



DEPARTMENT OF
ECOLOGY
State of Washington

Voluntary Cleanup Program

Report to the Governor and the Legislature

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Voluntary Cleanup Program

Report to the Governor and the Legislature

Toxics Cleanup Program
Washington State Department of Ecology
Olympia, Washington

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Acronyms & Abbreviations

BARTS	Billing and Revenue Tracking System
FTE	full time equivalent
ISIS	Integrated Site Information System
MTCA	Model Toxics Control Act
NFA	no further action
RCW	Revised Code of Washington
TCP	Toxics Cleanup Program
VCP	Voluntary Cleanup Program

Purpose of this Report

This report on the activities of the Voluntary Cleanup Program (VCP) has been prepared by the Toxics Cleanup Program (TCP) of the Department of Ecology (Ecology or the department) as required by the Model Toxics Control Act (MTCA), Chapter 70.105D.

Revised Code of Washington (RCW) 70.105D.030(1)(i) sets forth requirements for tracking and reporting programmatic performance information, as follows: “The department must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly the department is able to respond to those requests. By November 1, 2015, the department must submit to the governor and the appropriate legislative fiscal and policy committees a report on achieving the performance measures and provide recommendations for improving performance, including staffing needs.”

This report includes information on:

- The number of applications to the VCP.
- The number of requests for opinions about the adequacy of planned or completed remedial activities.
- Turnaround time to respond to applications and opinion requests.
- Program performance measures and results.
- Program staffing.
- Recommendations for improving performance.

The report was due to the Legislature on November 1, 2015. It is late because the staff needed to produce the report were working to manage the challenges to the VCP discussed in the report, specifically the large increase in demand and the departure of key staff who managed this work. In addition, the planning and analytical capacity needed for writing the report were needed to help respond to the precipitous decline in funding to MTCA that TCP was managing. As those latter efforts are now largely complete, we were able to finish the report.

The report includes data and discusses the situation in the VCP through December 2015. Since that time, the challenges discussed in the report have only intensified. Demand for the program continues to grow rapidly at a time when, for budgetary and other reasons, TCP is not able to maintain the staff needed to keep up with the demand.

Voluntary Cleanup Program—Overview

Purpose and Processes

Ecology-Supervised Cleanup

In Washington, contaminated sites may be cleaned up independently or under direct Ecology supervision. Ecology-supervised cleanups (also called remedial actions or formal process) are conducted by a potentially liable person under a legally enforceable consent decree, agreed order, or enforcement order. This means that Ecology-supervised cleanups involve court proceedings, require attorney-general and private legal advice, and include provisions for notice and public involvement. Ecology-supervised cleanups conclude when the site has been certified as clean and the parties are released from their consent decree, agreed order, or enforcement order. However, Ecology does not have the resources and staff to supervise all cleanups through the formal process.

Independent Cleanup

MTCA allows independent cleanups to be conducted without direct Ecology supervision. Unless Ecology is supervising or negotiating the cleanup of a site under an order or decree, any site may be cleaned up independently. Any person may conduct an independent cleanup and seek recovery of their costs from other liable persons. Independent cleanups represent an important path for cleaning up contaminated sites in Washington, particularly those that are smaller and less complex. They enable property owners to get sites cleaned up without waiting for Ecology. They also use substantially fewer agency resources and can take less time than Ecology-supervised cleanups.

However, unlike Ecology-supervised cleanups, independent cleanups do not provide responsible parties assurance that the completed work is sufficient under MTCA. While such cleanups must be reported to Ecology, Ecology generally will not provide an opinion on the sufficiency of independent cleanups unless requested through the VCP. Such opinions may facilitate various property transactions. For example, the opinions may help the owner sell or redevelop the property or obtain loans where the property is used as collateral.¹

¹ Neither Ecology nor the State of Washington prohibit transfer of contaminated property. Rather, banks and other transaction financiers require assurance regarding liability stemming from contamination as a condition of lending.

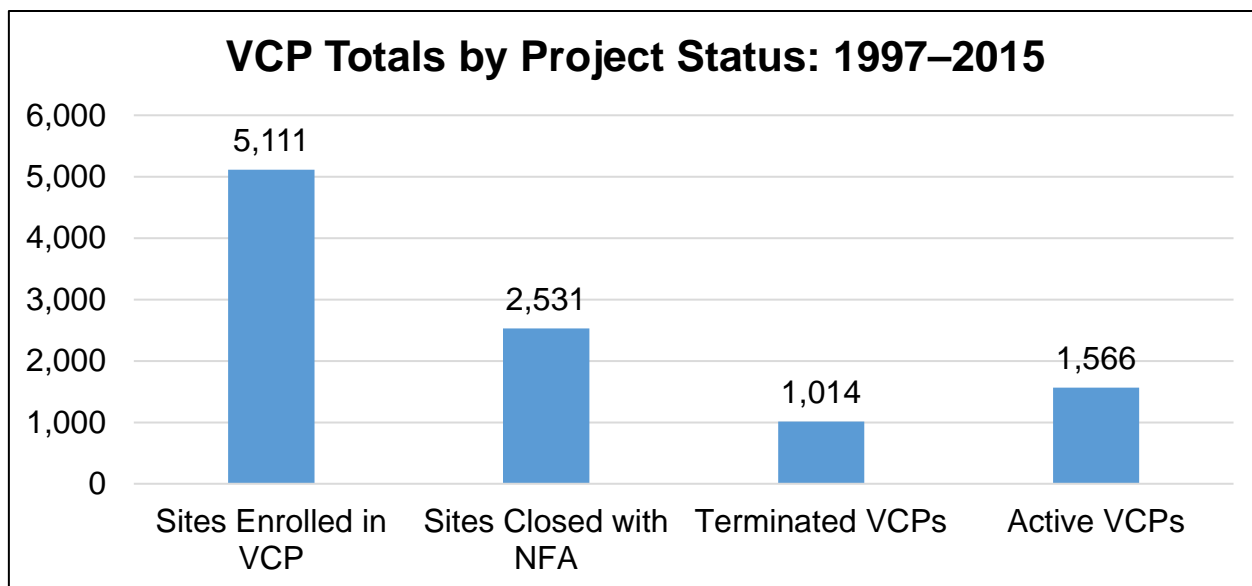


Figure 1. Number of VCP projects and sites by status since the inception of the program (1997–2015). Active VCPs includes sites that have started cleanup as well as sites that are still undergoing remedial investigations, feasibility studies, or are awaiting the start of planned cleanup activities. Terminated VCPs are those that have been removed from the program due to inactivity, transferred to the formal process, or are unable to pay for cleanup. (NFA – no further action)

Voluntary Cleanup Program

NOTE: This report was written to address the specific requirements of RCW 70.105D.030(1)(i), and so the following description of the VCP process is a summary overview. A more detailed overview and answers to frequently asked questions can be found by visiting the VCP website, <http://www.ecy.wa.gov/programs/tcp/vcp/Vcpmain.htm>. This website also includes links to a number of forms and agreements used in the VCP. These resources are routinely updated and provide the best source of current data about the VCP.

For more detailed information on the VCP process, please consult Guidelines for Property Cleanups under the Voluntary Cleanup Program (Publication 08-09-044), which can be downloaded at <https://fortress.wa.gov/ecy/publications/SummaryPages/0809044.html>.

