



Peter Whitehouse, Chief
Tiffani Kavalec, Assistant Chief
Eric Sainey, VAP Lead Worker

Division of Environmental Response & Revitalization



VAP Program Updates

- Cindy Hafner promoted
 - Deputy Director of Legal
- Peter Whitehouse promoted
 - DERR Chief
- Tiffani Kavalec promoted
 - DERR Assistant Chief
- VAP Manager Position
 - Vacant



VAP Program Updates

- Phase II Report Template Workgroup
 - Twelve CPs participating
 - Met three times since Feb. 28
 - Developed table of contents as framework for template
 - Next step: add guidance to each template section
 - Group deadline for completing next step; mid-April
- Goal is to have a template available to use by July 1st but will not be required to be used to develop NFA's until January 1, 2015.



VAP Program Updates

■ CP Initial Training

- Revising video scripts and power-point language through April
- Plan to video tape specific sections through May
 - Internal staff for now
- Use June to edit and finalize training
- Available late June, or sometime in July



Background Studies

- Lucas County – Completed 3/26/14, posted on web
- Montgomery – late April completion
- Summit – in progress, sites selected
- Hamilton – not started



VAP Rules Schedule

Ohio EPA - Voluntary Action Program - 2014 Five Year Rule Review Schedule

	2014						
	Jan	Feb	March	April	May	June	July
Interested Party Review / Business Impact Analysis (BIA)	2/6	3/7					
Develop Responsiveness Summary to Public Comments			3/8-3/28				
Internal Rule Pkg Review and Sign-off				4/1-4/15			
Original File Draft Rules				4/15			
JCARR Jurisdiction/Hearing				4/15	to	6/16	
Effective Date (no earlier)							7/1

VAP 5 Year - Rule 13 – Proposals

- Changes made to match a new NFA format and process
 - Ohio EPA would review the NFA Letter only (handout)
 - Submittal of supporting documentation after CNS issuance



VAP 5 Year – Rule 14 - Proposals

NFAs participating in the MOA track will be exempt from the random audit pool

- NFAs that participate in the MOA track are already thoroughly reviewed prior to issuance of the NFA letter, closely along the lines of an audit
- Saves time and money for the Agency, and it will ease concerns for volunteers and CPs in regard to being randomly selected for audit



VAP 5 Year – Rule 14 - Proposals

Creation of the VAP Audit Committee

- The committee will determine which NFA letters will be selected for **discretionary** audit and also evaluate whether or not a potential compliance issue warrants a **compliance** audit.





Voluntary Action Program Fee Schedule effective July 1, 2013



In accordance with Ohio Administrative Code (OAC) 3745-300-03(G), Voluntary Action Program fees described in OAC 3745-300-03(B)(6) to (B)(10) and (C)(3)(b) will increase annually on July 1 by the percentage of increase (if any) from the previous year of the Consumer Price Index [as defined in OAC 3745-300-01(A)(29)]. The average annual CPI from 2011 to 2012 increased by 1.8%. Therefore, the VAP fees will increase on July 1, 2013.

	Fee as of July 1, 2012		Fee as of July 1, 2013
<u>No Further Action Letters submitted for a covenant not to sue</u>			
NFA includes only a Phase I investigation with no releases identified	\$3,210.00	plus 1.8%	\$3,270.00
NFA includes only a Phase I investigation with asbestos as the only contaminant identified	\$6,750.00	plus 1.8%	\$6,870.00
NFA includes both a Phase I and Phase II assessment	\$13,740.00	plus 1.8%	\$13,990.00
NFA includes both a Phase I and Phase II assessment and an operation and maintenance plan and agreement	\$19,020.00	plus 1.8%	\$19,360.00
<u>Variance</u>			
Variance from Applicable Standards	\$25,660.00	plus 1.8%	\$26,120.00
<u>PAYGO Administrative Processing Fee</u>			
Processing fee charged to volunteers submitting a No Further Action Letter in request of a covenant not to sue under the Pay-As-You-Go (PAYGO) process	\$1,140.00	plus 1.8%	\$1,160.00



VAP 5 Year - Rule 03 - Proposals

- NFA review fees cover:

- Review of NFA Letter (Site Coord, GW, Risk, Legal), including O&M, EC, notice of deficiency letters (INOD/FNOD), preparing CNS documents

