

## Voluntary Action Program

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*Ohio's Voluntary Action Program (VAP) was created to give companies a way to investigate possible environmental contamination, clean it up if necessary and receive a legal release from the State of Ohio that no more cleanup is needed.*

### Benefits of the VAP

Ohio recognized the need to remove the environmental and legal barriers that stalled redevelopment and reuse of contaminated properties. Now anyone can undertake a cleanup project and be assured it meets environmental standards without direct oversight from Ohio EPA. The VAP minimizes governmental red tape and maximizes resources and expertise in the private sector. If someone wants to clean up a piece of property, it may be done following specific standards developed by Ohio EPA.

### Certified Professionals and Laboratories

The VAP maximizes resources and expertise in the private sector by utilizing qualified, experienced professionals such as engineers and scientists who are certified by Ohio EPA. These certified professionals (CPs) are responsible for verifying properties are cleaned up to the levels required by the program rules. The detailed program rules allow these qualified professionals and the volunteer that he or she represents to do the work without ongoing Agency involvement.

Ohio EPA operates a certification program to ensure that only environmental professionals with the appropriate qualifications and experience are licensed as CPs. In addition, to help ensure high-quality work, CPs must meet annual continuing education requirements and be recertified by Ohio EPA each year. Information about CPs can be found here: <http://epa.ohio.gov/derr/volunt/certification/cpapp.aspx>

To ensure high-quality laboratory data, Ohio EPA also certifies laboratories that test environmental samples that support voluntary cleanups. Before any certification is issued, Ohio EPA conducts an evaluation of the laboratory's documents and staff in order to determine its qualifications for certification. This evaluation includes a detailed technical review of all laboratory documents associated with an application and an on-site inspection to assess analysts' skills and knowledge in conducting the analyses. Information about certified laboratories can be found here: [http://epa.ohio.gov/derr/vap/pro\\_lab/labs.aspx](http://epa.ohio.gov/derr/vap/pro_lab/labs.aspx)

### No Further Action Letter

When a CP determines after site investigation and any necessary cleanup that the property meets the standards contained in the program rules (OAC Chapter 3745-300), he or she can prepare a No Further Action (NFA) letter. This document describes the environmental problems found at the site, how those environmental problems were investigated and how the site was cleaned up.

The NFA letter includes a Phase I property assessment report that contains information concerning the CP's investigation of the historical and current uses of the property. This information allows the CP to determine whether or not there is a reason to believe that a release of hazardous substances or petroleum has or may have occurred at the property.

If there is reason to believe a release has occurred and the site may be contaminated, a Phase II property assessment is then conducted. The Phase II assessment includes collecting soil, ground water, surface water and sediment samples from the site as necessary. The Phase II assessment ensures that all potential contaminants identified in the Phase I assessment are adequately evaluated and compared to the appropriate VAP cleanup standards. If the Phase II assessment indicates that cleanup standards are met and the site is protective of human health and the environment, the CP will determine that the voluntary cleanup is completed and prepare the NFA letter.

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If the Phase II assessment indicates that more action is needed to meet the standards, additional remedial activities will occur to make the site protective of human health and the environment. Remedial activities may include things such as soil removal, ground water treatment, barriers to the contamination such as a clay or asphalt cap, or placing limitations on future use of the property.

If volunteers want assurance that U.S. EPA will also not ask for additional cleanup, they need to implement the additional steps outlined in the agreement negotiated by Ohio EPA and U.S. EPA. These additional steps include direct oversight of investigation and cleanup activities by Ohio EPA and opportunities for public review of site documents as they are produced by the volunteer. For details regarding the memorandum of agreement track, see:

<http://epa.ohio.gov/portals/30/vap/docs/MOA%20Track.pdf>

Through technical assistance, Ohio EPA can assist volunteers with any questions they have regarding their participation in the VAP. Since the VAP relies on user fees to help support the program, volunteers must pay for the Agency's assistance. Although some volunteers receiving technical assistance submit NFA letters, many volunteers conduct work in accordance with Ohio EPA's advice but do not submit an NFA letter. Even if a volunteer does not submit an NFA letter, VAP rules and technical assistance can be used for cleanup and redevelopment of those properties.

### Covenant Not to Sue

If the volunteer wants a legal release from Ohio, the certified professional submits the NFA letter to Ohio EPA for review. VAP technical staff reviews NFA letters submitted to the Agency to determine if program standards are met and that the site is protective of public health, safety and the environment. When cleanup requirements are met, the director of Ohio EPA issues a covenant not to sue. This covenant protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup. This protection applies only when the property is used and maintained in the same manner as when the covenant was issued. A list of all the NFA letters received by the Agency and their status can be found here: [http://epa.ohio.gov/Portals/30/vap/docs/nfa\\_table1.html](http://epa.ohio.gov/Portals/30/vap/docs/nfa_table1.html)

A covenant is recorded in the county recorder's office and transfers with the title of the property to a new owner. Restrictions on how a property may be used are filed along with the property's deed in the county recorder's office before a covenant is issued by Ohio EPA. When a covenant is issued or denied by the director, a notice is published in the local newspaper to inform nearby residents and other interested parties. Covenant issuances and denials can be appealed to the Environmental Review Appeals Commission.

Ohio EPA audits at least 25 percent of the properties taken through the VAP annually to ensure that sites have been properly addressed and that CPs and laboratories performed work properly. All documents related to the voluntary action may be examined by Ohio EPA during an audit. During the audit, Ohio EPA may also conduct on-site sampling to verify compliance with cleanup standards. Volunteers may lose their covenants if problems identified in an audit are not corrected. CPs and laboratories who have conducted work under the VAP may be civilly or criminally penalized for violating agreements and falsifying or withholding information.

### Public Participation

All information provided to Ohio EPA about sites in the VAP is available to the public. This includes all the information provided by companies asking for technical assistance before submitting an NFA letter, and all the documentation included in an NFA letter, as well as all Agency comments. At any time during the NFA letter review process, the public can request and receive any cleanup document from Ohio EPA. In addition, each NFA letter must include a list of all the data, information and documentation relied on to conduct the voluntary action, even if the data is not included as part of the NFA letter submittal. This information is also available to the public upon request.

Though the law protects the volunteer from having any of this documentation used in any civil or administrative proceeding, it does not allow the volunteer to claim any of the information produced in connection with a voluntary action to be confidential or to alter any of the public's rights to receive access to these documents.

### Contact

For more information about the program, go to <http://epa.ohio.gov/derr/volunt/volunt.aspx> or contact Kelly Kaletsky at [Kelly.Kaletsky@epa.ohio.gov](mailto:Kelly.Kaletsky@epa.ohio.gov) or (614) 644-2304.