



Cleaning Up Brownfields Under State Response Programs – Getting to “No Further Action”

Foreword

In 2015, the U.S. Environmental Protection Agency (EPA) marked the 20th anniversary of the Brownfields program and launched its Next Generation Brownfields initiatives to promote improved approaches for supporting American communities in their revitalization efforts. This report was prepared in response to suggestions EPA received from brownfields stakeholders about the need for a central source of information regarding the process for attaining a state decision or certification of the need for “no further action” under each state response program.

This report summarizes information gathered from state response program contacts and state response program websites. While some basic information about state voluntary cleanup programs is provided for context, this report focuses primarily on the processes used in various states to provide no further action decisions or certifications. The entry for each state should be viewed as a digest rather than a comprehensive source of information for that state, and should be considered a starting point for additional research. Readers are strongly advised to use the links in the “Additional Resources” section and consult with the state contacts listed to ensure that they have complete and up-to-date information regarding the process for attaining a state decision or certification of the need for “no further action” for each state program.

EPA would like to thank the many state response program officials who contributed their time to the preparation and review of the information in this report, as well as the Brownfields coordinators in EPA regions who assisted in this effort.

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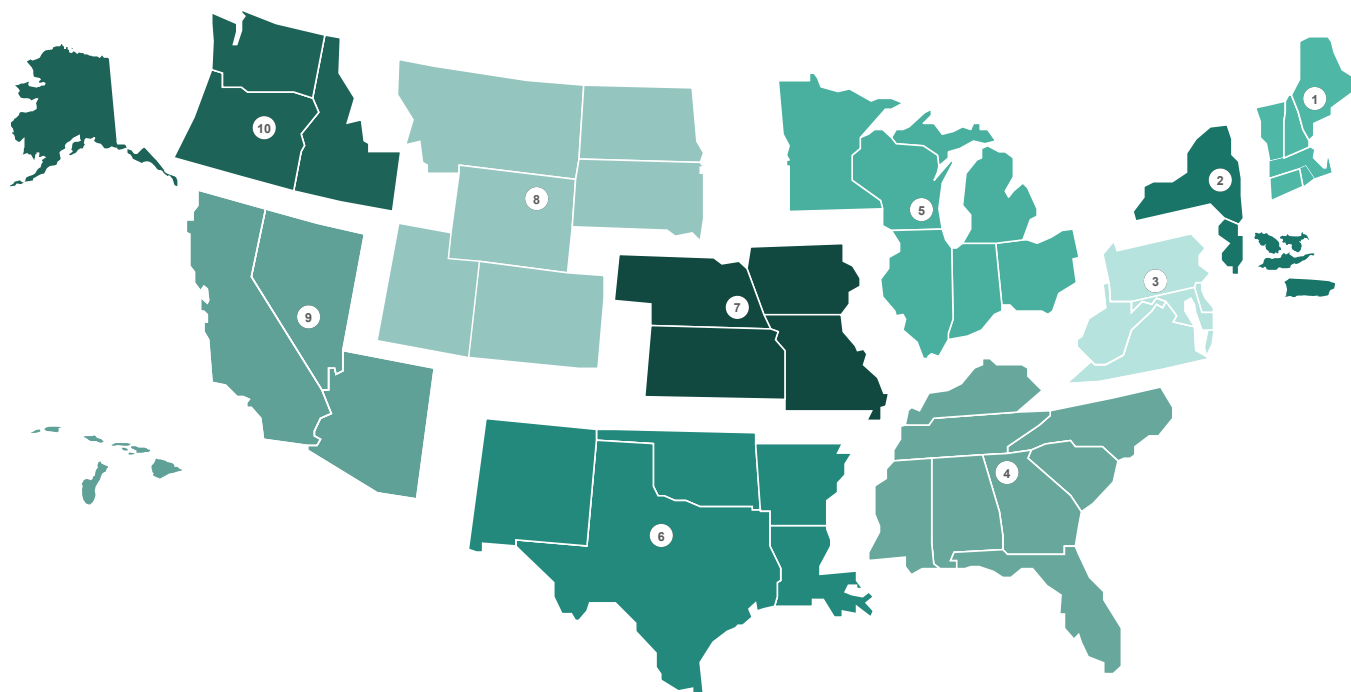
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Cover photos (clockwise): Green and affordable housing units at Lamar Station Crossing, Lakewood, CO
Urban agricultural site, Chicago, IL
Harbor Park 2nd Avenue Condos, Kenosha, WI
Amtrak station at the EmeryStation Transit Center, Emeryville, CA

Above: Harbor Point development, Stamford, CT
Wetland at Genetta Park, Mobile, AL (Courtesy of 2D Studios)

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Introduction

This report provides general information on certain aspects of state response programs available to owners and prospective purchasers of potentially contaminated properties, including brownfields. This report is meant to be a guide for owners of brownfields properties on the general requirements for entering a brownfield into a state cleanup program and the process for attaining a state decision or certification of the need for “no further action” under each state response program.

Brownfields sites often are cleaned up in accordance with and under the oversight of state “voluntary cleanup programs,” or state response programs. The benefits of enrolling in a state response program include the guidance and oversight provided by the state program, including guidance related to risk-based cleanups and constituent-based cleanup levels, as well as guidance on the use and long-term monitoring of institutional controls. State response programs also provide certain protections from environmental liability for sites cleaned up in accordance with program requirements. Liability protection often is documented as a “no further action” (NFA) decision or NFA letter. Individual states often use their own terms to refer to these NFA decisions or NFA letters.

Generally, states make a “no further action” decision after determining that a brownfield site, or one part of a brownfield site, that is enrolled in the state response program, poses no unacceptable risks to human health or the environment. This usually follows investigative or cleanup activities taken by the property owner or prospective purchaser under state program oversight or following a state’s comprehensive review of the cleanup actions taken at a brownfield. Obtaining a “no further action” decision generally means that the state will not require additional remedial action, based on the state agency’s knowledge of site conditions when it issues the NFA. Some NFA decisions are conditioned on compliance with institutional or engineering controls that are designed to prevent exposure to contaminants left in place following risk based cleanup activities.

The U.S. Environmental Protection Agency (EPA) does not oversee the cleanup of brownfields. Section 128(b) of the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA, or the federal Superfund law) limits U.S. EPA’s authority to take enforcement or cost recovery actions against persons who conduct a response action at a brownfield site in compliance with a state response program. Therefore, cleaning up brownfields in accordance with a state response program may afford a property owner liability protection under both state and federal environmental statutes.

This report provides a general summary of the eligibility requirements for entering a brownfield into each state’s response program and the required process in each state to apply for and obtain a determination of “no further action.” Comprehensive information on all aspects of state voluntary cleanup programs is not provided. More information on state voluntary cleanup programs can be found at: www.epa.gov/brownfields/2014-state-brownfields-and-voluntary-response-programs. State contact information and links to state program websites are provided in this report. The information contained in this report was gathered from state response program contacts and state response program websites.



REGION 1



*Lakes Region Facility Property, Lanconia, NH
Before photo of Save the Bay, Providence, RI*

Program Overview

Connecticut's Office of Brownfield Remediation and Development, Department of Economic and Community Development, is the state's official brownfield office. The Brownfield Remediation and Revitalization Program and Abandoned Brownfield Cleanup (ABC) Program establish a process for voluntary cleanup of contaminated sites that must meet Connecticut's Remediation Standard Regulations. These programs provide new developers of certain brownfields with relief from liability for pre-existing, offsite contamination, as long as cleanup of onsite contamination is addressed and migration of contamination from the site ceases. If the ABC Program accepts a property, the applicant must enter one of Connecticut's Voluntary Remediation Programs (VRPs).

There are two VRPs in Connecticut, authorized under Connecticut General Statutes sections 22a-133x and 22a-133y. Both programs are elective processes for property owners who wish to expedite the remediation of polluted property. The programs are managed by the Remediation Division, Bureau of Water Protection and Land Reuse, Connecticut Department of Energy and Environmental Protection (DEEP). The VRP under section 22a-133x is available to any person to facilitate the remediation of any contaminated property in Connecticut. The VRP under section 22a-133y is available for real property that has had a spill in an area where the groundwater meets certain classification standards; the site must not be subject to any order issued by DEEP, any consent order, or stipulated judgment regarding the spill. Under Section 22a-133x, DEEP usually authorizes a Licensed Environmental Professional (LEP) to verify that an investigation was performed in accordance with prevailing standards and guidelines, and that the completed remediation is consistent with regulations. However, DEEP may elect to directly review and approve in writing the investigation and remediation. Under Section 22a-133y, an LEP oversees the investigation and remediation and submits a remedial action report to DEEP. Remedial action reports submitted to DEEP pursuant to Section 22a-133y are deemed approved unless, within 60 days, the DEEP determines that an audit of the remedial action is necessary.

Connecticut limits the liability of prospective purchasers through two types of covenants not to sue. To qualify for

VRP Section 133x Program Summary

- The applicant files an environmental condition assessment form and a \$3,250 filing fee. DEEP notifies applicant within 30 days if further oversight is required.
- **If DEEP's Oversight is Not Required:** The applicant submits an investigation and remediation plan, and an implementation schedule to DEEP, within 90 days. The applicant satisfies notification requirements before remediation begins, and verifies that the site investigation and remediation meet applicable standards and guidelines.
- **If DEEP's Oversight is Required:** Within 30 days of DEEP's notice, the applicant submits a proposed investigation and schedule. DEEP notifies the applicant that remediation is complete.

VRP Section 133y Program Summary

- **Before the Remediation:** The applicant submits a remedial action plan, obtains all permits, and satisfies notification requirements.
- **After the Remediation:** The applicant submits a final remediation action report that is considered approved unless DEEP calls for an audit within 60 days. Before report approval, DEEP and applicant may enter into an agreement regarding further remedial action or monitoring activities. DEEP may disapprove the report after an audit.

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this benefit, the applicant must remediate the property according to regulations in effect on the effective date of the covenant and record any environmental land use restriction necessary to comply with the regulations on the land records; and the land use must remain in effect. The applicant must submit an application to request a covenant. DEEP can approve covenants early in the process as long as DEEP approves a brownfield investigation plan and remediation schedule.

Covenants Not to Sue

DEEP offers two types of covenants not to sue. A covenant not to sue is an agreement that DEEP will release claims related to pollution or contamination on or emanating from the property that resulted from a discharge, spillage, uncontrolled loss, seepage, or filtration on the property prior to the effective date of the covenant. DEEP will not require additional remediation in the future even if remediation standards change.

A covenant not to sue does not bar damage claims that third parties may bring, nor does it relieve anyone from responsibility for cleaning up new releases that occur after the covenant takes effect. A covenant not to sue does not prevent DEEP from requiring further remediation of the property if the information provided by the person seeking the covenant was false or misleading.

DEEP may enter into a covenant not to sue with a prospective purchaser of contaminated property; current owner of contaminated property; lending institution to whom the prospective purchaser or owner has conveyed a security interest in the property; or successor of the holder of an issued covenant.

Section 22a-133aa covenants are transferable to a party that is not responsible for polluting the property and is a successor of the holder of an issued covenant. These covenants also are available to lending institutions to which a prospective purchaser has conveyed a security interest.

Section 22a-133bb covenants require either DEEP approval of the cleanup plan or final remedial action report, LEP approval of the cleanup plan or final remedial action report, or verification that the property has been remediated in accordance with regulations. This covenant not to sue does not prevent DEEP from requiring additional action if new information confirms previously unknown contamination that resulted from a release prior to effective date of the covenant, or if the threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions.

Additional Resources

DEEP Remediation/Site Cleanup

http://www.ct.gov/deep/cwp/view.asp?a=2715&q=324950&deepNav_GID=1626

DEEP Voluntary Remediation Programs

http://www.ct.gov/DEep/cwp/view.asp?a=2715&q=325028&deepNav_GID=1626

Voluntary Remediation Program 133x Fact Sheet

http://www.ct.gov/DEep/cwp/view.asp?a=2715&q=325024&deepNav_GID=1626

Voluntary Remediation Program 133y Fact Sheet

http://www.ct.gov/DEep/cwp/view.asp?a=2715&q=325026&deepNav_GID=1626

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- **Upon Approval of a Final Remediation Action Report:** The property owner may file a Property Transfer Program Form II. An Environmental Land Use Restriction is recorded unless DEEP finds that land use restriction is unnecessary.
- **Remediation Complete:** DEEP approves the remediation or the applicant's verification that remediation is complete, or determines that applicant's verification survived the audit.

Covenants Not to Sue

http://www.ct.gov/deep/cwp/view.asp?a=2715&q=324936&depNav_GID=1626

Property Transfer Filing (including ECAF) and Covenant Not to Sue Forms

http://www.ct.gov/deep/cwp/view.asp?a=2715&Q=436540&deepNav_GID=1626#CovenantNotToSue

Remediation Standard Regulations

http://www.ct.gov/deep/cwp/view.asp?a=2715&q=325012&deepNav_GID=1626

Brownfields Program Liability Relief Programs Fact Sheet

http://www.ctbrownfields.gov/ctbrownfields/lib/ctbrownfields/Connecticut_Brownfields_Liability_Relief_Programs_Fact_Sheet.pdf

Agency Contacts

For more information about Connecticut's VRPs, contact:

Robert Bell

Assistant Director

Remediation Division

Bureau of Water Protection and Land Reuse

Connecticut Department of Energy & Environmental Protection

Email: robert.e.bell@ct.gov | Telephone: (860) 424-3873

Mark R. Lewis

Brownfields Coordinator

Office of Constituent Affairs & Land Management

Connecticut Department of Energy & Environmental Protection

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Main Agency Website: <http://www.ct.gov/deep/site/default.asp>



Program Overview

Maine established the Voluntary Response Action Program (VRAP) in 1993 to encourage the voluntary investigation, cleanup, and redevelopment of brownfields. VRAP helps to mitigate threats to public health and the environment, and facilitate the reuse of properties and infrastructure that consequently helps reduce sprawl and preserve greenspace. A state program imposed Public Communication Decision Matrix applies to all VRAP sites.

A property involved in a real estate transaction (such as acquisition, refinancing, or foreclosure) that has potential or documented soil or groundwater contamination may qualify for the VRAP. Ineligible properties include those operating pursuant to a license issued by a specific program within Maine's Department of Environmental Protection (DEP), or those that may fall under the jurisdiction of the federal Superfund (CERCLA) law or the Resource Conservation and Recovery Act (RCRA).

Eligible property owners that clean up a brownfield to the satisfaction of DEP can receive protection from future DEP enforcement actions. Property owners obtain liability protection through VRAP in the form of a *no further action assurance letter* and a *certificate of completion*. Owners not protected from liability under VRAP include those who caused, contributed to, or exacerbated the release (or threatened release) of contamination. Partial cleanups are possible under VRAP. For example, an applicant may propose to remediate contaminated soil at a property where groundwater contamination also is present but may not be remediated to drinking water standards. In this instance, DEP requires a land use restriction placed on the property to limit the use of the groundwater and to ensure protection of public health and the environment.

No Further Action Assurance Letter, No Action Assurance Letter, and Certificate of Completion

DEP issues a *no further action* assurance letter if an environmental site assessment indicates that contaminants were not discharged at the property or that discharges do not represent a threat to public health or the environment. DEP also issues a *no action assurance letter* upon concurrence with a Voluntary Response Action Plan. The letter assures the applicant that DEP will not take enforcement action.

VRAP Process Summary

- The applicant must conduct an environmental site assessment (ESA) to determine the nature and extent of contamination.
- The applicant must prepare a voluntary response action plan documenting the results of the ESA and the planned remedial measures for the property. The applicant then submits the plan to DEP to determine eligibility for VRAP. Submitting a voluntary response action plan and application for Assistance requires a non-refundable fee of \$500. DEP may subsequently bill the applicant for additional review and oversight services.
- DEP approves the voluntary response action plan. DEP may grant a "no action assurance" certification to applicants who enroll in the VRAP and complete all actions required in the approved plan.
- The applicant is required to submit a final report documenting the satisfactory completion of all response actions required in the plan to receive a certificate of completion.



DEP issues a certificate of completion upon approval of a final report that must document the satisfactory completion of all response actions required in the voluntary response action plan. The certificate includes the applicable liability release provisions for either a complete or partial cleanup. The certificate also applies to successors and assignees of the applicant, lenders, fiduciaries, and parties providing financing to the applicant.

The release of liability for a partial cleanup applies only to the contamination that is remediated to the satisfaction of DEP. An otherwise responsible party (i.e., the current owner/operator of the property) who undertakes only a partial cleanup does not receive liability protection.

Additional Resources

Brownfields Program

<http://www.maine.gov/dep/spills/brownfields/>

Voluntary Response Action Program

<http://www.maine.gov/dep/spills/vrap/index.html>

DEP Issue Profile: Voluntary Response Action Program

<http://www.maine.gov/dep/spills/vrap/ipvrap.html>

Voluntary Response Action Program Public Communication Decision Matrix

<http://www.maine.gov/dep/spills/vrap/documents/vrappubliccom.pdf>

Voluntary Response Action Program Law

<http://www.mainelegislature.org/legis/statutes/38/title38sec343-E.html>

Agency Contact

For more information about Maine's VRAP, contact:

Nick Hodgkins

Maine Department of Environmental Protection

Email: nick.hodgkins@maine.gov | Telephone: (207) 287-4854

Main Agency Website: <http://www.maine.gov/dep/>

MASSACHUSETTS



Program Overview

The Commonwealth of Massachusetts has a semi-privatized, risk based cleanup program that offers participants a choice of cleaning up a site using a chemical specific approach with numerical standards or a cumulative risk approach based on site specific information. The Massachusetts Department of Environmental Protection (MassDEP) does not oversee all phases of cleanup; instead, the cleanup program relies on licensed site professionals (LSPs) to provide oversight of cleanup activities. LSPs are technical experts licensed by the Commonwealth. Project proponents retain LSPs directly to conduct the analysis of the environmental condition of a property, determine the appropriate approach to cleanup, oversee and implement the cleanup, and ensure compliance with environmental laws on the proponent's behalf. Procedures and requirements on how to clean up sites in the privatized system are detailed in the Massachusetts Contingency Plan (MCP). MassDEP encourages parties interested in purchasing or redeveloping contaminated property to consult with an attorney with experience in Massachusetts General Law Chapter 21E.

Liability protection is available for certain participants if they meet statutory requirements. Municipalities are not considered owners/operators of properties when they foreclose on property subject to a tax lien, act diligently to divest themselves of the property, and meet other requirements of the law. Eligible persons, or non-causally responsible parties, also may receive liability protection once they complete property cleanup. MassDEP offers protection for tenants, redevelopment authorities, down gradient property owners, nonprofits, and other eligible parties undertaking brownfield redevelopment projects.

In exchange for a commitment to clean up a site and undertake a project that contributes to the economic or physical revitalization of the community or provides some other public benefit to the community in which the project is located, the Commonwealth might provide individually tailored liability relief to property owners and developers through the Brownfield Covenant Not to Sue Program administered by the Office of the Attorney General.

Permanent Solution Statement/Covenant Not to Sue Agreement

After a participant in the cleanup program selects a property and decides upon its intended use, it is necessary to determine if the property is contaminated. A description of a site's contamination issues may be available in MassDEP's Waste Site Database (site file viewer); if not, an LSP must be retained to perform a site assessment.

After a property is cleaned up in accordance with the MCP, the LSP posts a *permanent solution statement* in MassDEP's site file viewer with the other LSP-certified reports, thus providing a public record of the site's condition. These electronic records describe the activities conducted and level of cleanup attained. They provide participants, prospective purchasers, developers, or others interested in a site with informa-

Cleanup Process Summary

- The project proponent selects the site.
- The project proponent hires an LSP and assesses the site for contamination.
- The project proponent hires a lawyer.
- The project proponent cleans up the site under the direction of a LSP.
- The LSP posts a closeout statement in MassDEP's Waste Site Database to document the level of cleanup attained.
- If the cleanup is a conditional cleanup, the project proponent submits a brownfields covenant application to the Office of the Attorney General to request a covenant not to sue Agreement.



tion about the site's status, in lieu of a letter from MassDEP. Different categories of site closeout apply, depending on the level of cleanup that was completed (i.e., permanent solution with no conditions, permanent solution with conditions, or temporary solution). A permanent solution with conditions statement describes any site activity and use limitations (AULs). AULs are recorded on the property deed to describe any restrictions on the property's uses and any maintenance conditions that must be followed to ensure the property's safe use. MassDEP may screen or audit the permanent solution statement and typically posts the results on the site file viewer.

Entities ineligible for liability protection directly under Massachusetts law might obtain protection under a brownfields *covenant not to sue agreement* issued by the Office of the Attorney General pursuant to 940 C.M.R. 23.00. The process begins by discussing the proposed project and cleanup with the Attorney General's Office, including financial and project deadlines, and by submitting a brownfields covenant not to sue application. Applicants also must discuss cleanup and redevelopment plans with MassDEP and, if the Attorney General determines that a project meets the regulatory requirements for a covenant not to sue, provide notice, in accordance with the brownfields regulations, to certain third parties as described in 940 C.M.R. 23.04(2)(b). The liability protection provided in a brownfields covenant not to sue agreement becomes effective upon signing of the agreement before the applicant has achieved a liability endpoint, which, once achieved, will trigger statutory protection under c. 21E, §5C.

Additional Resources

Brownfields Redevelopment Toolbox: A Guide for Massachusetts Communities

<http://www.mass.gov/eea/docs/dep/cleanup/bftool.pdf>

Brownfields Liability Relief

<http://mgcmtraining.mass.gov/eea/agencies/massdep/cleanup/programs/brownfields-liability-relief.html>

Brownfields Covenant Program

<http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/brownfields-covenant-program/>

Cleanup Sites and Locations (access the Waste Site Database and file viewer)

<http://www.mass.gov/eea/agencies/massdep/cleanup/sites/>

Massachusetts Oil and Hazardous Material Release Prevention and Response Act (Chapter 21E)

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21E>

Massachusetts Contingency Plan or MCP (310 CMR 40.0000)

<http://www.mass.gov/eea/agencies/massdep/cleanup/regulations/massachusetts-contingency-plan.html>

Agency Contacts

For more information about Massachusetts' cleanup program, contact:

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MassDEP Brownfields Coordinator

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Main Agency Website: <http://www.mass.gov/eea/agencies/massdep/cleanup/programs/>

Betsy Harper

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Office of the Attorney General

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Main Agency Website: <http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/brownfields-covenant-program/>

Program Overview

The New Hampshire Department of Environmental Services' (DES) Brownfields Covenant Program, established in 1996 by the New Hampshire Legislature, provides incentives in the form of liability protections for the investigation, cleanup, and redevelopment of contaminated properties by persons who did not cause or contribute to the contamination. An eligible person can obtain a covenant not to sue from the New Hampshire Department of Justice (DOJ) and a certificate of completion from the DES when the person performs site investigations and remedial actions in accordance with DES cleanup requirements.

The New Hampshire brownfields statute contains specific public notice and participation requirements. When a participant submits an application to the Brownfields Covenant Program, the participant also must provide a copy of the application to the municipality in which the property is located and send a notice of the application to the owners of all properties abutting the site that will be cleaned up under the program. In addition, when the participant submits a proposed remedial action plan to DES, public notice of the plan and an announcement for a 30-day public comment period must be published in a local newspaper. The statute also requires that a public information meeting be held when there is significant environmental impact.

Covenants Not to Sue and Certificates of Completion

The Brownfields Covenant Program provides liability protections for property owners and prospective purchasers of property who did not cause or contribute to the contamination on the site, and who are willing to undertake the necessary site investigation and cleanup outlined within the Brownfields Covenant Program. Participants who investigate and clean up the site in accordance with DES requirements can obtain a *covenant not to sue* from the NH DOJ and a *certificate of completion* from DES. These documents often provide the needed assurances to developers and lenders that environmental and financial risks at a site were adequately addressed.

Brownfields Covenant Program Process Summary

- The applicant submits an Eligibility Determination Application to DES. DES reviews the application and issues an Eligibility Determination within 30 days.
- The participant submits a site investigation work plan to DES. After DES reviews and approves the work plan, the participant performs the site investigation and data analysis.
- At any stage in the Brownfields Covenant Program process, if DES concludes that cleanup goals are fully attained, DES issues a certificate of no further action. DES can issue a certificate of no further action, if no remedial action is required.
- If the site investigation reports confirm site contamination, the participant submits a remedial action plan. Public notice of the plan is published, and a 30-day public comment period is announced. If approved, DES issues a notice of approved remedial action plan.
- The participant implements the remedial action plan and submits a completion report to DES.
- Upon completion of site cleanup and DES approval of a completion report, DES issues a certificate of completion. A certificate of completion may include conditions such as activity and use restrictions, environmental monitoring requirements, and routine site maintenance requirements.
- The participant records the covenant not to sue and certificate of

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Specific liability protections in the program include:

- Site investigation and pre-remedial activities conducted at the property during participation in the program do not trigger liability for remediation of pre-existing contamination.
- An eligible person is not liable for the remediation of additional contamination or increased environmental harm caused by site investigation or pre-remedial activities, unless attributable to negligence or reckless conduct by the eligible person.
- The covenant not to sue provides liability protection for contamination addressed by an approved remedial action plan.
- The covenant not to sue is transferable to other eligible persons. The conditions for transfer to new persons may vary depending on the status of site cleanup at the time of transfer.
- After the site cleanup is complete and DES approves the eligible person's completion report, DES issues a certificate of completion that may include conditions such as activity and use restrictions, environmental monitoring requirements, and routine site maintenance requirements.
- If the eligible person cannot complete the site cleanup, the covenant not to sue provides protection from liability as long as the site is stabilized to the satisfaction of DES, and the site is not left in worse condition than it was before cleanup started.

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completion in the registry of deeds for the county in which the property is located.

- New Hampshire DOJ issues a covenant not to sue.

Additional Resources

New Hampshire's Brownfields Program

<http://des.nh.gov/organization/divisions/waste/hwrb/sss/brownfields/index.htm>

New Hampshire's Brownfields Covenant Program

<http://des.nh.gov/organization/commissioner/pip/factsheets/rem/documents/rem-8.pdf>

Brownfields Covenant Program: Application/Approval Process

http://des.nh.gov/organization/divisions/waste/hwrb/sss/brownfields/documents/bf_covenant_flowchart.pdf

Investing in New Hampshire's Future, Rebuilding Brownfields Today: An Overview of the New Hampshire Brownfields Program

<http://des.nh.gov/organization/commissioner/pip/publications/wmd/documents/wmd-06-3.pdf>

New Hampshire Statutes: Chapter 147-F: Brownfields Program

<http://www.gencourt.state.nh.us/rsa/html/nhtoc/nhtoc-x-147-f.htm>

New Hampshire Code of Administrative Rules: Env-Or 800, Brownfields Program Under RSA 147-F

<http://des.nh.gov/organization/commissioner/legal/rules/documents/env-or800.pdf>

Agency Contact

For more information about New Hampshire's Brownfields Covenant Program, contact:

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Main Agency Website: <http://des.nh.gov/>

Program Overview

The Rhode Island Department of Environmental Management (RIDEM)'s Voluntary Cleanup Program (VCP) encourages the cleanup of contaminated sites as part of its brownfields process. Remediation regulations define specific documents that are needed, or may be needed, as part of the voluntary cleanup process. These include:

- Notification of release
- Public notice (if more field work is necessary)
- Site investigation work plan (voluntary, but not necessary)
- Site investigation report
- Public notice
- Remedial action work plan
- Remedial action
- Closure report; and, if applicable
- Environmental land use restriction

Depending on the site conditions and the amount or type of contamination, other regulations also may apply.

Letter of Compliance or No Further Action Letter, or Remedial Agreement with Covenant Not to Sue

After submitting a site investigation report, completing public notice requirements, and receiving a remedial decision letter (RDL) from RIDEM, a responsible party that participates in Rhode Island's voluntary cleanup program may: (1) enter into a remedial agreement with RIDEM that includes a covenant not to sue, contribution protection, and a description of the remedial actions; or (2) submit a remedial action work plan to RIDEM and complete a site remediation. Upon successful completion of the remedial action and submittal of a closure report, RIDEM issues a *letter of compliance* or a *no further action letter*. If long-term monitoring is required, RIDEM issues an interim letter of compliance.

