

## **Voluntary Remediation Program Frequently Asked Questions**

### **Are you planning to issue any additional guidance documents?**

The Georgia Environmental Protection Division (EPD) is utilizing this “Frequently Asked Questions” as a means to provide additional guidance. While these responses provide guidance, please note that in the event of conflict between this guidance and the Voluntary Remediation Program Act (VRPA), the VRPA takes precedence. Please refer back to this page often, as it will be updated frequently.

### **What is a qualifying property?**

In order to be considered for the voluntary remediation program, a qualifying property must be listed on the Hazardous Site Inventory, a Brownfield property, or otherwise have a release of regulated substances into the environment.

The property must not be listed on the federal National Priorities List (NPL); not be undergoing response activities required by the EPA; and not be a permitted facility under RCRA. Any liens filed pursuant to OCGA 12-8-96(e) or 12-13-12(b) against the property must be satisfied or settled and released.

### **What are the criteria for participation?**

A participant in the voluntary remediation program must be 1) the property owner of the voluntary remediation property or 2) have express permission to enter another’s property to perform corrective action including, to the extent applicable, implementing controls.

A participant must not be in violation of any order, judgment, statute, rule, or regulation subject to enforcement by EPD.

### **What is considered a violation of an order, judgment, statute, rule, or regulation subject to the enforcement authority of the Director?**

When an applicant has failed to comply with any environmental laws under OCGA Chapter 12 or Rules under Chapter 13, the applicant would be considered in violation and the applicant would be considered ineligible. This would include failure to comply with a written directive of the Director or a duly authorized representative where the applicant is required to provide, do, and/or complete, information by a specified deadline.

### **If I’m subject to an Order of the Director, does this prevent me from being an applicant/participant under the VRPA?**

Being subject to an Order does not prevent you from being an applicant/participant under the VRPA; however, please refer to the question “What is considered a violation of an order, judgment, statute, rule, or regulation subject to the enforcement authority of the Director?” for additional information.

### **What items are required for application?**

- A voluntary remediation plan prepared and stamped by a Georgia-registered professional engineer or registered professional geologist in a streamlined form prescribed by the Director and including a milestone schedule with semi-annual reports through the submittal of a final compliance status report; and
- A Voluntary Remediation Plan Application Form and Checklist which specifies the streamline form prescribed by the Director ([http://www.gaepd.org/Documents/epdforms\\_hwb.html#voluntary](http://www.gaepd.org/Documents/epdforms_hwb.html#voluntary)); and
- Nonrefundable \$5,000 application fee.

Note: All documents except the application fee must also be submitted electronically as described in the electronic submittal format guide ([http://www.gaepd.org/Files\\_PDF/HSRAGuide/edocformat.pdf](http://www.gaepd.org/Files_PDF/HSRAGuide/edocformat.pdf)).

**I am still unsure about what I need to submit in my VRP application. Could you clarify?**

- Voluntary Remediation Plan Application Form and Checklist
- \$5,000 check made out to the Georgia Department of Natural Resources
- Copies of the warranty deed for the qualifying property(ies)
- Tax plat of qualifying property(ies) and adjoining properties including tax parcel ID numbers
- Graphic 3-D preliminary conceptual site model using all current information to illustrate:
  - surface and subsurface setting
  - known or suspected source(s) of contamination
  - how contamination might move within the environment
  - potential human health and ecological receptors
  - complete or incomplete exposure pathways that may exist
- Preliminary remediation plan
- Table of delineation standards

Note: Laboratory Analysis Sheets are not required for submittal in a VRP application. Laboratory Analysis Sheets are required in progress reports and the compliance status report for the qualifying property.

**Do I have to submit or resubmit a release notification if I have submitted a Voluntary Remediation Program (VRP) application?**

If the owner of the qualifying property submits a VRP application addressing that release within thirty (30) days of discovery of the release (§391-3-19-.04 of the Rules for Hazardous Site Response), a separate release notification does not have to be submitted.

**I have a deadline to submit a Compliance Status Report (CSR), Corrective Action Plan (CAP), or other document pursuant to the Hazardous Site Response Act (HSRA), but want to submit a VRP application instead. What do I need to do?**

Since you have a previously established schedule for submittal of a CSR, CAP, or other document, you must submit your VRP application before the currently established due date. Otherwise you may be considered in violation and thereby ineligible.