Overview and Distinguishing Features of the VCP

The VCP was instituted to provide support and more certainty to those undertaking independent cleanup activities. It is important to recognize that the VCP is a subset of independent cleanups rather than a completely separate entity. Under the VCP, which began operation on November 1, 1997, persons who conduct independent cleanups may request informal advice and assistance from Ecology on the administrative and technical requirements of MTCA. Customers often request a written opinion from Ecology either on cleanup plans or on the sufficiency of completed cleanups under MTCA.

The main difference between an Ecology-supervised cleanup and a VCP cleanup is that the customer drives the process in the VCP. Ecology-supervised cleanups, though guided by

customer needs and resources, are also heavily influenced by public involvement and Ecology staff determinations through the consent decree or other court documents. By contrast, the customer decides when to enter the VCP, may leave at any time, and determines the nature of the requests. Customers may enter the VCP and receive an opinion, then leave and potentially re-enter the VCP the next time they need an opinion. This means that VCP site managers are not involved in the remediation process in the same manner as formal site managers, who sign off on every step of the cleanup process. A VCP site manager is expected to provide an answer to whether an action will be or is sufficient based on the documents provided, whereas a formal site manager is expected to work with the potentially liable parties to determine what would be sufficient.

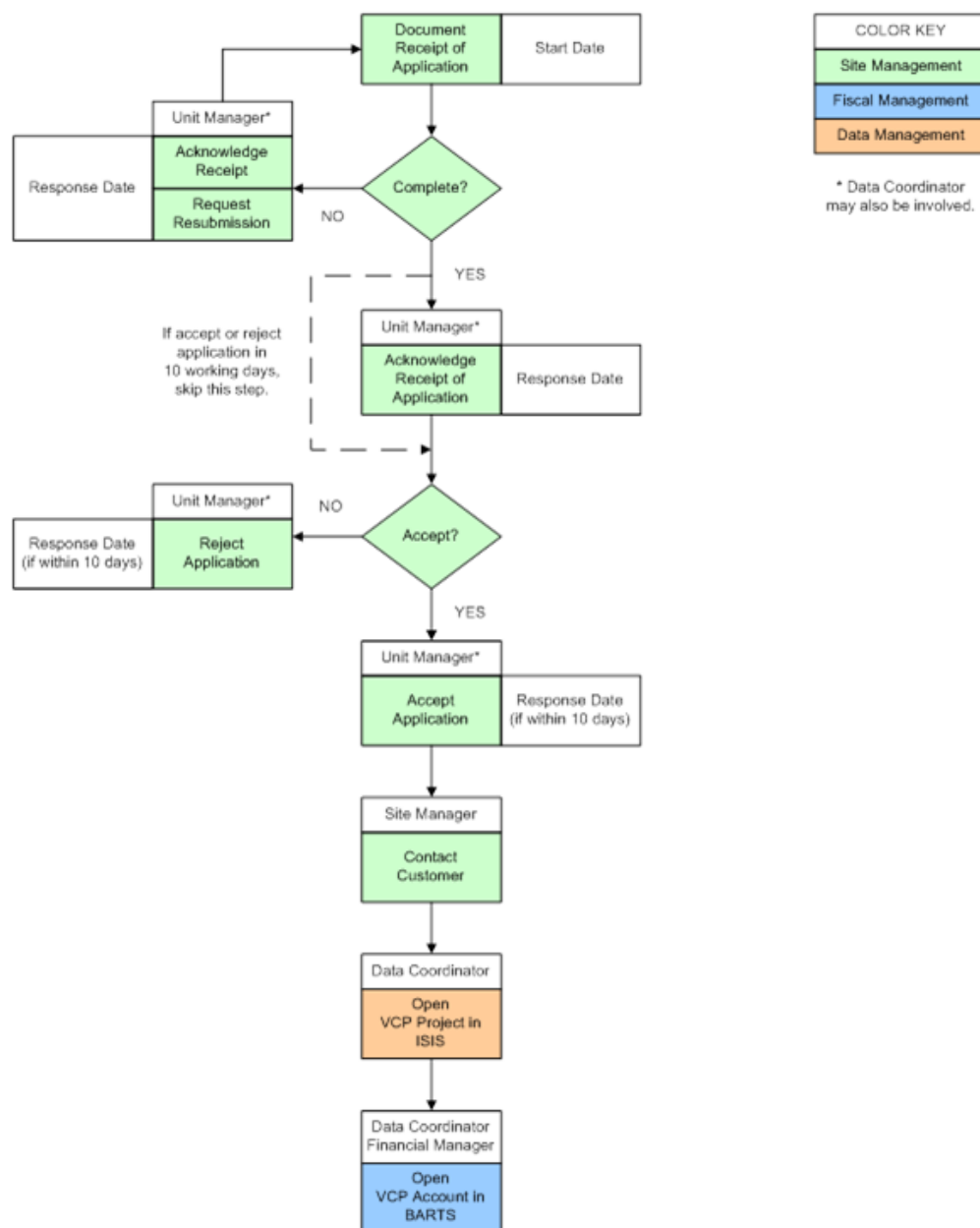


Figure 2. Overview of VCP Application Process.

VCP Opinions

VCP opinions include the following determinations:

- *Site No Further Action (NFA) opinion:* Ecology will issue this opinion when a cleanup meets standards throughout a contaminated site. In this case, no further action is necessary under MTCA to clean up the site. Under state law, a site is the area of contamination and may have different boundaries than the customer’s property.
- *Property NFA opinion:* Ecology will issue this opinion when a cleanup meets standards at a property located within a contaminated site, but not throughout the entire site. In this case, further action is still necessary under MTCA to clean up the remainder of the site. Property refers to the usual concept of real estate ownership.
- *Partial Sufficiency opinion:* Ecology will issue this opinion when a cleanup meets some, but not all, of the standards at a contaminated site. In this case, further action is still necessary under MTCA to clean up the site.
- *Further Action opinion:* Ecology will issue this opinion when a cleanup does not meet any of the standards at a contaminated site. In this case, further action is still necessary under MTCA to clean up the site.

