

3745-300-06

**Phase I property assessments for the voluntary action program.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (B) of rule 3745-300-01 of the Administrative Code titled "Incorporation by reference."]

(A) The purpose of a phase I property assessment under the voluntary action program is to determine whether there is any reason to believe that any releases of hazardous substances or petroleum have or may have occurred on, ~~underlying~~, or ~~are emanating~~ from a property including any release from management, handling, treatment, storage, or disposal activities from on or off-property activities. The scope of a phase I property assessment is to characterize a property for the purposes of participation in the voluntary action program and to determine the necessity for and initial scope of a phase II property assessment.

[Comment: If the voluntary action is part of a property transfer or is to be financed in part or in whole by a lending institution, additional requirements for an environmental investigation at the property may be required by the lending institution.]

(B) Upon completion of the phase I property assessment, if the volunteer has information that establishes any reason to believe that any releases of hazardous substances or petroleum, have or may have occurred on, ~~underlying~~, or ~~are emanating~~ from the property, including any release from management, handling, treatment, storage, or disposal activities from on or off-property activities, the volunteer must conduct, at a minimum, a phase II property assessment that addresses each release in accordance with rule 3745-300-07 of the Administrative Code prior to obtaining a no further action letter from a certified professional, except when paragraph ~~(F)~~(E)(2) of this rule is applicable.

(C) The volunteer must, at a minimum, perform a review of the historic and current uses of the property, review the environmental history of the property, and review the history of the property pertaining to the treatment, storage, management, or disposal of hazardous substances or petroleum, and the existence of source areas on the property and must conduct a property inspection. Any current owner of a property upon which a voluntary action is being conducted must provide to the volunteer any information known by that owner which may be relevant to determining the existence of source areas on the property or whether treatment, storage, management, or disposal of hazardous substances or petroleum occurred or may have occurred at the property. Any information that is determined not to be reasonably available, as defined in this chapter, must be identified and an explanation must be provided in the phase I property assessment report as to why it was not reasonably available.

- (1) Historic and current uses of the property. The objectives of this portion of the phase I property assessment are to establish a continuous history of the uses of the property, to determine if those uses may have included the treatment, management, handling, storage or disposal of hazardous substances or petroleum, which have or may have led to any releases of hazardous substances or petroleum on, ~~underlying~~, or ~~emanating from~~ from the property.

The volunteer must identify the first industrial or commercial use of the property through and including the present use of the property. To complete the property history portion of the phase I property assessment, a volunteer must perform the following as necessary to provide a continuous history:

- (a) History analysis. A diligent inquiry ~~as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code~~ of reasonably available historical ~~sources~~ records ~~as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code~~ to establish a continuous history of the use of the property, including significant changes in the use of the property, and to determine what, if any, hazardous substances or petroleum are or may be present on, ~~underlying~~, or ~~emanating from~~ from the property; ~~and~~.
  - (b) Chain of title investigation. A review of the chain of title for the property to evaluate current and previous ownership and identifiable uses of the property. The investigation must include a review of documents pertinent to determining whether there is any reason to believe that any releases of hazardous substances or petroleum have or may have occurred on, ~~underlying~~ or ~~are emanating~~ from the property. The documents include but are not limited to: deeds, mortgages, easements of record and similar documents that are reasonably available to the volunteer; and
  - (c) Interviews. Reasonable attempts to locate and conduct interviews with persons who reside or have resided, or who are or were employed at or within the areas surrounding or adjoining the property regarding the current and past uses of the property to determine if there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, ~~underlying~~ or ~~is emanating~~ from the property.
- (2) Environmental history review. The objective of this portion of the phase I property ~~assessment~~assessment is to provide a continuous environmental history to determine whether any management, handling, treatment, storage, or disposal activities at the property have occurred, which have or may have led to any release of hazardous substances or petroleum at, ~~underlying~~ or

~~emanating~~ from the property.

(a) To the extent that they are reasonably available, or available through diligent inquiry, a volunteer must review any previous environmental assessments or studies, property assessments or geologic studies for the property~~;~~.

