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3745-300-05 **Certified professionals.**

[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) Criteria for certification.

(1) Applicants for certification must provide such information and evidence as the director deems reasonably necessary to enable the director to determine that the applicant meets the qualifications set forth in this rule.

(2) The director will issue a certificate to an applicant upon a demonstration, to the director's satisfaction, that the applicant:

(a) Earned a minimum of a bachelor's degree from a recognized educational institution, as defined in paragraph (A) in rule 3745-300-01 of the Administrative Code, in one of the following areas: biology, chemistry, environmental sciences, geology, hydrogeology, toxicology, scientific subdisciplines of public health or hazardous waste management, appropriate areas of engineering, or in a curriculum determined to be equivalent by the director. The charter or accreditation of the recognized educational institution must have been effective as of the date the applicant's degree(s) was granted;

(b) Possesses eight years of relevant professional experience, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, three of which are supervisory or project management related. Such experience must consist of an average minimum of twenty hours per week. Relevant professional experience that consists of less than an average minimum of twenty hours per week will be applied toward the satisfaction of this requirement on a pro rata basis;

(c) Possesses the professional competence and knowledge to perform the tasks required of a certified professional. This determination will be made by reviewing evidence including, but not limited to, references, agency comments on past work submitted to the agency, the application form and other sources the director deems appropriate. In order to make this determination, the director will consider the following:

(i) The proficiency, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, of the applicant;

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(ii) The duration of the applicant's relevant employment;

(iii) The previous performance of the applicant with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations involving hazardous substances or petroleum have occurred;

(iv) The previous performance of the applicant with regard to the various types of remedial systems designed and monitored;

(v) The performance of the applicant with regard to risk and exposure assessments;

(vi) The number of individuals and disciplines of other professionals supervised or coordinated by the applicant;

(vii) The nature of conclusions reached and recommendations and opinions presented by the applicant; and

(viii) Any other factors the director deems relevant.

(d) Completed initial certification training in accordance with this rule. Each applicant for initial certification must complete initial certification training by attending all sessions of the initial certification training. Initial certification training will consist of at least eight hours of instruction pertaining to the technical implementation of Chapter 3746. of the Revised Code and this chapter and the standards of conduct a certified professional must exercise when providing professional services as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code under Chapter 3746. of the Revised Code and this chapter.

(i) The training may be conducted by Ohio EPA or a third-party who implements the training in a manner and using materials approved by Ohio EPA. Ohio EPA will review, and, with or without modification, approve the training syllabi, and the scope and content of training and training materials used by a third party prior to their use at an initial certification training.

(ii) Ohio EPA or the third party who conducts the initial certification

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training may charge each person registering for or attending the initial certification training a non-refundable fee, established at a level sufficient to defray the actual costs of the training, the amount subject to Ohio EPA approval.

(iii) Upon the conclusion of each initial certification training, Ohio EPA or the third-party who conducted the training will provide each person who completed the initial certification training a certificate of completion. In the event a third party conducts the initial certification training, the third party must submit to Ohio EPA the name and contact information of each person who completed the initial certification training.

(iv) Initial certification training is valid for one year from the date the applicant completes the initial certification training as provided in the certificate of completion. If the applicant for initial certification does not submit the application within one year of completion of the initial certification training, the training must be retaken; and

(e) Possesses good moral character as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code. Evidence of an inability to comply with the ethical responsibilities required of a certified professional with good moral character includes, but is not limited to, felonious acts and acts involving dishonesty, fraud, or deceit.

(3) An applicant who has earned advanced degrees from recognized educational institutions in addition to those required to meet the minimum educational requirements may request that the director credit that additional education toward the requirements for relevant professional experience if the applicant can demonstrate, to the director's satisfaction, that the advanced degree(s) constitute relevant experience. Credit may be granted in accordance with the following:

(a) One year credit for each relevant master's degree; or

(b) Two years credit for a relevant doctorate degree.

(c) A maximum of two years credit may be granted for such additional education.

(4) Certification will be denied if the director finds that the applicant:

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(a) Does not meet the requirements set forth in paragraph (A)(2) of this rule;

(b) Has been convicted of a felony or fraud or any other circumstance for which the director finds that the applicant has committed an act involving dishonesty, fraud, or deceit or otherwise lacks sufficient honesty or integrity; or

(c) Fails to pay the fees and costs as set forth in this chapter.

