

# Title 26

## DEPARTMENT OF THE ENVIRONMENT

### *Subtitle 28 Voluntary Cleanup Program*

#### **26.28.01 General**

*Authority: Environment Article, §§7-501 and 7-502, Annotated Code of Maryland*

##### **.01 Purpose.**

A. *Established under Environment Article, Title 7, Subtitle 5, Annotated Code of Maryland, the purpose of the Voluntary Cleanup Program is to:*

- (1) *Encourage the investigation of eligible properties with known or perceived contamination;*
- (2) *Protect public health and the environment where cleanup projects are being performed or need to be performed;*
- (3) *Accelerate cleanup of eligible properties; and*
- (4) *Provide predictability and finality to the cleanup of eligible properties.*

B. *The provisions of this subtitle establish the requirements for an applicant or participant of the Voluntary Cleanup Program.*

##### **.02 Definitions.**

A. *In this subtitle, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *“Active enforcement” means after the Department has issued a notice of violation, order, consent order, or enforcement action other than a site complaint and until completion of activities required by that action.*

(2) *“Applicant” means a person who applies to participate in the Voluntary Cleanup Program.*

(3) *“Certificate of Completion” means a written determination issued to a participant by the Department that meets the requirements described under Environment Article, §7-513, Annotated Code of Maryland.*

(4) *“Clean energy” means:*

(a) *Solar photovoltaic technology;*

(b) *Solar heating;*

(c) *Geothermal;*

(d) *Wind;*

(e) *Biofuels;*

(f) *Ethanol;*

(g) *Other qualifying biomass as defined in Public Utilities Article, §7-701(1), Annotated Code of Maryland;*

(h) *The ocean, including energy from waves, tides, currents, and thermal differences;*

(i) *A fuel cell that produces energy from biofuels, ethanol, or other qualifying biomass;*

(j) *Energy efficiency and conservation; and*

(k) *Any other technology or service that the Maryland Energy Administration determines will contribute directly or indirectly to the production of energy from renewable or sustainable sources, or to the improvement of efficiency in the use of energy.*

(5) *“Contamination” means a release, discharge, or threatened release of:*

(a) *A controlled hazardous substance, as defined in Environment Article, §7-201(b), Annotated Code of Maryland; or*

(b) *Oil, as defined in Environment Article, §4-401(h), Annotated Code of Maryland.*

(6) *“Department” means the Maryland Department of the Environment.*

(7) *“Eligible applicant” has the meaning stated in Environment Article, §7-501(f), Annotated Code of Maryland.*

(8) *“Eligible property” has the meaning stated in Environment Article, §7-501(g), Annotated Code of Maryland.*

(9) *“Federal act” has the meaning stated in Environment Article, §7-201(j), Annotated Code of Maryland.*

(10) *“Hazardous substance” means a substance:*

(a) *Defined as a hazardous substance under §101(14) of the federal act; or*

(b) *Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.*

(11) *“Inculpable person” has the meaning stated under Environment Article, §7-501(j), Annotated Code of Maryland.*

(12) *“No Further Requirements Determination” means a written determination issued by the Department that meets the requirements described under Environment Article, §7-506, Annotated Code of Maryland.*

(13) *“Participant” means an applicant accepted into the Voluntary Cleanup Program.*

(14) *“Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.*

(15) "Program" means the Voluntary Cleanup Program established under Environment Article, Title 7, Subtitle 5, Annotated Code of Maryland.

(16) "Renewable energy" means energy generated from a:

(a) A Tier 1 renewable source as defined under Public Utilities Article, §7-701(s), Annotated Code of Maryland; and

(b) A Tier 2 renewable source as defined under Public Utilities Article, §7-701(t), Annotated Code of Maryland.

(17) "Responsible person" has the meaning stated under Environment Article, §7-201(t), Annotated Code of Maryland.

## **26.28.02 Clean and Renewable Energy Generation Fee Waiver**

Authority: Environment Article, §§7-502, 7-506 and 7-506.1, Annotated Code of Maryland

### **.01 Fees.**

A. *Nonrefundable Application Fees.* To participate in the Program, an eligible applicant shall:

(1) Complete and submit an application on a form provided by the Department that includes the information required under Environment Article, §7-506(a)(1)(i), Annotated Code of Maryland; and

(2) Except as provided under §D of this regulation, pay to the Department:

(a) An initial application fee of \$6,000;

(b) An application fee of \$2,000 for each application submitted subsequent to the initial application for the same property; and

(c) 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.

B. *Fees for Expedited Determination of Inculpable Person Status.* A person that wishes to request an expedited determination of the person's status as an inculpable person shall pay to the Department a fee of \$2,000 upon submission of a written request to the Department for an expedited determination of inculpable person status.

C. *Additional Fees.*

(1) If the Department issues a No Further Requirements Determination to a participant conditioned on certain uses of an eligible property or on the maintenance of certain conditions, the participant shall pay to the Department a fee of \$2,000.

