VOLUNTARY REMEDIATION PROGRAM (VRP)
VIRGINIA WASTE MANAGEMENT BOARD – AMENDMENT 2
TECHNICAL ADVISORY COMMITTEE

FINAL MEETING NOTES
TAC MEETING – MONDAY, AUGUST 31, 2009

Meeting Attendees

TAC Members	*Interested Public*	*DEQ Staff*
David Johnson – Advantus Strategies	Ty Murray – Waste Board Member	Meade Anderson
Thomas Numbers – ERM		James Golden
Marina Phillips – Kaufman & Canoles		Kevin Greene
David Sayre – S&ME, Inc.		Jerry Grimes
Jim Succop – ECS Mid-Atlantic, LLC		William Lindsay
James A. "Jim" Thornhill – McGuire Woods, LLP		Patricia McMurray
Robert "Bob" Williams – Dominion Resources Services, Inc.		William Norris
		Durwood Willis

NOTE: The following VRP TAC Member was absent from the meeting: Henry J.H. Harris; Channing Martin; & Ian Shaw (Replaced Brian Brown);
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1. Welcome & Introductions (Bill Norris/James Golden):

Bill Norris, Regulation Writer with DEQ's Office of Regulatory Affairs, welcomed all of the meeting participants and thanked all of the Technical Advisory Committee Members for returning to participate in this important regulatory the process. He noted that main purpose of for today's meeting is to go over the recommendations contained in the "Draft White Paper" that program staff had developed to look at the funding issues facing the program and what those potential changes would mean to the draft regulation language. He noted that all of the TAC members would have an opportunity to comment on the "White Paper" and the proposed regulation language. He noted that Ian Shaw had replaced Brian Brown on the TAC and had provided a set of comments on the "White Paper".

James Golden, DEQ Deputy Director for Program Development, thanked all of the TAC members for attending and for their indulgence to help us with some of the discussions in the "white paper". This is not the normal approach when we are dealing with issues within a program, but it seemed appropriate at this time to get these issues in front of the stake-holders as soon as possible. Not going to rehash the funding woes, but the program has gone from a total of about 7 to about 3. The one thing that we know for sure is that we will be unable to continue as we have been doing. The program will be unable to handle the work load we have with the available resources for the foreseeable future. How we need to adjust it is not a given and that is why we are all here. We have put some ideas together that we would like to go through and get your thoughts and ideas. After this meeting we will decide what changes to

the way that we currently operate the program we will be taking to the Director for consideration.

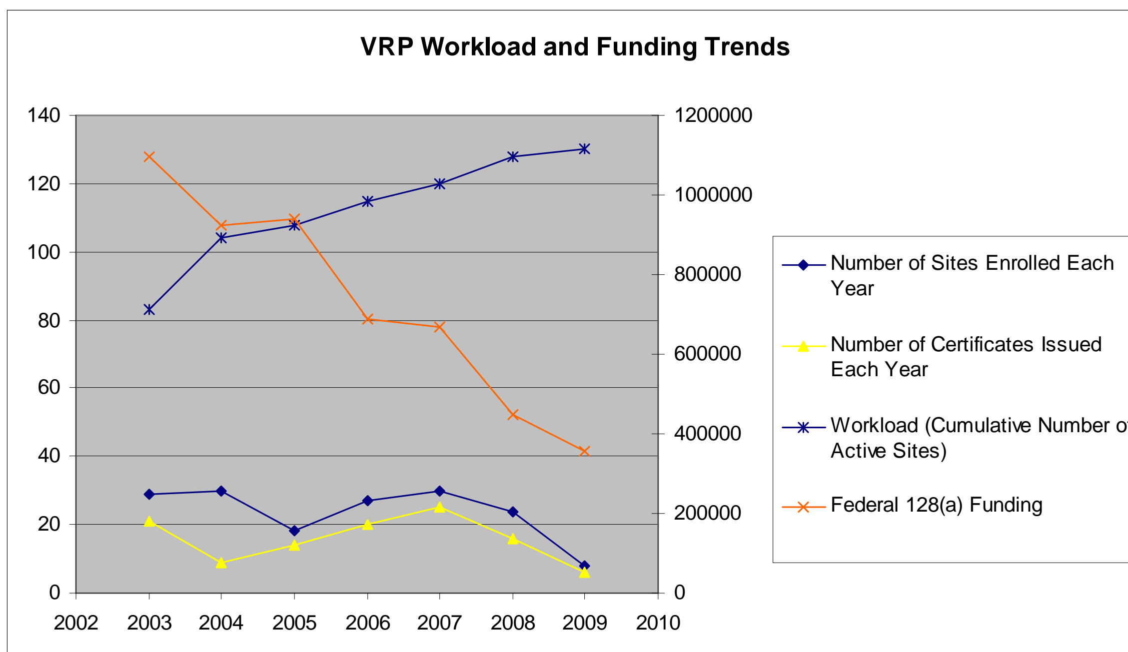
Bill Norris noted that Ty Murray, the new Waste Board Member, was in attendance today to listen and to get up to speed on this program. Members of the TAC and program staff then introduced themselves. Bill Norris noted that the program staff members were in attendance today to be available to share first hand advice and insight as to what the impacts of the proposed "white paper" recommendations might have on the day-to-day operation of the program.

2. **"White Paper" Discussion (Durwood Willis/Bill Norris):**

Durwood Willis, Director of the Office of Remediation Programs, provided a brief introduction and summary of the "White Paper". He summarized the following:

Since its inception in 1995 Virginia's Voluntary Remediation Program (VRP) has been funded through federal grants. In 2003 the VRP began receiving funding exclusively through CERCLA section 128(a) grants. Section 128(a) was amended to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments). It authorizes a noncompetitive $50 million grant program administered by the USEPA's Office of Brownfields and Land Revitalization to establish and enhance state and tribal response programs. In early 2009 the VRP was notified by USEPA Region III that VRP's annual 128(a) funding award was decreasing to $355,300. This represents a decrease of approximately 20% from FY2008 and approximately 68% from the peak funding year of FY2003. It is projected that the current 128(a) grant award will be sufficient to fund only 3 full-time equivalent (FTE) positions (as compared to 7 FTEs in 2007) - clearly an insufficient level of staffing considering the current and projected work load of the program.

He referred the TAC members to the VRP Workload and Funding Trends Table in Appendix I of the "white paper".



He noted that the program was currently slightly under the $400,000 funding level and that is sufficient for about 3 full-time positions. He noted that the program staff had first looked at the possibility of

setting a moratorium on receiving applications which has some plus but also has some negatives. He noted that the possibility of setting a prioritization of sites for review was also looked at. There were a number of options examined for setting priorities that we would like input from the TAC on today.

He noted that there were a number of alternatives that were included in the "white paper" that the program staff felt warranted further discussion by the TAC. These included "Developing a presumptive remedy for dry cleaners"; "Establishing a 'remediation no required' certificate that is issued immediately after a site is determined to be eligible"; Restricting analysis of offsite impacts to current use and not potential future use"; and "Eliminating the construction worker receptor from the risk assessment".

3. Alternatives Discussion – "Presumptive Remedies for Dry Cleaners" (Durwood Willis/VRP Program Staff/VRP TAC)

Durwood Willis introduced the concept of developing a "presumptive remedy for dry cleaners" and summarized the following "white paper" comments:

> *Dry cleaners account for more than a third of the sites enrolled in the Voluntary Remediation Program (VRP). Since the inception of the VRP in 1995, the DEQ has found that many dry cleaner sites have similar characteristics, such as types of contaminants present, site usage, or how environmental media are affected. Based on information acquired from evaluating and cleaning up these sites, the DEQ is undertaking an initiative to develop Presumptive Remedies to streamline the site investigation and remediation process for dry cleaner sites.*
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> *Presumptive Remedies are preferred technologies, or remedial methods, for common categories of sites. Based upon an evaluation of dry cleaner sites that have completed the VRP, the DEQ has determined that certain institutional and engineering controls are consistently selected as remedial methods, and are* ***presumptively*** *the most appropriate for addressing these types of sites.*
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> *The remedial methods proposed for the Presumptive Remedy are; sub-slab vapor mitigation systems, land use controls prohibiting groundwater usage on site, and land use controls prohibiting residential usage of the site. This Presumptive Remedy is designed for sites where contamination has not, and will not, migrate off-site. This option comes with an up-front (and unknown at this time) 'cost' in staff time to develop effective guidance for this option. The assumed benefit of a saving of staff time once implemented is also unknown*

He noted that the reason for consideration of this option was that dry cleaners represent a large percentage of the current work effort in the VRP. The program has been dealing with dry cleaners since 1995 and based on the way that the program has dealt with them feel that there are things about dry cleaners that are consistent as to types of contaminants we are dealing with and the types of remedies that are used. A presumptive path would help facilitate the processing of those certificates.

The TAC discussions on this topic included the following:

- The concept is a good one.
- Could a general permit be established to deal with dry cleaners? Could a dry cleaner then meet certain hurdles and then even self-certify to DEQ that certain things had been done so that the staff time involved be minimal? Staff noted that programs in other states had been looked at where that is done instead of having to incorporate it. Staff noted that they had been unable to locate any state that had a "cook-book" presumptive type remedy.
- Staff noted that where we were going with this is that most dry cleaners require some form of

sub-slab depressurization system. In lieu of going through the exhaustive effort of soil gas and in-door air sampling, that we are going directly to the use of a sub-slab depressurization system.

- Dry cleaners are one of the biggest time-sinks in the program. A lot of the effort for the proposed changes is on the risk assessment side.
- Could someone go ahead and install a sub-slab depressurization system and not have to do an analysis of the indoor air exposure risks? Staff noted that they have not thought it all the way through and that the development of guidance to address this would take some staff time to develop. But that was the way that staff was thinking of going. But it wouldn't preclude the staff from having to look at any off-site indoor air receptors. Verification sampling would still need to be done. There would still be a review loop on the work plan approval related to the collection of data.
- The use of this concept would save a lot of time in the normal back and forth considerations and discussions that currently occur on these types of projects.
- Certification and/or verification are options to be considered in the process of developing this presumptive rule.
- Would the department want to see all the sampling results or are we willing to say you have installed X, Y, and Z and the applicant is willing to certify that they have done those things and the site is clean, then we are okay, so here is your certification.
- When you do verification sampling, if it is an active dry cleaner, you would have to do sub-slab sampling since you couldn't do indoor air. Would need to do sub slab sampling to verify that you didn't have levels that are of concern to indoor air quality. Staff responded that is primarily to verify that you have flow that is being captured and going up the pipe and not through the cracks. There could be an engineering analysis done instead of doing sampling to verify that you are capturing the flow with the installed system. Staff noted that would be the concept. The concept would be that there would be a cook-book of options and requirements developed. There would be some expectation that if the applicant did X, Y, and Z that it would be met with a quick approval (with minimal oversight) by DEQ. What the approach would be is still to be determined. A "Permit by Rule" or a "General Permit" could be used.
- Staff noted that some sites had done effluent sampling instead of going through the more expensive process of a sub slab depressurization process and takes less effort.
- Vacuum measurements would still be required.
- It was noted that the bulk of the time on the applicant's part is also in the area of risk assessment.
- Staff noted that after 13 years of doing this that there some similarities. Every one of them is important and every one of them is different but there are a lot of similarities.
- A suggestion was made that a "**certificate-by-rule**" could be used for this category. Since the regulation is open now this would be the opportunity to develop this type of approach and include it in the current regulatory action instead of going through the current process and having to reopen the regulation for changes in another cycle.
- Staff reminded the members that the "presumptive remedy" as proposed included "land use controls prohibiting groundwater usage on the site" and "land use controls prohibiting residential usage of the site", in addition to the use of "sub-slab vapor mitigation systems".

