

Utah Department of Environmental Quality

Division of Environmental Response and Remediation

Voluntary Cleanup Program Summary

This summary document is prepared by the Utah Department of Environmental Quality (DEQ), Division of Environmental Response and Remediation (DERR) as a tool to assist applicants participating in the Utah Voluntary Cleanup Program (VCP). The contents may be used for any site in the VCP if compliance with all other relevant state or federal statutes, rules, standards, or procedures is maintained. This document is not expected to cover all situations that may be encountered at VCP sites, and therefore is not considered to be all-encompassing. This summary document is advisory and descriptive and is not intended to be enforceable. The summary creates no rights or duties and does not authorize, require or prohibit any action. For questions concerning a specific VCP site, please consult the assigned DERR Project Manager.

BACKGROUND

In Utah, there are numerous sites where soil, groundwater, surface water, and sediment have been impacted by past uses. These sites range from small spills to large industrial properties. Many of these sites are being addressed through the proper regulatory program to assure appropriate cleanup and protection of human health and the environment. However, for many of these sites, a regulatory program may not exist and the owners of these properties or prospective purchasers may wish to perform cleanups to facilitate land transfers or for other reasons. From the DEQ's perspective, there is a benefit to the citizens of Utah and the environment in having owners and prospective purchasers proactively conduct a voluntary cleanup. In addition to addressing environmental concerns at these sites, such activities promote the redevelopment and reuse of previously contaminated properties. It is the goal of the State to encourage as many voluntary cleanups as possible.

Recognizing this mutual benefit to land owners and the State, the Utah State Legislature passed the Voluntary Release Cleanup Program statute during the 1997 legislative session. The legislation created the VCP under the direction of the DEQ, effective May 5, 1997. The purpose of the program is to encourage the investigation and cleanup of sites where there is a potential or known release of contaminants to the environment, thereby providing protection to human health and the environment and removing the potential stigma attached to these sites, which may block economic development opportunities. The VCP is a program to address contaminated sites, potentially contaminated sites and/or Brownfields in Utah. The DERR administers the VCP for the DEQ.

PROGRAM ELIGIBILITY

All sites and applicants are eligible for participation in the VCP except the following:

- A treatment, storage, or disposal facility regulated under 42 U.S.C. 6901 et seq (aka RCRA);
- That portion of a site that is on the Superfund National Priorities List; or

- That portion of a site for which an administrative, state, or federal enforcement action is pending or existing against the applicant for the remediation of the contamination described in the application.

Sites listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database and the U.S. Environmental Protection Agency's (EPA) new system, known as Superfund Enterprise Management System (SEMS), may be eligible for the VCP. The DERR works with the EPA to evaluate sites on SEMS. If all or a portion of the site is on SEMS, the DERR will request the EPA suspend activities to allow the assessment and cleanup to proceed under the VCP. Should EPA decide to proceed with its planned actions, the DEQ may choose to deny the VCP application, or may process the application and coordinate approval of the application with EPA.

For a SEMS site for which EPA has planned but will agree to suspend investigation or response activities in lieu of the owner's compliance with the VCP, the DERR will keep EPA informed of the applicant's progress toward completion of the remedial action. The DERR will notify the EPA of the owner's completion or failure to complete the program. In the event the applicant completes the cleanup and a Certificate of Completion (COC) is issued, the DERR will petition EPA, upon issuance of the COC, to designate the site No Further Remedial Action Planned (NFRAP) and to archive it on SEMS.

PROGRAM OVERVIEW

Customer Needs

Each land owner, prospective purchaser, and/or party interested in performing a voluntary cleanup must assess their own needs regarding the property in question. In terms of approaching the DEQ to perform a voluntary cleanup, often the need is to receive a COC indicating that the property has been cleaned up to, or already meets an accepted standard for a particular land use. A COC is often required as part of a property transaction since it is recorded on the property title documenting a successful cleanup.