- Tier I Audit (average 13 per year)

$$\$130,780 / 36 = @ \$3,600$$

- Tier II Audit (average 3 per year)

$$\$75,180 / 36 = @ \$2,100$$

❖ **NFA Flat Fee = \$15,700**



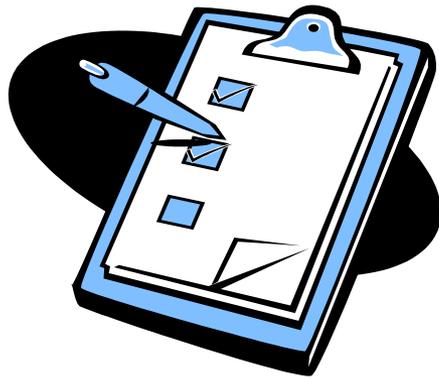
VAP 5 Year - Rule 03 - Proposals

Institutional Control 5 Year Inspections (10-15 hours each)

- Helps cover agency costs for 2 inspections or 10 years worth
- 25 hours = \$2,500

❖ NFA Fee with Environmental Covenant = \$18,200

- \$15,700 + \$2,500



VAP 5 Year - Rule 03 - Proposals

- PAYGO option would be eliminated
 - Doesn't capture costs to run the program (compliance piece)
- Current PAYGO projects would be converted to straight VAP TA if NFA is not submitted prior to final rule
 - June 2014 - estimated
- Current review process will remain in effect until final rule
 - NFA PAYGO billing has ranged from \$6,243.91 - \$57,507.90
 - Average \$16,308.33



VAP 5 Year - Rule 03 - Proposals

- Propose removal of Consumer Price Index increase
 - Fees changed annually
 - Fees printed in rules were no longer valid
 - *confusing*
 - Difficult for CP to estimate future costs



VAP 5 Year - Rule 03 - Proposals

- NFA = **\$15,700**
- NFA with Environmental Covenant = **\$18,200**
- MOA NFA = **\$10,000**
- MOA NFA with Environmental Covenant = **\$12,500**



VAP 5 Year - Rule 6 - Proposals

■ Phase I

Releases addressed by other programs exempt from being identified areas

- Proposal makes rule more consistent with ASTM – similar to ASTM historical REC
- Volunteer must be able to demonstrate clean closure under the other program
 - Release was addressed by other program using most stringent standards (i.e., unrestricted or similar standards)
 - No institutional or engineering controls were needed under the other program
- The other programs must fall under BUSTR, Ohio EPA, or US EPA jurisdiction
- Hazardous substances or petroleum from a release, or an exposure pathway, not addressed by the regulatory authority must be considered an identified area



VAP 5 Year - Rule 07 - Proposals

General

- Language modification: releases “*on, underlying or emanating from property*” to releases “*on or from the property*”
 - Assessment only when complete exposure pathways exist
 - Remedy only needed if standards are exceeded



VAP 5 Year - Rule 07 - Proposals

General

- Soil definition was under consideration
 - A lot of feedback and will be addressed in the responsiveness summary discussions next hour



VAP 5 Year - Rule 10 – Proposals

Urban setting Designation

- Eligibility Expanded to include communities , such as a village, that is surrounded by:
 - City, or
 - Township(s) with populations of twenty thousand or more residents in unincorporated areas, or
 - The unincorporated portion of a township that has an average population density of 650 people per square mile in the unincorporated area, or



VAP 5 Year - Rule 10 – Proposals

Urban setting Designation

- A former township that is entirely composed of municipal corporations, or
 - An area that is completely surrounded by areas that are otherwise eligible as described above.
- ❖ All townships in Cuyahoga County are fully incorporated
 - ❖ Includes individual sites within these communities



VAP 5 Year - Rule 10 – Proposals

Urban setting Designation

- More flexibility in defining the USD boundary.
 - As always: Professional Survey
 - New: Entirety of a city or township (i.e., by plat or charter that legally describes the incorporated boundaries)
 - New: Complete and adjacent parcels
 - Caveat: Any USD boundary that cuts across parcel boundaries must be surveyed.



