

Voluntary Response Action Program Public Communication Decision Matrix

The Maine Department of Environmental Protection's ("DEP") Voluntary Response Action Program ("VRAP") assists in the redevelopment of contaminated properties by providing liability protections to entities that voluntarily investigate and/or remediate potentially contaminated properties (often termed "Brownfields"). The VRAP provides a number of public benefits—the elimination or mitigation of threats to public health or the environment; the reuse of previously developed properties, thereby reducing sprawl and preserving "greenspace"; the reuse of existing infrastructure, such as utilities and roads, which were constructed to support previously developed properties which are currently idle or underutilized; the revitalization of "blighted" areas; the creation and/or expansion of businesses, with the corresponding creation of jobs; and the return of properties to the tax role. The VRAP allows both the state environmental regulatory agency and the VRAP applicant to achieve their primary goals—protection of public health and the environment for the former, and reduction or elimination of environmental liability for the latter.

The decision matrix that follows was developed for use by VRAP applicants to determine the level of Public Communication necessary at their site. The matrix establishes a connection between contaminant impact, risk to receptors and appropriate level of communication of such risks. The development of a meaningful policy for Public Communication is a requirement of the DEP's federal Brownfields grant funding.

VRAP staff will review all Public Communication determinations, and, at its discretion, may require a greater level of Public Communication at a site, even if the strict application of this policy determines that only Tier I Public Communication (see Appendix A-Levels of Public Communication") is necessary. Likewise, VRAP staff may approve a lower level of notification when warranted by site-specific circumstances. For example, when VRAP staff concludes that offsite groundwater contamination is not attributable to the VRAP site.

Any site that applies to the VRAP will be given no less than a Tier I classification in the Decision Matrix. Tier I sites will be placed on an electronically accessible list of sites that, at a minimum, includes the site name and location. The VRAP applicant has no other obligations for Tier I Public Communication. VRAP sites that are categorized as either a Tier II or Tier III site may need to develop and implement a Public Communication Plan that is acceptable to the Department. Other programs in the Bureau of Remediation & Waste Management may follow this policy voluntarily, unless there is already a prescribed public involvement requirement, as established through policy, rule or statute for that specific program.

The guidance document also outlines the elements that a VRAP applicant may need to consider when a Tier II or Tier III Public Communication (see "Levels of Public Communication") workplan is prepared for and implemented at a VRAP site.

The goal of Tier I Public Communication is to establish the public record of all sites participating in the VRAP. Any site that makes application will be added to the “Sites List Database”, the public record of all sites within the Bureau of Remediation’s Division of Remediation.

The goal of Tier II Public Communication is to make affected (or potentially affected) adjacent property owners and the municipality aware of what is being done at a VRAP site.

The goal of Tier III Public Communication is to afford the public an opportunity to review and comment on the proposed workplan at a VRAP site.

This decision matrix applies only to contamination issues; however, the VRAP may consider such issues as noise, traffic, etc. at a site if they represent a significant threat to public health or welfare and/or a potential nuisance condition.

If it is determined that a site will require a Tier II or Tier III level of public communication, the VRAP applicant must develop and submit a “Public Communication Plan” to the VRAP before remedial actions can commence. The elements necessary to implement a satisfactory Tier II or Tier III Public Communication Plan are outlined in the Appendix A-Levels of Public Communication” section of this document.

The policy has three appendices to assist the VRAP applicant in correctly assigning the appropriate public communication level for a site. “Appendix A-Levels of Public Communication”, outlines the goals and elements for the three tiers of public communication, providing guidance for the development of the Public Communications workplan. “Appendix B-Technical Criteria”, establishes the criteria for determining the impact and associated risk, which allows appropriate characterization utilizing the matrix. “Appendix C-Table of Applicable Standards”, lists the guidance concentrations to be used for comparison of levels of contamination for each medium.

For any given site, it may be necessary to apply this Decision Matrix multiple times as new information effecting the proposed remedial action(s) becomes available. VRAP personnel will determine if a remedy has changed significantly and warrants another review using the Decision Matrix.

This policy applies once a VRAP application is filed with the Department, and is effective January 1, 2008.

Voluntary Response Action Program Public Communication Decision Matrix

Instructions

To determine the appropriate level of Public Communication at a site, proceed through the Decision Matrix criteria until you have reached a Public Communication level (Tier I, II or III), then stop. If there is something you don't understand about the Decision Matrix, please refer to the attached "Appendix B-Technical Criteria" and the associated "Appendix C-Table of Applicable Standards". All levels in **bold** print will require the applicant to take additional actions meet the Public Communication requirement.