If a COC is not required, then a party may not need to apply to the VCP. Depending on the contamination, a party may be able to perform cleanup on their own and simply keep adequate documentation for use as needed. There is a risk that this cleanup may be deemed insufficient by a governmental agency or may not be accepted by those purchasing the property. By performing a voluntary cleanup, a party obtains certainty that the cleanup is considered adequate by the DEQ. A party must enter the VCP prior to performing the cleanup.

Pre-Application Meetings

Pre-application meetings are offered free of charge to discuss the VCP, which helps in educating prospective applicants about the needs and expectations of the program. A meeting is recommended, but not required and often helps avoid confusion and streamlines the process once an application is received. A meeting can be arranged by contacting the DERR VCP/Brownfields

Program coordinator.

Application

To apply, a prospective applicant must submit a formal application (using the DERR standard application form) along with the required application fee. The fee is outlined in the DEQ's fee schedule. As part of the application, pertinent site information relating to property ownership, current and proposed property use, prior and present contact with regulatory programs (that relate to the environmental condition of the property), and the applicant's intended response action objective is requested. This is designed to provide a starting point for the voluntary cleanup. The VCP application should indicate if the applicant is applying for only a portion of the site or the entire site. Furthermore, the application should indicate if the cleanup is media specific, such as soil or water only. An Environmental Assessment (EA) must also be submitted as part of the application.

It is acceptable for multiple applicants to apply to the Voluntary Cleanup Program, although the DERR expects all program applicants to define a primary point of contact for correspondence, submittals and invoicing purposes. By signing the application, the VCP applicant(s) requests oversight by the DERR for investigation and cleanup activities. However, neither the applicant nor the DERR is bound to proceed with the voluntary cleanup until a Voluntary Cleanup Agreement (VCA) is executed. By completing and signing the application, the VCP applicant affirms their financial capability to perform the voluntary cleanup and to cover the DERR's cost for oversight of the project.

Once a VCP application is received, the DERR will conduct an eligibility review per the requirements of the statute to determine if the site is eligible for the program. The application will be reviewed by all the Divisions within the DEQ. If the site is eligible, the applicant will be notified and the DERR will send an eligibility letter along with a standardized VCA for signature. If the application is rejected, it will be returned to the applicant with a letter of explanation.

Voluntary Cleanup Agreement

A VCA must be executed before the DERR will complete review of the EA or any workplan(s) or report(s), related to site investigation, cleanup and post-remediation management. The agreement provides for reimbursement of the DEQ's oversight costs by the applicant as outlined in the DEQ's fee schedule. The agreement also outlines the terms and conditions of the cleanup, the nature of deliverables to be submitted under the program, and specifies the anticipated land use for which the applicant will be cleaning up the property. Upon completion of the terms and conditions of the VCA, a COC can be issued to the applicant. The VCA is a standardized document and is not negotiated on a site-specific basis, unless there is a unique circumstance specific to the applicant (such as their status as a lessee of the property).

Over the course of a project, there may be a need to amend the VCA to reflect a new land use, or legal description, to add a new applicant, or other project specific reasons. Amendments are completed on the DERR's standard VCA Amendment form. To start the amendment process, the applicant must submit a letter to the DERR requesting this amendment. The applicant is required

to pay all costs associated with this process. Once the amendment is executed, it is part of the VCA.

There are no provisions for enforcement actions built into the VCA. Either party has the right to terminate a voluntary agreement by providing a written 15-day notice to the other party indicating termination. The applicant is responsible for paying the DERR costs for oversight conducted prior to termination. Termination may be for any reason. However, if termination by the applicant results in site conditions posing a threat to human health and/or the environment, the DEQ may use any or all existing authorities available to mitigate the threats believed to be present at the site or posed by site conditions. This includes a recommendation to Discover the site on the EPA SEMS database.