VAP 5 Year - Rule 10 – Proposals

Point of Compliance Changes

Situation

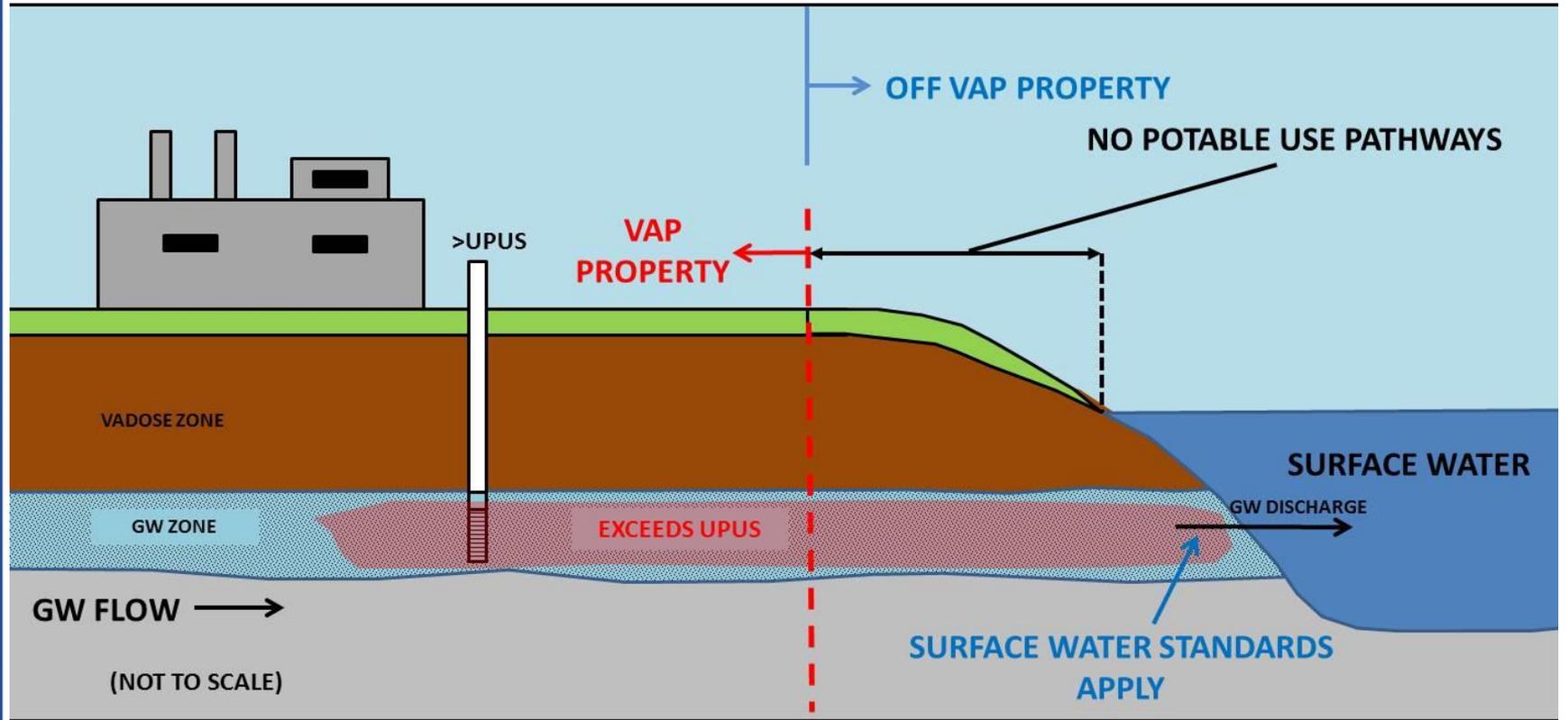


Potable Use POC

- Property adjacent to transportation corridor
- Down-gradient edge of transportation corridor
- GW discharging to surface water in close proximity (not necessarily adjacent) and GW not likely to be used for potable purposes
- Surface water boundary, and surface water standards apply



