

## **Guidance for Terminating Sites in the Voluntary Remediation Program**

### **Background and Purpose**

The General Assembly and the Waste Management Board have established the Voluntary Remediation Program (VRP) to allow owners, operators, or those having other interests in contaminated property to voluntarily remediate releases of contaminants. Sites are eligible for the VRP only where remediation has not clearly been mandated under other programs, unless jurisdiction has been waived. After a VRP participant satisfactorily demonstrates that contaminants at the site are at or below the applicable remediation levels, the Director of the Department of Environmental Quality (Director and Department, respectively) issues a Certification of Satisfactory Completion of Remediation (Certificate). The Certificate constitutes immunity to enforcement action under state law, but it is dependent on the identification of the nature and extent of contamination as presented to the Department.

The purpose of this Guidance is to provide information on agency practice to the public, applicants under the VRP, and Department staff in interpreting and implementing the regulations to terminate participation in the VRP for sites that have not, or likely will not, obtain a Certificate. There are three categories of sites addressed by this Guidance: inactive sites, eligible but not enrolled sites, and participant election sites.

### **Authority**

Va. Code §10.1-1429.1A

Va. Code §9-6.14:1, *et seq.*

9 Virginia Administrative Code (VAC) 20-160-100

### **Statutory and Regulatory Criteria**

Under 9 VAC 20-160-100, regulatory criteria for termination are provided. That regulation provides:

- A. Participation in the program shall conclude:
  1. When the director concurs with all work submitted, as set forth in 9 VAC 20-160-80, and the participant satisfactorily demonstrates attainment of the remediation levels. If warranted by the site-specific risk assessment, it may not be necessary to conduct remedial action in order to attain remediation levels.
  2. When evaluation of new information obtained during participation in the program results in a determination by the director that the site is ineligible for participation in the program. If such a determination is made, the director shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 working days, the participant may submit additional information, or accept the director's determination.
  3. Upon 30 working days written notice of termination by either party.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program.

C. Termination of participation in the program by any method, except as provided in subdivision A 1 of this section, shall result in no refund of any registration fee submitted.

Guidance on issuance of Certification of Satisfactory Completion of Remediation, as referenced in subsection (A)(1) is addressed under separate guidance.

## **Procedure for Termination**

### **Sites Enrolled in the Voluntary Remediation Program**

#### Terminating Sites After Inactivity

The assigned project officer (PO) will maintain contact with each of his/her assigned sites and will verify that progress is being made toward obtaining a Certificate. If no foreseeable progress has been made towards issuance of a Certificate for a twelve month period, then procedures outlined in this Guidance shall be implemented. The termination process shall consist of a status inquiry letter, a notification letter, and a termination letter.

1. **Status Inquiry** - When the PO determines a site has been inactive, a certified letter (Attachment 1) shall be sent to the participant requesting an update on VRP activities at the site and inquire if the participant desires to continue participation in the VRP. The participant will have thirty working days to respond to the Status request. The response must provide an adequate demonstration that progress is being made towards issuance of the Certificate.

2. **Notification**- If the participant notifies the Department that it does not intend to continue in the VRP, or if the participant does not respond to the initial notice, a second certified letter (Attachment 2) initiating the required thirty working day notification period for program termination will be sent. If an adequate response is received, the termination process will cease.

3. **Termination**-If the participant does not provide an adequate response to the notification, a formal termination notice (Attachment 3) will be sent to the participant and the PO will notify the appropriate regional office. Any documents submitted or developed will be retained by the Department.

#### Archiving Terminated Sites

After a site is terminated, the site shall be removed from the “active” VRP database.

#### Retaining Enrollment Fee

Termination of participation in the program shall result in no refund of any registration fee submitted per subsection (C) of 9 VAC 20-160-100.

