

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] Title 7, Subtitle 5, Annotated Code of Maryland

Notice of Final Action

[21-153-F]

On November 23, 2021, the Secretary of the Environment adopted new Regulations .01—.07 under a new chapter, **COMAR 26.14.03 Voluntary Cleanup Program**. This action, which was proposed for adoption in 48:21 Md. R. 905—908 (October 8, 2021), has been adopted with the nonsubstantive changes shown below.

Effective Date: January 1, 2022.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Authority: Since new Regulations .01—.07, under the new chapter COMAR 26.14.03 Voluntary Cleanup Program, restate and implement several provisions of the Voluntary Cleanup Program statute (i.e., Environment Article, Title 7, Subtitle 5, Annotated Code of Maryland), the broader statutory authority for these new regulations is cited rather than citing specific sections of the statute.

BENJAMIN H. GRUMBLES
Secretary of the Environment

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 14 Hazardous Substance Response Plan and Voluntary Cleanup

26.14.03 Voluntary Cleanup Program

Authority: Environment Article, Title 7, Subtitle 5, 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 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 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, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any 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 under 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 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 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.

Effective Date: January 1, 2022



COMPLIANCE GUIDE FOR NEW VOLUNTARY CLEANUP PROGRAM REGULATIONS

Clean and Renewable Energy Fee Waiver

This compliance guide for the Voluntary Cleanup Program (VCP) Clean and Renewable Energy Generation Fee Waiver regulations provides a clear and concise explanation of how VCP applicants may comply with the new regulations. This compliance guide is for informational purposes and should not be construed as legal advice. Affected parties, including 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.

Summary of the New Regulations

Regulations .01—.07 in COMAR 26.14.03 Voluntary Cleanup Program establish 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.

These new regulations, adopted by the Secretary of the Environment on November 23, 2021, implement this legislation.

The regulations become effective, and the ability to obtain a VCP clean and renewable energy application fee waiver begins, on January 1, 2022.



COMPLIANCE GUIDE FOR NEW VOLUNTARY CLEANUP PROGRAM REGULATIONS

Clean and Renewable Energy Fee Waiver

Who is affected by the Regulations

The new regulations affect 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.

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 inculcable 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 regulations.



COMPLIANCE GUIDE FOR NEW VOLUNTARY CLEANUP PROGRAM REGULATIONS

Clean and Renewable Energy Fee Waiver

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.

Verification Requirements

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 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.

Want to Learn More

General information about the Voluntary Cleanup Program, including information and resources regarding renewable energy siting and development in Maryland, can be found by visiting [MDE's Voluntary Cleanup Program](#) webpage.