

Hawaii Department of Health
Hazard Evaluation and Emergency Response Office
Voluntary Response Program





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Introduction

The State of Hawai'i developed the Voluntary Response Program (VRP) to encourage owners and purchasers to voluntarily investigate and cleanup property that may be contaminated. The VRP offers participants technical guidance, timely oversight, and regulatory assurance of completed cleanups. Most importantly, purchasers who participate are typically exempt from future liability related to contamination addressed under the VRP. The VRP has been used successfully by property owners, prospective purchasers, developers, and lenders.

The goal of the VRP is to encourage cleanup of contaminated property and to protect innocent purchasers from future environmental liability. The VRP is used to enhance property values and expedite projects.

VRP Contact Information

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Table of Contents

Introduction..... 1
VRP Contact Information..... 1
VRP Background2
VRP Overview2
VRP Process2
Site-Specific Strategies2
Types of Investigations and Cleanups.....3
Completing VRP Projects3
Determining Eligibility3
Entering the VRP4
Preparing the VRP Application4
Developing the VRP Agreement.....4
Cost of the VRP4
Success Story: Costco Warehouse5
Scope of Work6
Investigation and Cleanup Process6
VRP Tasks.....7
VRP Tasks and Work Products8
Success Story: Moana Pacific Condominiums9

The Hazard Evaluation and Emergency Response Office (HEER office) is committed to working collaboratively with VRP participants by responding promptly, strategizing as a team, applying lessons learned from other projects, and developing cost effective cleanup solutions.



VRP Background

In 1980, the U.S. Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, to clean up thousands of sites contaminated with hazardous substances. In 1989, Hawai'i passed a similar law known as the Hawai'i Environmental Response Law (HERL).

Because of the "strict liability" provisions in CERCLA and HERL, potential purchasers and developers find themselves potentially liable for contamination they did not create. As a result, they have become increasingly reluctant to purchase contaminated property for fear of incurring major financial liabilities and uncertain time delays. In the end, many valuable properties are not being used or developed to their fullest potential.

The Hawai'i VRP was created in 1997 to encourage voluntary cleanup of contaminated property and to protect future purchasers and developers from the strict liability provisions of the law.

VRP Overview

The VRP is a flexible program intended to address a wide range of site conditions, contamination, and property transactions. The VRP is attractive to property owners and purchasers because it provides a clear work plan, prompt oversight from the State, and an exemption from future liability. Property owners can benefit from the VRP if they are planning to sell their property or change its use. Buyers and lenders benefit because the VRP eliminates the uncertainty of regulatory oversight and the threat of future environmental liability. The result of the VRP is a State approved clean up and an official "Letter of Completion" which typically includes an exemption from future liability.

Who Benefits from the VRP?

1. Landowners enhance the value of their property by eliminating risks to buyers.
2. Developers manage costs, control projects, and reduce risks.
3. Lenders reduce risks and improve loan performance.
4. Public benefits from a safer environment and new jobs.
5. State and counties benefit from increased tax revenues.

Which of these benefits are most important to you?

The VRP Process



The term "brownfield" is often used to describe properties that are hampered by real or suspected contamination.

VRP projects follow the same overall process as other cleanup projects performed under HERL. There are two well-defined cleanup processes, which depend upon the degree and complexity of the situation. Complex or large cleanups follow the "Remedial Response Process" and more limited, straightforward cleanups follow the more streamlined "Removal Response Process."

Site-Specific Strategies

The VRP is designed to be flexible and site-specific. For example, minimal sampling might be required for a site with existing data about possible contamination, while large properties may require more data. Also, knowing the history of the property may reduce the number of samples and chemicals of concern.

Every site is different and the HEER Office is committed to working with VRP participants to design cost effective investigations that will gather the information needed to make sound decisions. The HEER Office recognizes that removing every last bit of contamination may not be technically feasible or necessary to protect the public.

Scheduling an informational meeting to learn more about the VRP can eliminate many unknowns and help you decide what is best for you.