Public Communication Decision Matrix	No Contamination or Contamination Below Standard (onsite only)	Contamination Above Standard (onsite only)	Soil Contamination below or above standard that has impacted offsite properties	Groundwater and/or Surface Water Contamination above standard has impacted offsite properties
Cleanup to meet standard	Tier I	Tier I	Tier I	Tier III
Cleanup that requires Engineering and/or Institutional Controls	Tier I	Tier I	Tier II	Tier III

Note: The Decision Matrix is to be followed by the VRAP applicant and reviewed by VRAP personnel to determine the level of Public Communication necessary at a site. Explanations of the criteria in the Decision Matrix are included in the accompanying "Appendix B-Technical Criteria".

Appendix A-Levels of Public Communication

Tier I

The goal of Tier I Public Communication is to establish the public record of all sites participating in the VRAP.

The VRAP shall maintain an electronically accessible list of all sites and shall update that list monthly to reflect the status of the site. The list shall at a minimum identify the site name and location of the property, and shall also identify a DEP contact person in the event that the public desires more information on the status of the site.

All sites accepted into the VRAP are, at a minimum, Tier I sites. If the *Voluntary Response Action Program Public Communication Decision Matrix* determines that the site is not a Tier II or Tier III site, the VRAP applicant does not need to pursue any further public communication measures pursuant to this policy.

Tier II

The goal of Tier II Public Communication is to make affected (or potentially affected) adjacent property owners and the municipality aware of what is being done at a VRAP site.

A Tier II level of Public Communication is appropriate for VRAP sites where there is offsite soil contamination and none of the following exist:

1. offsite contamination of drinking water supplies above guidance levels
2. offsite contamination of surface water bodies above guidance levels;
3. residual contamination left onsite that may cause vapor above guidance levels in nearby offsite structures;
4. it is likely that the type and concentrations of contaminants in groundwater may cause vapor above guidance levels in nearby offsite structures (Tier III); or
5. it is likely that remediation may cause additional offsite contamination (Tier III);

The applicant must submit a Tier II Public Communication Plan to the VRAP for review and approval prior to implementation of the plan. Unless otherwise approved in writing by the VRAP program, a Tier II Public Communication Plan must include the following elements:

- Provisions to notify appropriate municipal officials;
- Provisions for access to key documents, including environmental site assessments (ESAs) and workplans by submitting copies to the local municipal office and DEP office nearest the project site; and
- Provisions to notify the affected adjacent property owners, as appropriate.

For the purposes of this document, appropriate municipal officials would include at least one of the following: selectperson(s), town manager, and/or the code enforcement officer for the municipality.

If implementation of the Tier II Public Communication Plan results in substantial interest in a VRAP site, a meeting with municipal officials and the affected (or potentially affected) adjacent property owners may be necessary. VRAP staff would need to be present at such a meeting.

It is the VRAP applicant's responsibility to demonstrate that they have conducted the elements of Tier II Public Communication before the final VRAP certification can be issued.

If a public meeting or forum is required (or voluntarily conducted) for a site pursuant to other federal, state or local statute, rule, ordinance or policy, the Tier II Public Communication requirement may be met if issues related to the remediation of the site are addressed at such meeting. VRAP staff would need to be present at such a meeting.

Tier III

The goal of Tier III Public Communication is to afford the public an opportunity to review and comment on the proposed remediation workplan at a VRAP site.

A Tier III level of Public Communication is appropriate for VRAP sites where at least one of the following are true:

1. offsite contamination of drinking water supplies above guidance levels;
2. offsite contamination of surface water bodies above guidance levels;
3. residual contamination left onsite that will cause vapor above guidance levels in nearby offsite structures;
4. a high likelihood that the type and concentrations of contaminants in groundwater will cause vapor above guidance levels in nearby offsite structures; or
5. a high likelihood that remediation will cause additional offsite contamination.

The applicant must submit a Tier III Public Communication Plan to the VRAP for review and approval prior to implementation of the plan. Unless otherwise approved in writing by the VRAP program, a Tier III Public Communication Plan must include the following elements:

- Provisions to notify appropriate municipal officials;
- Provisions to notify affected property owners;
- Provisions to notify the broader public by publishing a notice once in a newspaper of general circulation in the area;

- Provisions for access to key documents, including environmental site assessments (ESAs) and workplans by submitting copies to the local municipal office and DEP office nearest the project site; and
- Provisions for receiving and considering comments and concerns.