Written comment – Ian Shaw – City of Roanoke: *"The City of Roanoke agrees that developing*

presumptive remedies for common sites such as dry cleaners makes sense and could be a good option to reduce work load while maintaining a timely project review process. The white paper notes a concern with a "one size fits all approach" since all sites are not alike. The presumptive remedy would likely be conservative from a cleanup perspective but a substantive time savings for implementation should be of value to the project developer. This option should be considered further from a local government perspective."

CONSENSUS: The presumptive remedy for dry cleaners should be developed as a "certificate-by-rule".

4. **Alternatives Discussion – "Establish a 'Remediation-Not-Required" certificate that is issued immediately after a site is determined to be eligible." (Durwood Willis/VRP Program Staff/VRP TAC)**

Durwood Willis introduced the concept of developing a "remediation-not-required" certificate and summarized the following "white paper" comments:

> VRP regulations establish the criteria by which Sites are eligible for participation. The regulations state in part that a site is eligible for VRP participation "where remediation is not clearly mandated". When an application for participation is received, the application is routed through the Regional Offices and the Office of Hazardous Waste to determine if remediation is required under the laws and regulations those offices are authorized to implement. Only after it is confirmed that there are no regulatory mechanisms to require remediation, a site is deemed eligible for participation. This letter is, by effect, a case decision that there are no DEQ requirements requiring remediation.
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> Although a letter confirming eligibility is sent to the participant, it is being proposed that upon request, a separate "Remediation Not Required (RNR)" certificate be developed addressing only the regulatory requirement aspect of site remediation. As the average time from VRP application to VRP closure is now approaching 3 years, such an affirmative statement from the DEQ may be an attractive substitute to a full blown "Certification of Satisfactory Completion of Remediation." Whereas it is expected that there will be a decrease in the number of facilities completing the VRP process, it is difficult to estimate how many sites will not seek VRP closure given this option.
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> No changes would be necessary to the enabling legislation to enact the above. There is existing guidance that states that Eligibility Determination expires after six months if the site is not enrolled, which would have to be modified.

He noted that as the process works now, when an individual approaches the department for consideration for the VRP, we evaluate their request for participation based on whether they are required to comply with any other act or regulation and whether it is clearly mandated that remediation is required or not then issue them a notice informing them that they are eligible for the program. What this is speaking to is issuing them a notice or a letter confirming that remediation is not required for the site. The current process time from application to certificate issuance is approximately 3 years. If there was a process where the department could recognize that due to the nature of the site; the activity there and the contamination or lack of contamination on the site that remediation was not necessary then that would greatly accelerate the processing of that site. It would impact the number of certificates issued. This would enable the processing of the sites that sought this type of certificate to occur at a faster pace than the current process and would allow more time for the evaluation of sites that have to go through the entire evaluation process.

The TAC discussions on this topic included the following:

- A question regarding risk assessment was raised. Staff responded that the current eligibility process is that the department issues a letter that says that you are eligible for the program and by default that eligibility says that remediation is not required. The concept here is that we memorialize that, we made it loftier, instead of a one paragraph letter saying you are eligible for the VRP; you would receive a certification that the department has made a decision that "remediation is not required". It would be a case-decision specifying that for that site that "remediation is not required". The thought here is that the banking or financial institution is looking for a read from DEQ that the applicant has to do anything. This would provide a little more authoritative documentation that maybe some of these sites may not have to do anything. That they may not have to go through the entire VRP process but may stop right there.
- This would be a "VRP Lite" and would be an in-between step. It would be a business decision at that point whether this level of determination was sufficient and the project would move forward.
- Is there value to this? It is kind of a comfort letter type approach that might be useful for some of the applicants to the program. Some that might stop at this point. Staff noted that they thought that it might be of some use to have a notation that the department doesn't feel that you have any obligations under RCRA Title C might be of some value.
- Everyone wants a certificate. Maybe it will reduce the workload by 20 %.
- Good concept if nothing else.
- Going to reduce the number of sites coming in for the full program. It can be easily done. The mechanism is already within the body of the statute.
- There would be firms that would ask for this type of certification. There are some sites that are borderline that would come in for this level of determination. This would come out of an eligibility determination. The same application process would be followed and then the eligibility determination step could result in the issuance of a "remediation not required" certificate. Then the applicant could decide whether to move forward or not.
- "Remediation not required" does not necessarily mean that clean-up is not required. Staff noted that the letter would have to clearly indicate that the determination was made from a regulatory standpoint not from a safety perspective. No claims would be made as to the safety of the site.
- There is a potential for abuse by some developers. Consultants and lawyers would need to clearly explain what this type of certification allows and what the applicant's responsibilities are based on this determination.
- A question was raised as to whether this would satisfy the requirements of the BFPP letter that all **appropriate** steps have been taken which is one of the conditions of the BFPP letter. Would the receipt of the "remediation not required" certificate satisfy all the requirements of the BFPP letter that all appropriate steps have been followed? Staff responded that this would be a question for legal counsel. It was noted that this would probably not satisfy those requirements.
- What comes under the umbrella of remediation? Is it appropriate to imply that there are no further regulatory requirements applies to this piece of property; there are no deed restrictions or deed notations necessary? There are things that a property owner may opt to do, but the department can't require or force the property owner to take certain steps. Staff responded that the current eligibility letter essentially implies that the department as a regulatory agency doesn't have any authority under existing regulations to force the applicant to take any actions on the site relative to the way it sits. The agency is already doing that, but we don't state it that

bluntly. The “remediation not required” certificate would make that statement more explicitly.

- A question was raised regarding the level of contamination on the site. Staff responded that there could be sites that because of loopholes in the law where there could be substantial contamination and short of getting into our general environmental protection responsibilities there are no clear regulatory tools to address them.
- Staff noted that this might put some other pressure on the regions for the eligibility determination process.
- It was noted that this is a voluntary program and coming out and actually saying that “remediation is not required” is not really a change in the program but a clarification of the process for determination. Maybe a change in perspective.
- The question of whether there would be a sunset provision was raised? Things change on the site and owners change, site use changes. The determination is made based on information provided at that time. New information is new information and could result in a change.
- The level of information would remain the same. This is just putting more meat on the eligibility determination process to see if that is enough for some projects to take it and run and be done with it.
- Staff noted that this was an attempt to give something back with all of the other proposals where we are taking things away.
- The statute says that “remediation is not clearly mandated”. That is a pretty high standard. There have instances where there have been sites coming when that was unclear. If the regions are doing this on every site, worry that they will move in some cases to a “remediation is required” consideration. Would think that you would want an applicant to ask for this “remediation not required” certificate. Sites have come into the program where it is “not entirely clear”. It would have to be pretty obvious that there would be no remediation required. It was suggested that this should be included as an option on the application form, i.e., “Would you like to be considered for a “remediation not required” certification?”
- There are some sites that will decide or be advised to go through the entire VRP process to show that they would be addressing the human health risks associated with their site, instead of having a regional office to make a determination that “remediation is required” for the site through the determination process when considering whether to issue a “remediation not required” certification.
- This would be different form of an eligibility letter. If it takes 5% off the table then that would be helpful.
- If a request is made seeking the “remediation not required” certificate and that request is not granted, does that mean that the site is “not eligible” for the VRP program. Staff noted that there may be exceptions, but that would likely indicate that there is “remediation required” and that the site needs to go through one of the regulatory programs.
- Will these sites be posted on-line, will they be public postings? Staff responded that all the eligibilities are posted on the web. One could assume that if a site is in the program that a determination has already been made that “remediation is not required”. The information on the web page is updated monthly.

Written Comment – Ian Shaw – City of Roanoke: *“This is an option that warrants further evaluation. Since DEQ is already evaluating a site to confirm that action is not required by regulatory program there seems to be value in issuing a “Remediation Not Required (RNR)” certificate. A*

concern is that while remediation may not be "legally" required based on state regulations there may be a need for some degree of remediation to make the site safe for the intended use. It seems like there should be a condition in the certificate for the owner to take appropriate care to make the site safe for future use, possibly similar to the language in the Brownfield program Bona-Fide Prospective Purchaser comfort letters. Basically, the "Remediation-Not-Required" certificate sounds like it may be a tool for reuse of an industrial property for a new industrial use but may be problematic for reuse of a former industrial property for new housing. A developer could potentially mistake the "Remediation-Not-Required" certificate to mean that "remediation is not needed". That is a distinction that should receive further consideration.

James Golden noted that this could be addressed through guidance. No new language would be needed Not 100% certain that it won't cause the department more work then it will save. The department still needs to work through this concept to determine an appropriate course of action. It has the potential to save the department time for those sites that might want to stop at the "remediation not required" step instead of using the "eligibility" letter as the step toward continuing through the VRP process.

CONSENSUS: The TAC members agreed that the "remediation-not-required" option was a good approach and should be made available to applicants to use if they wanted.

5. **Alternatives Discussion – "Restrict the Analysis of Offsite Impacts to Current Use and Not Potential Future Use". (Durwood Willis/VRP Program Staff/VRP TAC)**

Durwood Willis introduced the concept of developing a "restricting the analysis of offsite impacts to current use and not potential future use" and summarized the following "white paper" comments:

> *This alternative relates to the situation where a groundwater plume is migrating off-site with levels of constituents in the groundwater above drinking water standards. Typically, if a drinking water well is present we assume that the drinking water risk pathway is viable and assess the risk associated with this pathway. If a drinking water well is not present we still assume that a well can be installed some time in the future. Not all DEQ programs do this. In the UST program, only the current condition is taken into account.*

He noted that this is an alternative that would apply in cases where you had a groundwater plume moving offsite and the levels of contaminants there exceed the drinking water standards. The current assumption is that if there is a drinking water well on the property that the drinking water pathway is viable and that there are risks associated with that. He noted that a significant amount of time is spent on chasing groundwater plume or evaluating justifications from participants when a full delineation isn't necessary (modeling, no GW use, no real receptors, etc) But in the cases where there is no drinking water well, we currently assume that there will be one in the future. This alternative would only look at current existing use, not at potential future use.

The TAC discussions on this topic included the following:

- First reaction was that if it was only groundwater that this might be a good idea, but future use could encompass more constituents than a drinking water well. What about things other than groundwater?
- What about the case of offsite exposure, i.e., construction worker exposure?
- Future use could be construction and could result in vapor intrusion issues offsite.