(b) A diligent inquiry must be conducted of the environmental compliance history of the property and all persons who owned or operated the property. This investigation must relate to releases of hazardous substances or petroleum and to factors which may affect the eligibility of the property to participate in the voluntary action program and must, at a minimum, include a review of reasonably available information from the U.S. EPA, the Ohio EPA, the Ohio department of natural resources, and the bureau of underground storage tank regulations~~;~~.

(c) Review of records for the property and surrounding properties within a minimum of one half-mile from the property. A review of the following records of information, as they relate to the property and all areas located within a minimum of one half-mile of the property, to the extent necessary to determine if hazardous substances or petroleum may have been released from surrounding properties and could potentially impact the subject property:~~A review of the following sources, as they relate to the property:~~

(i) Federal national priorities list~~;~~.

(ii) Federal comprehensive environmental response, compensation and liability information system list~~;~~.

(iii) Federal Resource Conservation and Recovery Act treatment storage and disposal facility list~~;~~.

~~(iv) Federal Resource Conservation and Recovery Act generators list;~~

~~(v)~~(iv) Federal emergency release notification system list~~;~~.

~~(vi)~~(v) Federal Resource Conservation and Recovery Act information data base~~;~~.

~~(vii)~~(vi) Ohio EPA, division of emergency and remedial response files~~;~~.

~~(viii) Ohio bureau of underground storage tank regulations registered underground storage tank list;~~

~~(ix)~~(vii) Ohio bureau of underground storage tank regulations leaking underground storage tank list;

~~(x)~~(viii) Ohio EPA spill data base;

~~(xi) Ohio department of natural resources well log information;~~

(d) Review of records for the property and adjoining properties. A review of the following records of information, as they relate to the property and all adjoining properties, to the extent necessary to determine if hazardous substances or petroleum may have been released onto the property or are emanating onto the property from adjoining properties:~~A review of the following sources as they relate to the potential release of hazardous substances or petroleum on, underlying, or emanating from the property:~~

(i) Federal Resource and Conservation Recovery Act generators list.

(ii) Ohio Bureau of Underground Storage Tank regulations registered underground storage tank list.

~~(i) Community right to know inventory report records of the state emergency response commissioner or the local emergency planning committee;~~

~~(ii) Local fire department records; and~~

~~(iii) Local health department records.~~

(e) Review of records for the property only. A review of the following records of information as they relate to the potential release of hazardous substances or petroleum on or from the property:

(i) Community right-to-know inventory report records of the state emergency response commissioner and the local emergency planning committee.

(ii) Local fire department records.

(iii) Local health department records.

~~(e)(f) Review of records for the property and surrounding properties. A review of other appropriate federal, state and local agency records and data bases, referenced in ASTM E1527 ~~standard E-1527~~, paragraph ~~8.2.28.2~~, when a volunteer has reason to believe that relevant information may be obtained from such records of information. For example, Ohio Department of Natural Resources well log information. ~~sources; and~~~~

~~(f) Interviews with reasonably available key property personnel, residents, or former property personnel who have knowledge relevant to the environmental conditions at the property. These interviews must be conducted by the certified professional, unless a sufficient number and quality of interviews conducted by others are adequately documented and the certified professional demonstrates that the information provided by each interview is reliable and complete.~~

(3) Interviews with reasonably available key property personnel, residents, or former property personnel who have knowledge relevant to the historical use, operations, and environmental conditions at the property or surrounding properties. A sufficient number and quality of interviews must be conducted. The reliability and completeness of the interviews must be documented in the phase I report. A review of the sources contained in paragraph (C)(2)(e) of this rule must be conducted on all areas located within one half mile of the property, to the extent necessary to determine if hazardous substances or petroleum may have been released on, underlying or are emanating onto the property from adjoining properties.

