



Maryland
Department of
the Environment

FACTS ABOUT: **Voluntary Cleanup Program Determinations**

The Voluntary Cleanup Program (VCP) issues either a No Further Requirements Determination (NFRD) or a Certificate of Completion (COC) at the end of the VCP process.

The VCP issues a NFRD to a participant for an eligible property if the data provided in the VCP application package demonstrates that there is no unacceptable risk to exposed populations based on current conditions at the property.

For properties where the presence of hazardous substances and/or oil require the implementation of a Response Action Plan (RAP), the Department issues the COC upon request by the participant accompanied by a RAP completion report. If the Department determines that the requirements of the approved RAP have not been completed to its satisfaction, the Department may exercise its discretion and not issue the COC for the property. This decision may be based on a lack of adequate documentation, completion of activities or remedies that are not in accordance with the approved RAP, or due to a failure to achieve the applicable cleanup criteria. If the Department determines that in using its discretion it cannot issue a COC or NFRD, the Department may choose to issue a No Further Action letter with an environmental covenant for the property which must be recorded in land records of the local jurisdiction in lieu of an NFRD or COC. The Department may also use its discretion to alter proposed land use controls to be more protective of human health and the environment and address discrepancies in the RAP implementation. A requirement for long-term monitoring and maintenance in an approved RAP may not delay the issuance of a COC.

The issuance of the NFRD or COC is based on the information provided in the VCP application form, specifically the property name, address, acreage, and participant name and contact person. The applicants should ensure that the information on the application is correct and up-to-date prior to issuance of the NFRD or COC.

Once an NFRD or COC is issued for a property, the VCP application is considered archived and is no longer active. Any subsequent application for a property issued a NFRD or COC will require the applicant submit a new VCP application, including \$6,000 fee and meet all VCP application requirements.

The Determination Document

The NFRD or COC will describe liability protections and limitations, conditions for reopeners, land use controls, and institutional controls for the property. NFRDs and COCs that include a land use or institutional control will require recordation of a Uniform Environmental Covenant (UEC) as a part of the determination issued by the Department.



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Land Use and Institutional Controls

Examples of the most frequently issued land use controls are included below. The Department drafts specific language for each site taking into consideration the site-specific conditions, implementation of the RAP, and future use of the property.

- A. **Requirement for an Environmental Covenant:** Participant shall execute and record an environmental covenant within the land records within 30 days of issuance of this No Further Requirements Determination (or Certificate of Completion).
- B. **Groundwater Use:** There shall be no use of the groundwater beneath this property for any purpose.
- C. **Groundwater Use Restricted to Specific Aquifer, Water Appropriation Permit or Well:** There shall be no use of the groundwater beneath this property for any purpose except the non-potable use of groundwater from permitted well #XX-XX-XXXX withdrawn in accordance with Water Appropriation Permit #XXXXXXXXXX.
- D. **Excavation Encountering Groundwater:** When conducting any excavation activities on the property extending to the groundwater table, the property owner shall implement the requirements of a site-specific health and safety plan to ensure that worker protection measures are met.

The encountered groundwater shall be containerized during all dewatering activities at the property and shall be analyzed before disposal. The analytical results shall be the basis for appropriate disposition of the groundwater in accordance with applicable local, State and federal laws and regulations.

- E. **Long-Term Monitoring of Groundwater:** The property owner shall maintain compliance with the long-term monitoring of groundwater in Section X of the approved RAP, dated XXXX.
- F. **Soil Excavation and Disposal:** The property owner shall submit written notification, to the attention of the Chief, State Assessment and Remediation Division, at least 30 days prior to any planned future excavation or intrusive landscaping activities on the property. When conducting any planned excavation or intrusive landscaping activities, appropriate dust control measures and air monitoring shall be performed in accordance with a site-specific health and safety plan to ensure that all worker protection requirements are met. In the event of an unplanned emergency excavation on the property, the property owner shall verbally or electronically notify the Department within 24 hours following initiation of the emergency excavation activities. Within ten days following completion of an unplanned emergency excavation, the property owner shall file a detailed written report with the Department.

