



Minnesota Center for Environmental Advocacy

RegenerateMN: BROWNFIELDS

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*Why does contaminated property
make developers nervous?*





Disposing of used engine oil can be a problem. Solution: Dig a hole in the ground with a posthole digger and fill it with fine gravel. Then pour in the oil. It will be absorbed into the ground before your next change. Cover the spot with soil.

166 POPULAR SCIENCE JANUARY 1963



Federal law: 1980
Comprehensive Environmental
Response, Compensation and
Liability Act
("CERCLA" or "Superfund")

Who is Liable for Costs to Clean Up Contamination?

Current owners/operators

Past owners/operators

Generators, arrangers, transporters

may be held ***strictly, jointly, and severally*** liable
for the cost of cleaning up contaminated property.

CERCLA's Unintended Consequences

No market for contaminated property

+

No financing

=

**Mothballing +
Urban decay +
Sprawl**



CERCLA Liability Impacts



Fixing CERCLA's Unintended Consequences

➤ **1992:** Minnesota Land Recycling Act –

- MPCA Voluntary Investigation & Cleanup Program
- “No Association Determination”
- “Certificate of Completion”

➤ **1996:** Federal Lender Liability Act

➤ **2001:** Federal Brownfield Revitalization Act

- “Bona Fide Prospective Purchaser”
- “All Appropriate Inquiry”



The fix – *Bona fide prospective purchasers*

Buyers of contaminated property are exempt from cleanup liability if they:



Did not cause or contribute to the contamination



Conduct “all appropriate inquiry” within 6 months before purchase



Exercise “appropriate care” by:

- Stopping any continuing releases
- Preventing future releases and exposure
- Cooperating with cleanup,
- Complying with covenants and use restrictions

The fix – *Lender liability exemption*

Lenders taking a security interest on contaminated property are exempt from liability if they:



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graph TD; A[Lenders taking a security interest on contaminated property are exempt from liability if they:] --> B[Do not participate in management of the contaminated facility prior to foreclosure; and]; B --> C[Sell, re-lease, or otherwise divest the property at the earliest practicable, commercially reasonable time.];
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Do not participate in management of the contaminated facility prior to foreclosure; and

Sell, re-lease, or otherwise divest the property at the earliest practicable, commercially reasonable time.

The fix – *Clarified Exemption for Municipalities*

- **Municipalities** are not liable if they:

- ❖ Take title to property involuntarily –
 - Tax foreclosure
 - Bankruptcy
 - Escheat
 - Abandonment
- ❖ Are responding to an emergency on the property
- ❖ Qualify as a bona fide prospective purchaser



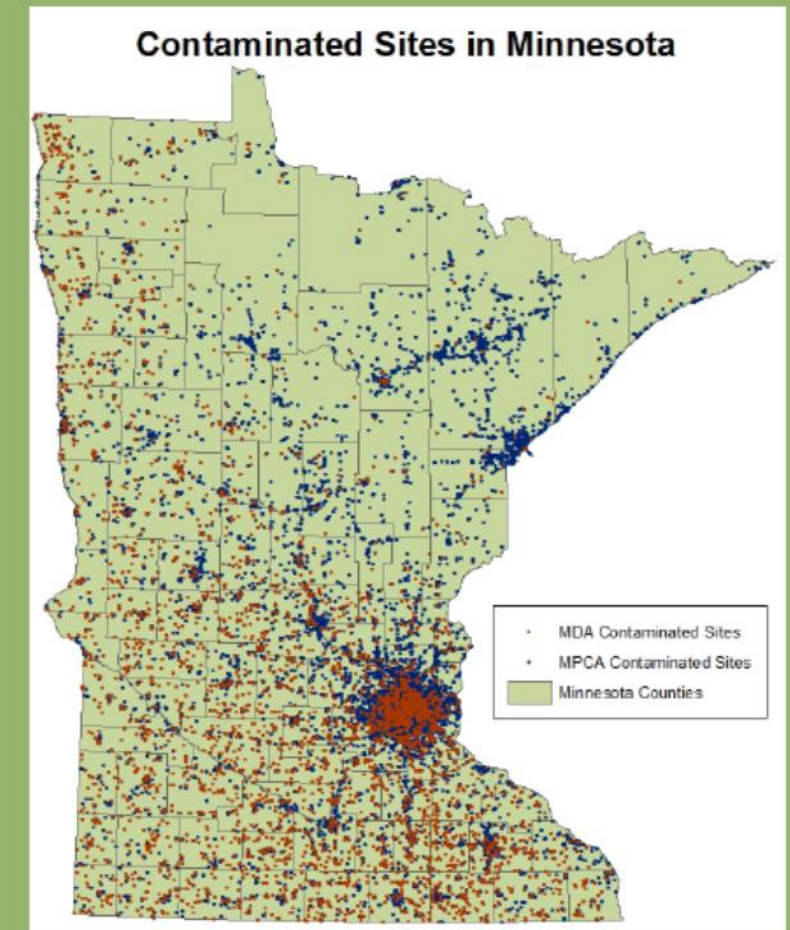
Leveling the Playing Field – Financial Incentives for Redevelopment