Environmental Assessment

Once the VCA is executed by the applicant and the DERR, the DERR will complete review of the EA included with the application to become familiar with the site and the associated environmental conditions. It is important to note that the EA can include previous Phase I and Phase II Environmental Site Assessments and analytical data collected prior to the Voluntary Cleanup Program should be provided with the application. The DERR will review the Environmental Assessment to determine whether the data can be accepted under the program. Data of sufficient quality collected using standard and accepted methodologies can be used. Review of the EA also allows the DERR to evaluate the need for additional characterization at the site prior to evaluating a proposed remedy. Cleanups conducted prior to the VCP cannot be accepted under the program.

Site Characterization

Site characterization is performed to determine the areas and contaminants of concern at a site and to delineate the nature/extent of contamination. Site characterization is also performed to “clear” suspected areas from further activities. The DERR has not established a minimum number of samples that must be collected or a minimum number of monitoring wells that must be installed at a site to complete characterization efforts. Each site is different and should be evaluated site-specifically, based on the conditions at the site. Site characterization activities are memorialized in workplans and reports, prepared by the applicant and reviewed/accepted by the DERR. This is part of the oversight noted in the VCA.

It is important to base the site characterization efforts around the current/historical information gathered to ensure a party is assessing the appropriate contaminants in the appropriate locations. Contamination migrating onto the property from an off-site source should be clearly demonstrated and does not negate the need for investigating potential sources on the site or documenting the site does not serve as a source of the contamination.

The results of the site characterization investigation are evaluated against screening criteria and other accepted standards. Typically, these include EPA Regional Screening Levels and Maximum Contaminant Levels (if there is no MCL, tap water screening criteria should be used). If contamination is detected above an accepted screening level, further characterization should be conducted to define the nature and extent of contamination, both laterally and vertically, in all affected medium, unless the applicant demonstrates that site conditions warrant otherwise.

Thorough site characterization is necessary to justify risk assessment, risk management, and remediation decisions. Under the VCP, historic, current and future land uses should be evaluated as part of the investigation (unless otherwise approved by the DERR during the application process). If the site characterization demonstrates that contaminants have been released on and potentially migrated off-site above Screening Levels or other published standards, the Applicant shall adequately delineate the extent of contamination for the purposes of evaluating the risk, managing the on-site and off-site contaminant impact and potentially remediating the impact. The delineation shall be completed in conjunction with the site characterization activities and documented in the Site Characterization Report.

A Quality Assurance Project Plan (QAPP) is required prior to the collection of analytical data under the VCP. The QAPP should be developed in accordance with standard EPA guidance.

Laboratories and Reporting

Laboratories providing data for decision-making purposes in the VCP must be State of Utah certified, in accordance with the Bureau of Laboratory Improvement requirements, to perform the appropriate analytical methods accepted in the workplan(s). All soil, groundwater, surface water, or sludge analyses should be conducted in accordance with *EPA Test Methods for Evaluating Solid Waste* (SW-846) and/or other accepted methods as appropriate and necessary to assist in the evaluation of the site. Soil samples should be reported based on a dry-weight basis and all laboratory data packages should include a Level III reporting package or equivalent. The reporting packages should include a case narrative (documenting holding times, batch quality control samples and calibration), matrix spike/spike duplicate results, recoveries and relative percent differences, laboratory control sample results and recoveries, and method blank results, surrogate recoveries, and recovery limits.

Risk Assessments

Analysis of risk often entails an evaluation of targets and receptors and the potential for pathways to be realized. Declaration of the proposed land use is necessary in all VCP applications, as the evaluation of risk is also contingent upon this information. VCP cleanups are typically tied to the future land use.

A formal risk assessment is not required under the VCP since a site can be cleaned up to generic screening criteria (such as EPA Regional Screening Levels) and MCLs, where applicable. Documentation of this decision should be completed in a narrative format during the preparation of the Remedial Action Plan. This could include a narrative description presenting a summary of all the site-specific information and contaminant levels, a discussion of the site conceptual model and a determination regarding the likelihood of impacting targets and/or completing exposure pathways.