RIDEM also provides liability protection for a bona fide prospective purchaser (BFP) by issuing a covenant not to sue in a *remedial agreement*. The remedial agreement is

VCP Process Summary

- The applicant submits a notification of hazardous materials release form within 15 days of knowledge of a release. RIDEM's receipt of this form marks the beginning of the state process and RIDEM's requirement of enrolling in the state program.
- RIDEM reviews the documentation submitted. RIDEM issues one of three letters:
 - Letter of responsibility with a requirement to conduct a site investigation report (SIR)
 - Voluntary procedure letter with a requirement to conduct a SIR
 - Non-jurisdictional letter indicating that no SIR or further action is required.
- The applicant submits a site investigation work plan (SIWP) for RIDEM's approval.
- After approval of the SIWP, the applicant conducts the site investigation and submits a site investigation report (SIR) to RIDEM.
- RIDEM issues a program letter indicating that site investigation is complete but that public notice must be performed.
- The applicant meets public notice requirements. RIDEM issues a remedial decision letter (RDL) indicating that a SIR and public notice are complete and that a remedial action work plan should be submitted.
- After receipt of a RDL, the applicant may enter into a remedial agreement with RIDEM. The remedial agreement includes a covenant

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a legally binding document that establishes liability protection for a bona fide prospective purchaser (BFP) from any known existing contamination at a site as long as the BFP brings the property into compliance with the state's remediation regulations.

In addition to an exemption from liability provided for in R.I. Statute 23-19.14-7, the state and a person who received a remedial decision letter may enter into a remedial agreement that includes a covenant not to sue and contribution protection. The remedial agreement describes the agreed upon remedial actions and is assignable, as provided. Whenever the state enters into a remedial agreement, the liability to the state of each party to the agreement, including any future liability to the state, arising from the release or threatened release that is the subject of the agreement, is limited as provided in the agreement pursuant to a covenant not to sue. The final covenant not to sue may, at the discretion of the state, be transferred to successors or assignees that are not otherwise found to be a responsible party under R.I. Statute 23-19.16-6. The *covenant not to sue* may provide that future liability to the state or a person who is under the remedial agreement may be limited to the same proportion as that established in the original agreement. A remedial agreement is distinct from a letter of compliance, and the absence of a remedial agreement will not affect or compromise exemption to liability provided for in R.I. Statute 23-19.14-7.

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not to sue, contribution protection, a description of the remedial actions, and is assignable. OR

- The applicant submits a remedial action work plan to RIDEM and pays an application fee.
- RIDEM issues a remedial approval letter for simple remedies or an order of approval for complex, engineered remedies.
- The applicant conducts the remedial action and submits a closure report, and if applicable, a draft environmental land use restriction (ELUR) to RIDEM for approval.
- RIDEM issues a letter of compliance or a no further action letter. If long-term monitoring is required, RIDEM issues an interim letter of compliance.

Additional Resources

Rhode Island DEM Site Remediation Program

<http://www.dem.ri.gov/programs/wastemanagement/site-remediation/>

Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations)

<http://www.dem.ri.gov/pubs/regs/regs/waste/remreg11.pdf>

Rhode Island Brownfields Program

<http://www.dem.ri.gov/brownfields/>

Frequently Asked Questions About Liability Protection

<http://www.dem.ri.gov/brownfields/steps/faqliability.htm>

Remedial Agreements

<http://webserver.rilin.state.ri.us/Statutes/title23/23-19.14/23-19.14-7.1.htm>

Agency Contact

For more information about Rhode Island's VCP, contact:

Kelly J. Owens

Associate Supervising Engineer

Email: kelly.owens@dem.ri.gov | Telephone: (401) 222-2797, ext. 7108

Main Agency Website: <http://www.dem.ri.gov/>

Program Overview

The Vermont Agency of Natural Resources (ANR), Department of Environmental Conservation, encourages brownfield reuse projects to accomplish positive environmental and human health impacts while advancing sound landuse practices. The Brownfields Reuse Initiative's programs focus on three areas: limitation of environmental liability, technical assistance, and financial assistance.

The Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) was enacted in July 2008. BRELLA provides participants with a broad release from state liability in exchange for cleanup of a contaminated property. Participation in BRELLA is open to prospective purchasers and innocent current owners, provided that they did not cause or contribute to the contamination and are not affiliated with any entity that caused or contributed to the contamination. BRELLA established the Environmental Liability Limitation Program.

BRELLA replaces the previous brownfields cleanup law, known as the Redevelopment of Contaminated Properties Program. BRELLA preserves many features of the prior law and adds provisions intended to enable more projects to access the benefits provided by the brownfields program. For projects that proceed through cleanup, BRELLA provides a release that protects the brownfields developer from the risk of environmental liability for newly discovered contamination or changes in the regulatory scheme.

Certificate of Completion

Regulatory closure for contaminated property cleanup typically comes with a caveat, known as a reopener condition. This condition allows a regulator to reopen a project to require additional investigation or cleanup at some future time. Under that scenario, liability for environmental cleanup may never be resolved completely. Participation in Vermont's Environmental Liability Limitation Program provides a way of limiting liability and enables redevelopment to proceed with the knowledge that legal and financial risks associated with contamination are put to rest.

Participation in the Environmental Liability Limitation Program provides an alternative to the standard approach to cleanup. The program closes the reopener loop and resolves the potentially open-ended cleanup issue by issuing a certificate of completion after participants achieve cleanup goals. The certifi-

Environmental Liability Limitation Program Process Summary

- Persons interested in applying to the program attend a pre-application meeting to provide applicants with information about the program and ANR's expectations.
- To obtain an eligibility determination, the applicant submits a completed application and a non-refundable \$500 application fee. The applicant receives an eligibility determination within 30 days.
- The applicant submits a contaminant investigation work plan to ANR at any time, even prior to the eligibility determination.
- If ANR approves the work plan, the applicant implements it and submits a site investigation report.
- If the site requires activities to protect human health and the environment, the applicant submits a corrective action plan.
- ANR provides public notice about the plan and property before approving the corrective action plan.
- The applicant implements the approved corrective action plan and submits a completion report.
- ANR issues a certificate of completion that contains liability protection.



cate eliminates reopeners for pre-existing contamination that is discovered after the cleanup; pre-existing contamination that was not regulated as a hazardous material at the time of the cleanup; and the establishment of more stringent cleanup standards post-cleanup. In this manner, it limits the developer's liability to the state for cleanup.

The certificate of completion protects the holder from contribution claims that other persons who could be held responsible for cleanup may bring against the party enrolled in the state program. Contribution claims are not unusual due to the strict liability scheme applicable to contaminated properties. This protection afforded by the certificate of completion provides the brownfields developer with an additional level of comfort.

The state does not pursue enforcement action against a program participant who is actively engaged in environmental investigation or cleanup. This enables the state and the developer to work collaboratively on a mutually acceptable project schedule, rather than having the state dictate the cleanup timeframe.

The benefits that the certificate conveys attach to the property and may be transferred to successor owners, enhancing the property's value and marketability.

Additional Resources

Brownfields Reuse Initiative

<http://dec.vermont.gov/waste-management/contaminated-sites/brownfields>

Brownfields Reuse Initiative: Environmental Liability Limitation Program and Benefits

<http://dec.vermont.gov/waste-management/contaminated-sites/brownfields/BRELLA>

Brownfields Reuse Initiative: Environmental Liability Limitation Program, Application Process

<http://dec.vermont.gov/waste-management/contaminated-sites/brownfields/BRELLA/application>

Brownfields Reuse Initiative: BRELLA Statutes

<http://dec.vermont.gov/waste-management/contaminated-sites/brownfields/BRELLA/statutes>

Agency Contact

For more information about Vermont's Brownfields Reuse and Environmental Liability Limitation Program, contact:

Patricia Coppolino

Email: patricia.coppolino@vermont.gov | Telephone: (802) 249-5822

Main Agency Website: <http://anr.vermont.gov/>



REGION 2



*Camden, NJ, a city that has undertaken numerous brownfields cleanups
Before photo of the former Aratex Service Blakely Uniform company, Trenton, NJ*



Program Overview

The Site Remediation Reform Act (SRRA) of 2009 made sweeping changes to the way that brownfields and other contaminated sites are remediated in New Jersey. The SRRA established the affirmative obligation for responsible parties to remediate contaminated sites in a timely manner by creating a new category of remediation professionals known as Licensed Site Remediation Professionals (LSRPs). Effective May 7, 2012, when the LSRP program was fully implemented, all remediating parties were required to retain an LSRP and remediate their site under the new LSRP paradigm, regardless of when the cleanup was initiated.

An LSRP is a qualified environmental professional licensed by New Jersey's Site Remediation Professional Licensing Board to conduct the remediation of sites in New Jersey. Every LSRP is bound by a strict code of ethics, violation of which could result in the assessment of penalties and the suspension or revocation of the LSRP's license.

Under the LSRP paradigm, the LSRPs implement the environmental site assessment, cleanup, and final site closeout in accordance with New Jersey's administrative regulations for the LSRP program. The New Jersey Department of Environmental Protection (NJDEP) works with LSRPs and persons responsible for conducting remediation to ensure that sites undergoing remediation are protective of public health and safety, and the environment. New Jersey's former voluntary cleanup program no longer exists.

Under the LSRP program, the person responsible for conducting the remediation (PRCR) pays a nonrefundable annual remediation fee, document review fees, remediation permit fees, and oversight costs to NJDEP.

This person may apply for a rebate if such costs and fees amount to more than 7.5 percent of the cost of remediation. The LSRP hired by the responsible party must comply with all remediation statutes, rules, and regulations, and meet all NJDEP timeframes and deadlines. Sites that are not in compliance with NJDEP regulations or violate a mandatory timeframe are subject to direct NJDEP oversight. This oversight requires the PRCR to establish a remediation funding source in the amount equal to the total remediation cost, and involves a much higher level of NJDEP control over the remediation.

LSRP Program Process Summary

- The remediating party's LSRP submits the SRRA form to NJDEP.
- The remediating party initiates and completes site cleanup under the direction of an LSRP, who is responsible for overseeing the environmental investigation, cleanup, and final site closeout. The LSRP must meet all NJDEP timeframes.
- The LSRP submits forms and reports to NJDEP as the site reaches remediation milestones.
- NJDEP inspects documents that the LSRP submits. In some cases, NJDEP may conduct a more detailed review. This allows NJDEP to monitor remediation progress.
- NJDEP works with person responsible for conducting the remediation to help ensure compliance with the NJDEP's remediation rules.
- If after receiving compliance assistance from NJDEP, a regulatory timeframe or extension is missed, NJDEP may take enforcement actions and levy penalties.
- After remediation is complete, the LSRP issues a remedial action report to NJDEP and an RAO letter to the PRCR.



Response Action Outcome

NJDEP issues no further action letters only for specific cases, usually unregulated heating oil. For other sites, the response action outcome (RAO) letter that the LSRP issues is considered the final remediation document and is recognized by the state as equivalent to the no further action letter that NJDEP issued prior to the SRRA.

The SRRA established statutory liability relief for certain parties undertaking brownfields projects. Private developers must conduct Diligent Inquiry (called all appropriate inquiries at the federal level) prior to acquiring the property to begin the process of securing state liability protections. The developer must then follow the LSRP process for site cleanup. Once remediation activities are complete and the LSRP issues a RAO letter, the developer has a defense against third party damage claims and will not be considered a responsible party. A covenant not to sue applies to the cleanup activities that are completed in accordance with state requirements. These protections go into effect when the LSRP issues the response action outcome letter to the PRCR and files the RAO with NJDEP. NJDEP may rescind an RAO and can audit an RAO within three years. An LSRP also may be required to rescind an RAO if the RAO is found to be no longer protective of human health and the environment.

Additional Resources

Brownfield Liability

<http://www.nj.gov/dep/srp/brownfields/liability.htm>

NJ Site Remediation Program

<http://www.nj.gov/dep/srp/>

Overview of the LSRP Program

http://www.nj.gov/dep/srp/srra/lrsp/lrsp_program_overview.pdf

Jersey's Site Remediation Professional Licensing Board

<http://www.nj.gov/lrspboard/>

Administrative Requirements for the Remediation of Contaminated Sites

http://www.nj.gov/dep/rules/rules/njac7_26c.pdf

Technical Requirements for Site Remediation

http://www.state.nj.us/dep/rules/rules/njac7_26e.pdf

Agency Contact

For more information about New Jersey's LSRP and Brownfields Programs, contact:

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Director, Remediation Management

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Main Agency Website: <http://www.nj.gov/dep/>

Program Overview

The New York Department of Environmental Conservation's (DEC) Brownfield Cleanup Program (BCP) began in 2003. The goal of the BCP is to encourage private sector cleanups of brownfields and to promote the redevelopment of brownfields as a means to revitalize economically blighted communities. The BCP provides an alternative to developing greenfields and is intended to remove some of the barriers to, and provide tax incentives for, the redevelopment of urban brownfields.

Reforms to the BCP on July 1, 2015, included establishment of a new BCP-EZ program that provides applicants who clean up lightly contaminated sites a path to a liability release. Liability release is in the form of a certificate of completion. However, because the law requires DEC to promulgate regulations before the program is implemented, the BCP-EZ program likely will not be available until fall 2016.

Sites eligible for the BCP are any real property where a contaminant is present at levels exceeding the soil cleanup objectives or other applicable standards adopted by DEC.

- Ineligible sites include: Class 1 or 2 sites with viable responsible parties on the Registry of Inactive Hazardous Waste Disposal Sites.
- National Priorities List (NPL) sites.
- Permitted Resource Conservation and Recovery Act (RCRA) Corrective Action sites, that are owned by a viable responsible party; "interim status" facilities are eligible for the BCP program.
- Sites subject to a cleanup order under Article 12 of the Navigation Law (oil spill prevention, control, and compensation) or under Title 10 of New York Environmental Conservation Law Article 17 (control of the bulk storage of petroleum).
- Sites subject to any ongoing state or federal enforcement actions regarding solid waste, hazardous waste, or petroleum.

When applicants enter into a brownfield cleanup agreement with DEC, their obligations depend on whether they are accepted as a volunteer or participant. Applicants are

BCP Process Summary

- The applicant submits a pre-application worksheet and attends a meeting with the DEC point of contact to review the benefits, requirements, and procedures for completing a BCP project.
- The applicant submits an application form to DEC for review and approval. DEC reviews the application for completeness and site eligibility.
- Once DEC approves the application, both parties sign a brownfield cleanup agreement (BCA) whereby the applicant commits to undertaking remedial activities under DEC's oversight.
- A participant must evaluate and implement an effective remedy that addresses onsite contamination and any contamination that migrated offsite. A volunteer must address onsite contamination and prevent further migration of contamination to offsite properties.
- Within 20 days of the executed BCA, the applicant submits a citizen participation plan for approval by DEC before any other work plans or reports can be approved. Additional citizen participation occurs at several milestones throughout the BCP project.
- The applicant performs all environmental investigation and cleanup activities in accordance with a work plan or design documents approved by DEC.
- The applicant submits to DEC a report documenting the completion of work. A Qualified Environmental

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considered “volunteers” if they did not contribute to or cause the contamination but subsequently came to own the property. Applicants are “participants” in the BCP if they owned or operated the site at the time of disposal or discharge of contaminants or failed to take reasonable care to stop continuing releases or prevent further releases.

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Professional or a Professional Engineer registered in the State of New York must certify the report. Upon DEC approval, the applicant receives a certificate of completion.

Certificate of Completion

DEC issues a certificate of completion after a participant or volunteer completes a BCP project and DEC determines that the remedial action objectives defined in the decision document were achieved. The certificate allows the applicant to receive a limitation of liability from the state that applies to contamination identified by the remedial program and addressed under the BCP.

A certificate of completion also makes the applicant eligible to apply for BCP tax credits that may vary depending on when the BCP accepted the site.

Additional Resources

DEC Brownfield and State Superfund Programs

<http://www.dec.ny.gov/chemical/84286.html>

Brownfield Cleanup Program

<http://www.dec.ny.gov/chemical/8450.html>

BCP Application Form and Guidance

http://www.dec.ny.gov/docs/remediation_hudson_pdf/bcpapplication.pdf

BCP Work Plans and Report Documents

<http://www.dec.ny.gov/chemical/100781.html>

BCP Certificate of Completion Process

http://www.dec.ny.gov/docs/remediation_hudson_pdf/cocprocess.pdf

Citizen Participation Plan Handbook

http://www.dec.ny.gov/docs/remediation_hudson_pdf/der23.pdf

Agency Contact

For more information about New York’s BCP, contact:

Theodore Bennett

New York Department of Environmental Conservation

Email: theodore.bennett@dec.ny.gov | Telephone: (518) 402-9764

Main Agency Website: <http://www.dec.ny.gov/>



REGION 3



*Baltimore Citgo, Baltimore, MD
Dome being placed on the APUS Information Technology Center, Ranson WV*



Program Overview

The Delaware Hazardous Substance Cleanup Act (HSCA) provides the Delaware Department of Natural Resources and Environmental Control (DNREC) with the authority to provide incentives for, as well as enforce requirements governing, the investigation and cleanup of property that is contaminated by the release of a hazardous substance. DNREC administers the state's Brownfields Development Program (BDP) and its Voluntary Cleanup Program (VCP). The HSCA also provides DNREC the authority to issue Prospective Purchaser Agreements (PPA). PPAs also are available only to parties that are not responsible for previous contamination at a property. The Delaware VCP is available to all property owners.

The Brownfields Development Program is available only to prospective purchases of contaminated properties that are not responsible for any previous contamination at the property. The BDP encourages the cleanup and redevelopment of potentially impaired vacant, abandoned, or underutilized properties. A party seeking to develop a brownfield property under the BDP enters into a Brownfields Development Agreement (BDA) with DNREC's Site Investigation and Remediation Section (SIRS) to perform an investigation and, if necessary, a remedial action or remedy to address the risks that past releases of hazardous substances pose at the site. A BDA is available only to parties that did not previously own or operate the facility. The BDP offers financial assistance and liability protection from past releases once the purchaser or developer enters into the BDP.

PPAs also are available to parties who never owned or operated the facility. There is no financial assistance under the PPA program, and liability protection for all past releases is achieved once a *certification of completion of remedy* (COCR) is obtained and filed with the Recorder of Deeds. The PPA is a viable program for sites that are not certified as a brownfield.

The VCP is available to site owners and all parties who might be liable for the contamination of a property, but who wish to settle their environmental liabilities with the state. The current owner of a contaminated property may volunteer to clean up the site before DNREC orders a cleanup under HSCA. This can eliminate the need for costly litigation and allow the applicant to negotiate and choose a qualified environmental consultant. After DNREC accepts the VCP application, parties sign a VCP agreement to allow DNREC

BDP Process Summary

- The brownfields purchaser or developer (applicant) submits the BDA application to DNREC.
- A scoping meeting is held and the applicant prepares a Sampling and Analysis Plan for DNREC review.
- The applicant conducts sampling plus interim action, if necessary, and prepares a Brownfield Investigation (BFI) report for DNREC review.
- The applicant and DNREC sign the BDA prior to the applicant taking title to the property; the state will provide no financial assistance in the way of reimbursement of investigation or cleanup costs until the BDA is signed. Also, the state will not reimburse for remedial action costs until title is taken by the applicant.
- The applicant must post the Proposed Plan and Final Plan of Remedial Action for public comment.
- The applicant implements the remedial action.
- If there are land use restrictions or technical limitations, the applicant obtains an Environmental Covenant from DNREC to document the restrictions.
- If requirements are met, DNREC issues a COCR.

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to oversee the investigation and cleanup of the site by the chosen environmental consultant. The applicant/site owner agrees to pay the costs of DNREC's oversight, which requires payment of a \$5,000 deposit.

Certification of Completion of Remedy/No Further Action Letter

Once the BDA is executed, the BDP offers complete liability protection at the state level for contamination to qualified brownfield developers. The brownfield property owner or developer must conduct the remedy as specified in the Final Plan of Remedial Action approved by DNREC prior to site development. Once the remedy is in place, the owner or developer may request a COCR, which provides liability protection as long as the owner or developer follows the requirements of the COCR. The BDP offers liability protection for specific geographic or environmental media operable units identified at the property.

Under the VCP, DNREC may issue a COCR after the site owner successfully completes all activities required in the Scope of Work and the Sampling and Analysis Plan, and no additional activities are required. The COCR resolves owner liability to the DNREC for conditions known by the department to exist on the site at the time the COCR is issued. However, DNREC reserves the right to bring appropriate enforcement action if remediation was not completed as described in the work plan or if the work performed no longer is protective.

DNREC and HSCA also allow for *no further action* (NFA) letters for sites that may or may not have a release but pose no risk to human health and the environment; however, speaking with a DNREC representative to gain a full understanding of the letter's specific provisions for liability relief is recommended.

Additional Resources

Delaware Hazardous Substance Cleanup Act (HSCA)
<http://delcode.delaware.gov/title7/c091/index.shtml>

Site Investigation and Restoration Information
<http://www.dnrec.delaware.gov/dwhs/SIRB/Pages/default.aspx>

Brownfields-Related Documents
<http://www.dnrec.delaware.gov/dwhs/SIRB/Pages/Brownfields.aspx>

Site Investigation and Restoration-Related Laws, Regulations, Guidance and Policies
http://www.dnrec.delaware.gov/dwhs/sirb/Pages/SIRB_Laws_Regulations_Guidance_Policies.aspx

VCP-Related Documents
http://www.dnrec.delaware.gov/dwhs/SIRB/Pages/Voluntary_Cleanup_Program.aspx

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VCP Process Summary

- The applicant submits a VCP Application to DNREC.
- The applicant and DNREC enter into a VCP Agreement.
- The applicant submits an Investigation Work Plan to DNREC that specifies the steps necessary to perform the site investigation.
- The applicant submits the Site Investigation Report to DNREC.
- If cleanup is not required, DNREC issues an NFA letter.
- If cleanup is required, the applicant submits a cleanup approach and remedy evaluation to DNREC.
- The applicant must make the cleanup work plan available for public comment.
- The applicant implements the final cleanup plan.
- If cleanup is attained, DNREC issues a COCR.

Agency Contact

For more information about Delaware's BDP and VCP, contact:

James Poling or Paul W. Will

Telephone: (302) 395-2600 | Fax: (302) 395-2601

Email: james.poling@state.de.us | paul.will@state.de.us

Main Agency Website: <http://www.dnrec.delaware.gov/Pages/Portal.aspx>

Program Overview

The District of Columbia's Department of Energy and Environment (DOEE) established the Voluntary Cleanup Program (VCP) to encourage private parties to voluntarily clean up contaminated properties. DOEE's Land Remediation and Development Branch (LRDB) administers the program. DOEE is responsible for determining the eligibility of sites for voluntary cleanups and brownfield development incentives, establishing cleanup standards, overseeing cleanup activities, and determining the finality of the cleanup of contaminated properties.

Any property owner, developer, or entity that did not cause or contribute to the contamination at a property but wishes to clean it to established standards, is eligible to participate in the VCP as long as the site is not on the National Priorities List or is not otherwise regulated under another DOEE cleanup program.

Certificate of Completion

After LRDB reviews the Cleanup Completion Report for a site and determines that the applicant fully implemented the plan and the cleanup meets applicable cleanup standards, LRDB issues a certificate of completion. This document releases the applicant from further liability under the District of Columbia Brownfield Revitalization Amendment Act for any contamination identified in the environmental assessment for the property. The applicant also is released from liability under any other District law or regulation for cleanup of the eligible property. The applicant will not be subject to a contribution action instituted by any responsible party at the property. Long-term monitoring and maintenance may be necessary for the property under the LRDB's direction. LRDB determines the permissible uses of the property and states them in the certificate of completion.

Additional Resources

Land Remediation and Development Branch, DOEE
<http://doee.dc.gov/service/land-remediation-and-development>

VCP Application Forms
<http://doee.dc.gov/service/participate-voluntary-cleanup-program>

VCP Process Summary

- Before submitting an application, the applicant conducts a comprehensive site assessment that meets the requirements in the DOEE VCP Comprehensive Site Assessment Protocol.
- Interested parties submit an application, site assessment reports for the contaminated site, and a \$10,000 application fee.
- LRDB reviews the application and notifies the applicant of eligibility within 90 days, including a 21-day public comment period.
- The applicant submits a voluntary cleanup action plan (VCAP) within 30 days of the applicant's eligibility determination; LRDB verifies that the plan addresses all contamination at the site.
- The proposed VCAP is published for a 21-day public comment period.
- Within 90 days of submittal, LRDB issues an approval letter directing the applicant to implement the approved VCAP.
- The applicant implements the VCAP with LRDB oversight.
- Once an applicant implements the remedy outlined in the VCAP, the applicant submits a Cleanup Completion Report within 30 days of completion.
- LRDB reviews the Cleanup Completion Report and determines that the plan was fully implemented and applicable cleanup standards are met.
- After a 21-day public comment period, LRDB issues a certification of completion.



VCP Frequently Asked Questions

<http://doee.dc.gov/service/vcp-frequently-asked-questions>

VCP Flowchart

<http://doee.dc.gov/publication/vcp-flowchart>

Agency Contact

For more information about the District of Columbia's VCP, contact:

James Sweeney

Chief, Land Remediation and Development Branch

Email: james.sweeney@dc.gov | Telephone: (202) 535-2289

Main Agency Website: <http://doee.dc.gov/>



Program Overview

The Maryland Department of the Environment (MDE) Land Management Administration's Land Restoration Program administers the Voluntary Cleanup Program (VCP) to provide state oversight for the voluntary cleanup of properties contaminated with hazardous substances. The program's goal is to increase the number of sites cleaned up, by streamlining the cleanup process while ensuring compliance with existing environmental regulations.

Any property contaminated or perceived to be contaminated by controlled hazardous substances or oil is eligible for participation in the VCP. Eligible properties also include sites listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS, now Superfund Enterprise Management System, or SEMS); sites listed on CERCLIS/SEMS and designated no further remedial action planned by the federal government; and sites under active enforcement by the MDE when the applicant is an inculpable person.

No Further Requirements Determination and Certificate of Completion

The VCP provides two types of final site approval documents for properties contaminated or perceived to be contaminated by controlled hazardous substances or oil: a no further requirements determination and a certificate of completion.

MDE issues a *no further requirements determination* for an eligible property when MDE approves the application package and determines that a remedial action plan (RAP) is not required. The determination states there are no further requirements related to the investigation of controlled hazardous substances or oil at the property. The determination is based on VCP specific land use and may contain certain land use requirements.

If the property owner wants to change the permissible use of the property from that specified in the no further requirements determination (e.g., change from commercial to residential use), the owner is responsible for the cost of cleaning up the property to the appropriate standard associated with the new use. This requires submission of a new application to the VCP.

VCP Process Summary

- Participants in the VCP must submit a completed application; Phase I and Phase II environmental site assessments; a \$6,000 application fee (unless MDE determines that a lesser amount would be sufficient); and other information to evaluate the eligibility of the applicant and the property.
- If the application is approved and no contamination is found at the property, MDE may issue a no further requirements determination for the property. If remediation is necessary, MDE may advise the applicant to develop a proposed remedial action plan (RAP).
- If required, the participant submits a proposed RAP containing a workplan and implementation schedule for MDE review and approval.
- The participant publishes a notice of the proposed RAP, including the location of a public information meeting. MDE approves or rejects the RAP.
- MDE issues a RAP approval letter that states that it will issue a certificate of completion after implementation of the approved plan.
- The participant implements and completes the approved RAP in accordance with the approved schedule.
- MDE issues the certificate of completion after verifying completion of the requirements of the approved RAP.
- MDE issues the no further requirements determination when MDE has no further requirements regarding the investigation of controlled hazardous substances or oil at the property.



A property owner may request an alteration of the no further requirements determination once it is recorded in the land records office. The property owner must make this request in writing, pay a \$2,000 fee, and provide documentation regarding the request. The participant and any subsequent owners of a property subject to a no further requirements determination will continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any subsequent owners did not cause or contribute to the violation.

The determination does not prevent MDE from taking action against inculpable or responsible persons for new or exacerbated contamination, or for previously undiscovered contamination or imminent and substantial threats to public health or the environment.

MDE issues a *certificate of completion* for an eligible property following the satisfactory completion of an approved RAP. Upon submission of the RAP to MDE, the applicant must complete certain public participation requirements. If the proposed RAP is approved, MDE issues a RAP approval letter. If the applicant implements the RAP, completes the RAP to the satisfaction of MDE, and achieves the cleanup criteria and/or remedial objectives, the participant receives a certificate of completion. The participant is released from further liability for the remediation of the eligible property for any contamination identified in the environmental site assessment. The certificate of completion is based on VCP specific land use and may contain certain land use requirements or restrictions.

A property owner may request an alteration of the certificate of completion once it is recorded in the land records office. The property owner must make this request in writing, pay a \$2,000 fee, and provide documentation regarding the request. The participant and any subsequent owners of a property subject to a certificate of completion will continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any subsequent owners did not cause or contribute to the violation.

