

Date: March 2, 2020

Public Notice and Comment Period for Updates to the Cost Recovery Schedule for the Voluntary Oversight and Assistance Program

The Department is providing notice of an update to the cost recovery schedule for projects participating in the Voluntary Oversight and Assistance Program. Pursuant to Tennessee Code Annotated 68-212-224(a)(3), all voluntary agreements or consent orders may provide for the reimbursement of the department's oversight costs. The Commissioner has determined that the cost recovery assessments outlined below are appropriate for the reimbursement of the Department's oversight costs, including staff time for review, comment, and approval of work plans, reports, or other documents submitted by parties enrolled in the Voluntary Oversight and Assistance Program. These cost recovery assessments shall be included in each Brownfield Voluntary Agreement or Consent Order to reimburse project manager time spent and any associated travel for field review of activities at voluntary sites. The proposed changes are attached to this document.

The public is invited to provide comment beginning on March 2, 2020 through April 1, 2020. Comments may be submitted by email to Division.Remediation@tn.gov with the subject line "VOAP Cost Recovery Assessments". Comments may also be provided in writing to:

*TDEC Division of Remediation
Attn: Public Comments
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, TN 37243*

Voluntary Cleanup Oversight and Assistance Program (VOAP) Cost Recovery Assessment Schedule

Pursuant to Tennessee Code Annotated 68-212-224(a)(3), all voluntary agreements or consent orders may provide for the reimbursement of the department's oversight costs. The Commissioner has determined that the cost recovery assessments outlined below are appropriate for the reimbursement of the Department's oversight costs, including staff time for review, comment, and approval of work plans, reports, or other documents submitted by parties enrolled in the Voluntary Oversight and Assistance Program. These cost recovery assessments shall be included in each Brownfield Voluntary Agreement to reimburse project manager time spent and any associated travel for field review of activities at voluntary sites. Consent Orders may also include these cost recovery assessments or other reimbursement, such as hourly charges, at the discretion of the Division Director.

This document outlines the cost recovery assessment schedule required to be paid by parties participating in the Voluntary Oversight and Assistance Program (VOAP). Each site participating in the VOAP will be assessed specific cost recovery assessments associated with the phase of work and each succeeding phase of work will incur an additional cost recovery assessment. These assessments will be invoiced to the participating party, and must be paid prior to receiving written approval to continue with the next phase of work. Participating parties include successor parties who assume the responsibilities of the original voluntary party. These cost recovery assessments must be paid prior to receiving a letter acknowledging the completion of the activities described in a Consent Order or Brownfield Voluntary Agreement. Participants in the VOAP who are seeking technical assistance but may not desire a Consent Order or Brownfield Voluntary Agreement are also subject to this cost recovery assessment.

ASSESSMENT SCHEDULE STRUCTURE **for projects entering the VOAP after March XX, 2020**

- **Program Entry (\$3,000)** – This assessment must accompany the VOAP application submitted to the Nashville Central Office, unless there are extenuating circumstances, which requires division director approval. This assessment covers the costs associated with the review and processing of the application and a prorated annual assessment charge of \$2,000. This prorated annual assessment, covering the first twelve months of program activity, is charged to support ongoing Brownfield and Voluntary Oversight and Assistance Program operations.

All voluntary parties must submit a completed application to DoR for each site that will

participate under the VOAP. For those voluntary parties who may not need or wish to enter into a formal Brownfield Voluntary Agreement limiting liability, DoR staff may review the data presented and, as appropriate, issue a Letter of No Additional Action. An application to the VOAP must be submitted for a voluntary party to receive a Letter of No Additional Action. The Letter of No Additional Action does not carry or imply that liability protection has been extended to the voluntary party. The letter serves only to say that the State has reviewed and agreed, based on the data provided in a specific report, that no additional investigations or remedial actions are required. As an example, a Letter of No Additional Action may be issued for a property when arsenic is found above the regional screening level with no other contaminants identified (in this example arsenic exceeds the RSL but is within TN background or below applicable site-specific risk-based concentrations.). In some cases, DoR may ask that a Notice of Land Use Restrictions (NLUR) be placed on the property.

- **Site Characterization (\$2,500)** – The Site Characterization assessment includes time associated with the review and evaluation of reports, specifically any Phase I or Phase II Environmental Site Assessments or other similar due diligence documents. This assessment may also be applied to include TDEC staff time associated with the review, comment, and approval of a work plan for supplemental site investigation, following the review of any Phase I or Phase II Environmental Site Assessment, or other similar due diligence documents. This assessment includes DoR staff time for the oversight of the fieldwork and review of the associated report for additional site characterization. This assessment may be repeated more than once should additional investigations be required, beyond the review of the initial due diligence documents. Activities under this phase of work may include but are not limited to:
 - Collection and analysis of samples of wastes, soils, sediments, ground water, surface water, and other media;
 - Evaluation of the sampling and analysis results to determine if contamination exists which warrants further investigation or remediation;
 - Characterization of the nature and extent of contamination in soils;
 - Determination if groundwater contamination exists which warrants further investigation or remediation; and
 - Characterization of the nature and vertical and horizontal extent of contamination in groundwater.

