

VOLUNTARY RESPONSE ACTIONS GUIDANCE

Introduction

In the 2021 legislative session, North Dakota Century Code Article 23.1-10 Environmental Emergency Costs was created. Section 23.1-10-15: *Voluntary response actions – Liability protection - Procedures* amended the procedures and requirements for a property owner to obtain liability protection with regards to contaminated properties. As part of this amendment, *Voluntary Response Actions* were defined and made an integral component of obtaining liability protection. This was done to simplify the process for all property owners, developers, and others.

What is a Voluntary Response Action?

Voluntary response actions (VRAs) are actions undertaken by a property owner, prospective owner, or other third party to address environmental contamination at a subject property (the site). VRAs are not undertaken under order or directive by the North Dakota Department of Environmental Quality – although they may be necessary to obtain liability protection. VRAs can be any action taken to address environmental contamination, or to address the health hazards/risk of environmental contamination. This can include remediation strategies such as contaminant source removal or reduction; or institutional controls such as vapor mitigation systems or land use restrictions.

When are Voluntary Response Actions Appropriate?

VRA's are conducted when a property has identified or suspected environmental contamination. VRA's may be conducted to receive liability protection from the NDDEQ, to improve the property value of a site, or to reduce the risk of negative human or environmental health effects.

What is the Process for Conducting Voluntary Response Actions?

The process of conducting VRA's is described in NDCC 23.1-10-15, and can be found at:

[Legis.nd.gov/general-information/north-dakota-century-code](https://legis.nd.gov/general-information/north-dakota-century-code)

In summary, the process consists of five steps, summarized on page 2 of this document. Please note, this document is a guidance document and does not limit the NDDEQ's ability to accept alternative standards or methods.

5-Step Process for Voluntary Response Actions

1. *Application.* An application is filed with the NDDEQ. The application is submitted on State Form Number 62131 and must include a Phase I and Phase II Environmental Site Assessment (collectively referred to as the “Assessments”) meeting current ASTM standards. [NDCC 23.1-10-15(2)]
2. *Voluntary Response Action Plan.* An applicant must also submit, either at the time of initial application or after corresponding with the NDDEQ, a Voluntary Response Action Plan (VRAP). The VRAP must include a summary of current site conditions described in the Assessments and the associated health risks. It must also include at least one proposed remedy to address those health risks, and an assessment of the impact to the current health risks of the property. In essence, the VRAP must contain a before/after comparison of the property after the remedial actions are taken. [NDCC 23.1-10-15(2)]

NOTE: The VRAP is not a static document. It may be amended based on site conditions uncovered during investigation/remediation activities, or during NDDEQ review and correspondence.

3. *Voluntary Cleanup Agreement.* After the NDDEQ has reviewed the application, the Assessments, and the VRAP, the NDDEQ may enter into a Voluntary Cleanup Agreement (VCA). The VCA is a formal agreement between the NDDEQ and the Applicant, stating that if the Applicant conducts all actions identified in the final VRAP, then the NDDEQ will take no action to compel additional cleanup. [NDCC 23.1-10-15(3)]

NOTE: This agreement *ONLY* addresses contamination identified in the Assessments and VRAP – it does not provide future protection against new or newly discovered contamination.

4. *Voluntary Response Action Completion Report.* Once the Applicant has completed all remedial activities identified in the final VRAP, the Applicant will submit a Voluntary Response Action Completion (VRAC) Report. This report contains a summary of the actions conducted, a signed statement from the applicant, and a summary of current site conditions.
5. *Certificate of Completion.* The NDDEQ will review the VRAC Report and make a completeness determination. If the NDDEQ feels all requirements of the VCA have been met, and the current site conditions reflect the expected conditions, then a Certificate of Completion (Certificate) will be issued. [NDCC 23.1-10-15(4)]

What Does a Certificate of Completion Mean?

The Certificate verifies the VRAP was implemented as planned, and the site conditions meet the risk conditions established in the VCA. The Certificate serves as liability protection for the Applicant, as well as the property owner, a financial institution providing financing for development or purchase, and successive owners or operators of the property.

Is a Certificate Good Forever?

A Certificate relates *only* to contamination identified in the VCA. The discovery of additional contamination, new releases, discovery of emerging contaminants, or a change in site conditions would not be covered by a Certificate. This may require additional work in the form of a new VCA, amendments to the previous VCA, and the issuing of a new Certificate.

Notes & Tips

- Long-term remedial systems (such as environment monitoring or vapor intrusion mitigation) may be included as part of a Certificate of Completion. Neglecting, or failing to maintain, these systems may cause a Certificate to be voided, and therefore the liability protection is no longer in place. Long-term remedial actions may require additional reporting to the NDDEQ, or involve follow-up actions from the NDDEQ. These actions may include on-site inspections, requests for documentation, or other methods of verification.
- VRA actions can vary in complexity. Some projects can be completed in 12-18 months, while others may take many years to complete. Early contact with the NDDEQ and proper due diligence when purchasing property can expedite the process.
- VRA's are not intended for use in immediate response actions addressing environmental incidents or releases (e.g.; pipeline releases, truck rollovers, tank breaches, etc.). These incidents are addressed through the [Spill Investigation Program](#) and must be reported to:

https://deq.nd.gov/WQ/4_Spill_Investigations/IncidentReporting.aspx

- The revised procedures do not retroactively affect entities with regulatory assurance agreements prior to **August 1, 2021**. However, subsequent applicants may be asked to provide additional information to meet new standards.