



ENVIRONMENTAL DUE DILIGENCE FOR PROPERTY ACQUISITION

POLICY OP009, EFFECTIVE 2016-07-18

POLICY STATEMENT

The Minnesota Department of Transportation (MnDOT) must perform an Environmental Due Diligence (EDD) evaluation each time MnDOT acquires real property.

The EDD evaluation is a risk management tool that guides decisions regarding MnDOT acquisition of properties through consideration of the project needs, the short- and long-term environmental risks associated with historical chemical use or disposal of solid waste at the project.

The Environmental Investigation Unit (EIU), Office of Environmental Stewardship must complete the EDD evaluation prior to an offer to the landowner for the property acquisition.

This policy applies to the following property acquisitions:

- Fee
- Permanent easements (e.g., highway, transportation, slope, wall maintenance, drainage)
- Temporary easements (e.g., construction, building removal)
- Acquiring permission to use property under the terms of a lease or a permit
- Commissioner's Orders on roadways of other jurisdictions
- Transfers of custodial control
- Excess property
- Rail bank
- Facilities (including shared facilities)
- Any project in which a local unit of government or other party acquires property with the expectation that MnDOT must become the owner

REASON FOR POLICY

State and federal laws can impose environmental liability on a new property owner regardless of when the property was contaminated or who caused the contamination. Completing the EDD evaluation prior to acquiring property reduces MnDOT's risk of liability associated with acquiring that property. The EDD evaluation allows MnDOT to:

- Predict how acquiring a contaminated property may affect project cost and schedule.

SENIOR OFFICER

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Deputy Commissioner/Chief Engineer

POLICY OWNERS

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POLICY HISTORY

2016-07-18, Established

[MnDOT Policy Website](#)

- Make a decision whether to avoid or proceed with the property acquisition.
- Make a plan for mitigating risk and managing liability when MnDOT decides to acquire a contaminated property.

MnDOT must assess all short-term and long-term costs and liabilities associated with contaminated property when deciding whether to acquire the property.

- In the **short-term**, contaminated property cleanup must increase project complexity and cost, and may cause project delays.
- In the **long-term**, owning contaminated property exposes MnDOT to potential liability for future remediation costs when MnDOT maintains or reconstructs the infrastructure located on the contaminated property.

WHO NEEDS TO KNOW THIS POLICY?

- MnDOT staff involved in planning, scoping, designing, constructing or maintaining transportation facilities or property
- MnDOT staff responsible for performing EDD reviews
- MnDOT staff involved in reviewing and making decisions about MnDOT-owned land or property, or who are considering acquiring land or property for MnDOT use
- MnDOT staff involved in reviewing and approving environmental documents and interpreting National Environmental Protection Act (NEPA) and Minnesota Environmental Policy Act (MEPA) regulations

DEFINITIONS

Acquisition

MnDOT's Office of Land Management is responsible for the oversight of the property acquisition process. The acquisition of land is as an easement or in fee, through a direct purchase by agreement, or by condemnation. It may also refer to temporary rights needed to construct a transportation facility.

Easements

An easement is a property right to use another's property for a specified purpose. Types of easements include, but are not limited to, drainage, wall maintenance, ingress/egress, highway, building removal, slope, and temporary easements.

Environmental Due Diligence (EDD)

Process to investigate the environmental background and use of a property to determine the potential risk associated with contaminated soil or groundwater or solid waste on that property. The process provides current and historical site data to assess the short- and long-term exposure liabilities of an interested party in carrying out an acquisition.

High-Risk Property Acquisitions

High-risk property acquisitions are properties that:

- Have clean-up costs greater than \$500,000
- Have clean-up costs greater than 50% appraised value of the property
- Have clean-up costs greater than 10% of the project cost
- Present a high environmental liability to MnDOT, such as a superfund site, landfill, coal gasification plant, etc.

PROCEDURES

Early involvement of the Environmental Investigation Unit

The EDD evaluation requires early involvement between project planners, designers, and right of way staff in district offices and the Environmental Investigation Unit (EIU) of the Office of Environmental Stewardship. This early involvement should occur during the scoping process and helps MnDOT identify environmental risks associated with acquiring particular properties prior to acquisition. An EDD evaluation must identify environmental risks such as contaminated soil and groundwater, or solid waste such as asbestos materials.

