



Section 1.0

**INTRODUCTION TO NEBRASKA'S
VOLUNTARY CLEANUP PROGRAM**

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SECTION 1.0 INTRODUCTION TO NEBRASKA'S VOLUNTARY CLEANUP PROGRAM

GENERAL INFORMATION

What Is The VCP?

The Nebraska Voluntary Cleanup Program (VCP) was established by the Remedial Action Plan Monitoring Act (RAPMA; see Attachment 1-5) in 1995. It is a fee-based cleanup program for all entities interested in voluntarily cleaning up contaminated properties. Fees paid by the applicant (see Section 1.1) cover costs associated with the Nebraska Department of Environmental Quality (NDEQ) review, approval, and oversight of voluntary cleanup plans. The Nebraska VCP facilitates the redevelopment and reuse of brownfield sites. It utilizes a streamlined, results-based approach to environmental cleanup. It provides an alternative approach to more traditional federal cleanup programs such as the Superfund or RCRA programs. Finally, it provides state determinations of “no further action” upon successful completion of cleanup activities. These “no further action” determinations are important for those applicants seeking financing from a banking institution for redevelopment of the site following cleanup. The “no further action” determinations are also important to applicants who wish to join the program as an alternative to more traditional federal cleanup programs. In such a case, eligible response sites are provided protection from federal enforcement in EPA-approved state VCPs upon successful completion of voluntary cleanup activities.

The VCP is intended for property owners, potential property buyers, facility owners, local governments, and other interested parties who want to use this approach to voluntarily clean up contaminated properties while **maintaining compliance with all applicable State and Federal environmental regulations.**

What Are The Goals Of The VCP?

The primary goals of the VCP are to (1) protect human health and the environment, (2) return contaminated properties to productive use, (3) provide a streamlined, results-based approach to environmental cleanup, and (4) provide an alternative approach to traditional cleanup programs. An applicant achieves these goals by conducting a thorough environmental investigation and developing a conceptual site model. Then, based on the investigation, conceptual site model, and the intended land use of the site, applicants and their consultants work together to develop appropriate remedial actions. The outcomes of these actions should eliminate human exposure to contamination, mitigate adverse impacts to the environment, and prepare the site for redevelopment and reuse.

What Are The Benefits of the VCP?

Participants who have completed remedial actions, paid all applicable fees, and met the provisions and objectives agreed to with NDEQ will have successfully completed the program. These participants will receive three desirable benefits:

- Determination by NDEQ that no further remedial action is required at the site
- Redevelopment and productive reuse of the property
- Protection to eligible response sites from federal enforcement in EPA-approved state VCPs upon successful completion of voluntary cleanup activities

How Is the VCP Different Than Traditional Cleanup Programs?

Traditionally, environmental investigations and remedial actions were often required to follow a regimented, step-by-step process that required extensive regulatory oversight. Cleaning up and returning a contaminated property to productive use often took many years. Nebraska's VCP, however, is designed to work as quickly and simply as possible. Applicants are encouraged to use a streamlined, results-based approach tailored to accomplish site-specific goals. NDEQ has developed user-friendly tables (see Attachment 2-6) that allow a consultant to quickly determine cleanup levels for a site based on its intended land use. By using these lookup tables and following this guidance carefully, the administrative procedures normally associated with environmental investigations and remedial actions can be reduced, and VCP applicants can complete remedial actions cost effectively. VCP applicants can:

- Control investigation and cleanup costs by choosing an appropriate environmental consultant
- Combine investigation and remediation activities when possible, while maintaining strict compliance with all applicable regulations
- Propose remedial actions that are appropriate for future land use (or current land use, if land use will not change) based on cleanup levels from the VCP lookup tables
- Maintain control over remediation activities
- Receive technical and regulatory assistance from NDEQ

Since the VCP is designed to be more flexible than traditional cleanup programs, a greater responsibility is placed on the applicant and consultant to **collect and submit correct and complete information to NDEQ**.

How Is The VCP Similar To Traditional Cleanup Programs?