~~If information from the search of sources contained in paragraph (C)(2)(e) of this rule indicates hazardous substances or petroleum may have been released on, underlying or are emanating onto the property then the volunteer must conduct other activities under paragraph (C) of this rule as necessary to determine if a release of hazardous substances or petroleum from surrounding properties is on, underlying or emanating onto the property.~~

(4) ~~Property hazardous substance or petroleum release history. The objective of this portion of the phase I property assessment is to identify all known or suspected releases of hazardous substances or petroleum which have or may have occurred on, underlying or are emanating from the property. The volunteer must identify for each release, to the extent known or suspected:~~

~~(a) The contaminant type;~~

~~(b) The quantity;~~

~~(c) The date of release;~~

~~(d) The areas of the property impacted by the release;~~

~~(e) The media impacted, including soil, ground water, surface water and sediments; and~~

~~(f) Any measures taken to address the release, including the result of those measures.~~

~~(5)~~(4) Property inspection. The objective of this portion of the phase I property assessment is to obtain information from a physical inspection of the property to determine whether any releases of hazardous substances or petroleum have or may have occurred on, ~~underlying~~ or ~~are emanating~~ from the property. The volunteer must conduct a physical inspection of all areas of the property, including an inspection of the interior and exterior of all buildings and structures on the property and an inspection of all other areas of the property. When conducting the property inspection, the volunteer must, at a minimum, identify and document the following:

(a) Areas containing hazardous substances or petroleum or areas where hazardous substances or petroleum were located, including, but not limited to: underground storage tanks, above-ground storage tanks, wells (including oil and gas wells and underground injection control wells), cans, boxes and other containers, pipes, drains, storm or sanitary sewers, electrical equipment, cables, fuel tanks, oil pans, lagoons, stacks, cooling systems, inventory, pits, piles, landfills, waste or process water treatment systems, equipment and associated structures that contain or previously contained any hazardous substances or petroleum, and areas used for the treatment, storage, management or disposal of any hazardous substances or petroleum. If any of the above sources are identified in the property inspection, the volunteer must determine the condition of the sources~~;~~.

(b) Evidence that a release of hazardous substances or petroleum occurred or may have occurred on, ~~underlying~~ or ~~is emanating~~ from the property. This evidence may include but is not limited to the following:

(i) Spilled materials~~;~~.

(ii) Stressed vegetation~~;~~.

(iii) Discolored soils~~;~~~~or~~.

(c) Any other available evidence of the current and past uses of the property

or evidence of practices regarding the management, handling, treatment, storage, or disposal of any hazardous substances or petroleum~~;~~.

- (d) The general topographic conditions of the property and area surrounding the property~~;~~.
- (e) Evidence of current and past uses of adjoining properties which may be observed from the property or which are accessible from public rights of way~~;~~.
- (f) Identifiable migration conduits for hazardous substances or petroleum including but not limited to basements, drains, tiles, wells, and utility lines~~;~~ ~~and~~.
- (g) Any physical obstructions which limit the visibility of conditions on the property, including but not limited to buildings, snow or leaf cover, rain, fill, asphalt, or pavement.

(5) Property hazardous substance or petroleum release history. Based on information obtained from paragraphs (C)(1) to (C)(4) of this rule, areas where hazardous substances or petroleum were or are located on or off property must be evaluated to determine which areas have known or suspected releases of hazardous substances or petroleum. The volunteer must identify for each release, to the extent known or suspected the following:

- (a) The contaminant type.
- (b) The quantity.
- (c) The date of release.
- (d) The areas of the property impacted by the release.
- (e) The environmental media impacted by the release, i.e. soil, ground water, surface water and sediments. Releases to dirt floors inside buildings are considered releases to environmental media.
- (f) Any measures taken to address the release, including the result of those measures.

(D) Any phase I property assessment performed as part of a voluntary action after December 16, 1996, must meet the requirements of this rule. Any phase I property

assessment performed as part of a voluntary action after September 28, 1994 and completed prior to December 16, 1996, must have been performed in accordance with "ASTM [E1527](#) ~~Standard E-1527~~" and Chapter 3746. of the Revised Code. Any phase I property assessment performed prior to December 16, 1996, and not conducted for purposes of a voluntary action, may be used by the volunteer in support of a no further action letter or to assist in a phase II property assessment under rule 3745-300-07 of the Administrative Code, to the extent the previous phase I property assessment satisfies the requirements of this rule. To the extent the previous phase I property assessment does not satisfy the requirements of this rule it must be supplemented to meet all requirements of this rule.

[Comment: For example, if a phase I property assessment was completed December 1, 1990 and met all of the requirements of this rule except the requirement to provide a property history, including the uses of the property and all adjoining properties and any surrounding areas, the 1990 phase I property assessment must be supplemented to include a continuous property history in accordance with paragraph (C)(1) of this rule, and a new phase I property assessment in accordance with this rule must be performed for the period between December 2, 1990 up to the date of the issuance of the no further action letter or the performance of a phase II property assessment, whichever is applicable to the particular voluntary action.]

