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# The Voluntary Remediation Program

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*In its 2000 session, the Wyoming Legislature created new opportunities, procedures, and standards for voluntary remediation of contaminated sites. These provisions, enacted as Articles 16, 17, and 18 of the Wyoming Environmental Quality Act and implemented by the Wyoming Department of Environmental Quality (DEQ), will govern future environmental cleanups in Wyoming.*

*This Fact Sheet provides basic information about the Voluntary Remediation Program (VRP). More specific Fact Sheets on applying to participate in the VRP, public involvement, spill response, independent cleanup, risk assessment, site characterization, and liability assurances are also available at <http://deq.wyoming.gov/shwd/voluntary-remediation-program/>*

## **1. What is the VRP?**

The VRP is a set of comprehensive standards and procedures for voluntary remediation (cleanup) of contaminated sites in Wyoming. The Program is focused on voluntary cleanup, but also includes provisions for DEQ to order responsible parties to carry out cleanup actions. The key features of the Program are described below.

## **2. Who is eligible to participate in the VRP?**

Requirements for eligibility in the VRP are established in § 35-11-1602. Under these provisions, most owners, operators and prospective purchasers of contaminated sites in Wyoming are eligible for the VRP.

Eligible contaminated sites include:

- Sites where contamination occurred before the effective date of the VRP statute (March 10, 2000), unless the release was subject to permit requirements of the Environmental Quality Act.
- Sites where contamination occurred after March 10, 2000, provided the site owner or operator are implementing a pollution prevention (P2) plan consistent with the P2 Plan Rule which became effective on January 1, 2011.
- Releases from permitted waste management or disposal units that DEQ determines are not technically practicable to cleanup in accordance with permit requirements.

Sites that are not eligible to participate in the VRP include:

- Sites that are listed on the federal National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund).
- Commercial waste incineration or disposal facilities.
- Sites regulated under the Leaking Above and Underground Storage Tank Program (Article 14 of the Environmental Quality Act, §35-11-1414 through 1428), except in cases where the release is from a source other than the regulated tank(s).
- Radioactive waste storage facilities.
- Sites regulated under the Abandoned Mine Lands Program (Article 12 of the Environmental Quality Act, §35-11-1201 through 1209).
- Sites where contamination is the result of continuous or repeated violation of any law, rule, regulation, or order under the Wyoming Environmental Quality Act.

In addition, as discussed in §35-11-1601(b), sites are not eligible for the VRP if remediation is already required by order (except for orders on consent) of DEQ, council or by a court, or required by an administrative or judicial order to which the U.S. Environmental Protection Agency (EPA) is a party.

### **3. How is the VRP related to spill response?**

The VRP does not replace the current requirements and procedures for spill response. If you have experienced a reportable spill or release you should immediately notify DEQ at (307) 777-7781 or can be reported on the DEQ website at <http://spills.adm.apps.deq.wyoming.gov/>.

If you have experienced a spill or release and you want to apply for one of the liability assurances established under the VRP, such as a certificate of completion, you may apply to enter the VRP only after you have completed the “immediate phase” of spill response.

In general, the immediate phase of spill response includes notification and immediate actions to control, contain, and cleanup a spill or release. DEQ's requirements and procedures for the immediate phase of spill response are located in Chapter 4 of the Water Quality Rules and Regulations. Additional guidance on the relationship between spill response and the VRP is available in the Fact Sheet #5 *Spill Response*.

### **4. How is the VRP related to other DEQ cleanup programs?**

For eligible sites, the VRP will replace most DEQ cleanup programs, including the Solid and Hazardous Waste Division “Voluntary Corrective Action” orders and the Water Quality Division Groundwater Pollution Control Program permits under Water Quality Rules and Regulations Chapter 3 for corrective action and remediation systems.

In addition, to ensure consistency among cleanups and equal protection of human health and the environment throughout the State, DEQ will, as a matter of policy, apply the cleanup standards

established by the VRP to all DEQ overseen cleanups in Wyoming. The VRP cleanup standards are established in §35-11-1605(a) and are consistent with standards generally used under federal cleanup programs and with standards that have been used under DEQ cleanup programs that pre-date the VRP. VRP cleanup standards are discussed further in question 9, below.

## **5. What if I am already doing cleanup at my site?**

If you are already doing cleanup under a DEQ cleanup program that pre-dates the VRP, you are not required to switch to the VRP and may continue remediation under your current arrangement with DEQ. However, as discussed above, to ensure consistency among cleanups and equal protection of human health and the environment throughout the State, as a matter of policy, DEQ will apply the cleanup standards established by §35-11-160-5(a) to all cleanups in Wyoming, including most cleanups that are completed under DEQ programs that pre-date the VRP. (The exception is cleanups under programs that pre-date the VRP when final cleanup objectives were established before the VRP was enacted. In cases where a site is undergoing cleanup in a program that pre-dates the VRP, and where site-specific final cleanup objectives have already been established, the established site-specific cleanup objectives will continue to apply.)