#### Re-Enrolling After Termination

If the participant wishes to re-enroll in the program after being terminated, the Department may require that the participant submit a supplemental application for eligibility determination. All re-enrollments will be subject to the Voluntary Remediation Regulations (9 VAC 20-160-10 *et seq.*), including public participation, even if prior participation was through a Voluntary Remediation Agreement. A new registration fee will be required.

### **Sites Deemed Eligible for Participation in the VRP but not Enrolled**

Sites that have been deemed eligible for participation in the VRP will have six months from the date of eligibility notification to pay the registration fee and enroll in the program. Participants who do not enroll after six months, will be removed from the VRP. The Department will provide only one thirty day’s notice (Attachment 4) prior to changing the VRP designation. Any documents submitted or developed will be retained by the Department.

If the participant wishes to enroll in the program after being removed from the VRP active designation, the participant may be required to submit a new application for a new eligibility determination.

### **Participant Election to Withdrawal from VRP**

The Participant may decide to withdraw from the VRP independent of the inactivity determination. If this occurs, the participant must provide the Department a thirty working day written notice of his intent to withdraw. The Department will acknowledge receipt of the written notice followed by a termination letter. The participant will forfeit any registration fees remitted during participation.

**Further Information, Limitation of Guidance; Revisions**

A general description of the VRP can be found on the Department's Website, <http://www.deq.state.va.us>, under **Waste Programs**. Contacts at the Regional Offices are identified at the same Website, under **Regional Offices**.

This Guidance document is intended for the use of the public, applicants for the VRP, and Department staff. It creates no rights, legal or equitable, in any person, and is subject to change without notice as circumstances may require.

This Guidance document is intended to help minimize delay and expense in remediation, while continuing to protect human health and the environment. Any suggestions or questions should be sent to:

Virginia Voluntary Remediation Program  
Waste Division  
Virginia Department of Environmental Quality  
P.O. Box 10009  
Richmond, VA 23240

Suggestions or questions concerning this Guidance can also be sent by e-mail to Kevin L. Greene, VRP Program Manager, at [klgreene@deq.state.va.us](mailto:klgreene@deq.state.va.us).

Approved: \_\_\_\_\_(date)

\_\_\_\_\_  
By Karen Jackson Sismour, Director  
Waste Division

**Attachments:**

- Attachment 1: Sample Status Inquiry Letter
- Attachment 2: Sample Notification Letter
- Attachment 3: Sample Termination Letter
- Attachment 4: Sample Enrollment Inquiry Letter

[type DATE]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Click **here** and type recipient's address]

Subject: Voluntary Remediation Program  
Status Inquiry  
[type SITE NAME], VRP[type SITE NUMBER]

Dear [type Mr./Ms. recipient]:

This letter is to request an update on the Voluntary Remediation Program (VRP) activities at [type SITE NAME] and to inquire if you wish to continue in the VRP. On [type DATE OF ENROLLMENT], [type SITE NAME] was enrolled into the VRP to address the possible release of contaminants. While the VRP is a voluntary program and participation is not mandatory, it is appropriate to remove from active tracking those sites where the parties no longer wish to participate in the program or where foreseeable progress toward a Certificate of Satisfactory Completion of Remediation (Certificate) is not anticipated.

Our records indicate that the most recent correspondence on this site relative to VRP participation is a [type report/letter] dated [type DATE]. No further activity is noted in the file. Because of this lengthy interval, we are uncertain whether you wish to continue participation in the VRP.

If you wish to continue the site in the VRP, please indicate by return correspondence within thirty working days when we should expect the next submittal. If you do not wish to continue in the VRP or if we do not hear from you about this matter, we will initiate termination as provided in 9 VAC 20-160-100. This section provides for termination of VRP participation upon thirty working days notice by either party.

We appreciate your prompt attention to this matter. If you have any questions please contact the project officer, [type PROJECT OFFICER] at (804) 698-[type EXTENSION]. I can be reached at (804) 698-[type EXTENSION].

