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Washington State Department of Ecology Unveils Expedited Voluntary Cleanup Program

In April 2019, the Washington legislature amended the Model Toxics Control Act (MTCA) to allow the Washington State Department of Ecology to create an expedited version of the existing Voluntary Cleanup Program (VCP). The VCP authorizes Ecology to provide customers who voluntarily clean up contaminated properties technical assistance and written opinions, including a "No Further Action" determination, on the sufficiency of their cleanups. However, an increasing demand on the VCP has strained Ecology's review capacity. In response, Ecology developed the Expedited Voluntary Cleanup Program (Expedited VCP), a self-sustaining program created to meet the needs of developers working under compressed schedules. On July 6, 2020, Ecology began accepting applications for the Expedited VCP. This update describes the components of this new program.

History of the VCP

Under the MTCA, contaminated sites may be cleaned up independently or under direct Ecology supervision. A supervised cleanup is a formal process in which potentially liable persons conduct the cleanup pursuant to a legally enforceable consent decree, agreed order, or enforcement order. An independent cleanup, on the other hand, occurs without Ecology's supervision. Because independent cleanups do not directly involve Ecology, a party must enter the VCP to obtain a formal opinion on the sufficiency of the cleanup.

Over the last several years, Ecology's internal capacity to review voluntary cleanups has not kept pace with increasing demand, largely driven by brownfield redevelopment in the Seattle-Bellevue area. Ecology created a waitlist for the VCP, which led to project delays. As of June 2020, there were more than 500 contaminated sites enrolled in the VCP, and more than 50 sites remain on the waitlist.

The Solution to Growing Demand: The Expedited VCP

The Washington legislature, in April 2019, passed SHB 1290, which amended the MTCA to allow Ecology to create the Expedited VCP. The Expedited VCP is a self-sustaining program that creates a faster cleanup and redevelopment process that still must meet the same cleanup requirements. Going forward, Ecology will operate two separate VCPs: the previously established VCP, now referred to as the Standard VCP, and the new Expedited VCP.

In early July 2020, Ecology released the Expedited VCP [guidance document](#) detailing the program's specific requirements. The Expedited VCP process includes five components:

- Ecology recommends participating in an optional VCP consultation with department staff prior to applying. Ecology provides this free consultation to guide applicants into the correct VCP and to discuss whether a project is eligible for the Expedited VCP.
- The applicant must submit a completed Expedited VCP application, which includes a completed Remedial Investigation (RI) or equivalent report, the agency determination checklist, a signed Expedited VCP agreement, a project schedule, and the non-refundable \$3,000 application fee. Ecology will accept or reject the application within 10 calendar days of receiving the application fee.

Ecology may reject an application for several reasons, including, but not limited to: (1) if the project

requires Ecology supervision; (2) if the project overlaps with an existing supervised cleanup; (3) the project overlaps with an existing Standard VCP or Expedited VCP project; or (4) the application contains an incomplete RI or equivalent report.

Additionally, Ecology may reject an application for either VCP, including the Expedited VCP, for site-specific reasons as well, including, if the project involves comingled contaminants, multiple parcels of real property, or if there is significant public interest in the cleanup.

- An accepted customer must work within the Expedited VCP process, which is designed to foster a more collaborative and flexible relationship between the customer and Ecology staff. Ecology expects to provide the customer with a written opinion on the RI or equivalent report within 90 days of a customer's acceptance into the program. From there, the customer commits to submitting quarterly progress reports and Ecology commits to giving future opinions within 90 days.
- The most significant difference between the Standard VCP and the Expedited VCP is the billing structure. Customers must prepay for **all** of Ecology's costs under the Expedited VCP. The prepayment structure achieves the Expedited VCP's self-funding mandate. Following acceptance, Ecology requires customers to prepay \$20,000 to cover costs including Ecology's technical and non-technical staff, legal services from the attorney general's office, and any required travel. This payment is deposited into a separate Voluntary Cleanup Account. If the initial \$20,000 prepayment is not sufficient to cover Ecology's costs, Ecology will require additional prepayments in \$10,000 increments. Within 45 days of a successful cleanup or other project termination, Ecology will refund the customer any unused prepayments.

Importantly, Ecology will waive Expedited VCP review costs when affordable housing is the end use of the cleanup project.

- The final component of the Expedited VCP is project termination, which can occur in several ways. A customer or Ecology can terminate the Expedited VCP agreement for any reason. A site "No Further Action" opinion will also terminate the agreement.

Ecology's Next Steps

The Expedited VCP provides qualifying projects with an opportunity to immensely speed up a site's cleanup through a collaborative process with Ecology. However, the Expedited VCP has limited capacity and Ecology will only accept applications during specific times, as noted on the new [Expedited VCP webpage](#). During the next year, Ecology will also seek feedback and initiate formal rulemaking for the program.

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