The certificate of completion does not prevent MDE from taking action against inculpable or responsible persons for new or exacerbated contamination, or for previously undiscovered contamination or imminent and substantial threats to public health or the environment.

Additional Resources

Maryland's Voluntary Cleanup Program

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/MDVCPInformation/Pages/programs/landprograms/errp_brownfields/vcp_info/index.aspx

Overview of the VCP Process

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/MDVCPInformation/Pages/programs/landprograms/errp_brownfields/vcp_info/vcp_application.aspx

Facts About Voluntary Cleanup and Brownfields Program

http://www.mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/mapping/Documents/www.mde.state.md.us/assets/document/VCP_and_Brownfields_Program1.pdf

Voluntary Cleanup Program Frequently Asked Questions

http://www.mde.maryland.gov/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/faqs/index.aspx

Agency Contact

For more information about Maryland's VCP program, contact:

Barbara H. Brown

Email: barbara.brown1@maryland.gov | Telephone: (410) 537-3493

Main Agency Website: <http://www.mde.state.md.us/Pages/Home.aspx>

Program Overview

Pennsylvania's Land Recycling Program (LRP) encourages the cleanup and redevelopment of older industrial sites through a number of initiatives. The LRP sets risk based cleanup standards that are protective of human health and the environment by considering both the future use of the property and potential risks from the release of regulated substances at the property. The LRP is authorized under Pennsylvania's Land Recycling and Environmental Remediation Standards Act, or Act 2. Act 2 and the LRP provide potential developers with uniform cleanup standards, a standardized review procedure by the Pennsylvania Department of Environmental Protection (DEP), and release from liability when the cleanup standards are achieved.

Under Pennsylvania's LRP, or the Voluntary Cleanup Program (VCP), the owner or purchaser of a contaminated site chooses the cleanup standard or combination of cleanup standards for the remediation process to follow.

Uniform statewide health standards enable the remediating party to clearly understand the extent and cost of site cleanup. The selection of standards assures that a site is protective of its present and future use. For example, a property used for industrial development need not be as clean as a residential site. This approach affords a greater degree of flexibility on site redevelopment. Regardless of the standards selected, the property owner can receive liability relief for the property when the standard is attained.

While Act 2 provides releases from state liability for site owners or developers, another companion law, Act 3, extends liability protection to financiers, such as economic development agencies, lenders, and fiduciaries (i.e., those who act as a trustee, executor, or administrator for the benefit of another person). These provisions are intended to reduce the liability concerns that may inhibit involvement with contaminated or abandoned sites.

Final Report Approval

The final report, developed by the applicant following the conduct of all remediation activities at a property documents the site characterization and cleanup conducted, and demonstrates the attainment of the selected cleanup standard. Once DEP issues a final report approval letter, Act 2 grants a release of liability for the remediation attainment demonstrated in the report. If the remedy requires post-remediation care and monitoring (e.g., maintenance of a soil cover cap or operation of drinking water treatment systems), an environmental covenant that specifies site activity and use limitations may be needed to maintain the effectiveness of the approved remedy.

Liability relief applies to the contaminants, environmental media, and physical areas addressed in the final report that meet the cleanup standard. Liability protections include:

Act 2 VCP Process Summary

- The applicant submits a notice of intent to remediate to DEP, and posts public notices of its intent to clean up a contaminated property.
- The applicant conducts an environmental site assessment of the site.
- The applicant conducts remediation based on a specific cleanup standard or standards provided under state law.
- The applicant submits a final report to DEP for review and approval, and posts public notices.
- DEP issues a final report approval letter.



- Any person demonstrating compliance obtains protection from having to do any future cleanup, unless it can be shown that the contamination resulted from later actions.
- Protection is extended to future owners, any participant in the cleanup, developer, occupiers, successors or assigns, and public utilities performing work on the property.
- Protection under state law from third-party contribution actions and citizen suits also is provided by the state.

Additional Resources

Pennsylvania Land Recycling Program

<http://www.dep.pa.gov/Business/Land/LandRecycling/Pages/default.aspx#.Vuw7ztlrKt9>

Standards, Guidance and Procedures

<http://www.dep.pa.gov/Business/Land/LandRecycling/Standards-Guidance-Procedures/Pages/default.aspx#.Vz3KmtQrKt8>

Brownfield Development Guide

<http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-98042/Brownfield%20Development%20Guide.pdf>

Land Recycling Forms and Lists

<http://www.dep.pa.gov/Business/Land/LandRecycling/Forms-Checklists-Notifications/Pages/Forms-and-Lists.aspx>

PA DEP PowerPoint Overview of the Land Recycling Program (Voluntary Cleanup Program)

<http://files.dep.state.pa.us/EnvironmentalCleanupBrownfields/BrownfieldRedevelopment/BrownfieldRedevelopmentPortalFiles/2014%20Land%20Recycling%20Program%20Overview.ppt>

Agency Contacts

For more information about the Act 2 VCP or Pennsylvania's LRP, contact:

George Hartenstein

Director, Bureau of Environmental Cleanup and Brownfields

Email: ghartenste@pa.gov | Telephone: (717) 83-1566

Troy Conrad

Land Recycling Program Manager

Email: tconrad@pa.gov | Telephone: (717) 783-7816

Main Agency Website: <http://www.dep.pa.gov>

Program Overview

The purpose of Virginia Department of Environmental Quality's (DEQ) Brownfields & Voluntary Remediation Program (VRP) is to encourage the productive reuse of lands in the Commonwealth by promoting remediation and restoration of sites that may otherwise not be cleaned up or redeveloped. The VRP provides a streamlined mechanism for site owners or operators to voluntarily address contamination at sites, with concurrence from the DEQ, and obtain closure and a final agency decision. The Virginia Brownfields Program will issue bona fide prospective purchaser (BFPP) status comfort letters to buyers of contaminated brownfields properties.

Under the VRP, when remediation activities at a property are satisfactorily completed, DEQ issues a certification of satisfactory completion of remediation. Typically, participation in the VRP and receipt of a certificate are beneficial to participants in facilitating the sale or productive reuse of properties.

Certificate of Satisfactory Completion of Remediation

When a participant in the voluntary cleanup program achieves the applicable remediation levels or when the Virginia DEQ determines that no further action is required at a site, the director issues a certificate of satisfactory completion of remediation, based on current property conditions and available information. DEQ issues a certificate to a participant when he or she satisfactorily demonstrates attainment of the remediation levels with or without the future site use restrictions, when migration of contamination is stabilized, and when the director concurs with all work submitted. The certificate contains an outline of conditions under which it is issued. The certificate includes a declaration of restrictive covenants that generally provides:

- Restrictions on future use.
- Required institutional controls.
- Required engineering controls and their maintenance.

The certificate provides immunity to enforcement actions under the Virginia Waste Management Act, the Virginia State

VRP Process Summary

- The applicant submits a request for eligibility determination that includes a completed VRP application, the Phase 1 registration fee (\$2,000) and other information that assists in the eligibility determination. DEQ makes an eligibility determination and notifies the applicant of its determination.
- The participant submits the Phase 2 registration fee (\$7,500) upon concurrence on the site's eligibility. The site is considered enrolled in the VRP. The applicant submits a required maintenance fee (\$4,500) after the first year for active sites in the program.
- The applicant submits a voluntary remediation report (a site characterization report, risk assessment, remedial action plan, documentation of public notice, and demonstration of completion). Remediation goals may be established based on background levels or a risk assessment. Institutional or engineering controls (e.g., land use restrictions, groundwater use restrictions) may be included in the VRP remediation goals to facilitate site closure.
- DEQ reviews and approves the remediation plan.
- The participant must provide the public an opportunity to comment on the proposed remediation.
- If DEQ is satisfied that the objectives of the remedial action plan were met, the established cleanup standards for the site were achieved, and migration of contamination is stabilized, the DEQ director issues a certificate of satisfactory completion of remediation. The VRP process is then complete.



Water Control Law, the Virginia Air Pollution Control Law, or other applicable Virginia law. The certificate grants immunity that is limited to site conditions at the time of issuance; these are described in the Voluntary Remediation Report (i.e., nature and extent of contamination), and is conditional upon the completeness and accuracy of the information in that report. The certificate also enumerates specific limitations.

If the certificate specifies a use restriction, the certificate and declaration of restrictive covenants must be recorded with the land records for the site in the Circuit Court where the site is located. If the closure is unrestricted, recordation of the certificate is optional. The immunity accorded by the certificate applies to the participant, but also “runs with the land” identified as the site.

Additional Resources

Guidance for the Voluntary Remediation Program Certification of Satisfactory Completion of Remediation
<http://www.deq.virginia.gov/Portals/0/DEQ/Land/RemediationPrograms/VoluntaryRemediationProgram/vrpcg.pdf>

Voluntary Remediation Program Risk Assessment Guidance
<http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/RemediationProgram/VoluntaryRemediationProgram/VRPRiskAssessmentGuidance.aspx>

Voluntary Remediation Program Regulations
<http://lis.virginia.gov/000/reg/TOC09020.HTM#C0160>

Model Certification of Satisfactory Completion of Remediation
<http://www.deq.virginia.gov/Portals/0/DEQ/Land/RemediationPrograms/VoluntaryRemediationProgram/vrPMC042309.doc>

Agency Contact

For more information about Virginia’s Brownfields and VRP, contact:

J. Meade R. Anderson, CPG

Email: j.meade.anderson@deq.virginia.gov | Telephone: (804) 698-4179

Main Agency Website: <http://www.deq.virginia.gov>

Program Overview

West Virginia's Voluntary Remediation and Redevelopment Act (VRRRA) authorized the Voluntary Remediation Program (VRP). The VRRRA was established to encourage voluntary cleanups of contaminated sites and redevelop abandoned and under-utilized properties. Applicants that remediate sites under the VRP are afforded liability protections under West Virginia Law.

Under the VRRRA, the participant identifies and addresses potential contamination at a site by conducting a voluntary remediation that complies with the program's remediation standards. Brownfield remediation is a special case of voluntary remediation. Voluntary remediation of brownfield sites involves the use of public funds for the site assessment or remediation; these cleanups require a higher degree of public involvement.

Certificate of Completion

A site is eligible to receive a certificate of completion once the site sampling demonstrates that applicable standards are met. If a site requires remediation, West Virginia Department of Environmental Protection (WVDEP) issues a certificate of completion after the remediation is complete, and the developer submits a request with a certified copy of the final report. The certificate of completion relieves the applicant and all subsequent purchasers from liability to the state for any further cleanup of previous contamination. WVDEP has 60 days to approve the final report and another 30 days to issue a certificate of completion.

If the applicant receives a notice of disapproval, he or she may: 1) instruct his or her Licensed Remediation Specialist to take the further actions indicated in the notification; 2) appeal the Director's decision to the Environmental Quality Board; or 3) formally terminate the voluntary remediation agreement.

Additional Resources

West Virginia Voluntary Remediation Program
<http://www.dep.wv.gov/dlr/oer/voluntarymain/Pages/default.aspx>

VRP Process Summary

- The site owner or operator, developer, prospective purchaser, or another interested party submits an application to WVDEP that includes the environment site assessment.
- The applicant executes a voluntary remediation agreement with WVDEP. The voluntary remediation agreement must provide for:
 - The services of a Licensed Remediation Specialist.
 - Recovery of costs that WVDEP incurs in excess of fees that the applicant submitted.
 - A schedule for payment of recoverable costs.
 - Descriptions of the work plan and other reports that the applicant will submit.
 - A list of applicable environmental requirements for the site.
 - Technical standards for work at the site.
 - Any engineering or institutional controls or land use covenants applicable for the site.
 - Criteria for reopening and modification of the agreement.
- Once the voluntary remediation agreement is in effect, WVDEP cannot take any enforcement actions against the applicant for the contamination being remediated under the Voluntary Program, unless there is an imminent threat to the public.
- Brownfields applicants must file a notice of intent to remediate with the Director of WVDEP.

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WV VRRRA Guidance Manual

<http://www.dep.wv.gov/dlr/oer/voluntarymain/documents/vrra%20guidanceversion2-1.pdf>

Voluntary Remediation and Redevelopment Rule

http://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/VRRRA%20Rule-6_1_2014.pdf

A Plain-Language Guide to Human Health Risk Assessment in the WV VRRP

<http://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/Risk%20Assessment%20Guide.pdf>

Licensed Remediation Specialist Program

<http://www.dep.wv.gov/dlr/oer/voluntarymain/lrs/Pages/LRS.aspx>

Land Use Covenants

http://www.dep.wv.gov/dlr/oer/Covenants/Documents/KMZ_Zip/Environmental%20Covenants%20Jan%202016.zip

Agency Contact

For more information about West Virginia's VRRP, contact:

Erin Brittain

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Main Agency Website: <http://www.dep.wv.gov/>

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- When the applicant completes the remediation, the applicant must submit a final report detailing the cleanup activities and results to WVDEP.
- WVDEP issues a certificate of completion when the remediation is complete and the developer or property owner requests a certified copy of the final report.



REGION 4



*Seasons Best Deli, Angier, NC
New wetland at Genetta Park, Montgomery, AL (courtesy of 2D Studio)*

Program Overview

The Alabama Department of Environmental Management's (ADEM) Brownfields Redevelopment and Voluntary Cleanup Program (VCP) provides oversight for the voluntary assessment and cleanup of contaminated brownfield sites. The greatest benefits of this fee-driven program are the significant liability protections afforded during and after assessment and cleanup activities.

The Alabama Land Recycling and Economic Redevelopment Act, signed on May 21, 2001, created the VCP. The ADEM Industrial Hazardous Waste Branch (IHWB) Redevelopment Section manages the VCP. The VCP allows innocent landowners to receive a limitation of liability for environmental contamination that occurred in the past. The liability protections are fully transferable to any non-responsible party who purchases the site, provided the party adequately maintains all land use controls.

All applicants—private industry, land developers, cities, counties, and the federal government—pay fees to enter the program. Submittal of the appropriate application fee is required prior to the review of any plans, reports, and, or certifications.

Certification of Compliance— Letter of Concurrence

To qualify for a limitation of liability, an applicant must not be a responsible person, i.e., “any person who has contributed or is contributing to a release of any hazardous waste, hazardous constituent, or hazardous substance at a property,” at the qualifying property. When the applicant is an individual, the individual must not have a familial or business connection to the property, and if a corporation or other legal entity, the corporation must not be a current or former subsidiary, division, parent company, or partner of a current owner; the employer or former employer of the current owner; or any responsible person on the subject property.

Certain types of sites are not eligible:

- Sites subject to ADEM permitting requirements as hazardous waste treatment and storage facilities.
- Superfund sites on the National Priorities List.
- Sites currently under an administrative order for cleanup by either ADEM or EPA.

VCP Process Summary

- The applicant requests a pre-application meeting with ADEM (optional).
- The applicant obtains a Letter of Eligibility for the property from IHWB.
- The applicant submits an application, supporting documents, and an application fee.
- The applicant submits for approval a site voluntary property assessment plan, with fee.
- The applicant submits a report of the assessment process and its findings.
- The applicant considers impacts to human health and the environment and determines cleanup levels, with IHWB concurrence.
- The applicant submits a voluntary cleanup plan for the site, with fee.
- The applicant conducts site activities as specified in the approved cleanup plan.
- The applicant submits a Certification of Compliance (with fee) when all requirements of an approved cleanup plan are complete, or upon completion of an assessment based on an approved voluntary property assessment plan with no contamination discovered.
- IHWB approves the applicant's Certification of Compliance and issues a Letter of Concurrence or a Conditional Letter of Concurrence.



When the applicant completes all requirements of an approved cleanup plan, or completes an assessment based on an approved voluntary property assessment plan with no contamination discovered, the applicant submits a *certification of compliance*. The certification of compliance describes all use restrictions. The applicant or eligible successor must satisfactorily maintain the engineering controls, remediation systems, or post-closure care to receive an unconditional *letter of concurrence*. If the applicant utilizes non-permanent institutional controls pursuant to an agreement, or performs partial response actions, IHWB may issue the applicant a conditional letter of concurrence.

Upon approval of the submitted certification of compliance as signified by the letter of concurrence, a non-responsible applicant at the qualifying property “shall not be liable to the state or any third party for costs incurred in the investigation or cleanup of, or equitable relief relating to, or damages resultant from, in whole or in part, a preexisting release at the qualifying property, including, but not limited to, any liability to the state for the cleanup of the property..., or a new release of a substance, constituent, or material which had been part of a preexisting release at the property, unless such new release results from noncompliance with an approved voluntary property assessment plan or voluntary cleanup plan or from the negligent, wanton, willful, or intentional conduct of the applicant.”

ADEM may revoke the letter of concurrence if contamination posing an unacceptable risk to human health and the environment is discovered onsite or if the submitted certification of compliance is found to be based on information that was materially false, inaccurate, or misleading.

Additional Resources

ADEM Redevelopment Programs

<http://adem.alabama.gov/programs/land/brownfields/bfredevelopment.cnt>

Brownfields/Voluntary Cleanup Program

<http://www.adem.state.al.us/programs/land/brownfields.cnt>

Ten-Step Process for Successful Brownfields Redevelopment

<http://www.adem.state.al.us/programs/land/brownfields/tenStep.cnt>

Form 521: Voluntary Cleanup Program Application Form

<http://www.adem.state.al.us/DeptForms/Form521.pdf>

Division 15: Brownfield Redevelopment and Voluntary Cleanup Program

<http://www.adem.state.al.us/alEnviroReglaws/files/Division15.pdf>

VCP Fee Schedule [see Fee Schedule H]

<http://www.adem.state.al.us/alenviroreglaws/files/division1.pdf>

Agency Contact

For more information about Alabama’s VCP, contact:

Sonja Favors, P.E.

Chief, Redevelopment Section

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Main Agency Website: <http://www.adem.state.al.us/programs/land/default.cnt>



Program Overview

The Florida Department of Environmental Protection (DEP) created the Brownfield Redevelopment Program to reduce public health and environmental hazards on existing commercial and industrial sites that are abandoned or underused due to these hazards. The program creates financial and regulatory incentives to encourage voluntary site cleanup and redevelopment; derives cleanup target levels and provides a process for obtaining a no further action letter using risk based corrective action principles; and provides the opportunity for environmental equity and justice.

To redevelop a brownfield site in Florida, prospective developers must obtain a brownfield site rehabilitation agreement (BSRA). To be eligible for a BSRA, the subject property must be located in a brownfield area that was so designated by the local government with jurisdiction over the property. The BSRA is an agreement between the DEP and the person responsible for brownfield site cleanup and rehabilitation. The BSRA defines the person's duties, certifies that the local government supports the actions to be taken at the site, ensures that a licensed contractor will complete the work in compliance with state statutes, and ensures liability protection upon successful execution and compliance with the agreement. A BSRA provides signatories with liability protections and eligibility for economic incentives, as long as compliance with the agreement is maintained.

Site Rehabilitation Completion Order

Once the site owner completes the remediation obligations outlined by the BSRA, DEP issues a site rehabilitation completion order. Under Florida law, any party that successfully executes and implements a BSRA is relieved of further liability for previous contamination at site, following completion and certifications of all required remediation. This includes liability for claims of property damages, lost or delayed rent, sale or use of property, stigma to real property, or improvements caused by the BSRA. This

BSRA Process Summary

- The applicant identifies the individual, entity, or parties responsible for brownfield site rehabilitation and the party or parties who agree to conduct site rehabilitation and abide by the duties identified in the BSRA.
- The applicant develops a brownfield site rehabilitation schedule with milestones for completion of all site rehabilitation tasks and submittal of technical reports and rehabilitation plans.
- The applicant commits to conduct site rehabilitation activities under the observation of professional engineers or geologists, in accordance with DEP quality assurance rules, and consistent with state, federal, and local laws. A professional engineer or geologist signs and seals any submittals by the person responsible for brownfield site rehabilitation, certifying compliance with state law and DEP rules. A professional engineer or geologist also must certify that the completed corrective action is in substantial conformance with the plans and specifications approved by the DEP.
- The applicant obtains a certification from the local government with jurisdiction over the site that indicates that the applicant consulted with the local government and the local government agrees with the proposed redevelopment. The certification may be accomplished with an officially approved land use or site plan, a development order or approval, building permit, or other document the local government issues; a resolution that describes the redevelopment; or

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liability protection becomes effective upon execution of the BSRA, and remains effective as long as the property owner complies with the terms of the BSRA.

Additional Resources

Brownfields Redevelopment Program

<http://www.dep.state.fl.us/waste/categories/brownfields/default.htm>

Voluntary Cleanup Tax Credits

<http://www.dep.state.fl.us/waste/categories/vctc/default.htm>

Florida Brownfields Redevelopment Act

<http://www.dep.state.fl.us/waste/categories/brownfields/pages/act.htm>

<http://www.leg.state.fl.us/Statutes/index.cfm>

Agency Contact

For more information about Florida's BSRA, contact:

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Brownfields Program Manager

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Main Agency Website: <http://www.dep.state.fl.us/mainpage/default.htm>

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a letter from the local government that describes the proposed redevelopment.

- The applicant certifies that any contractor performing site rehabilitation work meets all certification and license requirements, and will conduct sample collection and analyses pursuant to DEP rules.
- After the site owner completes the remediation outlined by the BSRA, DEP issues a site rehabilitation completion order.



Program Overview

The Georgia Environmental Protection Division (EPD) established the state's Brownfield Program in 2003 to provide liability protections and other incentives to innocent purchasers of contaminated property. The goal of the Brownfield Program is to encourage cleanup, reuse, and redevelopment of contaminated properties. Participants in the program agree to clean up soil and source material to cleanup standards promulgated under Georgia's Superfund Law, commonly referred to as the risk reduction standards.

To participate in the Georgia Brownfield Program, both the purchaser and the property must qualify. The prospective purchaser must not have contributed to the release or be related to the responsible party and must not be in violation of EPD's enforcement authority. The property must have a preexisting release of a regulated substance; not be undergoing response action under a federal order or be listed on the National Priorities List; not be a permitted hazardous waste facility; and not have an outstanding lien under the State Underground Storage Tank or Superfund programs.

Prospective purchasers are individuals who intend to acquire a property interest where there is a pre-existing release. Prospective purchasers may apply for a limitation of liability before or within 30 days of acquiring the property interest. The brownfield application requires payment of a \$3,000 nonrefundable application fee. Applicants also must submit a prospective purchaser corrective action plan (PPCAP) or a prospective purchase compliance status report (PPCSR) to EPD.

EPD's approval of the PPCAP or PPCSR conveys the limitation of liability to the prospective purchaser. The limitation of liability is from third party claims for prior releases and responsibility for cleaning up groundwater. The limitation of liability runs with the land and protects subsequent property owners, as long as they did not contribute to the release. The limitation of liability terminates if it is transferred to a party that would be disqualified from obtaining a limitation of liability. The limitation of liability does not extend to new releases or to releases not addressed in the PPCAP or PPCSR. Those releases constitute new, separate, and distinct release subject to oversight by the State Superfund Program.

The Brownfield Program also offers tax relief for properties where costs were incurred to obtain the limitation of liability. Prospective purchasers submit cost documentation, along with the brownfield cost certification form, to EPD for review. EPD issues a certification of eligible costs. Eligible costs are any costs incurred after July 1, 2003, that were directly related to the receipt of the limitation of liability and

Brownfields Program Process for Obtaining Limitation of Liability

- The prospective purchaser applies to EPD for a limitation of liability before or within 30 days of acquiring the property interest by submitting the brownfields eligibility form, a \$3,000 non-refundable application fee, and a prospective purchaser corrective action plan (PPCAP) or a prospective purchase compliance status report (PPCSR).
- EPD approves the PPCAP or PPCSR.
- The prospective purchaser implements the PPCAP within the timeframe specified in the approved PPCAP and must certify that the property complies with the risk reduction standards for source material or soil in order to maintain the limitation of liability.
- Once the corrective action activities specified in the approved PPCAP are completed, the prospective purchaser submits a PPCSR to EPD.
- EPD provides written concurrence with the PPCSR. EPD's approval conveys the limitation of liability to the prospective purchaser.



that are not ineligible as defined by law. Prospective purchasers then submit their certification to the local tax authority for preferential assessment.

The preferential assessment freezes the *ad valorem* value of the property for 10 years or until the brownfield costs are recouped, whichever occurs first. An amendment to the tax law in 2014 allows an extension of the preferential assessment for up to five years for brownfield properties where construction ceased for 180 days or more and later resumed. Similar to the limitation of liability, the preferential assessment is transferable as long as the limitation of liability has not been revoked.

Limitation of Liability

A purchaser of a contaminated property in Georgia is liable for site contamination and cleanup. However, the Georgia Brownfield Act (previously the Hazardous Site Reuse and Redevelopment Act [HSRA]) provides a limitation of liability for qualified prospective purchasers who voluntarily agree to remediate soil and source material to promulgated risk reduction standards. The law also expands prospective purchasers to include those who acquire a property interest, such as tenants, easement holders, and license holders. To qualify, prospective purchasers cannot have contributed to the release of hazardous substances at the property or be affiliated with a party responsible for the release. In addition, purchasers cannot be in violation of EPD's enforcement authority.

A limitation of liability protects the new owner from third-party claims resulting from prior contamination on the property. In addition, a new owner is not liable for cleaning up groundwater contamination. Liability protection runs with the land to subsequent eligible purchasers and those who acquire property interest.

Additional Resources

Georgia EPD Brownfield Program
<https://epd.georgia.gov/brownfield>

Georgia Brownfield Act
https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/12-8-200%20%20Brownfield%20Act%20effective%207-2014%20.pdf

Brownfield Eligibility Form
https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BF%20Eligibility%20Form%2011-2014.pdf

Georgia Brownfield Tax Incentive
https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BFTax.pdf

Georgia Brownfield Cost Certification Form
https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/BF%20Cost%20Certification%20Form%20%202011-2014%20%282%29.pdf

Agency Contact

For more information about Georgia's Brownfield Program, contact:

Shannon Ridley
Georgia Department of Natural Resources
Environmental Protection Division
Response and Remediation Program-Brownfield Unit
Email: shannon.ridley@dnr.ga.gov | Telephone: (404) 657-8616
Main Agency Website: <https://epd.georgia.gov/>



Program Overview

Kentucky's Department of Environmental Protection (DEP) has two programs that provide liability relief for brownfield site owners. The goal of the Kentucky Brownfield Redevelopment Program is to promote the redevelopment and revitalization of properties that are abandoned or underutilized due to real or perceived contamination. Under the Brownfield Redevelopment Program, DEP provides notification of concurrence for property owners and prospective property owners (who can certify that they did not cause a release or have relationships with those who did, and who develop a plan to reuse the property safely) that documents that they will not be held responsible for conducting site characterization and remediation under state laws.

Kentucky's Voluntary Cleanup Program allows interested parties to initiate cleanups on a property they either own or wish to purchase and redevelop. It offers four tracks that vary in eligibility criteria, complexity, and liability protection:

- Track 1: "self-certified" cleanup. Available for minor contaminant releases or releases authorized by permit. DEP offers no liability protection.
- Track 2: "notice of completion" cleanup. Available to all parties at a more complex cleanup site. Once cleanup is complete, the state issues a notice of completion letter.
- Track 3: "no further remediation" cleanup. Available only to public entities (city-, county-, or state-owned sites) at a more complex cleanup site. Once cleanup is complete, the state issues a no further remediation letter.
- Track 4: "VERP" (Voluntary Environmental Remediation Program) cleanup. Available to all parties, unless the property is a licensed radioactive materials facility, listed on the National Priorities List, a Resource Conservation and Recovery Act site, or the subject of an enforcement action. This track addresses the most complex cleanups in the state. Once cleanup is complete, the state issues a covenant not to sue.

Brownfield Redevelopment Program Process

To apply, site owners must:

- Certify that all releases of a hazardous substance, pollutant, or contaminant governed by state statutes occurred prior to the applicant's acquisition of the property.
- Make all appropriate inquiries into previous ownership and uses of the property.
- Provide all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property.
- Submit the following documents to DEP, with a \$2,500 application fee:
 - Brownfield liability relief eligibility form
 - Copy of the property deed
 - Property management plan
 - Documentation of all appropriate inquiry

Voluntary Environmental Remediation Program

VERP applicants must:

- Submit an application form, topographical map of the property, and application fee (between \$1,000 and \$3,000, depending on property size)
 - Publish a public notice about their intent to apply for the program.
 - Complete a site characterization plan.

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Notification of Concurrence, Notice of Completion Letter, No Further Remediation Letter, or Covenant Not to Sue

The Brownfield Redevelopment Program provides successful applicants who own a property with a *notification of concurrence* that documents that they will not be held responsible for performing site characterization or remedial actions under Kentucky Superfund statutes.

