

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

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Through: Glenn Shankle, Executive Director 
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Subject: Executive Summary for April 27, 2007 Work Session
Administrative Settlement Agreements in the Voluntary Cleanup Program

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Background

Recently, parties have expressed interest in the Texas Commission on Environmental Quality (TCEQ) assisting persons who are addressing sites in the Voluntary Cleanup Program (VCP) in recovering costs from other non-performing parties.

As background on the VCP, the program was created in 1995 to provide incentives to remediate property by removing liability for future landowners. *See* Texas Health and Safety Code (THSC) Chapter 361, Subchapter S. Under the VCP, a person voluntarily brings a site into the program to address contamination. To participate in the program, an applicant must pay a \$1,000 application fee and then agency costs to oversee the cleanup. Once a cleanup is successfully completed, a certificate of completion is issued which acknowledges the liability protection for future owners that did not contribute to the contamination. While the number of participants entering the VCP was well over 200 per year when the program was first created, that number has leveled off to a little over a hundred each year.

Issue

Should the TCEQ participate in cost recovery efforts, including administrative settlements, for sites that are being addressed in the VCP?

As reflected in Option 3, the Executive Director supports agency participation in settlement agreements for VCP sites on request of the VCP participant when the agency has incurred oversight costs and the party requesting settlement is not legally obligated to pay these costs.

Option One

The agency participates in all such cost recovery efforts when requested by a VCP participant.

The primary advantage of this option is to encourage parties to come forward and enter sites into the program, knowing that they will have state assistance in seeking contribution from other responsible parties. Additionally, when the TCEQ also has costs to recover on a site, it can be highly beneficial to share the workload of pursuing parties with people outside the agency that have a common interest.

On the downside of this option, if the TCEQ is not owed any costs for a site, it may be seen as heavy handed or inappropriate for the agency to pursue parties for any sums related to that site or enter into settlements concerning the site. Another consideration is the incentives already offered by virtue of a site participating in the VCP. The certificate of completion with its accompanying liability protection is seen by many as significant motivation on its own to enter the VCP. Finally, depending on the particular site, this option could be very demanding on agency resources for a site that is already being addressed.

Option Two

The agency does not participate in any such cost recovery efforts even if requested by a VCP participant.

This option allows the agency to focus cost recovery efforts on sites where the agency has expended money as opposed to sites that are already being addressed in the VCP. Additionally, there is not the potential perception that the agency is inappropriately pursuing parties for sums that are not owed to the TCEQ.

A potential disadvantage to this option is that parties will not bring sites into the VCP if they know that they will receive no assistance from the TCEQ in cost recovery efforts. Additionally, there would be no efficiencies gained in instances where the agency has outstanding costs as well since we would not be sharing the workload with outside parties.

Option Three

The agency only participates in any such cost recovery efforts when: 1) requested by the VCP participant; 2) the TCEQ has outstanding oversight costs that need to be recovered; and 3) the VCP participant is not legally obligated to pay those oversight costs.

This option seeks to balance the pros and cons of the other two options by assisting in cost recovery where the agency also has an interest to pursue. It maximizes the TCEQ's efforts to recover funds by sharing the workload with outside parties while also avoiding any perception that the agency is unfairly pursuing costs that are not owed to the state.