- There may be other exposure pathways other than groundwater.
- In some cases it sounds fine, but we should consider the full universe of possible exposure pathways.
- If you are not going to evaluate potential future use, what would that mean in practice? Does that mean that you wouldn't put deed restrictions on the property and the restrictions in the certificate that the water leaving the site cannot be used for drinking water? Staff responded that the point of this alternative is the offsite property and the level of effort it takes to characterize potential the exposure risks to the population and the ecological risks offsite that are beyond the control of the VRP participant. The statute is clear that it is "present conditions" that need to be addressed. Staff noted that this is the approach that the petroleum program takes.
- A question was raised as to whether this means that you won't look at any offsite uses or any potential offsite uses. Staff responded that this would result in only looking at "present uses" offsite, not potential future uses. This would raise the screening levels.
- This approach would eliminate the current core assumption that there will be a water well on the offsite property, even if there is not one there now. The assumption is always there is a groundwater well. Staff noted that this would be a big deal for DEQ's programs to propose this type of an approach; since, other than the Underground Storage Tank program it is not being done in DEQ's other programs that talk about groundwater. The assumption has always been that there is a groundwater well. Also, don't know what EPA's reaction would be to this change in process.
- A question was raised as to whether this would same time? Staff responded that it would save significant time because staff wouldn't have to worry about offsite modeling, i.e., how high the concentrations would get off site. Wouldn't have to worry about the potential was for future development. One more pathway that staff would not have to address. Would still be looking at whether something is moving offsite and there would still be public notice requirements.
- It was noted that this would also result in one less step that an applicant would have to focus on in his work. Staff noted that it would not eliminate the step, but the applicant would have to evaluate the potential for groundwater intrusion and justify that there is no need to do future analysis. It would apply in those cases where the groundwater monitoring results came back in that range that indicated that there would be no offsite flow, i.e., there would be a stable plume. It would fall into a bracket of requirements between "groundwater standards" and "vapor intrusion for industrial" particularly for those localities that don't have a groundwater ordinance.
- Staff noted that what you have in front of you is already a decision by DEQ that nothing is required to begin with. Staff spends a lot of time on what-if scenarios and this would eliminate the need to do a lot of those.

Written Comment – Ian Shaw – City of Roanoke: *"This alternative seems reasonable with certain considerations: (1) Use of groundwater – if "current" and "potential future" use is being considered strictly within the confines of groundwater use this seems reasonable. This option should also be evaluated with regard to the availability of a public water supply and if connection to that water supply is required by the locality. For example, if the adjacent property is currently undeveloped and there is no public water supply, there is a chance that a well could be installed if the property is developed at some point in the future. (2) Land use – With regard to broader land use this would not be a valid assumption (e.g., that adjacent property with an industrial use will stay that way). For example, in Roanoke, as part of our Brownfield redevelopment efforts, we created a new zoning district, and*

rezoned an entire street corridor from industrial districts to the new district. The new district allows for a wide range of uses including residential, day care and educational facilities in an effort to encourage investment and reuse. If a site had been closed through the VRP with off-site groundwater impacts based solely on adjacent industrial use, that presumption would no longer be valid.

A restriction on the off-site analysis of groundwater impacts would likely need to be coordinated with the local government where the site is located to consider availability of public water, potential for development/redevelopment and potential for changes in zoning/land use.

6. Alternatives Discussion – "Eliminate the Construction Work Receptor from the Risk Assessment". (Durwood Willis/VRP Program Staff/VRP TAC)

Durwood Willis introduced the concept of developing a "eliminating the construction worker receptor from the risk assessment" and summarized the following "white paper" comments:

> *In addition to the typical residential and industrial/commercial worker receptors the VRP also considers the construction worker receptor as one of its default receptors, both on-site and off-site. This has the effect of complicating the risk assessment, and other aspects of project management such as site closure activities. Active remediation is seldom ever based on unacceptable construction worker risk and closure activities usually involve a site-specific blend of deed restrictions and post-closure O&M plans that are designed to "protect" the construction worker from site conditions. Due to their site-specific nature these O&M plans involve significant staff time to develop. The question should also be asked whether it is appropriate for the VRP to consider these receptors in the risk assessment because by doing so we could be seen as trying to regulate an occupational risk, which is the purview of other State and Federal agencies (e.g., OSHA).*

He noted that typically the residential and industrial/commercial worker receptors are considered. The construction worker receptor is one of the default receptors both onsite and offsite. This consideration is to eliminate that construction worker from our risk assessment process.

The TAC discussions on this topic included the following:

- This is a big time sink for DEQ. DEQ has set up the construction worker model to be pretty conservative. It takes a fair amount of work from the applicant to show why this is not an issue.
- A question was raised as to whether the applicant could self-certify similar to the approach being taken with dry cleaners? Could the Operation & Management (O&M) Plan be used to self certify that they have met certain criteria to address exposure pathways on site? The consultant would then be able to provide something to the Department that could be used to indicate that the owner is going to implement certain steps.
- It was noted that one of the challenges that was currently being faced was getting an O&M plan developed that was satisfactory to the department's very stringent requirements/standards. A question was raised as to whether the current standards are too tough? A question was raised as to what OSHA standards would apply? OSHA requires that all contractors and subcontractors are aware of conditions on the site that may impact worker safety. Staff noted that the problem might be those affecting off-site workers in these situations. Breathing of the air in confined

spaces is the real issue.

- A concern was raised about DEQ's assumption that an OSHA requirement was going to be violated when conducting a VRP risk Assessment Is it appropriate to assume that someone will break laws when evaluation the risk ? There are significant penalties for non compliance with OSHA. Deferring to OSHA accomplishes the same objective
- Staff noted that the current construction worker did evolve over the 12 years that the program has been in existence. If this alternative is implemented it would essentially be saying to the public that we are defaulting to the OSHA requirements. OSHA covers that so the department will not be covering those particular issues. But in addition to the OSHA requirements, the department would also be requiring the O&M plans to address the site. The issue is the on-site construction worker safety through the O&M plan. The off-site issues would be an issue of the owner compliance with OSHA requirements.
- It was noted that in most cases, if the site was looked at realistically the concerns with construction workers goes away, because of the actual short potential exposure time. Staff noted that they go through the Construction Worker scenario and very rarely does it result in additional physical remediation requirements have to be met.
- Staff noted that the EPA standard is a little more conservative. Clean-up to Drinking Water Standards is required. This would be at a RCRA site, not a VRP Site. EPA doesn't do VRP sites. Staff noted that there is a little more flexibility and a trend towards the use of institutional controls on the EPA RCRA C corrective action programs.
- The use of the construction worker scenario is not driving to a lot of the decision making. It is not leading to additional remediation at the end of the day. There may be a sentence in the certificate to "lookout for groundwater" or "run a fan when you do an excavation", etc. Staff noted that there didn't appear to be a lot of value-added to the work that went into the development of the construction worker scenario, so that is why it is being looked at.

CONSENSUS: The TAC members agreed that the concept of the "elimination of the construction worker from the risk assessment" should be a part of the regulations.

ACTION ITEM: Staff will explore the use of OSHA type requirements more is then currently being done and will look internally at what other options are available to the department.

Written Comment – Ian Shaw – City of Roanoke: *"Since the construction worker scenario often drives cleanup levels and as noted, evaluating that scenario "has the effect of complicating the risk assessment, and other aspects of project management such as site closure activities" it seems like eliminating this scenario is a reasonable consideration. As long as the site is safe for long-term users/occupants of the property, it can be viewed that any construction or maintenance work should simply be performed by contractors who understand the work and can incorporate appropriate health and safety programs as part of their work in the manner they deem most appropriate for their activity.*

A deed restriction could be included as part of the land use controls that: (a) Lists the primary constituents of concern on the site; (b) Identifies areas that have not been fully remediated or established as clean utility corridors; and, (c) Requires contractors performing site work or subsurface maintenance work to protect their workers in accordance with OSHA construction and/or HAZXOPER standards, as applicable.

In this manner, as sites are redeveloped the developer and its contractor have flexibility to make sure that work is performed in a safe manner without those worker safety issues being addressed through the VRP. This seems to be a reasonable approach.

A potential concern would be a developer that does not disclose environmental conditions to a contractor working on the site."

Additional Written Comments - Ian Shaw - City of Roanoke: *"Coordination of Land Use Controls/Deed Restrictions with Local Development Ordinances" - An item that may help alleviate concerns with risk assessment and cleanup levels in items above are the following provisions of state code. The code allows localities to develop provisions in their Subdivision and Zoning Ordinances that require the preparation and submittal of a Phase I ESA, as well as Phase II ESAs, as needed, and disclosure and remediation of contamination as part of development projects. Localities that require these provisions as part of their local ordinances would be aware of:*

- *a) Issues related to cleanup required vs. cleanup needed;*
- *b) Cleanup standards based on certain land use assumptions; and/or*
- *c) The need for specific safety provisions for construction workers.*

§ 15.2-2242. Optional provisions of a subdivision ordinance.

A subdivision ordinance may include:

10. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

11. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

It may be difficult to implement, but it may be worth considering offering some of the proposed VRP flexibility to sites in localities that have adopted the above provisions. This could alleviate VRP program burdens on DEQ staff on follow up on deed restrictions, etc. and encourage localities to be more aware of brownfield work within their bounds. For disclosure, the City of Roanoke has not adopted these provisions at this time.

7. Alternatives Discussion – Other Comments/Alternatives. (Durwood Willis/VRP Program Staff/VRP TAC)

Durwood Willis asked the TAC members for any other comments on the options included in the list of alternatives identified in the white paper. These other options that were not carried forward in the "white paper" write-up included the following:

- "Remove requirement to demonstrate that groundwater plumes have stabilized." PROS - Reduced staff time on review and time sites in program. CONS - Could be considered unprotective for off-site receptors and therefore would constitute MOA, statute and regulation violations.
- "Lower acceptable risk criteria to 1E-04 for screening values for individual carcinogens." PROS - Would raise screening levels and remediation levels resulting in more streamlined risk assessments. CONS - Could be considered unprotective, total carcinogenic risk would be above 1E-04 and inconsistent with CERCLA and contrary to MOA, statute, and regulations. Note acceptable risk criteria are explicitly described in regulations.
- "Shorten Certificate to look more like UST Program No Further Action letters with broader re-openers." PROS - Reduce staff time working on Certificate. CONS - Significantly weakens immunity provision of statute. Unclear how this strategy would implicate the management and enforcement of institutional and engineering controls established for site closure.

TAC Comments/Discussions on the above included the following:

- **"Shorten the Certificate"** - If this alternative is talking about taking out or diluting the "covenant not to sue" contained in the certificate, then this is not a viable alternative. Staff noted that this option came on the coat-tails of the other recommendations. Staff cannot provide immunity for those things that are not being evaluated. The general concept is one of not having to look at everything. Instead of a very robust certificate that says that everything was considered there would be a more general in nature that says that for those items that were looked at that everything is fine, but recognize that everything has not been looked at.

Durwood Willis asked for any additional comments or suggestions from the TAC on options or alternatives that had not been presented by staff in the "white paper". The following additional topics were discussed:

a. "Ecological Risks":

- How much staff time is involved with addressing risk assessment? Staff noted that is not a huge time consideration with VRP. There are some sites where the staff asks for some level of ecological assessment. This is where there may be impacts to surface water and sediment. It is handled on a case-by-case basis. Staff looks at the surrounding habitat to determine whether there is a need to look at additional ecological issues.
- What are you looking at for ecological risks? Staff responded that it is not so much the earthworms but the critters that eat the earthworms that would be of concern.
- Staff noted that this is a minimum consideration in the VRP program and the desire is to keep it that way.
- The requirement is to take into consideration "human health and the environment".
- Staff noted that the real concern is the potential for contaminated groundwater reaching surface waters.
- It was noted that there is usually an increased level of effort needed on the screening of the site to demonstrate that there is not a concern for ecological risk. There is a need for a lot of communications and comments back and forth between the consultant and the department to evaluate the screening data to make this determination. Some resources are not readily available. A suggestion was made that the references for the screening should be available on the website.