If the VCP applicant chooses to conduct a risk assessment, the human health risk assessment should be conducted in accordance with EPA's *Risk Assessment Guidance for Superfund*. Depending on the intended land use, further action may be needed to evaluate potential ecological

risks. Ecological risk assessments should be conducted in accordance with EPA's *Ecological Risk Assessment Guidance for Superfund*.

Cleanup Criteria

The applicant's proposed cleanup is outlined in a Remedial Action Plan (RAP). Cleanups are tied to land use under the VCP and cleanup levels should be developed for the various exposure scenarios anticipated at the site. Options for cleanup range from cleaning up to background conditions through establishing site-specific levels using the formal methodology outlined in the EPA Risk Assessment guidance (see Risk Assessment section above). For water contamination, Maximum Contaminant Levels and EPA Vapor Intrusion Screening Levels can be used.

All cleanups under the VCP should typically implement source control methods. Methods of source control may include removal, capping, treatment, and/or isolation of the contaminants from the environment. It is not uncommon for the remedy to include institutional controls.

Other factors that should be considered during remedial design include current or potential impact of the contamination on public health/environment and technology available for cleanup. Additional factors to be considered include: the quantity of materials released; mobility, persistence and toxicity of the materials released; long-term reliability and effectiveness of the technology; type and levels of background contamination; extent of contamination and its relationship to potential receptors; and community acceptance. All remediation approaches and technologies should be capable of achieving site-specific cleanup goals.

The DERR will assess whether contaminated material can be managed on-site as part of the future development and construction on a case-by-case basis. On-site management of contaminated material may be considered under roads, parking lots or parking garages as an example. In these instances, the applicant is required to demonstrate that the management of this material on-site does not pose a risk to human health and the environment for the proposed land use and will meet all applicable environmental laws. Publications such as EPA's *Area of Contamination Policy* are useful in evaluating site-specific requests for on-site management, if the material is a hazardous waste. For cleanups that include on-site management of contamination, a Site Management Plan (SMP) and environmental covenant are necessary prior to the issuance of a COC.

Public Participation

Prior to implementing remedial action, the public must be notified and given the opportunity to provide meaningful input. A 30-day public comment period has been established for the VCP and all public comments must be addressed by the DERR and/or the applicant prior to implementation of the Remedial Action Plan. The applicant is responsible for the cost of all public participation activities.

To get started, the applicant publishes a notice in the local paper noting the start of the formal public comment period. This commences after the DERR has conceptually accepted the proposed Remedial Action Plan for public comment. The DERR will review and accept the notice prior to publishing in the local paper. The notice can be published in the legal section of the paper. In

addition, and to ensure those most potentially affected are given opportunity to comment, the applicant must also provide the public notice to land owners adjacent to the site. This coincides with the start of the public comment period and may be completed “door to door” or through the mail. The applicant should provide proof of this activity for the DERR records. In some cases, further public participation may be requested if there is a need. This will be evaluated site-specifically. Upon completion of the comment period and response to all public comments (including changes to the Remedial Action Plan, if necessary), the DERR can accept the RAP. The applicant may then proceed with the accepted cleanup strategy.

If no remedial action is required after site characterization, the public must be notified of the investigation and given the opportunity to comment on a “no action” determination. The DERR has established a minimum 15-day public comment period for this scenario. The procedures follow those outlined above in the preceding paragraph.

Monitoring Requirements

If residual soil and/or groundwater contamination remains at the site and/or neighboring properties above an established standard or goal after completion of the applicant’s characterization and remedial action, the applicant must submit a Site Management Plan (SMP) detailing how the remaining contamination will be managed. The SMP is designed to document the applicant’s post-remediation management strategy. Under the VCP, a SMP may be necessary when: 1) groundwater monitoring is required to evaluate the effectiveness of the cleanup and the stability of the groundwater concentrations, 2) long-term monitoring activities are necessary to evaluate the protectiveness of the remedy, 3) off-site contamination remains above established cleanup levels, or 4) contamination is managed on-site as part of the future development. This includes concentration levels between 1×10^{-6} and 1×10^{-4} excess cancer risk.