Types of Investigations and Cleanups

Investigations can be as simple as collecting surface soil samples by hand or as complex as installing groundwater monitoring wells. In some cases, only one contaminant may be of concern, while in others, there may be several. Developing a cost effective sampling plan is based on a number of factors including: past use of the property, chemicals that may have been used, soil type and topography, depth and movement of groundwater, proximity to bodies of water, and nearby sources of drinking water.

Not all VRP sites require extensive cleanup! In some cases, sampling may be all that is required to determine that no further action is necessary.

Cleanup, if required, can often be integrated into the development process, saving participants much time and money.

Data from site investigations are used for several purposes. The first is to determine if contaminants are present at the site. If none are present, there is no need for further action. If contaminants are present, their levels need to be evaluated. If the levels do not pose a significant risk, then no further action is necessary. For sites that do require action, the data are used to help define the extent of contamination and determine the most cost effective and timely cleanup.

Depending upon the situation, cleanup actions may range from simply removing small amounts of soil to extracting large volumes of soil and treating contaminated groundwater. Since the VRP is intended to be flexible and site-specific, the HEER Office works with participants to select a cleanup option that best fits everyone's needs while protecting the public health and the environment. Factors that contribute to selecting the appropriate cleanup include the degree contamination, public safety, future use of the property, nearby land use, and development schedules. HEER Office staff is available to help VRP participants understand the entire investigation and cleanup process.



Completing VRP Projects

The goal of the VRP investigation is to gather sufficient information to decide if cleanup action is necessary. If cleanup action is needed, the remedy will protect the public from contamination and future landowners or developers from environmental liability. At the end of the cleanup, participants will receive an official Letter of Completion from the State. The Letter of Completion eliminates future environmental liability associated with the property, thereby enhancing opportunities to sell and redevelop the property.

Determining Eligibility

To determine if the VRP can assist you and if you are eligible to participate in the program, there are a few important things to consider:

- Are you a prospective purchaser and do you have consent of the property owner to participate in the VRP?
- Are you an owner wanting to enhance the value of your property by securing an exemption from future liability for a prospective purchaser?
- Are you a lender who received property by foreclosure and would like to receive exemptions as a prospective purchaser?
- Are you willing and financially able to commit to the investigation and clean up work?
- Does the site meet certain criteria specified in the law?





The application requires a \$1,000 nonrefundable administrative fee. The Hawai'i Department of Health (HDOH) may waive this fee for other public or nonprofit agencies. The applicant will be notified within 45 days as to the adequacy of the application and what, if any, additional information is needed to complete the application process. Accelerated reviews can be arranged to meet the needs of the applicant.

Developing the VRP Agreement

Once the HEER Office approves a VRP application, the next step is to prepare a written VRP Agreement. The purpose of the Agreement is to better define the terms and conditions of the investigation and clean up of the property. The Agreement also describes the working

Potential applicants are encouraged to discuss their projects with the HEER Office in advance to determine if the VRP will be of benefit to them.

relationship between HDOH and the VRP participant.

A model VRP Agreement is available at www.hawaii.gov/health/environmental/hazard/vrp.html

Cost of the VRP

The law requires that participants reimburse the State of Hawai'i for the cost of overseeing VRP projects. Once an application is approved, a \$5,000 deposit is required to open the site-specific VRP account. HDOH then deducts a fee of \$100 for each hour spent overseeing the project. If the account balance falls below \$5,000, HDOH will request an additional \$5,000. When the work is completed, monies remaining in the site-specific account are returned



Entering the VRP

If you are interested in receiving an exemption from future liability, you must also meet the definition of a "prospective purchaser" which means a prospective owner, operator, tenant, developer, lender, or any party who would not otherwise be liable from past contamination. To receive an exemption from future liability, the prospective purchaser must obtain final approval to participate in the program before purchasing the property. As an owner, you may participate and secure an exemption from liability for a prospective purchaser. Current owners of contaminated property are not eligible to receive exemptions from liability. If you have received property through default, you may receive exemptions the same as a prospective purchaser.