ACTION ITEM: Staff will try to be more specific on what is required for an ecological risk assessment screening effort and will make the sources for information related to ecological risk assessment screening available on the program web site.

b. "Program Deemed Acceptable by EPA":

- The background materials provided with the "White Paper" indicates that EPA deemed the program acceptable in 1999. What if anything is being done in the program or required by the program that is above and beyond the 1999 acceptable levels? An evaluation of any differences might provide some other opportunities for

time savings. Staff noted that the program had remained somewhat consistent with the points that had been laid out by EPA at that time as far as addressing contamination.

ACTION ITEM: Staff will look at the current program to see if there are areas that are above and beyond that 1999 "acceptable level" that might be time savers if eliminated from the program.

- Staff noted that the program now looks at "vapor", but everyone is doing vapor now so that would not be a good item to pull from the program requirements.
- Staff also noted that the "public notice" requirements were added to gain EPA's approval, so that would not be an area that could be eliminated.

c. "Less Stringent Requirements"

- Could any of these proposed actions/changes be seen by EPA as being less stringent and affect EPA's approval and/or acceptance of the program? Staff noted that the last two topics discussed would fall into that category. Not sure how EPA would react to the implementation of those changes.
- It is important that EPA recognizes the certificates and accepts the program.

ACTION ITEM: Staff will need to determine how EPA would react to the proposed changes before they are finalized.

James Golden thanked everyone for their comments and input on these options/alternatives and indicated that their comments would be very helpful in determining an appropriate course of action for the department and the program staff.

8. Alternatives Discussion – "Moratorium on Applications" and "Prioritization of Sites for Review". (Durwood Willis/VRP Program Staff/VRP TAC)

*"**Moratorium on Applications:** VRP program funding will be reduced to a level that can only support 3 FTE. Meanwhile applications continue to be received by the program thereby increasing the active site workload. As an immediate response to these conditions a moratorium on accepting applications is being considered. This would decrease the amount of sites coming into the program, thereby decreasing the workload, hopefully to the point where it is manageable with 3 FTEs. It is unclear how the public or the USEPA would react to a moratorium. Temporarily "shutting down" the program may have unintended consequences. The public may ultimately lose interest in program. It could also be considered admittance to USEPA that DEQ cannot live up to our end of the Memorandum of Agreement (MOA) that DEQ signed in 2002 outlining the parameters on how the program will be run. It would also possibly violate the VRP's authorizing statute and regulations."*

*"**Prioritization of Sites for Review:** The establishment of a prioritization system for site review is also being contemplated. The following are ideas, in no particular order, for prioritizing sites that have enrolled in the VRP. Sites that fall into the following categories could receive priority review.*

- *Sites where human health is clearly threatened.*

- If an exposure pathway is complete (e.g., it is documented that a drinking water well is impacted) the site would be a priority.

- *Sites that have received site-specific brownfield grants for Targeted Brownfield Assessments (TBAs) or Site Specific Assessments (SSAs).*
- *Sites that are owned by local government entities.*
- *Sites that are NPL caliber/EPA deferral.*
- *Sites with a 1000 times exceedance of a VRP screening level for any media.*
  - If it was noted that there were instances of contaminants being 1000 times greater than a VRP screening level the site would be a priority.
- *Sites at the Certificate stage.*
- *Sites with active remediation underway such as expensive removal actions and/or the installation of remediation systems which represent significant investments of capital.*

The down-side to any system of prioritization is that it will not alleviate the overall workload and should therefore only be viewed as a short-term solution, if a solution at all. Also worth noting is that it will not alleviate the need to perform critical administrative functions such as site eligibility and enrollment functions, database management, semi-annual report writing, and institutional control tracking. The more day-to-day public interaction components of the program such as returning phone calls and email and providing technical advice to the general public and program participants will also have to be considered."

The TAC discussions on this topic included the following:

- The concept of a "moratorium on applications" is not a good one. Staff agreed that this may not be a viable option.
- Staff indicated that the development of a "prioritization of sites for review" is something that will have to be done no matter what in order to process the applications. It is difficult to place an economic hierarchy on projects.
- Staff noted that realistically since January 1, there have been 16 sites that have come into the VRP program. Staff has managed to get 5 closed for a delta of 11. The backload continues to grow. The program usually averages a total of 25 a year. Have not seen a decrease in the number of applications even with the current state of the economy. It was suggested that as soon as the economy turns around that there will be more sites coming into the program.
- How many of the 146 currently active sites are really active? Can some be eliminated because they are lingering? Staff responded that they had contact with all 146 sites during the course of the year and they were all considered active. Some may be more aggressive then others in working their way to the end of the certification process.
- Can some kind of time requirement or progress requirement be imposed? There is already a progress requirement in the regulation. The effort is in chasing the applicants/sites to make sure that progress is being made and that they are serious about continuing in the program. The issue is always the idea of kicking someone out of a program that they volunteered to be in. The problem is if the department is not happy with the progress of remediation on a site and the site is kicked out of a voluntary program then no remediation at all would be done, because it wasn't mandated to be done in the first place. Anything that is being done is good.
- Has an evaluation of time been done for a project? Has a time analysis been done? Staff responded that a time analysis as such has not been done but the "white paper" was an effort to identify those major categories where the time sinks are. The drafting of a certificate is a

significant time requirement. Most of the staff effort goes into the risk and characterization components of these projects.
- What is the status of the 146 sites? Staff responded that they are anywhere from "eligibility" to "certificate" stage of the process.
- One concept that staff had looked at was a classification of the sites based on their complexity. Some have groundwater wells and other issues associated with them and could be classified as complicated while others were simple sites to evaluate and process. Do we concentrate the staff effort on those with more environmental concerns or do we concentrate on the easy ones and get them out the door. Staff knows that they will issue about 16 certificates, but we just don't know which 16.
- Would any of the 146 qualify for the "remediation not required" letter? Staff responded that all of them would because they have all been deemed as eligible for the voluntary program. Some small percentage of the 146 would request such a letter and would stop at that point. Some letters have been written over the years that say that you are eligible and therefore DEQ has required nothing of you, i.e., remediation is not mandated for the site through any regulatory programs. It was noted that there were some clients would take the option.
- The possibility of developing a fact sheet of sorts that would provide a listing of BMPs that could be utilized on a site where no remediation was required, but committing resources to the endeavor would be issue.
- Staff noted that they had as yet been unable to find a prioritization scheme that they were comfortable with, but would take the TAC's suggestions into consideration as they explore available options to address the backload of applications.

Written Comment/Moratorium on Applications – Ian Shaw – City of Roanoke: *"This option is not desirable/practical from a local government perspective as it would likely preclude any new brownfield redevelopment projects from moving forward. This is especially significant for landlocked cites like Roanoke where one of the few opportunities for growth is through redevelopment. The City of Roanoke concurs that this option does not warrant further consideration."*

Written Comment/Prioritization of Site for Review – Ian Shaw – City of Roanoke: *"This option is also not desirable/practical from a local government perspective although not as onerous as a moratorium on new applications. If the prioritization is based solely on level of contamination there would be a strong possibility that prospective redevelopment projects with relatively low contamination issues could be put on the back burner and stall due to the prolonged schedule.*

Prioritization should only be considered if it looks at both the current environmental state of the site AND the potential positive economic and community development impact the project would have on the locality and/or region. However, it would be difficult to quantify the community benefit for a project and how to weight that benefit. The City of Roanoke concurs that this option does not warrant further consideration as currently presented."

CONSENSUS: The TAC members decided that the concept of a "moratorium" on applications was a bad idea and should not be considered.

9. **Alternatives Discussion – "Other Issues". (VRP Program Staff/VRP TAC)**

The TAC was asked for any other issues that had not been discussed that they wanted to bring forward for discussion.

The TAC discussions on this topic included the following:

- If the department gets CERCLA money can you only use federal money for the program? Staff responded that was the way that the program is currently being operated. There are certain flexibilities under the discretion of the DEQ director to place general fund money towards other programs, but that has not been the case for this program to date. The current pressures on the general fund would make that funding option unlikely in the foreseeable future. It was suggested that this was counterintuitive since this program was one that could actually stimulate the economy more then any other program.
- Are we talking about funding in today's discussions? Staff responded that yes, but only from the perspective that the funding has been cut and we need to identify viable options for dealing with those cuts.
- Do the fees collected get credited to the program? Staff responded yes they do, but they are just minimal and they don't cover the costs of the program. The fees don't fully fund the program. Staff noted that they would not be putting forth any legislation to raise fees in the upcoming General Assembly Session.
- The idea of a recalculation of the fees was raised, i.e., from a single fee to a yearly fee. That would require a change in the statute. Staff noted that there are lots of ways to raise revenues in a program, but that a statute change is not a viable option for the foreseeable future.
- Staff noted that the program had an amount of unspent EPA money granted over the years that have been used in the past to support 4 additional VRP support positions. EPA has asked for all unspent monies to be returned by January 1, 2010. The lost of this funding source results in the need to make changes to the program as recommended in the "white paper" and as being discussed by the TAC. As of January 1, the program can support only 2.8 full-time people. We need to make some changes. There need to be long term changes made.
- Staff noted that what it really comes down to is how we can keep the program viable through the next several years. As the economic climate changes over the next 3 to 8 years or more how do we maintain a viable program rather than pulling the plug. What we are trying to determine is at what level can we still maintain the program as a legitimate program until the funding climate changes? The department is looking at a total of only $355,000 to operate a program that satisfies the workload that is out there.
- It was noted that there was not a single client out there that would accept the alternative of the program not continuing. Staff noted that their concern that without some changes processing sites will become so slow that the program will die on its own. At what level can we maintain the program so that it barely keeps afloat?

10. **Draft Regulation Revisions Discussions - VRP Program Staff/VRP TAC**

The VRP TAC and VRP Program Staff discussed the proposed revisions to the VRP regulation that had been distributed to the TAC members prior to the meeting. The TAC discussions included the following:

a. 9VAC20-160-10. Definitions/Monitored Natural Attenuation:

PROPOSED: *"Monitored natural attenuation" means a remediation process which closely monitors the natural or enhanced attenuation process.*

TAC Comments:

- This seems like a new requirement. Why are we monitoring natural attenuation? Do we have to monitor natural attenuation? Staff responded that would be determined during the risk assessment phase of the project. This has been allowed as part of the process in the past, as part of the voluntary remediation process.

b. 9VAC20-160-10. Definitions/Noncarcinogen:

PROPOSED: *"Noncarcinogen" means a ~~chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system~~ which can cause effects other than cancer. A chemical can be both a carcinogen and a noncarcinogen.*

TAC Comments:

- Sounds like regulation overburden. This is not what the definition of noncarcinogen is in the dictionary. The dictionary meaning is "meaning not causing cancer". Is the rest of the proposed definition necessary?
- The proposed strike-out should be taken out. Revert to the original language, since it is part of the risk assessment process.
- Use common sense in the development of this definition.
- Need to "say what you mean".
- The phrase "a chemical can be both a carcinogen and a noncarcinogen" could be included as part of guidance.

SUGGESTED REVISIONS: *"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicological data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.*

c. 9VAC20-160-10. Definitions/Post Certificate Monitoring:

PROPOSED: *"Post certificate monitoring" means monitoring of environmental or site conditions after the issuance of a certificate to ensure that migration of the plume is stabilized or that engineering and institutional controls are being met or maintained.*

TAC Comments:

- Is this a new program requirement? Shouldn't be increasing program requirements.

d. 9VAC20-160-10. Definitions/Unrestricted Use Default Assumption:

PROPOSED: *"Unrestricted use default assumption" means there are no restrictions on the use of groundwater, surface water, and soil throughout a site.*

TAC Comments:

- Is this term actually used in the proposed revisions to the regulation? Staff will confirm that this and all other terms that are defined are actually used in the regulation. If they are not the definitions will be removed.

