



# COMPLIANCE GUIDE FOR DRAFT PROPOSED VOLUNTARY CLEANUP PROGRAM REGULATIONS

## Clean and Renewable Energy Fee Waiver

This compliance guide for the Draft Proposed Voluntary Cleanup Program (VCP) Clean and Renewable Energy Generation Fee Waiver regulations provides a clear and concise explanation of how small business VCP applicants may comply with the draft proposed regulatory changes. This compliance guide is for informational purposes and should not be construed as legal advice. If the draft proposed regulations are adopted, affected small businesses should consult the Environment Article, Annotated Code of Maryland and the Code of Maryland Regulations (COMAR), or consult legal counsel. This document is subject to change if the draft proposed regulations are substantively changed during the regulatory proposal process.

## Summary of the Draft Proposed Regulations

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The draft proposed regulations would adopt a new subtitle, COMAR 26.28 Voluntary Cleanup Program, and two new chapters within that subtitle. The first chapter, COMAR 26.28.01 General, establishes the purpose and definitions for the subtitle. The second chapter, COMAR 26.28.02 Clean and Renewable Energy Generation Fee Waiver, establishes the criteria and process for a VCP applicant to certify their intention to use an eligible property to generate clean or renewable energy, qualifying the applicant for a VCP application fee waiver.

The VCP, administered by the Maryland Department of the Environment (MDE), was created by legislation in 1997 for the purpose of encouraging the investigation, cleanup, and redevelopment of eligible properties with known or perceived controlled hazardous substance contamination. Requirements for the program can be found in Environment Article, §§7-501—7-516, Annotated Code of Maryland. Existing law lays out an application process for the VCP, including application fees.

In 2020, legislation passed, waiving application fees for participation in the VCP for projects that involve the generation of clean or renewable energy (Chapter 544, Acts of 2020). Specifically, the legislation requires MDE to:

1. Waive VCP application fees for an applicant that certifies their intent to use an eligible property to generate clean or renewable energy; and
2. Adopt regulations that establish the criteria for determining whether a VCP applicant has certified their intent to use the eligible property to generate clean or renewable energy.

The draft proposed regulations implement this legislation.

## Who is Affected by the Draft Proposed Regulations

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The draft proposal affects a person who applies to the VCP for an eligible property that they intend to use to generate at least 2 megawatts per year of clean or renewable energy.



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#### Fees Subject to the Clean and Renewable Energy Generation Waiver

The following VCP application fees are subject to the clean and renewable energy fee waiver:

1. An initial application fee of \$6,000;
2. An application fee of \$2,000 for each application submitted subsequent to the initial application for the same property; and
3. An application fee of \$2,000 for each application that is submitted subsequent to the initial application for a contiguous or adjacent property that is part of the same planned unit development or a similar development plan.

The following fees related to VCP participation are not eligible for the clean and renewable energy fee waiver:

1. A fee of \$2,000 to request an expedited determination of inculpable person status;
2. A fee of \$2,000 if MDE issues a No Further Requirements Determination (NFRD) to a participant conditioned on certain uses of an eligible property or on the maintenance of certain conditions;
3. A fee of \$2,000 if MDE issues a Certificate of Completion (COC) to a participant conditioned on the permissible use of an eligible property; and
4. A fee of \$2,000 to request the alteration of records of certain NFRDs or COCs that have been recorded in the land records of the local jurisdiction.

#### Eligibility and Application Requirements

In order for a VCP applicant to be eligible for the clean and renewable energy fee waiver, the applicant's intended use of the property must have an anticipated yearly clean or renewable energy output of at least 2 megawatts per year. "Clean energy" and "renewable energy" are defined in the draft proposal.

Additionally, a VCP applicant must submit a Clean or Renewable Energy Certification form to MDE with the VCP application. The Certification must contain information about the project, including the type of clean or renewable energy, the anticipated yearly energy output, the construction schedule for the clean and renewable energy installation, and the anticipated date that energy generation will begin. The applicant must sign and notarize the form and submit it to MDE. If MDE determines that the Clean or Renewable Energy Certification form is incomplete or that the property is not eligible for a fee waiver, MDE will notify the applicant. If an applicant is ineligible for the fee waiver, the applicant must either pay the application fee or resubmit a Clean or Renewable Energy Certification form demonstrating that the applicant is eligible for the waiver.



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## Verification Requirements

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A VCP participant who submits the Clean or Renewable Energy Certification and whose fee is waived must later verify to MDE that the project was completed in accordance with the Certification. Specifically, within 5 years after the VCP participant completes the VCP and is issued a NFRD or COC, the participant must submit to MDE verification that the eligible property is generating clean or renewable energy as described in the Certification. The verification must include the current yearly energy output. An extension of the 5-year deadline may be approved after a written justification is submitted to MDE by the participant with evidence that the delay was due to circumstances outside of the participant's control.

In certain situations listed in the draft proposed regulations, a VCP applicant or participant who initially received a fee waiver will be required to pay the application fee. For example, the application fee must be paid if the VCP application is denied or withdrawn, the application or Clean or Renewable Energy Certification contained false or inaccurate information, the participant is withdrawn from the program, or the participant fails to submit a timely verification that the project is generating at least 2 megawatts per year of clean or renewable energy.

## Comments

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Comments may be submitted via mail, telephone, email, or fax to:

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If submitting a written comment, please include "VCP Clean and Renewable Energy Fee Waiver" in the subject line. Public comments on the draft proposed regulations will be accepted until **August 17, 2021**. Additional public comments will be accepted by MDE during the mandatory 30-day public comment period required by law for each newly proposed regulation, which begins once a proposed regulation is published in the *Maryland Register*.