

Pathway Omission

VAP REMEDY RULE



Pathway Omission

- OAC 3745-300-11(D) - Pathway omission process for pathways to off-property receptors that cannot be remedied after a volunteer has applied diligent efforts.
- A CP may request a pathway omission for a complete exposure pathway that meets certain threshold criteria.

Pathway Omission Threshold Criteria

- Omitted property is different from VAP property.
- Reasonable measures taken to determine off-property receptors and potential complete pathways.
- Document that reasonable measures were taken to:
 - Contact each receptor property owner,
 - Inform them of the potential complete pathway and the risk potential,
 - Inform them how the pathway might be investigated and addressed,
 - Offer to pay property owners all costs associated with installation of a remedy.



Pathway Omission – Notice to Property Owners

- Provide prior written notice to each owner when seeking an omission request:
 - Explanation of the VAP program
 - Describe the pathway and reason for omission
 - Location and description of all property where omission is sought
 - Summary of threshold criteria and Ohio EPA approvals
 - Explain that if approved, the pathway is not covered by a CNS.



Pathway Omission

- Like an Urban Setting Designation, request is made **prior** to issuance of the NFA letter.
 - Agency costs for review billed to volunteer.
 - 90 day review time
- Upon approval (i.e. threshold criteria met), the pathway is eliminated and outside the scope of the NFA letter.
- The CNS will include a finding that identifies the omitted pathway
- Also, the CNS will not apply to the omitted pathway.

Pathway Omission Template

- Request For Pathway Omission is posted on the VAP Internet web page.

Search under “Program Info/Services”

then, “Director Approvals prior to Issuance of NFA Letter”

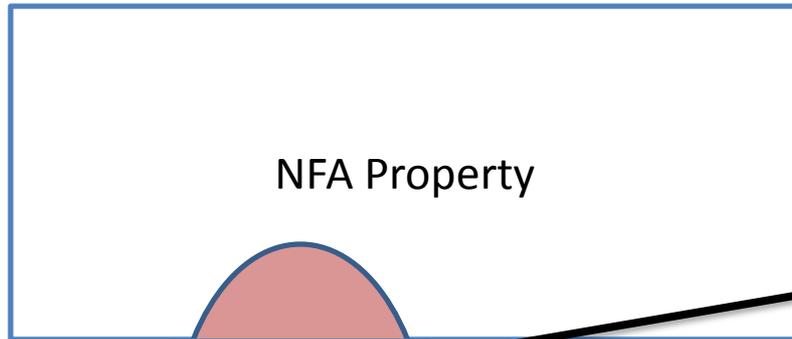
(USD, Variance, Pathway Omission)



Pathway Omission

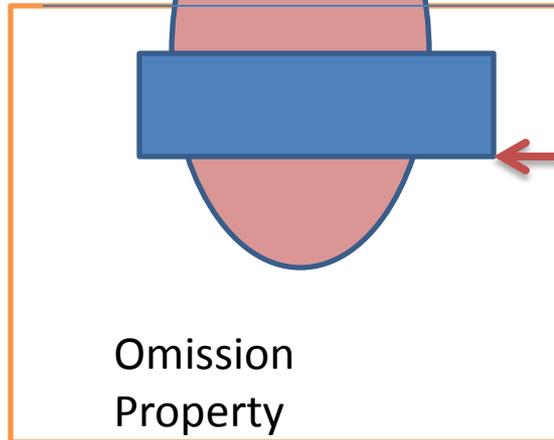
EXAMPLE





NFA Property

GW Plume above UPUS
Vapor risk to workers on and
off property



Omission
Property

Occupied Building
Access to property denied by owner



Pathway Omission- Example

- Document attempts to access:
 - Let them know of the pathway and risks: no potable, vapors
 - Let them know all costs for investigation and remedy will be covered
- Owner still refuses.
- Decision made to omit pathway.
- Provide written notice to owner.
- Make request to Ohio EPA to omit pathway from NFA letter.



Remedy Revision

VAP REMEDY RULE



Remedy Revision

OAC 3745-300-11(H)

- Voluntary process to formally tell VAP when a remedy change has been made
 - May 2011 “Post – CNS Compliance Process”
- Volunteer is ensured that property not out of compliance with CNS
- Optional - If VAP discovers remedy changes later, notice of non-compliance and opportunity to fix



Remedy Revision

OAC 3745-300-11(H)

- A volunteer may revise an existing remedy or remedies relied upon to meet applicable standards. To maintain the CNS, the volunteer must:
 - Continue to comply with existing remedies (AUL, O&M, RMP) until replaced or terminated,
 - Collect data to support the remedy revision,
 - Implement the revised remedy, and
 - Ensure the property complies with applicable standards throughout the remedy revision.



Remedy Revision

- Reporting the remedy revision is **optional**.
- If Volunteer chooses to submit a remedy revision notice to Ohio EPA. Notice will include a request for either a:
 - Acknowledgement of the revision, or
 - Approval of the revision

Notice & request templates on VAP web site.



Remedy Revision Notice

- Providing notice is optional
- Documentation same for each request
- Implement remedy first then provide notice, but:
 - Must comply with EC and O&M plan
 - Cannot make changes to EC or O&M agreement without EPA approval
- Not intended for situations already covered by EC or O&M plan



Remedy Revision Notice

- Acknowledgement means documentation is filed without our review
 - Potential compliance audit
- Approval means documentation is reviewed prior to approval
 - Compliance audit is less likely
 - Level of review similar to new NFA Letter review
 - Review costs billed
- EC and O&M plan changes must still be reviewed and approved- for either scenario.
 - Modified under VAP TA



Remedy Revision

EXAMPLES



Example – New Remedy

- CNS issued with...
 - No O&M Plan
 - Environmental Covenant
 - Commercial/industrial use restriction
 - 2-foot POC
- 7 years later...
 - Re-grade property
 - Install storm water retention basin
 - Remove contaminated soil & test remaining soil

Options

- Request TA – Prior to implementation
- Do work without documentation
- Hold remedy documentation and wait
- Remedy revision notice – After completion
 - Request acknowledgment
 - Request approval
- Now assume standards are not met and parking lot (engineering control) is required to cover contaminated soils

Example – Replace Remedy

- CNS issued with...
 - Vapor mitigation system with O&M
 - Annual reporting in March
 - Environmental Covenant
 - Commercial/industrial use restriction
 - 2-foot POC
- May to November
 - Demo building
 - Remove soil
 - Implement chemical oxidation in ground water

Options

- Request TA – Prior to implementation
 - Work on modifying O&M plan/agreement
- Do work then submit remedy revision notice
 - Probably out of compliance with O&M agreement
 - Acknowledgement or approval probably warrants same level of review
- Do work and don't submit O&M report
 - Wait for notice from Ohio EPA then submit documentation
 - Out of compliance with O&M agreement

Example – Building Occupancy Restriction

- CNS issued with Environmental Covenant
 - Commercial/industrial use restriction
 - AUL prohibiting building occupancy without
 - Engineering control to mitigate VI pathway
 - Risk assessment demonstrating compliance with applicable standards for VI pathway
- 7 years later...
 - Assess soil gas and build building
 - Generate report demonstrating compliance with applicable standards for VI pathway

Options

- Is remedy revision notice needed?
 - No, only realistic options covered by AUL in EC
 - Must comply with EC prior to building occupancy or CNS is void
- If active remedy done to comply with applicable standards...
 - Remedy revision notice would be warranted (if outside scope of EC)
 - Must still submit documentation for our review prior to building occupancy or CNS is void

Questions????