STAFF NOTE: The term "unrestricted use default assumption" is no longer used in the regulation and therefore will be deleted from the proposed changes to the definitions section.

e. 9VAC20-160-20. Purpose, applicability, and compliance with other regulations.

NO SUGGESTED REVISIONS

f. 9VAC20-160-30. Eligibility Criteria:

PROPOSED:

A. ~~Candidate~~ Applicants and candidate sites shall meet eligibility criteria as defined in this section.

B. ~~Any~~ Eligible applicants are any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate ~~that~~ a site may apply to participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may apply to participate in the program.

1. Access: Applicants who are not the site owner must demonstrate that they have access to the property at the time of application, during the investigation, and throughout the remedial activities until the remediation is completed.

2. Change in Ownership: The department shall be notified immediately if there is a change in property ownership.

3. Change in Agent: The department shall be notified immediately if there is a change in agent for the property owner or the participant.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an eligible party has ~~completed~~ performed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided the site meets applicable remediation levels. Performed remediation must be documented.

2. Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

3. Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

~~1.~~ a. It is not clear whether the release involved a waste material or a virgin material;

~~2.~~ b. It is not clear that the release occurred after the relevant regulations became effective; or

~~3.~~ c. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a ~~pending or existing~~ closure plan, ~~a pending or existing~~ an administrative order, a ~~pending or existing~~ court order, a ~~pending or existing~~ consent order, or the site is on the National Priorities List;

2. The site at which the release occurred is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. ~~The site at which the release occurred~~ Solid waste was disposed on the site on or after December 21, 1988 and the site constitutes an open dump or unpermitted solid waste management facility under Part IV (9VAC20-80-170 et seq.) of the Virginia Solid Waste Management Regulations;

4. Solid waste was disposed on the site prior to December 21, 1988 and at the time of receipt of the VRP application one or more of the following applies:

a. DEQ has issued a notice of violation that remains unresolved asserting that the site constitutes an open dump or unpermitted solid waste management facility under 9VAC20-80-170, et seq.;

b. The site has been declared an open dump or an unpermitted solid waste management facility under 9VAC20-80-170, et seq., pursuant to a court or administrative order; or,

c. DEQ has not yet issued a notice of violation, but is actively investigating the site as a potential open dump or unpermitted solid waste management facility pursuant to 9VAC20-80-170, et seq., and the VRP application was submitted in an attempt to circumvent DEQ's authority to enforce the open dump or unpermitted solid waste management facility criteria under 9VAC20-80-170, et seq.

~~4.~~ 5. The ~~director~~ department determines that the release poses an imminent and substantial threat to human health or the environment; or

~~5.~~ 6. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The director may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.-

F. No provisions of this Voluntary Remediation Program shall be applied to off-site properties without the written consent of the owners of such properties.

TAC Comments:

Staff noted that they were still working with the Solid Waste Staff on some needed clarification. Has the appearance of solid waste guidance in the VRP regulation. There needs to be some clarification of how the issue of “open dumps” is handled in the VRP program. Need something definitive on what “open dumps” means clearly identified in the regulation. Part of the issue is that the regions wanted clarification of what should be handled and how “open dump” should be addressed

- Should the VRP program include this type of information or guidance about the handling of “open dumps”? There is a regulation open now and should be addressed now. D.3 and D.4 are part of recommendations on draft guidance that were provided by the industry to DEQ over two years ago on clarifying the “open dump criteria”. There have been cases where a site has come in and the determination has been that the site doesn’t qualify for the VRP program but since the presence of an “open dump” has been identified the site will be treated as an “open dump” and there will be an enforcement action. This approach doesn’t provide a big incentive for applicants to bring sites in for consideration for the VRP. The proposed language is there to provide some guidance to the regions so that sites can come into the program without having to go through the solid waste requirements.

- Staff noted that what is and what isn't subject to the solid waste regulations, particularly open dump and old landfills should be defined by the Solid Waste Program and only after which can the VRP eligibility criteria are evaluated   VRP regulations is not the place to create solid waste policy or guidance.

- A question was raised regarding the phrase "was previously under interim status" contained in Section D.2. Seems like this might cause a problem with eligibility considerations. Staff noted that this is a "pat" definition under the RCRA program as to when RCRA applies.

ACTION ITEM: Staff will check the use of the phrase "was previously under interim status".

- Staff noted a concern with Section F. It was noted this had been suggested as a way to address the imposition of controls on an off-site property without the consent of the owner. It was noted that the concern was the use of another ordinances, i.e., well ordinances that require certain things or prohibit things on a property. The presence of another ordinance is used to justify that there is not an exposure risk if there is another agency or mechanism for addressing or regulating that risk. You should be able to rely on the other laws that are out there like OSHA to make the program work. This is not appropriate to include in the regulation. It was noted that this was a vague and unclear statement and should be deleted from the proposed regulation revisions.
- Recommend that F be stricken from the proposed regulation.
- Staff noted that the terms of applicant and eligible applicants and candidates in Sections A and B were confusing and need to be clarified. Staff will revisit these sections to clarify the wording.

SUGGESTED REVISIONS:

A. ~~Candidate~~ Applicants and candidate sites shall meet eligibility criteria as defined in this section.

B. ~~Any~~ Eligible applicants are any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of an eligible site. Those who wish to voluntarily remediate ~~that~~ a site may apply to participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may apply to participate in the program.

1. Access: Applicants who are not the site owner must demonstrate that they have access to the property at the time of application, during the investigation, and throughout the remedial activities until the remediation is completed.

2. Change in Ownership: The department shall be notified immediately if there is a change in property ownership.

3. Change in Agent: The department shall be notified immediately if there is a change in agent for the property owner or the participant.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

1. A site on which an eligible party has ~~completed~~ performed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided the site meets applicable remediation levels. Performed remediation must be documented.

2. Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

3. Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

~~1.~~ a. It is not clear whether the release involved a waste material or a virgin material;

~~2.~~ b. It is not clear that the release occurred after the relevant regulations became effective; or

~~3.~~ c. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a ~~pending or existing~~ closure plan, ~~a pending or existing~~ an administrative order, a ~~pending or existing~~ court order, a ~~pending or existing~~ consent order, or the site is on the National Priorities List;

2. The site at which the release occurred is subject to the Virginia Hazardous Waste Management Regulations (9VAC20-60) (VHWMR), is a permitted facility, is applying for or should have applied for a permit, is under interim status or should have applied for interim status, or was previously under interim status, and is thereby subject to requirements of the VHWMR;

3. ~~The site at which the release occurred~~ Solid waste was disposed on the site on or after December 21, 1988 and the site constitutes an open dump or unpermitted solid waste management facility under Part IV (9VAC20-80-170 et seq.) of the Virginia Solid Waste Management Regulations;

4. Solid waste was disposed on the site prior to December 21, 1988 and at the time of receipt of the VRP application one or more of the following applies:

a. DEQ has issued a notice of violation that remains unresolved asserting that the site constitutes an open dump or unpermitted solid waste management facility under 9VAC20-80-170, et seq.;

b. The site has been declared an open dump or an unpermitted solid waste management facility under 9VAC20-80-170, et seq., pursuant to a court or administrative order; or,

c. DEQ has not yet issued a notice of violation, but is actively investigating the site as a potential open dump or unpermitted solid waste management facility pursuant to 9VAC20-80-170, et seq., and the VRP application was submitted in an attempt to circumvent DEQ's authority to enforce the open dump or unpermitted solid waste management facility criteria under 9VAC20-80-170, et seq.

~~4.~~ 5. The ~~director~~ department determines that the release poses an imminent and substantial threat to human health or the environment; or

~~5.~~ 6. Remediation of the release is otherwise the subject of a response action or investigation required by local, state, or federal law or regulation.

E. The director may determine that a site under subdivision D 3 of this section may participate in the program provided that such participation complies with the substantive requirements of the applicable regulations.

g. 9VAC20-160-40. Application for Participation:

PROPOSED:

A. The application for participation in the Voluntary Remediation Program shall~~, at a minimum~~, provide the elements listed below:

1. A written notice of intent to participate in the program and an overview of the project;

2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.)~~.~~;

3. For authorized agents, a letter of authorization from an eligible party;

4. A legal description of the site;

5. ~~The~~ A general operational history of the site;

6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site; and,

7. A discussion of the potential jurisdiction of other existing environmental regulatory programs, or documentation of a waiver thereof~~; and~~.

~~8. A notarized certification by the applicant that to the best of his knowledge all the information as set forth in this subsection is true and accurate.~~

B. ~~Within 60 days of the department's receipt of an application, the director shall review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30.~~ The department shall review the application for completeness and notify the applicant within 15 days of the application's receipt whether the application is administratively incomplete. Within 60 days of the department's receipt of a complete application, the department shall verify whether the applicant and the site meet the eligibility criteria set forth in 9VAC20-160-30 and notify the applicant whether the application has been accepted. The department reserves the right to conduct eligibility verification inspections of the candidate site during the eligibility verification review.

C. If the ~~director~~ department makes a tentative decision to reject the application, ~~he~~ it shall notify the applicant in writing that the application has been tentatively rejected and provide an explanation of the reasons for the proposed rejection. Within 30 days of the applicant's receipt of notice of rejection the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection. The ~~director's~~ department's tentative decision to reject an application will become a final agency action under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) upon receipt of an applicant's written acceptance of the ~~director's~~ department's decision to reject an application, or in the event an applicant fails to respond within the 30 days specified in this subsection, upon expiration of the 30 ~~days specified~~ day period. If within 30 days an applicant submits additional information to correct the inadequacies of an application, the review process ~~begins~~ shall begin again in accordance with this section.

TAC Comments:

- With the changes that are being considered, should the 15 and 60 day time frames proposed in B be adjusted? Staff responded that the time schedule as proposed actually helps DEQ make sure that the necessary completeness review progresses in a timely manner, since we rely on other entities to do parts of the completeness review.
- It was noted that if the wording is "days" and doesn't specifically say "business days" that the default is that it is "calendar days".

NO SUGGESTED REVISIONS

h. 9VAC20-160-60. Registration Fee:

PROPOSED:

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program.

B. The registration fee shall be ~~at least~~ 1.0% of the estimated cost of the remediation at the site, but shall not ~~to~~ exceed the statutory maximum. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality~~, P.O. Box 10150, Richmond, VA 23240,~~ P.O. Box 1105, Receipts Control, Richmond, VA 23218.

C. To determine the appropriate registration fee, the applicant may provide an estimate of the anticipated total cost of remediation.

1. Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.

2. Departmental concurrence with an estimate of the cost of remediation does not constitute approval of the remedial approach assumed in the cost estimate.

3. The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.

D. If the participant does not elect to submit the statutory maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any costs to be refunded shall be remitted by the department with issuance of the certificate.

E. If the participant elected to remit the statutory maximum registration fee, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.

F. Failure to remit the required registration fee within 90 days of the date the application was determined eligible by the department may result in loss of the applicant's eligibility status established under Section 40.B.

TAC Comments:

- Staff noted the addition of Section F to establish a sunset provision in the regulation. This was proposed so that the department would not have to continue to track these for the next 20 years to see if they were still interested in participation in the program. It was suggested that a better wording might be that the applicant would need to reapply if they failed to remit the required registration fee within 90 days.