Among other items, the SMP should include provisions for risk management, for groundwater monitoring (if necessary), for the continued evaluation of the effectiveness of the remedy, and for the development of a contingency plan in the event that the proposed remedy is not effective and further corrective actions are necessary to address the contamination. The SMP should also include provisions for continued access to monitor compliance with the terms of the VCA and to reimburse the DERR for oversight costs incurred during the review of pertinent information related to the implementation of the SMP.

The DERR can issue a COC after successful completion of the remedy, yet prior to initiation of long-term monitoring/management activities. Under this scenario, monitoring/management requirements are outlined in the SMP and compliance with the SMP is a condition of future land use. Reporting is a necessary component of all monitoring activities and the requirements must be outlined in the SMP. Failure to comply with the SMP requirements could impact the Certificate of Completion.

Since site management often entails inspections and/or groundwater monitoring to verify the effectiveness of the remedy, additional reports will be necessary to document post-remediation management activities and results. The frequency and nature of the monitoring and inspection requirements, as well as the party responsible for the site management and subsequent reporting

should be detailed in the document.

Certificate of Completion

A Certificate of Completion (COC) is issued once the terms and conditions of the VCA have been met. The COC provides a liability release to qualified applicants under certain conditions stipulated in the statute. Responsible parties (including owners, operators and lenders) who are originally responsible for a release or contamination under Title 19, Chapter 5, Part 1, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6 Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage Tank Act are not eligible for the release of liability but may still receive the COC acknowledging successful cleanup of the site. The COC is recorded on the real property records of the county in which the site is located. The release of liability is available to future owners and future lenders on the property covered by the COC.

The DERR will only issue one COC per site. This COC will be issued after the terms and conditions of the VCA have been met for the entire site and will only cover the contamination noted in the various reports submitted for the site. The DERR recognizes that assessments and cleanups are often conducted in phases to help fund development activities on the remainder of the property. Recognizing this, the DERR can issue an administrative “no further action” letter noting completion of a particular phase of work. This approach often meets the needs of the applicant until the project is completed in its entirety and a COC is issued. This administrative approach follows the standard VCP process noted in this summary document and could include a need to comply with a SMP and Environmental Covenant as part of the remedy for the particular phase.

If the COC includes conditions as part of the site closure (such as compliance with a Site Management Plan or institutional controls), the COC may be amended and restated to remove the conditions, once the conditions are completed or no longer needed. The applicant must cover the DERR costs to amend the COC.

Environmental Covenant

An Environmental Covenant will be requested for cleanups where contamination remains on-site above an established standard or goal. Covenants are implemented in accordance with Utah Code Title 57 Chapter 25 Uniform Environmental Covenants Act.

Permits

Permits are not required for work done under a VCA, unless required by a program delegated to the state by the federal government. For all voluntary cleanups, the substantive requirements of any permit(s) normally required must be met.

Administrative Costs

The Applicant agrees to reimburse the DEQ for all costs associated with implementation of the VCA in accordance with Utah Code Ann. Section 19-8-108. The DEQ will track all costs to the DEQ for review and oversight activities related to the Site and provide monthly invoices to the Applicant, per the VCA. If the DEQ costs are less than the application fee set forth in the fee schedule, the remaining balance in the Site account will not be refunded. The Applicant is required to pay invoiced costs to the DEQ within 30 days after the date the Applicant receives notice that that costs are due and owing. If payment is not made within thirty days, the DEQ may request that the attorney general bring action to recover all costs allowed by law.

Summary

The goal of the VCP is to promote the investigation and cleanup of contaminated sites under a cooperative, regulatory-friendly framework. Through voluntary cleanups, the residents and resources of the State will be protected and the quality of life in the State improved and enhanced. Voluntary cleanups mitigate risk to human health and the environment while hopefully removing the stigma attached to contaminated sites, which allows the impacted properties to be redeveloped. The DEQ is committed to the program's success.