SURFACE WATER COMPLIANCE BOUNDARY



VAP 5 Year - Rule 10 – Proposals

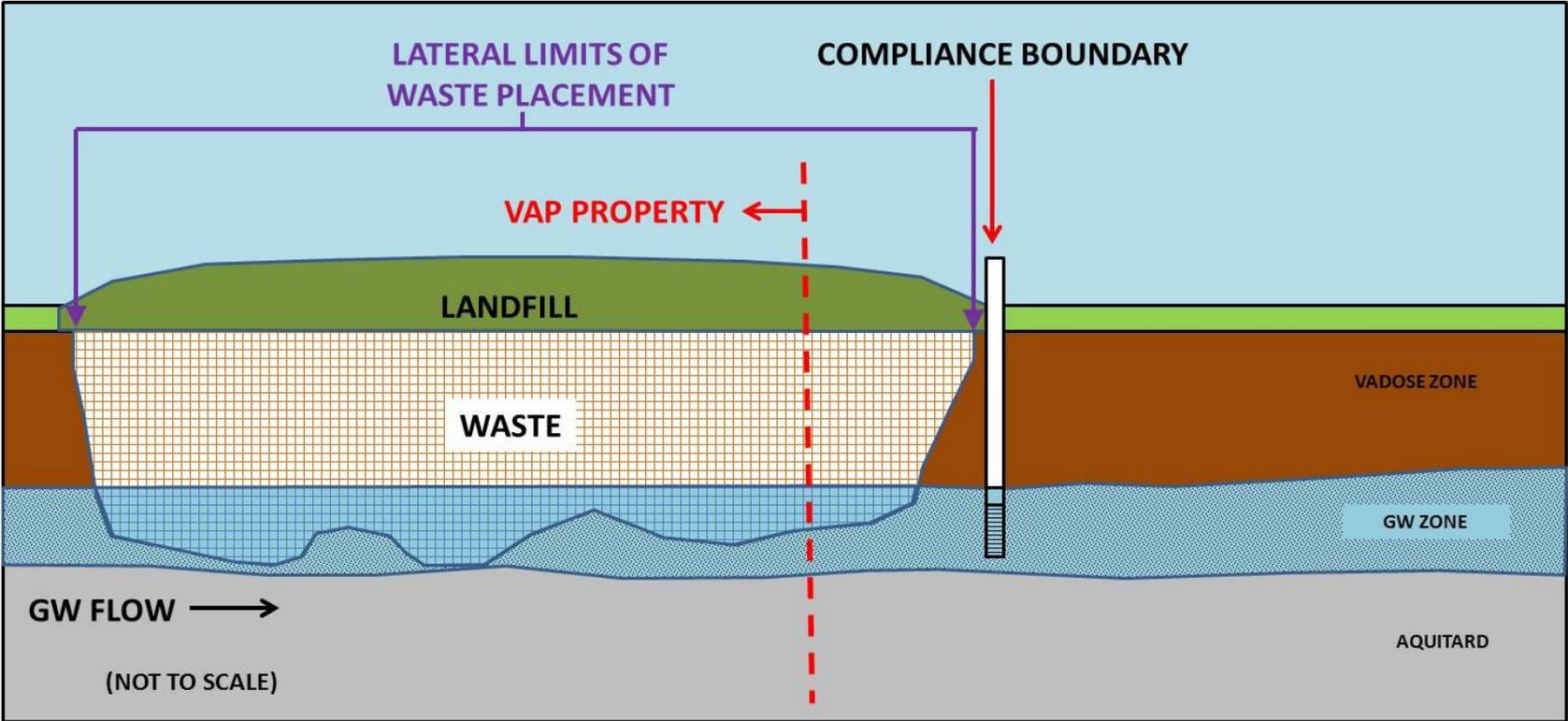
Point of Compliance Changes

Situation → Potable Use POC

- Adjacent, down-gradient property has an Environmental Covenant
- Property boundary bisects a landfill
- Down-gradient edge of adjacent property
- Down-gradient edge of the lateral extent of the waste in the landfill



LANDFILL COMPLIANCE BOUNDARY



VAP 5 Year - Rule 08 - Proposals

- US EPA Regional Screening Levels (RSLs) default inputs
 - Consistent with Remedial Response (RR) and RCRA
 - In RR & RCRA, RSLs can be used as screening levels in these programs
 - VAP would not use RSLs as screening levels, but rather a construct for developing cleanup numbers
 - Risk Goal and Hazard Index will remain at 1E-05 and HI of 1
 - Generic values for about 330 COCs
 - current rules list 120 COCs



VAP 5 Year - Rule 11 - Proposals

Issue: Complete pathways to off property receptors may be beyond a volunteer's control to address with a remedy

Proposal: For contamination that **HAS EMANATED** from the property to an **OFF PROPERTY** receptor, if the volunteer can demonstrate that they were unable to implement a remedy despite "**diligent efforts**", the pathway can be **omitted** from the voluntary action.



