



Facts About: Voluntary Cleanup Program Inculpable and Responsible Person Status

The Voluntary Cleanup Program (VCP) defines two types of persons with respect to liability for site contamination: Responsible Persons (RP) and Inculpable Persons (IP). This fact sheet describes both categories and outlines the legal liability protections provided to each.

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 RPs, including a list of exceptions. VCP applicants qualifying for an exception listed in Section 7-201(t)(2) of the Environment Article are considered IPs.

RPs 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 IP, as defined in Section 7-501(j) of the Environment Article, means a person who, at the time of application to 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.

IP also includes a successor in interest in an eligible property acquired from an IP, 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.

A VCP applicant requests IP status by submitting an executed IP affidavit to the Department, either as part of the VCP application or via an Expedited IP Request, which can be approved or denied. If designated as an IP, a participant is not liable for existing contamination identified in the submitted application (Environment Article 7-505). However, an IP may still be required to

prepare a Response Action Plan (RAP) to address environmental conditions. An IP remains liable for new contamination or the exacerbation of existing contamination on a site. Participants and successors with a Certificate of Completion (COC) remain protected from liability for property-use condition violations, provided they did not cause or contribute to the violation.

Withdrawal Requirements: If an IP elects to withdraw an application from the VCP during any phase of the process, the law requires the applicant to secure and stabilize the property to the Department's satisfaction to protect human health and the environment.

Limitations:

- IP is a legal definition within the VCP; a withdrawn applicant may, but does not automatically, retain the status if they enter the VCP at a later date. Reasons for losing IP status could include applicants causing new contamination on a site, exacerbating existing contamination, failing to meet statutory deadlines, etc.
- IP status only protects applicants who are actively participating in or have completed the VCP. It provides no protection outside of the program.

MDE strongly recommends communicating project plans and goals with VCP project managers as early as possible to ensure applicants understand these limits.

Application Process & Decision Timelines

Standard Approval: When the VCP receives an application, it notifies the applicant in writing within 60 days of receiving a complete application package whether their status is approved as an RP or an IP. The applicant's status is formally confirmed in the acceptance letter approving the applicant and property for VCP participation or.

Expedited IP (EXP-IP) Approval: The Department will provide expedited IP approval within five business days of receiving: 1) a written request; 2) a \$2,000 fee; and 3) an executed IP affidavit. Expedited IP approval will expire if a VCP application and associated fees are not filed within six months of approval. If an entity purchases the property and fails to submit the VCP application within six months, the entity will lose IP status and will be treated as an RP if they apply to the VCP at a later date.

Lender Liability Provisions

Sections 7-201(t)(2)(iv) through (x) and (Section 7-201(t)(3)) 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;
- 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 the MDE-LRP.

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 MDE-LRP. The exceptions specifically apply to lenders who may be involved with a project in the VCP, or who are otherwise working with the MDE-LRP on a cleanup of a contaminated property.

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 IP 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)).

Innocent Purchaser

An IP designation includes a person who can establish by a preponderance of 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 a 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.