SUGGESTED REVISIONS:

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program.

B. The registration fee shall be ~~at least~~ 1.0% of the estimated cost of the remediation at the site, but shall not ~~to~~ exceed the statutory maximum. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality~~, P.O. Box 10150, Richmond, VA 23240,~~ P.O. Box 1105, Receipts Control, Richmond, VA 23218.

C. To determine the appropriate registration fee, the applicant may provide an estimate of the anticipated total cost of remediation.

1. Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.

2. Departmental concurrence with an estimate of the cost of remediation does not constitute approval of the remedial approach assumed in the cost estimate.

3. The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.

D. If the participant does not elect to submit the statutory maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any costs to be refunded shall be remitted by the department with issuance of the certificate.

E. If the participant elected to remit the statutory maximum registration fee, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.

F. Failure to remit the required registration fee within 90 days of the date the application was determined eligible by the department may result in applicant having to reapply for participation in the program.

i. 9VAC20-160-70. Work to be Performed:

PROPOSED:

A. The Voluntary Remediation Report serves as the archive for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into the report. The report shall consist of a site characterization, a risk assessment including an assessment of risk to surrounding properties (as appropriate), a remedial action work plan, a demonstration of completion, and documentation of public notice.

1. The site characterization shall contain a delineation of the nature and extent of releases to all media, including the vertical and horizontal extent of ~~the~~ contaminants on the site. The site characterization shall also include evaluation of any off-site impacts. No remediation, including land-use controls, shall be proposed for any off-site property, unless the vertical and horizontal extent of contamination on that property have been delineated.

2. The risk assessment shall contain an evaluation of the risks to human health and the environment posed by the release, a proposed set of remediation levels consistent with 9VAC20-160-90 that are protective of human health and the environment, and a recommended remediation to achieve the proposed objectives; or a demonstration that no action is necessary.

3. The remedial action work plan shall propose the activities, schedule, any permits required to initiate and complete the remediation and specific design plans for implementing remediation that will achieve the remediation levels specified in the risk assessment. Control or elimination of continuing onsite source or sources of releases to the environment shall be discussed. Land use controls should be discussed as appropriate.

a. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.

b. For sites that do not achieve the unrestricted use classification, land use controls may be proffered in order to develop remediation levels based on restricted use. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in 9VAC20-160-110. Land use controls accepted by the department for use at the site are considered remediation for the purpose of this chapter.

4. Demonstration of completion~~.~~: The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.

~~a. The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.~~

~~b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~

~~5. The participant shall provide documentation that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall include copies of comments received during the public comment period, all acknowledgements of receipt of comments, as well as the participant's responses to comments, if any are made.~~

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state and local laws and regulations ~~and any appropriate regulations that are not required by state or federal law but~~ that are necessary to ensure that the activities do not result in a further release of contaminants to the environment and are protective of human health and the environment.

C. All work shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised ~~April 1998~~ January 3, 2008, or other media specific methods approved by the department and completed using appropriate quality assurance/quality control protocols.

D. Until certificate issuance, all participants shall submit a report to the department containing a brief summary of any actions ongoing or completed as well as any planned future actions for the next reporting period. This report shall be submitted by July 1st using the "VRP Site Status Reporting Form".

TAC Comments:

- Section A.1 references both the evaluation and delineation of off-site impacts. Staff noted that the way it is currently worded is a significant new requirement. The recommendations of the "white paper" propose to eliminate the off-site considerations. There needs to be flexibility in dealing with off-site properties. This wording is too specific. This would take a lot of technical and scientific work.
- Still have to evaluate the risk of any off-site impacts, but these can be modeled. If delineation is required then modeling would not be an option.
- The concern that had been raised was relying on the local ordinance to provide the protection measure for the exposure pathway for drinking water. No requirements for water testing or other requirements should be imposed on a property owner without his consent under this program. But you would have to comply with a local ordinance whether a site was under the VRP or not. It was suggested that the concern may have been a desire to not have land use controls imposed on a property without someone coming out to the property and getting the owners permission before hand.
- The sentence, "The site characterization shall also include evaluation of any off-site impacts" is appropriate and should be retained.
- Staff noted that the concern is trying to marry the recommendations of the "white paper" with the concerns raised with the inclusion of language that addresses off-site impacts.
- Staff noted that Sections 70.A.3.a and 70.A.3.b should be taken out of this section and moved to the section dealing with risk assessment or certificate section of the regulation. Staff noted that the language was fine but seems to be out of place.

ACTION ITEM: Staff will look at Section 70.A.3.a and 70.A.3.b language to determine the appropriate place in the regulations to inset it.

- Section D refers to the submittal of an annual report by all participants to the department containing a brief summary of any actions ongoing or completed, as well as any planned future actions for the next reporting period. It was noted that this was to enable the program staff to development the required reports to EPA on the status of the program. A question was raised as

to the EPA reporting requirement. Staff noted that the reports to EPA were required as part of the public record requirements. The public record requirements require the constant posting of the status of sites in the VRP program on the web page. Part of making information accessible to the public. Staff noted that out of the 146 current sites in the program there are about 50 to 60 that are really active. Staff noted that it could be streamlined so that the information could be dumped directly into an excel spreadsheet for posting on the web page.

- A question was raised regarding a previous recommendation for semi-annual reporting. Staff noted that under the EPA grant requirements, the department has to report on the status of all sites under the VRP program twice a year. The original recommendation was to require the participants to report on a semi-annual basis to provide the information needed for these reports. Staff decided to back off that requirement to the annual report that is being proposed. Staff noted that the semi-annual reporting requirement is a good management tool for the program staff to go over all of the sites in the program to determine status and to determine if any have dropped between the cracks.
- Staff noted that this requirement might actually cost staff time if there are participants who fail to submit the required annual report. What do you do if they don't report? Staff noted that the report to EPA is due on October 31st. The required annual report from the participants is due on July 1st to provide some time for follow-up if needed prior to the preparation of the report to EPA.
- The development of a "30-Day letter" was recommended as a way to deal with participants who fail to provide the required report. If they don't provide the needed report by the specified deadline they would receive the letter notifying them that they have 30 days within which to comply with the requirements or they will be removed from the program or would have to pay a fine, etc.. Whatever resulting penalties would be driven off of the need to save time so that more sites can make it through the program on an annual basis.
- Staff noted that the contacts are made through regular mail. A suggestion was made that the contact for updates could be handled through an email notification.
- Staff noted that they try to make contact with every site once a year. Phone calls are made to those participants that have not submitted reports.
- Need to make sure that this requirement ends up as a time saver. It was suggested that if requiring the report twice a year would result in saving staff time that could be spend processing sites through the program that program participants would be willing to provide the reports on that schedule.

Written Comment – Ian Shaw – City of Roanoke: 9VAC20-160-70. Work to be performed. A.1: *"What happens if the adjacent property owner is uncooperative? Will that prevent the site from being closed or limit the ability of a potential community development project to move forward?*

SUGGESTED REVISIONS:

A. The Voluntary Remediation Report serves as the archive for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into the report. The report shall consist of a site characterization, a risk assessment including an assessment of risk to surrounding properties (as appropriate), a remedial action work plan, a demonstration of completion, and documentation of public notice.

1. The site characterization shall contain a delineation of the nature and extent of releases to all media, including the vertical and horizontal extent of ~~the~~ contaminants on the site. The site characterization shall also include evaluation of any off-site impacts.

2. The risk assessment shall contain an evaluation of the risks to human health and the environment posed by the release, a proposed set of remediation levels consistent with 9VAC20-160-90 that are protective of human health and the environment, and a recommended remediation to achieve the proposed objectives; or a demonstration that no action is necessary.

3. The remedial action work plan shall propose the activities, schedule, any permits required to initiate and complete the remediation and specific design plans for implementing remediation that will achieve the remediation levels specified in the risk assessment. Control or elimination of continuing onsite source or sources of releases to the environment shall be discussed. Land use controls should be discussed as appropriate.

4. Demonstration of completion~~.~~: The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.

~~a. The demonstration of completion should, when applicable, include a detailed summary of the performance of the remediation implemented at the site, the total cost of the remediation, and confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or that other criteria for completion of remediation have been satisfied. If the participant elected to remit the statutory maximum registration fee and is not seeking a refund of any portion of the registration fee, the total cost of remediation need not be provided.~~

~~b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.~~

~~5. The participant shall provide documentation that public notice has been provided in accordance with 9VAC20-160-120. Such documentation shall include copies of comments received during the public comment period, all acknowledgements of receipt of comments, as well as the participant's responses to comments, if any are made.~~

B. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state and local laws and regulations ~~and any appropriate regulations that are not required by state or federal law but~~ that are necessary to ensure that the activities do not result in a further release of contaminants to the environment and are protective of human health and the environment.

C. All work shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised ~~April 1998~~ January 3, 2008, or other media specific methods approved by the department and completed using appropriate quality assurance/quality control protocols.

D. Until certificate issuance, all participants shall submit a report to the department containing a brief summary of any actions ongoing or completed as well as any planned future actions for the next reporting period. This report shall be submitted by July 1st using the "VRP Site Status Reporting Form".

j. 9VAC20-160-80. Review of Submittals.

NO SUGGESTED REVISIONS

k. 9VAC20-160-90. Remediation Levels.

PROPOSED:

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

~~B. Remediation levels shall be based upon a risk assessment of the site and surrounding areas that may be impacted, reflecting the current and future use scenarios.~~

~~1. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.~~

~~2. For sites that do not achieve the unrestricted use classification, land use controls shall be applied. The restrictions imposed upon a site may be media specific, may vary according to site specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in 9VAC20-160-110. Land use controls approved by the department for use at the site are considered remediation.~~

~~C.~~B. Remediation levels based on human health shall be developed after appropriate site characterization data have been gathered as provided in 9VAC20-160-70. Remediation levels may be derived from the three-tiered approach provided in this subsection. Any tier or combination of tiers may be applied to establish remediation levels for contaminants present at a given site~~, with consideration of site use restrictions specified in subsection B of this section~~.

1. ~~Under~~ Tier I ~~the participant shall collect appropriate samples from background and from the area of contamination for all media of concern~~ remediation levels are based on media backgrounds levels. These background levels shall be determined from a portion of the property or a nearby property or other areas as approved by the department that have not been impacted by the contaminants of concern.

~~a. Background levels shall be determined from a portion of the property or a nearby property that has not been impacted by the contaminants of concern.~~

~~b. The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable. If concentrations are at or below background levels, no further assessment is necessary.~~

2. Tier II ~~generic~~ remediation levels are ~~media-specific values,~~ derived ~~using unrestricted use default assumptions~~ assuming that there will be no restrictions on the use of groundwater, surface water, and soil (I.E., LAND USE) on the site. ~~Use of Tier II shall be limited to the following:~~

a. Tier II ~~generic~~ groundwater remediation levels shall be based on the most beneficial use of groundwater. The most beneficial use of groundwater is for a potable water source, unless demonstrated otherwise by the participant and accepted by the department. Therefore, they shall be based on (i) federal Maximum Contaminant Levels (MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values derived using the methodology provided in the ~~EPA Region III Risk-Based Concentration Table current at the time of the assessment~~ Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 10, 2008 using an acceptable individual carcinogenic risk of 1 X 10^{-5} and an individual noncarcinogen hazard quotient of 0.1. ~~For contaminants that do not have values available under clauses (i) or (ii) above, a remediation level shall be calculated using criteria set forth under Tier III remediation levels.~~

b. ~~Soil~~ Tier II soil remediation levels ~~shall insure that migration of contaminants shall not cause the cleanup levels established for groundwater and surface water to be exceeded. Soil remediation levels~~ shall be determined as the lower of ~~either~~ the ingestion or cross-media transfer values, according to the following:

(1) For ingestion, values derived using the methodology provided in the ~~EPA Region III Risk-Based Concentration Table current at the time of assessment.~~ Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 10, 2008

(a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of ~~1 X 10^{-6}~~ 1 X 10^{-5}.