(5) An applicant may be denied certification if the director finds that the applicant is or was subject to certification or license denial, revocation, or suspension in this state, another state, or under a federal program.

(6) Except as provided in paragraphs (A)(4) and (A)(5) of this rule, an applicant who meets the qualifications of paragraph (A)(2) of this rule and pays the application fee will be issued a certificate. The certificate automatically expires one year after the date of issuance, unless the certificate is renewed, suspended or revoked prior to the certificate's expiration.

(7) No individual, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, whose certification has expired, or has been suspended or revoked, may perform any work as a certified professional or represent in any way that the individual is authorized to perform such work until the recertification of such individual as a certified professional in accordance with this rule.

(B) Procedure for initial certification.

(1) An applicant must submit to the director a complete and current application by certified mail, courier delivery or any other form of mail or delivery accompanied by a receipt, on forms provided by the director, and full payment of the non-refundable certified professional application fee, as set forth in paragraph (B)(1) of rule 3745-300-03 of the Administrative Code. The director may require the applicant to furnish additional documentation pertaining to this application.

(2) The applicant must submit official transcripts from the appropriate educational institution(s) to verify that the educational qualifications as specified in paragraphs (A)(2)(a) and (A)(3) of this rule are met.

(3) The applicant must submit a certificate of completion demonstrating the

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applicant's completion of the initial certification training in accordance with paragraph (A)(2)(d) of this rule.

(4) All documents and information submitted to the director pursuant to this paragraph must be accompanied by an affidavit from the applicant affirming that upon knowledge, information, and belief, all information submitted in support of the applicant's certification application is true, accurate and complete.

(5) The agency will conduct a completeness review of the application within fourteen days of receipt and will respond to the applicant in the event that the application is incomplete. The agency will not consider an incomplete application and will notify the applicant of any reasons the application is incomplete and of any additional information required for further consideration. The director will not initiate approval or denial of an application until the agency determines that a complete application has been received. Nothing in this rule prevents the agency from requiring an applicant to promptly provide any information necessary to determine whether to approve or deny certification.

(6) Within forty-five days of the agency's determination that an application is complete, the director will either approve or deny certification. If the director denies certification, the director will provide a letter describing the deficiencies upon which the certification denial is based.

(7) Each applicant has the burden of demonstrating to the director's satisfaction that the applicant meets the requirements for certification. The agency may require an applicant to appear for a personal interview for the purpose of answering questions pertaining to an application. If a personal interview is scheduled, the time for approving or denying an application as set forth in paragraph (B)(6) of this rule will be extended to twenty days from the date a personal interview is conducted. If an applicant twice fails to appear for a personal interview scheduled with the agency, the application will be denied unless the agency finds such failure to appear was due to circumstances beyond the applicant's reasonable control.

(C) Procedure for renewal of certification.

(1) An applicant for certification renewal must submit to the director a renewal application by certified mail, courier delivery or any other form of mail or delivery accompanied by a receipt, on the form provided by the agency. The application must demonstrate that the applicant has completed a minimum of

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twelve professional development hour units of relevant continuing education as set forth in paragraph (C)(6) of this rule. The application must be submitted along with full payment of the annual fee set forth in paragraph (B)(2) of rule 3745-300-03 of the Administrative Code, at least forty-five, but not more than ninety days, before certification expires.

(2) The agency will conduct a completeness review and respond to the renewal applicant within fourteen days of receipt of an incomplete application. The agency will not consider an incomplete application and will notify the applicant of the reason the application is incomplete and of any additional information required for further consideration. The director will not approve or deny an application until the director determines that a complete application has been received. Nothing in this rule prevents the agency from requiring an applicant to promptly provide any information necessary to determine whether to approve or deny certification.

(3) Within thirty days of the director's determination that a complete renewal application has been received, the director will either approve or deny the renewal application, unless the certification is suspended or revoked.