Kentucky does not provide liability relief for self-certified cleanups completed under Track 1 of the VCP. Liability relief under Kentucky law is available only to sites cleaned up under Tracks 2-4:

- Successful cleanups under Track 2 receive a *notice of completion letter*. This letter states that the applicant conducted the remedial action in accordance with the established standards and procedures for corrective action, as determined by the state.
- Successful cleanups under Track 3 receive a *no further remediation letter*. This letter releases the applicant from further responsibility to undertake additional remedial action at the site. The issuance of a letter is considered evidence that the site does not constitute a threat to human health and the environment, and the site does not require additional remediation. This track is available only for public entities.
- Successful cleanups under Track 4 receive a *covenant not to sue*. The covenant prevents any suit of claim by the state against the applicant for failure to perform remedial actions at the site.

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- Conduct a site characterization and submit a site characterization report that complies with the site characterization plan. This is equivalent to a Phase I environmental site assessment.
- Submit a corrective action plan that contains a proposed schedule for implementation.
- Submit a corrective action completion report that documents the corrective actions implemented, and compliance with the corrective action plan approved by DEP, as well as documentation of all engineering and institutional controls.

Additional Resources

Kentucky Brownfield Redevelopment Program
<http://dca.ky.gov/brownfields/Pages/default.aspx>

Brownfield Redevelopment Program and Voluntary Environmental Remediation Program Processes
<http://waste.ky.gov/SFB/Pages/Brownfields.aspx>

Brownfield Redevelopment Program Application Form
<http://waste.ky.gov/SFB/Documents/Brownfield%20Program%20Application%20Form%202011-12-13.pdf>

Voluntary Environmental Remediation Program Application Form
<http://waste.ky.gov/SFB/Documents/VERPApplication.pdf>

Agency Contact

For more information about Kentucky's Brownfield Redevelopment Program and VERP, contact:

Herb Petitjean
Email: herb.petitjean@ky.gov | Telephone: (502) 564-0323
Main Agency Website: <http://eec.ky.gov/Pages/default.aspx>



Program Overview

The Mississippi Department of Environmental Quality (MDEQ) is responsible for the assessment and remediation of contaminated sites in Mississippi. The Brownfields Voluntary Cleanup and Redevelopment Act established the Mississippi Brownfields Program in 1998. This act established the program to assist in the cleanup and redevelopment of contaminated properties by providing liability protection and with the goal of lowering potential redevelopment costs. In addition, the Brownfield Voluntary Cleanup and Redevelopment Incentives Act provides a state income tax credit for costs incurred by property owners who remediate brownfields.

Mississippi also established an Uncontrolled Sites Voluntary Evaluation Program (VEP) that allows accepted parties to participate in a program that expedites the evaluation of site information for “uncontrolled sites” (sites where hazardous or toxic wastes were released into the environment, and there is no federal environmental program that can handle the problem).

No Further Action Letter

Brownfields parties that execute a brownfields agreement are relieved of liability to all parties (other than the United States), including MDEQ, for remediation of the Brownfields Agreement site other than the remediation required by the brownfields agreement, and all costs reasonably related to the remediation other than the remediation costs required by the brownfields agreement or regulations. For sites cleaned up to unrestricted levels, MDEQ issues a no further action letter. This liability protection is available only under the Brownfields Program.

Additional Resources

MDEQ Brownfields Webpage

http://www.deq.state.ms.us/MDEQ.nsf/page/GARD_brownfields?OpenDocument

Uncontrolled Sites Section Voluntary Evaluation Program

[http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_ussvep/\\$FILE/Ussvep.pdf](http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_ussvep/$FILE/Ussvep.pdf)

Brownfields Program Process Summary

- The applicant submits an application form to MDEQ.
- MDEQ reviews and approves the application and issues an agreed order for participation.
- MDEQ reviews any prior assessments, and reviews and approves additional assessment work plan, if necessary.
- The applicant submits a proposed corrective action plan, including proposal of the brownfields agreement site and cost estimates to support financial assurance estimates, if necessary.
- MDEQ drafts the brownfields agreement and environmental covenant.
- The applicant fulfills notification and public participation requirements, including a possible public hearing.
- The MDEQ provides approval by order of the brownfields agreement and environmental covenant.
- The applicant files a copy of environmental covenant with the Chancery Clerk.
- The applicant carries out brownfields provisions, and submits the certification and corrective action report to MDEQ. The applicant performs compliance monitoring as required.
- MDEQ performs technical reviews.
- Once site conditions meet defined unrestricted levels, MDEQ issues a no further action letter.



MDEQ Brownfields Application Packet

[http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_bfpacket/\\$File/bfpacket.PDF?OpenElement](http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_bfpacket/$File/bfpacket.PDF?OpenElement)

Tax Credit Information

<http://bit.ly/MS-Brownfield-Tax-Credit>

Agency Contact

For more information about Mississippi's Brownfields Program, contact:

William McKercher

Acting Brownfield Coordinator

Email: wmckercher@mdeq.ms.gov | Telephone: (601) 961-5731

Main Agency Website: <http://www.deq.state.ms.us/>

Program Overview

North Carolina has two distinct programs that address the cleanup and redevelopment of brownfield sites. The inactive hazardous sites program (IHSP) establishes a process for voluntary cleanup of contaminated sites. Responsible parties and site owners volunteer to clean up sites by entering into agreements with the North Carolina Department of Environmental Quality (NCDEQ). NCDEQ provides oversight and approval during site assessment and remedial action. Sites that are successfully remediated under IHSP receive liability protection from the state through the issuance of a *no further action letter*.

Depending on the nature and extent of contamination at a site and the sensitivity of the cleanup, the NCDEQ may determine that the cleanup must be managed under the state's Registered Environmental Consultant Program. If NCDEQ selects a site for the Registered Environmental Consultant Program, the site owner or responsible party must choose one of NCDEQ's pre-approved environmental consultants to perform the remedial action at the site.

The North Carolina brownfields program (NCBP) provides a mechanism for prospective brownfield site developers to receive liability protection as they conduct remediation activities to make a site suitable for reuse. Prospective developers negotiate a brownfields agreement with NCDEQ that defines risk based cleanup activities necessary to make the site suitable for reuse, rather than requiring the site to be cleaned up to full (unrestricted use) regulatory standards, as responsible parties are required to do. The brownfields agreement provides liability protection in a covenant not to sue, in exchange for conducting safe-making actions outlined in the agreement.

No Further Action Status and Covenant Not to Sue

After satisfactorily completing a voluntary remedial action under the Inactive Hazardous Sites Program, the remediating party receives a letter indicating that the work required under the agreement is complete and the agreement terminated. The site then receives *no further action status* in the Inactive Hazardous Sites inventory. This change of inventory status does not preclude any future state action if new evidence of contamination is discovered at a later date.

Inactive Hazardous Sites Program

- A site owner or responsible party contacts NCDEQ's Inactive Hazardous Site Branch about conducting a voluntary assessment or cleanup.
- The owner or responsible party completes a voluntary cleanup checklist.
- The NCDEQ determines if the Registered Environmental Consultant Program can manage the site.
- If the Registered Environmental Consultant Program manages the cleanup:
 - The owner or responsible party hires a registered environmental consultant from NCDEQ's list of approved registered environmental consultants.
 - The owner or responsible party enters into an administrative agreement with NCDEQ.
 - The registered environmental consultant conducts the remedial action and certifies that it complies with the administrative agreement and NCDEQ regulations.
- If the responsible party or site owner manages the cleanup:
 - The owner or responsible party enters into an administrative agreement with NCDEQ.
 - The owner or responsible party hires a qualified environmental consultant to conduct the remedial actions defined in the agreement. NCDEQ reviews and approves the cleanup as work proceeds.

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One of the major benefits to prospective developers who enter the brownfields program is the liability protection offered in the *covenant not to sue* in the brownfields agreement. This liability protection generally is unavailable to sites in the IHSP. Once the safe-making actions specified in the brownfields agreement are complete, liability protection automatically is in force. This protects developers from enforcement action by NCDEQ for remaining contamination known to exist at the site prior to its redevelopment. Because the brownfields agreement defines the prospective developer's cleanup liability at the property and limits that liability to actions specified in the agreement, it removes uncertainty regarding site cleanup costs. In this way, the agreement provides comfort to lenders or other entities that may not otherwise be willing to offer funding for the project. In their letters of intent, developers must make the case that the liability protection provided by a brownfield agreement is necessary to break such a barrier to funding or is otherwise required for the redevelopment project to proceed.

Additional Resources

Inactive Hazardous Sites Program

<https://deq.nc.gov/about/divisions/waste-management/superfund-section/inactive-hazardous-sites-program>

North Carolina Brownfields Program Homepage

<https://deq.nc.gov/about/divisions/waste-management/brownfields-program/>

Registered Environmental Consultant Program

<https://deq.nc.gov/about/divisions/waste-management/superfund-section/registered-environment-consultant-program>

Brownfields Property Reuse Act of 1997

http://portal.ncdenr.org/c/document_library/get_file?uuid=996a5ea5-73a0-41f9-b6fc-1edcdeef0d-9f&groupId=38361

Agency Contacts

For more information about North Carolina's Brownfields Programs, contact:

Bruce Nicholson

North Carolina Department of Environmental Quality

Division of Waste Management

Email: bruce.nicholson@ncdenr.gov | Telephone: (919) 707-8330

Charlotte Jesneck

North Carolina Department of Environmental Quality

Division of Waste Management

Email: charlotte.jesneck@ncdenr.gov | Telephone: (919) 707-8327

Main Agency Website: <http://deq.nc.gov/>

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- Once the owner or responsible party satisfactorily completes work in the administrative agreement, NCDEQ assigns the site no further action status in the Inactive Hazardous Sites inventory.

Brownfields Program

- The applicant submits a letter of intent and a brownfields property application to the NCBP.
- If the application is eligible, the applicant submits any additional information the NCBP requests, including site assessment data, a receptor survey, and a \$2,000 application fee.
- If additional assessment is necessary, NCBP notifies the applicant.
- Once the applicant and NCBP enter into a brownfields agreement, the redevelopment plan is released for public comment and work commences.
- Upon successful completion of activities in the brownfields agreement, NCBP issues a covenant not to sue.

Program Overview

South Carolina's Voluntary Cleanup Program (VCP), established in 1988, is a component of the state's hazardous substance cleanup program. In 1995, the VCP was expanded and enhanced to incorporate a brownfields component. The VCP's goal is to facilitate the cleanup and redevelopment of a property that will create new jobs and boost the state's economy, while protecting human health and the environment.

All contaminated sites are eligible for the VCP except sites on the National Priorities List (NPL). The VCP is open to both responsible parties and parties that are not responsible for the site contamination. Parties that are under a South Carolina Department of Health and Environmental Control (DHEC) order or permit that requires assessment or cleanup enforcement action or permits are not eligible to participate in the VCP.

There is no application fee to enter into the VCP, but private-party responsible parties (RP) and non-responsible parties (NRP) must pay oversight costs. DHEC provides oversight without charge to governmental entities and nonprofit agencies as long as sufficient funding is available through the U.S. EPA's 128(a) State and Tribal Response Program.

Certification of Completion and Covenant Not to Sue

The brownfields component of the VCP allows a non-responsible party to acquire a contaminated property with state Superfund liability protection for existing contamination by submitting an application to DHEC and agreeing to perform an environmental site assessment and/or remediation on the property. The amount or level of environmental remediation required is site-specific and dependent on the intended future use of the site.

By completing a voluntary cleanup contract, the non-responsible party:

- Gets the assurance of knowing that the property is safe for its intended uses.
- Receives a *certification of completion* that provides liability protection from state Superfund actions and from third party lawsuits because of the preexisting contamination.
- Receives DHEC's assistance in meeting the EPA's all appropriate inquiries rule.
- Also may qualify for tax credits and low interest loans to defray the costs of redeveloping the property.

VCP Process Summary

- The applicant submits an application to DHEC with a Phase I environmental site assessment for the property, in accordance with the CERCLA all appropriate inquiries rule. There is no application fee.
- The applicant and DHEC agree on a scope of work and enter into a voluntary cleanup contract.
- The applicant submits required documents, which may include a work plan, remedial investigation, baseline risk assessment, and other documents specified in the voluntary cleanup contract.
- The applicant completes the required remediation work according to the terms of the voluntary cleanup contract. DHEC oversees cleanup activities to ensure that applicant performs activities adequately.
- Upon completion of the negotiated work in the voluntary cleanup contract, a responsible party receives a covenant not to sue, and a non-responsible party receives a certification of completion that provides liability protection under the state Superfund law.



By completing a voluntary cleanup contract, the responsible party:

- Receives a *covenant not to sue* for work performed to DHEC's satisfaction.
- Avoids cost recovery actions initiated by the state.
- Increases the marketability and financial worth of the property.
- Reduces the likelihood of third party lawsuits because of perceived harm.

Additional Resources

Brownfields/Voluntary Cleanup Program and Loan Fund homepage

<http://www.scdhec.gov/HomeAndEnvironment/Pollution/CleanUpPrograms/BrownfieldsCleanupLoanFund/>

Non-Responsible Party Application for Voluntary Cleanup Contract

<http://www.scdhec.gov/HomeAndEnvironment/Docs/d-2956.pdf>

Sample Voluntary Cleanup Contract for Non-Responsible Party

<http://www.scdhec.gov/HomeAndEnvironment/Docs/DistributionNRP%20Model.pdf>

Sample Voluntary Cleanup Contract for Responsible Party

http://www.scdhec.gov/HomeAndEnvironment/Docs/CleanUpPrograms/RPVCC_8_31_15.pdf

Agency Contact

For more information about South Carolina's VCP, contact:

Robert Hodges, Jr., P.G.

South Carolina Department of Health and Environmental Control

Brownfields and Dry Cleaning Programs

Division of Site Assessment, Remediation, and Revitalization

Bureau of Land and Waste Management

Email: hodgesrf@dhec.sc.gov | Telephone: (803) 898-0919

Main Agency Website: <http://www.scdhec.gov/>

Program Overview

Tennessee's Voluntary Cleanup, Oversight and Assistance Program (VOAP) offers entities the opportunity to work proactively with the state to investigate and clean up a property that is contaminated with hazardous substances, and return it to productive reuse. The program, which is administered by the Tennessee Department of Environment and Conservation (TDEC), also offers participants liability relief for sites where investigation and cleanup are conducted. The liability relief agreement provides protection for third party contributions, and indicates that the state considers the site safe for future use.

No Further Action Letter

Upon completion of all actions agreed upon in the voluntary agreement, the site owner will receive a no further action (NFA) letter. The letter demonstrates that contamination at the site was cleaned up to the satisfaction of the TDEC. In certain cases, participants also may be eligible to receive a release of liability under applicable state environmental statutes. These releases may be used to demonstrate to prospective purchasers, future users of the site, lenders, the local community, and other interested parties that contamination issues were resolved, and the site is safe for reuse.

Additional Resources

Tennessee Voluntary Program Overview

<https://www.tn.gov/environment/topic/rem-voluntary-programs>

VOAP Application

https://tdec.tn.gov/etdec/DownloadFile.aspx?row_id=CN-1463

Brownfields Redevelopment, TDEC

<https://www.tn.gov/environment/article/rem-brown-fields-redevelopment>

VOAP Process Summary

- To address a brownfield site under the VOAP, a site owner must submit an application with a \$750 participation fee and perform Phase I and II environmental site assessments.
- If the site assessments discover contamination at the site, the applicant contacts the VOAP to enter into a voluntary agreement.
- The applicant determines the areas of contamination that need to be addressed in the voluntary agreement.
- VOAP and the applicant negotiate and finalize the voluntary agreement, which describes the cleanup activities to be conducted and the types of contamination that will be addressed.
- The applicant notifies local governments with jurisdiction and contiguous landowners of the voluntary agreement. If the owner seeks third-party contribution protection, the participant must publish a notice summarizing the voluntary agreement in a newspaper and a 30-day comment period is required.
- The applicant performs the actions agreed upon in the voluntary agreement.
- After the activities in the voluntary agreement are complete and approved by VOAP, VOAP will issue a no further action letter.

Agency Contacts

For additional information about Tennessee's VOAP, contact:

Robin Heriges

Deputy Director, Central Office Operations

Email: robin.l.heriges@tn.gov | Telephone: (615) 741-4936

Evan Spann

Brownfield and Voluntary Program Coordinator

Email: evan.w.spann@tn.gov | Telephone: (615) 532-0919

Main Agency Website: <https://www.tn.gov/environment>



REGION 5



*Youth in a canoe on the gravel bar, Menomonee Valley, WI
2005 aerial view of the Diamond Shamrock Chemical Company, OH*



Program Overview

The Illinois Environmental Protection Agency's (IEPA) Bureau of Land provides technical and financial support for the cleanup and redevelopment of brownfield sites. The Site Remediation Program (SRP) is the state's voluntary cleanup program, through which persons or entities performing investigation and remediation at a site can receive IEPA review, technical assistance and no further remediation determinations.

SRP participants are called remediation applicants. To receive IEPA approval and release from further liability or responsibility for previous contamination at a property, a remediation applicant voluntarily cleans up a site and agrees to pay IEPA for oversight services. The remediation applicant works with an environmental consultant to ensure the reports and plans required under the SRP are properly prepared and implemented. All investigations, remedial activities, plans, and reports must be undertaken or prepared under the supervision of an Illinois licensed professional engineer, and all documents must include a certification from the engineer.

Certain sites are not eligible for enrollment in the SRP:

- Sites subject to IEPA permitting requirements as hazardous waste treatment, storage or disposal facilities.
- Sites subject to state or federal underground storage tank laws and implementing regulations, except where tank owners/operators complete an IEPA Leaking Underground Storage Tank Program election to proceed under the SRP form as a condition of eligibility.
- Sites on the National Priorities List.
- Sites currently under a U.S. EPA administrative order or federal court order for cleanup.

No Further Remediation Letters

Upon completion and approval of all SRP requirements for a site, an applicant receives a no further remediation (NFR) letter that reflects the type or level of liability protection to be associated with the property, as requested in the SRP application. An NFR letter signifies a release from further responsibilities for the conduct of approved remedial actions and provides *prima facie* evidence that environmental conditions at the remediation site do not constitute a significant threat to human health and the environment. Two types of protective letters are available under the SRP:

- A comprehensive NFR letter signifies a release from liability for all recognized environmental conditions at the site.
- A focused NFR letter signifies a release from liability for specific contaminants of concern at the site.

SRP Process Summary

- The applicant or prospective property owner completes a SRP application and services agreement form, and submits an advance partial payment for oversight costs to IEPA.
- The applicant submits draft reports for site investigation, remediation objectives, planned remedial action, and remedial action completion for IEPA review and evaluation. Each report must be accompanied by site remediation program form.
- After IEPA approves all required reports, the applicant will receive a no further remediation (NFR) letter.
- The applicant must pay SRP oversight costs, including the required NFR letter assessment fee.
- The applicant records the NFR letter as part of the property title with county recorder's office and provides IEPA with a certified copy.



For the NFR letter to be effective, the applicant must record it with the property title in the appropriate county recorder's office and provide IEPA with a certified copy of the recorded letter.

Additional Resources

415 ILCS 5/Title XVII: Site Remediation Program:

<http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=041500050HTit.+XVII&ActID=1585&ChapterID=36&SeqStart=54700000&SeqEnd=-1>

35 Illinois Administrative Code Part 740: Site Remediation Program

<http://www.ipcb.state.il.us/documents/dsweb/Get/Document-33436>

SRP Overview

<http://www.epa.illinois.gov/topics/cleanup-programs/srp/overview/index>

SRP FAQs

<http://www.epa.illinois.gov/topics/cleanup-programs/srp/faqs/index>

Site Remediation Program Forms

<http://www.epa.state.il.us/land/site-remediation/forms.html>

Agency Contact

For more information about Illinois' SRP, contact:

Greg Dunn

Remedial Project Management Section

Email: greg.dunn@illinois.gov | Telephone: (217) 785-2359

Main Agency Website: <http://www.epa.illinois.gov/>

Program Overview

The Indiana Department of Environmental Management (IDEM) administers Indiana's voluntary remediation program (VRP). The VRP provides a process for property owners, operators, potential purchasers, and third parties to voluntarily address property that is or may be contaminated. Typically, participants are current or past property owners, current or past lessees, and prospective purchasers. Local units of government that obtained property by default, or have an interest in developing property, also may participate.

The Indiana Finance Authority (IFA) is not a regulatory agency. The IFA manages the Indiana Brownfields program. It is a resource for public and private brownfield stakeholders and offers a mechanism for the state to partner with communities and eligible private entities to address environmental concerns and facilitate brownfields redevelopment. The main goal of IFA is to help communities identify and mitigate environmental barriers that impede local economic growth by offering state government assistance primarily for site assessment and/or cleanup activities as an incentive for redevelopment or reuse of brownfields. While it is not a regulatory program, the Indiana Brownfields Program is authorized by statutes that allow for the provision of services and the distribution of financial assistance for brownfield stakeholders to assess and clean up brownfield properties.

Certificate of Completion, Covenant Not to Sue, Comfort Letter, and Site Status Letter

VRP participants that successfully complete all actions outlined in an approved remediation work plan receive a *certificate of completion* from IDEM and a *covenant not to sue* from the Governor. These documents provide assurance that the remediated areas will not become the subject of a future IDEM enforcement action, and future liability is limited.

The Indiana Brownfields Program offers *comfort letters* and *site status letters* to outline or address potential environmental liability issues at contaminated proper-

Indiana VRP Process Summary

- The applicant checks eligibility and completes an application containing basic information about the proposed project.
- Once IDEM determines that an application is eligible for the program, the applicant enters into a voluntary remediation agreement with IDEM.
- Applicant submits a proposed voluntary remediation work plan that IDEM evaluates and publishes for public comment at least 30 days before approval or rejection.
- Once IDEM approves the work plan, IDEM charges the applicant with implementation of the plan and IDEM provides oversight.
- When IDEM determines that an applicant has successfully completed an approved voluntary remediation work plan, it issues a certificate of completion and the Governor's office issues a covenant not to sue.

Indiana Brownfields Program Process Summary

- For environmental liability clarification/closure letters, the applicant fills out the Indiana Brownfields Program comfort/site status letter request form and the brownfields comfort/site status letter Supplemental Information Request Form.
- Indiana Brownfields Program issues a comfort or site status letter to the eligible applicant under the IDEM brownfields comfort/site status letter nonrule policy document.

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ties—the highest forms of “comfort” or “closure” offered by the state at this time. Requests for comfort letters or site status letters can be submitted outside of any requests for financial assistance.

The Indiana Brownfields Program can issue a comfort letter, in accordance with the IDEM brownfields comfort/site status letter nonrule Policy Document, to a party that qualifies for an applicable exemption to liability found in Indiana law or IDEM policy. However, comfort letters are not legal releases from liability.

The Indiana Brownfields Program can issue a site status letter, in accordance with the IDEM brownfields comfort/site status letter nonrule policy document, to a party that did not cause or contribute to or knowingly exacerbate any contamination at a property, and can demonstrate that current levels of contamination at levels of concern at the brownfield site meet current cleanup criteria established by IDEM under the remediation closure guide.

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- For financial assistance, applicant should inquire with VRP staff regarding all potentially available resources and complete respective application(s) available on the VRP website as applicable and appropriate.

Additional Resources

IDEM VRP

<http://www.in.gov/idem/landquality/2335.htm>

Indiana Brownfields Program

<http://www.in.gov/ifa/brownfields/>

Request for Comfort Letter or Site Status Letter

<http://www.in.gov/ifa/brownfields/files/ComfortLetterRequest%281%29.pdf>

Brownfields Comfort/Site Status Letter Supplemental Information Request Form

http://www.in.gov/ifa/brownfields/files/CL-SSL_Supplemental_Info_for_Request_Revised_11-17-15.pdf

Brownfields Comfort/Site Status Letter Non-rule Policy Document

http://www.in.gov/idem/files/nrpd_waste-0051.pdf

Agency Contacts

For more information about Indiana’s brownfields programs, contact:

Corey Webb

Voluntary Remediation Program

Indiana Department of Environmental Management

Email: cwebb@idem.in.gov | Telephone: (317) 234-0966

Michele Oertel

Indiana Brownfields Program

Email: moertel@ifa.in.gov | Telephone: (317) 234-0235

Main Agency Websites: <http://www.in.gov/idem/>

Program Overview

The Michigan Department of Environmental Quality (DEQ) does not have a voluntary cleanup program. However, Michigan provides options for owners and prospective purchasers of contaminated properties to overcome the obstacles of brownfields cleanup and redevelopment. These programs include cost-effective cleanup options and certain liability protections for prospective purchasers of contaminated properties. Key components of the state's brownfield law include the *baseline environmental assessment* (BEA) provisions, which provide liability protection to prospective or new owners and operators of contaminated properties, statutorily imposed *due care* provisions to assure the safe use of contaminated properties, and land use-specific cleanup standards.

A current owner or operator who has knowledge that his or her property is contaminated is required by state law to provide notice of the contamination to any prospective buyer or transferee. All owners/operators of contaminated property, regardless of their liability status, must assure that the property is safe for the intended use. Owners or operators must conduct an environmental evaluation, take necessary response activities to prevent or mitigate any unacceptable exposure to contamination, provide required notices, continue to conduct any required operations and maintenance of institutional or engineering controls, and maintain documentation of compliance with any land use restrictions. Although an owner or operator is obligated to be in compliance with all statutorily imposed due care provisions from the time ownership is established, documentation of compliance must be available to DEQ upon request, or within eight months of property ownership.

Baseline Environmental Assessments (BEAs) and Due Care

A person can buy, lease, or foreclose on contaminated property and be protected from liability for cleanup of existing contamination on the property if he/she conducts a baseline environmental assessment and submits it to DEQ. Subsequent purchasers and transferees of the property must be provided with a copy of the DEQ-approved BEA to claim protection from future liability. The BEA is conducted only on a property that is demonstrated to be contaminated and meets the definition of a "facility" as defined in Michigan Law, Part 201. While completing a BEA can give liability protection for existing contamination that a prospective owner did not cause, the owner still is obligated to assure the property is safe for the intended use.

BEA and Due Care Process Summary

- The potential purchaser or lessee must conduct its own due diligence, which includes hiring an environmental professional to conduct an all appropriate inquiries Investigation (AAI) or Phase I environmental site assessment (ESA). The AAI investigation or ESA includes a records search, which involves contacting DEQ to obtain or review any available records.
- The prospective purchaser must conduct a baseline environmental assessment (BEA) prior to, or within 45 days after the date of purchase, occupancy, or foreclosure of the property, whichever occurs first.
- The AAI investigation or Phase 1 ESA report, field work, sampling and analysis results, and the BEA all must be completed within 45 days of purchase, occupancy, or foreclosure.
- The owner/operator of a property must submit the BEA to the appropriate DEQ District Office no later than six months from the date of purchase, occupancy or foreclosure.
- To maintain the liability protection afforded by the submittal of a BEA, the owner or operator must provide the BEA to subsequent purchasers or transferees, including lessees.



New owners or operators must employ an environmental professional to conduct an AAI investigation or a Phase I environmental site assessment. At a minimum, this requires the review of past activity on the property—including land and chemical use, review of regulatory agency files on the property, and a visual survey of the property—to look for signs of soil staining or other indicators of possible contamination. The BEA report typically includes the AAI or Phase I ESA report and the results of any sampling and analysis conducted at the property to confirm that the property is a “facility.”

New owners of contaminated property (e.g., brownfields) who conduct and submit a BEA are not required to remediate onsite contamination present on the property at the time of purchase or occupancy, or prior to placing the property back into productive use. As owners or operators of contaminated property, they are required to assure the safe use and management of the property; these requirements are often referred to as “due care.” Due care involves taking actions to protect people from contamination found in soil, groundwater, or vapors, and preventing the spread of contamination from the property. The actions ensure that those using the property are protected from unacceptable exposures to contamination; that owners and operators do not exacerbate any contamination present at the property; and that protections against reasonably foreseeable actions of third parties, such as trespassers, are in place. Due care obligations apply to all owners of contaminated property.