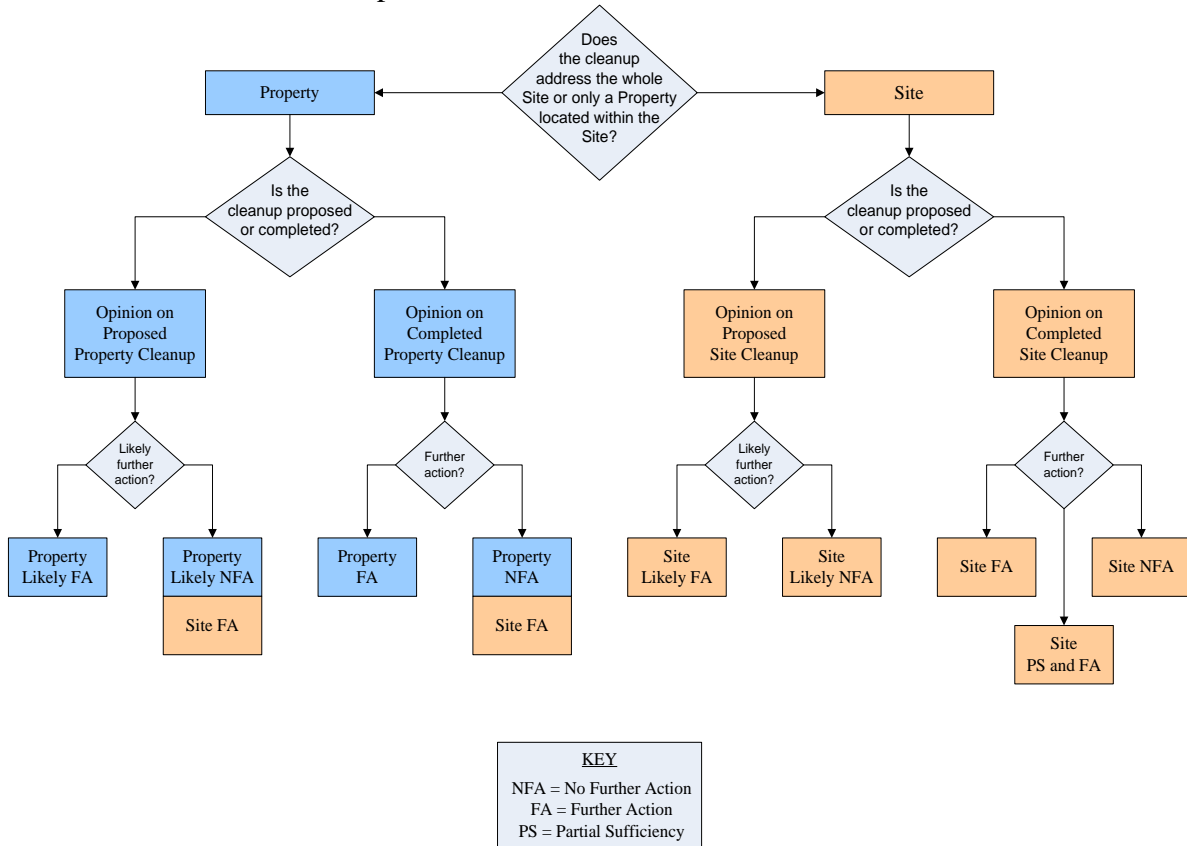


Figure 3. Flowchart summarizing types of opinions that can be requested through VCP and potential determinations that customers may receive.

A written opinion—even an NFA letter—does not fully absolve a person of liability to the state under MTCA. Ecology does not have the authority to settle with any person potentially liable under MTCA, except in accordance with RCW 70.105D.040(4) (Consent Decrees). However, an NFA letter can provide enough assurance for a lending institution to finance real property sales and development, or for potential buyers to enter into real estate transactions.

VCP Business Practices and Considerations

Ecology charges fees only for the time spent reviewing documents and preparing opinions. All assistance and opinions are advisory only and bind neither the department nor the customer. This distinguishes VCP from Ecology-supervised cleanups, where both Ecology and the customer must abide by terms in the controlling documents.

While many sites exit the VCP with an NFA determination, sites can be terminated from the program for a number of reasons, including inactivity, the transfer of the site to a formal cleanup process, or the inability to pay for the cleanup. A site that has been terminated for inactivity can reenter the program once the cleanup process resumes.

The primary obligation of the VCP is to ensure that independent cleanups protect human health and the environment. Beyond that, the goal of the program is to provide excellent service in a timely fashion to those performing independent cleanups.

Trends within VCP and Snapshot of Active Remediation at VCP Sites

Figures 4 and 5 provide an overview of historical activity in the VCP, as well as the distribution of sites currently undergoing cleanup under the VCP.

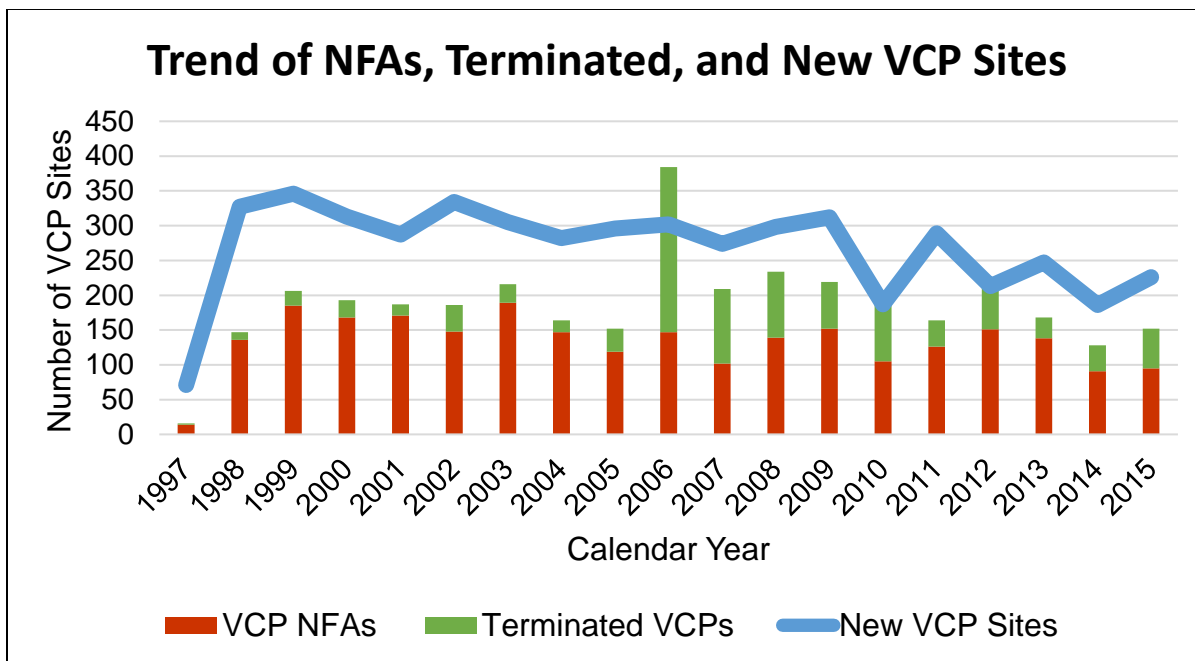


Figure 4. Activity trends in VCP since 1997. The majority of sites that enter the VCP complete cleanups and receive a No Further Action (NFA) determination. There is another large number of VCPs that terminate from the VCP. VCP projects are terminated for a number of reasons, which include inactivity, transfer to a formal process, or inability to pay for the cleanup. Owners of these terminated projects can come back into the VCP when ready for active cleanup. Note: In 2006, a program-wide push to complete leaking underground storage tank cleanups was made, which significantly increased the number of terminated VCPs.

Figure 5 provides a regional breakdown of the existing 963 VCPs that have started cleanup. This is meant to provide context to compare new applications to the work that is already in progress and making demands upon staff time and program resources.