Grant Programs

DEED Contamination Cleanup & Investigation
Program

Metropolitan Council Tax Base Revitalization Account

Hennepin & Ramsey County Environmental Response
Funds



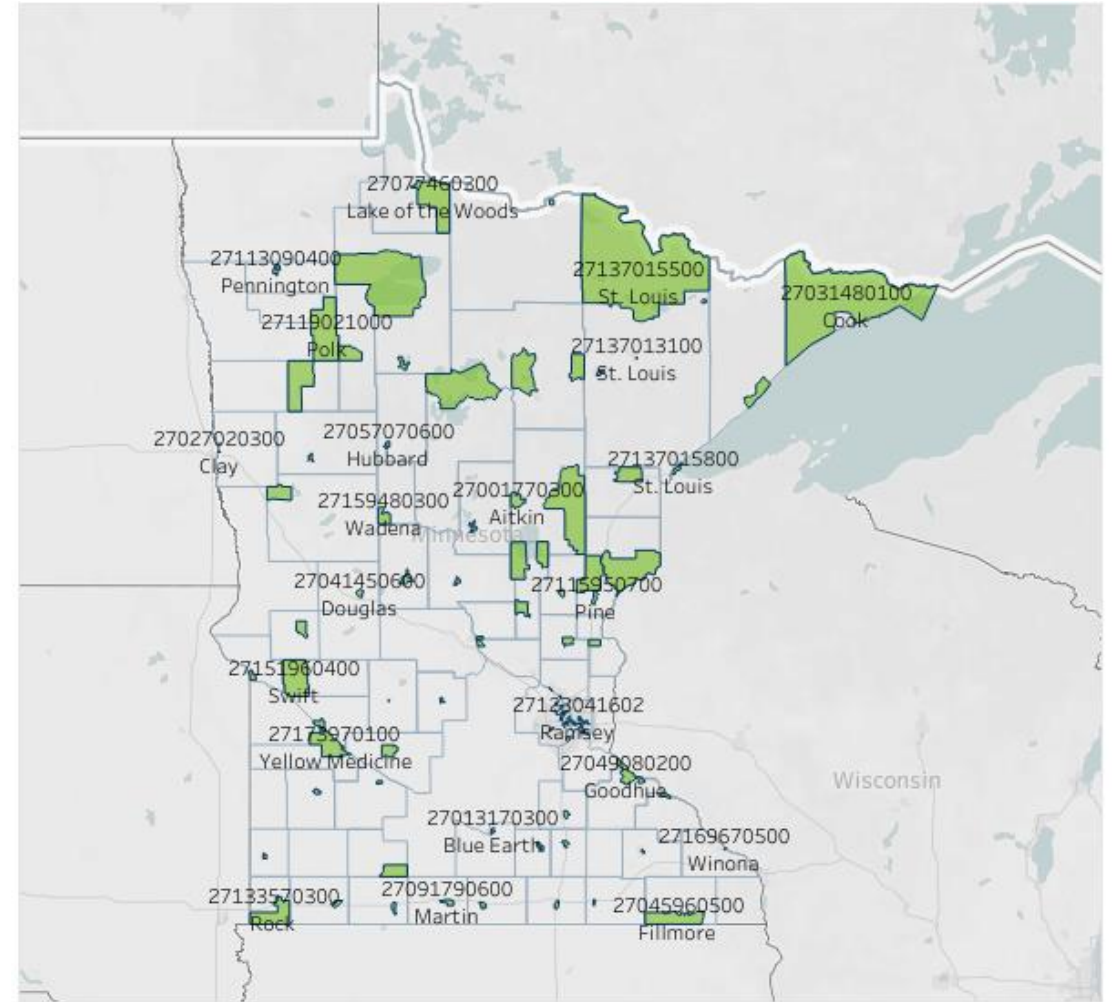
Map 1: Contaminated Sites in Minnesota, 2016

Cartographer: Kathrene Garcia

Sources: Minnesota Pollution Control Agency,
Minnesota Department of Agriculture, Minnesota
Geospatial Commons, ESRI

Leveling the Playing Field – Opportunity Zones

- Developed under Tax Cut and Jobs Act of 2017
- Goal: encourage long-term investments in low-income and urban communities
- Basic Structure: Opportunity Funds allow U.S. investors holding unrealized gains to invest in O-Zone projects for tax benefits



Questions / Comments?



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