All excavated soil at the property shall be analyzed before disposal and the analytical results shall be the basis for appropriate disposition of the material in accordance with



applicable local, State, and federal laws and regulations. No excavated material shall be transferred to a property other than a disposal facility without appropriate sampling of the specific material proposed to be moved and prior approval of the Department. Copies of the analytical results collected from the excavated soil and records of all soil disposal locations shall be maintained by the property owner and available upon request.

- G. Future Construction – Single Family Dwellings:** The property shall not be used for fee-simple residential lots designed to contain single-family dwellings with private yards or open spaces. This restriction may be removed if the current or future property owner, or designated agent, submits a written work plan for the collection of confirmatory soil samples and/or additional vapor samples to the attention of the Chief, State Assessment and Remediation Division, Land and Materials Administration, Maryland Department of the Environment, at least sixty (60) days prior to any planned construction of fee-simple residential lots designed to contain single-family dwellings with private yards or open spaces. The submitted work plan must include the collection of soil and/or vapor samples from each individual residential lot and private yard, and all analytical results from the confirmatory samples must demonstrate contaminants do not exceed the Department’s established residential cleanup standards. (updated 8/13/2018)
- H. Maintenance of Sealant and Caulking Applied to Concrete Floor:** At all times the property owner shall maintain the integrity of the sealant and caulking compound applied to the floor and all joints and cracks in all buildings to prevent the entry of intrusive organic vapors to the indoor air from contaminated soil beneath the building. The property owner shall maintain written records documenting all maintenance of the concrete floor sealant and caulking in this area.
- I. Concrete Slabs:** The property owner shall maintain the integrity of concrete slabs of the buildings on the property. At a minimum, the property owner shall maintain records of the results of annual inspections of the concrete slabs conducted within the first 90 days of each calendar year and have the records available upon request by the Department. All deficiencies noted during each annual inspection shall be corrected within 30 days thereafter and so documented in the maintenance records.
- J. Asphalt or Concrete Cap Maintenance Restriction:** The property owner shall maintain the integrity of the building slabs and all asphalt and concrete parking areas at all times to prevent any exposure to contaminated soil by any person on the property at any time. The Department shall be notified within ten (10) business days after discovery of any needed repairs to the building slabs or asphalt and concrete parking areas. To evaluate adequacy of the asphalt, the “Asphalt Maintenance Guide” provided as Exhibit X, shall be used to evaluate the asphalt parking areas and conduct the specified maintenance activity. The property owner shall maintain written records documenting all maintenance of the building slabs and asphalt parking areas. All necessary repairs to the building slabs or asphalt parking areas on the property shall be completed within five (5) business days of discovery of the needed repairs.



- K. Landscape and/or Soil Cap Maintenance Restriction:** The property owner shall maintain the integrity of all soil caps and/or landscape caps at all times to prevent any exposure to contaminated soil by any person on the property at any time. The Department shall be notified within ten (10) business days after discovery of any needed repairs to the soil caps and/or landscape caps. To evaluate adequacy of the soil caps and/or landscape caps, the “Landscape Cap Maintenance Guide” provided as Exhibit X, shall be used to evaluate the soil caps and/or landscape caps and conduct the specified maintenance activity. The property owner shall maintain written records documenting all maintenance of the soil caps and/or landscape cap areas. All necessary repairs to the soil caps and/or landscape cap areas on the property shall be completed within five (5) business days of discovery of the needed repairs.
- L. Health and Safety Plan:** Prior to conducting any excavation activities at the property, a site specific Health and Safety Plan for all personnel will be developed, implemented, and maintained on-site. The Health and Safety Plan must include appropriate dust control measures and air monitoring to ensure that all worker protection requirements are met. All personnel will be made aware of the Health and Safety Plan.
- M. Venting System and Concrete Slab:** The property owner shall maintain the integrity of the passive venting system and concrete slabs under all buildings on the property. At a minimum, the property owner shall maintain records of the results of annual inspections of the venting system and concrete slabs conducted within the first 90 days of each calendar year and have the records available upon request by the Department. All deficiencies noted during each annual inspection shall be corrected within 30 days thereafter and so documented in the maintenance records.
- N. Sub-slab Depressurization System:** The property owner shall maintain the sub-slab depressurization system in the building on the property to address the vapor intrusion to indoor air pathway. At a minimum, during the continued operation of the sub-slab depressurization system, the property owner shall maintain records of the results of quarterly inspections of the system, as set forth in Section X of the approved RAP, dated XXXX, and have the records available upon request by the Department.
- O. Heating, Ventilation, and Air Conditioning (HVAC) System:** The property owner shall continue to operate and maintain the HVAC system within the building such that the cancer risk for indoor air is below 1×10^{-5} . At a minimum, the property owner shall maintain records of periodic inspections and have the records available upon request by the Department.
- P. Vapor Barrier:** The design and construction of all new buildings on the property shall include a vapor barrier or other effective measure that will protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. Prior to any occupancy of any new building constructed on the property, the applicant must conduct indoor air monitoring, verifying the effectiveness of the vapor barrier or other effective measure, and submit the monitoring results to the Department within 5 days of receipt.