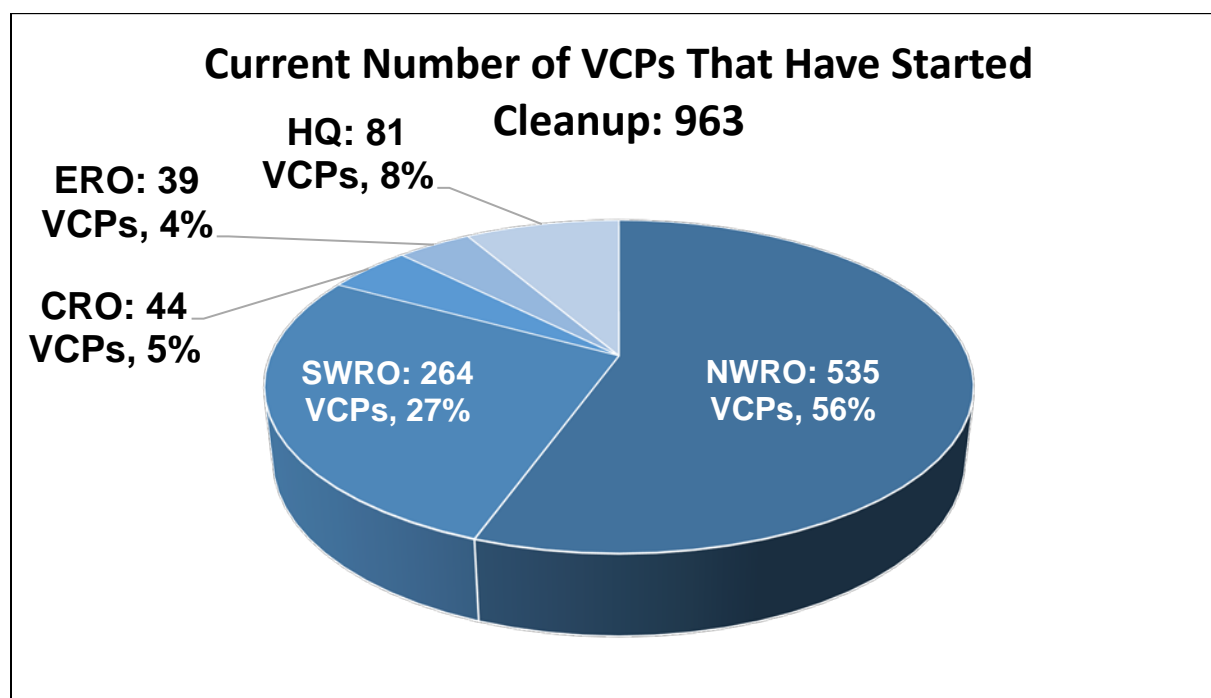


Figure 5. Number and regional share of all VCP sites that have entered cleanup phase (as of December 2015). Note that these numbers represent a subset of active VCPs, some of which have yet to enter cleanup. (CRO – Central Regional Office, ERO – Eastern Regional Office, HQ – Headquarters Office, NWRO – Northwest Regional Office, SWRO – Southwest Regional Office)

Staffing

The VCP currently includes roughly 28 full time equivalent (FTE) employees, who are divided among the regions according to the location of sites in the program. For context, VCP makes up about 14 percent of the 197 FTE in the Toxics Cleanup Program. As compared with formal site managers, VCP site managers are responsible for more sites at any given time and have greater variability in sites and customer support needs.

Ecology operates four regional offices across the state and a headquarters in Lacey. The regional offices include the Northwest Regional Office in Bellevue (NWRO), the Southwest Regional Office in Lacey (SWRO), the Central Regional Office in Yakima (CRO), and the Eastern Regional Office in Spokane (ERO). Figure 6 shows the regions and the number of staff positions dedicated to the VCP in each office.

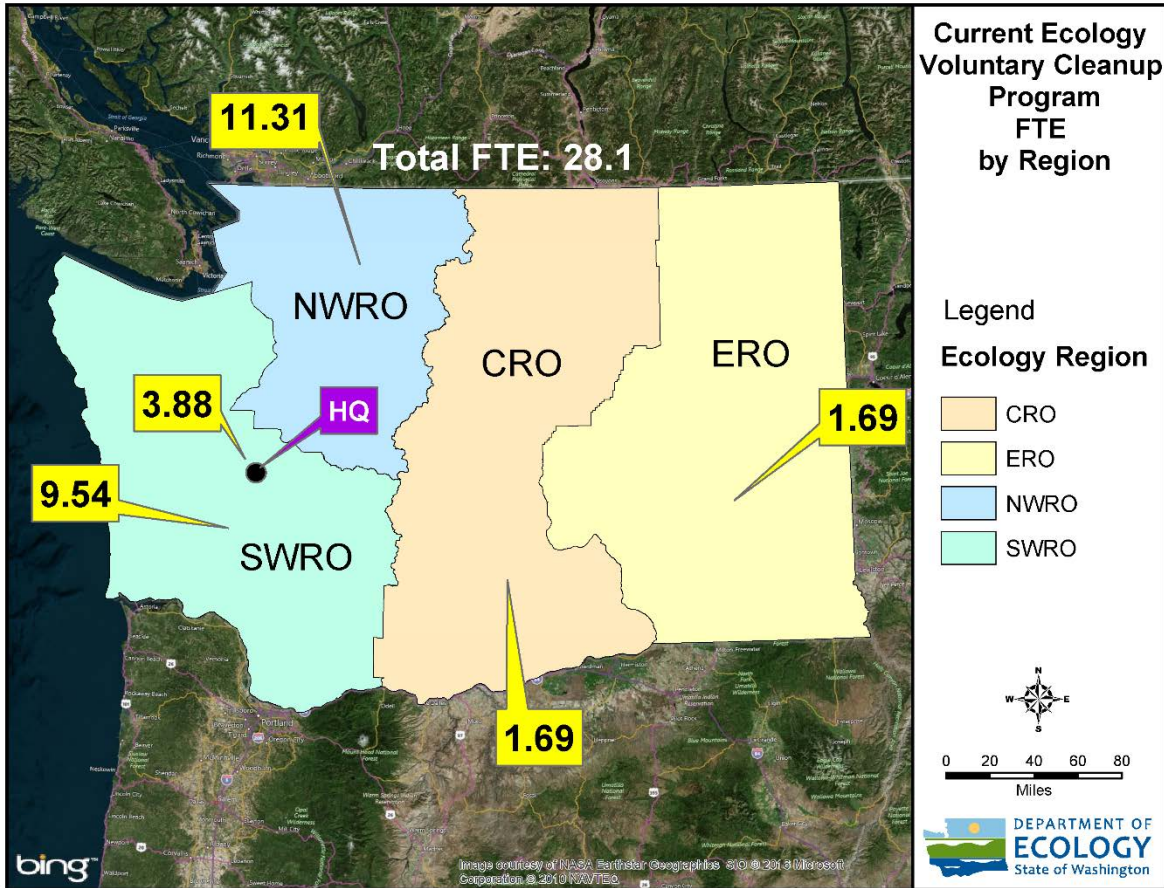


Figure 6. Number of full time equivalent (FTE) employees in the VCP broken down by region.

Requests for Entry to Program and Opinions

From 1997 through July, 2015, over 5,000 applications were submitted for VCP enrollment. Over 3,500 VCP cleanup projects have been closed. Most (2,531) completed cleanups and received an NFA determination, and the remainder were terminated from the VCP. Project sites terminated for inactivity can come back into the VCP when ready for active cleanup. Customers may also cancel their requests before an opinion has been issued.

Figures 7-10 summarize the data requested by Senate Bill 5296.