For the purposes of this document, appropriate municipal officials would include at least one of the following: selectperson(s), town manager, and/or the code enforcement officer for the municipality.

Based on the response and comments on the key documents, a public meeting may be necessary. VRAP staff would need to be present at such a meeting.

It is the VRAP applicant's responsibility to demonstrate that they have conducted the elements of Tier III Public Communication before the final VRAP certification can be issued.

If a public meeting or forum is required (or voluntarily conducted) for a site pursuant to other federal, state or local statute, rule, ordinance or policy, the Tier III Public Communication requirement may be met if issues related to the remediation of the site are addressed at such meeting. VRAP staff would need to be present at such meeting.

Appendix B-Technical Criteria

The purpose of Voluntary Response Action Program Public Communication Decision Matrix is to provide guidance for VRAP applicants to determine the level of Public Communication appropriate for a site. The intention of the following is to provide clarification of what the criteria in the Decision Matrix means. A table of applicable resources (standards) used by VRAP for determining the appropriate categorization in the Public Communication Decision Matrix for a VRAP site is attached (Appendix C-Table of Applicable Standards).

No Contamination or Contamination Below Standard

If analytical results from sampling at a site indicate that no contaminants are present above the method detection limit (MDL) or that the compounds detected are naturally occurring and are present at levels comparable to “background” (the average of three separate samples from background locations, for the purposes of this document), this would qualify as “No Contamination”. If the samples show detectable levels of contaminants, but these contaminants are below the established standards for that media (see Appendix C-Table of Applicable Standards), then this would qualify as “Contamination Below Standard”.

Both the “No Contamination” and “Contamination Below Standard” designation apply only to sites that have no offsite contamination.

Any site that is designated “No Contamination” or “Contamination Below Standard” is assigned a **Tier I** category in the Public Communication Decision Matrix.

Contamination Above Standard (onsite only)

If contamination exceeds the standard (see Appendix C-Table of Applicable Standards) but is limited to the property boundaries of the site, then a **Tier I** category is assigned, regardless of whether the cleanup is performed to meet the standard or a remedy involving engineering and/or institutional controls is chosen.

Soil Contamination below or above the standard that has impacted offsite properties

If soil contamination (but not other media) is found to impact offsite properties below the standard, then the site qualifies for a **Tier I** categorization. If soil contamination has impacted offsite properties above the standard but will be cleaned up to the standard, then the affected property owner needs to be contacted and **Tier I** public communication employed to notify other potentially interested parties. Soil contamination above the standard on an offsite property that will require engineering or institutional controls as part of the final remedy will involve communication with the municipality and affected property owners, and will be categorized as a **Tier II** public communication site.

Groundwater and/or Surface Water Contamination Above Standards that has Impacted Offsite Properties or Vapor Hazard to Offsite Buildings/Structures

Sites that have contamination that is at or above the standard for groundwater (provided the groundwater is being used or is in an area where public water is not available) and/or surface water off of the property, or that has contamination that impacts or threatens to impact offsite buildings/structures (including utilities) with vapors above the applicable guidelines, will require a **Tier III** level of Public Communication.

Appendix C--Table of Applicable Standards

		Contaminant Type	
		Non-Petroleum	Petroleum
M E D I A	Soil	Maine Remedial Action Guidelines (RAGs) for Sites Contaminated with Hazardous Substances	Remediation Guidelines for Petroleum Contaminated Sites in Maine, May 23, 2014
		Site-Specific Risk Assessment conducted in accordance with Maine's "Revised Guidance for Human Health Risk Assessments at Hazardous Substance Sites in Maine"	
	Groundwater	Maine Remedial Action Guidelines (RAGs) for Sites Contaminated with Hazardous Substances	Remediation Guidelines for Petroleum Contaminated Sites in Maine, May 23, 2014
		Site-Specific Risk Assessment conducted in accordance with Maine's "Revised Guidance for Human Health Risk Assessments at Hazardous Substance Sites in Maine"	
	Surface Water	Site-Specific Risk Assessment conducted in accordance with Maine's "Revised Guidance for Human Health Risk Assessments at Hazardous Substance Sites in Maine"	
	Indoor Air	Maine Remedial Action Guidelines (RAGs) for Sites Contaminated with Hazardous Substances	Remediation Guidelines for Petroleum Contaminated Sites in Maine, May 23, 2014
		Site-Specific Risk Assessment conducted in accordance with Maine's "Revised Guidance for Human Health Risk Assessments at Hazardous Substance Sites in Maine"	

Revised: March 2016