Sincerely,

[type PROGRAM MANAGER]  
Voluntary Remediation Program  
Office of Remediation Programs

cc: Regional Office

Attachment 1

[type DATE]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Click **here** and type recipient's address]

Subject: Voluntary Remediation Program  
Notification of Termination  
[type SITE NAME], VRP[type VRP NUMBER]

Dear [type Mr./Ms. recipient]:

This Office sent a letter to you requesting the status of the above referenced site with respect to the Virginia Voluntary Remediation Program (VRP) on [type DATE]. We noted that either party may terminate participation in the VRP following thirty working days notice.

We did not receive a response to our letter regarding this matter. Therefore, in accordance with the Voluntary Remediation Regulations, 9 VAC 20-160-100, this letter is to provide official notice that the Virginia Department of Environmental Quality - Office of Remediation Programs intends to terminate your participation in the VRP. Thirty working days after this notification, you will receive a letter of termination. The submitted registration fee of \$[type AMOUNT OF FEE PAID] will be forfeited at that time.

If the Site is terminated, it can be re-enrolled into the VRP upon the filing of a new application, a determination that the site remains eligible for participation under 9 VAC 20-160-10, *et seq.*, and submittal of the registration fee.

If you have any questions please contact the project officer, [type PROJECT OFFICER] at (804) 698-[type EXTENSION].

Sincerely,

[type PROGRAM MANAGER]  
Voluntary Remediation Program  
Office of Remediation Programs

cc: Regional Office

[type DATE]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Click **here** and type recipient's address]

Subject: Voluntary Remediation Program  
Termination of Participation  
[type SITE NAME], VRP[type SITE NUMBER]

Dear [type Mr./Ms. recipient]:

This letter is to formally notify you that participation in the Voluntary Remediation Program (VRP) for the above referenced site has been terminated. The site can be re-enrolled into the VRP upon the filing of a new application and determination that the site remains eligible for participation under the Voluntary Remediation Regulations, 9 VAC 20-160-10, *et seq.*

Should there be any questions, please contact the project officer, [type PROJECT OFFICER] at (804) 698-[type EXTENSION].

Sincerely,

[type PROGRAM MANAGER]  
Voluntary Remediation Program  
Office of Remediation Programs

cc: Regional Office

[type DATE]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Click **here** and type recipient's address]

Subject: Voluntary Remediation Program  
Enrollment Inquiry  
[type SITE NAME], VRP[type SITE NUMBER]

Dear [type Mr./Ms. recipient]:

This letter is to inquire if you wish to enroll [type SITE NAME] in the Voluntary Remediation Program (VRP). On [type DATE OF Eligibility], [type SITE NAME] was deemed eligible to participate in the VRP to address the possible release of contaminants. While the VRP is a voluntary program and participation is not mandatory, it is appropriate to remove sites from the VRP Active Sites Database when the parties no longer wish to participate in the program.

Our records indicate that the most recent correspondence on this site relative to VRP participation is a [type report/letter/application] dated [type DATE]. No further activity is noted in the file. Because of this lengthy interval, we are uncertain whether you wish to continue participation in the VRP.

If you intend to enroll this site in the VRP, please indicate by return correspondence within thirty working days of receipt of this letter. A registration fee consisting of \$5000 or 1% of the total cost of remediation will be required pursuant to 9 VAC 20-160-60. If you do not wish to proceed with enrollment at this time, we would appreciate such notification. If we do not hear from you within thirty working days, we will no longer track this site in the VRP Active Sites Database. If in the future, you decide to enroll in the VRP, a new eligibility determination package will be required.

We appreciate your prompt attention to this matter. If you have any questions please contact the project officer, [type PROJECT OFFICER] at (804) 698-[type EXTENSION]. I can be reached at (804) 698-[type EXTENSION].

Sincerely,

[type PROGRAM MANAGER]  
Voluntary Remediation Program  
Office of Remediation Programs

cc: Regional Office

Attachment 4