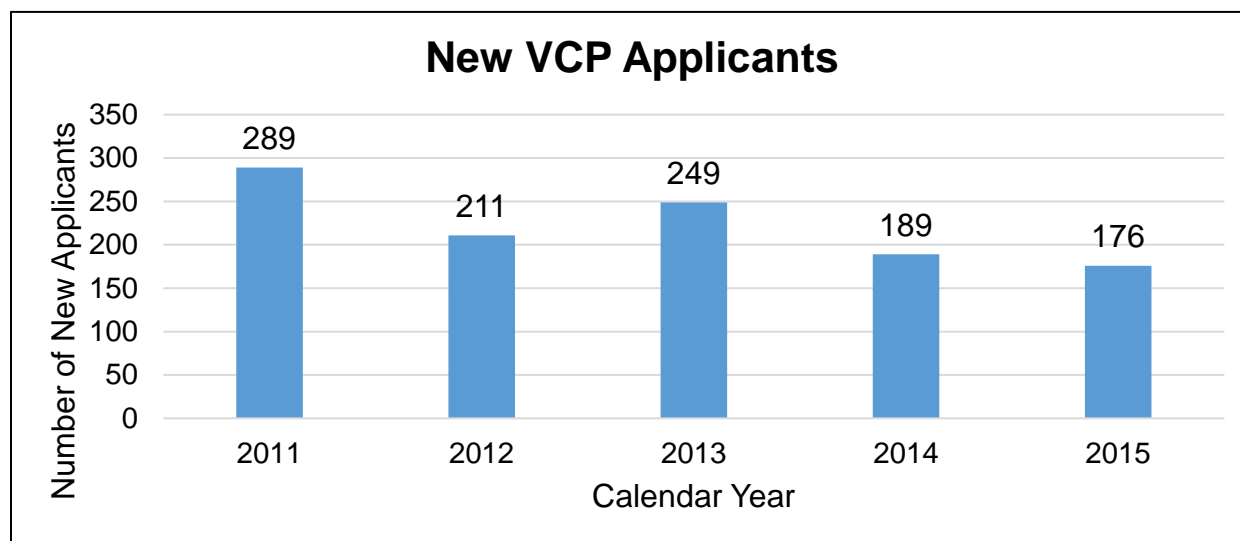


Figure 7. Number of new VCP applications. The number of new VCP applications fluctuates with real-estate demands, redevelopment needs, and construction season, which are all tied to the strength of the local economy. VCP projects may formally enter the VCP independent of when the contaminated site is reported to Ecology, so there is some delay between new site discovery and VCP applications.

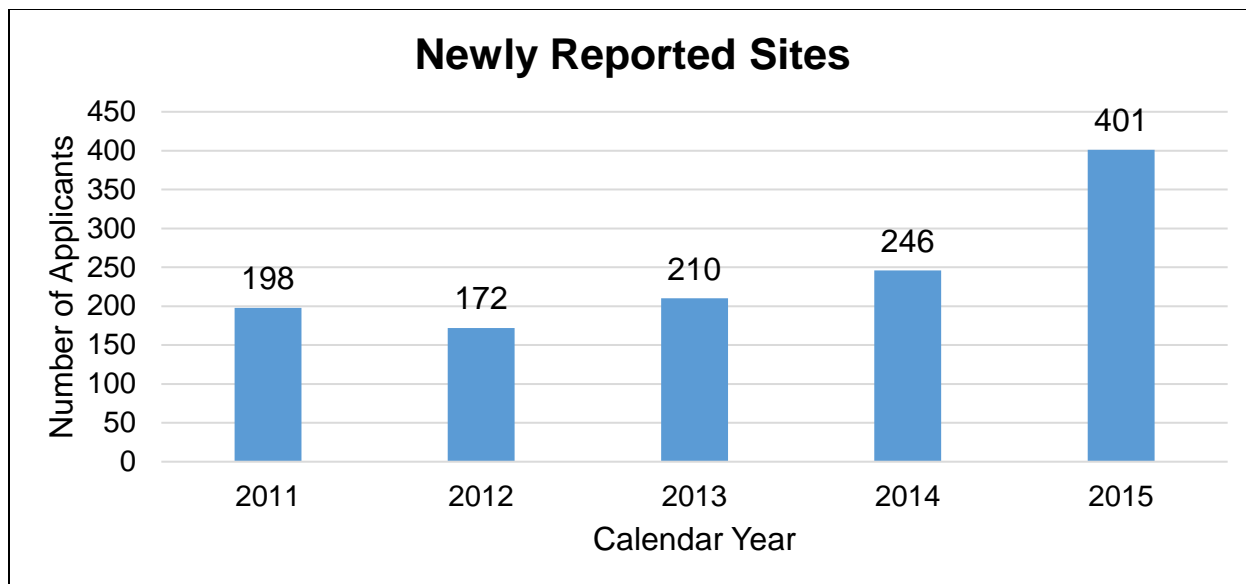


Figure 8. Number of newly reported sites. Note the upward trend from 2014 to 2015. This is the largest number of newly reported sites in over 15 years. Newly reported sites and new VCP applicants do not track perfectly, as a site may enter the VCP years after being reported.

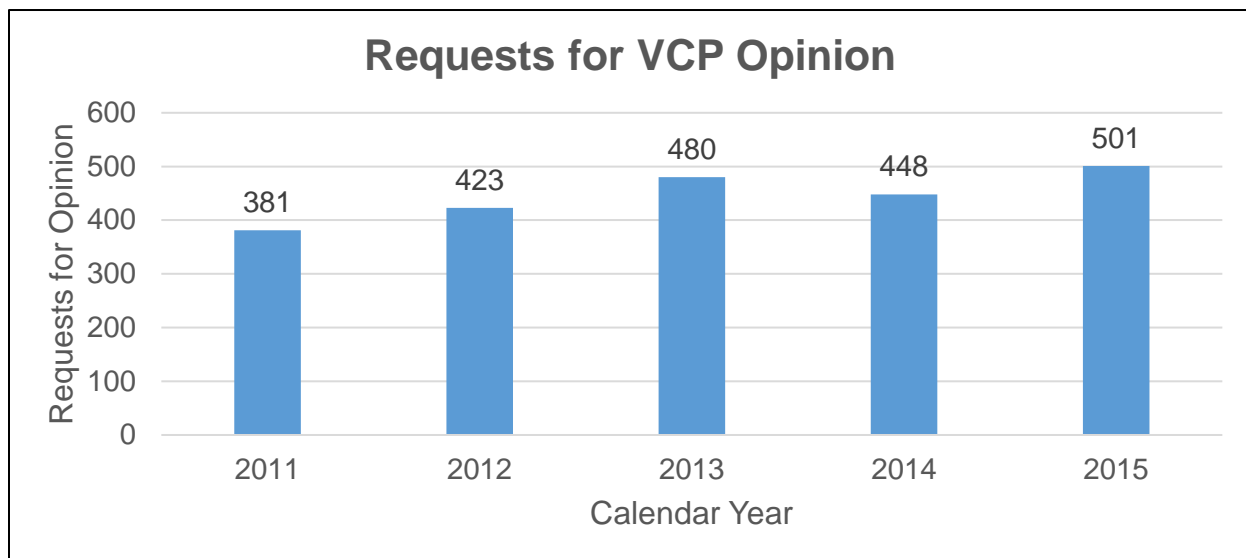


Figure 9. Number of written opinions requested from the VCP asking (1) whether the planned or completed independent remedial actions at a site meet the substantive requirements of MTCA; and (2) whether further remedial action is necessary at the site to meet those requirements.