While the Nebraska VCP is different in certain respects from traditional cleanup programs, it is similar to traditional cleanup programs in the following areas:

- Cleanup decisions are protective of human health and the environment
- A complete and thorough investigation is necessary
- All activities must be in compliance with all applicable state and federal laws and regulations
- Risk-based cleanup goals are within the acceptable risk range of federal cleanup programs

What Is The Streamlined, Result-Based Approach?

Nebraska's VCP is intended to be a streamlined, results-based approach to environmental cleanup. This approach minimizes the number of steps in the regulatory review process and involves setting goals to focus on achieving specific outcomes, or results, as a means of cleaning up contaminated sites. It also allows VCP applicants a number of options on how to achieve these goals.

One example of a streamlined, results-based approach could be for the VCP applicant to perform a complete and thorough investigation prior to joining the VCP. Another example of the streamlined, results-based approach would be the integration of the investigation and cleanup steps that are typically separate parts of the process in more traditional cleanup programs. This approach also bases cleanup decisions on risk assessment, future land use, and ground water use. The approach encourages the use of presumptive remedies and innovative cleanup technologies. Finally, the approach includes the use of performance-based cleanups where submittal of detailed engineering design plans are no longer necessary and focus is placed on ensuring that an adequate performance monitoring plan is submitted to demonstrate how the cleanup goals for the site will be achieved.

The streamlined, results-based approach taken by NDEQ still allows the VCP applicant to submit draft workplans, reports, or other information to NDEQ for review and comment.

Although the VCP program utilizes a streamlined, results-based approach, this does not mean that the remedial actions are less protective. All investigation and cleanup work must conform to federal and state environmental laws and regulations. NDEQ believes that the streamlined, results-based approach is important because it helps applicants complete their project in a timely manner and it makes best use of limited government resources.

1.1 PROCESS OVERVIEW

1.1.1 Process Options

Over the history of the NDEQ VCP, two basic process options have evolved for use by the VCP applicant, one in which the applicant conducts a site investigation and prepares a Remedial Action Plan (RAP) prior to applying to the VCP and the other in which an applicant first goes through the application stage and then moves forward with the site investigation and RAP preparation. The first option may be preferable to those VCP applicants wishing to proceed through the process more quickly and efficiently. The second option may be preferred by those VCP applicants wishing to have NDEQ review workplans and reports prior to their final approval. The flowcharts in Attachment 1-1 provide an outline of either process that applicants might follow as they progress through the VCP.

1.1.1.1 Pre-Application Site Investigation/RAP

This process is designed to eliminate the multi-stage review process that occurs when individual workplans and reports are submitted at each stage of an investigation and cleanup. The RAP is a single, comprehensive document that describes all stages of an investigation as well as the plans for cleaning up the site. RAPs conforming to this guidance will facilitate and expedite NDEQ review and approval.

The first step taken by an applicant should be to complete an investigation to define the full nature and extent of contamination at the contaminated site. Should interim remedial actions be necessary to address an imminent threat to human health or the environment, the applicant can complete these actions before proceeding to the application stage.

1.1.1.2 Application Followed by Site Investigation/RAP

This process allows a VCP applicant to enter the program with more NDEQ oversight and review prior to completing an investigation to define the full nature and extent of contamination.

1.1.2 VCP Application and Written Agreement

A complete application package includes an application form, a non-refundable \$2,000 application fee, a refundable \$3,000 initial deposit, and a signed written agreement. The application form (see Attachment 1-2) asks the applicant to identify critical information such as the site's point of contact, the type of contamination present at the site, land use and operational history, and future use of the site.