VAP 5 Year - Rule 11 - Proposals

If you are able to show you cannot address despite **diligent effort** to do so:

- The pathway would not be remedied, but **omitted** from the voluntary action (not a variance).
- The CNS would be **conditioned** to reflect that there is no liability release for this pathway.
- Most useful when **off-site access** is the issue.
- **Allows volunteers to proceed** in situations they might now be stuck.

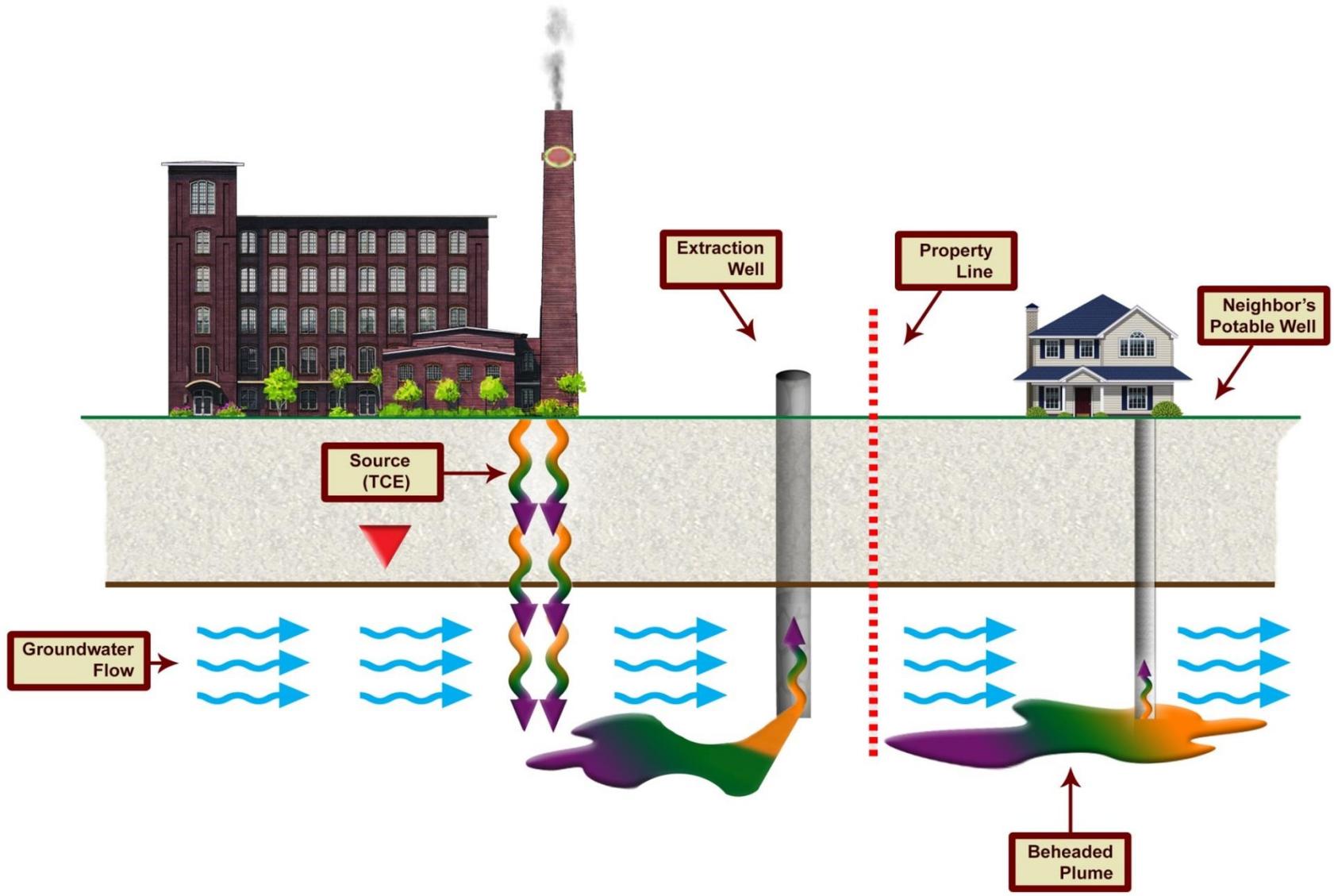


VAP 5 Year - Rule 11 - Proposals

Example: contaminated groundwater has emanated to a **neighboring property**; that owner refuses access and continues potable use of contaminated GW. The volunteer is required to, but cannot, remedy that pathway.

Demonstration: Volunteer's attempts to contact the neighbor, inform him of the situation, and resolve access issues and remedy the pathway are **robust** and **documented**, as is the neighbor's refusal.





VAP 5 Year - Rule 11 - Proposals

Clarify: Remedy Construction, Remedy completion and Achieving applicable standards (AS)

- Clarify that remedies must be **constructed** prior to the NFA letter, but may **achieve** AS after the CNS
- Clarify that the “five years or other time frame” includes the **verification time** (e.g. 8 quarters of ground water confirmation sampling)
 - **Three years to perform remedy; two years to verify remedy worked**



VAP 5 Year - Rule 11 - Proposals

Post CNS Remedy Changes

- Volunteers are not required to secure DIR approval for **remedy changes**. Volunteers are, as always, free to handle their property as they see fit