An eligibility checklist for the VRP is posted at www.hawaii.gov/health/environmental/hazard/vrp.html

Preparing the VRP Application

Entering the VRP is a relatively simple process. The first step is to complete an application containing basic information about the proposed project. Application information includes:

- Participant and owner information
- Property description
- Summary of site history and operations
- List of applicable permits and reports
- Intended scope of work
- Statement of financial viability
- Consent of property owner

A complete list of items to be included in the VRP application is posted at: www.hawaii.gov/health/environmental/hazard/vrp.html



Success Story: Costco Warehouse Store-Iwilei District, Oahu

The Dole cannery in Iwilei was a major contributor to Hawaii's economy for much of the 20th century. However, with decline of the pineapple industry cannery operations ceased and the facility was closed in 1991. Unfortunately, after many years of industrial use, the cannery left behind contamination in both the soil and groundwater. The Iwilei District, which had been a hub of industry, became an underutilized, neglected neighborhood, despite its close proximity to downtown Honolulu.



Working with HDOH under the VRP, Costco restored the site to conditions that are safe for commercial and light industrial use. Through this collaborative effort, the VRP helped Costco construct a hugely successful warehouse store and protect the company from future environmental liability. This successful development has, in turn, boosted the commercial use of the entire Iwilei District, attracting additional stores and restaurants. The Costco project is an example of a successful transition from historic industrial use to commercial use that benefits the people of Honolulu.

VRP Actions

VRP site characterization identified several areas of soil and groundwater contamination as a result of previous cannery operations. Contaminated groundwater near the warehouse was cleaned up through a specially designed pumping system, and an impermeable cement wall installed in the ground eliminated movement of contaminants to other areas. A system to monitor and remove petroleum that leaked into the groundwater has also been installed. In addition, 6,000 cubic yards of contaminated soil was removed and disposed of at an approved disposal facility.



Result

HDOH determined that the cleanup allowed for safe commercial use of the property. Land use controls are in place to ensure workers are protected if any future excavation or construction activities occur in the area. The Costco store has created jobs, increased tax revenues, and boosted the overall commercial development of the previously underutilized Iwilei area.



Scope of Work

The VRP Agreement includes a scope of work that is used to investigate any contaminated property under HERL law and consists of the following tasks:

A more detailed discussion of the scope of work, investigation, and cleanup process is presented in the following section.

- Task 1:** Assess environmental work completed to date
- Task 2:** Determine the scope of investigation and response action
- Task 3:** Prepare a plan to characterize the environmental conditions
- Task 4:** Implement the site investigation work plan
- Task 5:** Develop options for cleanup actions
- Task 6:** Perform an environmental hazard evaluation
- Task 7:** Prepare and implement a public participation plan
- Task 8:** Select the appropriate response action
- Task 9:** Implement the response action
- Task 10:** Issue the Letter of Completion



Investigation and Cleanup Process

The investigation and cleanup process should be designed to meet the goal of receiving an official Letter of Completion. To issue a Letter of Completion, HDOH must determine that the cleanup action protects human health and the environment, and meets all the requirements of HERL.

The tasks described below will determine if chemicals are present on the property at levels that may be harmful and, if so, what actions are needed to eliminate the hazard. At times, complete removal of all contamination may not be feasible or necessary to protect the public health and environment. In those situations, HDOH may issue a Letter of Completion with certain conditions or restrictions on the future use of the property. The investigation and cleanup activities follow a process that is described in:

1. Hawai'i Environmental Response Law,
2. Hawai'i administrative rules, and
3. HDOH Technical Guidance Manual.

Proper investigation and cleanup generally require the services of a knowledgeable environmental consultant.

The Technical Guidance Manual can be accessed at <http://www.hawaii.gov/health/environmental/hazard/statutes.html>



1 Assess Environmental Work Completed to Date

Prepare a summary report of all environmental work previously completed. The State will evaluate the work to determine what information can be used in the current project.

2 Determine the Scope of the Investigation

Prepare a general work plan based on the results of the assessment in Task 1. The general work plan should include a *conceptual site model*, a proposed list of chemicals, and the area to be investigated. This general work plan can be submitted as part of Task 3.