(E) ~~Identified~~ [Designating identified](#) areas.

(1) The volunteer must identify each area ~~located on or underlying~~ [at](#) the property ~~which may contain~~ [where a release of](#) hazardous substances or petroleum ~~and each area where a release of hazardous substances or petroleum~~ has or may have occurred [to environmental media](#). Each identified area must be detailed in the written phase I property assessment report as provided in paragraph ~~(H)(G)~~ of this rule. ~~Each identified area may be redelineated or eliminated if data obtained during a phase II property assessment conducted in accordance with rule 3745-300-07 of the Administrative Code supports a redelineation or elimination of the identified area or areas.~~

[\(a\) Each identified area may be redelineated or eliminated if data obtained during a phase II property assessment conducted in accordance with rule 3745-300-07 of the Administrative Code supports a redelineation or elimination of the identified area.](#)

[\(b\) If the volunteer has reason to believe a release has or may have occurred on or from the property, but cannot visually observe or otherwise define the portion of the property that may have been affected by hazardous substances or petroleum, the volunteer shall designate the portion of the property as an identified area, suspected to be affected by the hazardous](#)

substances or petroleum.

(c) If the volunteer has knowledge that a release of hazardous substances or petroleum occurred on the property but has no information on the location of the release, the volunteer may designate the whole property as one identified area.

~~(2) Exceptions to designating identified areas. If the volunteer has reason to believe a release has or may have occurred on, underlying or emanating from the property, but cannot visually observe or otherwise define the portion of the property that may have been affected by hazardous substances or petroleum, it is necessary to designate as an identified area, that portion of the property suspected to be affected by the hazardous substances or petroleum. If the volunteer has knowledge that a release of hazardous substances or petroleum occurred on the property but has no information on the location of the release, the volunteer may designate the whole property as one identified area;~~

(a) De minimis areas. Areas with releases determined to be de minimis are not identified areas. De minimis areas are those areas where the following criteria have been demonstrated and documented in the phase I report. The logic and reasoning used when evaluating the information for the de minimis demonstration must consider the following:

(i) Whether the release of hazardous substances or petroleum is confined to surficial soils on the property and that no hazardous substances or petroleum have been released from the de minimis area into surface water, sediments or ground water on or from the property.

(ii) That the release of hazardous substances or petroleum was a small quantity confined to a limited area of shallow depth of the soil surface that generally would not present a threat to human health, safety and the environment.

(iii) That the release of hazardous substances or petroleum was not part of a pattern of disposal or mismanagement.

(iv) There are no more than three de minimis areas per acre at the property.

(b) Areas previously addressed by other regulatory programs. Areas where a release of hazardous substances or petroleum was previously investigated or remediated to the most stringent standards without the need for any land use restrictions or controls might not be identified areas.

(i) Documentation from the other regulatory program must be evaluated to determine whether the release meets current unrestricted residential standards, or the equivalent. The other regulatory program must have addressed all potential constituents identified this phase I property assessment, or the additional constituents from the release must be considered an identified area. The size of the area, the environmental media and the pathways investigated by the other regulatory program must be consistent with what would have been investigated under this chapter, or the release must be considered an identified area.

(ii) Regulatory authorities accepted for this provision include the following:

(a) Closure or cleanup of petroleum falling under the jurisdiction of the Ohio bureau of underground storage tank systems regulations under the state fire marshall's office.

(b) Closure or cleanup of hazardous substances or petroleum falling under the jurisdiction of the Ohio environmental protection agency.

(c) Closure or cleanup of hazardous substances or petroleum falling under jurisdiction of the United States environmental protection agency.

~~(3) Areas demonstrated to be de minimis under paragraph (F) of this rule are not identified areas.~~

(F) Eligibility evaluation. The volunteer must do the following:

(1) Evaluate the property based on each exception to voluntary action eligibility given by rule 3745-300-02 of the Administrative Code.