- However, this new process can provide the volunteer comfort that the CNS remains effective, i.e., that the property will **continue to comply** with applicable standards after the **remedy change**.



VAP 5 Year - Rule 11 - Proposals

Post CNS Remedy changes:

In order to ensure that the CNS remains in good standing, the volunteer can alert the DIR to a remedy change with a **Remedy Revision Notice**.

Note: Remedy modifications or enhancements done in accordance with an O&M plan do NOT require a **Remedy Revision Notice**.



VAP 5 Year - Rule 11 - Proposals

Acknowledgement v. Approval

- The **Remedy Revision Notice** will be accompanied by a request for either Remedy revision *acknowledgement*, or remedy revision *approval*
- The volunteer can request that the Agency simply **acknowledge** the revision; no review but the Agency would consider these sites for a compliance audit
- The Volunteer can request that the Agency **review** and **approve** the revised remedy.



VAP 5 Year - Rule 11 - Proposals

- Remedy Revision **Approval** would give the volunteer comfort as to the adequacy of their revised remedy up front, no audit expectations.
- To secure the approval, the volunteer would be required to **establish a TA account** to cover the costs of Ohio EPA review.



VAP 5 Year - Rule 11 - Proposals

- Remedy Revision **Acknowledgement** would not trigger an Agency review of the revised remedy.
- No TA account need be established, **UNLESS** the revised remedy requires the development of new OMA/O&M or EC documents.