- **Remedial Action Work Plan (\$3,000)** – This assessment includes time reviewing, modifying, or approving a submitted work plan, for overseeing the field implementation

of the work plan, and for review of associated report(s) for a planned corrective action, including a Soil Management Plan. Vapor mitigation investigations and corrective actions are not included in this assessment. Oversight may include:

- Waste or soil removal with off-site disposal, groundwater removal with off-site disposal, or other remediation efforts.
 - Waste or soil removal with on-site treatment or disposal, repeated groundwater removal with on-site treatment or disposal, or other remediation efforts.
 - Monitored natural attenuation, *in-situ* biological treatment, groundwater “pump and treat” programs, or other remediation efforts designed to clean up soil or groundwater contamination over an extended period of time.
 - Soil Management Plan – A tactical, focused plan for managing contaminated soils on-site under appropriate barriers or off-site disposal.
 - Brownfield Site Development Plan – A strategic plan focused on the future development of the site, taking all factors into account including soil management/disposal, vapor intrusion mitigation, or any other required mitigation effort.
- **Risk Assessment Review (\$2,500)** –The risk assessment review includes reviewing, modifying, and approving or disapproving a formal, comprehensive assessment of the risks posed by contamination in soil and groundwater in support of alternate cleanup levels. A Risk Assessment Review may also be required when a determination about the appropriate risk-based concentrations for a site and the associated remedial strategies is required. While not applicable to all projects in the VOAP, some projects may wish to include a risk assessment in order to develop site specific appropriate cleanup targets.
 - **Beneficial Use Determination (\$2,500)** – The beneficial use determination assessment includes reviewing and approving or disapproving a petition for beneficial use determination submitted in accordance with the Division of Solid Waste Management’s policy (PN028).
 - **Vapor Intrusion Evaluation/Mitigation (\$2,500)** – The vapor intrusion evaluation and/or mitigation assessment includes the review and approval of a submitted work plan, field oversight of implementation of the work plan, review of associated vapor mitigation reports and as-built drawings, or other report(s) for a planned vapor mitigation corrective action specific to the potential for vapor intrusion. Activities under this phase of work may include but are not limited to:

- Collection and analysis of samples of soil gas, sub slab vapors, or indoor air;
 - Evaluation of the sampling and analysis results to determine if contamination exists which warrants further investigation or remediation;
 - Characterization of the nature and extent of contamination in groundwater, soil gas, vapors, or indoor air;
 - Determination if groundwater, soil gas, sub slab vapors, or indoor air contamination exists which warrants further investigation or remediation;
- **Brownfield Voluntary Agreement or Consent Order (\$4,000)** - The Brownfield Voluntary Agreement or Consent Order assessment encompasses the review of a Brownfield Voluntary Agreement or Consent Order for a property enrolled in the VOAP. Pursuant to Tennessee Code Annotated section 68-212-224, the Commissioner is authorized to enter into a Voluntary Agreement with parties who are willing and able to conduct an investigation and remediation of a hazardous substance site or Brownfields project and who did not generate, transport, or release the contamination that is to be addressed at the site. The Commissioner may enter into a Consent Order with parties who are willing and able to conduct an investigation and remediation of a hazardous substance site that may have generated, transported, or released the contamination that is to be addressed at the site.
 - **Notice of Land Use Restrictions (\$1,000)** – This assessment involves the review of land use restrictions when they are to be recorded on a property enrolled in the VOAP, independent of whether a Brownfield Agreement or Consent Order is also completed.
 - **Institutional and Engineering Controls Compliance (\$750)** - The Institutional and Engineering Controls Compliance Review assessment will be charged once for each site where a notice of land use restrictions is recorded. The assessment covers DoR staff time for future EC/IC inspections (performed at all sites with a recorded notice of land use restrictions).
 - **Annual Assessment (\$4,000)** – Whenever a site remains in the program for more than a year, the voluntary party will receive an Annual Assessment invoice to support ongoing project oversight. Once a site is in the remedial action phase, costs associated with long-term monitoring or other on-site activities required of TDEC staff time will be recovered in this annual assessment. The annual assessment is an additional cost to the other assessments identified herein and may only be waived with approval of the division director.

ASSESSMENT GUIDELINES

1. No review or oversight will be performed until all applicable financial assessments have been processed. Cost recovery assessments must be paid to remain in the VOAP and ultimately receive a letter of closure (NFA or NAA).
2. Participating parties can be assessed multiple assessments per phase if the Department determines a subsequent investigative or remedial action constitutes a significant modification to the previous scope of work or work plan. Significant modification could include changing remedial technologies or the discovery of contamination unknown at the time the work plan was approved. Additionally, multiple phases of work or reporting under a single work plan may be assessed additional assessments at the discretion of the regional office manager or the division director.
3. The annual assessment is in addition to the other assessments and is required for any site that remains in the voluntary program beyond one year of the date the site was accepted into the voluntary program. This assessment is due regardless of the amount of work done at the site during the previous twelve months.
4. Only the division director may approve a deviation from this cost recovery schedule. No approvals for cost recovery schedule amounts different from those identified herein may be approved by a project manager, the regional brownfield coordinator, or the regional field office manager.

For additional information contact:

Brownfield Voluntary Cleanup Oversight and Assistance Program
Tennessee Department of Environment and Conservation
Division of Remediation
312 Rosa L. Parks Ave., 14th Floor
Nashville, TN 37243
(615) 532-0900