

UDEQ VOLUNTARY CLEANUP PROGRAM FREQUENTLY ASKED QUESTIONS

Is the VCP a tool to address Brownfields? The VCP is a tool to assess and cleanup Brownfields. Voluntary cleanups mitigate risk to human health and the environment while hopefully removing the stigma attached to contaminated sites. This allows impacted properties to be developed and returned to a state of beneficial use.

Is my site eligible for the Voluntary Cleanup Program (VCP)? All sites are eligible except for the following: 1.) a treatment, storage, or disposal facility regulated under 42 U.S.C. 6901 et seq; 2.) that portion of a site that is on the National Priorities List; and 3.) any portion of a site for which an administrative, state, or federal enforcement action is existing or pending against the applicant for remediation of contaminants described in the application.

What are examples of “enforcement actions” that would result in ineligibility for the program? Applicants who have owned or operated a site for which a “Notice of Violation” has been received but not been resolved (current enforcement actions), or are under investigation for potential violations (pending enforcement actions), or sites currently under state or federal corrective action orders are all examples of enforcement actions that will preclude eligibility. A site on the Comprehensive Environmental Response Compensation Liability Information System (CERCLIS) database does not constitute an enforcement action under the VCP. Should you have any question as to whether you or your site is eligible, please call the VCP coordinator at (801) 536-4100.

As a prospective property purchaser or developer of a contaminated property, am I an eligible applicant? Yes, unless any of the three conditions described in the question above apply to you or the property considered for voluntary cleanup.

Does the UDEQ offer a pre-application meeting to discuss the VCP? The UDEQ offers a pre-application meeting to interested parties. In fact, a pre-application meeting is encouraged, but not required, prior to submitting an application to the program. A pre-application meeting will cover the application/agreement process, site characterization, remedial action, public participation, and other important administrative and technical aspects of the program. The meeting is designed to assist the applicant. Should you wish to arrange a pre-application meeting, please contact the VCP coordinator.

Is there an application fee and what is it used for? There is a \$2,500 application fee, required at the time of application. The application fee is used to cover the UDEQ’s administrative costs for processing and reviewing the VCP application and executing a VCP Agreement. Any remaining funds will be applied to oversight of the voluntary cleanup.

How long does it take to get my application reviewed and approved and are there time frames and deadlines for the applicant or the UDEQ? Applications may be submitted during regular business hours (8:00 a.m. - 5:00 p.m., Monday - Friday). There are no deadlines for the review and acceptance process other than “the department shall take action on the application in the order in which it is received, but in all circumstances within 60 days of the receipt of the application by the department” (Utah Code Ann. § 19-8-107 (4)). Generally, applications are processed upon receipt and the eligibility review takes five to seven working days, as coordination between all divisions within the UDEQ must occur. If an application is “ineligible,” a letter will be sent to the applicant

explaining the reason(s) for ineligibility, and the application fee will be returned. If “eligible,” the applicant will receive an acceptance letter along with a standard Voluntary Cleanup Agreement for signature.

Is site characterization necessary under the Voluntary Cleanup Program? If the site has not been sufficiently characterized, site characterization is necessary to gather information regarding the nature and extent of contamination prior to implementing a remedy.

Will analytical data collected prior to my application to the Voluntary Cleanup Program be accepted? Analytical data collected prior to application to the Voluntary Cleanup Program should be contained in the Environmental Assessment. The UDEQ will review the Environmental Assessment to determine whether the data can be accepted under the program. Data collected using standard operating procedures and of sufficient quality can be used.

What soil and groundwater screening levels are accepted? For soil, EPA Regional Screening Levels may be used. In the event groundwater contamination is present, concentrations should be screened against Maximum Contaminant Levels (MCLs) or, if MCLs do not exist, other approved health based standards, such as tap water screening criteria.

Is a risk-based cleanup allowed under the Voluntary Cleanup Program? Yes, a risk-based cleanup is allowed under the program. Cleanup levels are tied to land use and a Site Management Plan and environmental covenant may be necessary.

Is a Risk Assessment required? A risk assessment is not required. However, a risk assessment may be conducted if the applicant wishes to perform this activity. Under the Voluntary Cleanup Program, an applicant may clean up to generic screening concentrations, background levels, site-specific numbers or other accepted criteria approved by the UDEQ. Cleanup objectives should be detailed in a Remedial Action Plan(s).

Is a partial response action allowed under the Voluntary Cleanup Program? A partial response action may be conducted on a selected area, release, contaminant and/or medium in a manner approved by the UDEQ. However, the Certificate of Completion will only extend to the action, not the entire property.

Are institutional controls accepted under the Voluntary Cleanup Program? Institutional controls may be a component of the remedy employed at the site.

Is public participation required prior to cleanup? Public participation is required prior to cleanup. The minimum requirements are notification of adjacent land owners and notice in the local newspaper, followed by a 30-day comment period on the Remedial Action Plan. The UDEQ may also request further activities based on the level of community interest.

What do I get at the end of the process? After the terms and conditions of the Voluntary Cleanup Agreement have been completed, a Certificate of Completion is issued to the applicant. The COC provides a release of liability under Utah Code Ann. § 19-8-113(3)(a). 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).

Is the “Certificate of Completion” transferable to subsequent property owners? Yes. The Certificate of Completion also protects future lenders on the property from state liability for environmental contamination addressed under the Voluntary Cleanup Agreement.

Am I protected from federal liability through participation in the State VCP? There is no protection from federal liability through participation in the VCP. However, it is the UDEQ’s belief that successful site cleanups under the program may minimize a party’s potential federal liability for environmental cleanup.

How much does the UDEQ oversight under the Voluntary Agreement cost? The UDEQ charges the state legislative rate for agency oversight of the work to be performed under a Voluntary Cleanup Agreement. Costs cover the UDEQ project manager’s oversight and include personnel time for document reviews and discussions; field oversight, including split samples; analytical costs; or other non-personnel and administrative costs related to oversight of the project. Additional costs that exceed the application fee will be billed to the applicant in accordance with the Voluntary Cleanup Agreement.

Are there any enforcement provisions in the Voluntary Agreement? The Voluntary Cleanup Program is intended to be completely voluntary. As such, either party may terminate the agreement at any time with a 15-day written notice.

By voluntarily conducting a site cleanup under the UDEQ VCP, do I limit my ability to cost recover from other responsible parties? The statute specifically maintains the right of an applicant to seek cost recovery allowable by law. The UDEQ recommends that you consult with counsel if cost recovery is anticipated.

I’ve already cleaned up a site on my own. Am I eligible to participate so that I can receive a Certificate of Completion after-the-fact? If your cleanup action was completed prior to May 5, 1997, and if you and your site meet the eligibility requirements outlined in the statute, you are eligible for participation.

If I change my mind and wish to withdraw my application at any time, is the application fee refundable? The application fee will only be refunded if the application is determined to be ineligible for participation in the program.

Who do I call if I have any questions on the program or application process? You may call the Department of Environmental Quality, Voluntary Cleanup Program Coordinator for more information during regular business hours at (801) 536-4100. You may also view the VCP/Brownfields homepage at <http://www.superfund.utah.gov/vcp.htm>