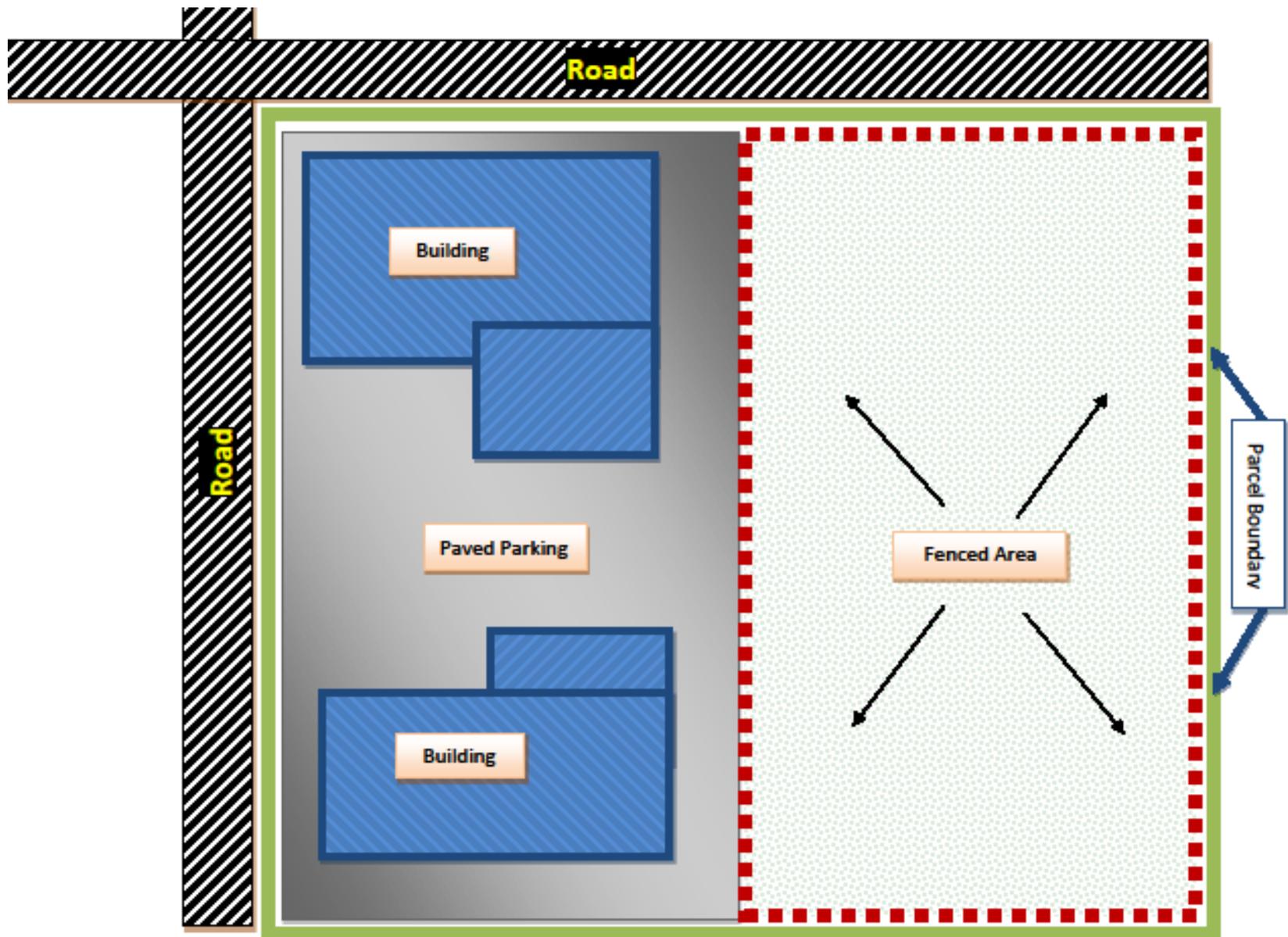


VAP 5 Year - Rule 11 - Proposals

Example

- Developer originally secured a CNS for a large parcel, only half of which was developed at that time of the CNS.
- Property has a **direct contact complete pathway** – this was addressed by buildings and parking lots in the developed portion, and fenced off in the undeveloped portion.
- An O&M plan was developed to maintain both the **buildings/parking lot** and **fence** engineering controls.





Developed – Pavement & Buildings are the Engineering Control

Undeveloped – the Fence is the Engineering Control

VAP 5 Year - Rule 11 - Proposals

Remedy Revision Plan

- Volunteer now wants to build on the undeveloped portion of the property.
- The fence must be maintained in accordance with the O&M plan at all times.
- The portion of the property within the fence can be developed with buildings and pavement, as the front portion has been.



VAP 5 Year - Rule 11 - Proposals

Proposed Remedy Revision Procedure

- The volunteer can submit a **Remedy Revision Notice** to Ohio EPA, along with a **draft O&M** plan for the new buildings and pavement on the back half
- The volunteer can chose to seek either a **Remedy Acknowledgement**, or a **Remedy Approval**
- The **Remedy Revision Notice** will contain information specific to this remedy (template to be developed)



VAP 5 Year - Rule 11 - Proposals

Proposed Remedy Revision Procedure

- If the volunteer seeks **Remedy Acknowledgement**, DERR will file the notice and enter into (or modify) an OMA for the OMP
 - Any new or modified OMA or OMP would require TA
 - Always subject to compliance audit
- If the volunteer seeks **Remedy Approval**, the Agency will review the entire submittal under TA.