Additional Resources

Michigan DEQ Brownfields Redevelopment

http://www.michigan.gov/deq/0,4561,7-135-3311_29262---,00.html

Remediation and Redevelopment Division

http://www.michigan.gov/deq/0,4561,7-135-3306_28608---,00.html

Brownfield Redevelopment Financial Incentives in Michigan

<http://www.brownfieldsconference.org/Documents/Document/Document/44>

BEAs

http://www.michigan.gov/deq/0,1607,7-135-3311_4109_4212---,00.html

Baseline Environmental Assessments (BEA) Fact Sheet

http://www.michigan.gov/documents/deq/deq-rrd-BEA-BEACitizensGuide_357377_7.pdf

Due Care

http://www.michigan.gov/deq/0,4561,7-135-3311_4109_59851---,00.html

Due Care Obligations for Owners for Operators of Contaminated Property

http://www.michigan.gov/documents/deq/deq-rrd-duecare-citizenguide_253063_7.pdf

Part 201 Michigan Law, the Natural Resources and Environmental Protection Act 451 of 1994

[http://www.legislature.mi.gov/\(S\(icoutexawmc43jsjtwyhndpf\)\)/mileg.aspx?page=GetObject&objectname=m-cl-451-1994-II-7-201](http://www.legislature.mi.gov/(S(icoutexawmc43jsjtwyhndpf))/mileg.aspx?page=GetObject&objectname=m-cl-451-1994-II-7-201)

Environmental Remediation Law

http://www.michigan.gov/documents/Remediation_4557_7.pdf

What You Need to Know if You Own or Purchase Property with Environmental Contamination

http://www.michigan.gov/documents/deq/deq-rrd-Part201CitizensGuide_247033_7.pdf

Agency Contacts

For more information about BEAs and Due Care in Michigan, contact:

Jeanne Schlaufman

Email: schlaufmanj1@michigan.gov | Telephone: (586) 753-3823

For more information about Michigan's Brownfields Program, contact:

Carrie Geyer

Email: geyerc1@michigan.gov | Telephone: (517) 284-5182

Main Agency Website: <http://www.michigan.gov/deq>



Program Overview

The Minnesota Pollution Control Agency (MPCA)'s Brownfield Program was created to facilitate the sale and redevelopment of brownfield sites. Voluntary brownfields cleanups can be conducted under the Petroleum Brownfields Program (PBP) or the Voluntary Investigation and Cleanup (VIC) Program that addresses brownfields contaminated with hazardous substances. Both programs charge a fee for services, such as technical assistance and document review. Liability assurances are available from MPCA to participants in the PBP and VIC Program.

Liability Assurances

Under the Land Recycling Act of 1992, persons not responsible for the contamination at a property are eligible for future liability protection when they voluntarily undertake and complete response actions that the MPCA Commissioner approves.

To facilitate property transfers, the VIC Program offers several types of liability assurances:

- *No association determination (NAD)*: Applies to parties with ownership interest in a site when they follow the specific proposed actions at the site.
- *Lender no association determination (lender NAD)*: A statement to the lenders that they are not liable when solely providing financing.
- *No action (no cleanup required) letter*: Issued to voluntary or responsible parties when the identified contamination does not pose a risk to human health or the environment, and therefore, no response actions are necessary.
- *No further action (cleanup completed) letter*: Issued to voluntary or responsible parties after response action implementation successfully manages risk to human health and the environment.
- *Off-Site Source Determination*: Indicates there are no detected onsite sources of groundwater contamination.
- *Certificate of completion*: Issued after accomplishing a site investigation and the complete cleanup of contaminants of concern. Responsible parties are not eligible.
- *Technical assistance letter*: Communicates the results of MPCA's review of site documents when a party is not interested in or eligible for a liability assurance letter.

PBP offers the following types of liability assurances:

- *Tank removal verification letter*: States that the tanks that were the source of any release were removed, and MPCA will not consider prospective buyers to be responsible parties for that release.

VIC and PBP Process Summary

- The applicant prepares a Phase 1 environmental site assessment (ESA) and conducts a site investigation to determine the nature and extent of contamination.
- The applicant submits an application form and the ESA report to MPCA for review, approval, and acceptance into program.
- The applicant submits a response action plan to MPCA for approval, and then implements the plan, as approved.



- *File closure confirmation letter*: Confirms that the leak site is closed or that its closure status is still valid.
- *Offsite tank release determination letter*: States that the current site owner is not responsible for contamination that migrated to the site from a tank located off-site.
- *General liability letter*: States that a party that comes into possession of a site after removal of the tanks cannot be ordered to conduct corrective action.

The Minnesota Department of Agriculture administers another program for the cleanup of pesticides, fertilizers, and other substances from agricultural properties. It is the Agricultural Voluntary Investigation and Cleanup (AgVIC) Program.

Additional Resources

Brownfields Program

<https://www.pca.state.mn.us/waste/brownfields>

Brownfields Program Services

<https://www.pca.state.mn.us/sites/default/files/c-brwnfld4-01.pdf>

Minnesota Brownfields: A Resource Guide

<http://mnbrownfields.org/wp-content/uploads/2016/03/MN-Brownfields-Resource-Guide-2016-PDF.pdf>

Cleanup Guidance for Brownfields Redevelopment Projects

<https://www.pca.state.mn.us/waste/cleanup-guidance#guidance-for-brownfield-redevelopment-projects>

Introduction to the Voluntary Investigation and Cleanup Program

<https://www.pca.state.mn.us/sites/default/files/vic-gd1.pdf>

Brownfields Program Response Action Plans

<https://www.pca.state.mn.us/sites/default/files/c-rem4-43.pdf>

Guidance Document #4: Types of Written Assurances

<https://www.pca.state.mn.us/sites/default/files/vic-gd4.pdf>

Agriculture Voluntary Investigation and Cleanup Program (AgVIC)

<http://www.mda.state.mn.us/chemicals/spills/incidentresponse/agvic.aspx>

Agency Contacts

For more information about Minnesota’s PBP and VIC Program, contact:

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Petroleum Brownfields Program

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Gary Krueger

Voluntary Investigation and Cleanup Program

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Main Agency Website: <https://www.pca.state.mn.us/>

Program Overview

The Ohio Environmental Protection Agency's (Ohio EPA) Voluntary Action Program (VAP) was created to give prospective property owners a way to investigate possible environmental contamination at a property, clean it up if necessary, and receive a legal release from liability from the State of Ohio. When cleanup requirements are met to the state's satisfaction, Ohio EPA issues a covenant not to sue. This covenant protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup of previous contamination. This protection applies only when the property is used and maintained in the same manner as when the covenant was issued.

Ohio's Voluntary Action Program (VAP) maximizes resources and expertise in the private sector by using qualified, experienced professionals, such as professional engineers and scientists, who are certified by Ohio EPA to oversee compliance with the program's investigation and cleanup requirements. These certified professionals (CPs) are responsible for verifying that properties are cleaned up to the levels required by the program rules and preparing and submitting a no further action letter to Ohio EPA. The detailed program rules allow these qualified professionals, and the property owner (called a volunteer or VAP applicant) that he or she represents, to do the environmental investigation and cleanup work without direct involvement from Ohio EPA.

No Further Action Letters and Covenants Not to Sue

When a CP determines, after site investigation and any necessary cleanup, that a property meets the state cleanup standards (OAC Chapter 3745-300), he or she can prepare a *no further action (NFA) letter*. This document describes the environmental problems found at the site, how those environmental problems were investigated, and how the site was cleaned up. The NFA letter includes an executive summary of the voluntary action that includes a concise summary of the Phase I environmental site assessment. This information allows the CP to determine whether or not there is a reason to believe that a release of hazardous substances or petroleum actually or may have occurred at the property.

If there is reason to believe a release has occurred and the site may be contaminated, a Phase II property assessment is then conducted. The Phase II assessment ensures that all potential contaminants identified in the Phase I assessment are adequately evaluated and compared to the appropriate VAP cleanup standards. If the Phase II assessment indicates that cleanup standards are met and the site is protective of human health and the environment, the CP determines that the voluntary cleanup is complete and prepares the NFA letter.

VAP Process Summary

- The applicant's CP conducts a Phase I assessment of identified areas of concern and any releases or threatened releases of hazardous substances or petroleum.
- The CP completes a Phase II property assessment work plan.
- The CP completes Phase II property assessment activities or a Phase II property assessment report.
- The CP completes a risk assessment.
- The CP completes a remedial action bench scale, treatability, pilot, or similar study.
- The CP completes a remedial action plan.
- The CP completes soil and/or groundwater remedies.
- The CP submits a no further action letter to the Ohio EPA director. (See steps outlined on page 72.)



If the Phase II assessment indicates that cleanup is needed to meet state regulatory standards for any contaminant found at the property, additional remedial activities will be necessary to ensure protection of human health and the environment. Remedial activities may include soil removal, groundwater treatment, barriers to the contamination such as a clay or asphalt cap, or placing limitations on future use of the property.

If the VAP applicant wants a legal release from environmental liability from Ohio, the CP submits an NFA letter to Ohio EPA for review. VAP technical staff review the NFA letter submitted to the agency to determine if program standards are met and that the site is protective of public health, safety, and the environment. When cleanup requirements are met, the director of Ohio EPA issues a *covenant not to sue* (CNS). This covenant protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup. This protection applies only when the property is used and maintained in the same manner as when the covenant was issued. It is important to note that the CNS does not release the property owner from liability from third party property damage or injury lawsuits, including toxic tort claims related to exposure to releases of contamination.

Each year the VAP audits a minimum of 25 percent of the NFA letters from the previous calendar year that received a CNS from the agency. The audit consists of a thorough review of all supporting documentation (Phase I, Phase II, Risk Assessment, etc.) and, if necessary, the collection of additional field data. Audit reviews evaluate the property's compliance with applicable standards, as well as the performance of the certified professional who issued the NFA letter.

Steps for Submitting an NFA Letter and Requesting a CNS

Step 1 – Receipt of Information [OAC 3745-300-13(B)]

Volunteer (or other persons performing work to support the NFA letter request) submits (by affidavit) to the certified professional (CP) all relevant investigatory and remedial information pertaining to the property.

Step 2 – Review of Information [OAC 3745-300-13(D)]

- CP reviews the investigatory and remedial information to determine whether the property complies with applicable standards.
- CP must conduct an eligibility evaluation to determine whether the property meets all eligibility requirements.
- CP must ensure Phase I Property Assessment activities were last conducted within 180 days prior to issuing NFA letter.
- CP must have conducted a walk-over of the property within 180 days prior to issuing NFA letter.

Step 3 – Preparation of NFA Letter [OAC 3745-300-13(E)]

If after performing the review of the investigatory and remedial information the CP concludes the property meets or will meet applicable standards, the CP may prepare the NFA letter for the property.

Step 4 – Issuance of NFA Letter [OAC 3745-300-13(F)]

To issue the NFA letter, the CP must send a copy of NFA letter to the property owner (volunteer, or VAP applicant) accompanied with:

- Written request that the property owner (VAP applicant) notify the CP as to whether the property owner wishes to submit the NFA letter to the director.
- Written notice informing the property owner that the original NFA letter may be submitted only to the director by the CP and that the property owner may receive a CNS from the director only if the original NFA letter is submitted to the director on behalf of the volunteer by the CP.
- CP's affidavit issuing the NFA letter (date of CP affidavit determines NFA letter issuance date).

Step 5 – VAP Applicant’s Decision [OAC 3745-300-13(G)]

Promptly after receipt of NFA letter, the VAP applicant must do one of the following:

- Send written notice to CP that indicates whether or not the property owner or VAP applicant wishes the CP to submit the NFA letter to director.
- Send the director a copy of the written notice sent to the CP.

Step 6 – CP Acts on VAP Applicant’s Decision [OAC 3745-300-13(H)]

Promptly after receipt of written notice from the VAP applicant, the CP must do one of the following:

- Submittal for a CNS – Send the original NFA letter (accompanied by an original CP affidavit from Step 4) to the director on behalf of the VAP applicant or property owner informing the Ohio EPA that the VAP applicant wishes to request a CNS.
- No CNS requested – Send the original NFA letter to the VAP applicant.

Additional Resources

Ohio EPA can assist property owners by providing technical assistance to parties that wish to enter the VAP with any questions they have regarding their participation in the VAP. Since the VAP relies on user fees to help support the program, volunteers must pay for the agency’s assistance. Although some volunteers receiving technical assistance submit NFA letters, many volunteers conduct work in accordance with Ohio EPA’s advice but do not submit an NFA letter. Even if a volunteer does not submit an NFA letter, VAP rules and technical assistance can be used as guides for the cleanup and redevelopment of those properties.

Ohio EPA’s VAP

<http://www.epa.ohio.gov/derr/volunt/volunt.aspx>

Current VAP Fee Schedule

<http://www.epa.ohio.gov/portals/30/vap/docs/2014VAPFeeScheduleAugustrounded.pdf>

Content and Scope of No Further Action Letters

<http://epa.ohio.gov/Portals/30/rules/2014/3745-300-13.pdf>

Rules and Laws Governing the Voluntary Action Program and RCRA

<http://www.epa.ohio.gov/derr/derrrules/tabid/5796/LiveAcclId/120392/LiveTabId/113213/Default.aspx#54>

VAP NFA Review Process for NFAs Submitted After August 1, 2014

<http://www.epa.ohio.gov/portals/30/vap/docs/NFA%20Comment%20Letter%20Process%20-%20EXTERNAL%20-%20Final%20Draft.pdf>

Additional Information About Certified Professionals

<http://epa.ohio.gov/derr/volunt/certification/cpapp.aspx>

Additional Information About Certified Laboratories

http://epa.ohio.gov/derr/vap/pro_lab/labs.aspx

Agency Contact

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Main Agency Website: <http://www.epa.ohio.gov>



Program Overview

Wisconsin's Voluntary Party Liability Exemption (VPLE) program is an elective environmental cleanup program. Interested businesses, individuals, or local governments—including the party that caused the contamination—are eligible to participate in the program. The voluntary party can be the company that owned and operated a facility, or a new purchaser. Many developers, lenders, and prospective purchasers of brownfields choose this route versus a traditional cleanup path because the VPLE program provides certain liability assurances that may provide comfort to investors and future property owners.

Most properties that had a discharge of a hazardous substance are eligible for the VPLE, including some landfills and sediment remediation projects. However, some properties with solid and hazardous waste sites are excluded from the VPLE process, including:

- some larger landfills and landfills that require ongoing active remedial action.
- some hazardous waste treatment, storage, or disposal facilities.
- any hazardous waste disposal facility that was issued a license under applicable Wisconsin statutes or rules, for a period of long-term care following the facility's closure.
- a property listed or proposed to be listed on the National Priorities List.

The Wisconsin Department of Natural Resources (WIDNR) administers the VPLE. Benefits of participating in the VPLE include clear and certain assurance that all contamination on a property is cleaned up to the satisfaction of the state; protection from environmental liability that is transferable to future owners; and protection to the owner if the remedy fails or environmental standards change.

Properties cleaned up through the VPLE process must conduct the environmental investigation and response actions in accordance with the same cleanup standards as any environmental cleanup conducted in Wisconsin.

VPLE Program Process Summary

- The applicant submits a VPLE application to WIDNR with a non-refundable \$250 application fee for each property.
- The applicant submits a \$4,000 deposit for properties one acre or larger or \$2,000 for smaller properties within 30 days after receiving WIDNR acknowledgment of receiving the application.
- The applicant submits the results of Phase I and Phase II environmental site assessments to WIDNR. If the applicant owns the property or caused the discharge, the applicant must immediately notify WIDNR of any hazardous substance discharge.
- WIDNR approves the environmental site assessments.
- The applicant completes the environmental investigation and submits a report and a remedial action options report to WIDNR.
- Upon WIDNR's approval, the applicant conducts a cleanup of the property and any contamination that migrated off the property.
- Once the cleanup is complete and all requirements for case closure are met, the applicant requests a closure letter and a certificate of completion from WIDNR and submits all applicable fees. If natural attenuation is part of the cleanup, the applicant can request the certificate of completion before the groundwater meets enforcement standards by submitting the insurance fee and application required under Wisconsin law.

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Certificate of Completion or Case Closure Letter

By entering the VPLE process, a party can earn a certificate of completion. A *certificate of completion* provides the party protection from future liability for past contamination. WIDNR issues a certificate of completion when it determines that the party met all requirements and complied with administrative rules. WIDNR must determine that the property and any off-site discharges were satisfactorily restored to the extent practicable, and the harmful effects from the discharge were minimized, including any discharges that migrated off the property. WIDNR also determines that the applicant paid all applicable fees. The length of time it takes for a party to receive a certificate of completion after the party submits an application ranges from five months to more than five years. Certificates of completion are transferable to future property owners.

There are three protections granted after WIDNR issues a certificate of completion: 1) no further response actions are needed if environmental standards change; 2) the state will not hold the property owner liable if an approved cleanup remedy is later discovered to have failed to fully restore the environment; and 3) the state will not hold the property owner liable for contamination that is cleaned up but later found to be more extensive than originally thought. These protections apply only to releases that occurred on the property before WIDNR approved the site investigation. The exemption does not cover any discharges that occur after WIDNR approved the site investigation.

Businesses cleaning up brownfields in Wisconsin that do not use the VPLE process can obtain a *case closure letter* when the state approves the remedial action.

Additional Resources

Wisconsin's Voluntary Party Liability Exemption Fact Sheet
<http://dnr.wi.gov/files/PDF/pubs/rr/RR506.pdf>

Other Information, Guidance and Forms
<http://dnr.wi.gov/topic/brownfields/vple.html>

Guidance on Case Closure and the Requirements for Managing Continuing Obligations
<http://dnr.wi.gov/files/pdf/pubs/rr/rr606.pdf>

Wisconsin Statute for Chapter 292, Remedial Action
<http://docs.legis.wisconsin.gov/statutes/statutes/292.pdf>

Agency Contact

For more information about Wisconsin's VPLE, contact:

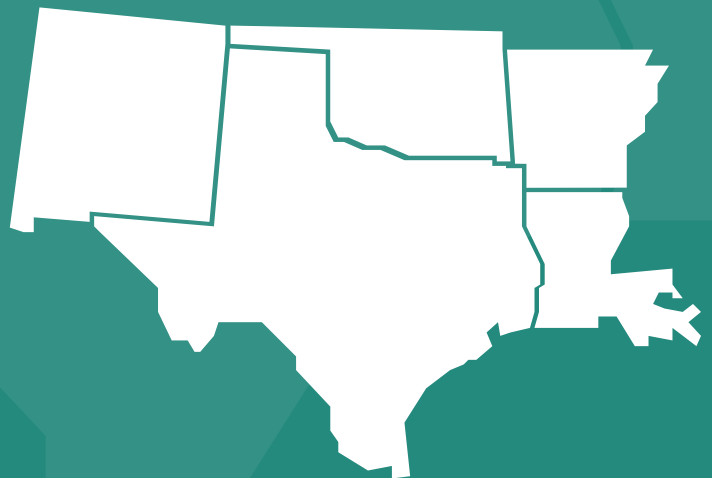
Michael Prager
Email: michael.prager@wisconsin.gov | Telephone: (608) 261-4927
Main Agency Webpage: <http://dnr.wi.gov/>

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- WIDNR issues a certificate of completion if the applicant meets all appropriate requirements, including payment of fines and fees. If oversight costs are less than the advance deposit, WIDNR sends a refund to the applicant.
- The applicant maintains and monitors the property as required by any conditions listed in the certificate of completion.



REGION 6



*View of Floyd Point Dow Woodbine-Dow Chemical, Petersburg, TX
Devastation from Hurricane Katrina, LA*

Program Overview

The Arkansas Department of Environmental Quality (ADEQ) offers two programs to facilitate the cleanup and revitalization of underused and potentially contaminated properties. The Elective Site Cleanup Program (ESCP) allows *responsible parties* to enter into an agreement with ADEQ to perform a voluntary cleanup of a contaminated site. The ESCP does not offer a release of liability. The ESCP does offer participants a means to address historic contamination on their sites without penalty and with known objectives.

The Arkansas Brownfield Program (ABP) provides liability protection for nonliable prospective purchasers of previously contaminated properties who enter into and complete the conditions within an implementing agreement. To promote the redevelopment of brownfields, the ABP offers a release from liability for past contamination to prospective purchasers of properties with real or perceived hazardous substance contamination.

ESCP No Further Action Determination Letter, ABP Certificate of Completion

Under the ESCP, responsible parties enter into an agreement with ADEQ's Hazardous Waste Division Enforcement Section to pay for site investigation and agree to prepare a remedial plan and complete site remediation to ADEQ's satisfaction. After remediation, ADEQ issues a *no further action determination letter* stating that there are no further requirements related to the investigation of the identified area(s) of concern of hazardous substances at the site. It is conditioned on a specific property use and may include land use controls such as maintenance, air monitoring, and deed restrictions of groundwater use.

The ABP allows prospective purchasers of potentially contaminated properties to enter into an agreement with ADEQ for liability protection from fines or penalties against responsible parties. Individuals, companies, or lenders that do not hold (or have held) title to the property and are not responsible for contamination at the site are eligible to participate in the ABP. Eligible properties include abandoned or underutilized industrial, commer-

ESCP Process Summary

- The responsible party submits a letter to ADEQ requesting participation in the ESCP.
- ADEQ and participant enter into an elective site cleanup agreement. Applicants pay applicable ADEQ staff document review fees.
- The participant submits a sampling and analysis plan (SAP) that includes a site history, sources of contamination, exposure pathways, proposed cleanup objectives, and intended future land use. ADEQ approves the SAP.
- Participant submits a remedial plan and implements the plan after ADEQ approval.
- The participant submits a completion report to ADEQ.
- ADEQ issues a no further action determination letter to the participant.

ABP Process Summary

- The applicant submits an application to ADEQ.
- The participant performs a comprehensive site assessment.
- The participant and ADEQ enter into an implementing agreement.
- The participant submits a property development plan (PDP).
- ADEQ reviews the PDP.
- ADEQ writes a property development decision document (PDDD) outlining the needed remediation and provides for a 30 day public comment period.
- The participant performs remediation on property, if necessary.
- ADEQ issues a certificate of completion to the participant.



cial, agricultural, or residential properties for which no responsible party can reasonably be pursued for cleanup. Benefits to the participant include defining legal and financial environmental liabilities early in the process.

Under the ABP, eligible parties submit an application to ADEQ and conduct a Phase 1 environmental site assessment that meets ASTM E1527-13, Phase I environmental site assessment requirements. ABP may require a letter of intent depending on when the site will be purchased in relation to liability parameters.

If the environmental site assessment identifies recognized environmental conditions, the participant performs a comprehensive site assessment. ADEQ and the participant enter into an implementing agreement that establishes the participant's legal and financial environmental liability parameters for the brownfield property; ADEQ considers the Implementing Agreement an enforceable document.

The participant submits a property development plan that describes cleanup activities and development plans for the property. ADEQ then issues a property development decision document (PDDD) that describes the proposed plans for cleanup and the PDP.

ABP participants involved in the cleanup of a brownfield site are released from liability for past contamination addressed in the implementing agreement and the PDDD if they redevelop the site according to provisions mutually agreed upon in the two documents. ADEQ issues a *certificate of completion* stating that the response action is complete. The liability release is transferable as long as all terms of the implementing agreement, PDDD, and associated restrictions are maintained.

Additional Resources

Arkansas Elective Site Clean-up Program

http://www2.adeq.state.ar.us/hazwaste/branch_ie/esca.aspx

ADEQ's ESCA Agreement

http://www2.adeq.state.ar.us/hazwaste/branch_ie/pdfs/esca.pdf

ADEQ's Sampling and Analysis Plan Template

http://www2.adeq.state.ar.us/hazwaste/branch_tech/pdfs/sap_template_with_hasp_and_qapp.pdf

ADEQ's Brownfields Program:

<http://www2.adeq.state.ar.us/hazwaste/bf/>

ADEQ's Brownfields User's Guide:

http://www2.adeq.state.ar.us/hazwaste/bf/pdfs/users_guide_02-12-2015.pdf

Agency Contacts

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For more information about Arkansas' ABP, contact:

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Main Agency Website: <http://www2.adeq.state.ar.us>

Program Overview

The Louisiana Department of Environmental Quality (LDEQ) administers the state's Voluntary Remediation Program (VRP). The VRP provides a mechanism for property owners, potential owners, or others to clean up contaminated properties and receive a release of liability for further cleanup of historical contamination at a site. This release of liability flows to future owners of the property.

Through the VRP, LDEQ provides administrative, technical, and legal incentives to encourage the cleanup, redevelopment and reuse of brownfield properties. All properties are eligible for participation in the VRP except permitted hazardous waste management units, those listed on the National Priorities List, trust fund eligible underground storage tanks, and sites that have pending or unresolved federal environmental enforcement actions related to proposed voluntary remediation. Both responsible and non-responsible parties may participate in the program, but only non-responsible parties are eligible to perform "partial voluntary remedial actions" (see below). Participants that successfully remediate a site under the VRP receive a certificate of completion at the end of the process, which releases the participant from liability for further cleanup of historical contamination at the site.

Certificate of Completion

Remediation begins with an investigation work plan to determine the nature and extent of contamination at the property. After LDEQ accepts the work plan, the participant performs an investigation and submits a report summarizing the investigation's findings. If contamination is found, the participant submits a voluntary remedial action application to begin cleanup. After LDEQ approves the remedial action application, the participant implements the remedial action. Once remediation is complete, the participant submits a voluntary remedial action report.

If LDEQ determines that the site cleanup meets the remediation action goals, LDEQ issues a certificate of completion. The certificate states that the participant and subsequent owners are not liable for further cleanup of contamination at the site.

LDEQ also allows partial voluntary remedial actions to be undertaken under certain circumstances. A partial voluntary remedial action is one in which not all discharges, disposals, or threatened discharges or disposals are removed. However, partial voluntary remedial actions must be protective of public health and the environment for the intended use of the property. Corresponding use restrictions for the property must be recorded in parish records.

VRP Process Summary

- The participant submits a voluntary remedial investigation application, a \$500 fee, and an investigation work plan.
- After implementation of the work plan, the participant submits an investigation report summarizing the nature and extent of contamination at the identified area of immovable property.
- The participant submits an application, another \$500 fee, and a voluntary remedial action work plan.
- The participant submits a voluntary remedial action report after cleanup is complete.
- If remediation goals are met, LDEQ issues a certificate of completion releasing the participant from liability.



Only non-responsible parties may apply to perform a partial voluntary remedial action or receive a certificate of completion for a partial voluntary remedial action. Applicants for a partial voluntary remedial action follow the same process as for other voluntary cleanups, but applicants also must submit a partial voluntary remedial supplemental application form at the time of application.

Additional Resources

LDEQ Brownfields Initiative and VRP Program

<http://www.deq.louisiana.gov/portal/PROGRAMS/BrownfieldsandVoluntaryRemediationProgram.aspx>

LDEQ VRP Program Description

<http://www.deq.louisiana.gov/portal/PROGRAMS/BrownfieldsandVoluntaryRemediationProgram/VRPProgramDescription.aspx>

LDEQ VRP Process Flow Chart

<http://www.deq.louisiana.gov/portal/Portals/0/RemediationServices/VRP/VRP%20flowchart.pdf>

LDEQ Voluntary Remedial Investigation Application

http://www.deq.louisiana.gov/portal/Portals/0/RemediationServices/VRP/Voluntary%20Remedial%20Investigation%20Application%20Form_current.pdf

LDEQ Voluntary Remediation Application

http://www.deq.louisiana.gov/portal/Portals/0/RemediationServices/VRP/Voluntary%20Remedial%20Application%20Form_current.pdf

LDEQ Partial Voluntary Remedial Action Supplemental Application

http://www.deq.louisiana.gov/portal/Portals/0/RemediationServices/VRP/Partial%20Voluntary%20Remedial%20Application_current.pdf

Agency Contact

For more information about Louisiana's VRP, contact:

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Main Agency Website: <http://www.deq.louisiana.gov/portal/>



Program Overview

New Mexico's Voluntary Remediation Program (VRP) provides incentives for the voluntary remediation of contaminated properties and encourages the redevelopment of such properties. Private, nonprofit, and public entities are eligible for the program. The VRP offers oversight of the assessment and cleanup of contaminated properties, when such activities are undertaken voluntarily at properties that are not involved in other regulatory or enforcement actions.

Participants in the VRP are entitled to a certificate of completion when they successfully complete the terms of a Voluntary Remediation Agreement between the New Mexico Environment Department (NMED) and the participant. NMED may not initiate an enforcement action against a participant for the contamination that is the subject of the voluntary remediation agreement as long as the participant successfully implements the agreement within a reasonable time. After receipt of the certificate of completion from NMED, future purchasers and lenders are afforded liability protection for any previous contamination at the property that was addressed under the VRP agreement.

Certificates of Completion and Covenants Not to Sue

The VRP offers a certificate of completion documenting that site conditions meet applicable standards, and a covenant not to sue for prospective purchasers and future owners. The participant is entitled to a *certificate of completion* when the terms of the voluntary remediation agreement are successfully completed. The certificate of completion confirms that the contamination was mitigated to the satisfaction of NMED or that contamination issues on the property were satisfactorily addressed. If post-completion requirements are necessary, such as monitoring, landuse restrictions, or engineering controls, NMED issues a conditional certificate of completion that identifies the required actions.