The written agreement (see Attachment 1-3), once signed by both parties, establishes that the applicant will reimburse NDEQ for the costs of all review, oversight, and guidance. This written agreement is based on language within the RAPMA. Because the written agreement is based on state statute, flexibility within the agreement is limited. It also establishes that the applicant submit the refundable \$3,000 initial deposit with the written agreement, prior to any technical reviews by NDEQ. If oversight costs exceed the \$3,000 initial deposit, additional fees will be required over the course of VCP participation. Typical oversight costs associated with NDEQ review of a VCP site may range between \$3,000 and \$75,000, depending on the complexities of a site. NDEQ may also request a one-time lump-sum payment for potential future oversight costs associated with a project, such as the review and evaluation of the effectiveness of any institutional controls put in place as part of the approved final remedial actions for a site. Factors that determine the amount of the requested lump-sum payment will include the size of the site, the type and mobility of the documented contaminants, the anticipated maintenance requirements of protective structures or controls, and the need for periodic inspections or audits. An applicant may be able to offset some oversight costs with EPA Brownfields funding.

NDEQ typically issues invoices for additional oversight costs on a monthly basis. However, invoicing frequency may be adjusted to address site-specific issues. More complex or resource-intensive projects may require establishment of a pre-payment plan.

The complete application package must be submitted to the following address:

VCP Coordinator
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 "N" St.
P.O. Box 98922
Lincoln, NE 68509-8922
(402) 4714210
ndeq.vcpbrownfields@nebraska.gov

The application will be reviewed by NDEQ to determine if all requested information has been provided. Incomplete applications will be returned to the applicant for revision. The applicant has sixty (60) days to resubmit the application or the application will be denied. If an application is determined to be complete and acceptable, NDEQ will approve the application, making the applicant and site valid participants in the VCP.

An application consists of:

1. A completed **application form** (see Attachment 1-2)
2. A nonrefundable **\$2,000** application fee
3. A refundable **\$3,000** initial deposit
4. A **written agreement** signed by the applicant (see Attachment 1-3)

1.1.3 Remedial Action Plan

After an application has been approved by NDEQ, the applicant will have 90 days to submit the first technical document: the Remedial Action Plan (RAP; see Section 2.0), unless an extension is granted. A RAP consists of an Investigation Report (IR), which presents a conceptual site model based on a thorough investigation, and a Remedial Action Work Plan (RAWP), which outlines the plan for cleaning up the site.

NDEQ will then conduct a technical review of the RAP. While NDEQ will review the RAP in as timely a manner as possible, the actual review time will be dependent on factors such as NDEQ staffing levels, work load, size and complexity of the site, future land use, and quality of the documents submitted. If there are any outstanding issues identified by the technical review, the applicant will be asked to submit a complete, revised plan. NDEQ may require the applicant to submit a work plan for additional investigation.

1.1.4 Public Notice and Implementation of Remedial Actions

Upon receipt of an approvable RAP, NDEQ will public notice its intent to approve the plan (see Attachment 1-4). An administrative record will be prepared by NDEQ containing all the information forming the basis for preliminary approval of the plan. The administrative record will be located on NDEQ's website (<http://deq.ne.gov>). During the thirty (30) day public comment period, any person may submit written comments or request a hearing. (Sites subject to RCRA permitting and corrective action requirements that are using the VCP as an alternate cleanup program may require a 60-day public comment period.) Following the thirty (30) day public comment period, and any public hearing, if appropriate, final approval of the plan will be given and cleanup of the site may begin. Initiation of cleanup must begin within six (6) months and be completed within twenty-four (24) months, excluding long-term operation, maintenance, and monitoring. NDEQ will monitor the implementation of remedial actions and provide guidance as necessary.

1.1.5 Remedial Action Report

Within sixty (60) days of completion of remedial actions, the applicant will prepare the second technical document: the Remedial Action Report (RAR; see Section 3.0). The purpose of the RAR is to document the remedial actions and to demonstrate to NDEQ and the public that the site is cleaned up as proposed in the approved RAP. NDEQ will then review this document. In those instances where the outcome of remedial activities is unsatisfactory, NDEQ will inform the applicant and indicate the actions necessary to achieve the desired outcome. If the cleanup is satisfactory, NDEQ will prepare a No Further Action (NFA) letter to declare that no further action is necessary, and the property is ready for redevelopment and reuse.