- Q. Long-term Monitoring and Post-treatment Sampling of Indoor Air:** During the continued operation of the sub-slab depressurization system, the property owner shall maintain compliance with the long-term monitoring of indoor air of Section X of the approved RAP, dated XXXX.

In the event that operation of the sub-slab depressurization system is discontinued, the property owner shall maintain compliance with the post-treatment indoor air sampling protocol of Section XX of the approved RAP, dated January 1, 2016.

- R. Sub-Slab Depressurization System:** The property owner shall maintain continuous operation of the sub-slab depressurization systems installed at the property beneath the tenant space located at Street Address, to address the vapor intrusion to indoor air pathway such that the cancer risk for indoor air is below 1×10^{-5} . The property owner shall maintain records of the monthly periodic inspections of the sub-slab depressurization system, as set forth in Section XX of the approved RAP, dated XXXX, and have the records available for review upon request by the Department.

In the event that any of the sub-slab depressurization systems fails or ceases to operate, the Department will be notified within 48 hours of discovery and the contingency measures set forth in Section XX of the approved RAP dated XXXX, will be implemented.

- S. Specific Tenant Space (Operating Drycleaner):** At least 60 days prior to any occupancy change of the tenant space located at Street Address to any non-dry cleaning business or operation, the property owner shall demonstrate compliance with all occupancy change requirements set forth in Section X of the approved RAP dated XXXX. The property owner shall submit written verification to the Department, including all laboratory data sheets from the indoor air monitoring events conducted within the previous 60 days, showing that the sub-slab depressurization system is in working order and that individual concentrations of chlorinated solvents, as well as the sum of the concentrations of chlorinated solvents, in the indoor air do not exceed a cancer risk of 1×10^{-5} and/or a hazard index of 1.0 for all chlorinated solvents.

- T. Future Construction:** The design and construction of all new buildings on the property shall include the installation of a sub-slab depressurization system, or other effective measure, that will protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. Prior to any occupancy of any new building constructed on the property, the property owner must conduct indoor air monitoring, verifying the effectiveness of the sub-slab depressurization system or other effective measure, and submit the monitoring results to the Department within 5 days of receipt.

- U. Long-term or Post-treatment Monitoring (Groundwater, Soil Gas, or Indoor Air):** If the issued COC is conditioned on the completion of long-term monitoring requirements, the participant or subsequent property owner will be responsible for the completion of these long-term monitoring activities.



In the event that action levels or other evaluation criteria established in the approved RAP are triggered, the participant or subsequent property owner will be responsible for implementing appropriate measures to remedy the situation, including implementation of any contingency plan contained in the approved RAP. The participant or subsequent property owner will also be responsible for the completion of these corrective actions. The Department may issue an invoice for personnel time spent reviewing and overseeing requirements of long-term monitoring.

If wells or monitoring points required for long-term and/or post-treatment monitoring are damaged or destroyed, the Department will require replacement in order to complete the monitoring requirements.

