

**19-8-108 Voluntary agreement -- Procedure and establishment.**

- (1)
  - (a) Before the executive director may evaluate any detailed plan or report regarding the remediation goals and proposed methods of remediation, the applicant and the executive director shall have entered into a voluntary cleanup agreement under this chapter.
  - (b) The agreement shall establish the terms and conditions for the evaluation of investigation, remediation, and status reports.
- (2) Before the applicant may initiate any response action covered by an agreement, a voluntary cleanup agreement shall have been signed by the applicant and the executive director, except that the applicant may take emergency measures as necessary, but shall coordinate these measures with the appropriate emergency response authorities.
- (3) A voluntary cleanup agreement shall provide for:
  - (a) recovery by the department of all reasonable costs:
    - (i) incurred in the voluntary cleanup in the review and oversight of the applicant's work plan and reports and as a result of the department's field activities regarding the cleanup;
    - (ii) attributable to the voluntary cleanup agreement; and
    - (iii) in excess of the amount of fees submitted by the applicant under Section 19-8-107; and
  - (b) a schedule of payments by the applicant to the department, to be made by the applicant for recovery of all department costs attributable to the voluntary cleanup program, including:
    - (i) direct and indirect costs of overhead, salaries, equipment, and utilities;
    - (ii) legal, management, and support costs; and
    - (iii) appropriate tasks, deliverables, and schedules.
- (4) A voluntary cleanup agreement shall:
  - (a) identify all statutes and rules with which the applicant shall comply;
  - (b) describe any work plan or report the applicant shall submit to the executive director for review, including a final report that provides all information necessary for the executive director to confirm that all work contemplated by the voluntary cleanup agreement has been completed;
  - (c) include a schedule for submitting the information required by Subsection (4)(b); and
  - (d) state the technical standards to be applied in evaluating the work plans and reports.
- (5) If an agreement under this section is not established between the applicant and the executive director within 30 days after good faith negotiations between the parties have been initiated:
  - (a) the applicant or the executive director may, upon providing written notice to the other party, withdraw from the negotiations; and
  - (b) the applicant's application fee is not refundable.
- (6) The department may not initiate an enforcement action against an applicant regarding a contamination or release, or any activity that resulted in the contamination or release if the applicant:
  - (a) is in compliance with this chapter regarding the contamination or release; and
  - (b) has entered into a voluntary cleanup agreement that is in effect under this chapter regarding the contamination or release.

Enacted by Chapter 247, 1997 General Session