

Voluntary Cleanup and Property Redevelopment Program (VCPRP) Initial Deposits for Properties



BER Policy # BER-VCP-001

December 20, 2019

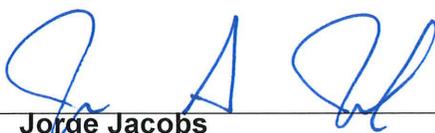
Concurrence



Bob Jurgens
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12/27/19

Date



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12/27/19

Date



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12/26/19

Date

Document History

Reviser: Brittany R. Bennett

Date: 12/20/2019

Revised to include a summary of previous revisions, based on stakeholder comments. Formatting changes.

Reviser: Brittany R. Bennett

Date: 07/25/2019

Revised to reflect 1) an increase in the initial deposit amount for a Class I property from \$1,000 to \$2,000, and 2) a reduction in the total number of sites necessary to qualify as a group, from 4 to 2.

Reviser: Deanna Ross

Date: 04/06/2018

Revised to reflect changes to the contaminant classification system per K.A.R. 28-71-6. Contamination was previously classified as Class I, II, III, and IV. Contamination is now classified as Class I or Class II. Class II (a, b, and c) site criteria remain reflective of the previous Class II, III, and IV criteria.

Reviser: Frank Arnwine

Date: 10/08/2004

Originator: Frank Arnwine

Date: 10/03/2000



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1. Considerations

- K.S.A. 65-34,165 (e) provides that upon determination that an applying property is eligible to participate in the VCPRP, the applicant shall post an initial deposit not to exceed \$5,000, to cover the department's direct and indirect costs in administration of the program.
- K.A.R. 28-71-6 (a) establishes the required amount of initial deposit based upon the determined "contamination classification" of the applying property. For a Class I, the initial deposit is \$2,000; for a Class II, the initial deposit is not to exceed \$5,000.
- K.A.R. 28-71-7 (a) establishes quarterly billing once the deposit amount is approximately \$1,000 for Class I sites and \$2,000 for Class II sites.

A deposit amount of \$2,000 to \$5,000 will be required for each site that enters the program. KDHE will draw upon the deposit to cover KDHE's oversight activities until the deposit remaining is approximately \$1,000 for Class I sites and \$2,000 for Class II sites; then KDHE will initiate quarterly invoicing for the project. KDHE will refund the unused deposit balance within 60 days after mutual termination of the Voluntary Agreement.

2. Classification of Contamination

Once a property is determined eligible to participate in the VCPRP, KDHE will determine the classification of contamination. Based on the information contained in the application, the property will be placed into one of two categories as defined in regulation (K.A.R. 28-71-6). These categories include:

Class I

An eligible property with suspected or confirmed contamination, where the subject property is not a source of contamination. The deposit for a Class I site is \$2,000.

Class II

An eligible property with suspected or confirmed contamination, where the subject property is a source of contamination. A Class II property can be further described by the media and property impacted:

- a. Contamination in soil only, property only – for an eligible property with no known or suspected soil contamination emanating off the property and no groundwater contamination. The deposit for a

- Class II property with soil contamination only and which is confined to the property is \$3,000;
- b. Contamination in soil and groundwater or groundwater only, property only - for an eligible property with suspected or confirmed soil and groundwater or groundwater only contamination, but no off-property contamination. The deposit for a Class II property with soil and groundwater contamination confined to the property is \$4,000.
 - c. Contamination in soil and/or groundwater, on and off property - for an eligible property with suspected or confirmed soil and/or groundwater contamination both on and off the property. The deposit for a Class II property with soil and/or groundwater contamination both on and off the property is \$5,000.

Additional criteria for a deposit to be \$5,000, may include the following:

- If the site area is > 10 acres (urban) or > 0.5-mile radius (rural)
- Multiple contaminants of concern
- Potential to impact surface water body
- Potential for vapor intrusion
- Other site-specific conditions

The property's eligibility and KDHE's classification of contamination will be conveyed to the applicant through written notification. All additional information obtained during the VCPRP process may be used by KDHE to re-evaluate the property's eligibility or classification of contamination.

3. Initial Deposits for Grouped Properties

For applying properties demonstrating the following characteristics, special considerations concerning initial deposit requirements may be allowed (as determined by the department):

- a. an applicant wishes to apply to the VCPRP for two (2) or more properties at the same time, in the same geographical region.
- b. the applicant can demonstrate control of, or access to, all the properties for which application has been or will be made and there will be one single point of contact for the applicant for all applying grouped properties;
- c. the source mechanism(s) and suspected contaminants are determined to be similar for all applying properties;
- d. the applying properties are generally located in the same region of the State; and

- e. all applying properties are, or can be, determined by the department to be eligible.

For groups of two (2) or more properties applying to the VCPRP that meet all the criteria specified for special considerations above, the initial deposit may be established as \$2,000 per property, regardless of classification, subject to the following process requirements:

- a. Oversight charges will be tracked and invoiced on a property-specific basis. KDHE will bill the Voluntary Party for oversight costs as incurred on a quarterly basis. If timely remittance of invoiced oversight costs is not provided, the Voluntary Party may be required to post an initial deposit per site based on the contamination classification of each specific property.
- b. No Further Action determinations will be provided on a property-specific basis as individual properties in a group meet respective requirements for receiving such determinations in accordance with applicable statutes, regulations, and policy.
- c. Forfeiture of initial deposits will be considered on a property-specific basis and will be conducted in accordance with applicable statutes, regulations, and policy.
- d. Refunds of initial deposits will be made on a property-specific basis only upon the department's issuance of the No Further Action determination or mutual termination of the Voluntary Agreement for an individual property. The property's eligibility and KDHE's classification of contamination will be conveyed to the applicant through written notification. All additional information obtained during the VCPRP process may be used by KDHE to re-evaluate the property's eligibility or classification of contamination.

¹ Similar means the same types of releases such as crude oil releases from cross-country pipelines, refined petroleum releases from pipelines, or mercury spills from pipelines manometer/metering locations, etc. (Some general types of contaminants releases, discharged, or spilled by similar mechanism and investigation, monitoring and cleanup requirements for response to the release are similar). The ultimate determination of similarity will be made by the department.

² Same region of the State means properties geographically situated within a single KDHE district office area or river basin. The ultimate determination on similarity will be made by the department.