DEP Issue Profile
Voluntary Response Action Program

March 2018
Contact: (207) 592-0882

Background
In June 1993, the Maine Legislature passed P.L. 1993, Chapter 355, which established a technical assistance and Voluntary Response Action Program ("VRAP") within the Department of Environmental Protection. This program, administered by the Bureau of Remediation & Waste Management, allows any party (e.g., lender, fiduciary, owner, operator, buyer, etc.) to submit environmental site assessments ("ESAs") and voluntary response plans to the Department for review.

If the ESA reports do not indicate that contaminants have been discharged at the site ("site" or "property"), or that such discharges resulted in "de minimis" levels of contamination and do not represent a threat to public health or the environment, the party may request technical review of the reports, including a "No Further Action Assurance" letter, indicating that no remedial actions are necessary at the site.

Alternatively, if there have been releases of contaminants (e.g., hazardous substances, petroleum products, special wastes, hazardous wastes, or similar types of materials) at the site requiring some level of remediation to protect public health and the environment, a remedial plan may be submitted for approval by the Department. When the plan has been implemented satisfactorily, the Department will issue a "Certificate of Completion" and a liability release to the applying party regarding all known and identified releases at the subject site.

What is a voluntary response action plan?
A voluntary response action plan is a scope of work for remedial measures at a property. The plan is developed by a VRAP applicant's environmental consultant after the ESAs have been completed and the nature and extent of the contamination has been characterized. This plan must be approved by DEP. The plan could provide for remediation of all known contamination at the site, or it could provide for partial cleanup of such contamination.

What properties qualify for VRAP?
Any property, including those involved in a real estate transaction (acquisition, refinancing, foreclosure, etc.), that has potential or documented contamination of surface or subsurface soils and/or groundwater as a result of discharges of contaminants, is potentially eligible for the program. While the law does not specifically preclude any type of site from eligibility, properties operating pursuant to a license issued by a specific program within the Department, or those that may fall under the jurisdiction of another program (e.g., RCRA, Superfund, etc.), may not be eligible for participation in VRAP. When an application is received, the Department will determine a site's eligibility for VRAP.

What are the fees?
The Department is authorized to charge an upfront, one-time application fee of 1% of the most recent town assessed value of the property, with a fee cap of $15,000. Land and buildings, and not equipment, are included in calculating the fee. A copy of the assessment from the town must be included with the application. This fee went into effect on January 1, 2018; all VRAP applications received after that date must submit the fee with the application materials. All VRAP applications submitted before January 1, 2018, will be assessed fees using the previous method, which assesses the applicant an hourly charge not to exceed $50 per hour per person for any

review/oversight services. The Department will submit a billing statement to the applicant for the Department's costs of providing technical assistance and the applicant would be required to reimburse such expenses. Bills will be sent when all actions at the site are complete. All checks for VRAP should be made out to "Treasurer, State of Maine". Failure to reimburse the state for costs associated with providing technical assistance at a VRAP site may result in the implementation of more aggressive cost recovery procedures by the Department.

If the VRAP concurs with a remedial plan, what happens?
The Department issues a "No Action Assurance" letter stating that if the plan is properly implemented, the Department will assure the applicant(s) that no enforcement action will be taken. Following receipt of a final report documenting the satisfactory completion of all response actions required in the plan, the VRAP will issue a "Certificate of Completion" acknowledging that the applicant has satisfactorily completed the response action. The "Certificate of Completion" includes the applicable liability release provisions for either a complete or partial cleanup. The "Certificate of Completion" generally applies to applicant(s) to VRAP, the successors and assigns of the applicant(s), lenders, fiduciaries, and parties providing financing to the applicant(s). The applicant(s) may or may not be the party responsible for completing the work.

What if a partial cleanup is completed?
The law provides for partial cleanup of the known contamination at a property. However, releases of liability only apply to known contamination that is remediated to the satisfaction of the Department. An otherwise responsible party (i.e., the current owner/operator of the property) who undertakes only a partial cleanup does not receive liability protection.

An example of a "partial cleanup" is a situation where both soils and groundwater on a property are contaminated, but the party is only proposing to remediate the contaminated soils. In this instance, the Department would require a land use restriction (e.g., a Declaration of Restrictive Covenant pursuant to 38 M.R.S. ⌧ 3001 et seq.) be placed on the property to ensure that public health and the environment are protected.

Will the VRAP review environmental site assessments if the results do not indicate a need for remediation?
If requested, the VRAP will review ESAs reports at properties that may not require any cleanup. If, in the opinion of the environmental consultant, the results of ESAs at a property do not indicate a need for any further work, parties may submit an application and request the VRAP review such reports and render an opinion. If the VRAP concurs with the environmental consultant's recommendations for no action, a "No Further Action Assurance" letter would be issued to the VRAP applicant(s).

What happens if the VRAP is approved by the Department and work is started, but the parties do not complete all the remedial work?
This is a voluntary program and applicants are not required to complete remedial actions. However, if parties choose to stop remedial work, the Department could identify responsible parties and exercise all its legal rights to compel cleanup. No liability releases would be issued under such circumstances, and the VRAP applicant(s) would forfeit any fees paid to the program.

Does the release from liability absolve the applicant from all liability at a property?
No. The release from liability only applies to the satisfactory remediation of all known contamination at the property at the time the "Certificate of Completion" is issued, and it only includes relevant provisions of *state* law; there is no liability protection granted for applicable federal laws. In addition, the VRAP does not protect the applicant from third party actions. The applicant is still responsible for unknown or unidentified contamination, as well as any discharges that occur after the issuance of a "No Further Action Assurance" letter or "Certificate of Completion". Obviously, it is important for the applicant's environmental consultant to fully characterize the property and identify all existing contamination as part of the VRAP submission.

