



**Maryland**  
Department of  
the Environment

## **FACTS ABOUT:** Voluntary Cleanup Program Inculpable & Responsible Person Status

The Voluntary Cleanup Program (VCP) defines two types of persons with respect to liability for site contamination: responsible persons and inculpable persons (See Sections 7-201 and 7-501 of the Environment Article, Annotated Code of Maryland). This fact sheet describes a responsible person and inculpable person, as well as the distinctions between the liability protections of the two categories.

When the VCP receives an application, it notifies the applicant in writing within 45 days of receipt of a complete application package whether the applicant's status is approved as a responsible or inculpable person. The applicant's status is confirmed in the acceptance letter approving the applicant and property for participation in the VCP.

The Department will provide expedited inculpable person approval within five business days of receipt of : 1) a written request; 2) a \$2,000 fee; and 3) an executed inculpable person status affidavit. Expedited inculpable person approval will expire if the application and fees are not filed within six months of approval. Please note that if an entity purchases the property and does not comply with the requirement to submit the VCP application within six months, the entity will lose inculpable person status and will be considered a responsible person in the event that they apply to the VCP.

### **Responsible Person (RP)**

A responsible person means a person who is the owner or operator of a site contaminated by a controlled hazardous substance (CHS). Those responsible for the cleanup of hazardous substances are property owners, operators, generators, and transporters of the CHS. Section 7-201(t) of the Environment Article, Annotated Code of Maryland, provides a complete description of responsible persons, including a list of exceptions. VCP applicants qualifying for an exception listed in Section 7-201(t)(2) of the Environment Article are considered inculpable persons.

Responsible persons who successfully complete the VCP process gain limited liability protection. This includes protection against State enforcement actions at the eligible property, release from further liability for the remediation of contamination identified in the environmental investigations, and protection against contribution actions instituted by other responsible persons (Environment Article 7-506(e)(3); 7-513(b)).

### **Inculpable Person (IP)**

An inculpable person, as defined in Section 7-501(j) of the Environment Article, means a



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person who, at the time of application for participation in the VCP, has no prior or current ownership interest in an eligible property and has not caused or contributed to contamination at the eligible property.

Inculpable person also includes a successor in interest in an eligible property acquired from an inculpable person, if the successor in interest does not have a prior ownership interest in the eligible property and, other than by virtue of ownership of the eligible property, is not otherwise a responsible person at the eligible property. The participant and any successors in interest in a property subject to a COC shall continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any successors in interest did not cause or contribute to the violation.

An inculpable person also includes a person, notwithstanding their current ownership in the property, who is not considered a responsible person under Section 7-201(t)(2) of the Environment Article.

Once the Department designates a participant as an inculpable person, the person is not liable for existing contamination identified in the submitted application at the site. The inculpable person is only liable for new contamination or the exacerbation of the existing contamination (Environment Article 7-505). The inculpable person, although not liable for existing contamination identified in the submitted application, may be required to prepare a RAP to address environmental conditions at a property.

It is important to note that if an inculpable person elects to withdraw from the VCP, the law requires that the inculpable person secure and stabilize the property to the satisfaction of the Department in order to protect human health and the environment. The Department may require the inculpable person to secure or stabilize the property upon withdrawal of the application during any phase of the application process.

### **Lender Liability Provisions**

Sections 7-201(t)(2)(iv) through (x) of the Environment Article, Annotated Code of Maryland, describe the liability protections available to lenders, such as secured creditors, fiduciaries, and persons who hold title to a property to protect a security interest and are not considered responsible for site contamination. The following are not considered responsible persons:

- A person who holds indicia of ownership to protect a security interest in the property;
- A person who holds a mortgage or deed of trust to protect a security interest in the property;
- A fiduciary who has legal title to a site as trustee or administrator of an estate;
- A holder of a mortgage or deed of trust who forecloses on property;



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- A holder of a mortgage or deed of trust who acquires title to a property in the VCP subject to a written agreement in accordance with the VCP; or
- A lender who extends credit for removal or remedial actions.

A lender who takes action to protect or preserve a mortgage or deed of trust on a site or a security interest in property located on a site by stabilizing, containing, removing or preventing the release of a hazardous substance is not a responsible person if the lender provides advance written notice to Department.

In addition to the protections already provided to mortgage or deed of trust holders, or anyone who held title to protect a security interest, these exceptions specifically protect a mortgage holder who acquires title to a property in the VCP, and lenders who extend credit to finance a cleanup, or who do the cleanup themselves as long as they work with Department. The new exceptions specifically apply to lenders who may be involved with a project in the VCP, or who are otherwise working with Department on a cleanup of a contaminated property.

A separate section was added to the VCP law in 1997 to further limit lender liability if the lender caused contamination during a cleanup (Section 7-201(t)(3)). This section provides that a lender taking action to protect or preserve a mortgage or deed of trust or security interest and causes or contributes to a release of a hazardous substance will only be responsible for costs incurred as a result of the release to which the lender caused or contributed, unless the lender was otherwise a responsible person.

### **Liability Provisions for Government Entities**

A State, county, or municipal government or other political subdivision of the State that owns a property or operates on a property is subject to similar liability protection as an inculpable person except in the case of gross negligence or willful misconduct (Section 7-201(t)(2)(vii)).

### **Liability Provisions for Heirs and Contiguous Property Owners**

If a person acquires a property contaminated by CHS by inheritance or bequest of the transferor, that person is not a responsible person (Section 7-201(t)(2)(ii)).

If a person owns property that is contaminated solely by a contiguous property, that person is excluded from the definition of responsible person provided that: 1) the person does not own the contiguous or otherwise similarly situated real property; 2) the person's real property is, or may be, contaminated by a release or threatened release of hazardous substance from the contiguous or otherwise similarly situated property; and 3) the person could establish that all requirements in Section 107(q) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) have been met (Environment Article 7-201(t)(7)).



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### **Innocent Purchaser**

An inculpable person designation includes a person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance, the person did not know and had no reason to know that any hazardous substance was disposed on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with Section 101(35)(B) of the federal act [All Appropriate Inquiry (AAI)], and that the person satisfied the requirements of Section 107(b)(3)(a) of the federal act. AAI 107(b)(3)(a) is third party defense. Any documentation submitted to MDE in support of the innocent purchaser defense must show that all points of AAI and the American Society of Testing and Materials (ASTM) were met.

### **Liability Protections**

The Maryland law defining liability provisions can be found in Title 7 (Sections 7-201 and 7-501) of the Environment Article, Annotated Code of Maryland.

### **Tort Liability**

The VCP law specifically states that it does not provide any liability protection against tort (personal injury) claims (Section 7-516(b)). The risks associated with tort liability may be addressed through commercially available insurance protection.



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