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ENVIRONMENTAL GUIDANCE DOCUMENT

for use of the
VOLUNTARY REMEDIAL ACTION
provision of §66-1525(2)(d)

The procedures contained within this document should not be interpreted as requirements. These are only guidelines intended to clarify the provision in §66-1525(2)(d) for Voluntary Remedial Action.

In the last few years the law has been amended to include language that enables Responsible Parties (RPs) to perform work at their sites that is not currently being required by NDEQ and still be eligible for reimbursement consideration in the future. According to §66-1525(2)(d), *“...responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council.”* This document serves to establish procedures as stated in this portion of the law.

Voluntary Remedial Action (the designation for remedial action taken by the RP that would be eligible for reimbursement through this provision) may be an attractive option to RPs in a variety of situations. Voluntary Remedial Action (VRA) could potentially be applicable not only to suspended sites, but also to backlogged sites at which remedial action has not been required by the Department. VRA may even be used at active sites by RPs who would like to proceed more quickly than NDEQ can grant approval based on reimbursement funds available. Any remedial actions, as outlined in Title 118, Appendix B, are potentially eligible for VRA reimbursement, providing the work was done after April 1995. It should be stressed, however, that the Department **will not** reimburse for VRA that would not have been approved under the Department’s work approval process for active sites.

Voluntary Remedial Action affords RPs an opportunity to request reimbursement for eligible activities once their backlogged site is activated by NDEQ. The Department will not require any documentation of VRA work prior to activation of the site. It will be the responsibility of the RP to carefully document all activities and costs associated with those activities (the Reasonable Rate Schedule and Reimbursement Guidance Manual may provide assistance). Some other points to consider:

- Sites are activated according to their backlog list score and ranking.
- Site score and ranking are continually modified as new information is obtained during the investigative phase. Once the investigative phase is complete, the site score can only go up (the score may be increased and a higher ranking given if conditions subsequently discovered show that a more urgent response is needed). This assures RPs that, as they clean up their site, their score will not go down and, consequently, their opportunity for reimbursement consideration will not be further delayed.
- Once the site reaches the top of the backlog list, the normal Title 200 reimbursement process is followed.
 - In the case of an active site, VRA will be eligible for reimbursement when resources are available and the work is approved through the standard approval process.
 - As with the reimbursement for any Title 200 site, an RP that receives a partial reimbursement for VRA work but does not complete the remedial action when required by NDEQ will be required to reimburse the fund the amount of reimbursement received.
- Interest will not accrue on VRA reimbursements prior to work approval by NDEQ.
- Eligibility for reimbursement will be based upon the RP’s compliance with procedures established by the Department and applicable regulations.
- Reimbursement may be limited by cash available from the Fund.

- Responsible Parties undertaking VRA will not be exempt from state and federal regulations which would otherwise apply to the work being performed.
- Any permits which would be required must still be obtained from the appropriate agency.
- The Reasonable Rate Schedule and Reimbursement Guidance Manual will apply to VRA reimbursements.
 - As with approved work at active sites, it will be the responsibility of the consultant/RP to justify the hours spent on a particular project and those hours will be compared against similar tasks.
- The following submittals, if voluntarily submitted by the RP, will be reviewed by the Department in as timely a manner as practical within the limitation of available resources:
 - Workplans submitted prior to performance of VRA work will be reviewed for compliance with department regulations and for appropriateness of work proposed.
 - Cost estimates submitted prior to performance of VRA work will be reviewed for potential ineligible work and potential reductions to reimbursement that may result from compliance issues.
 - Reports of VRA work performed will be reviewed for appropriateness of work and to determine if the RP accomplished what was proposed.
 - Actual costs which are submitted following completion of a phase of VRA work (and are submitted in the proper Title 200 format) will be reviewed and a draft reimbursement determination will be prepared.
- All VRA submittals will be judged by the regulations and guidelines in place at the time of submittal.
- If the RP chooses not to submit information at the time VRA is performed, the Department will, once the site is activated, review the documentation and determine the appropriateness of the work and which, if any, costs will be eligible for reimbursement.

One of the most likely reasons the RP would undertake VRA is to conduct a Title 118 RBCA investigation or minimal site clean-up in an effort to receive site closure from NDEQ. The Department will, in as timely a manner as practical, review the VRA investigation and remediation reports, and if the site meets closure criteria in place at the time, a closure letter will be sent to the RP.

The procedures contained within this document should not be interpreted as requirements. These are only guidelines intended to clarify the provision in §66-1525(2)(d) for Voluntary Remedial Action. If you have any further questions, feel free to contact the Petroleum Remediation Section at (402) 471-2186.