

DA2023**** Process (Tracking number provided when developer seeks application to City)

1. Colorado Department of Public Health and Environment (CDPHE) approval of the Voluntary Clean Up (VCUP) application will be required prior to approval of the DA.
2. CDPHE approval of the VCUP completion signified by the No Action Determination will be required prior to certificate of occupancy issuance for the site.

03/22 Arvada City Staff Comments

CDPHE VCUP Program overview

Properties that sit untouched because of their real or perceived contamination can be rehabilitated using our Brownfields Program in conjunction with the Voluntary Cleanup and Redevelopment Program.

- **These programs provide public and private property owners with the resources to facilitate cleanups, as well as assurances against regulatory enforcement.**
- Because the Voluntary Cleanup and Redevelopment Program provides both federal and state remedial plan approval in one step, banks will accept a "No Action Determination" letter from the program as assurance that we or the U.S. Environmental Protection Agency won't order a costly, conventional cleanup. This eases concerns of environmental liability when involved in property transfers.
- **Cleanup decisions are based on existing standards and the proposed use of the property, but we provide no construction or cleanup oversight. The actual cleanup and verification are the owner's responsibility.**
- To receive the EPA's assurances that it won't take Superfund action as specified in the Memorandum of Agreement (MOA), the owner must submit a completion report as a new application for a No Action Determination so we can review and concur that the plan has been completed as approved.

<https://cdphe.cVoluntary Cleanup and Redevelopment Program | Department of Public Health & Environmentolorado.gov/voluntary-cleanup>

Summary of CDPHE Roadmap

For some sites, however, an appropriate regulatory framework does not exist. *For example, contamination which predates the RCRA statute would not be subject to RCRA authority. The Voluntary Cleanup and Redevelopment Act was enacted to address sites not covered by existing regulatory programs and to provide a mechanism for approving clean-up plans.*

As a result, several states have developed programs that provide alternate mechanisms for reviewing, approving, and overseeing these voluntary clean-up efforts. In 1994, the Colorado General Assembly passed the Voluntary Cleanup and Redevelopment Act, which formalized a non-regulatory process for cleaning up certain types of sites. This document provides a resource to landowners and their consultants who would like to propose a voluntary clean-up (VCUP) effort or receive a no-action determination (NAD).

The State's *goals are to encourage as many voluntary clean-up proposals as possible and remove any barriers landowners might have in coming forward with a VCUP proposal.* Traditionally, such barriers have included fear of prosecution or being forced to do more cleanup than necessary for the intended future use of a property. Such barriers hinder environmental cleanup and property redevelopment or reuse. *Most voluntary clean-up situations involve contamination that occurred in the past and do not trigger reporting requirements.*

Authority for the Voluntary Clean-up Program is derived from the Voluntary Cleanup and Redevelopment Act (the Act) (C.R.S.25-16-301) passed in 1994. The purpose of the Act is to "Provide for the protection of human health and the environment and to foster the transfer, redevelopment and reuse of facilities that had been previously contaminated with hazardous substances or petroleum products." *The program is designed to operate expeditiously, with minimal administrative processes and costs. Accordingly, no regulations have been promulgated for the Voluntary Cleanup and Redevelopment Act.*

Program is allowed to accept sites the U.S. Environmental Protection Agency (EPA) is addressing under Superfund, as long as the site has not been proposed or listed on the NPL. Historically, on these sites, concerns were raised as to whether the EPA could require additional work, despite approval from the State under the VCUP program. In order to address this issue, *the State and EPA signed a Memorandum of Agreement (MOA), which provides assurance that the EPA will not take action on sites approved by the VCUP program unless, under exceptional circumstances, there is a substantial threat to human health or the environment.*

In some cases, there may be insufficient information to determine whether the site falls under RCRA authority. The CDPHE Hazardous Waste Corrective Action Unit *may defer such questionable sites without further consideration if the following conditions are met: The volume of impacted soil is relatively small and contained on the property. VOLUNTARY CLEANUP AND REDEVELOPMENT PROGRAM 13 Ground water has not been impacted, or contamination does not exceed state standards at the site boundary. Mobility and potential biodegradation of the contaminants will also be evaluated. Surface Water has not been impacted Aqueous waste is not present All releases can be remediated within 24 months with a high probability of success Neither long-term monitoring and environmental covenant is required.*

Even if all of the above criteria are not met, the Hazardous Waste Corrective Action Unit may refer sites to the VCUP Program, if site-specific conditions diminish the severity of the release, and threats to human health and the environment are determined to be minimal.

The VCUP Program is designed to be a one-time interaction with the CDPHE.