(a) If the director fails, within thirty days, to approve or deny a complete renewal application submitted within forty-five to ninety days before the certificate expires, together with full payment of the non-refundable annual fee, the certified professional's certification will be automatically renewed. Renewal applications that are not submitted within forty-five to ninety days before the certificate expires, or are not submitted with full payment of the annual fee, will not be automatically renewed.

(b) The director will renew the certifications of certified professionals who meet the requirements of this rule, including but not limited to compliance with the standards of conduct set forth in paragraph (E) of this rule, and who submit the appropriate fee. If the director denies renewal of a certification, the director will provide a letter describing the reasons for the denial of certification renewal.

(4) A certified professional must demonstrate, to the director's satisfaction, fulfillment of the continuing education requirements set forth in this rule or must obtain an excuse or modification of those requirements in accordance with paragraph (C)(13) of this rule.

(5) The certified professional's certification automatically expires one year after the

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date of issuance, unless the certification is renewed, suspended or revoked prior to expiration.

(6) To maintain certification, a certified professional must demonstrate to the director's satisfaction that the certified professional has completed a minimum of twelve professional development hour units, as set forth in paragraphs (C)(7) to (C)(11) of this rule, of relevant continuing education during the certification year.

(7) A certified professional who has not submitted a no further action letter to the director in support of a request of a covenant not to sue within the past four calendar years, must demonstrate having either:

(a) Attended and completed initial certification training in accordance with paragraphs (A)(2)(d)(i) to (A)(2)(d)(iii) of this rule within the past four calendar years; or

(b) Attended and completed an alternative Ohio EPA-sponsored course as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code or third party workshop approved by Ohio EPA pertaining to the technical implementation of Chapter 3746. of the Revised Code and this chapter, and the standards of conduct a certified professional must exercise when providing professional services under Chapter 3746. of the Revised Code and this chapter.

(8) In addition to the requirements of paragraph (C)(7) of this rule, professional development hour units may be earned as follows:

(a) Attendance at and successful completion of relevant college courses, relevant continuing education courses, seminars, in-house courses, workshops, meetings, conventions, or conferences pertaining to investigation, assessment or remediation of hazardous substances or petroleum; and

(b) Presentation and instruction at any courses, seminars, workshops or other meetings identified in paragraph (C)(8)(a) of this rule.

(9) The conversion of other units of credit to professional development hour units is as follows:

(a) One college or unit semester hour equals twenty professional development

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hour units.

(b) One college or unit quarter hour equals fifteen professional development hour units.

(c) One continuing education unit equals ten professional development hour units.

(d) One hour of attendance at seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences equals one professional development hour unit.

(10) A certified professional's initial presentation or instruction of a course, seminar, workshop or other meeting described in paragraph (C)(8) of this rule will be eligible to receive credit for twice the professional development hour units that would be credited for attending the part of the course, seminar, workshop or other meeting presented or instructed by the certified professional. This additional credit is not available to full-time faculty.

(11) Professional development hour units will not be earned for:

(a) Any worker health and safety training; and

(b) Any course, seminar or workshop designed primarily for hazardous waste facility personnel for training on the requirements of Chapter 3734. of the Revised Code or the rules adopted thereunder. Partial credit may be claimed and earned for the portions of such course, seminar or workshop that relate to the performance of a voluntary action, such as waste characterization and hazardous waste management requirements.

(12) Documents used to support professional development hour units claimed must be submitted with the renewal application and must include, but are not limited to:

(a) A log showing the type of activity claimed, date of activity, sponsoring organization, location, duration, instructor's or speaker's name, and professional development hour units earned;

(b) Attendance verification documents from the sponsoring entity or other documents supporting evidence of attendance and indicating the actual hours of instruction; or

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(c) Conference agendas with detailed course descriptions indicating actual courses attended.

(13) The director may excuse or modify the continuing education requirements of this rule for any certification period if a certified professional is able to demonstrate to the director's satisfaction that the certified professional is unable to complete the minimum requirements due to:

(a) Health reasons, as certified by a medical doctor; or

(b) Active service in the armed forces of the United States.

(14) All documents and information submitted to the director pursuant to this paragraph must be accompanied by an affidavit from the applicant, affirming that upon knowledge, information, and belief, all information submitted in support of the renewal application is true, accurate and complete.

