



## Harmful Substance Compensation Program

This fact sheet, prepared by the Minnesota Pollution Control Agency (MPCA) explains how individuals can get financial aid for property damage or personal injury caused by harmful chemical substances.

### What is the Harmful Substance Compensation Program?

The Harmful Substance Compensation Program (HSCP) was created to compensate persons who suffer certain kinds of injury or property damage from exposure to harmful substances in Minnesota. This exposure may come from water, soil, or air contaminated by improperly disposed of or discharged chemical waste, petroleum, or agricultural chemicals.

The HSCP was established to provide an administrative alternative to filing lawsuits against the person or company responsible for the damage. Decisions on compensation are made by the Commissioner of the MPCA. The Commissioner receives advice as necessary from physicians knowledgeable in toxicology, from health professionals knowledgeable about injuries caused by harmful substances, and from the Minnesota Attorney General's staff.

### What kinds of personal injury are eligible for compensation?

Injuries eligible for compensation from the HSCP are those caused by exposure to an identifiable harmful substance and may include:

- A chronic or progressive disease, illness or disability, such as cancer, organic nervous system disorder, reproductive disorder, or physical deformity.
- Acute diseases or conditions that are obvious after limited exposure to a harmful substance released into the environment, provided the party responsible for the release is unknown or unable to compensate the victim.

### What kinds of property damage are eligible for compensation?

If the contamination is at the person's principal residence, eligible damages include:

- The reasonable cost of replacing or decontaminating drinking water at a home when the Minnesota Department of Health has advised that the water not be used for drinking.
- The reasonable cost to install a vapor mitigation system at a home when the MPCA has recommended a system be installed to protect human health due to soil vapor intrusion of harmful substances.
- Losses for the sale of a home at less than the appraised market value if the sale was necessary due to a hardship for the owner. Compensation is limited to 75% of the difference in the appraised market value and the selling price.
- The increased cost to maintain two residences when caused by the inability of a property owner in a hardship situation to sell the property due to the contamination.

For eligible property damage, the compensation is limited to \$25,000 for each loss.

Claims for rental or business property or second homes are not eligible.

## What types of injuries are ineligible for compensation?

Injuries that are not eligible for compensation include:

- Injuries that result from workplace exposures and for which an award is made under worker's compensation.
- Injuries caused by use of consumer products.

The person responsible for the release of the harmful substance cannot file a claim.

## How are injuries compensated?

For eligible injuries, compensation includes:

- Reimbursement for medical expenses.
- Reimbursement for lost wages or income and for lost household labor.
- Payment of death benefits to dependents.

Compensation for lost wages, lost household labor, and death benefits is limited to \$24,000 each per year. There is no limit on medical expenses, but the maximum award to any one person cannot exceed \$250,000.

## Is there a time limit on filing a claim?

A personal injury claim must be filed within two years after the injury and its connection to exposure to a harmful substance was discovered.

A property damage claim must be filed within two years after the total amount of compensable losses can be determined.

## Are there restrictions on filing a claim?

- A claim cannot be filed by a person who has received compensation for the injury or damage from the party responsible for the release of the harmful substance.
- A person cannot bring an action in court and before the MPCA Commissioner for the same injury or damage at the same time.
- Double recovery is prohibited. If a person accepts an award from the MPCA Commissioner, the person cannot bring an action in court for that same injury or damage.
- If a person has received a favorable court judgment, the person cannot file a claim with the MPCA Commissioner unless the judgment was not paid.

A person does not need an attorney to file a claim. If the person chooses to be represented by an attorney, the attorney's fee for a property damage claim is limited to 15% of the amount awarded. No limit exists for fees on injury awards.

## How are claims decided by the MPCA Commissioner?

After an investigation of a claim, the MPCA Commissioner or Commissioner's delegate drafts a preliminary decision to grant or deny compensation with an explanation. This preliminary decision is provided to the claimant for review. If the decision is accepted by the claimant, it becomes final. If the claimant is not satisfied with the preliminary decision, the claimant can challenge the preliminary decision. A notice of the challenge must be received by the MPCA Commissioner within 30 days of receiving the preliminary decision. This challenge consists of an informal hearing before the Commissioner, in which more evidence can be introduced or witnesses can be heard. After this informal hearing, the MPCA Commissioner's decision is finalized. There is no right to judicial review.

For personal injury claims, the MPCA Commissioner must grant compensation when information provided by the claimant and the Commissioner's investigation show it to be likely that:

- The claimant has an eligible injury and eligible losses.
- The claimant has been exposed to an identifiable harmful substance.
- The claimant's exposure was due to the release of the harmful substance from a facility in Minnesota.
- The claimant's injury can be caused or significantly contributed to by exposure to the harmful substance in the amount and duration of the claimant's exposure.

For property damage claims, the MPCA Commissioner must grant compensation when information provided by the claimant and the Commissioner's investigation show it to be likely that:

- The claimant has eligible damage and eligible losses under the law governing the HSCP.
- A release from a facility in Minnesota could have caused the presence of the harmful substance on the property.
- The MPCA determines that drinking water or soil vapor corrective measures taken are comparable to actions the agency would implement to protect public health.

## **For more information**

For more information or to obtain a claim application form, call Gary Krueger, MPCA Superfund Program, at 651-757-2509.

For an authoritative description of the rights and procedures that govern the Harmful Substance Compensation Program, please refer to Minn. Stat. §§ 115B.25-36 and Minn. R. ch. 7190.

MPCA website: <http://www.pca.state.mn.us>.