Upon successfully completing remediation, a prospective purchaser that did not contribute to the contamination at the site receives a *covenant not to sue* from NMED

VRP Process Summary

- The applicant submits a VRP application, including a preliminary work plan, to NMED. NMED evaluates the submittal and notifies the applicant if it needs additional information.
- NMED informs the applicant of conditional eligibility and sends a draft voluntary remediation agreement.
- Upon notification of conditional eligibility, the applicant has 10 days to initiate a 30-day public notice and comment period.
- After the public comment period ends, NMED notifies the applicant of its final eligibility determination and any modifications to the voluntary remediation agreement. Once both parties sign the final agreement, the applicant becomes a VRP participant.
- Unless the participant demonstrates that further investigation and cleanup are unnecessary at the site, the participant must submit a final work plan within 30 to 60 days of signing the voluntary remediation agreement for NMED's approval.
- When remediation activities are complete, the participant submits a completion report and an affidavit of completion. NMED has 45 days to approve the report or identify data gaps. After NMED approves the completion report and the participant pays any outstanding oversight charges, NMED issues a certificate of completion documenting that the site meets applicable standards.

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for any direct or future liability for claims based upon the contamination covered by the voluntary remediation agreement. If a participant applied to the VRP prior to purchasing the site and did not contribute to the contamination, the participant is entitled to a covenant not to sue.

Additional Resources

New Mexico's Voluntary Remediation Program

<https://www.env.nm.gov/gwb/RemediationOversight/VRP.html>

Voluntary Remediation Program Frequently Asked Questions

https://www.env.nm.gov/gwb/RemediationOversight/VRP_FAQs.html

Voluntary Remediation Program Regulations

<http://164.64.110.239/nmac/parts/title20/20.006.0003.htm>

Cleanup Regulations and Guidelines

<https://www.env.nm.gov/gwb/NMED-GWQB-Regulations.htm>

Agency Contacts

For more information about New Mexico's VRP program, contact:

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Main Agency Website: <https://www.env.nm.gov/>

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- If a participant applied to the VRP before purchasing the site and did not contribute to the contamination, the participant is entitled to a covenant not to sue.



Program Overview

Oklahoma has two separate voluntary programs that allow eligible parties to investigate and, if necessary, clean up contaminated properties.

The Oklahoma Department of Environmental Quality (DEQ)'s Brownfields Program provides a means for all eligible entities to voluntarily investigate and, if warranted, clean up properties that may be contaminated. The Brownfields Program includes sites ranging from old oil refineries with multiple sources of contamination that affect hundreds of acres to sites of less than an acre with a single source of contamination. Properties under a DEQ or EPA cleanup order may not qualify for the Brownfields Program. The program utilizes a negotiated process for site activities, and is voluntary. The Brownfields certification program provides specific state liability relief.

The Oklahoma Corporation Commission (OCC) Oil and Gas Division's Brownfields Program also provides a means for private parties, public and governmental entities, and nonprofits to voluntarily investigate and, if necessary, clean up certain properties that may be contaminated. This includes sites that are or may be impacted from petroleum, or produced water/brine, gasoline, diesel, or other deleterious wastes related to oil and gas exploration and production or from leaking underground petroleum storage tanks. These sites generally have the option to participate in the OCC Brownfields program.

DEQ Certificate of No Action Necessary or Certificate of Completion

Sites that are remediated through DEQ's Brownfields Program are eligible for one of two certificates when the work is complete. DEQ issues a *certificate of no action necessary* when it determines that no remediation is necessary for a planned use. DEQ issues a *certificate of completion* when it determines that the applicant successfully completed the DEQ-approved risk based remediation. For completed brownfields actions for which DEQ issued a brownfields certificate, DEQ is prohibited from assessing administrative penalties or pursuing civil actions against the participants in the program, as well as any lender, lessee, successor, or assign if they are in compliance with any post-certification conditions or requirements specified in the certificate.

DEQ Brownfields Process Summary

- The applicant submits eligibility Information and meets with DEQ personnel to discuss the project.
- Both parties sign a voluntary consent order.
- The applicant submits a workplan for site characterization.
- The applicant submits a brownfields proposal to DEQ requesting a determination of no action, or outlining a remediation plan, if contamination is present.
- DEQ reviews and approves the agreement.
- The applicant meets public participation requirements. DEQ considers comments and determines if changes are necessary.
- If no further remedial action is warranted, DEQ issues a no action necessary certificate. If remediation is necessary, the applicant submits a remediation plan for DEQ's approval.
- The applicant completes the cleanup and submits a written report to DEQ.
- When cleanup is complete, DEQ issues certificate of completion.
- The applicant files the certificate in county land records and submits a stamped copy to DEQ.



Additional Resources

DEQ Brownfields Program

<http://www.deq.state.ok.us/lpdnew/brownfindex.html>

DEQ Brownfields Program Rules

<http://www.deq.state.ok.us/rules/221.pdf>

DEQ Brownfields Program Process

http://www.deq.state.ok.us/lpdnew/Brownfields/bf_path.pdf

DEQ Brownfields Checklist

http://www.deq.state.ok.us/lpdnew/Brownfields/ODEQBrownfields_Checklist.pdf

OK OCC Brownfields Program

<http://www.occeweb.com/og/brownfields.htm>

Agency Contacts

For more information about Oklahoma’s Brownfields Programs, contact:

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Oklahoma DEQ

Land Protection Division

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Main Agency Website: <http://www.deq.state.ok.us>

Jeff Myers

Oklahoma Corporation Commission

Brownfields Manager

Email: j.myers@occemail.com | Telephone: (405) 522-2764

Main Agency Website: <http://www.occeweb.com>

Program Overview

The Texas Voluntary Cleanup Program (VCP) provides administrative, technical, and legal incentives to encourage the cleanup of contaminated sites in Texas. All non-responsible parties, including future lenders and landowners, receive protection from liability under Texas law for cleanup of sites under the VCP. As a result, many unused or underused properties may be restored to uses that are economically productive or beneficial to the community. Under the VCP, site cleanups follow a streamlined approach to reduce future human and environmental risk to safe levels. The program is administered by the Texas Commission on Environmental Quality (TCEQ).

The Railroad Commission of Texas (RRC) Voluntary Cleanup Program (RRC-VCP) provides applicants an incentive to remediate oil- and gas-related pollution by participants as long as they did not cause or contribute to the contamination. The RRC-VCP is very similar to TCEQ's VCP. (A link to information about the RRC-VCP program is provided in the Additional Resources section on the next page.)

Any sites except the following are eligible to enter the VCP:

- Sites that are subject to a response action under the RRC authority.
- Sites that are subject to TCEQ orders or certain permits from TCEQ.
- Sites where TCEQ enforcement action is pending.

After completion of the cleanup in the VCP program, participants receive a certificate of completion from TCEQ. The certificate of completion states that all non-responsible parties are released from liability under state law for areas cleaned up under the VCP and covered by the certificate of completion.

Certificates of Completion

There are two types of certificates of completion that offer a non-responsible party protection from liability under the Texas Health and Safety Code. A *conditional* certificate certifies that an applicant demonstrated that long-term response actions (e.g., engineering controls, remediation systems, or post-closure institutional controls) meet performance standards and are being implemented under requirements established in the Texas Voluntary Cleanup Program. When TCEQ issues a *final* certificate, it certifies that an applicant implemented or completed all requirements of the Texas voluntary cleanup agreement.

VCP Process Summary

- The participant submits an application, supporting documents, and a \$1,000 application fee to TCEQ.
- The participant signs a TCEQ or Agreement and determines the schedule of events. Participants cannot start a cleanup before signing a TCEQ Agreement.
- The participant identifies contamination on the property by type, place, and levels.
- The participant completes a Response Action Plan that describes how the participant will clean the groundwater and soils.
- The participant performs remediation activities and submits a Response Action Completion Report to TCEQ.
- TCEQ reviews and approves the response action completion report.
- The participant signs and notarizes an affidavit certifying completion of all necessary remediation activities.
- TCEQ issues a certificate of completion.



It is important to note that for TCEQ to issue a VCP certificate of completion for an entire site, the applicant must provide adequate information to document that the entire site meets the applicable cleanup standards. As an alternative, the applicant may pursue a VCP certificate of completion for only a portion of the site, as a partial response action area.

Additional Resources

Texas's Voluntary Cleanup Program

<http://www.tceq.state.tx.us/remediation/vcp/vcp.html>

Application Form and Instructions

<http://www.tceq.state.tx.us/assets/public/remediation/vcp/10241.pdf>

VCP Guidance

<http://www.tceq.state.tx.us/remediation/vcp/vcpguide.html>

Legal Property Descriptions for VCP Certificates of Completion

<http://www.tceq.state.tx.us/assets/public/remediation/vcp/legaldesc.pdf>

Issues in the Texas Voluntary Cleanup Program

<https://txpd.org/tpj/15/cleanup.html>

Railroad Commission of Texas Voluntary Cleanup Program

<http://www.rrc.state.tx.us/oil-gas/environmental-cleanup-programs/site-remediation/voluntary-cleanup-program/>

Agency Contact

For more information about Texas' VCP, contact:

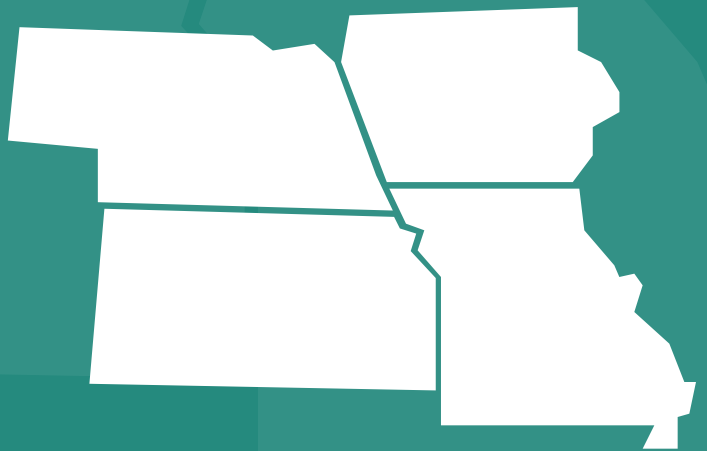
Merrie Smith, P.G.

Email: merrie.smith@tceq.texas.gov | Telephone: (512) 239-5051

Main Agency Website: <http://www.tceq.state.tx.us/remediation/vcp/vcp.html>



REGION 7



*Revitalized landfill, Kansas City, KS
Rear view of Chemical Recovery Corporation in Blue Valley, Kansas City, MO*



Program Overview

The Iowa Department of Natural Resources (IDNR) has a voluntary cleanup program, known as the Land Recycling Program (LRP), which was created in 1997 with enactment of the Iowa Land Recycling Program and Remediation Standards Act. The LRP was created to address concerns that real or perceived contamination may prevent properties from achieving their full potential.

The LRP is open to parties responsible for contamination and to innocent property owners and prospective purchasers of contaminated properties. Parties wishing to enroll in the LRP must have property access to perform assessment and cleanup activities. For a property to be enrolled in the LRP, contamination at levels exceeding maximum contaminant levels or appropriate statewide standards must be present.

Sites excluded from the program include those contaminated from underground storage tanks, properties on the National Priorities List, animal feeding operations, properties subject to some types of enforcement actions or consent orders (unless the enforcement agency gives permission), and properties where there is a commingling of eligible and ineligible situations.

At the end of the LRP process, IDNR issues a no further action certificate that certifies the participant completed remediation and is not required to complete further response actions. The participant also is covered by a covenant not to sue that releases the participant from liability under state environmental statutes.

No Further Action Certificate and Covenant Not to Sue

The LRP process includes both mandatory and recommended steps for the participant to follow. IDNR encourages a collaborative approach that results in an open and flexible process. To ensure the LRP process is the best approach, IDNR recommends that LRP participants discuss the site and contamination with IDNR staff before submitting an application.

Once a participant demonstrates that an affected area meets applicable cleanup standards and IDNR certifies

LRP Process Summary

- The participant submits an application and \$750 fee after discussing the site with IDNR.
- IDNR prepares a participation agreement that addresses access to the property, reimbursement by the participant for state oversight costs, financial assurances, project scoping, and the development of a general timetable for completing assessment and cleanup activities. The participant must pay a fee that is not to exceed \$7,500.
- The participant must fully define the extent of contaminants present in soils or groundwater, or must carry out additional site assessment field activities to define the nature and extent of contamination and media affected, and must submit a site assessment report to IDNR.
- The participant prepares a risk evaluation and response action that outlines the planned course of action for either direct remediation of contaminants, the use of institutional controls, engineering controls, or a combination of all, in order to mitigate the contamination addressed. The participant submits the risk evaluation/response action (RE/RA) document for IDNR's approval, unless IDNR grants permission to continue without approval.
- After additional environmental sampling or monitoring to confirm compliance with statewide standards or other risk management controls approved within the RE/RA, the participant submits a final report for IDNR approval.

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that the participant has met all requirements for completion, IDNR issues a *no further action (NFA) certificate*. The NFA certificate indicates that the remediated site requires no further response action. In some cases, the NFA certificate may be provisional, based on the need for continued monitoring or the maintenance of necessary institutional or technological controls. The NFA certificate is transferable to future site owners.

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- IDNR issues a no further action (NFA) certificate.

IDNR can reopen sites and or revoke the NFA status if the department finds that necessary institutional or technological controls are ineffective and cannot be, or are not, corrected. IDNR also may revoke a site's NFA status or terminate its enrollment in the LRP on the basis of fraud, misrepresentation, or failure to disclose material information. IDNR also may terminate a site's LRP enrollment in the event of significant failure to comply with schedules or pay required fees. An enrollee may withdraw from the LRP at any time, but forfeits its NFA status by doing so.

After IDNR issues the NFA certificate, the department issues a *covenant not to sue*. The covenant states that the participant complied with the requirements in the LRP. It also releases the participant from liability to the state to perform additional environmental assessment, remedial activity, or response action.

Additional Resources

IDNR Land Recycling Program

<http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Contaminated-Sites/Land-Recycling-Program-LRP>

Iowa Brownfields Program

<http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Contaminated-Sites/Brownfields>

Agency Contact

For more information about Iowa's LRP, contact:

Amie Davidson

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Main Agency Website: <http://www.iowadnr.gov/>

Program Overview

The Kansas Department of Health and Environment (KDHE)'s Bureau of Environmental Remediation administers Kansas' Voluntary Cleanup and Property Redevelopment Program (VCPRP). Under the VCPRP, eligible parties, including owners, developers, and prospective purchasers, voluntarily address environmental issues associated with buying, selling, reusing, or redeveloping contaminated properties. Properties eligible for the VCPRP are considered low to moderate priority sites that generally do not represent an immediate danger to human health or the environment. KDHE provides technical guidance and issues no further action determination letters after appropriate cleanup activities are complete.

Any party willing to voluntarily clean up a contaminated property is required to submit an application to KDHE. Parties must pay a fee to cover KDHE oversight costs. KDHE classifies the property's contamination in accordance with the state established classification system. The classification system provides flexibility with regard to cleanup program requirements, based upon the level of contamination at a property. Each classification level is subject to a defined investigative scope of work developed by KDHE. There are four classes:

- Class I is for sites impacted by contamination that originates from another property and is being addressed by an appropriate state response program. It requires an initial deposit of \$1,000.
- Class II applies to sites with suspected or confirmed soil contamination that is migrating off the property, but where there is no groundwater contamination. It requires an initial deposit of \$3,000.
- Class III is for sites with suspected or confirmed soil and groundwater contamination that is not migrating off the property. It requires an initial deposit of \$4,000.
- Class IV applies to sites with suspected or confirmed soil and groundwater contamination both on and off the property. It requires an initial deposit of \$5,000.

The voluntary party may withdraw from the program at any time provided that the property's condition, from a human health and environmental perspective, is no worse than before the property was enrolled in the program. Participants follow a clearly defined, streamlined assessment and cleanup process.

VCPRP Process Summary

- The participant submits an application and a \$200 fee.
- The participant submits a signed voluntary agreement and an initial deposit that is determined based on the site's classification.
- KDHE determines if a voluntary investigation is needed.
- The participant identifies the contamination sources, delineates the contamination areas, and submits the investigation report for KDHE's approval.
- KDHE reviews and approves the voluntary site investigation report.
- The participant submits a cleanup proposal to KDHE.
- KDHE reviews and approves the cleanup proposal.
- The participant then prepares a cleanup plan.
- KDHE places a legal notice or advertisement in a local newspaper in general circulation in the vicinity of the contaminated property.
- After public comment, KDHE approves the voluntary cleanup plan.
- The participant implements the cleanup plan and submits a cleanup report for KDHE's approval. The participant implements environmental use controls, if needed.
- KDHE approves the cleanup report and issues a no further action determination.



No Further Action Determination Letter

Once all program requirements are met, KDHE may issue a no further action determination letter that provides assurance that no further action is required as long as conditions at the property do not change. KDHE provides this assurance to encourage property owners to clean up and redevelop contaminated properties.

No further action determinations:

- may be disclaimers, limitations, or conditional terms for the property.
- apply only to identified conditions on the property.
- are based upon the applicable statutes, rules, and regulations that exist at the time the project is complete.

In general, KDHE issues no further action determinations in five types of situations: (1) where no contamination is found; (2) where contamination found during an environmental site assessment or VCI presents no significant risk and contaminant levels are below federal or state standards; (3) where contamination at the site originates exclusively from an off-property source and the source property is being addressed; (4) where verification sampling confirms that the property was cleaned up to the standards in the voluntary cleanup plan; or (5) where the contamination remaining at the property presents no significant risks based on current and future land use, and is not migrating off-site. An environmental use control (EUC) has been placed on the property to prevent further exposure to the remaining contamination.

To close out a project, the voluntary party must record the “no further action” determination letter, with any required attachments, with the Register of Deeds in the county in which the property is located. The “no further action” determination becomes a permanent record for the property successors and assignees and is also retained as a permanent record by KDHE. After receiving an affidavit that the determination has been recorded, KDHE will issue a closure letter officially terminating the voluntary agreement. KDHE will refund any leftover deposit money to the voluntary party within 60 days.

Additional Resources

KDHE's VCPRP

<http://www.kdheks.gov/ars/vcp/index.html>

VCPRP Manual

http://www.kdheks.gov/ars/vcp/download/VCPRPManual_2011.pdf

VCPRP Application

http://www.kdheks.gov/ars/vcp/download/vcp_application.pdf

Agency Contact

For more information about Kansas' VCPRP, contact:

Deanna Ross

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Main Agency Website: <http://www.kdheks.gov/>

Program Overview

Owners of contaminated property in Missouri can participate in the Brownfields/Voluntary Cleanup Program (BVCP). The Missouri Department of Natural Resources (MoDNR) Hazardous Waste Program's Brownfields/Voluntary Cleanup Section administers the BVCP and oversees voluntary cleanups for properties that are abandoned or underutilized because of contamination from hazardous substances. The program promotes the selling, financing, and development of properties that otherwise might be left stagnant.

Participating in the Brownfields/Voluntary Cleanup program allows a landowner to obtain a certificate of completion (equivalent to a no further action letter) from MoDNR at the end of a successful voluntary cleanup project. While the certificate does not give a buyer or seller a full release from liability for environmental contamination, it gives parties a reasonable level of confidence that the property poses no significant risk for liability in the future. This certificate can greatly reduce the risk of incurring environmental liability associated with such properties. Sites where residual contamination is controlled or safely left in place on the property under management of a restrictive covenant enter a long term stewardship program after MoDNR issues a certificate of completion.

Certificate of Completion

A site must participate in the BVCP to obtain a certificate of completion. The certificate of completion states that the site is cleaned up to MoDNR's standards and requires no further remedial action, unless additional contamination is discovered. The certificate pertains to the property itself and therefore protects both current and future owners of the property.

The certificate of completion provides applicants with assurance that as long as no new negative environmental conditions are discovered and no subsequent releases of hazardous substances occur at the property, MoDNR will not bring an action for additional assessment or remediation. However, under the BVCP, a certificate of completion does not act as a release from liability for claims of third parties or the government, and does not act as a covenant not to sue between the applicant and MoDNR.

BVCP Process Summary

- The applicant submits a BVCP application form and a consent for access to property form to MoDNR with a \$200 application fee, copies of all environmental site assessment reports, and other supporting documentation. At a minimum, the application must include a Phase I environmental site assessment report.
- If the BVCP accepts the site, MoDNR and the applicant sign a letter of agreement. The applicant pays the required deposit.
- Within 180 days (usually 60), MoDNR reviews the site assessment reports and determines if further site assessment or remediation is necessary. If additional assessment is necessary, the participant submits a site assessment work plan. Upon MoDNR's approval of the plan, the applicant performs the additional site assessment.
- After the site assessment, the participant completes a risk assessment to determine if risk management is necessary. If so, the applicant submits a risk management (remediation) plan to MoDNR for approval. The applicant performs the activities in the approved plan and schedule. MoDNR provides oversight that may include document review, field observation, and collecting samples. The applicant submits quarterly progress reports if these activities last longer than one calendar quarter.
- The participant submits a final report to MoDNR when the cleanup is complete. MoDNR issues a

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Additional Resources

Missouri Department of Natural Resources Brownfields/
Voluntary Cleanup Program

<http://dnr.mo.gov/env/hwp/bvcp/hwpvcp.htm>

Brownfields/Voluntary Cleanup Program Application Form

<http://dnr.mo.gov/forms/780-1712-f.pdf>

Agency Contact

For more information about Missouri's BVCP, contact:

Scott Huckstep

Chief, Brownfields/Voluntary Cleanup Section

Hazardous Waste Program

Email: scott.huckstep@dnr.mo.gov | Telephone: (573) 526-8913

Main Agency Website: <http://dnr.mo.gov/>

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certificate of completion when it determines that the cleanup meets the established cleanup goals for the site or the site requires no remedial action.



Program Overview

The Nebraska Voluntary Cleanup Program (VCP) is a fee-based cleanup program administered by the Nebraska Department of Environmental Quality (NDEQ). Under the VCP, NDEQ reviews and oversees efforts by property owners, prospective buyers, developers, lending institutions, or others wishing to initiate voluntary environmental cleanup activities at contaminated sites.

Nebraska's VCP is a streamlined, results based approach to cleaning up contaminated sites that minimizes the number of steps in the regulatory review process and focuses on goals or objectives rather than a rigid and structured process. VCP applicants have the latitude to determine how to achieve cleanup goals, with the guidance and oversight of the NDEQ. This enhances the applicant's responsibility for achieving the cleanup goals as agreed upon for the site while maintaining compliance with all applicable state and federal environmental regulations.

No Further Action Letter

When an applicant completes cleanup at a site in accordance with an approved remedial action plan, the NDEQ reviews the remedial actions to determine that the site was cleaned up as proposed and there is no threat to human health or the environment. If the cleanup is satisfactory, NDEQ prepares a no further action letter to declare that no further action is necessary, and the property is ready for redevelopment and reuse. The state's no further action letter does not contain a covenant not to sue.

Additional Resources

Nebraska Voluntary Cleanup Program
<http://deq.ne.gov/NDEQProg.nsf/OnWeb/VCP>

Voluntary Cleanup Program – Process and Forms
<http://deq.ne.gov/Publica.nsf/pages/05-162/#Sec0>

Voluntary Cleanup Program – Guidance
<http://deq.ne.gov/Publica.nsf/pages/05-162>

VCP Process Summary

- The site owner (applicant) completes a thorough environmental site investigation. If interim remedial actions are necessary to address an imminent threat to human health or the environment, the applicant may complete these actions before applying to the VCP.
- The site owner submits an application form, non-refundable \$2,000 application fee, and a refundable \$3,000 deposit for oversight costs. NDEQ and the applicant sign an agreement describing the expectations of the applicant and NDEQ regarding the voluntary cleanup of the site.
- NDEQ reviews and approves the application. The site owner submits a remedial action plan (RAP) within 90 days.
- Once NDEQ approves the RAP, the site owner may begin site cleanup. Cleanup must be initiated within six months of NDEQ's approval of the RAP, and cleanup activities must be completed within 24 months. NDEQ monitors the implementation of all remedial actions, and provides guidance as necessary.
- Within 60 days of completion of remedial actions, the site owner must prepare a remedial action report (RAR) documenting the remedial actions, and demonstrating that the site is cleaned up as proposed in the approved RAP.
- NDEQ reviews the RAR. If the RAR is approved, NDEQ prepares a no further action letter to declare that no further action is necessary, and the property is ready for redevelopment/reuse.



Agency Contact

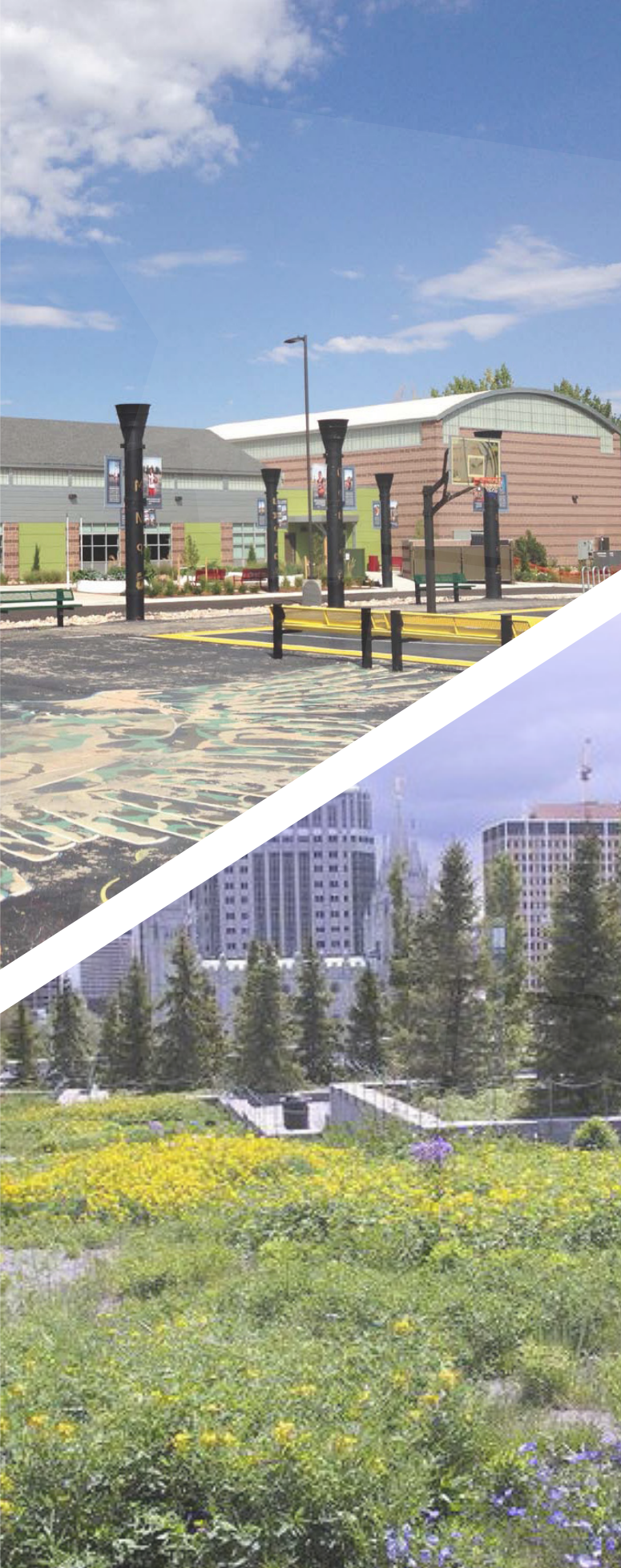
For further information on the Nebraska VCP, please contact:

Mike Felix

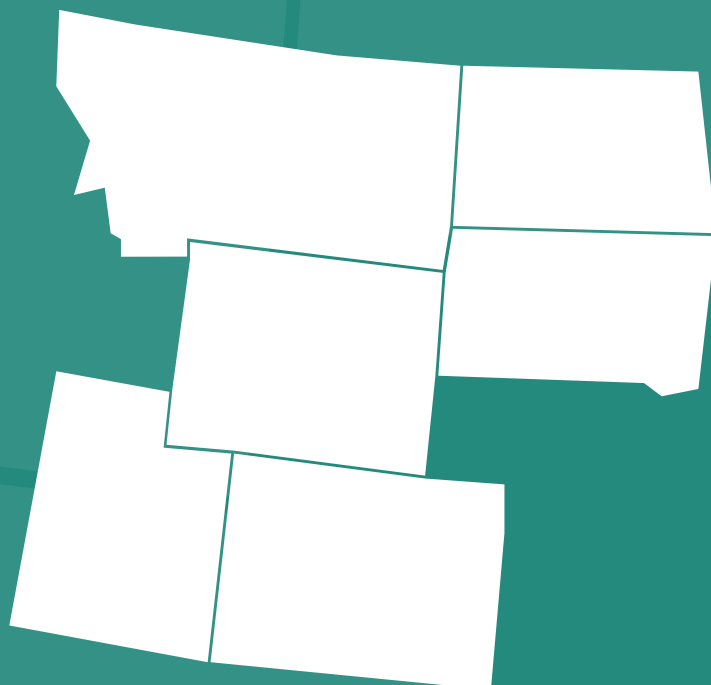
NDEQ Remediation Section

Email: mike.felix@nebraska.gov | Telephone: (402) 471-4210

Main Agency Website: <http://deq.ne.gov>



REGION 8



*Roots Elementary Charter School at Holly Square, Denver, CO
Greenscape on the third floor of the LDS Conference Center, Salt Lake City, UT*



Program Overview

Colorado's Voluntary Cleanup and Redevelopment Program (VCUP) was created in 1994 with enactment of the Voluntary Cleanup and Redevelopment Act. The Act created the VCUP to facilitate the redevelopment and transfer of contaminated properties.

