

3745-300-06 "Phase I Property Assessment" for the Voluntary Action Program.

(A) For the purposes of this rule:

- (1) "Areas surrounding the property" means all areas located within one half-mile of the property boundaries.
- (2) "Diligent inquiry" means conducting a thorough search of all reasonably available information, and making reasonable efforts to interview persons with knowledge regarding current and past uses of the property, waste disposal practices, and environmental compliance history.
- (3) "Historical sources" means sources of information which assist in identifying current or past uses or occupants of a property, including but not limited to the following: aerial photographs, fire insurance maps, property tax files, recorded land title records, United States geological survey (hereinafter "USGS") 7.5 minute topographic maps, local street directories, building department records, zoning or land use records that identify past uses or occupants of the property from its first commercial or industrial use through the present use, and records in the files of an owner or operator of the property.
- (4) "Key site personnel" means a person or persons identified by the owner or operator of a property, and confirmed by the volunteer, as having reliable knowledge of the uses or physical characteristics of the property.
- (5) "Practically reviewable" means information provided in a manner and in a form that, upon examination, yields information relevant to the property. Records that cannot feasibly be retrieved by reference to the location of the property, geographic area in which the property is located, or the name of the owner or operator of the property are not practically reviewable.
- (6) "Publicly available" means the source of the information allows access to the information by anyone upon request.

[Comment: anyone wishing to conduct a voluntary action should review section 3746.02 of the Revised Code and rule 3745-300-02 of the Administrative Code to determine whether the property is eligible for participation in the "Voluntary Action Program."]

(B) The purpose of a "Phase I Property Assessment" under the "Voluntary Action Program" is to determine whether 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 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 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.]

- (C) Upon completion of the “Phase I Property Assessment”, if the volunteer has information that establishes 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 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” prior to obtaining a no further action letter from a certified professional, except when paragraph (G) of this rule is applicable.
- (D) 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 property hazardous substance or petroleum release history, 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 whether any release of hazardous substances or petroleum has or may have occurred on, underlying, or is emanating from 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 voluntary action 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 a release of hazardous substances or petroleum on, underlying, or emanating onto the property.

The volunteer must identify the first industrial or commercial use of the property participating in the “Voluntary Action Program”, through and including the present use of the property. To complete the property history section of this rule, a volunteer must perform the following as necessary to provide a continuous history:

- (a) History analysis. a diligent inquiry of reasonably available historical sources 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 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 a release of hazardous substances or petroleum has or may have occurred on, underlying or is 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" 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 the release of hazardous substances or petroleum on, 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 current and past environmental compliance histories of the property and all persons who owned or operated the property. this investigation 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 (hereinafter "ODNR"), and the bureau of underground storage tank regulation (hereinafter "BUSTR");

[Comment: the environmental compliance history should 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".]

(c) A review of the following sources, as they relate to the property:

(i) Federal "National Priorities List" (NPL);

(ii) Federal "Comprehensive Environmental Response, Compensation, and Liability Information System" list (CERCLIS);

(iii) Federal Resource Conservation and Recovery Act (hereinafter "RCRA") treatment storage and disposal facility list;

- (iv) Federal RCRA generators list;
 - (v) Federal emergency release notification system list;
 - (vi) Federal national corrective action priority system list;
 - (vii) Ohio "Master Sites List";
 - (viii) Ohio BUSTR registered Underground Storage Tank (hereinafter "UST") list;
 - (ix) Ohio BUSTR leaking UST list;
 - (x) Ohio EPA spill data base;
 - (xi) ODNR well log information;
- (d) A review of the following sources as they relate to the potential release of hazardous substances on, underlying, or emanating from the property:
- (i) Community right-to-know inventory report records of the "State Emergency Response Commission" or "Local Emergency Planning Committee";
 - (ii) Local fire department records;
 - (iii) Local health department records; and
- (e) A review of other appropriate federal, state and local agency records and data bases, referenced in ASTM Standard E 1527, paragraph 7.2.2, when a volunteer has reason to believe that relevant information will be obtained from such 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) A review of the sources contained in paragraph (D)(2)(c) of this rule must be conducted on surrounding properties to the extent necessary to determine if hazardous substances or petroleum may have been released on, underlying or emanating onto the property from adjoining properties.