Once the application is submitted, these HSRA deadlines are suspended until the Director either accepts you as a participant in the Voluntary Remediation Program or notifies you that your application is unacceptable and specifies a new deadline under HSRA.

### **Are there other costs?**

EPD may bill for other costs beyond the application fee. EPD, at its sole discretion, will charge for personnel time to review and respond to any document submitted to EPD or requested by EPD to demonstrate ongoing cleanup and compliance with cleanup standards under the Act, including, but not limited to, the application, compliance status report, progress report, previously submitted documents if needed to complete a review of a current document, documents submitted for non-qualifying properties, and documents to demonstrate continued compliance with cleanup standards along with direct administrative costs such as file management, invoicing, etc.. EPD will also bill for costs associated with inspections relating to these documents.

Currently, EPD is billing personnel time at \$75.00/hour and other items, such as travel expenses and modeling software, at cost plus a 5% additional charge for administrative management.

### **Can I request a waiver of the fees?**

Pursuant to OCGA 12-8-104(a)(6), “[t]he director shall have the power and duty to grant waivers of all or any portion of the fees provided by this part for any small business or for any county, municipality, or other political subdivision of this state.” The Director has issued the following Waiver Memorandum ([http://www.gaepd.org/Files\\_PDF/VRP/feewaiver.pdf](http://www.gaepd.org/Files_PDF/VRP/feewaiver.pdf)) specifying the conditions under which the Director will grant fee waivers.

### **What is the commitment in hours to the applicant? (ie: how much will this cost?)**

EPD is allowed to recover its costs beyond the \$5,000 application fee. EPD is currently billing personnel costs at a cost of \$75/personnel hour and cost plus a 5% administrative management fee for items such as travel costs, purchase of models, etc. Each application is unique and EPD is unable to provide a specific cost to the applicant.

### **What happens if I don't pay the fees when requested?**

Pursuant to OCGA 12-8-107(a), the Director may not issue a written concurrence with a certification of compliance if there is an outstanding fee to be paid by the participant. If the participant fails to pay an outstanding invoice by the specified due date, the Director may terminate the enrollment of the property and the participant's requirements for failure to comply with the provisions, purposes, standards, and policies of the voluntary remediation program [OCGA 12-8-107(d)].

### **The United States Geological Survey (USGS) Open File Report 81-197 (Boerngen and Shacklette, 1981) doesn't include a data point for the county where the qualifying property is listed. Can I use this data set to establish delineation concentration criteria?**

These data provide an ultra-low-density geochemical baseline for soils and other surficial materials in the conterminous United States collected from 1958 to 1976. The data contains 1,323 samples for a sampling

density of approximately 1 sample per 6,000 square kilometers. The data set is a national geochemical data set collected and analyzed according to standardized protocols. The data are most appropriately used to provide information on background concentrations of elements in soil. The major drawback with the data set is its extremely low number of samples for the entire conterminous US. The US Geological Survey (USGS) provides the data “as is”. THE USGS makes no guarantee or warranty concerning the accuracy of the information contained in the geographic data. The USGS further makes no warranties, either expressed or implied as to any other matter, whatsoever, including, without limitation, the condition of the product, or its fitness for any particular purpose. The burden for determining fitness for use lies entirely with the user.

There are 32 data points located in the state of Georgia and each data point does not necessarily include all of the metals listed. To statistically use this data as a representation of the concentrations of metals in soil in the state of Georgia, EPD evaluated this data using ProUCL 4.00.05 and recommends the following concentrations be used. In evaluating the data, please note the meaning of the following flags: N – not detected at concentration listed, L – detected but at a level below the concentration listed, B – no data for that particular element, and G – detected above the upper determination limit.

