv. **Environmental Covenants.** [Ch. 114E MN Statutes](#) authorizes environmental agencies including the MPCA to use environmental covenants (ECs) to restrict the use or activity at a contaminated property. An EC is recorded with the county where the property is located and remains in the real estate records. It may serve as or require a disclosure of the facts contained in the recorded document, which describe the environmental conditions, any restrictions and any affirmative obligations required at the site (e.g., operation and maintenance of an environmental mitigation system).
  - v. **Methamphetamine production.** [Sec. 152.0275 MN Statutes](#) requires a seller to disclose any methamphetamine production on the property.
  - vi. **Solid waste facilities.** [7035.2635 - MN Rules Part](#) Subp. 2. requires a landowner to record a document in the property records after facility closure describing any special conditions or limitations for use of the site.

- vii. **Demolition debris land disposal facilities.** [7035.2825 - MN Rules Part](#) Subp. 5. requires a landowner to record a document in the property records after facility closure describing site use and location of waste.
  - viii. **Industrial solid waste land disposal facilities.** [7035.1700 - MN Rules Part](#) requires a disclosure of types and location of wastes and other information of interest to future landowners to be filed with the county recorder.
2. **How do I meet the environmental disclosure requirements?** Work with your real estate professional and/or legal counsel to make sure you are satisfying all disclosure requirements under the law.
  3. **Should I have a Phase I ESA completed?** See related questions in the *Buying contaminated property: Environmental due diligence* section above (e.g., questions 4, 6, and 9). A Phase I ESA is the best and most widely accepted way to find out if there are past or present environmental concerns related to the property. Having a Phase I ESA report in hand can help address questions related to environmental concerns raised during a property transaction.