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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Waste Management Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC20-160
<b>Regulation title(s)</b>	Voluntary Remediation Regulations
<b>Action title</b>	Amendment to address eligibility and fees
<b>Date this document prepared</b>	May 28, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

This regulation facilitates voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority.

In order to continue to promote the voluntary remediation of sites, changes are needed to the wording of the eligibility requirements to encourage additional sites to participate in the program. The fees assessed for participation in the program will also be reviewed as part of this amendment. Currently sites that enrolled prior to July 1, 2014, are not assessed annual fees for their continued participation in the program. Sites enrolled prior to July 1, 2014 paid a one time registration fee of 1% of the total cost of remediation or a maximum of \$5,000 whichever was less to participate in the program. Sites enrolled on or after July 1, 2014 are subject to one time initial registration fees and annual fees to defray costs associated with the sites' continued participation in the program. This regulatory amendment will examine requiring all sites continuing to participate in the program to pay annual fees and will evaluate the fees associated with the VRP. Registration fees and annual fees are used to defray a portion of the department's costs associated with the VRP. Additional issues that are identified during the NOIRA public comment period and the regulatory advisory panel meetings will be addressed during the development of the proposed regulation.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document.*

Board- Virginia Waste Management Board  
CERCLA- Comprehensive Environmental Response, Compensation and Liability Act  
RCRA- Resource Conservation and Recovery Act  
VRP- Voluntary Remediation Program

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

Participation in the VRP is voluntary and is not mandated. The goal of the program is to facilitate the remediation of sites where remediation is not mandated by other regulatory programs. This regulation was originally adopted in 1997 to provide oversight of the voluntary remediation of sites and to establish guidelines for the issuance of certifications of satisfactory completion of remediation once the cleanup is complete.

As of May 1, 2019, there are 138 sites enrolled in the VRP. All of these sites have paid a registration fee to participate in the VRP. Seventy-five of the enrolled sites were enrolled prior to July 1, 2014 and were assessed only a single registration fee of 1% of the remediation costs, not to exceed \$5,000. Sites enrolled in the VRP prior to July 1, 2014 are not assessed annual fees for their continued participation in the program. Some of these 75 sites have been enrolled in the VRP for over 23 years and agency staff are continuing to expend time to oversee the activities of the site. Agency personnel costs for some individual sites are estimated to have cost the agency as much as \$150,000. Of the 106 sites enrolled on or after July 1, 2014, 63 have not completed the VRP and remain enrolled and are assessed an annual fee of \$4,500 for their continued participation in the VRP. As part of this amendment, the fee structure associated with the VRP will be evaluated and potentially modified to help defray costs associated with sites continuing to participate in the VRP. Historically federal funding has provided the bulk of the fiscal support for the VRP however funding has declined significantly since 2002. Registration and annual fees are used to defray a portion of the department's costs of the program. The current fee structure is being evaluated to ensure that funding will be available to support the VRP's mission of facilitating the remediation of sites not mandated by other regulatory programs.

### Legal basis

*Please identify: (1) the agency (includes any type of promulgating entity); and, (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Virginia Code in § 10.1- 1232 directs the Virginia Waste Management Board (Board) to promulgate regulations that facilitate voluntary cleanup of contaminated sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. Section 10.1-1402(11) of the Virginia Code authorizes the Board to promulgate and enforce regulations necessary to carry out its powers and duties, the intent of the Virginia Waste Management Act and the federal acts.

The Voluntary Remediation Regulations are a state regulation and there is no equivalent corresponding federal regulation. This regulation applies only where remediation is not otherwise required under state or federal law, or where such jurisdiction has been waived. Entities that qualify may choose to utilize this regulation to conduct remediation of contaminated sites. This regulation provides enrolled sites with agency oversight of the cleanup and assurance that the remediated site will not later become the subject of a DEQ enforcement action unless new issues are discovered.

### Purpose

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The goal of the Voluntary Remediation Program (VRP) is to facilitate the remediation of sites where remediation is not clearly mandated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Virginia Waste Management Act, or other applicable authority. The remediation of sites protects the health, safety, and welfare of citizens as well as resolving environmental liability issues that facilitates redevelopment of sites and economic development. The fees assessed enrolled sites will be evaluated to ensure that funding will continue to be available to support the VRP's mission of facilitating the remediation of sites not mandated by other regulatory programs. The regulatory language describing eligibility criteria will be reviewed and revised as needed to encourage additional sites to participate in the program.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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. The agency is considering modifications to the regulatory language concerning program eligibility to encourage additional sites to participate in the program. The agency is also considering requiring all sites continuing to participate in the program to pay annual fees. The regulation currently assesses an annual fee of \$4500 for sites that enrolled in the program on or after July 1, 2014. Additional issues that are identified during the NOIRA comment period and the technical advisory committee meetings will be addressed during the development of the proposed regulation.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

No alternative to this regulation has been identified as viable. The Code of Virginia directs the Waste Management Board to adopt regulations to facilitate the remediation at sites that are not mandated by specific laws.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to

determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Public Participation

*Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments.*

The Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section above for details on specific comments requested for the periodic review.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Michelle Callahan at [michelle.callahan@deq.virginia.gov](mailto:michelle.callahan@deq.virginia.gov), 804-698-4014, Virginia Department of Environmental Quality, 14<sup>th</sup> Floor, 1111 East Main Street, Richmond, Virginia 23219 or P.O. Box 1105, Richmond, Virginia 23218. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

The Board is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person listed above by the end of the comment period and provide their name, address, phone number, email address and the organization the person represents (if any). The primary function of the panel is to advise the Department regarding development of recommended regulatory amendments for Department consideration through a collaborative approach of negotiation and consensus. Please note, multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

Notification of the composition of the panel will be sent to all applicants.

### Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

### Family Impact

*In accordance with § 2.2-606 of the Code of Virginia, assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the*

*assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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No impact on the institution of the family and family stability is anticipated with this regulatory action.