(15) The director has final authority with respect to approval of courses, credit, professional development hour unit value for courses, and other methods of earning credit.

(D) Biocriteria ~~training and~~ certification.

(1) If the qualitative habitat evaluation index, index of biotic integrity, modified index of well-being, and the invertebrate community index are being used in support of a no further action letter, the certified professional or the certified professional's designated representative must:

(a) Conduct these indices in accordance with the procedures contained in the biocriteria manual, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code~~;~~ only for those indices for which the certified professional or the certified professional's designated representative have received approval for under paragraph (D)(1)(b) of this rule;

(b) ~~Successfully complete the Ohio EPA biocriteria training course and receive biocriteria certification; and~~Receive approval by the director for status under paragraph (B) of Ohio Administrative Code rule 3745-4-03 to be a qualified data collector for level 3 credible data for:

(i) stream habitat assessment,

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(ii) fish community biology, or

(iii) benthic macroinvertebrate biology.

(c) Submit with the no further action letter written documentation from the agency which states that the certified professional or the certified professional's designated representative ~~has completed the biocriteria training course required in this paragraph.~~received approval by the director for status under paragraph (B) of Ohio Administrative Code rule 3745-4-03 to be a qualified data collector for level 3 credible data.

(2) ~~Biocriteria certification expires two years after the issuance of the certification. A certified professional or designated representative may apply for biocriteria recertification. Such application must comply with the procedures developed by the director.~~Qualified data collector level 3 status must be renewed every two years before it automatically expires. In order to be renewed, the certified professional or the certified professional's designated representative must meet the renewal requirements for status as a level 3 qualified data collector under paragraph (C) of Ohio Administrative Code rule 3745-4-03.

(E) Standards of conduct.

The following standards apply to a certified professional only when providing professional services under Chapter 3746. of the Revised Code and this chapter:

(1) Professional competency.

(a) A certified professional must act with care and diligence, and must fully apply the certified professional's knowledge and skill at the time professional services are performed.

(b) A certified professional may render a voluntary action opinion, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, only when the certified professional, individually, or together with other persons who are qualified by education, training, and experience in other areas outside the certified professional's area of professional practice, has:

(i) Managed, supervised or actually performed the work which is required to render the voluntary action opinion; or

(ii) Reviewed the work, performed by other qualified persons, which is

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required to render the voluntary action opinion.

(2) Professional responsibility.

(a) A certified professional must hold paramount public health, safety, welfare and the environment in the performance of professional services.

(b) If a certified professional identifies an imminent hazard, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, at a property at which the certified professional is providing professional services, the certified professional must:

(i) Immediately notify the volunteer, or the owner or operator of the property, if different from the volunteer, of the imminent hazard and of the need to notify the director; and

(ii) Notify the director of the imminent hazard if the volunteer, or the owner or operator of the property, if different from the volunteer, does not submit written confirmation to the certified professional within forty-eight hours of identifying the imminent hazard that the hazard has been addressed or the director has been notified.

(c) If a certified professional discovers the occurrence of a release at or from a property that is subject to the requirements contained in section 3750.06 of the Revised Code, the certified professional must:

(i) Immediately advise the volunteer, or the owner or operator of the property, if different from the volunteer, of the condition and the need to notify the director within the applicable time frame established in section 3750.06 of the Revised Code; and

(ii) Notify the director of the condition if the certified professional is not able to notify the volunteer, or the owner or operator of the property, if different from the volunteer, within the applicable time frames established in section 3750.06 of the Revised Code.

(d) In the event that a certified professional knows or has reason to know of an action taken by a volunteer, or any person conducting work in connection with a voluntary action, that significantly deviates from any scope of work, plan, or report developed to meet the requirements of

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this chapter, or an order of the director issued under division (B)(3) of section 3746.12 of the Revised Code, the certified professional must promptly notify the volunteer in writing of such deviation.