VAP 5 Year - Rule 11 - Proposals

- **Remedy approval** under TA will mean the revised remedy has been reviewed
- This **costs more**, but our discussions with developers have made it clear that some volunteers will want the **certainty**.



VAP 5 Year - Rule 12 - Proposals

Variances – Authority and Scope

- In existing rule. Authority stems from ORC 3746.09.
- A variance can only vary or change an applicable standard (i.e. soil generic standards, UPUS, VI and other risk-based standards) and replaces it with another standard.
- Applies to all media.



VAP 5 Year - Rule 12 - Proposals

Variances – Approval Criteria

- Technically infeasible to comply with applicable standard, or costs exceed economic benefit; and
- Alternate standard improves environmental conditions and protects public health and safety; and
- Alternate standard promotes or preserves employment opportunities



VAP 5 Year - Rule 12 - Proposals

Case-by-Case groundwater rule

- Authority under ORC 3746.04(B)(12) to develop this rule; has never been exercised.
- By statute, it renders a generic numeric or risk derived ground water standard inapplicable to a property. It does not apply to other media or standards.



VAP 5 Year - Rule 12 - Proposals

Case-by-Case – Approval Criteria

- What makes sense for this property?
- Rendering the ground water standard inapplicable must still ensure that public health and safety is and will continue to be protected. An **alternate standard** or special site-specific terms will be proposed and/or imposed to meet this criteria
- Director must consider public comments.



Comparison

Variance (existing rule)	Case-by-Case (new)
Applies to any applicable standard (i.e. soil, GW, SW, sediment, VI).	Only applies to ground water standards.
Varies an existing standard and replaces it with an alternate standard.	Renders a ground water standard inapplicable. An alternate standard or conditions will be proposed.
Criteria – technically infeasible, economic benefits, protective of public health and safety, employment opportunities and must consider public comments.	Criteria – what makes sense for this property? must ensure public health and safety is and will continue to be protected, and must consider public comments.

***Examples are available online**



VAP 5 Year - Rule 12 - Proposals

Application review process (existing rule)

- Must be approved before issuance of an NFA Letter that relies upon the new standard.
- Approval time of 6-8 months, minimum. This is based on the extensive and detailed public process outlined in statute
 - May take longer depending on complexity of technical review



VAP 5 Year - Rule 02 - Proposals

The concept, “**Entry into the VAP**” would be defined to mean.....commencing a voluntary action by:

- Completed a Phase I
- Retained a CP to conduct the voluntary action
- Conducted activities in accordance with the 30 & 60 day submittals
 - Summary of planned activities
 - Schedule for completion of each milestone in the Phase II
 - Documentation of recent and ongoing activities



VAP 5 Year - Rule 02 - Proposals

The concept, “**Proceeding Expeditiously**” would be defined to mean:

- Conducting a voluntary action through the achievement of milestones which address the release or threatened release of hazardous substances or petroleum identified in the enforcement letter within a three year period, unless otherwise established by the director.
 - Three year period considerations include: analogous programs (e.g., COF (30 months))
 - Addresses the concern of open-ended and unreasonably long schedules for priority enforcement sites



VAP 5 Year - Rule 02 - Proposals

Propose to define “**Milestones**” to include:

- Assessment of releases or threatened releases of hazardous substances or petroleum identified in the enforcement letter
- Completion of certain Phase II property assessment activities
- Completion of a Phase II report
- Completion of a risk assessment
- Completion of a remedial action plan
- Completion of remedies
- Submittal of a NFA letter to the director



VAP 5 Year - Rule 02 - Proposals

Progress Reports

- Currently, progress reports are submitted upon completion of milestones or **every 6 months**
- As proposed, reports would be due **every 3 months**



VAP 5 Year - Rule 02 - Proposals

Proposal for schedule change approval

- Currently, reports simply include updates to changes on milestone target and actual completion dates
- As proposed, changes to milestone target dates in reports would require an explanation for schedule changes and be subject to Ohio EPA approval



VAP 5 Year - Rule 02 - Proposals

- Propose to have Sufficient evidence demonstration reviews invoiced by the Agency through the VAP TA process rather than handled through a cost recover claim

