

Joseph Maternowski

As a St. Paul Highland Park resident and an environmental lawyer who represented the Minnesota Pollution Control Agency (MPCA) I have closely followed developments related to MPCA's review of Feasibility Study prepared by Ford Motor Company evaluating options for handling the Area C disposal site located in the Mississippi River floodplain immediately adjacent to the former Ford manufacturing site.

Beyond having a toxic waste dump near where I have raised my family, Area C has always been of interest. I began my legal career in the Minnesota Attorney General's Office where I represented MPCA on various matters where Minnesota's newly enacted Superfund law was applied to clean up sites, such as Ford's Area C, where hazardous substances releases resulted in contamination.

In evaluating the feasibility study alternatives, it is critical to understand the procedural context.

How did we get Area C?

Following the enactment of Minnesota's Superfund law, Minn. Stat. Ch. 115B, Ford reported three areas (Areas A, B and C) where hazardous substances (paints and solvents) were disposed to the MPCA.

MPCA enrolled the Ford site in the Superfund program in 1984. The law provided that Ford was retroactively, jointly, severally and strictly liable for the release and cleanup of the site, meaning that Ford can be held fully responsible for all costs. When disclosing its site to the MPCA, Ford must have contemplated a cleanup in accordance with the law.

Investigations were conducted by Ford in response to MPCA requests. Areas A and B, located at the main plant site with easily accessible wastes, were cleaned up by Ford. The MPCA delisted Areas A and B from the Superfund list. Even though Area C was disclosed and included in initial studies, MPCA did not require a cleanup and closed its file.

No explanation was ever provided as to why the MPCA did not address the cleanup of Area C when the MPCA had its Superfund file open and when the MPCA documented Ford's release at Area C.

In evaluating cleanup options MPCA should give due consideration to reopening the Area C Superfund site.

When Ford decided to sell the main plant site, the MPCA began managing the cleanup under the state's "Brownfields" program rather than the Superfund enforcement program. The programmatic transfer occurred even though the Brownfields program, as the MPCA well knows, is actually designed to assist legitimate Brownfields "voluntary" applicant. who purchase and clean up properties already contaminated by a prior party. Ford's hands are dirty. Ford is not a legitimate Brownfields "voluntary" applicant.

MPCA has permitted Ford to morph from a Superfund "responsible party" to a Brownfields "voluntary party." The change in status is unwarranted and inconsistent with the law. The MPCA

now claims that it cannot enforce the Superfund cleanup and funding requirements it used to hold Ford to. For the reasons stated herein, that is just plain wrong. The Ford property has been transformed into the highly successful Highland Bridge site with mixed use development. Ford reaped significant profits from the sale. The Area C dumping ground – Ford's waste disposal site and primary liability in Minnesota - remains in place out of sight but not out of mind.

MPCA Has Superfund Authority at Area C

At its recent community meeting, the MPCA said that it doesn't have the authority to require Ford to fully clean up its Area C dump. I disagree.

Beginning in the 1980s the MPCA, the lead agency on Superfund matters in the State, regularly issued Requests for Response Actions (RFRAs) under its MERLA authority to potentially responsible private parties. With the advent of the Brownfields program in recent years, which promotes partial cleanups by voluntary parties in aid of redevelopment projects, MPCA's use of its MERLA enforcement authority has waned. MERLA is state law. Its provisions remain in effect. The Brownfields program did not supplant the formal Superfund enforcement program.

In the 1980s after MERLA's enactment, responsible parties often filed legal challenges to MPCA's authority, but the MPCA routinely rebuffed these challenges and soon developed a strong record of success. MPCA cleanup orders to responsible parties and MPCA's MERLA authority were regularly upheld. After business interests' efforts to lobby against MERLA's provisions failed, MPCA ordered full cleanups. Responsible parties reluctantly agreed to comply with MPCA's cleanup orders. Dozens of waste disposal sites in Minnesota and hundreds more across the country were cleaned up under MERLA and its federal analogue CERCLA and state statutes.

There appear to be a number of misunderstandings of MPCA's MERLA authority including by MPCA staff. In one of MPCA's recent public statements (at the January 15 ,2026, public meeting) MPCA contended that Superfund sites are never really ever cleaned up. I disagree.