(2) If the Department issues a Certificate of Completion to a participant conditioned on the permissible use of an eligible property, the participant shall pay to the Department a fee of \$2,000.

(3) A participant shall pay a fee of \$2,000 upon submission of a request to alter a record of:

(a) A No Further Requirement Determination conditioned on certain uses of an eligible property or on the maintenance of certain conditions that has been recorded in the land records of the local jurisdiction; or

(b) A Certificate of Completion conditioned on the permissible use of the eligible property that has been recorded in the land records of the local jurisdiction.

D. *Waiver of Certain Fees.* The Department shall waive the application fees required under §A(2) of this regulation if the applicant certifies that the applicant intends to use the eligible property to generate clean or renewable energy in accordance with Regulation .02 of this chapter.

### **.02 Clean or Renewable Energy Certification – Eligibility and Application Requirements.**

A. *Eligibility.* An applicant to the Program is eligible for the fee waiver provided under Regulation .01D of this chapter if:

(1) The intended use for clean or renewable energy has an anticipated yearly energy output of at least 2 megawatts; and

(2) The applicant completes the certification requirements under §§B–D of this regulation.

B. An applicant shall submit with its Program application a Clean or Renewable Energy Certification on a form provided by the Department.

C. The Clean or Renewable Energy Certification shall include:

(1) The type of clean energy or renewable energy to be generated at the eligible property;

(2) The anticipated yearly energy output in kilowatts;

(3) The construction schedule for the clean or renewable energy installation; and

(4) The anticipated date energy generation will begin.

D. Upon completion of the Clean or Renewable Energy Certification form, the applicant shall:

(1) Sign, date and notarize the form, attesting that all information provided in the form is correct; and

(2) Submit the form to the Program with the application for the eligible property.

E. If the Department determines that the Clean or Renewable Energy Certification form is incomplete or that the eligible property is not eligible for a fee waiver:

(1) The Department shall notify the applicant; and

(2) Before the applicant may be accepted into the Program, the applicant shall either:

(a) Pay the application fee required under Regulation .01A(2) of this chapter; or

*(b) Resubmit a complete Clean or Renewable Energy Certification form demonstrating that the applicant is eligible for a fee waiver.*

**.03. Clean or Renewable Energy Certification - Verification.**

*A. Not later than 5 years from the date that a Program participant whose application fee was waived is issued a No Further Requirements Determination or a Certificate of Completion, a participant shall submit to the Department verification that the eligible property is generating clean or renewable energy as described in a Clean or Renewable Energy Certification in accordance with this regulation.*

*B. The verification required under §A of this regulation shall include the current yearly energy output from clean and renewable energy.*

*C. Upon written request by a Program participant, the Department may issue an extension of the deadline to submit the verification required under §A of this regulation if the participant demonstrates, to the satisfaction of the Department, that the commencement of energy generation at the eligible property as described in the participant's Clean or Renewable Energy Certification is delayed beyond 5 years from the date of the No Further Requirements Determination or Certificate of Completion due to circumstances outside of the participant's control.*

**.04 Clean or Renewable Energy Certification – Payment of Previously Waived Application Fee.**

*A Program applicant or participant who submitted a Clean or Renewable Energy Certification and whose application fee was initially waived shall pay the application fee required under Regulation .01A(2) of this chapter if:*

*A. The Department denies the applicant's application to participate in the Program in accordance with Environment Article, §7-506(f), Annotated Code of Maryland;*

*B. The applicant withdraws their application to participate in the Program in accordance with Environment Article, §7-506(g), Annotated Code of Maryland;*

*C. The Department determines the applicant submitted false or inaccurate information in the Clean or Renewable Energy Certification form or the Program application;*

*D. The participant is withdrawn from the Program in accordance with Environment Article, §7-512, Annotated Code of Maryland;*

*E. Any permit or certificate necessary to construct the clean or renewable energy project at the eligible property is denied by the Department or the Public Service Commission and any opportunity for appealing the denial has passed;*

*F. The applicant or participant of the eligible property subject to the approved clean or renewable energy project wants to revise or change the clean or renewable energy project, and the change or revision no longer complies with the provisions in Regulation .02 of this chapter; or*

*G. The participant fails to timely submit the verification required under Regulation .03 of this chapter, demonstrating that the eligible property is generating yearly energy output of at least 2 megawatts from clean or renewable energy.*

**.05 Effect of Fee Waivers under this Chapter.**

*A fee waiver resulting from a Clean or Renewable Energy Certification under this chapter does not relieve a person from the duty to comply with:*

*A. The requirements on a person applying to participate or participating in the Program established under this subtitle, Environment Article, Title 7, Subtitle 5, Annotated Code of Maryland, or any other rules or policies of the Department; and*

*B. Any other federal, State, or local government statute, regulation, or authorization applicable to a person applying to participate or participating in the Program or constructing or operating a clean or renewable energy project.*