Of course, cleanups completed under programs other than the VRP are not eligible for the liability assurances established by the VRP. If you would like to switch to the VRP, and your site is eligible to participate in the Program, you should contact your DEQ cleanup project manager. If you do not know who your project manager is, you may contact DEQ at (307) 777-7752 for assistance.

## **6. Am I required to volunteer if my site is eligible?**

No, you are not required to volunteer. However, if you own or operate a contaminated site and choose not to volunteer, DEQ may determine that your site must be cleaned up in order to protect human health, safety or the environment. If DEQ makes this determination, the Department may issue an order to require you to cleanup your site under the new provisions at §35-11-1613 or under other applicable cleanup authorities. These new provisions at §35-11-1613 authorize DEQ to require responsible parties to:

- Return contaminated soil and water to background contaminant levels.
- Return contaminated soil to levels that are safe for any potential future use of the site.
- Return contaminated groundwater to contaminant levels that ensure that the class of use of groundwater prior to the release is restored, or if not technically practicable, employs the best available groundwater remediation technology.
- Remove all continuing sources of soil or water contamination.
- Eliminate to the extent practical any continuing risk to any ecological receptor present at or near the site.

If DEQ issues an order requiring you to conduct cleanup, you will no longer be eligible to volunteer for the VRP and, therefore, will not be eligible for any of the liability assurances established by the VRP.

## **7. What does the VRP offer to Volunteers?**

Individuals who choose to participate in the VRP gain a number of advantages, including:

- First, and most importantly, they participate in an integrated, flexible, risk-based cleanup process specifically designed to be responsive to local concerns and to support Volunteers.
- Second, upon successful completion of a remedy agreement and/or cleanup, Volunteers are eligible for a number of liability assurances including covenants not to sue, certificates of completion, and no further action letters. These liability assurances affect DEQ's ability to require additional cleanup at a site and give owners, operators, prospective purchasers, and land developers certainty about the extent of their potential cleanup liability.
- Third, the VRP allows use of non-residential (i.e., restricted use) cleanup levels for soil under certain circumstances. Volunteers are allowed to petition local governments to designate a non-residential use control area. These non-residential land use determinations can be used to support alternative, risk-based cleanup levels for soil that are appropriate for the designated land use. At sites that are not in the VRP, cleanup must achieve levels that are safe for unrestricted site uses (generally residential uses), regardless of where a site is located.
- Finally, Volunteers may apply to DEQ for a determination that current technology cannot feasibly be used to cleanup soil contamination to established levels (i.e., a technical impracticability determination for soil). If DEQ makes such a determination, site-specific alternative soil cleanup levels that can be achieved with available technology would likely be established in combination with requirements to control exposures to residual contamination to ensure full protection of human health and the environment (See Fact Sheet #27 *Technical Impracticability Determinations*). Sites that are not in the VRP are not eligible for this approach.

DEQ believes that these and other benefits make the VRP the best cleanup approach for all eligible sites.

## **8. How can the public participate in the VRP?**

The VRP establishes a number of public participation requirements. For all sites, Volunteers must provide written notice and an opportunity for public comment as soon as they enter the VRP. Notification must be published as a display advertisement in a newspaper of general circulation in the county in which the site is located once per week for a minimum of four weeks. In addition, notice must be given in writing to all surface land owners of record for land that is contiguous to the site and to all known surface land owners of record for land that is adjacent to the site. If, based on responses to the notices, there is significant public interest in a site, the Volunteer must develop and implement a site-specific public participation plan.

In addition, at all cleanup sites, even sites at which there is not significant public interest based on the initial public notice and which do not have a site-specific public participation plan, Volunteers must publish another public notice and provide an opportunity for public comment when cleanup actions (remedies) are chosen. More information on public participation requirements and opportunities is available in the Fact Sheet #2 *Public Participation*.

## **9. What cleanup standards does the VRP establish?**

The primary purpose of the VRP is to protect human health, safety and the environment in Wyoming. VRP cleanup standards are established in § 35-11-1605(a). Under these provisions, in general, cleanups approved under the VRP must:

- Protect human health, safety and the environment.
- Remediate contaminated air, soil and water to attain applicable standards established under federal or state law or regulation, or to attain site-specific risk-based levels developed for the site in question.
- Control sources of releases to reduce or eliminate, to the extent technically practicable, further releases as required to protect human health and the environment.
- Comply with applicable standards for management of waste generated as a consequence of a remedy.

The cleanup standards established by the VRP are consistent with the cleanup requirements currently in place under DEQ programs that pre-date the VRP and with the cleanup standards used under CERCLA and the Resource Conservation and Recovery Act (RCRA) corrective action cleanup programs.

Under the VRP, site-specific, risk-based cleanup levels must reduce excess cancer risk to between one-in-ten-thousand ( $1 \times 10^{-4}$ ) and one-in-one-million ( $1 \times 10^{-6}$ ), with the one-in-one-million level used as a target risk level or point of departure. Site-specific, risk-based cleanup levels must also significantly reduce risks from non-carcinogenic contaminants so that the hazard index does not exceed one. Site-specific, risk-based cleanup levels will not be established at concentrations lower than natural background concentrations.