EDD Evaluation Levels

There are three EDD levels, EDD-1, EDD-2, and EDD-3. The information required to complete each level of EDD is contained in the MnDOT REALMS (Right of Way Electronic Acquisition Land Management System) database, Office of Land

Management. The three levels of the EDD evaluation require progressively more information regarding the parcels under consideration for acquisition. The Office of Environmental Stewardship may give clearance to acquire a property at EDD-1 or EDD-2 levels based on the information obtained during the property evaluation. An EDD-3 level evaluation requires MnDOT's Deputy Commissioner/Chief Engineer to approve (or disapprove) the acquisition. Information regarding the internal procedures for the EDD evaluation is in the Right of Way Manual. A brief description of the three EDD levels follows below.

- An **EDD-1** evaluation provides the general project area information, including the end-points of the project. EIU reviews the project area for identification of potential contamination. EIU determines that additional investigation is not needed or more commonly additional evaluation is necessary under EDD-2.
- An **EDD-2** evaluation provides additional specific parcel information, so that known or suspected occurrences of contamination tie to specific parcels. EIU must conduct a Phase I or Phase II as necessary. EIU must clear parcels for acquisition or determine that an EDD-3 evaluation is required.
- An **EDD-3** evaluation provides information on potential high-risk property acquisitions. The EDD-3 summarizes benefits and risks of acquiring the property, all feasible and practicable risk mitigation options (such as project design changes to avoid or limit use of the property), and liability protections available from regulatory agencies. MnDOT's Deputy Commissioner/Chief Engineer must review and approve (or disapprove) the acquisition.

Most projects only require an EDD-1 or EDD-2 evaluation. Only projects involving high-risk property acquisitions must require an EDD-3 evaluation.

RESPONSIBILITIES

Provided below is a high-level overview of key responsibilities. For a detailed description of duties, refer to Right of Way Manual.

Office of Environmental Stewardship, Environmental Investigation Unit (EIU)

- Determines the level of investigation needed for each parcel transaction to assess environmental conditions and risk associated with the acquisition
- Obtains appropriate clearances and approvals needed in order to proceed with the property acquisition

District Land Management/Right of Way Offices

- Provides the general project layout followed by specific parcel information to EIU
- Obtains access permits for environmental investigation from landowners
- Works with the Local Unit of Government (LGU) and informs EIU of project corridors and project areas where potential property acquisitions for planned construction and operations projects
- Works with the LGU and EIU to gain EDD clearance prior to property acquisition

Office of Land Management

- Confirms the fulfillment of EDD requirements prior to the offer being made for the property acquisition

Deputy Commissioner/Chief Engineer

- Reviews information about the parcels on the EDD-3 form and approves or denies the property acquisition

RELATED INFORMATION

The [Office of Environmental Stewardship](#) provides environmental resources for pre-construction, construction and maintenance operations of state highways, roadsides, and mass transit systems.

The [Office of Land Management](#) provides surveying, mapping, utility agreements, acquisition and disposition of property for program delivery clientele to assure legal, timely and standardized land management services.

Liability for contamination encountered during construction

- Minnesota Statutes (based on federal acts):
 - [Minnesota Statutes Chapter 115](#) *Water Pollution Control; Sanitary Districts*
 - [Minnesota Statutes Chapter 115A](#) *Waste Management*
 - [Minnesota Statutes Chapter 115B](#) *Environmental Response and Liability*
 - [Minnesota Statutes Chapter 116](#) *Pollution Control Agency*
 - [Minnesota Statutes 609.671](#) *Environment; Criminal Penalties*
- [OSHA \(Occupational Safety & Health Administration\) Law and Regulations](#)

Liability for contamination on property acquisitions

- [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#)
 - [Minnesota Statutes Chapter 115B](#) *Environmental Response and Liability*

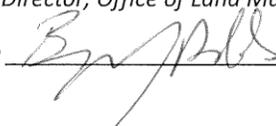
POLICY OWNERSHIP AND AUTHORIZATION

Policy Owners

Lynn Clarkowski, P.E., Director, Office of Environmental Stewardship

Signature and Date  7/13/16

Bryan Dodds, P.E., Director, Office of Land Management

Signature and Date  7/13/16

Governance Council

Sue Stein, Assistant Commissioner, Corporate Services Division, on behalf of the Governance Council

Signature and Date  7-15-16

Responsible Senior Officer

Susan M. Mulvihill, P.E., Deputy Commissioner/Chief Engineer

Signature and Date  7/18/16