While it is true that sometimes long-term impacts are left in place for future monitoring, many Superfund sites have been fully cleaned up. Waste – in the form of drums, contaminated soil and impacted groundwater - has been either hauled away or remediated. Dozens of sites have been listed in the State Superfund. Many of these sites that have been cleaned up and delisted. Delisting occurs when sites have been deemed to no longer pose a risk to public health or the environment.

In addition to completing full Superfund cleanups, MPCA recognizes the potential for full site cleanups in the voluntary context (for a non-responsible party benefitting from redevelopment). The voluntary Brownfields program offers a Certificate of Completion to voluntary parties as the highest level of cleanup liability assurance available from the State. Certificates of Completion typically involve waste removal to the greatest extent possible. Residual groundwater contamination may continue to exist at some sites. After waste sources have been removed, long term monitoring is often required. As the MPCA knows the standard 5-year review of Superfund sites may result of reopening of Superfund sites as new information about contamination threats becomes available.

The MPCA clearly has authority under MERLA to require action of Ford. As discussed above, Ford reported Area C to the MPCA. The Ford manufacturing site, including Area C, was listed by the MPCA in the State Superfund program. MPCA clearly has the legal authority to require a cleanup.

In fact, the MPCA's authority has already been invoked here. MPCA found hazardous substances were released to the environment. MPCA mandated the investigation and cleanup of Areas A and B. Ford complied. The mere fact that concrete debris was placed on top of the waste – with Ford's full knowledge and permission – does not mean that Ford can or should now be allowed to skirt its legal obligations as to properly managing the waste material it initially placed in the waste pile.

MPCA has maintained that reopening the site or pursuing a Superfund enforcement action against Ford is not legally defensible. But MPCA can reopen the site with a measure of confidence. Area C has already been found by the MPCA to be a Superfund site. Ford never contested the initial findings. At this point and given its past admissions Ford would be hard-pressed to mount any kind of credible defense to liability. Ford's wastes have been released. The record supports MPCA's order of a full cleanup. A prospective Ford argument that it is unfair to now require Ford to pay will fail, as was the case with arguments advanced by private responsible parties in the past in similar circumstances.

Superfund was passed into law to promote private party cleanups of waste sites. The fullest possible cleanup of contamination was and remains the goal. A Superfund site is a Superfund site. A half measure, such as cleaning up Areas A and B, but leaving out cleanup of Area C, does not count as a Superfund cleanup. The law did not distinguish between sites with smaller amounts of waste or lower amounts of contaminants that were released. Sites are scored to reflect relative risk. Cleanups are regularly required at all sites including low-risk sites.

Superfund's "polluter pays" principle, a shortened form of Superfund's retroactive, strict, joint and several liability principles, fosters cleanups. Where possible, private responsible parties are required to complete cleanups rather than shift their cleanup responsibility to governmental entities or an uncertain future. Of course, for cleanups to occur the US EPA or state environmental agencies, such as MPCA, need to have the resolve or will to require a private responsible party to complete the cleanup work. Agencies that fail to require cleanups allow responsible parties to shirk their duty under the law to protect public health and the environment. This is wrong and contravenes the plain language of MERLA, CERCLA and their long-standing legal principles including "polluter pays."

In response to concerns about the scenario of Ford waste remaining on site, questions about Ford's continuing existence long-term and Ford's ability to conduct work when it may be required in the future, MPCA has indicated the City of St. Paul and the U.S. Army Corps of Engineers may be named as responsible parties in the future and be held responsible for a cleanup. This threat is a dodge of the critical issues. First, it is not clear that either the City or the Army Corps are Superfund responsible parties. The petroleum exemption or other limitations contained within Superfund may preclude the MPCA from pursuing these parties as responsible parties. Second, with Ford as a known, viable MERLA responsible party the MPCA need only pursue Ford under joint liability concepts. Superfund allows Ford to seek contribution from other parties if they are found to be responsible.

At the public meeting MPCA contended that Ford's disposal was legal at the time. MPCA maintains no laws were broken. This proposition was seemingly advanced to support a theory that Ford could not be held liable under Superfund.