1.2 RAPMA ELIGIBILITY

RAPMA establishes that any entity may voluntarily apply for NDEQ monitoring of remedial actions for land or water pollution through the VCP. This includes petroleum sites, however, in most cases, petroleum contaminated sites will be managed by the NDEQ Petroleum Remediation (PR) Section, for the following reasons:

- The NDEQ PR Section has technical expertise in working with petroleum releases.
- The NDEQ PR Section has an established, functioning, risk-based corrective action program that may have less stringent screening or cleanup levels than those remediation

goals established for the Nebraska VCP.

- Funding for many petroleum release investigations and cleanups may be available through the PR Section Title 200 reimbursement fund and federal LUST Trust Fund.
- The property owner will not incur oversight cost fees for work through the PR Section.

1.3 FEDERAL ENFORCEMENT PROTECTION

Additionally, certain sites enrolling in the VCP may be eligible for protection from federal enforcement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. NDEQ and the U.S. Environmental Protection Agency (EPA) Region VII have negotiated a Memorandum of Agreement (Attachment 1-6) for the Nebraska Voluntary Cleanup Program. This agreement became effective on November 22, 2006 and offers protection from federal Superfund enforcement for those eligible response sites, as defined in CERCLA §101(41), that successfully complete cleanup under the VCP.

Some property owners, by conducting “All Appropriate Inquiries” into present and past uses of the property, are already eligible for protection from federal enforcement under the **Small Business Liability Relief and Brownfields Revitalization Act**. These owners include: *bona fide prospective purchasers, innocent landowners, and contiguous property owners.*

1.4 ADDRESSING MULTIPLE SITES

In some cases, a prospective applicant may want to enter multiple sites into the VCP. For example, an owner of a chain of dry cleaners may want to voluntarily clean up several sites in different geographical locations. In such cases, the applicant must submit individual VCP applications, Written Agreements, fees, Remedial Action Plans, and Remedial Action Reports for each site and will receive separate No Further Action letters for each site.

1.5 PARCELING AND CONSOLIDATING PROPERTIES

In some cases, an investigation and cleanup may be more practical if one large property can be addressed in pieces. This practice is referred to as parceling. For example, if your prospective VCP project site is a large industrial complex that consists of manufacturing and shipping facilities as well as a large green space that has never been used for any manufacturing, you may choose to divide the site into parcels. The advantage of dividing the project into parcels is that the green space can usually be investigated more quickly and, if the investigation confirms that the parcel does not require any remediation, the green space can be developed very quickly. Parceling also allows a large, complex VCP project to be divided into phases. If a VCP applicant decides to divide a project into parcels, the applicant may submit one VCP application and Written Agreement and pay only one set of fees. However, separate Remedial Action Plans, and Remedial Action Reports for each parcel will still need to be submitted and each parcel will receive separate No Further Action letters.

In other cases, an investigation and cleanup will be more practical if several generally contiguous properties are consolidated into one project. This practice is referred to as consolidating. For example, your prospective VCP project may encompass several real properties that include a former salvage yard, former landfill, fertilizer plant, and shipping terminal. One of the advantages to consolidating several real properties into one project is that you pay only one set of fees and submit one VCP application, Written Agreement, Remedial Action Plan, and Remedial Action Report for the entire project. Upon completion of the project, you will then receive one No Further Action letter for the entire project.

Consolidating multiple real properties into one VCP project is only allowed if the properties are generally contiguous. If one or more of the properties are not generally contiguous, that property(ies) must be addressed as a separate VCP project.

It is up to each VCP applicant to determine whether one of these approaches is practical for their project. Factors that tend to influence the approach to a project include financing and project completion timeframes.

It is important to note that because the number of VCP applications, Written Agreements, and fees are based on whether a project is divided into parcels or consolidated into one project, each applicant must decide before submitting their application whether to divide the project into parcels or consolidate multiple real properties into one project. Both the VCP application and the Written Agreement must include the geographic extent of the subject property.

Issues regarding parceling and consolidating properties will be handled on a case-by-case basis. Such issues may include the cleanup of only certain contaminants (as opposed to all contaminants discovered) or where different sources exist. Each applicant should contact NDEQ to discuss how the application should be prepared.