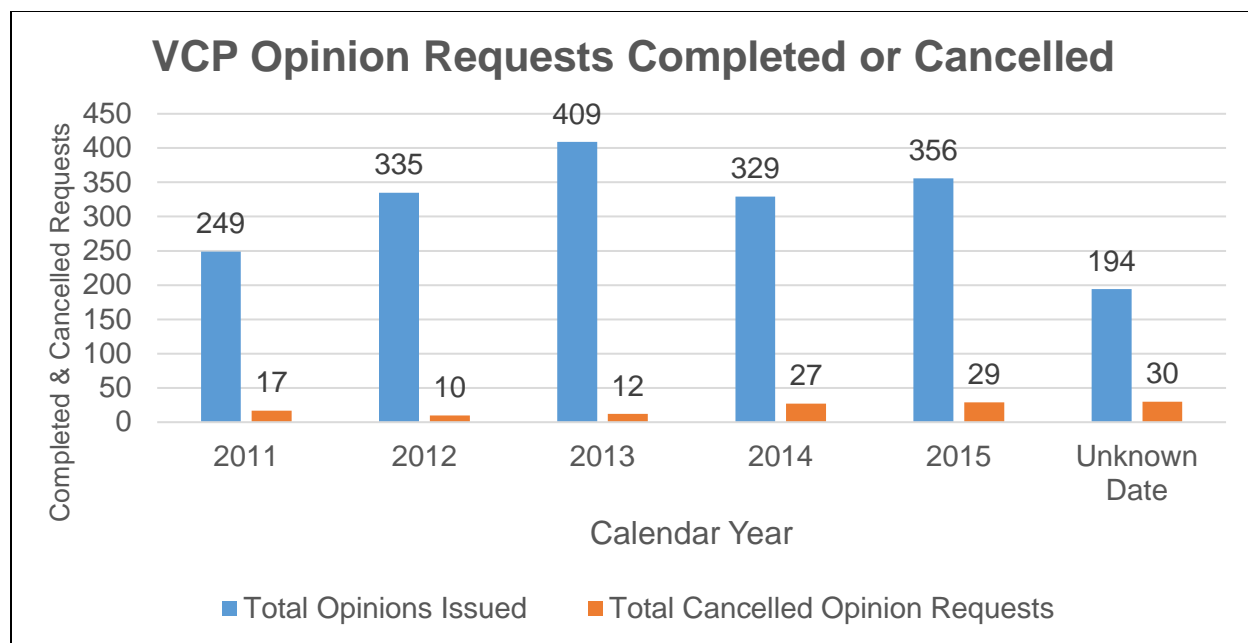


Figure 10. Completed and cancelled VCP opinions. This figure represents the number of opinions that have been completed in each year and requests that have been cancelled by the customer. Cancellations differ from terminations in that customers may cancel their opinion request at any time, whereas terminations are when Ecology removes a site from the VCP due to inactivity, transferring the site to the formal process, or inability to pay for cleanup. There are some opinions and cancellations that cannot be attributed to a specific year due to earlier database management practices. We include these for context, but business rules have already been updated so that data may be correctly attributed to a year.

Performance Measures

TCP established three performance measures to assess VCP responsiveness and evaluate resource management. The program began reporting these measures to the Office of Financial Management in July 2005.

Performance Measure 1: How quickly do we notify customers that we received their application to enter the VCP?

Performance Goal: Respond to 90 percent of applicants within 10 calendar days of application receipt with an acknowledgement identifying an Ecology contact.

- This performance measure was selected based on customer feedback.
- Customers had expressed frustration with not receiving timely acknowledgment or knowing whom they could contact for information.
- Measure is meant to ensure that application is acknowledged and that customers have a point of contact in Ecology to whom they may direct questions.

The VCP received an average of 212 applications per year for fiscal years (FY) 2011 through 2015. The VCP acknowledged receipt of 98 percent of applications within 10 calendar days, meeting Ecology’s performance goal of 90 percent. The yearly percentage was greater than 99 percent except for FY 2015 when it was 92 percent.

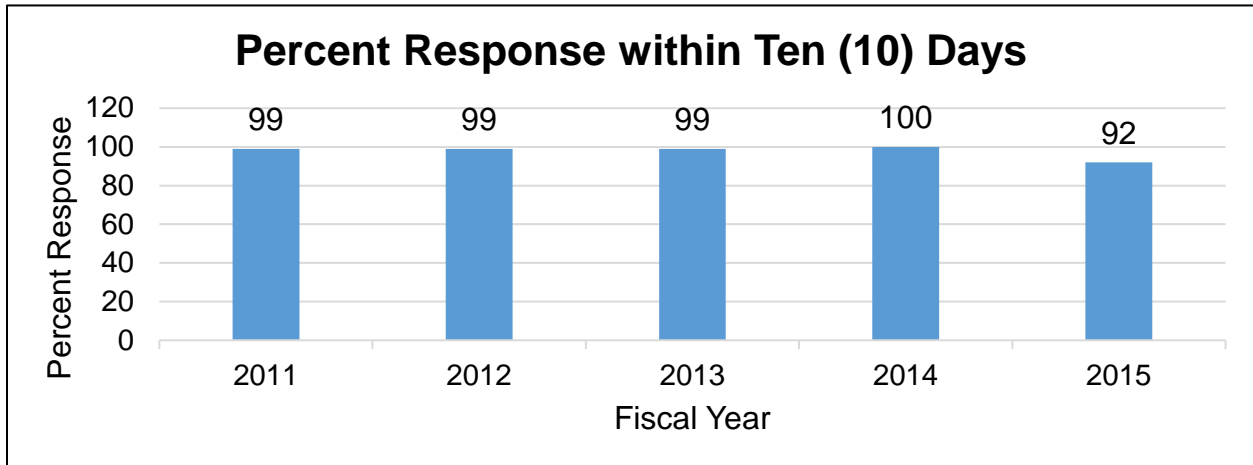


Figure 11. Performance Measure 1—VCP response to applications. Percentage of applicants responded to within ten (10) calendar days. (Note: Fiscal years (FY) run from July 1 of the prior year to June 30 of the year listed. Thus, FY 2015 runs from July 1, 2014–June 30, 2015.)

Performance Measure 2: How quickly do we respond to a request for a written opinion about a site or property?

Performance Goal: Respond to 90 percent of requests for a written opinion within 90 calendar days.

- This goal was set in consultation with Ecology site managers.
- 90 days was agreed upon as a reasonable amount of time in which the VCP review could be accomplished.
- The 90-day period pauses while Ecology is waiting for a response.
 - For example, the clock pauses after Ecology issues its initial response pending customer response.

The VCP received an average of 295 requests for opinions for FY 2011 through 2015. The program responded to almost 93 percent of requests within 90 calendar days of receipt, meeting Ecology’s performance goal of 90 percent. The yearly percentage was greater than the performance goal of 90 percent except for FY 2015 when it was 89 percent.