Each application should include a detailed site history, outlining past and present uses of the property and identifying conditions that might have contributed to potential or actual environmental contamination. In addition to a history of site uses, the application should also include a thorough discussion of site characterization activities. *Site characterization efforts should be based on site history and demonstrate that environmental sampling included appropriate constituents, media, and locations on the property. Sampling and analytical methodologies should be clearly identified. The site characterization data should be compared to established state standards, if they exist.* In addition to summary tables of the data, raw data and borehole logs should be included. Lastly, a plan of action should be prepared to either remediate the site or justify a no action determination. Justification for the plan should be based on meeting relevant state standards. If relevant state standards will not be achieved, the application must include an analysis of risk, based on proposed use of the property, and demonstrate that the cleanup is protective of human health and the environment. *If site characterization efforts demonstrate a property is not impacted by environmental contamination, or is impacted by contamination from an off-site source, a NAD may be requested.*

The VCUP program requires applicants to meet existing state surface water and ground water standards. The compliance point is the property boundary. For sites where a groundwater plume originates on the property and migrates off the property in excess of state standards, the applicant is encouraged to perform remedial actions to reduce contaminant levels to below state standards at the property line. The applicant may treat the entire plume, or may perform remedial actions only within the property boundary, and rely on monitored natural attenuation for the remainder of the plume. Active remediation should be based on source characterization, contaminant concentrations, and contaminant fate and transport, and groundwater depth and flow characteristics. Remedial actions may include source removal, mass reduction, or other treatment alternatives. If the entire plume is not treated, an evaluation of monitored natural attenuation must be made. This evaluation should include the geochemical reactions that influence contaminant concentrations, the time expected to meet state standards, and the expected land uses and exposure pathways that may exist during the attenuation period. The applicant must show that the attenuation timeframe is reasonable, given the expected land use scenarios. The use of institutional controls may be considered in this evaluation. An additional important consideration will be whether a ground water plume may adversely impact the quality of hydrologically connected surface water. If the proposed clean-up is determined to be adequate, taking the above considerations into account, the CDPHE may approve the voluntary clean-up proposal, even though ground water standards may be exceeded at the property boundary at the conclusion of active clean-up. If the applicant proposes "No Action" in situations where a groundwater plume migrates off the property in excess of state standards, the applicant must first obtain a site-specific standard, site-specific point of compliance, or site-specific variance from the CDPHE Water Quality Control Commission, as provided in the Commission's Basic Standards for Groundwater, Regulation #41. In general, the State will consider EPA's Regional Screening Levels as appropriate soil cleanup goals, although other promulgated standards and criteria may be considered. If appropriate, clean-up standards or guidance may be modified, based on an assessment of risk at the site. The Voluntary Cleanup Program encourages applicants to develop a conceptual site model and streamlined risk assessment methodologies to characterize risks associated with VCUP sites.

For most sites, a narrative description of the exposure pathways (or lack of completed pathways) is sufficient. For example, an acceptable level of risk could be demonstrated, if the land use (e.g., a paved parking lot) will prevent human health or environmental exposure to contaminated soil, as long as that soil is not a source of ground water contamination.

Under the Voluntary Cleanup Program, the state provides no construction oversight or certification. The applicant is responsible for providing a self-certification that the remediation has been completed in accordance with the approved plan. This self-certification must be submitted to the State by a qualified environmental professional (as described in 40 C.F.R. § 312.10(b)) within 45 days after completion of the clean-up plan. This certification is required in order to receive assurances that EPA will not take Superfund action (as specified in the aforementioned Memorandum of Agreement).

There is no formal agreement that binds the parties under the Voluntary Cleanup Program, and the state has no enforcement authority under the Act. Assuming the site is eligible for the program, the statute does not require proposed cleanups to be completed. The applicant can "walk away" at any time, with the only consequence being that any approval received from the state would be void. However, if a cleanup had been started, the state can require the owner to properly manage any waste that had been generated from the incomplete cleanup. This authority would not be used to force completion of the cleanup.

The Act has no formal requirements for public participation or review of applications. However, all files are public documents, available for public review.

In order to receive assurances that EPA will not take action under CERCLA (as per the Memorandum of Agreement), *the applicant must provide public notice, within 30 days of the approval, that the clean-up plan or no action determination has been approved by the state. In some cases, where public interest in the property is high, CDPHE may require that the applicant provide additional public information.*

For large sites or sites where VOLUNTARY CLEANUP AND REDEVELOPMENT PROGRAM 17 public interest is likely due to publicity or proximity to Superfund sites, CDPHE may request that the applicant hold a public meeting to explain its cleanup plan.

STATE APPROVAL The state provides an approval letter upon completion of the application review. The letter generally states that, based on the information provided in the application about the contamination and the proposed land use, if the plan is completed as proposed (either cleanup or no action), no further action will be necessary on the site. This letter provides the state's assurance that as long as the land use stays the same (as stated in the application), the state will not require any additional cleanup.

<https://cdphe.colorado.gov/environmental-cleanup-guidance-and-policy> Go to [Voluntary cleanup roadmap](#)