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# Voluntary Remediation Regulation (9VAC20-160 et seq.)

## Proposed regulation

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# Background

- The Virginia Code in § 10.1- 1232 directs the Virginia Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, the State Water Control Law, or other applicable authority.
- Section 10.1-1402(11) of the Virginia Code authorizes the Board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts.
- Originally adopted in 1997, this regulation provides oversight of voluntary remediation of contaminated sites and established guidelines for the issuance of certifications of satisfactory completion of remediation once the cleanup is complete.

# Purpose

- The purpose of the Voluntary Remediation Program (VRP) is to encourage hazardous substance cleanups that might not otherwise take place.
- Participants may participate in the VRP to remediate sites where remediation has not been clearly mandated or in cases where jurisdiction has been waived
- A “Certification of Satisfactory Completion of Remediation” is issued by DEQ when the remediation has been satisfactorily completed. The Certificate provides immunity to enforcement actions under Virginia environmental laws.
- The anticipated benefit of participation in the VRP is the sale and reuse of industrial and commercial properties in Virginia.

# Program overview

- 2002 Federal Brownfields legislation provided the Federal 128a grant, authorized \$50 million to enhance state and tribal brownfield programs.
  - \$1.18 million to VA was maximum
  - Award decreased with increase in applicants to \$400,000
  - FY19 had 171 funded requests, 56 which were states and territories and 115 tribes
  - Additional tribes expected to apply (Total of 573 Recognized Tribes)
  - Funding is not intended to solely sustain state voluntary cleanup program salaries
  - Virginia Voluntary Program costs approximately \$1.4 million per year to operate

## Program overview continued

- 2014- An emergency action amendment to regulations removed the registration fee cap and implemented a three phased registration fee structure for applications received on or after July 1, 2014
- Since 2014 136 sites
- Currently there are 143 sites enrolled in the program
- 72 sites enrolled prior to July 1, 2014 (no annual fee)
- 71 sites enrolled on or after July 1, 2014 (pay annual fee)
- Some of the 72 sites enrolled prior July 1, 2014 have been in the program over 20 years and have cost the DEQ between \$20,000 and \$150,000 in staff time.

# Regulatory action priorities

- DEQ issued a NOIRA in October 2019, no public comments were received
- A Regulatory Advisory Panel (RAP) was formed and met February 21, 2020.

## Regulatory Action Priorities:

- Structure the fees to fully support the VRP program
- To bring the “old program” pre July 1, 2014 sites into alignment financially
- Annual inflation cost adjustment so periodic revisions aren’t needed for financial issues
- Clarify amendments and accompanying fees for administrative and technical changes
- Add, revise, and clarify certain definitions
- To clarify eligibility criteria and address waivers
- To clarify requirements for public notice for Certificate amendments

## Amendments to registration fees

- The RAP reached consensus that the sites enrolled in the program prior to July 1, 2014 should pay annual registration fees to continue to participate in the program.
- The RAP reached consensus that the registration fees should increase in order to defray costs.
- The RAP reached consensus that the Phase 1 registration fee will be raised from \$2,000 to \$3,000.
- The RAP reached consensus that the Phase 3 registration fee will be raised from \$4,500 to \$10,500

# Amendments to registration fees continued

Prior to July 1, 2014	Post July 1, 2014	Proposed new fee structure
Registration fee is 1% of total cost of remediation not to exceed \$5,000	Phase 1: \$2,000 (one time fee application)	Phase 1: \$3,000 (one time fee application)
	Phase 2: \$7,500 (one time fee enrollment)	No change
	Phase 3: \$4,500 (annual fee for continued participation)	Phase 3: \$10,500 (All sites enrolled each year will pay fee for continued participation)
		Annual inflation cost adjustment to all registration fees

## Amendments - continued

- Sites enrolled prior to July 1, 2014 paid registration fee of 1% of the total cost of remediation or \$5000, whichever is less. These fees are held in an account until a Certificate is issued.
- Approximately \$270,715 is currently held in the account.
- The RAP reached consensus that the sites enrolled prior to July 1, 2014 should reconcile the fees paid upon implementation of this regulation in order to release the fee money held in the account.
- 9VAC-160-57 is a new provision to address the pre July 1, 2014 sites fees. There are 3 options provided for reconciliation of the fees.

## Transition of pre- July 1, 2014 sites to new fee structure- 9VAC-160-57

- Pre July 1, 2014 participants must select one of three options
  1. Max \$5,000 was paid and a refund is owed, provide actual cost of remediation and dept. will refund. If not provided within 60 days participant will have waived the right to a refund.
  2. Max was not paid (1% estimate), provide the actual total cost of remediation. Dept. will calculate balance adjustment to be made to the registration fee. Dept. will refund any balance owed or participant must pay negative balance owed.
  3. Notify Dept. terminating participation in program, no refunds will be paid if terminated.

# Additional amendments

- The RAP reached consensus on revising some definitions for the purpose of clarity, terms not used in the regulation were removed, and new terms were defined as they are now used in the scope of work section of the regulation.
- The eligibility criteria section is revised for language consistency throughout the chapter and ease of readability and to clarify what sites may be eligible to participate in the program.
- Language has been included to make it clear that if a waiver is issued its use is conditional upon completing participation in the program and receiving a Certificate.
- Language has been added to identify the MOU between EPA and DEQ. The MOU addresses sites which may be eligible to participate in the program.

## Additional amendments continued

- Work to be performed. The RAP reached consensus on including language that participants may include risk management proposals in the risk assessment. The risk assessment must include an uncertainty analysis that discusses any remaining risk.
- The RAP reached consensus that a public notice must occur prior to amending a certificate that involves additional remedial work or changes to land use controls. Not all amendments to certificates will require public notice. For example, amendments to the certificate reflecting a name change will not require public notice.

# Questions

## Requested action

- Staff are requesting the board to approve the draft language as a proposed regulation and to proceed with public comment.