If the owner/operator who caused the contamination is not the applicant, will the owner/operator receive liability protection?
No. Only the party(s) applying for inclusion of the property in the VRAP will receive the liability protection

(along with the successors/assigns, lenders, fiduciaries and financiers). Current owners/operators can receive liability protection only if all known releases at the property are removed and/or remediated.

Does the Uniform Environmental Covenants Act (UECA) apply to VRAP sites?
Yes. Any final VRAP certification that relies on institutional and/or engineering controls as part of the remedy will require the applicant to record a Declaration of Environmental Covenant ("Declaration") pursuant to the Uniform Environmental Covenants Act, 38 M.R.S. ◆ 3001 et seq., with the appropriate registry of deeds. The Declaration must be approved by the VRAP before being finalized. The preferred template for UECAs completed for VRAP may be found on the VRAP webpage (index.html#fo) .

Where can I find the VRAP law?
The Department's technical assistance requirements are established in 38 M.R.S. § 342 (15) (http://www.mainelegislature.org/legis/statutes/38/title38sec342.html) . The VRAP is described in 38 M.R.S. § 343-E (http://www.mainelegislature.org/legis/statutes/38/title38sec343-E.html) . Reporting and disclosure requirements are found in 38 M.R.S. § 343-F (http://www.mainelegislature.org/legis/statutes/38/title38sec343-F.html) . The Maine Uniform Environmental Covenants Act may be found at 38 M.R.S., Chapter 31 (http://www.mainelegislature.org/legis/statutes/38/title38ch31sec0.html) .

How long will review take?
VRAP staff will make every effort to review and provide comments on submitted reports as soon as possible. Generally, for reviews of ESAs where the consultant has recommended no further action and the technical assistance request is limited to the Department's concurrence with the recommendation, the review and opinion can be completed within 15 working days. For all other reviews, the Department will make every effort to provide comments on the ESAs and associated remedial plans within 30 days of receipt of the application, fees and and ESA reports. Submittal of all required documentation with the VRAP application will ensure a timely review by VRAP staff. For more information on what to include in an application submittal, please see application submission requirements (appsub.html) .

Are there public notice/public communication requirements for participating in VRAP?
Yes. Effective January 1, 2008, the VRAP "Public Communication Decision Matrix" applies to all VRAP sites. At a minimum, all new VRAP sites will be added to a publicly available database (/dep/maps-data/data.html#re) . For some sites, a more rigorous public notice/public communication plan will need to be implemented. Go to the communication decision matrix (vrappcmatrix.html) .

How does VRAP relate to Brownfields?
A Brownfield is defined by the United Stated Environmental Protection Agency (EPA) as "Abandoned, idled, or under used industrial and commercial facilities/sites where expansion or redevelopment is complicated by real or perceived environmental contamination." Most VRAP sites fit this definition; however, the term Brownfields is typically applied to those sites that receive either federal (EPA) or state (Maine DEP) funding or services under the Brownfields Program. In most cases, sites in the Brownfields Program also participate in VRAP, as it provides a reliable and time-proven method for clarifying environmental liability. The "Issue Profile" for the state's Brownfields Program can be found at http://www.maine.gov/dep/spills/brownfields/index.html (http://www.maine.gov/dep/spills/brownfields/index.html)

How does a potential applicant to the VRAP start the process?
An applicant to the VRAP will need to hire an environmental consultant to conduct ESAs at the subject property. Any ESAs and/or other environmental information should be submitted to the VRAP along with the application, the fee, and other supporting materials. Potential applicants are encouraged to involve the VRAP as early as possible in the assessment process, as VRAP staff will work with the consultant to develop assessments that collect the necessary environmental information in a timely and cost-effective manner. The VRAP application can be found on our website at http://www.maine.gov/dep/spills/vrap/index.html

How do I select a qualified environmental consultant?
Although the Department cannot make recommendations regarding who you select as an environmental

consultant, we would recommend that you ask the following questions to determine if the consultant is qualified to assist you with the VRAP process:

- Have you performed environmental site assessments for real estate transactions?
- Have worked on any sites that have participated in the VRAP?
- Do you have a Maine Certified Geologist or Professional Engineer on staff?

If a consultant does not answer "Yes" to at least two of the three questions, you probably should select another consultant.

For Additional Information:
For additional information, visit the VRAP website at http://www.maine.gov/dep/spills/vrap/index.html (index.html) , call Nick Hodgkins of the Department's Bureau of Remediation & Waste Management at (207) 592-0882, or write to:

Department of Environmental Protection
Bureau of Remediation and Waste Management
Attn: Nick Hodgkins, Voluntary Response Action Program
17 State House Station
Augusta, Maine 04333-0017
e-mail: nick.hodgkins@maine.gov (mailto:nick.hodgkin@maine.gov)

Credits

Copyright © 2019
All rights reserved.

Popular Pages

- Major Projects
- What Do My Recyclables Become
- Beverage Container Redemption
- NRPA
- GIS Maps and Data Files
- Jobs @ DEP
- Board of Environmental Protection

Connect with Us

- Email Us
- Twitter
- Receive Updates
- RSS Feeds

- Meeting Calendar
- Comment Opportunities
- Office Locations
- Staff Directory

Other Links

- Site Policies
- Privacy Policy
- Notice of Nondiscrimination
- Natural Resources Service Center
- Request for Proposals
- Subject Index A-Z
- Training Opportunities
- DEP Intranet

Contact Information

17 State House Station
28 Tyson Drive
Augusta, Maine 04333-0017
Tel: 207-287-7688
Fax: 207-287-7826