Properties that sit untouched because of real or perceived contamination can be rehabilitated using Colorado's Brownfields Program in conjunction with the VCUP. The Brownfields and VCUP programs provide public and private property owners with the resources to facilitate cleanups, as well as assurances against regulatory enforcement. Cleanup decisions under the VCUP are based on existing standards and the proposed use of the property. The Colorado Department of Public Health and Environment (CDPHE) provides no construction or cleanup oversight. The property owner is responsible for cleanup and verification of compliance.

Colorado's VCUP approves both the federal and state remedial plans in one step. Therefore, banks will accept a no further action letter (also referred to as a no action determination) from the state program as assurance that neither CDPHE nor U.S. EPA will issue an enforcement action for past contamination at a property cleaned up under the VCUP.

No Action Determination

A no action determination is a letter to the applicant that states that no further action is required at that time. The state provides an approval letter indicating that based on the information provided, no further action is necessary if the cleanup or no action plan is complete as proposed. For sites cleaned up under the VCUP, the letter is based on receipt of a completion report certifying that the cleanup plan is complete as approved. Property owners applying for a no action determination must pay a \$2,000 fee. CDPHE has 45 days to review the application.

As long as the land use stays the same, the state will not require any additional cleanup. The No Action Determination letter does not include a covenant not to sue. If the property is subsequently sold, the approval runs with the land, provided the land use stays the same.

VCUP Process Summary

- After discussing site options with VCUP staff, the property owner submits an application for the approval of a voluntary cleanup plan for a property where remediation may be necessary, or an application for a no action determination (NAD) for sites where remediation is complete or not necessary to protect human health and the environment.
- The applicant must submit a \$2,000 fee to CDPHE with the application for either a cleanup plan or NAD.
- CDPHE approves or denies an application, usually within 45 days.
- Within 45 days of completing the cleanup, the applicant must submit to CDPHE a report and certification from a qualified environmental professional that the remediation is complete according to the approved cleanup plan. Following review of the cleanup report and certification, CDPHE issues a concurrence letter to the applicant.
- Following implementation of an approved cleanup plan, the applicant certifies that the cleanup was completed in accordance with the voluntary cleanup plan. Applications for NADs are approved in writing by CDPHE.



Additional Resources

Colorado Brownfields Program

<https://www.colorado.gov/pacific/cdphe/brownfields>

Colorado Petroleum Brownfields Program

<https://www.colorado.gov/pacific/ops/BrownfieldsProgram>

Voluntary Cleanup Roadmap: A How-To Guide

https://www.colorado.gov/pacific/sites/default/files/HM_Voluntary-Cleanup-Roadmap-02_0.pdf

CDPHE Voluntary Cleanup and No Action Determination Processes

https://www.colorado.gov/pacific/sites/default/files/HM_VCRA-no-action-determination-processes-flow-chart_1.pdf

Voluntary Cleanup and No Action Determination Application Format

https://www.colorado.gov/pacific/sites/default/files/HM_VCRA-NAD-report-format.pdf

Agency Contact

For more information about Colorado's VCUP, contact:

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Unit Leader

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Fonda Apostolopoulos

VCUP Program Coordinator

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Main Agency Website: <https://www.colorado.gov/cdphe/>

Program Overview

The Voluntary Cleanup and Redevelopment Act (VCRA) is part of the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA). The Montana Department of Environmental Quality (DEQ)'s Site Response Section administers the VCRA. The VCRA encourages prompt cleanup of properties impacted by hazardous substances, encourages the sale or redevelopment of impacted properties, and minimizes administrative processes and redevelopment costs. The VCRA provides interested parties with a method of determining the cleanup responsibilities for reuse or redevelopment.

Prospective applicants (such as property owners, operators, or prospective purchasers) ask DEQ to approve a voluntary cleanup plan (VCP). Applicants may submit VCPs for facilities whether or not they are on the state CECRA Priority List. Under this act, DEQ cannot take enforcement action against the party conducting an approved voluntary cleanup for work addressed in the plan. Eligible sites must be remediated within 60 months. The applicant must reimburse DEQ for any costs that the state incurs during the review and oversight of a voluntary cleanup effort. Liability protection is provided to entities that otherwise would not be responsible for site cleanup.

Letter of Closure and No Further Action Determination

Once the applicant fully implements the VCP, the applicant submits a construction completion report (CCR) to DEQ and can petition for closure and delisting of the site, if applicable. Upon approval of the CCR, DEQ issues a *letter of closure*. DEQ offers a 30 day public comment period on the delisting. Following the public comment period, the facility is delisted, if appropriate.

On occasion, a VCRP applicant conducts cleanup without the benefit of an approved voluntary cleanup plan and then seeks a determination from DEQ that *no further action* is necessary. There are at least two situations for which DEQ requires an applicant to submit a no further action VCP to obtain a letter of closure from DEQ:

Letter of Closure for Sites Implementing a VCP

- The applicant submits to DEQ an environmental assessment (EA) of the property or facility.
- Once DEQ determines that the environmental assessment is complete, the applicant submits a remediation proposal (RP) to DEQ.
- After DEQ determines that the RP is complete, the applicant submits the EA and RP for public comment and DEQ approval.
- Following public comment, DEQ approves the applicant's VCP and publishes a notice of approval.
- The applicant completes the cleanup within 60 months of approval of the VCP.
- Upon full implementation of the VCP, the applicant submits a construction completion report (CCR) to DEQ and petitions for closure and delisting, as appropriate.
- DEQ issues a letter of closure upon approval of the CCR.
- DEQ offers a 30-day public comment period on the delisting of the site.
- Following the public comment period, DEQ delists the facility.

No Further Action VCP Determination and Letter of Closure

- The applicant seeks a no further action VCP determination when they conduct a site cleanup before receiving an approved VCP, or when no cleanup is necessary at the site.

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- A property where cleanup has occurred outside of a legal order or consent decree, or without formal DEQ oversight; and
- A property that relies on a facility-specific risk analysis to determine that cleanup is not necessary.

Generally, a no further action VCP must meet all the VCRA requirements that must be met for a VCP submitted for a site that requires action, but may be somewhat briefer. Typical remedial alternatives evaluated in no further action VCPs include capping, complete removal and offsite disposal, or an onsite repository. Typically, no further action VCPs are submitted for properties with residual contaminant levels that are below acceptable cleanup levels.

Additional Resources

Voluntary Cleanup and Redevelopment Act
<https://deq.mt.gov/Land/StateSuperFund/vcra>

VCRA Application Guide
<https://deq.mt.gov/Land/statesuperfund/vcraguide>

CECRA Priority List
<https://deq.mt.gov/Land/statesuperfund/cecralistformats>

Montana's Brownfields Programs
<https://deq.mt.gov/Land/brownfields/mtbrownfieldsprograms>

Montana VCRA Process Diagram
http://deq.mt.gov/Portals/112/Land/StateSuperfund/Documents/VCRA_Guide/Fig1vcraprocess.pdf

Agency Contacts

For more information about Montana's VCRA, contact:

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Main Agency Website: <https://deq.mt.gov/>

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- If cleanup is necessary, the applicant conducts site cleanup without an approved VCP.
- The applicant requests a no further action determination from DEQ.
- DEQ determines that the site requires no further action (either no cleanup is necessary or the cleanup already conducted meets the requirements of the VCRA).
- DEQ issues a letter of closure.

Program Overview

North Dakota does not have a formal state voluntary cleanup program. The North Dakota Department of Health's (NDDH) Waste Management Division (WMD) is authorized under state statute as the primary regulatory authority for hazardous waste. EPA provides funding, oversight and technical assistance to NDDH via the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 128(a) Response Program funding. NDDH can use this funding for environmental assessment and cleanup activities at brownfield sites.

NDDH has guidance and requirements governing the use of institutional controls as part of risk based cleanups. NDDH also provides site-specific exemptions from liability, for owners of real property that is contaminated with substances regulated by the state, and who clean up the property in accordance with state regulations.

Letters of No Further Remediation, No Further Action, or Regulatory Assurance

NDDH issues letters of *no further remediation* (NFR), *no further action* (NFA), or *regulatory assurance* that provide owners, operators, and lenders with liability protection and exemptions from responsibility for further environmental remediation under applicable North Dakota laws and rules. An owner or operator of a site or property that qualifies for an NFR or NFA letter and who complies with the conditions NDDH requires will have a partial or complete exemption from liability for previous contamination addressed under the state program.

In general, a responsible party who caused the contamination will not be eligible for a responsibility exemption, but a subsequent property owner will be eligible to apply for an exemption from liability for past contamination. Similarly, a lender who receives a letter of regulatory assurance will have NDDH's assurance that the lender will not be subject to any enforcement actions under North Dakota's environmental laws with regard to existing contamination or pollution on a property or site.

Liability Relief Application Process

To review and process an application for liability relief or exemption, NDDH requires that property owners complete these steps:

- The applicant must complete an environmental site assessment.
- The applicant must submit to NDDH a completed and signed application and the results of the environmental site assessment. To make a final determination on the request, NDDH must have adequate information to assess the environmental conditions at the site. If the data on file do not adequately assess the site conditions, it is the responsibility of the applicant to submit an environmental assessment of the property satisfying the intent of the Phase II environmental site assessment process or comparable information that NDDH determines.
- NDDH reviews the application for completeness.
- NDDH reviews the results of the environmental site assessment and available data.
- NDDH makes a determination of applicable institutional controls (which the applicant may propose and submit with request).
- NDDH drafts environmental covenant or ordinance (which the applicant may propose and submit with its request).
- The applicant notifies the local political subdivision, and the political subdivision provides notice and

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The person requesting the exemption must complete NDDH's application form providing basic information about the applicant and the property. The business entity or individual that owns or is purchasing the property must submit the application for an NFR or NFA letter, and the business entity's or property owner's name will be on the deed as the legal owner.

Additional Resources

North Dakota's Brownfields Program

<http://www.ndhealth.gov/WM/Brownfields/>

Application Guideline for Brownfields Assistance

<http://www.ndhealth.gov/WM/Brownfields/ApplicationGuidelineForBrownfieldsAssistanceInNorthDakota.pdf>

Request for Responsibility Exemption/Regulatory Assurance

<http://www.nd.gov/eforms/Doc/sfn59226.pdf>

Qualification for Responsibility Exemption/Regulatory Assurance

<http://www.ndhealth.gov/wm/Publications/Qualification-ForResponsibilityExemptionRegulatoryAssurance.pdf>

Agency Contact

For more information about North Dakota's Brownfields Program, contact:

Derek Hall

Environmental Scientist

Hazardous Waste Program

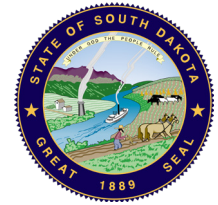
Email: dahall@nd.gov | Telephone: (701) 328-5166

Main Department Website: <http://www.ndhealth.gov/>

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opportunity for a public hearing at the request of applicant (if an environmental ordinance is proposed).

- The local political subdivision and NDDH conduct a public ordinance hearing (if necessary).
- NDDH writes a letter of regulatory exemption.
- The applicant endorses the letter of regulatory exemption.
- The applicant notifies contiguous landowners (not necessary under the ordinance option or for letter of regulatory assurance to a lender).
- The applicant files environmental covenants and/or responsibility exemption document (conveyed through NDDH's letter of regulatory exemption) with county recorder's office (if needed).
- The applicant returns the original signed copy of agreements to NDDH with copies of recorded covenants showing county document numbers and proof of landowner notification.
- The NDDH issues a no further action, no further remediation, or a regulatory assurance letter.



Program Overview

South Dakota does not have a formal voluntary cleanup program. The South Dakota Brownfields Program, administered by the Department of Environment and Natural Resources (DENR) Ground Water Quality Program, assists with the redevelopment of brownfields in the state by performing site assessments and cleanups using funding provided by EPA's Brownfields Program.

Comfort Letters

Under South Dakota statute, a site owner or prospective purchaser is not liable for environmental, response, cleanup, or remediation costs at brownfields sites that were approved by DENR for participation in the state's Brownfields Program, unless these entities caused the release of contamination at the site, or violated an environmental statute or regulation. The property owner is responsible for the portion of the response action or remediation that is directly attributable to his or her aggravation of a release. The Department will issue comfort letters to prospective purchasers of brownfields program sites if these conditions apply.

Additional Resources

Brownfields Program Website

<http://denr.sd.gov/des/gw/Brownfields/Brownfields.aspx>

South Dakota Codified Laws, Title 34A: Environmental Protection

Chapter 12: Laws governing Regulated Substance Discharges:

http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34A-12

Chapter 15: Laws governing Limitation on Liability of Lenders for Environmental Damage

http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34A-15

Agency Contact

For more information about South Dakota's Brownfields Program, contact:

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Main Agency Website: <http://denr.sd.gov/>

Brownfields Program Process Summary

DENR uses EPA brownfields grant funds to help eligible entities assess and clean up brownfield sites. Because funding is limited, DENR prioritizes projects where assessment and cleanup provide a clear public benefit and significant protection to human health or the environment. For an applicant to be eligible for assessment or cleanup assistance from the DENR, the following must occur:

- Brownfields assessment and cleanup funds must be available.
- The applicant must submit an application to DENR.
- DENR must review the application and determine that it is eligible for brownfields funding.
- The applicant must have a letter of support from the Mayor, City Commission, or County Commission.
- DENR must confer with the applicant to discuss the work needed and prospective redevelopment plans.
- DENR and its designees must have access to the property to perform the necessary work.
- The Board of Water and Natural Resources must approve the project through a public hearing process.
- The Secretary for DENR must approve and sign the work plan and budget for each project.



Program Overview

The Utah State Legislature passed the Voluntary Release Cleanup Program statute in 1997. This legislation created the state's voluntary cleanup program (VCP). The goal of the VCP is to promote the investigation and cleanup of contaminated sites under a cooperative, regulatory-friendly framework. Voluntary cleanups protect the residents and resources of Utah, and improve and enhance the quality of life in the state. Voluntary cleanups mitigate risk to human health and the environment while hopefully removing the stigma attached to contaminated sites, and allow the impacted properties to return to beneficial use.

All sites are eligible for enrollment in the VCP, except for sites regulated as treatment, storage, or disposal facilities under 42 U.S.C. 6901 et seq; sites that are listed on the National Priorities List; and sites, or portions of sites, where a state or federal enforcement action is existing or pending against the applicant for remediation of the contaminants described in the application.

When an applicant successfully completes a project under the VCP, the applicant receives a *certificate of completion* that provides a release of liability as outlined in Utah Code, Title 19, Chapter 8, Voluntary Cleanup Program. This release of liability is not available to owners or lenders who were originally responsible for a release or contamination described in Utah Code Ann. § 19-8-113 (3)(b). The certificate of completion is recorded on the real property records of the county where the site is located, allowing it to be transferable to subsequent property owners.

The Utah Department of Environmental Quality (UDEQ) may not initiate an enforcement action against an applicant regarding the contamination or release if the applicant is in compliance with the statute and is entered into a VCP regarding the contamination or release.

Enforceable Written Assurances for Bona Fide Prospective Purchasers

The UDEQ has a brownfields tool known as an Enforceable Written Assurance (EWA), which allows the Executive Director of UDEQ to issue an EWA to a bona fide

VCP Process Summary

- The applicant determines if the site is eligible for the VCP.
- The applicant schedules a pre-application meeting with UDEQ's Division of Environmental Response and Remediation VCP/Brownfields Program Coordinator (optional, but encouraged).
- The applicant submits an application along with the \$2,500 application fee and environmental assessment to UDEQ. If UDEQ deems the site eligible for the VCP, UDEQ will send an acceptance letter and voluntary cleanup agreement to the applicant for signature. The applicant signs the voluntary cleanup agreement and returns it to UDEQ.
- The applicant characterizes the site.
- Public participation is required prior to cleanup. At a minimum, the applicant must notify adjacent land owners and place a notice in the local newspaper, followed by a 30-day comment period on the remedial action plan. UDEQ also may request further activities based on the level of community interest.
- The applicant completes the site cleanup.
- After the terms and conditions of the voluntary cleanup agreement are complete, UDEQ issues a certificate of completion.
- UDEQ may require a site management plan and environmental covenant as a component of the remedy, if a site is cleaned up to non-residential levels and/or the remedy includes engineering controls,

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prospective purchaser (BFPP). UDEQ will not bring an enforcement action under HSMA against the holder of an EWA, provided the holder continues to satisfy the ongoing obligations associated with the written assurance. The requirements for an EWA are outlined in R311-600 Utah Administrative Code. There is an application fee. The completed application and fee may be submitted to the VCP/Brownfields Coordinator.

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institutional controls, or land use restrictions.

- UDEQ provides oversight throughout the VCP process.

Additional Resources

Utah DEQ Voluntary Cleanup Program

<http://www.deq.utah.gov/ProgramsServices/programs/cercla/voluntarycleanup/index.htm>

Utah DEQ Laws and Rules

http://www.deq.utah.gov/Laws_Rules/derr/index.htm

Utah DEQ Enforceable Written Assurances

<http://www.deq.utah.gov/ProgramsServices/programs/cercla/voluntarycleanup/vcpassuranceprogram.htm>

Agency Contact

For more information about Utah's VCP, contact:

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Main Agency Website: <http://www.deq.utah.gov/>



Program Overview

The Wyoming Department of Environmental Quality's (DEQ) Voluntary Remediation Program (VRP) works with businesses, landowners, and communities to remediate contaminated land and return it to productive use. DEQ assists these parties through the process of characterizing contaminated sites, developing remedy agreements, and establishing cleanup requirements.

Wyoming's VRP allows a property owner or prospective owner to voluntarily investigate possible contamination and clean up the site, if necessary. The VRP provides a process for negotiating and establishing appropriate cleanup activities for a given property, resulting in an assurance from DEQ about the extent of liability for environmental cleanup at the property.

Covenants Not to Sue, Certificates of Completion, or No Further Action Letters

When a remedy agreement is in place, DEQ can issue a covenant not to sue. After remedial actions are complete, the applicant may seek a certificate of completion or a no further action letter. DEQ issues liability assurance depending on site-specific conditions, the remedies implemented, and the amount of certainty an applicant wants about the potential for DEQ to require additional cleanup in the future.

A *covenant not to sue* assures that DEQ will not issue a unilateral cleanup order, if the applicant implements a remedy consistent with the terms of a valid remedy agreement. DEQ usually issues a covenant not to sue while a cleanup is ongoing, rather than at the end of a cleanup. In many cases, DEQ issues a covenant not to sue at the same time that a remedy agreement is signed.

A *certificate of completion* documents DEQ's opinion that all cleanup requirements for a site (or a portion of a site) were successfully implemented or satisfied. DEQ usually issues a certificate of completion at the end of cleanup, after a remedy is fully implemented and cleanup levels

VRP Process Summary

- To enter the VRP, prospective applicants submit an application form, supporting information, and a \$550 application fee. Once DEQ receives the application and confirms that the site is eligible, the voluntary remediation process begins.
- The applicant must publish an initial public notice to notify the general public about the site. If there is marked public interest, the applicant must develop a site specific public participation plan.
- The applicant and DEQ negotiate a preliminary remediation agreement (PRA). The PRA establishes the specific activities necessary to investigate and characterize contamination at the site and, if necessary, to evaluate potential remediation alternatives.
- The applicant completes human health and ecological risk assessments.
- Based on the results of the risk assessments, the applicant works with DEQ to determine remedies and cleanup actions that will meet the remedy standards defined by state statute. The applicant completes a remedy agreement that establishes the remedial actions that will be implemented at the site. Once DEQ and applicant enter into a remedy agreement, the applicant can implement the remedy according to the agreement's terms and conditions.

are achieved. Certificates of completion issued under the VRP generally are analogous to the types of “no further action” determinations made in many other states and to the “comfort letters” issued under some federal cleanup programs.

A no further action (NFA) letter documents that all cleanup requirements for a site (or portion of a site) were successfully implemented or satisfied. However, DEQ issues NFA letters under only two circumstances: when a site is completely cleaned up to levels that support unrestricted site uses, or when a site will be completely cleaned up to these levels through monitored natural attenuation. If DEQ issues an NFA letter, DEQ generally will not impose any additional remediation requirements at the site (or portion of a site) that the NFA letter covers. Any contamination discovered after DEQ issues an NFA letter will be cleaned up at state expense under the provisions for orphan sites, unless the newly discovered contamination poses an imminent and substantial endangerment to human health or the environment. Because NFA letters transfer some responsibility for funding future cleanup to the state, they are issued only when DEQ is confident that a site is completely and comprehensively characterized and fully remediated to cleanup levels that are appropriate for unrestricted site uses.

Additional Resources

Wyoming Voluntary Remediation Program

<http://deq.wyoming.gov/shwd/voluntary-remediation-program/>

Fact Sheets related to the VRP

<http://deq.wyoming.gov/shwd/voluntary-remediation-program/resources/fact-sheets/>

Agency Contact

For more information about Wyoming’s VRP, contact:

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Main Agency Website: <http://deq.wyoming.gov>



REGION 9



*Before photo of Chesterfield Square, Los Angeles, CA
Amtrak station at the EmeryStation transit center, Emeryville, CA*

Program Overview

Arizona's Voluntary Remediation Program (VRP) enables property owners, prospective purchasers, and other interested parties to investigate or clean up a contaminated site in cooperation with the Arizona Department of Environmental Quality (ADEQ). The VRP provides a streamlined process for program participants, who work with a single point of contact at ADEQ to address applicable cross-program remediation efforts. ADEQ reviews these voluntary remedial actions and provides a closure document for successful site remediation that all relevant ADEQ programs accept.

The main goals of Arizona's VRP are to:

- Allow interested parties to conduct remediation of properties and return them to productive use.
- Work cooperatively with interested parties to achieve their remediation goals in a cost-effective manner.
- Allow interested parties to proactively reduce risk to public health and the environment.
- Inform the community of the activities being performed at the site.
- Facilitate identification of remediation goals as background, predetermined, or site-specific (risk assessment) standards.
- Facilitate the selection of regulatory tools, such as engineering and institutional controls, through Declaration of Environmental Use Restrictions.

Once VRP participants meet the remedial goals under the VRP and complete the community involvement requirements, they may request a no further action determination from ADEQ.

No Further Action Determination

According to Arizona State Statute, Title 49 §181, an applicant may ask ADEQ to provide a determination that no further action is needed for a site or portion of a site by submitting a report to the department. This report should include:

- A description of the specific contaminants for which a no further action determination is sought.
- A description of the actions taken to achieve remediation levels or controls determined in accordance with the state statute.

VRP Process Summary

- The participant determines if the site is eligible for the VRP.
- The participant must complete and submit an application, along with a non-refundable application fee of \$2,000, to ADEQ. (If the site is accepted, any of the \$2,000 application review fee remaining after ADEQ's review is applied to the site account and used by ADEQ to cover document review costs before it uses any other deposits.) Small businesses have the opportunity to pay the application fee in installments under an agreement with ADEQ.
- The participant develops and submits to ADEQ a work plan outlining the remediation process for addressing contamination at the property.
- Once a site is accepted into the VRP, ADEQ issues a \$4,000 deposit request (or less if remaining application funds are available), due and payable within 30 days of issuance.
- The participant must make an initial deposit of \$4,000. The deposit must be received by ADEQ before program personnel will perform any review of work. When deposited funds drop below \$1,000, ADEQ requests another \$4,000 deposit, due and payable within 30 days of issuance.
- The participant proceeds with the investigation and/or remediation according to the approved work plan.
- Once a participant meets the remedial goals and completes the community involvement requirements, he or she submits a request for a no further action determination.

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- A description of any soil, water, or soil and water treatment systems used as part of the remediation.
- Whenever institutional or engineering controls are placed on the site:
 - A demonstration that any engineering control or combination of engineering controls has been constructed, is functioning, and will be maintained.
 - A description of the proposed land use for the site and a demonstration that the use will not compromise the integrity of the engineering controls and will be in accordance with any institutional controls.
- If post-remediation monitoring is proposed, a description of the type of monitoring, monitoring locations, contaminants to be monitored, monitoring frequency, and sampling procedures.
- A description of community involvement activities undertaken to meet statute requirements.
- A list of permits under this title obtained for the remedial action or held by the applicant pertaining to the site.

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- ADEQ reviews and, if appropriate, grants a no further action determination for the site or portion of the site.

After ADEQ receives a request for a no further action determination, it reviews, approves, denies, or requests modifications to the request. ADEQ may request additional information before acting on the request for a determination of no further action, may conduct an investigation of the site or portion of the site, and will have access to the site at reasonable times to verify the completion of the remedial action. Once ADEQ determines that all of the conditions are met, ADEQ issues a no further action determination. ADEQ may issue a conditional no further action determination at a site where remedial actions include the use of institutional controls or engineering controls, and require post-remediation care obligations such as monitoring or maintenance of engineering controls.

A determination of no further action means that no further action will be taken against the property owner, or prospective purchaser, by ADEQ, unless the no further action determination is rescinded or amended.

Additional Resources

ADEQ Voluntary Remediation Program

<https://www.azdeq.gov/enviro/waste/cleanup/vrp.html>

Frequently Asked Questions

<https://www.azdeq.gov/enviro/waste/cleanup/faqs.html>

Voluntary Remediation Program Application

<https://www.azdeq.gov/enviro/waste/cleanup/download/agency.pdf>

ADEQ Voluntary Remediation Program Orientation Package

https://www.azdeq.gov/enviro/waste/cleanup/download/VRP_Orientation_Package.pdf

Arizona Brownfields Assistance Program

<https://www.azdeq.gov/enviro/waste/cleanup/brownfields.html>

Arizona State Legislature Title 49 – The Environment

<http://azleg.state.az.us/arizonarevisedstatutes.asp?title=49>

Agency Contact

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Main Agency Website: <http://www.azdeq.gov>

Program Overview

The California Environmental Protection Agency's Department of Toxic Substances Control's (DTSC) Brownfields Voluntary Cleanup Program (VCP) allows motivated parties who are able to fund the cleanup and DTSC's oversight costs to investigate and remediate their sites. The VCP operates under the premise that corporations, real estate developers, and local and state agencies entering into VCP agreements can clean up and restore properties quickly and efficiently. The program encourages responsible parties to clean up contaminated properties by offering economic, liability, or efficiency incentives. California refers to program applicants and participants as "project proponents." Project proponents include property owners, state or local agencies, real estate developers, and others involved with proposed changes in land use or ownership.

No Further Action Letter and Certification of Completion

Under the VCP, when the site assessment and/or cleanup are complete, DTSC issues a no further action letter or a certification of completion. A *no further action letter* indicates that cleanup is complete, with no land use restrictions. A no further action letter also may be issued with conditions such as a land use restriction or ongoing operations and maintenance. DTSC provides a *certificate of completion* as legal recognition that cleanup is complete and that liability to all state government entities is satisfied. These documents indicate that DTSC determined that the site does not pose a significant risk to public health or the environment. While neither document constitutes a release or covenant not to sue, both significantly minimize future liability concerns.