(2) Document the completion, resolution or non-applicability of the exception as needed to support a demonstration to the agency pursuant to the rule that the property is eligible for the voluntary action program.

(3) Identify any activities that remain to be completed or statements from regulatory agencies that remain necessary to confirm the eligibility of the property as required by that rule.

~~(F) De minimis releases:~~

~~(1) In order to show that a release of hazardous substances or petroleum is de minimis, a volunteer must demonstrate in writing all of the following:~~

- ~~(a) What constituent(s) of hazardous substances or petroleum has been released;~~
  - ~~(b) That any constituent of hazardous substances or petroleum released does not exceed residential direct contact soil standards established in paragraphs (B) and (C) of rule 3745-300-08 of the Administrative Code for that constituent;~~
  - ~~(c) That the release of hazardous substances or petroleum is confined to the surficial soils on the property, as set forth in paragraph (F)(1)(d) of this rule, and that no hazardous substances or petroleum have been released from the de minimis area into surface water, sediments, or ground water on or underlying the property or are emanating from the property;~~
  - ~~(d) That the release of hazardous substances or petroleum was a small quantity confined to an area not exceeding nine square feet of the soil surface, and not exceeding one foot in depth from the soil surface; and~~
  - ~~(e) That the release of hazardous substances or petroleum was not part of a pattern of disposal or mismanagement.~~
- ~~(2) Paragraph (F) of this rule does not apply to a voluntary action unless information exists to establish that the criteria contained in paragraph (F)(1) of this rule are met. If the criteria are met through the statement of persons with knowledge of the circumstances of the release, the statement of any such persons must be made through an affidavit. If information does not exist to establish that the criteria contained in paragraphs (F)(1)(a) and (F)(1)(b) of this rule are met, at least one sample from the de minimis area must be analyzed by a certified laboratory to establish that the criteria contained in paragraphs (F)(1)(a) and (F)(1)(b) of this rule are met.~~
- ~~[Comment: Although a volunteer may choose to do so, the sampling requirements in paragraph (E) of rule 3745-300-07 of the Administrative Code do not have to be applied when sampling de minimis areas.]~~
- ~~(3) Any property which contains more than three de minimis areas per acre may not utilize the provisions of paragraph (F) of this rule for that acre and must conduct, at a minimum, a phase II property assessment in accordance with rule 3745-300-07 of the Administrative Code before a no further action letter may be issued.~~
- ~~(G) Nothing in this rule prevents a volunteer from either sampling a de minimis area in accordance with rule 3745-300-07 of the Administrative Code, or removing and disposing of soils at a property that contain de minimis amounts of hazardous substances or petroleum, so long as this disposal is performed in accordance with laws and regulations applicable to the removal and disposal of these materials.~~

~~(H)~~(G) The volunteer must complete a written phase I property assessment report which, at a minimum, includes [the following](#):

(1) An introduction identifying: the property, ~~including the legal description of the property~~; the date that the phase I property assessment and the written report were completed; the name and job title of each person conducting the investigation; and a summary of the current ~~and intended~~ use of the property.

(2) [Summary of areas where hazardous substances or petroleum were or are located on or off property and the areas of known or suspected releases of hazardous substances or petroleum. The summary must include all areas at the property of known or suspected releases, including de minimis areas and areas with releases previously addressed by other regulatory programs that have been determined not to be identified areas pursuant to paragraph \(E\)\(2\) of this rule. For each designated identified area at the property, the report must include the location and the approximate boundaries of the identified area at the property and the contaminant type known or suspected to be present that must be evaluated during the phase II property assessment. Any of the identified areas in the phase I report may be redelineated or eliminated as a result of data collected during and in accordance with the phase II property assessment.](#) ~~Conclusions regarding whether there is any reason to believe that any releases of hazardous substances or petroleum have or may have occurred on, underlying, or are emanating from the property. If there is any reason to believe that a release of hazardous substances or petroleum has or may have occurred on, underlying, or emanating from the property, the report must identify the hazardous substances or petroleum which the phase II property assessment will evaluate and the areas where these hazardous substances or petroleum are known or suspected to be present. Any of the areas identified in the Phase I report may be redelineated or eliminated as a result of data collected during and in accordance with the phase II property assessment.~~

(3) [Eligibility determination pursuant to paragraph \(F\) of this rule.](#)

(4) [Identification of the presence of asbestos in building materials, and, if available, documentation of compliance with the national emission standards for hazardous air pollutants \(NESHAPs\) during any remedy, renovation or demolition of the building. If available, an asbestos survey should be included in the appendix of the phase I report.](#)

~~(3)~~(5) Maps.