Immediate Actions Required by Participant:

Upon receipt of the NFRD or COC, the Participant is required to complete three actions:

- 1. Recording in the Land Records:** If the NFRD or COC issued for the eligible property is conditioned on the permissible use of the property, the participant shall record the NFRD or COC in the land records of the local jurisdiction within 30 days after receipt of the NFRD or COC. This requirement applies to each participant that receives a determination. The VCP recommends that participants who do not own or intend to purchase the property ensure that the current property owner is amenable to recording the NFRD or COC on the property prior to applying to the VCP. The NFRD or COC must be recorded as a Declaration that states the these documents are covenant running with the land and that the terms and conditions shall be binding on the property.

Failure by the participant to record the NFRD or COC within 30 days shall render the determination void. If the NFRD or COC becomes void due to failure to record the document, the applicant may request that the VCP reissue the determination for recording purposes.

If the recording process for the issued NFRD or COC is not completed within six months, the determination may not be reissued without reapplying, which may include submission of a current Phase I ESA for the property documenting that no changes have occurred since submission of the RAP completion report.

- 2. One-Call System:** If the NFRD or COC is conditioned on permissible use of the property, the participant shall send a copy of the NFRD or COC to a one-call system, as defined in Section 12-101 of the Public Utility Companies Article, Annotated Code of Maryland, within 30 days of receipt of the NFRD or COC.
- 3. Certification:** Each NFRD or COC is accompanied by a certification from the Department that the participant has read and understands the NFRD or COC including



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the land use and institutional controls. This document should be signed and returned to the Department within 10 days.

- 4. Recording Environmental Covenant:** If the NFRD or COC is conditioned on land use or institutional controls, a Department-approved Environmental Covenant shall be recorded concurrently with the NFRD or COC.

Fees Associated with Issuance of the Determination:

If the NFRD or COC is conditioned on permissible use of the property, the participant shall pay the Department a fee of \$2,000 upon issuance of the determination. If a participant withdraws after issuance of the NFRD or COC but prior to recording the document, an invoice for the above fee will still be issued.

If a participant files a request to alter a record of determination (i.e. remove a land use control) in the land records for an eligible property with conditions in accordance with Section 7-514(d) of the Environment Article, the participant shall pay the Department a fee of \$2,000. This fee also applies if a participant requests a change in the language of land use requirements after issuance of the NFRD or COC.

Long-term Actions required by Property Owner/Responsible Parties:

For properties issued a determination with land use or institutional controls, it is the responsibility of the property owner and holder of the Environmental Covenant to ensure that the land use controls are being met. In certain cases, the responsibility for the land use controls may be to a homeowners association, condominium association, or tenant. In such cases, the NFRD or COC will clearly state the entity with responsibility and it is the responsibility of the participant to ensure that the third party has been fully notified of the exact requirements that are the responsibility of that party. The VCP recommends that the participant keep copies of the notification and acknowledgement response as a part of their records.

It is the participant's (and any future property owner's) responsibility to notify the Department 5 days prior to any property transfer and include in that notification a contact person for the new entity responsible for the institutional controls. If the participant wishes to transfer the NFRD or COC to a new property owner, a transfer affidavit is available from the Department upon request.

Once a COC or NFRD is issued, the VCP considers the site archived and VCP involvement completed. Therefore, all post-issuance institutional controls that require review of data or work plans (e.g. long term monitoring, work plans for future construction or excavation, etc.), will be handled under the CHS Enforcement Division and subject to cost-recovery. The Department reserves the right to determine whether the required oversight is small enough to waive the fees. The Department may also address any re-openers under the CHS Enforcement Division. Reopeners by the Department may be required due to new or exacerbated contamination,



undiscovered contamination, imminent and substantial endangerment, or fraud/material representation.

The Department shall conduct periodic inspections of closed sites to ensure that all COC and NFRD requirements are continuing to be met. As a part of these inspections, the Department may request the inspection and maintenance records required in the NFRD or COC be provided. If these cannot be provided or the conditions of the NFRD or COC have not been met, the determination may be void or the property subject to an administrative order and penalty.



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