3 Prepare a Plan to Characterize the Environmental Conditions

Prepare a detailed site investigation work plan to determine the extent of contamination on the property. The work plan must conform to the HDOH Technical Guidance Manual. HDOH should review and approve the plan prior to beginning any field work.

4 Implement the Site Investigation Work Plan

Following HDOH approval of the site investigation work plan, samples are collected and analyzed, and data are presented in a site investigation report. The report should evaluate the nature and extent of contamination from the suspected sources and include an environmental hazard evaluation for all contaminants that exceed Environmental Action Levels established by HDOH.

5 Develop Options for Alternative Clean Up Action

If sampling results indicate the need for cleanup action, evaluate alternatives to protect public health and the environment. The HEER Office Technical Guidance Manual discusses the evaluation of cleanup alternatives and preferences for certain cleanup technologies.

6 Perform an Environmental Hazard Evaluation

HDOH has created Environmental Action Levels (EALs) for soil and groundwater that can be used to evaluate site data for potential environmental hazards. If contaminants are below the EALs, the site does not pose significant risk to human health or the environment and no further action is necessary. If contaminants exceed the EALs, then a more detailed environmental hazard evaluation is needed to assess potential concerns associated with the contamination. This screening process, comparing contaminant levels to EALs, is referred to as an Environmental Hazard Evaluation and can be used to develop site-specific cleanup goals. Use of the EALs and the hazard evaluation is intended to expedite the cleanup process.

7 Prepare and Implement a Public Participation Plan

The extent of public participation is determined on a case-by-case basis, depending on the complexity of the site as well as nearby community concerns. HDOH and the VRP participant will discuss the public participation activities that are most appropriate for the site. In addition to publishing a notice of the proposed response action in the newspaper, and allowing at least 30 days for public review of the response action, the plan may include:

1. Publishing a fact sheet,
2. Providing information to affected neighborhood associations and nearby property owners, and
3. Holding a public meeting, if the HDOH determines that there is sufficient public interest.



A conceptual site model is a general description of the situation on the property. It typically includes sources of contamination, the area of concern, pathways contamination might travel, and potential effects on people and the environment.



8 Select the Appropriate Response Action

Based on site reports and public comments, the HEER Office will work with the VRP participant to arrive at a final decision on the appropriate response action.