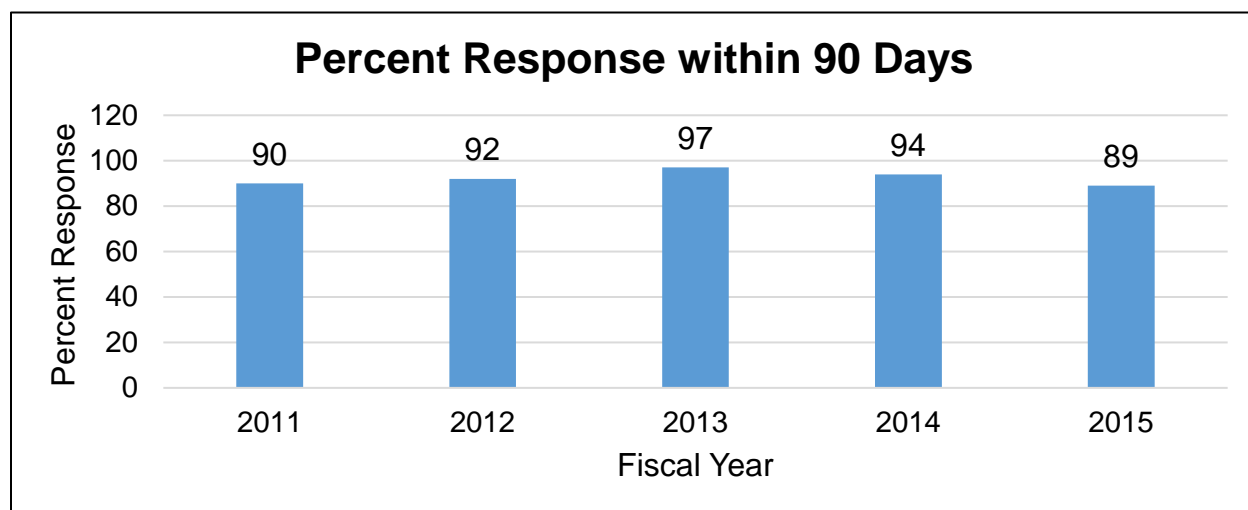


Figure 12. Performance Measure 2—VCP opinions provided. Percentage of requested opinions responded to within 90 calendar days of receiving the request.

Performance Measure 3: Ecology tracks the average number of days it takes to provide a response.

Performance Goal: Respond to requests for opinions in fewer than 90 days.

- This measure supplements Performance Measure 2 by providing more detailed information about response times.
- This measure is paused in the same manner as Performance Measure 2, with the clock stopping while Ecology waits for customer response.
- For opinions taking 90 days or less (greater than 90 percent of the requests), the average response time for FY 2011 through 2015 was 62 days. Response times were longer in FY 2014 (65 days) and FY 2015 (70 days) than in previous years.

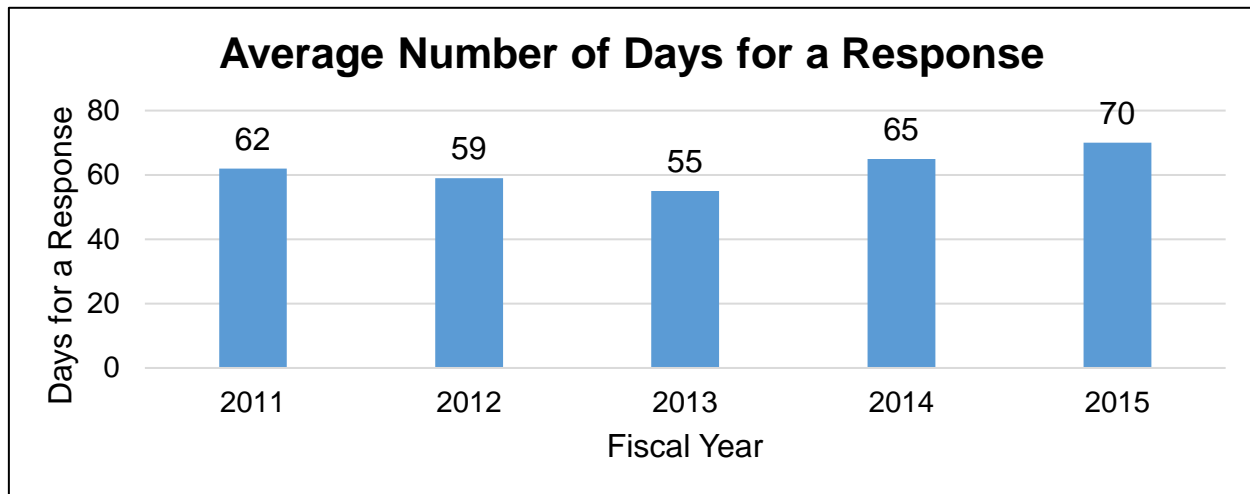


Figure 13. Performance Measure 3— Average number of days for an opinion to be issued. These averages do not include some complex sites where a response took more than 90 days.

Performance Measure Evaluation

Although the goals for responsiveness and timeliness were largely met, the measures don't portray the dynamic and changing environment of the VCP. Since the VCP was launched, interest in the program continues to climb and projects continue to become more complex. The number of staff dedicated to the VCP has remained fairly constant. This has created workload challenges as the number of new VCP applications increases along with their complexity.

Current and Future Challenges

Fluctuating Workload and Complexity

Despite improvements to the program and other developments discussed above, the VCP faces several challenges. Of particular concern are the unpredictable increases and decreases in demand for services over short time periods (months) that must be addressed by a constant number of staff. The workload for the VCP is driven by:

- 1) The number of VCP projects given current staffing levels
- 2) The complexity of the projects

In recent months, the workload has increased while the number of program staff available for site management has decreased. As shown in Figure 8, a record number of new sites were reported to Ecology in 2015. Historically, the majority of reported sites have been cleaned up using independent cleanups (which include VCP sites), a trend which Ecology expects to continue. The increased reporting of new sites, and demand for faster cleanups, comes at a time when program staff numbers have decreased. Open positions in the program are being held vacant longer due to budget constraints. Filling and retaining these positions is difficult because of higher competition with related private sector entities for the same talent pool of potential staff.

This is particularly the case in the Northwest Region, where the highest number of VCP applications originate.

In addition to the sheer number of sites, more complex sites are also entering the VCP. Complex sites are defined by a mix of multiple contaminants, involve contaminated groundwater, and potentially have other factors that significantly extend the time and increase the level of resources required to complete the cleanup. This trend has significantly changed the dynamic and the original intention of the VCP.

When the VCP was first developed, cleanup project managers worked on a mix of VCP and formal sites. The competing demands eventually made prioritizing VCP site work very difficult. In response, TCP created a firewall between VCP work and formal site work to help ensure that VCP projects had sufficient resources to move towards completion.

We expect these trends to continue. The rapid increase in real estate transactions associated with the improving state economy is creating significant pressure to move cleanups forward. Developers and property owners are often eager to enter the VCP to move through cleanup as swiftly as possible. For example, a large number of South Lake Union development projects have applied to the VCP, creating challenges for the NWRO due to the number and complexity of these sites. There was a two-year delay between the onset of the most recent economic recession and a corresponding drop in activity in VCP requests. A similar lag in applications with economic recovery has the potential to drive numbers even higher in the near future.

Staff Recruitment and Retention

Recruiting and retaining staff are ongoing challenges. The VCP and parties conducting cleanups look for similar qualifications and both draw from the same talent pool. People hired and trained by Ecology may be recruited by the private sector, and it can be difficult for Ecology to offer competitive compensation. After staff leave the agency, hiring and training replacements takes time. It takes longer for staff to gain the experience to manage complex sites.

