

# Title 26 DEPARTMENT OF THE ENVIRONMENT

## Subtitle 14 HAZARDOUS SUBSTANCE RESPONSE PLAN AND VOLUNTARY CLEANUP

### 26.14.03 Voluntary Cleanup Program

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

#### Notice of Proposed Action

[21-153-P]

The Secretary of the Environment proposes to adopt new Regulations .01—.07 under a new chapter, **COMAR 26.14.03 Voluntary Cleanup Program**.

#### Statement of Purpose

The purpose of this action is to establish criteria for determining whether a Voluntary Cleanup Program (VCP) applicant has certified their intention to use an eligible property to generate clean or renewable energy, qualifying the applicant for a VCP application fee waiver. The Maryland Department of the Environment (MDE) administers the VCP to provide State oversight for the voluntary investigation and cleanup of properties known or perceived to be contaminated (i.e., an eligible property) to facilitate their redevelopment and reuse. The proposed action implements Chapter 544, Acts of 2020, which requires MDE to 1) waive VCP application fees for an applicant that certifies their intent to use the 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.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** VCP application fees are set in statute and include an initial \$6,000 fee and an additional \$2,000 fee for a subsequent application submitted for either the same property or a neighboring property that is a part of the same development project. Under the proposed action, a VCP participant developing an eligible property that will be used to generate at least 2 MW per year of clean or renewable energy would save at least \$6,000 for the initial application fee, and possibly more if subsequent applications are submitted for the same development project. Participants in the VCP can include private organizations, such as utility companies and nonprofits, and public organizations such as government agencies.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Voluntary cleanup fund	(R-)	At least \$6,000/project eligible for a fee waiver
B. On other State agencies:	NONE	
C. On local governments:	(E-)	At least \$6,000/project eligible for a fee waiver
	Benefit (+)Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	At least \$6,000/project eligible for a fee waiver
E. On other industries or trade groups:	(+)	Indeterminable
F. Direct and indirect effects on public:	(+)	Indeterminable

#### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The VCP typically receives between 40 to 50 VCP applications per year, generating annual fees of approximately \$300,000, which can fluctuate depending on whether applicants need to submit only initial application fees or additional fees for submitting subsequent applications. Currently, at the time of application, the applicant is not required to submit to VCP site development plans as the eventual development of a property is dependent on the findings of an environmental site assessment and any land use restrictions for the property. Therefore, MDE is unaware of how many approved applicants develop VCP projects that generate clean or renewable energy. For the purpose of estimating the economic impact of this proposed action, MDE assumes that a maximum of approximately 10 applicants per year could be certified as intending to use the eligible property to generate clean or renewable energy. This would result in revenue reduction of approximately \$60,000 annually in the Voluntary Cleanup Fund.

C. A VCP participant that is an instrumentality of a local government developing an eligible property that will be used to generate at least 2 MW per year of clean or renewable energy would save at least \$6,000 for the initial application fee, and possibly more if subsequent applications are submitted for the same development project.

D. A VCP participant developing an eligible property that will be used to generate at least 2 MW per year of clean or renewable energy would save at least \$6,000 for the initial application fee, and possibly more if subsequent applications are submitted for the same development project.

E. To the extent the proposed action encourages additional clean and renewable energy projects on VCP sites, it may benefit companies that develop, construct, and maintain clean or renewable energy projects and infrastructure. MDE is unable to quantify this impact.

F. To the extent the proposed action encourages additional clean and renewable energy projects on VCP sites, it would benefit the public by reducing greenhouse gas emissions, increasing access to clean and renewable energy, and returning abandoned or underutilized sites to productive uses that employ people. MDE is unable to quantify this impact.

#### **Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

A small business participating in the VCP that qualifies for an application fee waiver under the proposed action would benefit from reduced costs to participate in the VCP. To the extent the proposed action encourages additional clean and renewable energy projects on VCP sites, any small businesses involved in construction or other development activities on the site may benefit economically. Additional information is provided in the "Estimate of Economic Impact" section of this notice of proposed action.

#### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

#### **Opportunity for Public Comment**

Comments may be sent to Erica Chapman, Administrator II, Land and Materials Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230, or call 410-537-3304, or email to [erica.chapman@maryland.gov](mailto:erica.chapman@maryland.gov), or fax to 410-537-3002. Comments will be accepted through November 8, 2021. A public hearing has not been scheduled.

#### **.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 chapter establish the requirements for an applicant or participant of the Voluntary Cleanup Program.*

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

A. *In this chapter, 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" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.*
- (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 COMAR.*
- (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, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

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

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

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

### **.03 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 Inculcable Person Status. A person that wishes to request an expedited determination of the person's status as an inculcable 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 inculcable 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 Requirements 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.

### **.04 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 .03D 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 .03A(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.

### **.05. 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.

### **.06 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 .03A(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 .05 of this chapter, demonstrating that the eligible property is generating yearly energy output of at least 2 megawatts from clean or renewable energy.*

***.07 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.*

BENJAMIN H. GRUMBLES  
Secretary of the Environment