<b>Regulated Substance</b>	<b>Outlier Test Results</b>	<b>Distribution</b>	<b>Background Threshold Value (BTV) (mg/kg)</b>
<b>Antimony</b>		<b>Only one sample in dataset</b>	<b>No BTV*</b>
<b>Arsenic</b> (full set)	<b>Potential Statistical Outlier</b>	<b>Log normal</b>	<b>12.86</b>
<b>Barium</b> (full set)		<b>Gamma</b>	<b>674.1</b>
<b>Beryllium</b> (set with NDs)**		<b>Insufficient sample size</b>	<b>No BTV</b>
<b>Bromine</b>		<b>Only one sample in dataset</b>	<b>No BTV</b>
<b>Chromium</b> (full set)		<b>No discernable distribution</b>	<b>100</b>
<b>Copper</b> (full set)	<b>Potential Statistical Outlier</b>	<b>Log normal</b>	<b>46.7</b>
<b>Fluorine</b> (set with NDs)		<b>Gamma</b>	<b>.065 %</b>
<b>Lead</b> (set with NDs)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>30</b>
<b>Mercury</b> (full set)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>.395</b>
<b>Nickel</b> (set with NDs)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>24</b>
<b>Phosphorus</b> (set with NDs)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>.0176 %</b>
<b>Selenium</b> (set with NDs)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>.0176</b>
<b>Zinc</b> (full set)	<b>Potential Statistical Outlier</b>	<b>No discernable distribution</b>	<b>67</b>

\* Statistically unable to determine a BTV due to datasets with insufficient sample size

\*\* Sets with non-detects were evaluated without non-detects as recommended by guidance document

**Does site delineation require sampling to the property boundary?**

No, site delineation under the voluntary remediation program only requires delineation to specific concentrations [please refer to OCGA 12-8-108(1) for site delineation concentration criteria]. Once delineation to those concentrations is reached, you do not need to delineate further. However, if these concentrations have not been established before the qualifying property's boundary, additional delineation off-property is required.

**Is Monitored Natural Attenuation (MNA) acceptable as a method of corrective action under the voluntary remediation program?**

All corrective actions are acceptable as a potential corrective action under the voluntary remediation program. However, some potential corrective actions may not be appropriate due to the type and quantity of regulated substance released in each media and the conditions at that specific qualifying property. Please also see OCGA 12-8-108 for VRP standards and policies that may be considered and used in connection with the investigation and remediation of a qualifying property.

**I will be relying on controls for the purpose of certifying compliance with cleanup standards. What additional documentation do I need to provide to EPD?**

For ANY property where controls will be used for the purpose of certifying compliance, an environmental covenant, including EPD as a party to the covenant, must be executed. A list of property abutters, their mailing information, and tax parcel identification numbers and a title report must be provided along with the proposed environmental covenant for execution by the Director.

**I want to set my point of exposure at my property line. Is this acceptable?**

Point of exposure is defined as the nearest of a) the closest existing downgradient drinking water supply well, b) likely nearest future location of a downgradient drinking water supply well where public water is not currently available and is unlikely to be made available in the foreseeable future, or c) 1000 feet downgradient from the delineated site contamination. Therefore, provided your property line is reached before these criteria are exceeded, yes, you may set your point of exposure at your property line.

**Can you provide additional information regarding the environmental covenant?**

EPD has established a model environmental covenant ([http://www.gaepd.org/Files\\_DOC/forms/hwb/modelcovenant.doc](http://www.gaepd.org/Files_DOC/forms/hwb/modelcovenant.doc)). While the model environmental covenant may be modified to address site-specific information, the certain criteria may not be revised without EPD approval. Therefore, proposed revisions of the boilerplate language should be submitted to EPD for review and approval. Please also note that the state of Georgia will sign the environmental covenant as a "Grantee/Entity with express power to enforce" but not as a "Grantee/Holder". The participant must identify and make arrangements for another party to be the holder of the environmental covenant.

**What type of liability protection is provided under the VRP Program?**

There is no liability protection provided under the Voluntary Remediation Program Act.

**Can a qualifying property be cleaned up under both the VRPA and the Georgia Hazardous Site Reuse and Redevelopment Act (aka Brownfield Act)?**

A qualifying property under the Hazardous Site Reuse and Redevelopment Act (HSRRA) may also qualify as a qualifying property under the VRPA. However, while a cleanup under HSRRA provides a limitation of liability to the prospective purchaser, cleanups using the standards and policies under the VRPA do not provide a limitation of liability.