1.6 RAPMA ENFORCEABILITY & TERMINATION

As set forth in the RAPMA, voluntary remedial action plans approved by NDEQ are enforceable if NDEQ demonstrates that the applicant has failed to fully implement the approved plan. NDEQ may require additional actions if other state statutes administered by the agency authorize such actions.

NDEQ may terminate (in writing and with explanation) a voluntary remedial action plan if the applicant:

- Violates any terms or conditions of the plan or fails to fulfill any obligations of the plan (including submission of an acceptable plan within a reasonable period of time)
- Fails to address an immediate and significant risk to public health and the environment in a timely and effective manner
- Fails to initiate the plan within six months after NDEQ approval or to complete the plan within 24 months after NDEQ approval, excluding long-term operation, maintenance, and monitoring (unless NDEQ grants an extension)

Under RAPMA, an applicant may unilaterally terminate a voluntary remedial action plan approved by NDEQ prior to completion of investigative and remedial activities if the applicant leaves the property in no worse condition, from a human health and environment perspective, than when they initiated voluntary remedial actions and NDEQ is reimbursed for all outstanding costs.

1.7 GENERAL COMMENTS ON VCP GUIDANCE

Please note that the specific guidance contained herein under Sections 2.0 and 3.0 has been written for a “typical” facility or property where both soil and groundwater contamination exists. It is possible that some of the information requested within the guidance may not apply to a specific site. Where requested information does not apply, it is not necessary to collect this information. However, if such information is not collected, it should be noted in the appropriate report provided to NDEQ why the information was not collected. It is the responsibility of each applicant to determine which parts of the guidance are applicable and which parts are not.

NDEQ would also like to emphasize that the level of effort for conducting a complete investigation is not based on future land use. That is, even if the site land use was, and will remain as commercial or industrial use, ***the extent of soil, groundwater, and/or soil gas contamination must still be defined to the most conservative remediation goals***, as specified below, using the Remediation Goals Lookup Tables found in Attachment 2-6. Specifically:

- The extent of soil contamination should be defined to the remediation goals for the residential direct contact exposure pathway or the migration to groundwater pathway, whichever is less
- The extent of groundwater contamination should be defined to the remediation goals for the groundwater direct contact exposure pathway or the residential groundwater vapor intrusion exposure pathway, whichever is less
- The extent of soil gas contamination should be defined to the remediation goals for the residential soil gas vapor intrusion exposure pathway

The intent of the VCP guidance is to provide a process or “framework” for conducting a site investigation. Sites will vary considerably in respect to property size, historical uses, extent and degree of contamination, geology, etc. Therefore, the guidance cannot provide specific details or particulars on such investigative concerns as the number and location of analytical samples, specific sampling and analysis methods (with an exception made for potential chromium contamination, as provided in the information box below), determination of appropriate chemicals of concern, etc. Such determinations will need to be made by the applicant and their contractor based on their professional judgment.

Any VCP site entering the program for which the metal chromium may be considered a potential contaminant of concern (such as a former metal plating facility) should plan on conducting valance-specific (i.e., chromium III and chromium VI) media sampling in characterizing the site.

A primary focus of the Nebraska VCP is to provide an applicant with options in determining remedial action objectives and remediation goals that are appropriate for their site. Towards that end, the NDEQ

has developed a protocol that utilizes a three-tiered approach to establish or select specific remediation goals for a site. This tiered approach is discussed in detail in Appendix A, *Protocol for VCP Remediation Goals Lookup Tables*, Section 3.0. The NDEQ recommends that applicants familiarize themselves with this protocol prior to preparing the Remedial Action Work Plan.

Lastly, NDEQ wishes to note that the information requested within this guidance document is presented as **guidance**, and are not requirements promulgated under state statute or regulation. As such, the applicant is not required to strictly follow the framework provided in the guidance. However, the applicant's project will progress more quickly if the guidance is followed. Following the guidance, as well as complying with all federal and state regulations, will provide protection to eligible response sites from federal enforcement in EPA-approved state VCPs upon successful completion of voluntary cleanup activities.

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