(a) A property location map using the most currently available 7.5 minute U.S. geological survey topographic map, which includes the property

boundary and the surrounding significant features such as roads and other rights of way, surface water bodies, and adjacent properties.

(b) A property map which identifies significant structures and features, including but not limited to property improvements, including all roads, railroads and above and below ground structures and appurtenances, the property's boundaries, ~~as determined by a professional surveyor licensed under Ohio law to practice surveying,~~ and identifies the property which is the subject of the voluntary action, ~~and provides, at a minimum, four latitude and longitude coordinates to the nearest second for the property, or more if necessary to adequately define the property boundaries.~~

(c) Identified areas. A property map which identifies the location and type of all known or suspected releases of hazardous substances or petroleum on the property including areas determined under this rule to be de minimis or areas previously addressed by other regulatory programs that have been determined not to be identified areas.

(d) A map which identifies all sites within one half-mile surrounding the property which were identified in paragraph ~~(C)(3)~~(C)(5) of this rule.

~~{Comment: Whenever possible, the volunteer should provide latitude and longitude coordinates for any identified areas. A digitized map with the information in paragraphs (H)(3)(a) to (H)(3)(e) of this rule should also be provided whenever possible.}~~

~~(4)~~(6) An explanation of all procedures used during the phase I property assessment.

~~(5)~~(7) A summary of all relevant information used to meet the objectives contained in paragraph (C) of this rule, including: historic and current uses of the property, adjoining properties, and areas surrounding the property; the environmental history; any interviews and property inspections conducted; and the release history on or adjoining the property.

~~(6)~~(8) A statement of any limitations or qualifications which impact the phase I property assessment, including an identification and explanation of any ~~sources~~ records of information which were not reviewed because they were determined not to be reasonably available.

~~(7)~~(9) A recommendation stating that either a no further action letter can be issued

or that a phase II property assessment would be required in order to obtain a no further action letter for the property.

~~(8)~~(10) A bibliography of references which identifies, to the extent available, a description, date, source, and location of any document reviewed as part of the phase I property assessment and include the name, address and telephone number of any persons interviewed in the phase I property assessment.

~~(9)~~(11) Sufficient color photograph documentation of the property's current condition. The volunteer must identify the dates that the photographs of the property were taken.

~~(10)~~(12) Appendices for all appropriate supporting documentation.

~~(H)~~(H) If more than one hundred eighty days has elapsed since the completion of a phase I property assessment, the phase I property assessment must be amended in accordance with paragraph (E)(1)(c) of rule 3745-300-07 and paragraph (D)(1) of rule 3745-300-13 of the Administrative Code. In order for a phase I property assessment to be used in support of a no further action letter, a certified professional must ensure that:

~~(1) All information required by this rule is complete and reliable to the extent relied upon by the certified professional for the purposes of issuing a no further action letter. If a certified professional finds that any relevant information submitted by a volunteer is not complete or reliable, the certified professional must advise the volunteer that additional information is needed in order to meet the requirements contained in this rule;~~

~~(2) All of the items of a phase I property assessment outlined in paragraph (C) of this rule have been performed in accordance with the requirements of this rule;~~

~~(3) All requirements contained in paragraphs (C) and (F) of this rule have either been performed within one hundred eighty days prior to the issuance of a no further action letter, or that subsequent investigation conducted in accordance with paragraph (C) of this rule has ensured that conditions at the property have not changed since the activities contained in paragraphs (C) and (F) of this rule were performed; and~~

~~(4) That the phase I property assessment meets all of the requirements of this rule.~~

~~(J) A certified professional may not issue a no further action letter without performing a walk-over of the property and making a determination that the requirements of paragraph (I) of this rule have been met.~~

~~(K) The phase I property assessment report and a written description of any additional information gathered by the certified professional to satisfy paragraph (I) and paragraph (J) of this rule and must be included in the no further action letter.~~