



No Further Action Letters

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.

The Voluntary Remediation Program (VRP) establishes a number of new opportunities for owners and prospective purchasers of environmentally suspect, contaminated and formerly contaminated property to obtain a liability assurance from DEQ. This Fact Sheet summarizes the requirements and procedures for one type of liability assurance: no further action letters.

1. What is a no further action letter?

A no further action (NFA) letter is a type of liability assurance issued under the VRP. Except for a NFA letter being issued as part of a monitored natural attenuation remedy (discussed below), they document that DEQ has determined that no further remediation is required on a given piece of property (a "site") or portion of a site. As defined in §35-11-103(g)(ix), "remediation" means all actions necessary to assess, test, investigate or characterize a site, and to cleanup, remove, treat, or in any other way address any contaminants that are on, in, or under a site or adjacent properties to prevent, minimize or mitigate harm to human health or the environment. Therefore, in general, a NFA letter documents that no further work is necessary to cleanup a site.

2. What is the difference between a NFA letter and a certificate of completion?

The VRP establishes two liability assurances that DEQ generally uses to document that cleanup is complete: NFA letters and certificates of completion. Both assurances affect DEQ's ability to require additional cleanup at a site and give site owners, operators, prospective purchasers, and land developers certainty about the extent of their cleanup liability. However, NFA letters can be issued in fewer circumstances than certificates of completion.

Furthermore, in accordance with §35-11-1701 et seq. any contamination discovered after a NFA letter has been issued will be cleaned up at State expense under the provisions for orphan sites, unless the newly discovered contamination poses an imminent and substantial endangerment to human health or the environment. Because NFA letters transfer some responsibility for funding future cleanup to the State, they will be issued only when DEQ is confident that a site has been completely and comprehensively characterized (see §35-11-1701(b)(ii)(A)) and (except for

monitored natural attenuation remedies) fully remediated to achieve cleanup levels that are appropriate for unrestricted site uses. For more information on the different types of liability assurances established by the VRP, see Fact Sheet #15 *Liability Assurances*. For more information on certificates of completion, see Fact Sheet #18 *Certificates of Completion*.

3. Can DEQ require additional cleanup after a NFA letter is issued?

In general, after a NFA letter is issued, DEQ cannot require additional remediation at the covered site under the VRP and, unless the NFA letter is reopened or terminated, cleanup of any contamination that is subsequently discovered will be carried out under the provisions for orphan site cleanup at §35-11-1701 et. seq.

The criteria for reopening or terminating NFA letters are established in §35-11-1610. In general, NFA letters may be reopened or terminated only if:

- An imminent and substantial endangerment to human health or the environment is discovered.
- It is discovered that the NFA letter was based on fraud, material misrepresentation, or failure to disclose material information.
- In the case of a monitored natural attenuation remedy, DEQ determines that the monitored natural attenuation remedy is not effective in meeting cleanup levels for unrestricted site uses.

4. When can a NFA letter be issued?

The criteria for issuing NFA letters are established in §35-11-1608. In general, NFA letters can be issued in three circumstances:

- When a site has been cleaned up so that no engineering or institutional controls and no use restrictions are necessary to meet the VRP cleanup levels for unrestricted site uses established under §35-11-1605(a)(ii), generally residential cleanup levels, unless more conservative exposure assumptions are appropriate for a site.
- When a site has been completely and comprehensively characterized and DEQ determines that no cleanup is necessary to meet the VRP cleanup levels for unrestricted site uses. In addition, no engineering or institutional controls and no use restrictions are necessary.
- When a monitored natural attenuation remedy is approved and DEQ determines that no exposure to contaminated media is reasonably expected during the period of monitored natural attenuation. In these cases, a NFA letter may require that the current use of the property continue during the period of natural attenuation and also may require that testing be conducted to confirm that cleanup levels are met.

5. Will a NFA letter cover my entire site?

DEQ will issue two types of NFA letters: partial and site-wide.

Site-wide NFA letters will cover an entire site. If you request a site-wide NFA letter, you should show that cleanup levels for unrestricted site uses have been achieved (or cleanup is not needed, or a monitored natural attenuation remedy is in place) for all contaminants of concern in all media at the entire site, to a depth of at least twelve (12) feet. To make this showing, you will have to meet the VRP site characterization performance criterion (which emphasizes biased sampling in areas of known or suspected contamination) for the entire site. Additionally, you may have to conduct grid sampling between known and suspected areas of contamination. For more information on site characterization, see Fact Sheet #8 *Site Characterization*. For more information on grid sampling, see Fact Sheet #9 *Grid Soil Sampling Outside of Source Areas*. Information necessary to support your application for a NFA letter is discussed in more detail in question #6, below.

Partial NFA letters will cover a particular area on a site, a particular set of contaminants, or a particular environmental medium. If you request a partial NFA letter, you should specifically document the area, contaminants, or media for which you want the NFA letter and should show that the area, contaminants, or media meet cleanup levels for unrestricted site uses (or do not need cleanup, or are covered by a monitored natural attenuation remedy). Partial NFA letters will contain provisions explaining that the coverage of the NFA letter is limited to the specific area, contaminants, or media addressed and that DEQ's ability to require additional remediation is not limited for other areas, contaminants, or media.

6. What information do I have to provide to DEQ to show that my site qualifies for a NFA letter?

Because NFA letters transfer some responsibility for funding future cleanup to the State, DEQ expects that, before a NFA letter will be issued, sites will be completely and comprehensively characterized, site investigations and cleanups will be thoroughly documented, and (except for monitored natural attenuation remedies) sites will be fully remediated and sampling and analysis carried out to ensure that cleanup levels for unrestricted site uses have been achieved throughout the area covered by the NFA.