If information from the search of sources contained in paragraph (D)(2)(c) of this rule indicate hazardous substances or petroleum may have been released on, underlying or emanating onto the property then the volunteer must conduct other activities under paragraph (D) 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 is 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 those releases, including the result of those measures.

(5) 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 a release of hazardous substances or petroleum has or may have occurred on, underlying or is 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:

(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, surface water, sediments, 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 items are identified in the property inspection, the volunteer must determine the condition of the items;

- (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;
 - (iv) Strong, pungent, or noxious odors; or
 - (v) The presence and condition of any items identified in paragraph (D)(4)(a) of this rule;
 - (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 is 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 dirt, asphalt, or pavement.
- (E) Any “Phase I Property Assessment” performed as part of a voluntary action after the effective date of this rule 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 the effective date of this rule, must have been performed in accordance with ASTM E1527 and Chapter 3746. of the Revised Code. any “Phase I Property Assessment” performed prior to the effective date of this rule, 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 requirement 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 (D)(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.]

(F) Identified areas.

- (1) The volunteer must identify all areas located on or underlying the property which are or may contain hazardous substances or petroleum and all areas where hazardous substances or petroleum are or may be emanating from the property. the identified areas must be detailed in the written “Phase I Property Assessment” report as provided in paragraph (i) of this rule.
- (2) 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 that portion of the property suspected to be affected by the hazardous substances or petroleum or 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 the identified area;
- (3) Areas demonstrated to be de minimis under paragraph (G) of this rule are not identified areas.

(G) 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 paragraph (B) 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 (G)(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;
 - (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 (G) of this rule does not apply to a voluntary action unless information exists to establish that the criteria contained in paragraph (G)(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 (G)(1)(a) and (G)(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 (G)(1)(a) and (G)(1)(b) of this rule are met.

[Comment: although a volunteer may choose to do so, the sampling requirements in rule 3745-300-07 paragraph (F) 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 (G) 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.
- (H) 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.
- (I) The volunteer must complete a written “Phase I Property Assessment” report which, at a minimum, includes:
 - (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) Conclusions regarding whether 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. 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.

(3) Maps.

(a) A property location map using the most currently available 7.5 minute USGS topographic map; and provide at a minimum four latitude and longitude coordinates for the property, or more if necessary to adequately define the property boundaries.

(b) A property map which identifies significant structures and features, including but not limited to property lines, and which identifies the property which is the subject of the voluntary action under this chapter of the Administrative Code;

(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;

(d) A map which identifies all sites within one half-mile surrounding the property which were identified in paragraph (D)(3) 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 (I)(3)(a) to (I)(3)(c) of this rule should also be provided whenever possible.]

(4) An explanation of all procedures used during the “Phase I Property Assessment”;

(5) A summary of all relevant information used to meet the objectives contained in paragraph (D) 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) A statement of any limitations or qualifications which impact the “Phase I Property Assessment”, including an identification and explanation of any sources of

information which were not reviewed because they were determined not to be reasonably available;

- (7) 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) 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) Sufficient color photograph documentation of the property’s current condition. the volunteer must identify the dates that any photographs of the property were taken; and
 - (10) Appendices for all appropriate supporting documentation.
- (J) 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 (D) of this rule have been performed in accordance with the requirements of this rule;
 - (3) All requirements contained in paragraphs (D) and (G) of this rule have either been performed within 180 days prior to the issuance of a no further action letter, or that subsequent investigation conducted in accordance with paragraph (D) of this rule has ensured that conditions at the property have not changed since the activities contained in paragraphs (D) and (G) of this rule were performed; an
 - (4) That the “Phase I Property Assessment” meets all of the requirements of this rule.
- (K) 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 (J) of this rule have been met.

(L) The “Phase I Property Assessment” report and a written description of any additional information gathered by the certified professional to satisfy paragraph (J) and paragraph (K) of this rule and must be included in the no further action letter.

Effective: _____

Certification: _____

Date: _____

Promulgated under: RC Chapter 119.

Rule amplified: RC Chapter 3746.

Rule authorized by: RC Chapter 3746.

Prior effective dates: NONE