(e) In providing professional services, a certified professional must:

(i) Exercise independent professional judgment and be objective in any professional report, statement, or testimony;

(ii) Follow the requirements and procedures set forth in the applicable provisions of this chapter and Chapter 3746. of the Revised Code;

(iii) Make a good faith and diligent effort to obtain all relevant data, reports, and other available information regarding conditions at a property, and identify and obtain such additional data and other information as the certified professional deems necessary to provide professional services; and

(iv) In rendering a voluntary action opinion, disclose and explain in the voluntary action opinion the relevant facts, data, and other information that support the voluntary action opinion, and all qualifications and limitations of the voluntary action opinion.

(f) In the event that, subsequent to the date that a certified professional issues a no further action letter, the certified professional learns that relevant facts, data or other information existed at the time the no further action letter was issued which indicates that applicable standards were not met, the certified professional must:

(i) Promptly notify the volunteer or the owner or operator of the property, if different from the volunteer, that the applicable standards were not met and of the need to notify the director; and

(ii) Notify the director that applicable standards were not met if the volunteer, or the owner or operator of the property, if different from the volunteer, does not submit written confirmation to the certified professional within thirty days of learning of the relevant facts, data, or other information, that the director has been notified.

(g) In the event that a volunteer prevents or attempts to prevent a certified

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professional from acting in accordance with paragraphs (E)(2)(e)(i) to (E)(2(e)(iv) of this rule, the certified professional must sever the certified professional's relationship with the volunteer.

(h) A certified professional must not engage in fraudulent or dishonest business practices or allow the use of the certified professional's name by, or associate in a business venture with, any person or firm which the certified professional knows or should know is engaging in fraudulent or dishonest business practices.

(i) A certified professional must cooperate fully in the conduct of audits by the director and must promptly furnish such information as the director deems necessary to perform all audits under this chapter and section 3746.17 of the Revised Code.

(j) A certified professional must promptly and completely respond to all document requests made by the director under this chapter and Chapter 3746. of the Revised Code.

[Comment: A certified professional or authorized representative should contact the certified laboratory conducting analyses in support of the voluntary action to determine if the applicable standards calculated in accordance with rules 3745-300-08 and 3745-300-09 of the Administrative Code are within the laboratory's reporting limits. The certified professional is responsible for ensuring that the certified laboratory, which performs analyses in support of the no further action letter, is capable of detecting the chemical(s) of concern on the property at or below the applicable standards.]

(3) Conflicts of interest and contingent fees.

(a) A certified professional must not accept compensation, financial or otherwise from more than one person for professional services regarding a property, unless the circumstances are fully disclosed in writing to, and agreed to by, all persons who contract with the certified professional for professional services with regard to that property.

(b) A certified professional must not render a voluntary action opinion with respect to any property owned, leased, or operated by or in which any of the following persons have an interest:

(i) The certified professional;

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(ii) An employer or a person affiliated with an employer of the certified professional;

(iii) A relative or past relative of the certified professional;

(iv) A person, or any affiliated person, with whom the certified professional was employed during the year preceding, or in the year subsequent to, the date at which the certified professional entered into a contract with that person; or

(v) Any person whose relationship with the certified professional may impact the certified professional's ability to discharge professional obligations under this chapter.

(c) In the event that a certified professional has, develops, or acquires any business association, direct or indirect financial interest, or other circumstance which could create an impression of influencing the certified professional's judgment in connection with performance of professional services, the certified professional must fully disclose in writing, to the person who has contracted with the certified professional for professional services, the nature of the business association, financial interest, or other circumstance.

(i) If the person who has contracted with the certified professional for professional services objects to such business association, financial interest or circumstance, the certified professional, at the certified professional's discretion, must either terminate the business association, financial interest or circumstances, or terminate the professional services pertaining to the voluntary action.

(ii) If a certified professional believes that a business association, financial interest or other circumstance renders the certified professional incapable of discharging professional obligations under this chapter regarding a voluntary action, the certified professional must terminate the certified professional's involvement regarding that voluntary action and avoid any further involvement regarding such action.

(d) A certified professional must not solicit or accept financial or other consideration from any person in return for specifying or endorsing the products or services of such person in connection with a voluntary

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action.

(e) A certified professional must not, directly or indirectly, provide professional services under a contingency arrangement whereby the amount of payment of any consideration to the certified professional is dependent upon or related to the attainment or non-attainment of a specified finding or result, or where the payment of any consideration to the certified professional in whole or in part is otherwise dependent upon or related to a specified finding or result of such services.