Site-specific, risk-based cleanup levels for soil and air must be established using residential exposure assumptions, unless the appropriate local government approves an alternative land use through a use control area (UCA). Site-specific, risk-based cleanup levels for groundwater must be established assuming that groundwater may be used as a drinking water source. For additional information about cleanup levels for groundwater see Fact Sheet #13 *Groundwater Cleanup Levels*.

More information on cleanup standards under the VRP and a list of pre-calculated soil cleanup levels are available in Fact Sheet #11 *Risk Assessment* and Fact Sheet #12 *Soil Cleanup Levels*.

## **10. How are the cleanup standards implemented?**

DEQ has established two administrative processes under the VRP, the traditional process and the independent cleanup process (ICP).

In the traditional process, VRP requirements are implemented through preliminary remediation agreements (PRAs) and remedy agreements (RAs). These are agreements between a Volunteer and DEQ that establish site-specific requirements for investigation and characterization of contamination, evaluations of remedial alternatives (where applicable), and cleanup.

The ICP applies to sites that are not technically complex and where Volunteers use a pre-defined conservative remedial approach. In the ICP, contamination must be limited to soil and Volunteers must agree to remove all soil contaminated above unrestricted site use cleanup levels. Volunteers who qualify for the ICP carry out cleanup with reduced DEQ oversight and generally do not negotiate PRAs or RAs. More information is available in Fact Sheet #4 *Administrative Processes* and Fact Sheet #6 *Independent Cleanup*.

## **11. How is the VRP related to other non-DEQ cleanup programs?**

The VRP does not replace other non-DEQ cleanup programs that might apply at eligible sites. For example, the Wyoming Oil and Gas Conservation Commission is responsible for regulating oilfield activities, which include seismic operations, drilling of wells, and oil and gas production operations. Under its scope of responsibility, the Oil and Gas Conservation Commission regulates wastes and releases that are intrinsic to, and uniquely associated with, exploration, development, or production activities and are not part of a transportation or manufacturing operation. Sites regulated by the Oil and Gas Conservation Commission will continue to be regulated by the Oil and Gas Conservation Commission.

Similarly, the VRP does not replace federal cleanup programs established under CERCLA or RCRA, for sites where those programs apply. DEQ has negotiated a RCRA Memorandum of Understanding and a CERCLA Memorandum of Agreement with EPA Region 8, which indicate that, even though the VRP does not replace or preempt applicable federal cleanup programs, EPA does not expect to take federal action at sites that are successfully cleaned up under the VRP.

## **12. What if I am subject to a non-DEQ cleanup program but I want one of the liability assurances offered by the VRP?**

Provided your site meets the VRP eligibility criteria, you may volunteer even if you are also subject to a non-DEQ cleanup program, such as the Wyoming Oil and Gas Conservation Commission. If you successfully complete cleanup under the VRP, you may receive a VRP liability assurance.

However, volunteering for the VRP (and receiving a liability assurance) will not replace or obviate other non-DEQ cleanup requirements that may apply. DEQ is working with the people

responsible for administering non-DEQ cleanup programs to clarify the relationship between those programs and the VRP. For example, as discussed in question 11 above, DEQ signed a RCRA Memorandum of Understanding and a CERCLA Memorandum of Agreement with EPA to define how the two agencies will interact when contaminated sites are addressed under the VRP. As program development continues, DEQ will work with other agencies, such as the Wyoming Oil and Gas Conservation Commission, to further define the relationships between the VRP and non-DEQ cleanup programs.

### **13. How is the VRP funded?**

The Wyoming Environmental Quality Act §35-11-1612 specifically mandates that DEQ develop and implement a fee system to cover all reasonable direct and indirect costs of administration of the VRP. Currently, all Volunteers must pay a \$550 application fee with their application to enter the VRP. The application fee covers the first ten hours of DEQ oversight. Additional oversight is billed at a rate of \$55 per hour and will be invoiced monthly. If Volunteers are found ineligible for the Program, the \$550 application fee will be refunded in full; however, no partial refund is available if total oversight time for eligible Volunteers is less than 10 hours. DEQ may reevaluate and change the fee structure based on actual costs incurred by the VRP and of DEQ oversight. Information on the most current fee structure and oversight rates can be found at the VRP website: <http://deq.wyoming.gov/shwd/voluntary-remediation-program/>

### **14. How can I get more information about the Program?**

To learn about VRP sites that may exist in your community, obtain copies of other VRP Fact Sheets/guidance documents, get answers to your questions, or volunteer for the program, contact DEQ at (307) 777-7752 or through the VRP website at: <http://deq.wyoming.gov/shwd/voluntary-remediation-program/>

The VRP website includes all of the Fact Sheets and other guidance documents for the VRP. This website is updated frequently and includes the latest information about DEQ's progress in developing guidance, policy, and other supporting documents for the VRP.