This is misguided and a mischaracterization of the law. Superfund liability is retroactive, strict, joint and several. Although Ford's actual disposal of wastes in the 1940s to 1960s may not have been

illegal at that time, with the passage of MERLA the Minnesota Legislature followed federal law, CERCLA, and determined that past disposal of hazardous substances was illegal. MERLA, therefore, made Ford's past disposal practices illegal. Specifically, past disposal by Ford in multiple instances resulted in releases of hazardous substances. This was and is illegal. The Superfund law applies retroactively. The act of past disposal violated federal and state law and triggered Superfund liability.

It is ironic that Area C is located along the Mississippi River in the flood plain. In years past rivers were viewed as a cheap, convenient and an easy conduit for waste disposal. Area C fits into the classic mode of this method of dumping. The flow of the river in contact with the Ford waste carried some of the waste away. Nonetheless, Ford dumped paints and solvents into Area C with general disregard. Some of the waste mass floated away. What waste remains is an unknown. What waste remains poses a risk to anyone living along or recreating in the Mississippi River. Ford later acquiesced to the City of St. Paul and US Army Corps requests to dump concrete and other debris over the top of the waste pile. The dumped materials and debris provide challenges to reaching the hazardous substances dumped by Ford. But Ford's wastes are still fully accessible with a sufficient level of effort. It is Ford's singular responsibility under MERLA to recover its wastes and ensure proper disposal.

Alternative 4 Is Insufficient

At Area C instead of proposing a cleanup, a complete remedy (which is preferred under MERLA and CERCLA), Ford proposes to leave the buried hazardous waste pile and monitor it into the foreseeable future. This is unacceptable. MPCA recommends that Ford remove a limited portion of surficial waste (no more than 4 feet deep), but leave behind perilously steep slopes and the buried pile waste for others to manage. Under this alternative, without properly engineered slopes waste will continue to be exposed exacerbating risk. This is unsustainable. I understand that objections have been filed on a technical basis by the Capitol Region Watershed District.

The Feasibility Study is defective on its face in that it fails to consider an alternative to pull back the concrete cap and utilize properly engineered slopes. Pulling back the cap and removing more waste material is a more expensive but more effective alternative than either Alternatives 3 or 4. When such an alternative is properly considered it makes the waste removal option more tenable and a superior choice. Friends of the Mississippi River (FMR) calls for the removal of the waste pile now preventing future releases, minimizing oversight and restoring the riverfront property. The waste removal option is most consistent with Superfund requirements including that of a permanent remedy.

Superfund Process Must Be Restarted

Moving forward with anything less than a full cleanup is inconsistent with the "polluter pays" principle. MPCA must restart the formal Superfund process. Despite what MPCA says, requiring Ford to clean up its dump site is clearly legally defensible. Other states, the EPA and, in the past, Minnesota (through its MPCA) have stood strong and required such cleanups. MPCA and reviewing courts have consistently supported state and federal authority and the cleanups conducted by responsible parties.

MPCA supports its recommendation for Alternative 4 with limited surficial removal by insisting

that is decision must be and is guided by science. MPCA's reliance on science is overstated. With the Ford and MPCA alternatives, the slopes are steep. Unknown wastes are left behind. Superfund sites have always raised mixed issues of fact and law. In the past the legal requirements have weighed heavily in cleanup determinations. Here, MPCA cavalierly discards obvious legal support that can be invoked to require Ford to do its part and leave the Twin Cities free of its industrial impact.

MPCA needs to stiffen its spine, reopen the Ford Superfund site and require a cleanup. Ford, one of the world's most profitable companies, who has profited handsomely over decades from over its plant on the Mississippi River, must clean up its mess.

Joseph Maternowski has been a resident of Highland Park in St. Paul since 1989. He served as a Special Assistant Attorney General where he represented the MPCA on Superfund matters. He entered private practice and has worked on a range of environmental matters including helping voluntary parties with Brownfields cleanups and property redevelopment. Mr. Maternowski has served as Chair of the Minnesota State Bar Association's Environmental, Natural Resources and Energy Law Section.