(f) A certified professional may not advertise or otherwise promise to any person that the certified professional will issue a no further action letter regarding a property, until the certified professional has determined that all requirements of Chapter 3746. of the Revised Code and this chapter have been satisfied.

(4) Affidavit requirement - voluntary action opinions.

Certified professionals must submit each voluntary action opinion, as defined in rule 3745-300-01 of the Administrative Code, by affidavit pursuant to this paragraph except for no further action letters that are subject to the affidavit provisions of paragraph (O) of rule 3745-300-13 of the Administrative Code. The certified professional must submit an affidavit based upon the certified professional's knowledge, information and belief, which includes the following:

(a) The name of the certified professional;

(b) Name and address of the property that is the subject of the voluntary action;

(c) The purpose for which the voluntary action opinion is being submitted;

(d) An identification of the information, data, documents, or reports included with the voluntary action opinion submitted with the affidavit;

(e) A statement attesting the certified professional has read all of the standards of conduct contained in paragraph (E) of this rule and is in compliance with the standards of conduct regarding the voluntary action opinion; and

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(f) A statement attesting the voluntary action opinion and the associated information, data, documents, or reports submitted by the certified professional are true, accurate and complete.

(F) Suspension or revocation of certification.

(1) The director may suspend or revoke the certification of a certified professional for a period of time to be determined by the director if the director finds that:

(a) The certified professional's performance has resulted in the issuance of a no further action letter that is not consistent with applicable standards contained in this chapter or Chapter 3746. of the Revised Code;

(b) The certified professional has been denied certification for performing environmental work in this state, another state, or under federal programs;

(c) The certified professional's certification for performing environmental work in this state, another state, or under federal programs has been revoked or suspended;

(d) The certified professional has used the certified professional seal described in paragraph (K) of this rule in an unauthorized manner;

(e) The certified professional has been convicted of a felony or fraud;

(f) The certified professional has failed to make annual fee payments in accordance with paragraph (C)(1) of this rule and paragraph (B)(2) of rule 3745-300-03 of the Administrative Code;

(g) The certified professional has failed to comply with the standards of conduct established under paragraph (E) of this rule; or

(h) The certified professional has not substantially complied with section 3746.31 of the Revised Code or paragraph (H) of this rule.

(2) The director will revoke the certification of a certified professional for a period of time to be determined by the director if the director finds that any information on the certified professional's application for initial certification or application for renewal has been falsified.

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(3) The director will permanently revoke the certification of a certified professional:

(a) Who intentionally falsifies any information in connection with a voluntary action or in connection with an application for initial certification or certification renewal under this chapter;

(b) Who fails to comply with the director's request to provide documents, data and other information for the purposes of verifying the qualifications of the certified professional or auditing the performance of the certified professional;

(c) Who fails to comply with the procedure for requests made by the director in connection with an audit, contained in rule 3745-300-14 of the Administrative Code, that is conducted to evaluate the performance of the certified professional; or

(d) Whose certification has been suspended or revoked under this chapter on two occasions.

(4) A certified professional whose certification has been suspended or revoked must immediately provide notification of the suspension or revocation, by certified mail, to all persons who have contracted with the certified professional for professional services, or who have had a no further action letter prepared by the certified professional. The certified professional must provide to the director a copy of all notifications required by this paragraph within ten days of the date of the certified mailing.

(5) The director will not revoke the certification of a certified professional who conducts voluntary actions only at properties contaminated solely with petroleum, unless the director first consults with the director of the department of commerce.

(6) The director will provide at least thirty days notice to a certified professional of an ensuing suspension or revocation action by the director. The notice will include a general explanation of the suspension or revocation action.

(G) Recertification.

(1) An individual whose certification has expired, and has not been renewed within one year after the expiration of the certificate, may apply for recertification.

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Such application must comply with the criteria and procedures for initial certification set forth in paragraphs (A) and (B) of this rule.

(2) An individual whose certification has been suspended, and has not been renewed within one year after the date of expiration, may apply for recertification after termination of the suspension period imposed by the director. Such application must comply with the criteria and procedures for initial certification set forth in paragraphs (A) and (B) of this rule.