Other Brownfields Liability Relief Mechanisms

DTSC's Site Mitigation and Brownfields Reuse Program offers several forms of limited brownfields liability relief:

- The California Land Reuse and Revitalization Act of 2004, as amended, provides immunity from liability for response costs or damage claims to qualified innocent landowners, bona fide purchasers, or contiguous property owners. The law also provides immunity from liability to prospective purchas-

VCP Process Summary

- If exclusions do not apply, the project proponent submits an application for "agency oversight" to DTSC that provides details about site conditions, proposed land use, and potential community concerns. Excluded sites are sites listed as a federal or state Superfund site, military facilities, and sites that fall outside of DTSC's jurisdiction, as in the case where a site contains only leaking underground fuel tanks.
- Once DTSC accepts the application, the proponent meets with DTSC to negotiate a VCP agreement. In the agreement, DTSC retains its authority to take enforcement action if, during the investigation or cleanup, it determines that the site presents a serious health threat, and proper and timely action is not otherwise being taken.
- Before beginning any site work, the proponent must sign the VCP agreement, make the advance payment, and commit to paying all project costs, including DTSC's oversight costs. Once the proponent signs the VCP agreement, initial site assessment, site investigation, or cleanup activities begin.
- When remediation is complete, DTSC issues either a no further action letter or certification of completion, depending on project circumstances. This means the site is now ready for productive economic use.



ers and bona fide ground tenants, provided they meet certain conditions and conduct specified site assessment and cleanup actions.

- California's prospective purchaser policy removes or lessens the liability that prospective purchasers face, and includes a model prospective purchaser agreement (PPA) with covenant not to sue and eligibility criteria. The PPA states that DTSC will not pursue site mitigation enforcement against prospective purchasers/tenants/lessors who become site owners or operators if specific conditions are met. If the DTSC is the lead agency and enters into a PPA, the appropriate Regional Water Board may, upon review of the final PPA, issue a comfort letter that serves as written assurance of the agency's intention not to pursue specific enforcement against parties under limited circumstances.
- The Local Government Agency Oversight Agreement (Gatto Act) created a local agency program to encourage infill development and brownfields cleanup by authorizing local governments to compel cleanup of contaminated properties and reduce liabilities for local agencies and subsequent property purchasers.

Additional Resources

California's Brownfields Program

<http://www.dtsc.ca.gov/SiteCleanup/Brownfields/>

DTSC Brownfields Initiatives

https://www.dtsc.ca.gov/SiteCleanup/Brownfields/upload/BF_Initiative.pdf

Brownfields Voluntary Cleanup Program

<http://www.dtsc.ca.gov/SiteCleanup/Brownfields/BrownfieldsVoluntaryProgram.cfm>

Fact Sheet: Voluntary Cleanup Program

http://www.dtsc.ca.gov/SiteCleanup/Brownfields/upload/BF_FS_VCP.pdf

Prospective Purchaser Agreements and Liability Relief

<http://www.dtsc.ca.gov/SiteCleanup/Brownfields/BrownProsPurchaser.cfm>

California Land Reuse and Revitalization Act of 2004

<http://www.dtsc.ca.gov/SiteCleanup/Brownfields/BrownLandReuse.cfm>

Prospective Purchaser Policy/Procedure

<http://www.dtsc.ca.gov/LawsRegsPolicies/Policies/SiteCleanup/upload/eo-96-005-pp.pdf>

Policy and Procedure for Managing Voluntary Site Mitigation Projects

<http://www.dtsc.ca.gov/LawsRegsPolicies/Policies/SiteCleanup/upload/eo-95-006-pp.pdf>

Agency Contacts

For more information about California's VCP, contact:

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Kevin Shaddy

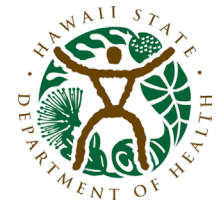
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Maryam Tasnif-Abbasi
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Main Agency Website: <https://www.dtsc.ca.gov/>



Program Overview

Hawaii developed the Voluntary Response Program (VRP) to encourage owners and purchasers to voluntarily investigate and clean up property that may be contaminated. The Hawaii Department of Health's (HDOH) Hazard Evaluation and Emergency Response Office administers the VRP. The VRP offers participants technical guidance, oversight, and regulatory assurance of completed clean-ups. Purchasers who participate are typically exempt from future liability related to contamination addressed under the VRP. Property owners, prospective purchasers, developers, and lenders have successfully used the VRP.

The goal of the VRP is to encourage cleanup of contaminated property and protect innocent purchasers from future environmental liability. It also seeks to enhance property values and expedite cleanup and redevelopment projects. It is a flexible program intended to address a wide range of site conditions, contamination, and property transactions. Property owners can benefit from the VRP if they are planning to sell their property or change its use. Buyers and lenders benefit because the VRP eliminates the uncertainty of regulatory oversight and the threat of future environmental liability. The result of the VRP is a state-approved cleanup and an official letter of completion that typically includes an exemption from future liability.

Letter of Completion

Under Hawaii's Environmental Response Law, eligible purchasers who receive a letter of completion through Hawaii's VRP are exempt from future liability related to contamination addressed under the VRP. HDOH oversees work within the VRP agreement. When the remediation is complete, the participant receives an official letter of completion for the specific property and contaminants addressed. This letter certifies that the site was properly cleaned up and, to the extent allowed in the law, provides relief from future liability. The expectation is that the assurances provided in the letter of completion will help facilitate the sale and/or development of the property.

VRP Process Summary

- The applicant checks eligibility and completes an application containing basic information about the proposed project. After HDOH's Hazard Evaluation and Emergency Response Office approves the VRP application, both parties enter into a VRP agreement.
- The applicant prepares a summary report of all environmental work previously completed. HDOH evaluates the work to determine what information from previous investigations and cleanups the current project can use.
- The applicant prepares a general work plan for site investigation.
- HDOH approves the work plan.
- Applicant collects and analyzes samples, presents data in a site investigation report, and performs an environmental hazard evaluation.
- If the environmental hazard evaluation indicates a need for cleanup action, the applicant evaluates alternatives to protect public health and environment in a remedial alternatives analysis.
- The applicant prepares and implements a public participation plan.
- The applicant selects the appropriate response action and produces a response action memorandum.
- A public meeting is held regarding the response action memorandum, if sufficient public interest exists.
- The applicant implements the response action.

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Other Brownfields Liability Relief Mechanisms

Bona Fide Prospective Purchaser Protection: In 2009, Hawaii Revised Statute 128D was amended to add a definition for “bona fide prospective purchasers” consistent with federal law that limits civil liability for bona fide prospective purchasers who knowingly purchase contaminated property. A “prospective purchaser” as defined in the law means “a prospective owner, operator, tenant, developer, lender, or any party who would not otherwise be liable under section 128D-6 of the Hawaii Environmental Response Law, prior to conducting a voluntary response action.” The prospective purchaser must obtain final approval to participate in the program before becoming an owner or operator.

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- When the response action is complete to HDOH’s satisfaction, HDOH issues a letter of completion.
- An environmental covenant for the site is filed at the State of Hawaii Bureau of Conveyances within 30 days of issuance of the letter of completion.

Additional Resources

Hawaii’s VRP

<http://eha-web.doh.hawaii.gov/eha-cma/Leaders/HEER/voluntary-response-program>

Hawaii DOH HEER VRP Brochure

<http://eha-web.doh.hawaii.gov/eha-cma/documents/f4d701f9-f679-439e-b245-443916c71b50>

Model VRP Agreement

<http://eha-web.doh.hawaii.gov/eha-cma/documents/5488917b-f57f-4230-8c0a-1825467a77bd>

Example of a Letter of Completion

<http://eha-web.doh.hawaii.gov/eha-cma/documents/f45fba29-bff7-4b8a-822e-845898a6542b>

VRP Applicant Checklist

<http://eha-web.doh.hawaii.gov/eha-cma/documents/d830d679-9cab-4028-a1cc-8cbb1837e586>

Agency Contact

For more information about Hawaii’s VRP, contact:

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Hawaii State Department of Health

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Main Agency Website: <http://health.hawaii.gov/about/links-to-doh-program-information/environmental-health-administration/>

Program Overview

The Nevada Division of Environmental Protection's (NDEP) Bureau of Corrective Action (BCA) oversees cleanup of releases of regulated substances using a multimedia (air, water, soil, and ecological resources) approach. The state relies primarily on regulated entities self-reporting to NDEP when they cause a release to the environment that exceeds state reporting quantities. Once a release is identified, a responsible party may choose to conduct remediation activities by hiring a Certified Environmental Manager to conduct the cleanup, or the responsible party can enroll in the state Voluntary Cleanup Program.

Nevada's regulations require that only individuals whom the agency certifies as Certified Environmental Managers (CEMs) can manage and oversee environmental projects. This work includes Phase I and Phase II environmental site assessments, investigations and characterizations, remediation, and other related tasks. By regulation, CEMs are compelled to advise a client who is responsible for a release to report it to NDEP. If the release is discovered and the responsible party is unknown, the CEM must report the finding to the Bureau of Corrective Action. NDEP believes that this statutory professional certification process and the rules of conduct it established assure the notification of nearly all releases that meet the regulatory criteria.

An entity that caused a release of contamination to the environment will conduct a site characterization to determine if the release will require cleanup and remediation of any impacted media. If it is determined in the characterization report that cleanup action is necessary, the responsible party can hire qualified contractors (CEMs) to oversee and perform the work, which must be performed under a BCA-reviewed and approved corrective action plan.

Under a responsible party lead remediation, NDEP BCA will provide a no further action notification to the property owner and responsible party, but the closed case may be reopened in the future, under certain circumstances (see next page).

As an alternative, responsible parties can apply to conduct cleanup activities under the Nevada Voluntary Cleanup Program (VCP). The responsible party must submit an application requesting that the site be addressed under the VCP. The responsible party will be billed for NDEP BCA's staff time, subcontractors, and all incidental expenses attributable to the state's oversight of the project. In addition, NDEP BCA usually requires that a site specific human health and ecological risk study be performed to establish the allowable contamination levels under the clean closure finding.

VCP Process Summary

- The property owner submits a VCP application to NDEP BCA with the required application fee (\$400 for residential properties; \$500 to \$2,000 for commercial properties), and site characterization information (obtained by conducting a Phase I environmental site assessment).
- NDEP BCA approves the VCP application.
- The participant submits a site remediation plan to NDEP BCA. NDEP BCA and the participant negotiate a remedial agreement.
- After a public notice and comment period, NDEP and the participant accept the remedial agreement.
- The participant performs the remediation.
- When NDEP BCA determines that no further remediation is necessary or that a cleanup meets state standards, NDEP BCA issues a certificate of completion.



Under the VCP, the site owner and responsible party will receive a notification of Clean Closure of the site, releasing them from any future liability for contamination found on the site related to the discovery of an actionable release.

Notification of Clean Closure or No Further Action Notifications, and Liability Protection and Advisory Letters

There are two paths for obtaining liability protection for remediation of contaminated sites in Nevada:

- Under the VCP, NDEP BCA will issue a *notification of clean closure* for a site cleaned up under the VCP. This releases the VCP participant from any future liability for contamination found on the site related to the discovery of an actionable release.
- Under a responsible party lead remediation, NDEP BCA will provide a *no further action notification* to the property owner and responsible party, but any future discovery of an exceedance of the contaminant(s) on the site that may be attributable to the historic release can warrant reopening of the closed case and extending the potential liability to the former owner and/or responsible party.

Nevada offers *liability protections* for three categories of landowners—bona fide prospective purchasers, innocent landowners, and contiguous landowners—that are equivalent to the liability protections enacted under federal law, as provided by the 2002 Small Business Liability Relief and Brownfield Revitalization Act. These provisions are set forth in Nevada Revised Statute (NRS) 459.930. Landowners interested in maintaining liability protections should review all relevant laws and guidance to understand these obligations, which include both pre- and post-purchase requirements.

NDEP believes that in most cases, the federal Brownfields Amendments and NRS 459.930 make prospective purchaser agreements (PPAs) or other equivalent agreements or agency clarification of individual liability status unnecessary. In some instances, the NDEP may provide a non-binding *advisory letter* outlining the obligations of the bona fide prospective purchaser to achieve and maintain liability protections under NRS 459.930.

Additional Resources

Nevada Division of Environmental Protection VCP

<https://ndep.nv.gov/bca/vcp.htm>

Environmental Liability Protections For Property Owners Under State and Federal Law

<http://ndep.nv.gov/bca/liability.htm>

NDEP Brownfields Program

<https://ndep.nv.gov/bca/brownfld.htm>

Nevada VCP Quick Facts

<https://ndep.nv.gov/bca/vcpfctsht.pdf>

VCP Application (also available at NDEP offices)

https://ndep.nv.gov/bca/vcp_application.htm

VCP Application Fees

<http://www.leg.state.nv.us/nac/NAC-459.html#NAC459Sec9739>

Agency Contacts

For more information about Nevada's VCP, contact:

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REGION 10



*View of a forest in Oregon (exact location unknown)
Brownfields site, King County, WA (courtesy of ECCOSS)*



Program Overview

Alaska does not have a voluntary cleanup program. However, the Alaska Department of Environmental Conservation (ADEC) established a brownfields element within the Contaminated Sites Program to better coordinate with communities to identify, assess, and ensure adequate cleanup at brownfields to realize their full economic potential.

ADEC has resources to help tribes, Alaska native corporations, municipalities, and borough governments identify and assess brownfield sites. ADEC works with government agencies, tribes, responsible parties, landowners, U.S. EPA, and developers by offering technical assistance, site assessments, and limited cleanups, and maintaining a publicly accessible database of contaminated sites.

ADEC's Contaminated Sites Program supports and promotes the reuse of brownfields through the DEC Brownfield Assessment and Cleanup (DBAC) Services. The DBAC is not a grant program. Rather, it provides services to: help determine if an environmental problem is limiting a site's desired reuse; help identify the nature and extent of contamination; recommend and estimate costs for additional assessment, if needed; identify cleanup options and an estimate of cleanup costs, if cleanup is required; and when funding is available, conduct cleanup activities designed to enable site reuse.

The ADEC does not provide "no further action" assurance letters to nonliable property purchasers or owners who undertake environmental cleanup at a property. However, ADEC does enter into prospective purchaser agreements (PPAs) with perspective owners.

Prospective Purchaser Agreement

Although the federal brownfields law provides certain protections from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for purchasers of contaminated property, Alaska has strict joint and several liability requirements that are not affiliated with CERCLA authority. For a prospective purchaser of potentially contaminated land to obtain protection from liability at the state level, purchasers must obtain liability clarification from the state through a PPA. A PPA is a legally binding agreement between DEC and a prospective purchaser of contaminated property. It is designed to clarify the potential environmental liability a purchaser assumes when buying a property with preexisting environmental conditions. In general, the state may consider entering into a PPA when a purchaser agrees to conduct site cleanup or other activities that will reduce potential risks or provide other benefits to the public. The Alaska Attorney General is the only entity that can relieve any current or future potentially responsible party from liability.

PPAs facilitate the cleanup and reuse of contaminated property by providing certainty to purchasers regarding the extent of their liability for existing contamination. Liability for contamination on a property is defined in Alaska Statute 46.03.822. General liability applies to those individuals with a current or past ownership interest in the property; those individuals that owned or were in control of the contaminant substance at the time of the release; and those who arranged for the disposal or transport of hazardous substances. If an individual did not own the property on which an assessment is completed, and did not cause or contribute to any contamination at the property, conducting a noninvasive assessment (such as a historical records search or an onsite investigation/walk through) would not cause the individual to be considered liable. However, under state law, if a more invasive investigation is conducted, such as one that involves drilling or excavation and the investigation causes a release, or causes an existing environ-



mental problem to become worse, the person conducting the investigation could be held liable for causing the contamination. If this occurred, it could invoke liability under the Alaska Statute.

Additional Resources

ADEC's Contaminated Sites Program Brownfields website:

<https://dec.alaska.gov/spar/csp/brownfields.htm>

Alaska State & Tribal Response Program (STRP) Brownfield Handbook, Second Edition

<https://dec.alaska.gov/spar/csp/docs/brownfields/handbook/Brownfield%20Handbook%20March%202014%20-%20Online%20Version.pdf>

Alaska Statute 46.03.822, Strict Liability For the Release of Hazardous Substances:

<http://www.touchngo.com/lglcntr/akstats/statutes/title46/chapter03/section822.htm>

ADEC's Frequently Asked Questions About Brownfields form (December 2015 version)

<http://dec.alaska.gov/spar/csp/docs/Brownfield%20Frequently%20Asked%20Questions%20Alaska%20December%202015.pdf>

ADEC's Brownfield Assessments and Cleanups (DBAC) Fact Sheet

https://dec.alaska.gov/spar/csp/docs/brownfields/DBAC_Fact_Sheet_FY2016_Final.pdf

Agency Contact

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Environmental Program Specialist

ADEC Contaminated Sites Program

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Main Program Website: <http://dec.alaska.gov/spar/csp/>



Program Overview

The Idaho Department of Environmental Quality (DEQ) provides a mechanism for cleanup of contaminated sites throughout the state through the voluntary cleanup program (VCP). The Land Remediation Act created the VRP in 1996. It emphasizes the protection of public health and minimization of risk while encouraging redevelopment and reuse of contaminated properties. The VCP is open to persons, including those who do not currently own the property, who did not cause, contribute, or consent to the release that led to contamination of the property. The program offers liability relief with a *covenant not to sue* letter after cleanup is complete.

DEQ encourages potential participants to contact the department to discuss their projects and the benefits of participating in the VCP. The benefits of VCP participation include:

- Expedited remediation process
- No adversarial enforcement actions
- Seven year partial property tax exemption when cleanup is complete
- Covenant not to sue from DEQ
- Use of site specific risk based cleanup standards
- Use of activity, limitations, and environmental covenants in cleanup plans
- Lender liability protection

Once cleanup is complete and DEQ issues a *certificate of completion*, the participant can request to negotiate a covenant not to sue from DEQ.

Certificate of Completion and Covenant Not to Sue

The participant submits a voluntary remediation program application to DEQ that includes a Phase I environmental site assessment and a \$250 application fee. The application helps DEQ determine the participant's eligibility to participate in the VCP.

If deemed to be eligible, the participant then enters into a voluntary remediation agreement (VRA) with DEQ and develops a voluntary remediation workplan. DEQ reviews the workplan and makes it available for public comment. After resolving comments, DEQ approves the workplan for implementation. DEQ provides oversight and assistance throughout the cleanup process. The participant reimburses DEQ for oversight costs, including an initial required deposit of \$2,500.

VCP Process Summary

- The participant performs a Phase I environmental site assessment that includes information about the site ownership, location, and history.
- The participant submits an application to Idaho DEQ, including the Phase I environmental site assessment and a \$250 application fee.
- The participant enters into a voluntary remediation agreement (VRA) with DEQ and pays a \$2,500 deposit for DEQ oversight costs.
- The participant submits a voluntary remediation workplan to DEQ for approval and public comment.
- The participant cleans up the site according to the voluntary remediation workplan and submits a cleanup completion Report to DEQ.
- DEQ issues a certificate of completion, which is recorded with the property deed. The participant can then request to negotiate a covenant not to sue.



Once cleanup is complete, the participant submits a cleanup completion report to DEQ. After DEQ approves the report, it issues a certificate of completion that certifies that the participant successfully implemented or satisfied the workplan. After receiving a certificate of completion, a party can request to negotiate a covenant not to sue. The covenant not to sue protects the participant from any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation workplan successfully implemented. The covenant not to sue extends to any current or future owner or operator of the site or portion who did not cause, aggravate, or contribute to the release or threatened release. These documents are recorded with the deed to the property.

The site owner is eligible to receive a property tax reduction, not to exceed seven years, that is applied to 50 percent of the difference in value between the property's pre-remediation and post-remediation land valuation. The exemption is granted only if the covenant not to sue is in full force and effect for the entire period of exemption, and the owner possesses the site for the entire exemption period.

The VCP is not available if the condition of the hazardous substance or petroleum contamination the application describes constitutes an imminent and substantial threat to human health or the environment, or if other environmental statutes require the remediation.

Additional Resources

Idaho DEQ's Voluntary Cleanup Program

<https://www.deq.idaho.gov/waste-mgmt-remediation/brownfields/voluntary-cleanup-program/>

Idaho DEQ Voluntary Remediation Program Guidance for Application Completion

<https://www.deq.idaho.gov/media/625295-guidance.pdf>

Rules and Laws Governing the VCP

<http://adminrules.idaho.gov/rules/current/58/0118.pdf>

Idaho DEQ Environmental Covenant Program

<http://www.deq.idaho.gov/waste-mgmt-remediation/remediation-activities/environmental-covenant/>

Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites

<http://adminrules.idaho.gov/rules/2012/58/0124.pdf>

Agency Contact

For more information about Idaho's VCP, contact:

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Main Agency Website: <https://www.deq.idaho.gov/>

Program Overview

The Oregon Department of Environmental Quality (DEQ) created its Voluntary Cleanup Program (VCP) to provide oversight to property owners and others wishing to investigate and clean up hazardous substance sites in a voluntary, cooperative manner. The program's goal is to increase the number of remediated sites by streamlining the cleanup process while ensuring compliance with Oregon environmental regulations. Projects range from simple sites with a limited amount of contaminated soil to complex sites with multiple contaminants in soil, groundwater, surface water, sediment, or air.

The Oregon VCP offers two options for cleaning up contaminated sites: the traditional voluntary cleanup pathway, and the independent cleanup pathway (ICP). Both offer flexibility and allow for more efficient investigation and cleanup to facilitate the use, sale, refinancing, or redevelopment of contaminated property, while protecting human health and the environment.

All sites that enter the VCP are added into DEQ's environmental cleanup site information (ECSI) database. Sites with a verified release are listed on the confirmed release list. Sites that require further action also are listed on the inventory list.

No Further Action Determination, No Further Action Letter

Under the VCP, DEQ provides oversight throughout the investigation and cleanup of an eligible site. This option is available for the voluntary cleanup of high-priority sites, as well as lower-priority sites with contamination in any environmental medium (soil, groundwater, sediment, surface water, or air). DEQ oversight ensures that the cleanup will meet Oregon's Environmental Cleanup Law. DEQ issues a *no further action (NFA) determination* once remediation and/or institutional controls achieve protective conditions. DEQ provides public notice and opportunity for comment on any remedial action proposal, including the NFA determination. DEQ also determines, in consultation with the participant, the form of any further agreement needed to manage the project most effectively.

DEQ created the Independent Cleanup Pathway to assist parties wishing to clean up low- and medium-priority sites without ongoing DEQ oversight. The independent cleanup pathway is specifically designed for low- and medium-priority sites; it is not available for high-priority sites. If a responsible party

VCP Process Summary

- The participant submits the intent to participate form. DEQ prepares a cost recovery letter agreement and requests a deposit (usually \$5,000) when a project manager is assigned.
- When DEQ receives a signed agreement and deposit, the project manager completes a file review and helps the participant's environmental consultant scope a work plan that will achieve protective conditions at the site.
- The participant's consultant develops work plans and reports for DEQ review and comment to define the problem, determine risks to human health and the environment, and evaluate potential solutions.
- The participant's consultant proposes a remedy, often with DEQ input. DEQ ensures that it meets requirements of the Environmental Cleanup Law, and gathers public comments on the plan.
- Once DEQ selects the remedy, participant/consultant implements it.
- DEQ issues a no further action determination once remediation is complete and/or institutional controls are in place to achieve protective conditions. This process also includes a public comment period.



cleans up a site to a level that protects human health and the environment according to Oregon's cleanup regulations, DEQ reviews and approves the cleanup by issuing an NFA determination for the site. DEQ typically does not require public notice on independent cleanup pathway site completions, since DEQ is not involved in the cleanup decision process.

The primary potential risk in the independent cleanup pathway is that DEQ will not issue an NFA determination after cleanup activities are complete. This can occur if DEQ believes that unacceptable risks remain after site cleanup. While this is an unusual outcome, parties wishing certainty in obtaining an NFA letter should consider entering either site-specific technical consultation (an ICP option) program or entering the traditional VCP, where DEQ provides complete oversight of the site investigation and cleanup.

Additional Resources

Oregon's Voluntary Cleanup Program

<http://www.deq.state.or.us/lq/cu/voluntarycu.htm>

Fact Sheet: Voluntary Cleanup Program

<http://www.deq.state.or.us/lq/pubs/factsheets/cu/VoluntaryCleanupProgram.pdf>

Voluntary Cleanup Pathway

<http://www.deq.state.or.us/lq/cu/cupathway/voluntary.htm>

Independent Cleanup Pathway

<http://www.deq.state.or.us/lq/cu/cupathway/independent.htm>

Voluntary Cleanup Pathway Information Packet

<http://www.deq.state.or.us/lq/pubs/docs/cu/VoluntaryCUPathwayInfoPacket.pdf>

Independent Cleanup Pathway Information Packet

<http://www.deq.state.or.us/lq/pubs/docs/cu/IndependentCUPathwayInfoPacket.pdf>

Liability Management Tools for Buyers of Contaminated Property

<http://www.deq.state.or.us/lq/cu/ppa/liabilitymanagement.htm>

Agency Contact

For more information about Oregon's VCP or ICP, contact:

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Main Agency Website: <http://www.oregon.gov/DEQ>

Program Overview

The Washington Department of Ecology works with property owners and responsible parties to clean up contaminated sites through the state's voluntary cleanup program (VCP). The VCP allows parties to clean up their sites independently, or obtain services for a fee from the Department of Ecology. These services include technical assistance about how to meet cleanup requirements and written opinions from the department about whether a cleanup meets those requirements.

The VCP is used most commonly to address smaller or less complex sites that can be cleaned up quickly without entering a formal cleanup process with the Department of Ecology's direct oversight. Responsible parties, including property owners and prospective purchasers, can apply to enter the VCP at any point in the cleanup process, including during the investigative or planning phases. The Department of Ecology encourages early consultations. Upon application and acceptance into the program, the department assigns a site manager, who provides technical assistance and written opinions on the cleanup.

Property owners can clean up a site and obtain liability relief through a no further action opinion, consent decree, or agreed order with the Department of Ecology.

No Further Action Opinion Letters, Consent Decrees, and Agreed Orders

Upon successful completion of a cleanup under the VCP, the Department of Ecology issues a no further action (NFA) opinion. Many parties consider the *NFA opinion* letter sufficient to meet their needs when obtaining loans, selling a property, or redeveloping a property. Local governments that receive an NFA opinion letter may apply for an independent remedial action grant to help offset their cleanup costs.

A *consent decree* is a formal legal agreement between the responsible party and the state. The decree outlines cleanup requirements and specifies the terms under which they must be done. The responsible party, the

VCP Process Summary

- The steps in the cleanup process for hazardous waste sites in Washington are the same under the VCP, consent decrees, or agreed orders:
- Contaminated sites must be reported to the Department of Ecology within 90 days of discovery. Underground storage tank releases must be reported within 24 hours.
- The Department of Ecology conducts an initial investigation of the site within 90 days of receiving a discovery report, and must determine within 30 days of the initial investigation if the site requires further action. If the site requires further action, the Department of Ecology notifies all potentially responsible parties and invites them to work cooperatively on the cleanup.
- The participant submits a hazard assessment that confirms the presence and relative risk of hazardous substances on the site.
- The Department of Ecology ranks the site on a scale of 1 to 5 according to the relative risk to human health and the environment.
- The participant submits a Remedial Investigation/Feasibility Study to the Department of Ecology that defines the extent and magnitude of contamination, potential impacts on human health and the environment, and alternative cleanup technologies.
- The participant develops a cleanup plan that identifies preferred cleanup methods and specifies cleanup standards and other requirements.

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Department of Ecology, and the Washington Attorney General's office negotiate and agree to the decree. An *agreed order* is a legally binding administrative order issued by the Department of Ecology and agreed to by the responsible party. It describes the site activities that must occur so that the state will not take enforcement action. Consent decrees and agreed orders both are subject to public review. Consent decrees settle a property owner's liability to the state. Consent decrees also protect the responsible party from being sued for "contribution" by other persons that incur cleanup expenses at the site, while facilitating any contribution claims against the other persons who are responsible for part of the cleanup costs. Agreed orders do not provide this level of liability relief.

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- The Department of Ecology reviews and approves the cleanup plan.
- The participant implements the cleanup plan.
- Upon successful completion of the cleanup, the Department of Ecology issues a no further action opinion.

Additional Resources

Brownfields Revitalization, Washington Department of Ecology
http://www.ecy.wa.gov/programs/tcp/brownfields/brownfields_hp.html

Hazardous Waste Policies and Guidance
http://www.ecy.wa.gov/programs/tcp/policies/pol_main.html

Voluntary Cleanup Program
<http://www.ecy.wa.gov/programs/tcp/vcp/Vcpmain.htm>

Other Administrative Options for Site Cleanup
<http://www.ecy.wa.gov/programs/tcp/vcp/vcp2008/vcpOtherAdminOptions.html>

Agency Contact

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