(b) For noncarcinogens, ~~1/10 (i.e., Hazard Quotient = 0.1)~~ 0.1 of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding ~~1/10~~ 0.1 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~ 1.0.

(2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, July 1996, Document 9355.4-23, EPA/540/R-96/018) and USEPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites (OSWER, December 2002, Document 9355.4-24) shall be used as follows:

(a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on a MCL; or

(b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens and a risk level of $1 X 10^{-5}$ for carcinogens, using default residential exposure assumptions.

~~(3)~~ (c) For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding ~~1/10~~ 0.1 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~1.0.

~~(4)~~ (3) Values derived under 9VAC20-160-90 C 2 b (1) and (2) may be adjusted to allow for updates in approved toxicity factors as necessary.

~~c. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.~~

~~d.~~ c. ~~For unrestricted future use, where a contaminant of concern exists for which~~ Tier II remediation levels for surface water ~~quality standards~~ shall be based on the Virginia Water Quality Standards (WQS) ~~have been adopted~~ as established by the State Water Control Board ~~for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies.~~(9VAC25-260), according to the following:

(1) The chronic aquatic life criteria shall be compared to the appropriate human health criteria and the lower of the two values selected as the Tier II remediation level.

(2) For contaminants that do not have a Virginia Water Quality Standard (WQS), the federal Water Quality Criteria (WQC) may be used if available. The chronic federal criterion continuous concentration (CCC) for aquatic life shall be compared to the appropriate human health based criteria and the lower of the two values selected as the Tier II remediation level.

(3) If neither a Virginia WQS nor a federal WQC is available for a particular contaminant detected in surface water, the participant should perform a literature search to determine if alternative values are available. If alternative values are not available, the detected contaminants shall be evaluated through a site-specific risk assessment.

3. Tier III remediation levels are based upon ~~a site-specific risk assessment considering~~ site-specific assumptions about current and potential exposure scenarios for the population or populations of concern~~, including ecological receptors,~~ and characteristics of the affected media and can be based upon a site-specific risk assessment. Land-use controls can be considered.

a. In developing Tier III remediation levels, and unless the participant proposes other guidance that is acceptable to the department, the participant shall use, for all media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may use other methodologies approved by the department.

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of ~~$1 X 10^{-6}$~~ $1 X 10^{-5}$. The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding $1 X 10^{-4}$ considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than $1 X 10^{-4}$.

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

~~*e. Groundwater cleanup levels shall be based on the most beneficial use of the groundwater. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the participant and approved by the department.*~~

~~*f. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.*~~

C. The participant shall determine if ecological receptors are present at the site or in the vicinity of the site and if they are impacted by releases from the site.

1. At sites where there are complete exposure pathways to ecological receptors, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under the three-tiered approach described in this section are also protective of such ecological receptors.

2. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under the three-tiered approach described in this section are also protective of ecological receptors. If the remediation levels developed for human health are not protective of ecological receptors, the remediation levels shall be adjusted accordingly.

TAC Comments:

- Are we going to revisit the change of the acceptable risk criteria level from 1 X 10^{-5} to the level of 1 X 10^{-4} as proposed in the "white paper"? Staff noted that they would look at all of the information and suggestions from the TAC before deciding on an appropriate course of action. The change from 10^{-5} to 10^{-4} is a big deal.
- It was noted that the staff rewrite of this section made it much clearer.
- It was also noted that the rewrite is a significant improvement over the previous versions.
- It was suggested that the pieces that had been shifted out of this section (B.1 and 2) might need to be reinserted since they really didn't fit where they were moved to. Staff suggested that they might need to go into the "demonstration of completion" section (9VAC20-160-70.A.4).
- A question was raised regarding the handling of groundwater issues and how the standards are enforced or dealt with. Staff responded that they would look at what is happening with groundwater and look for potentials for discharges to surface water. This would be looked at by the project manager as part of the characterization process. It would be part of a hydrological assessment to determine whether there is a reasonable probability that there could be discharge to surface water. It would be a professional judgment determination.
- Are there any TMDLs involved? Staff noted that you couldn't count it out even if to date there have not been any instances where TMDLs were involved. There is a potential for overlap.
- Is this information shared with the water program? In a couple of instances yes, but the reverse is more likely. The water program staff would come to the program staff to find out the potential cause of a water problem. The communication is getting closer between programs within DEQ to share information regarding potential sources of pollutants.
- Shouldn't the restriction noted in B.2 regarding Tier II remediation levels also include a

statement that "no restrictions on land use' are assumed as well? Staff noted that should be clarified to note that additional assumption.

- Is the change from 10^{-6} to 10^{-5} being seriously considered? IT was noted that the "white paper" proposed a change from 10^{-5} to 10^{-4}. Staff noted that everything is on the table for consideration. Will that even pass the EPA laugh-test? The recommended change to 10^{-4} was not supported. Staff will look at the impacts of the proposed change from 10^{-6} to 10^{-5} to make a determination as to implementing the change.
- What is meant by the use of the term "complete exposure pathways"? What does this addition mean? Is there any reason to use the word "complete"? Staff noted that this is to indicate that in addition to a potential for an exposure pathway to ecological receptors that there is an actual exposure pathway. A suggestion was made to revert back to the original regulation language to clarify this statement.
- The term "ecological" is not well defined. Staff noted that the use of the term is purposely vague to keep as much flexibility in the program as possible. Don't want to be too prescriptive for ecological risk assessments, so that staff could use their professional judgment. Don't want to make it any more difficult. This broad language is appropriate for use under this regulation.

SUGGESTED REVISIONS:

A. The participant, with the concurrence of the department, shall consider impacts to human health and the environment in establishing remediation levels.

~~*B. Remediation levels shall be based upon a risk assessment of the site and surrounding areas that may be impacted, reflecting the current and future use scenarios.*~~

~~*1. A site shall be deemed to have met the requirements for unrestricted use if the remediation levels, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of these levels will allow the site to be given an unrestricted use classification. No remediation techniques or land use controls that require ongoing management may be employed to achieve this classification.*~~

~~*2. For sites that do not achieve the unrestricted use classification, land use controls shall be applied. The restrictions imposed upon a site may be media-specific, may vary according to site-specific conditions, and may be applied to limit present and future use. All controls necessary to attain the restricted use classification shall be described in the certificate as provided in 9VAC20-160-110. Land use controls approved by the department for use at the site are considered remediation.*~~

~~*C.*~~ *B. Remediation levels based on human health shall be developed after appropriate site characterization data have been gathered as provided in 9VAC20-160-70. Remediation levels may be derived from the three-tiered approach provided in this subsection. Any tier or combination of tiers may be applied to establish remediation levels for contaminants present at a given site*~~*, with consideration of site use restrictions specified in subsection B of this section*~~*.*

1. ~~*Under*~~ *Tier I* ~~*the participant shall collect appropriate samples from background and from the area of contamination for all media of concern*~~ *remediation levels are based on media backgrounds levels. These background levels shall be determined from a portion of the property or a nearby property or other areas as approved by the department that have not been impacted by the contaminants of concern.*

~~*a. Background levels shall be determined from a portion of the property or a nearby property that has not been impacted by the contaminants of concern.*~~

~~*b. The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable. If concentrations are at or below background levels, no further assessment is necessary.*~~

2. Tier II ~~*generic*~~ *remediation levels are* ~~*media-specific values,*~~ *derived* ~~*using unrestricted use default assumptions*~~ *assuming that there will be no restrictions on the use of groundwater, surface water, and soil (i.e., land use) on the site.* ~~*Use of Tier II shall be limited to the following:*~~

a. Tier II ~~generic~~ groundwater remediation levels shall be based on the most beneficial use of groundwater. The most beneficial use of groundwater is for a potable water source, unless demonstrated otherwise by the participant and accepted by the department. Therefore, they shall be based on (i) federal Maximum Contaminant Levels (MCLs) or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or, in the absence of a MCL, (ii) tap water values derived using the methodology provided in the ~~EPA Region III Risk-Based Concentration Table current at the time of the assessment~~ Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 10, 2008 using an acceptable individual carcinogenic risk of $1 X 10^{-5}$ and an individual noncarcinogen hazard quotient of 0.1. ~~For contaminants that do not have values available under clauses (i) or (ii) above, a remediation level shall be calculated using criteria set forth under Tier III remediation levels.~~

b. ~~Soil~~ Tier II soil remediation levels ~~shall insure that migration of contaminants shall not cause the cleanup levels established for groundwater and surface water to be exceeded. Soil remediation levels~~ shall be determined as the lower of ~~either~~ the ingestion or cross-media transfer values, according to the following:

(1) For ingestion, values derived using the methodology provided in the ~~EPA Region III Risk-Based Concentration Table current at the time of assessment.~~ Regional Screening Level Table, Region III, VI, and IX, United States Environmental Protection Agency, December 10, 2008

(a) For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of ~~$1 X 10^{-6}$~~ $1 X 10^{-5}$.

(b) For noncarcinogens, ~~1/10 (i.e., Hazard Quotient = 0.1)~~ 0.1 of the soil ingestion concentration, to account for multiple systemic toxicants at the site. For sites where there are fewer than 10 contaminants exceeding ~~1/10~~ 0.1 of the soil ingestion concentration, the soil ingestion concentration may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~ 1.0.

(2) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, July 1996, Document 9355.4-23, EPA/540/R-96/018) and USEPA Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites (OSWER, December 2002, Document 9355.4-24) shall be used as follows:

(a) The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on a MCL; or

(b) The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens and a risk level of $1 X 10^{-5}$ for carcinogens, using default residential exposure assumptions.

~~(3)~~ (c) For noncarcinogens, for sites where there are fewer than 10 contaminants exceeding ~~1/10~~ 0.1 of the soil screening level, the soil screening level may be divided by the number of contaminants such that the resulting hazard index does not exceed ~~one~~1.0.

~~(4)~~ (3) Values derived under 9VAC20-160-90 C 2 b (1) and (2) may be adjusted to allow for updates in approved toxicity factors as necessary.

~~c. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under Tier II are also protective of ecological receptors of concern.~~

~~d.~~ c. ~~For unrestricted future use, where a contaminant of concern exists for which~~ Tier II remediation levels for surface water ~~quality standards~~ shall be based on the Virginia Water Quality Standards (WQS) ~~have been adopted~~ as established by the State Water Control Board ~~for a specific use, the participant shall demonstrate that concentrations in other media will not result in concentrations that exceed the WQS in adjacent surface water bodies.~~(9VAC25-260), according to the following:

(1) The chronic aquatic life criteria shall be compared to the appropriate human health criteria and the lower of the two values selected as the Tier II remediation level.

(2) For contaminants that do not have a Virginia Water Quality Standard (WQS), the federal Water Quality Criteria (WQC) may be used if available. The chronic federal criterion continuous concentration (CCC) for aquatic life shall be compared to the appropriate human health based criteria and the lower of the two values selected as the Tier II remediation level.

