

Guidance for the Voluntary Remediation Program Certification of Satisfactory Completion of Remediation

Background and Purpose

Upon successful completion of the Voluntary Remediation Program (VRP), 9 VAC 20-160-100(A)(1), a Certification of Satisfactory Completion of Remediation (Certificate) is issued by the Director, or his designee, 9 VAC 20-160-110. The Certificate grants immunity to the participant, owner, and future owners of the site for enforcement actions under state law. The immunity is limited to the site conditions at the time of issuance of the Certificate, which are described in the Voluntary Remediation Report (Report), and it is conditional upon completeness and accuracy of the information in the Report.

This Guidance is to aid VRP participants and Department of Environmental Quality (Department) staff in developing Certificates for each site. The following procedure provides direction to drafting a Certificate. A model Certificate has been developed to facilitate the process and is attached to this Guidance.

Authority

Va. Code § 10.1-1429.1A
Va. Code § 9-6.14:1, *et seq.*
9 Virginia Administrative Code (VAC) 20-160-110

Procedure for Issuing a Certification of Satisfactory Remediation

When a voluntary cleanup achieves the applicable cleanup standards or when the Department determines that no further action is required at a site the Director, or his designee, will issue a Certificate based on current conditions and available information. The Department works along with the participant in drafting each site specific Certificate. A model Certificate is found at the end of this Guidance. The standard format of the model Certificate is to be followed for all sites. There are prompts provided for the participant to fill in relevant site information on the front page and in the “Conditions of Issuance,” “Other Encumbrances on Site,” and “Discussion of Relevant Information” sections. The other sections of the Certificate, “Authority,” “Determination,” and “Reservation of Rights,” include language that has been previously approved by counsel. Any deviation from this language, except where site specific information is requested, may destroy the effectiveness of the document.

On the first page of the Certificate, the participant should enter site information in the spaces provided. The current owner of the site’s name should be inserted in the “Grantor” and “Grantee” spaces at the top of the first page. This information directs the circuit court clerk to record the completed Certificate in both the grantor index and the grantee index under the

owner's name. If the VRP site ~~is~~ covers only a specific portion of a ~~parcel~~facility and not the whole facility, the participant and the Department must agree on what the site boundaries are. For example, a facility may encompass many acres, but the VRP site may be limited to a specific production area. The "Description of Property" section must then clearly define those site boundaries and the attached plat must clearly reflect the site.

If use restrictions are specified in the Certificate they must be included in a Declaration of Restrictive Covenants (Declaration) and attached to the Certificate. A sample Declaration is included with the model Certificate. Please note that a metes and bounds description of the site must be included in the Declaration along with the attached plat clearly identifying the site. Any restrictions must also be listed in the Certificate under the "Conditions of Issuance" section and explained within the "Discussion of Relevant Information" section. The participant and current owner must sign both the Certificate and the Declaration. In addition, any parties with property interests in the site that are affected by the use restrictions must be listed on the Certificate under the "Other Encumbrances on Site" section and sign the Declaration. For example, if the participant wants to prohibit disturbance of a six-inch soil cap on a portion of the site and there is a utility line easement across that area, the easement must be listed under "Other Encumbrances on Site" and the easement holder must sign the Declaration. If there is a mortgage on the site, the lender must also be listed under "Other Encumbrances on Site" because of their interest in the property and they must sign the Declaration.

After all of the appropriate parties have signed the Declaration, it along with the Certificate must be recorded with the land records in the office of the clerk of the circuit court for the jurisdiction in which the site is located within 90 days.

~~When~~If no use restrictions are imposed on a ~~site~~site, the participant is not required to record the Certificate. The immunity accorded by the Certificate applies not only to the participant and current owner of the site but also to future site owners and their successors-in-interest. Because the immunity runs with the land, it may be useful for the participant to record the Certificate to benefit future owners. Unless new issues are discovered, the Certificate provides assurance that the remediated site will not later become the subject of an enforcement action under state law.

Further Information, Limitation of Guidance; Revisions

A general description of the VRP can be found on the Department's Website, <http://deq.state.va.us>, under Waste Programs. Contacts at the Regional Offices are identified at the same Website, under Regional Offices.

This guidance document is intended for the use of the public, applicants for the VRP, and Department staff. It creates no rights, legal or equitable, in any person, and is subject to change without notice as circumstances may require.

This Guidance document is intended to help minimize delay and expense in remediation, while continuing to protect human health and the environment. Any suggestions or questions should be sent to:

Virginia Voluntary Remediation Program
Virginia Department of Environmental Quality
P.O. Box 10009
Richmond, VA 23240

Suggestions or questions concerning this Guidance can also be sent by e-mail to Kevin L. Greene, VRP Program Manager, at klgreene@deq.state.va.us.

Approved: _____ (date)

By Karen J. Sismour, Director
Waste Program Coordination

Attachments:

Attachment 1: Model Certificate