



Maryland
Department of
the Environment

FACTS ABOUT: Withdrawing from the Voluntary Cleanup Program

The Voluntary Cleanup Program (VCP) statute allows applicants and participants to withdraw from the VCP at anytime, including before or after approval of an application or RAP. The participant may also withdraw from the program after receiving a Certificate of Completion (COC) and prior to completing long-term monitoring or land use controls. The statute requires an applicant or participant to provide ten days written notice of the anticipated withdrawal, stabilize and secure the property to the satisfaction of the Department to ensure protection of public health and the environment, and forfeit any application fees. If an application, RAP or COC is withdrawn, any letter or COC issued to an applicant or participant shall be void. In addition, any bond or other security, as required by an approved RAP, shall be maintained by the Department for up to 16 months from the date of a RAP withdrawal.

There are different obligations for inculpable and responsible persons after withdrawing from the VCP. An inculpable person is not required by the Department to conduct an environmental assessment of the property or clean up the property except in the event of new contamination or exacerbation of existing contamination after withdrawing from the VCP. The inculpable person would be required to secure and stabilize the property to ensure protection of public health and the environment. The same is not true for a responsible person. Upon withdrawal from the VCP, a responsible person remains liable for existing contamination and may be subject to applicable enforcement action and be required to complete the environmental assessment or cleanup of the property. Regardless of inculpable or responsible person status, the Department will require a property owner to secure and stabilize a property to address an imminent and substantial threat to human health and the environment, including mitigating off site releases.

In addition to a voluntary withdrawal by an applicant or participant, the Department may withdraw an application or RAP under certain circumstances:

- **Failing to respond to VCP comments on an incomplete application:** Upon receipt of an incomplete VCP application, the VCP issues comments and requires the requested information be submitted within sixty (60) days of receipt. If the requested information is not received within 60 days, the application will be denied.
- **Failing to respond to VCP comments on a denied application:** Upon receipt of responses to VCP comments, if the application remains incomplete, the VCP will deny the application and allow the re-submittal of an application within sixty (60) days after receipt of VCP application denial letter by the applicant. If the application is not resubmitted within the 60 days, the application is considered withdrawn.



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- Failing to Provide Notice of Intent Following Application Approval: Within 30 days of receiving notification from the Department regarding approval of an application, a participant must inform the Department in writing whether the participant intends to proceed or withdraw from the program. If the participant fails to notify the Department, the application may be deemed withdrawn.
- Failing to submit a proposed Response Action Plan (RAP) within 18 months of acceptance: A participant must submit a proposed RAP within 18 months of receiving notification from the Department regarding approval of an application and indicating a RAP is required. If the participant does not submit a RAP within the 18 months, the application will be considered withdrawn.
- Failing of Participant to Resubmit a Revised RAP: After the Department notifies the participant that modifications to a proposed RAP are necessary before approval, and if the participant does not resubmit the plan within 120 days, the Department may consider the participant's application to be withdrawn.
- Failing to Submit a Performance Bond or Other Surety: If the participant does not submit a performance bond or other surety within 10 days of RAP approval as required by 7-508(d) and set forth in an approved RAP, the application may be considered withdrawn by the Department.
- Failing to Reach Agreement on Revised RAP Schedule: During implementation of a RAP, if the participant fails to meet the approved schedule and an agreement to revise the schedule cannot be reached with the participant, the Department may withdraw approval of the RAP. In this case, the Department may not require an inculcable person to complete the RAP but would require the inculcable person to secure and stabilize the property to ensure protection of public health and the environment. In addition, the inculcable person would remain liable for new contamination or the exacerbation of existing contamination. A responsible person would be required, upon withdrawal, to secure and stabilize the property and may be subject to an enforcement action. The actions required to secure and stabilize the property are determined by the Department.

VCP Withdrawal and Inculcable Person Status: If an entity (prospective applicant) applies for, and receives, expedited inculcable person status, but does not apply to the VCP, the expedited inculcable person status expires after six months. If an entity (prospective applicant) applies for, and receives, expedited inculcable person status and submits the VCP application form, VCP application fee and Phase I environmental site assessment (ESA) within 6 months of receipt of the expedited inculcable person status, the entity maintains the inculcable person status upon withdrawing from the VCP as long as the entity continues to meet the requirements of Environment Article 7-512 and performs any environmental remediation at the property under the oversight of the CHS Enforcement program. If the participant later reapplies to the VCP, it will not lose its inculcable person status, but shall be liable for new contamination or the exacerbation of existing contamination at the property. The participant will be required to



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submit a new VCP application, including an updated Phase I ESA. If environmental activities were completed under CHS Enforcement oversight, the Department will use its discretion as to whether a new Phase II ESA is required, depending on how much time has passed since completing remediation activities and reapplying to the VCP.

If an applicant (who has not received expedited inculpable person status) has submitted an application but not yet been approved as a participant via a VCP acceptance letter confirming the inculpable person status, the applicant loses inculpable person status upon withdrawing a pending application. If such an entity wishes to reapply to the VCP at a later date, it will have to submit a new VCP application including a new request for inculpable person status (if still applicable).

For a VCP applicant or participant that did not receive expedited inculpable person status, inculpable person status is confirmed as part of the VCP approval letter issued to the participant. If a participant withdraws after receiving the VCP acceptance letter confirming inculpable person status, a participant can retain its inculpable person status upon withdrawal from the VCP if the participant continues to meet the requirements of Environment Article 7-512 and performs any environmental remediation at the property under the oversight of the CHS Enforcement program. If the participant later reapplies to the VCP, it will not lose its inculpable person status, but shall be liable for new contamination or the exacerbation of existing contamination at the property. The participant will be required to submit a new VCP application, including an updated Phase I report. If environmental activities were completed under CHS Enforcement oversight, the Department will use its discretion as to whether a new Phase II ESA is required, depending on how much time has passed since completing remediation activities and reapplying to the VCP.