(3) An individual whose certification has been revoked may apply for recertification after termination of the revocation period imposed by the director. Such application must comply with the criteria and procedures for initial certification set forth in paragraphs (A) and (B) of this rule.

(H) Document retention and production.

(1) The criteria set forth in this paragraph are applicable to all voluntary actions for which professional services are rendered:

(a) A certified professional must retain all documents prepared or acquired in connection with a voluntary action for a period of at least ten years. After ten years, if a certified professional does not intend to retain such documents, the certified professional must notify the director by certified mail of such intent and provide the director with the opportunity to obtain all documents. The documents must be retained by the certified professional until the notice described above is provided to the director and the director notifies the certified professional in writing that the director does intend to obtain the documents. If the director notifies the certified professional in writing that the director does not intend to obtain the documents, the certified professional may discard the documents. Notification of the director is not required as long as a certified professional continues to retain all documents.

(b) If a certified professional no longer intends to retain certification, the certified professional may return the certificate with a notice by certified mail to the director indicating the certified professional's intent to withdraw from certification. Upon withdrawal, the certified professional must promptly provide the director the opportunity to obtain all documents maintained under this chapter in the same manner as identified in paragraph (H)(1)(a) of this rule.

(2) The director will, upon the written request of any person for documents not in

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the possession of the director and described on a list included in a no further action letter submitted to the director, send a written request to the certified professional to submit such documents to the director within a reasonable period of time. Upon receiving the written request from the director, the certified professional must submit the original documents to the director, within the time period specified in the director's request. Within a reasonable period of time after the director receives the requested documents, the director will provide copies of the documents, at cost, to the person who requested the documents and will retain the originals in the agency's files. Any request for reproduction of documents must be made through the director.

(I) Summary reports.

A certified professional must prepare and retain a voluntary action summary report, detailing the certified professional's findings and conclusions regarding the environmental conditions at each property for which the certified professional was requested to prepare a no further action letter, in accordance with division (C) of section 3746.11 of the Revised Code and paragraph (J) of rule 3745-300-13 of the Administrative Code and in a format prescribed and provided by the agency.

(J) Appeal of certification determinations.

The issuance, denial, suspension, or revocation of certifications are final actions of the director, and are subject to the procedure for appeal set forth in Chapter 3745. of the Revised Code.

(K) Certified professional's seal.

(1) For the purpose of rendering a voluntary action opinion, each certified professional must procure and use a rubber stamp or embossing device for a seal. The design, arrangement, size and wording of the seal must conform with the specifications as prescribed by the agency.

(2) The certified professional's seal is intended for the certified professional's official use only in connection with voluntary action opinions for which the certified professional is responsible, and is not transferable.

(3) A certified professional must use the seal to attest that, in the certified professional's professional judgment, the voluntary action opinion upon which it appears complies with the provisions of this chapter and Chapter 3746. of the Revised Code.

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(4) A certified professional may not allow the official seal to be affixed to any document associated with any project which is not a voluntary action or to any voluntary action opinion not prepared by the certified professional or under the certified professional's personal supervision.

(5) An individual whose certification has expired and has not been renewed, or has been revoked or suspended must not allow the official seal to be affixed to any document associated with a voluntary action opinion unless and until such individual is recertified as a certified professional in accordance with this rule.

(6) A certified professional, upon receipt of his or her seal, must stamp or emboss it upon two sheets of paper, and submit the impression to the agency as evidence that the certified professional has complied with the requirements for procurement of a certified professional's seal.

(L) Out-of-state certified professionals.

As a condition of certification under this rule, certified professionals located outside the state of Ohio hereby consent to service of process and to personal jurisdiction of any Ohio court or the Ohio environmental review appeals commission in proceedings which adjudicate any rights or obligations under this chapter, and Chapter 3746. of the Revised Code, or in which the cause of action involves, in whole or in part, the certified professional's performance under this chapter or Chapter 3746. of the Revised Code. Out-of-state certified professionals also hereby consent to the agency's right of entry for inspection or investigation, and to the service of administrative warrants, inspection warrants, or other appropriate search warrants as a condition of certification under this rule of the Administrative Code.