9 Implement the Response Action

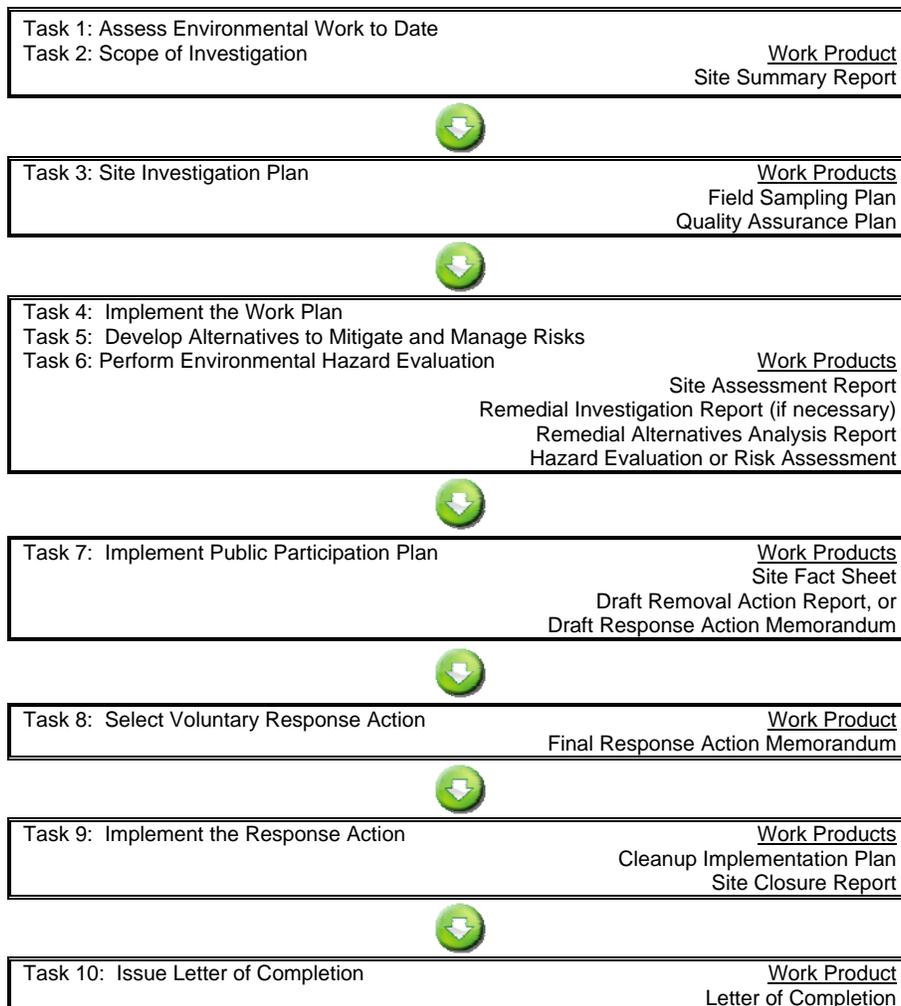
Prepare an implementation plan outlining the general guidelines, procedures, and protocols to be observed during the cleanup action. The level of detail in the plan should be consistent with the complexity of the cleanup action. A site closure report is submitted to document that the response action has been properly completed.

10 Issue the Letter of Completion

Within 30 days of completing a voluntary response action the Director of HDOH will issue an official Letter of Completion. The Letter identifies the contaminants and land area addressed in the project and typically provides an exemption from environmental liability for future owners of the property. If contamination is left on the property, the Letter of Completion will specify conditions needed to protect public health and environment, such as land-use or institutional controls. These requirements are typically included in an environmental covenant, which is made a part of the property deed.

While identified separately in the Scope of Work, Tasks 4, 5, and 6 can be completed within a single report presenting the sampling results, environmental hazard evaluation, and remedial alternatives analysis.

VRP Tasks and Work Products



Success Story: Moana Pacific Condominiums, Honolulu



The Moana Pacific project, two 46-story residential towers at Piikoi and Kapiolani Streets in Honolulu, is the result of a successful collaboration between a landowner, HDOH, and the community. This project restored a large vacant city block to productive use, and demonstrates the benefits that can be achieved by using the VRP. What had been an unused lot with residual contamination from past industrial use is now home to 706 residential units in close proximity to restaurants and the Ala Moana shopping center, as well as the site of a new furniture design center. The success of this project has made a major contribution to the revitalization of the Ala Moana-Kaka`ako neighborhood.

VRP Actions

Investigations were conducted in the early 1990s due to environmental concerns regarding former automotive repair facilities on the property. Soil and groundwater sampling, removal of under-ground storage tanks and equipment, and removal of contaminated soil were conducted. During this time, the site sat vacant and unused. While all known contamination was removed, the entire property was further investigated to assure that no additional contamination had occurred.

HDOH oversaw the site characterization activities under the VRP in connection with Evershine X's purchase of the property in 1998. Additional soil and groundwater samples were collected in 2003 and 2004 at several suspect areas. Based on the sample results, HDOH determined that no further investigation was required and issued a Letter of Completion based on the cleanup actions already taken.



Result

The Letter of Completion helped enabled the developers to transform this vacant, underutilized lot into the Moana Pacific Project, adding 706 condominium units to this high-demand residential area of Honolulu. The Neighborhood Board and Kaka`ako Improvement Association approved the project with overwhelming support. In addition to the residential units, the development includes a furniture design center, demonstrating the flexibility of the VRP to allow both residential and commercial uses within the same project. Success of the Moana Pacific and other projects have inspired additional residential and commercial development in the area.





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