Because every cleanup site is different, the exact information necessary to support an application for a NFA letter will vary based on site-specific conditions. However, at a minimum, DEQ expects that, to support a NFA letter determination, a Volunteer should submit the following types of information:

- Information specifically documenting the site for which the Volunteer is requesting a NFA letter. If the NFA letter is being requested for only a portion of a larger site, or only specific releases, a specific set of contaminants, or a specific environmental medium, it is necessary to provide a detailed description of the portion of the site, releases, contaminants, or medium to be considered. This should include a map clearly illustrating the site (or portion of a site), including site boundaries, for which the NFA letter is being requested. If site boundaries are uncertain or unclear, or if a NFA letter is being requested for only a portion of a larger site, a survey by a licensed surveyor may be needed. Volunteers should talk with their DEQ project manager to determine if a survey is needed.

- Information documenting that the site (or portion of a site) for which the Volunteer is requesting a NFA letter has been characterized in accordance with the site characterization performance criteria. This will include information on the site, site history and site setting, known and potential sources of contamination, the nature and distribution of contaminants, media properties that are likely to influence contaminant distribution or the ability to implement remedial alternatives, and human and ecological receptors. As discussed earlier in this Fact Sheet, you should plan to meet the VRP site characterization performance criteria (which emphasizes biased sampling in areas of known or suspected contamination) for the entire site that will be covered by the NFA letter. In addition, you may need to conduct grid sampling between known and suspected areas of contamination, before DEQ will consider the site completely and comprehensively characterized (see §35-11-1701(b)(ii)(A)). For more information on site characterization, see Fact Sheet #8 *Site Characterization*. For more information on grid sampling, see Fact Sheet #9 *Grid Soil Sampling Outside of Source Areas*.
- If a cleanup has been completed, information documenting that a remedy that meets the levels in § 35-11-1605(a)(ii) has been selected and implemented for the site (or portion of a site) and information, including sampling and analysis, documenting that cleanup levels for unrestricted site uses have been achieved, at a minimum, to a depth of twelve (12) feet and at any other points of compliance. Sampling and analysis to confirm that cleanup levels are achieved at points of compliance should be carried out according to the guidelines for confirmation sampling. For more information on cleanup levels for unrestricted site uses see Fact Sheet #11 *Risk Assessment*. For more information on confirmation sampling, see Fact Sheet #10 *Soil Confirmation Sampling*.
- If a NFA letter is being requested because a site has been investigated and a Volunteer believes no cleanup is necessary, information documenting that the site (or portion of a site) for which the Volunteer is requesting a NFA has been fully and completely characterized in accordance with the site characterization performance criteria and that contaminants of concern either have not been released or are below cleanup levels appropriate for unrestricted site uses. As discussed above, you may need to conduct grid sampling between known and suspected areas of contamination, before DEQ will consider the site completely and comprehensively characterized (see §35-11-1701(b)(ii)(A)).
- If a NFA letter is being requested for a site with a monitored natural attenuation remedy, information documenting the remedy (including monitoring requirements) and verifying that the current use of the property will continue during the period of natural attenuation must be provided. For more information on monitored natural attenuation, see §35-11-1605(d), §35-11-1608(b) and Fact Sheet #26 *Monitored Natural Attenuation for Soil and Groundwater*.

Many Volunteers will have already provided DEQ with some of these types of information during the course of their cleanup. You do not need to re-submit new copies of information already provided to DEQ with your request for a NFA letter. Instead, simply reference the reports, documents, or other information in your request. To expedite DEQ review, please reference information clearly, including the name of the report or other document, the date you submitted it to DEQ, and, if appropriate, the pages or sections that are pertinent to your request for a NFA letter.

7. Do I have to sample my entire site, even uncontaminated areas, to get a NFA letter?

At a minimum, some sampling and analysis of areas that are to be covered by a NFA letter will be needed to confirm that VRP cleanup levels for unrestricted site uses are achieved. If only a portion of your site (or a specific set of contaminants or a specific environmental medium) will be covered by a NFA letter, sampling and analysis should be focused on the area (or contaminants or medium) to be covered. If you wish for your entire site to be covered by a NFA letter (i.e., you are requesting a site-wide NFA letter), DEQ may require grid sampling between known areas and sources of contamination to confirm that these areas are clean.

8. Who can receive a NFA letter?

NFA letters are available to owners and prospective purchasers of VRP sites.

9. Do I have to be in the VRP before I can get a NFA letter?

Yes, only participants in the VRP are eligible for NFA letters. However, under certain circumstances, a Volunteer might apply to enter the VRP and apply for a NFA letter at the same time. DEQ expects that this will most often be the case at sites that are cleaned up using DEQ's special administrative procedures for less complex sites, called the Independent Cleanup Process (ICP). It might also occur when a liability assurance is requested as part of a property transfer for a property that does not require cleanup (e.g., in situations where the property is already clean). For more information about the ICP, see Fact Sheet #6 *Independent Cleanup*. For more information on property transfer see Fact Sheet #7 *Property Transfer and the Voluntary Remediation Program*. Note that VRP liability assurances are not required in order to transfer property.

10. How do I request a NFA letter?

NFA letters must be requested from DEQ in writing.

Two copies of your written request should be sent to:

Wyoming Department of Environmental Quality
Attention: Voluntary Remediation Program
122 West 25th Street, Herschler Building 4-W
Cheyenne, WY 82002

Your request should clearly identify the site for which you are requesting a NFA letter and include the information discussed in question #6 above.

11. How can I get more information about the VRP?

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 visit the VRP website at: <http://deq.state.wy.us/volremedi/index.asp>.

FACT SHEET #16

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