

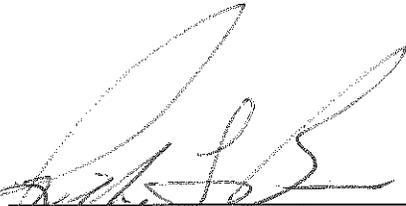
Process for Notification of Termination from the Voluntary Cleanup and Property Redevelopment Program

BER Policy # BER-RS-VCP-005

Date: July 2013

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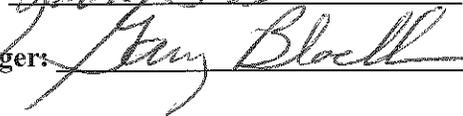
Section Chief:



Date:

9/3/13

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9/6/13

ORIGINATOR

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Date: July 2013

Bureau of Environmental Remediation/Remedial Section Policy

Process for Notification of Termination from the Voluntary Cleanup and Property Redevelopment Program (VCPRP)

Preliminary Remarks

This document serves as a guide to Kansas Department of Health and Environment (KDHE) Bureau of Environmental Remediation (BER) staff and the public on the Agency's process for notifying voluntary parties of violations with the Voluntary Agreement prior to termination from the Voluntary Cleanup and Property Redevelopment program.

This policy also provides the steps that would result in a site/property being terminated from the program as a result of a change in the level of risk at a site. The main objective of the VCPRP is to provide property owners or voluntary parties with the regulatory framework to voluntarily investigate and mitigate environmental conditions at a property in order to receive a No Further Action (NFA) determination while providing protection of public health and the environment. The statutes limit the level of risk a site can pose and remain in the VCPRP.

Statutory Considerations

The VCPRP is not intended to address properties that present an immediate and significant risk of harm to human health and the environment. KDHE will not approve applications that rise to this level of risk; however, periodically the conditions at a site/property change and/or as new information is discovered during the process of investigation and/or corrective action.

K.S.A. 65-34, 164 (c): The provisions of this act shall not apply to: K.S.A. 65-34, 164 (c)(5) property that presents an immediate and significant risk of harm to human health and the environment; or K.S.A.65-34, 164 (c)(6) property that the department determines to be a substantial threat to public or private drinking water wells.

K.S.A. 65-34, 165 (h): The department may terminate the Voluntary Agreement if the applicant: (1) Violates any terms or conditions of the Voluntary Agreement or fails to fulfill any obligations of the Voluntary Agreement; or (2) fails to address an immediate and significant risk of harm to public health and the environment in an effective and timely manner. The department shall notify the applicant in writing of the intention to terminate the Voluntary Agreement and include

a summary of the costs of the department. The notification shall state the reason or reasons for the termination.

Policy#BER-RS-VCP-002 Eligibility Determinations Concerning Public or Private Drinking Water Well Situations. As stated in the policy, “Failure to comply with any of the implementation procedures will result in KDHE’s termination of the Voluntary Agreement as the property would be considered no longer eligible to participate.”

Policy

In accordance with K.S.A. 65-34,165 (h): “The department may terminate the Voluntary Agreement if the applicant: (1) violates any terms or conditions of the Voluntary Agreement or fails to fulfill any obligations of the Voluntary Agreement; or (2) fails to address an immediate and significant harm to public health and the environment in an effective and timely manner.”

Prior to termination from the VCPRP, KDHE BER will provide two written notifications to the Voluntary Party. Each letter will provide a specific list of requirements that must be implemented by the Voluntary Party within a timeframe approved by KDHE BER. The termination deadline will be project-specific but will provide a minimum of 15 days for the Voluntary Party to respond to each letter. Notification letters will be sent to the applicant or Voluntary Party following approval by the Unit Manager and, Section Chief. A copy of the notification letter will be sent to the Bureau Director.

KDHE’s notification letters must include a specific list of required steps to remain in the VCPRP including appropriate steps during the Voluntary Cleanup Investigation needed to provide assurance to the department and document that significant risk to public health and the environment are/are not present. As noted in the Voluntary Cleanup Investigation Scope of Work, investigation of groundwater is required to clearly document potential migration from any known source areas and potential connection to impacted drinking water wells. When a public threat or impact is identified, the voluntary party must take appropriate action to resolve the threat/impact in a timely manner to remain in the VCPRP program. A schedule that clearly meets the deadlines requested by KDHE in the notification letter must be provided by the voluntary party to ensure timely response. If an acceptable method to address the threat/impact to public health and/or the environment cannot be determined and/or implemented, the project must be transition to an enforcement based program that is designed to address higher priority projects.

At the midpoint to the established termination deadline established, KDHE BER will follow-up with the Voluntary Party by phone to confirm the delivery of the letter, get a status update and to provide assistance to the Voluntary Party so that deficiencies can be addressed and the Voluntary Party can understand what is required to successfully continue in the program. Documentation of the follow-up will be provided for the file (record of communication).

Failure to comply with implementation of the specific list of requirements as described in the notification letters and/or the eligibility requirements set forth in BER Policy #BER-RS-VCP-

002 will result in the final termination notice (third letter) of the Voluntary Agreement. The final termination notice will follow K.S.A. 65-34,165 (h)(2) which states, "The department shall notify the applicant in writing of the intention to terminate the Voluntary Agreement and include a summary of the costs of the department. The notification shall state the reason or reasons for the termination." The final notice and termination to the Voluntary Party shall be a certified letter signed by the Secretary of KDHE with copies to the Unit Manager, Remedial Section Chief and Bureau Director for concurrence. The letter shall be routed through proper concurrence prior to the Secretary's signature.