Funding

Participants in the VCP pay Ecology after services have been provided. Payments are deposited into the MTCA accounts as revenue, and are not directly available to the program without a new appropriation. Funding and staffing cannot be adjusted quickly to respond to changing demand for services, since program financing is planned according to the Model Toxics Control Accounts Ten-Year Financing Report and allocated biennially based on legislative appropriations.

Response and Recommendations

Responding to Changing Demands

Although performance measure goals were generally met, each measure showed a slight decline in agency performance. Ecology sees this trend continuing for several reasons:

- A record number of VCP applicants
- Experienced staff retiring or leaving for other opportunities
- More complex sites entering the VCP

The VCP was originally intended to help small businesses understand what was required by MTCA to complete simple cleanups (such as straightforward removal and disposal of contaminated soil). Since then, the demands on the program have changed.

Clients often request VCP services to facilitate the transfer or development of real estate. Prior to providing funding for property transactions or redevelopment activities, lending institutions may require some degree of assurance that contamination on a property has been adequately addressed. These sites enter the system in search of a rapid decision that will satisfy lending institutions and, compared to the formal MTCA process, the VCP is sometimes seen as an avenue leading to expedited site cleanup.

Further, the VCP is now frequently asked to evaluate relatively complex sites such as those with groundwater contamination coming from several sources. Review of such sites generally requires more staff time and in-depth investigation than a review of simple sites. In some cases, the VCP has become a triage area for sites that are eventually required to undergo a more formal process that includes legal agreements. Complex sites that initially appear to be a fit for the VCP may need to be diverted to the formal process because of their need for legal agreements. This more lengthy process doesn't always match the rapid response wanted for sites that may be undergoing real estate transactions.

In response to these changes, we continue to adapt the VCP to better meet the needs of those using its services.

Before 2007, Ecology only provided opinions regarding the cleanup of an entire site, which might include multiple parcels. Under state law, a site is the area of contamination. A site may include multiple individual and unrelated properties. This is due to contamination from one property (the source) spreading off the property and contaminating neighboring properties. Each individual property could then become a separate VCP project. One example would be a leaking underground tank where petroleum leaks onto a neighboring property. Other examples include former smelters or mining operations that have spread toxics across tens or hundreds of square miles, affecting numerous individuals and their properties.

To reflect changes in the marketplace and better achieve the purpose of the VCP, the Washington Legislature amended MTCA in 2007 to clarify Ecology's authority to provide written opinions

on remedial actions performed on individual properties within a larger cleanup site. When providing property-specific opinions, Ecology must also provide an opinion on the status of the entire site.

In 2008, Ecology created a staff user manual to promote consistent management of independent cleanup projects and also made key changes to the VCP, which include:

- *Property-specific opinions.* Ecology now provides written opinions on proposed or completed cleanup actions at specific properties within a larger site.
- *Revisions to boilerplate opinion letters for site cleanup.* Ecology coordinated boilerplate revisions across regions and created new boilerplate letters to standardize responses for the pre-completion opinions that were added to VCP in 2006.
- *Revisions to the application form and administrative and opinion letters.* Ecology updated the VCP application, agreement, and various administrative letters based on implementation experience since 2006.

More recently, several developments are underway to help streamline many VCP cleanups and the costs of those cleanups:

- *Model Remedies.* Ecology has developed simplified off-the-shelf protocols (model remedies) allowing efficient cleanup of petroleum-contaminated soils at low-risk sites. More recently, the department has developed model remedies to address petroleum-contaminated groundwater, which is found at the majority of VCP sites.
- *Multi-site Agreements and Technical Assistance Agreements.* These are voluntary agreements between Ecology and a party responsible for cleaning up contamination at multiple current and former gas stations. To fast-track cleanups, the responsible party funds Ecology staff who dedicate all or part of their time to the sites. Ecology is involved throughout the cleanup process, and the parties follow well-defined schedules.
- *Checklists and model documents.* To further increase efficiency and clarify expectations for clients and staff, Ecology has published a series of checklists to standardize reporting for independent cleanups. Reports that provide good models are also available for both staff and the public.

Strategies to Improve Performance and Address Workload Challenges

General Strategies

Since it began in 1997, Ecology has made several improvements to the VCP and continues to explore new ways to better respond to the needs of its clients. These include:

- Creating a VCP staff user manual to promote consistency.

- Providing opinions on individual properties within a multi-parcel site.
- Revising many written forms and documents.
- Developing off-the-shelf model remedies for certain types of sites.
- Establishing multi-site and technical assistance agreements that provide a consistent process and staffing for a party that has several similar sites at different locations.
- Exploring a partnership with Pollution Liability Insurance Agency to streamline remediation activities at sites they serve.

Ecology has considered using contractors to assist with VCP review, but this solution has limited utility due to the statutory requirement that opinions must be issued by Ecology. Ecology's authority to contract out is limited to situations where the agency lacks the capability needed to carry out its mandates. In that case, TCP may use the contracting authority granted to it under the MTCA statutes to seek outside assistance, but that authority is supplemental to and limited by the general provisions regarding public contracts in state law. Further, work completed by a contractor under this authority must still be reviewed by Ecology, who retain ultimate authority to sign opinion letters. Thus, even with contractors assisting with VCP review, the challenges described above will remain.

Manage Increasing VCP Complexity

TCP recognizes that increasing economic growth in Washington will continue to accelerate the rate of applications for both formal cleanup and VCP support. The same staffing concerns that affect the VCP exist for formal site management, so complex sites that would previously have entered formal site management are shifting to VCP to move forward. TCP is adapting to the increasing demand and complexity by:

- Continuing the development of model remedies to streamline cleanups and reduce costs so that customers can more easily move sites through the cleanup process.
- Continuing to utilize agreements to cover multiple sites when feasible to leverage economies of scale and reduce the need for redundant background investigations.
- Clarifying the factors that make a site too complex for VCP.

Staff Recruitment and Retention

TCP will continue evolving the VCP to address ongoing staffing challenges by:

- Creating additional training tools to facilitate the rapid training of new staff and the retention of existing staff so that the VCP has the staff resources needed to respond quickly, effectively, and in compliance with MTCA requirements.

- Developing additional checklists and model documents to clarify and streamline minimum requirements for clients, reducing the amount of time staff must spend with each new applicant.
- Examining the root causes of the VCP's current high staff turnover to better retain our experienced staff.

Funding

TCP will evaluate new funding options for the VCP that would permit more rapid response, including:

- Prospective funding based on future workload forecasts.
- Up-front fee for service. The fee could be flexible, with payment based on current VCP workload, estimated hours for the service, and the response time requested by the customer.
- Align fee schedule and services provided. Evaluate current and extra services provided, reexamine estimated hours for the service, and streamline the billing process.

Recommendations

TCP will continue to implement the strategies discussed above, and as these are implemented we will consider further changes that may be needed. TCP is taking steps, described in the previous sections, to manage the VCP in a way that will allow it to better serve customers and public needs.

Conclusion

The VCP has been and continues to be a critical vehicle for protecting human health and the environment while helping property owners move quickly through the cleanup process, allowing properties to be put back into productive use. There are significant challenges in maintaining this high level of service to the public. TCP will continue to innovate and improve the VCP to ensure responsive and effective service to sponsors of these important cleanup projects.