(3) If neither a Virginia WQS nor a federal WQC is available for a particular contaminant detected in surface water, the participant should perform a literature search to determine if alternative values are available. If alternative values are not available, the detected contaminants shall be evaluated through a site-specific risk assessment.

3. Tier III remediation levels are based upon ~~a site-specific risk assessment considering~~ site-specific assumptions about current and potential exposure scenarios for the population or populations of concern~~, including ecological receptors,~~ and characteristics of the affected media and can be based upon a site-specific risk assessment. Land-use controls can be considered.

a. In developing Tier III remediation levels, and unless the participant proposes other guidance that is acceptable to the department, the participant shall use, for all media and exposure routes, the methodology specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002) and (Part B, Development of Preliminary Remediation Goals) Interim, USEPA, December 1991 (Publication 9285.7-01B) with modifications as appropriate to allow for site-specific conditions. The participant may use other methodologies approved by the department.

b. For a site with carcinogenic contaminants, the remediation goal for individual carcinogenic contaminants shall be an incremental upper-bound lifetime cancer risk of ~~$1 X 10^{-6}$~~ $1 X 10^{-5}$. The remediation levels for the site shall not result in an incremental upper-bound lifetime cancer risk exceeding $1 X 10^{-4}$ considering multiple contaminants and multiple exposure pathways, unless the use of a MCL for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than $1 X 10^{-4}$.

c. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

d. In setting remediation levels, the department may consider risk assessment methodologies approved by another regulatory agency and current at the time of the Voluntary Remediation Program site characterization.

~~e. Groundwater cleanup levels shall be based on the most beneficial use of the groundwater. The most beneficial use of the groundwater is for a potable water source, unless demonstrated otherwise by the participant and approved by the department.~~

~~f. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under Tier III are also protective of ecological receptors of concern. If the Tier III remediation levels developed for human health are not protective of ecological receptors of concern, the remediation levels shall be adjusted accordingly.~~

C. The participant shall determine if ecological receptors are present at the site or in the vicinity of the site and if they are impacted by releases from the site.

1. At sites where ecological receptors are of concern and there are complete exposure pathways, the participant shall perform a screening level ecological evaluation to show that remediation levels developed under the three-tiered approach described in this section are also protective of such ecological receptors.

2. For sites where a screening level ecological evaluation has shown that there is a potential for ecological risks, the participant shall perform an ecological risk assessment to show that remediation levels developed under the three-tiered approach described in this section are also protective of ecological receptors. If the remediation levels developed for human health are not protective of ecological receptors, the remediation levels shall be adjusted accordingly.

l. 9VAC20-160-100. Termination.

PROPOSED:

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the ~~director~~ department that the site is ineligible or that a participant has taken an action to render the site

ineligible for participation in the program. If such a determination is made, the ~~director~~ <u>department</u> shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the ~~director's~~ <u>department's</u> determination.

2. Upon 30 days written notice of termination by ~~either party~~ <u>the participant</u>.

<u>B. Participation in the program may be terminated by the department upon participant's failure to make reasonable progress towards completion of the program.</u>

~~B.~~ <u>C.</u> The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

~~C.~~ <u>D.</u> No portion of the registration fee will be refunded if participation is terminated by any method as described in 9VAC20-160-100.

TAC Comments:

- Staff noted that with the changes proposed that it is unclear if the department can terminate due to inaction. If someone is not doing anything then have we given up the ability to do anything? Who determines reasonable progress? Recommended that the section be modified to provide that the department is the one to determine what "reasonable progress" is.
- If you are terminated in a voluntary program then you don't receive your certificate. There have been instances where a potential participant has been kicked out of the program due to inaction.
- Staff noted that this stipulation is for those long term participants where there is an ongoing voluntary effort going on and there is a need to continue to track the progress on the site.

SUGGESTED REVISIONS:

A. Participation in the program shall be terminated:

1. When evaluation of new information obtained during participation in the program results in a determination by the ~~director~~ <u>department</u> that the site is ineligible or that a participant has taken an action to render the site ineligible for participation in the program. If such a determination is made, the ~~director~~ <u>department</u> shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 days, the participant may submit additional information, or accept the ~~director's~~ <u>department's</u> determination.

2. Upon 30 days written notice of termination by ~~either party~~ <u>the participant</u>.

<u>B. Participation in the program may be terminated by the department upon participant's failure to make reasonable progress towards completion of the program, as determined by the department.</u>

~~B.~~ <u>C.</u> The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program whether the program is satisfactorily completed or terminated.

~~C.~~ <u>D.</u> No portion of the registration fee will be refunded if participation is terminated by any method as described in 9VAC20-160-100.

m. 9VAC20-160-110. Certification of Satisfactory Completion of Remediation.

NO SUGGESTED REVISIONS

n. 9VAC20-160-120. Public Notice.

PROPOSED:

A. The participant shall give public notice of ~~either the proposed voluntary remediation or the completed voluntary remediation~~ the enrollment of a site into the program. The notice shall be made ~~after the department concurs with the site characterization report and the proposed remediation, and shall occur prior to the department's issuing a certificate~~ upon enrollment into the program. Such notice shall occur prior to the department's acceptance of a site characterization report. Such notice shall be paid for by the participant.

~~B. The participant shall give written notice to adjacent property owners as soon as the site is accepted into the program. The participant shall also give written notice to owners of any property impacted by the releases being addressed under the VRP project as soon as the participant and the department determine that such property is so impacted.~~

C. The participant shall:

1. Provide written notice to the local government in which the facility is located;

2. Provide written notice to all adjacent property owners and other owners whose property has been impacted by the release being addressed under the VRP project; ~~and~~

3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action~~.~~; and,

4. Provide a copy of the public notice to the department for inclusion on its public notification webpage. Copy of the public notice shall be provided at the same time as the notice is provided to the newspaper.

~~B.~~D. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period. The contents of each public notice required pursuant to 9VAC20-160-120 A shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;

2. A brief description of ~~the remediation,~~ the general nature of the release, any proposed remediation and any proposed land use controls;

3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

E. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

~~C.~~F. The participant shall provide to the department:

1. ~~a~~ A signed statement that he has sent a written notice to all adjacent property owners and the local government, a copy of the notice, and a list of all names and addresses to whom the notice was sent~~.~~;

2. Copies of all written comments received during the public comment period, copies of acknowledgement letters, and copies of any response to comments.

~~D. The participant shall send all commenters a letter acknowledging receipt of comments.~~

~~E. The participant shall provide to the department copies of all written comments received during the public comment period, copies of acknowledgement letters, a discussion of how those comments were considered, a copy of any response to comments, and a discussion of their impact on the proposed or completed remediation.~~

TAC COMMENTS:

- Staff noted a concern that the proposed language would result in the applicant having to submit three public notices. It was noted that it should only be one.
- There should be only one required public notice and that should be when the applicant requests to have his site characterization report approved. It should be when the applicant asks for the approval. Either leave the original language or make it when the applicant asks for approval of

his site characterization plan. When the applicant would ask and when the department agrees except for the public notice.

- Staff noted that when the site characterization plan is ready for approval the site is essentially almost done. The site characterization feeds into the risk assessment part of the process.
- It was noted that there is a difference between a "public notice" and a "written notice".
- It was suggested that Section A be put back to the original language and that B should be deleted.
- There are at least two notices, one at the beginning and one at the end of the program.
- It was suggested that the purpose of the proposed changes was to get the notice sooner than later in the process.
- Notification to adjacent property owners either after site characterization or after approval of the site remediation plan.
- If the proposed language in B is struck, when do the adjacent property owners receive notification? This would occur when the department concurs with the site characterization report and the proposed remediation.
- The adjacent property owners get a notice towards the end of the process that contains a brief description of the general nature of the release, any proposed remediation and any proposed land use controls.
- What about the use of the term "releases"? Staff responded that the statute refers to the "remediation of releases".
- There should be only one notice.
- A notice made at the end of the process would have more complete information.
- The notice should have sufficient information so that adjacent property owners would be able to look at real data. There is still an opportunity at that time in the process to affect the issuance of the certificate. If there is an exposure pathway that has been missed it could stop the issuance of the certificate.
- Staff noted that of the 220 certificates that have been issued there have been public comments made on probably 8 or 10 of those. Significant public comment on maybe 3, but there has been nothing that resulted in any material changes. Deed restrictions and institutional controls can cover a lot of uncertainty.
- Within the idea of one notice, can you include some information that the status of this will be updated on the web site?
- The notice will end up tied with the risk evaluation.
- The requirement to provide a copy of the public notice to the department for inclusion on its public notification webpage should be deleted. It could still be asked for but should be included in the regulation as a requirement that the department has to post it by a certain date.

Written Comment – Ian Shaw – City of Roanoke - 9VAC20-160-120: *"If the notice is given at the time of enrollment of the project into the program, is there a provision for further notice should there be changes in site conditions, the proposed cleanup or the proposed land use restrictions? Is the something the local government or an adjacent land owner would need to request as part of the initial notice?*

SUGGESTED REVISIONS:

A. The participant shall give public notice of either the proposed voluntary remediation or the completed voluntary remediation. The notice shall be made after the department concurs with the site characterization report and the proposed remediation, and shall occur prior to the department's issuing a certificate. Such notice shall be paid for by the participant.

B. The participant shall:

1. Provide written notice to the local government in which the facility is located;

2. Provide written notice to all adjacent property owners and other owners whose property has been impacted by the release being addressed under the VRP project; and

3. Publish a notice once in a newspaper of general circulation in the area affected by the voluntary action.

~~B.~~C. A comment period of at least 30 days must follow issuance of the notices pursuant to this section. The department, at its discretion, may increase the duration of the comment period. The contents of each public notice required pursuant to 9VAC20-160-120 A shall include:

1. The name and address of the participant and the location of the proposed voluntary remediation;

2. A brief description of ~~the remediation,~~ the general nature of the release, any proposed remediation and any proposed land use controls;

3. The address and telephone number of a specific person familiar with the remediation from whom information regarding the voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

D. The participant shall send all commenters a letter acknowledging receipt of written comments and providing responses to the same.

~~C.~~E. The participant shall provide to the department:

1. ~~a~~ A signed statement that he has sent a written notice to all adjacent property owners and the local government, a copy of the notice, and a list of all names and addresses to whom the notice was sent~~.~~;

2. Copies of all written comments received during the public comment period, copies of acknowledgement letters, and copies of any response to comments.

~~D. The participant shall send all commenters a letter acknowledging receipt of comments.~~

~~E. The participant shall provide to the department copies of all written comments received during the public comment period, copies of acknowledgement letters, a discussion of how those comments were considered, a copy of any response to comments, and a discussion of their impact on the proposed or completed remediation.~~

11. Other Items Not Addressed in the White Paper or During the TAC Discussions

The TAC members were asked whether there were any other items that had not been discussed:

TAC Comments:

- The issue of dry cleaners has been identified as a big time sink, are there any other areas that are time sinks that could be dealt with in a similar manner? Staff responded that the next biggest category is "Miscellaneous".

12. Staff TAC Meeting Wrap-Up/Summary (Bill Norris)

Staff thanked all of the TAC members for their time and commitment to the effort. Staff asked the TAC members for their feedback on the materials that were discussed today and the forthcoming meeting notes so that their comments can be considered as the draft regulation is being developed.