

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 rule 3745-300-15 of the Administrative Code titled "Incorporation by reference - voluntary action program."]

(A) Criteria for certification.

- (1) Individuals applying for certification shall provide such information and evidence as Ohio EPA deems reasonably necessary to enable the director to determine that the individual meets the qualifications provided in this rule.
- (2) The director shall issue a certificate to an individual upon a demonstration, to the director's satisfaction, of the following:
 - (a) The individual has earned a minimum of a bachelor's degree from a recognized educational institution in 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 shall have been effective as of the date the individual's degree was granted.
 - (b) The individual possesses eight years of relevant professional experience three of which are supervisory or project management related. Such experience shall 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 shall be applied toward the satisfaction of this requirement on a pro rata basis.
 - (c) The individual possesses the professional competence and knowledge to perform the tasks required of a certified professional. This determination shall be made by a review of evidence including, but not limited to, references, Ohio EPA comments on past work submitted to Ohio EPA, the application form, and other sources the director deems appropriate. To make this determination, the director shall consider the following:
 - (i) Proficiency of the individual.
 - (ii) Duration of the individual's relevant employment.

- (iii) Previous performance of the individual with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations that involved hazardous substances or petroleum occurred.
 - (iv) Previous performance of the individual with regard to past performance working with Ohio EPA.
 - (v) Previous performance of the individual with regard to the various types of remedial systems designed and monitored.
 - (vi) Performance of the individual with regard to risk and exposure assessments.
 - (vii) Performance of the individual with regard to evaluating laboratory data quality and sufficiency to conduct a voluntary action.
 - (viii) Number of individuals and disciplines of other professionals supervised or coordinated by the individual.
 - (ix) Nature of conclusions reached and recommendations and opinions presented by the individual.
 - (x) Any other factors the director deems relevant.
- (d) The individual completed initial certification training in accordance with this rule. Each individual who applies for initial certification shall complete initial certification training by attending all sessions of the initial certification training. Initial certification training shall consist of at least eight hours of instruction pertaining to the technical implementation of Chapter 3746. of the Revised Code, this chapter, and the standards of conduct a certified professional shall exercise when professional services are provided under Chapter 3746. of the Revised Code and this chapter.
- (i) The training may be conducted by Ohio EPA or a third-party in a manner and using materials approved by Ohio EPA. Ohio EPA shall review, and, with or without modification, shall approve the training syllabi, and the scope and content of training and training materials used by a third party prior to use at an initial

certification training.

- (ii) Ohio EPA or the third party who conducts the initial certification training may charge each person who registers for or who attends the initial certification training a non-refundable fee, established at a level sufficient to defray the actual costs of the training. The fee amount is subject to Ohio EPA approval.
 - (iii) Upon the conclusion of each initial certification training, Ohio EPA or the third-party shall provide each person who completed the initial certification training a certificate of completion. The third party shall 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 after the date the individual completes the initial certification training as provided in the certificate of completion. If the individual who applies for initial certification does not submit the application within one year after completion of the initial certification training, the individual shall re-take the training.
- (e) Possesses good moral character. 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, acts that involve dishonesty, fraud, or deceit.
- (3) An individual 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 individual can demonstrate to the director's satisfaction that the advanced degree constitutes relevant experience. Credit may be granted in accordance with the following:
- (a) One year credit for each relevant master's degree.
 - (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 shall be denied if the director finds the following:

- (a) The individual does not meet the requirements provided in paragraph (A)(2) of this rule.
 - (b) The individual committed an act that involves dishonesty, fraud, or deceit, or otherwise lacks sufficient honesty or integrity.
 - (c) The individual fails to pay the fees and costs as provided in this chapter.
- (5) An individual may be denied certification if the director finds that the individual 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 individual who meets the qualifications of paragraph (A)(2) of this rule and pays the application fee shall be issued a certificate.

(B) Procedure for initial certification.

- (1) An individual who applies for certification shall submit to Ohio EPA a complete and current version of an initial application in a manner prescribed by Ohio EPA.
- (2) The individual shall submit full payment of the non-refundable fee, as described in paragraph (B)(1) of rule 3745-300-03 of the Administrative Code.
- (3) The individual shall submit official transcripts from the appropriate educational institutions to verify that the educational qualifications specified in paragraphs (A)(2)(a) and (A)(3) of this rule are met.
- (4) The individual shall submit a certificate of completion that demonstrates the individual's completion of the initial certification training in accordance with paragraph (A)(2)(d) of this rule.
- (5) All documents and information submitted to Ohio EPA pursuant to this paragraph shall be accompanied by an affidavit from the individual affirming that upon knowledge, information, and belief, all information submitted in support of the individual's certification application is true, accurate, and complete.

- (6) Within fourteen days after receipt, Ohio EPA shall conduct a completeness review of an individual's initial certification application, as follows:
 - (a) Ohio EPA shall not consider an incomplete application, and shall notify the individual of any reasons the application is incomplete, and of any additional information required for further consideration of the application.
 - (b) The director shall not initiate final review of an application until Ohio EPA determines that the application is complete.
 - (c) Nothing in this rule prevents Ohio EPA from requiring an individual to promptly provide any information necessary to determine whether to approve or deny certification.
- (7) Within forty-five days after Ohio EPA determines that an application is complete, the director shall either approve or deny certification. The initial certification is valid for one year after the date of approval. If the director denies certification, the director shall provide a letter that describes the deficiencies upon which the certification denial is based.
- (8) Each individual shall demonstrate to the director's satisfaction that the individual meets the requirements for certification. Ohio EPA may require an individual to appear for a personal interview to answer questions pertaining to an application. If a personal interview is scheduled, the time to approve or deny an application as provided in paragraph (B)(7) of this rule shall be extended to twenty days after the date a personal interview is conducted. If an individual twice fails to appear for a personal interview scheduled with Ohio EPA, the application shall be denied unless the director finds such failure to appear was due to circumstances beyond the individual's reasonable control.

(C) Procedure for renewal of certification.

- (1) An individual who applies for certification renewal shall submit to Ohio EPA a complete and current version of a renewal application in a manner prescribed by Ohio EPA. The complete renewal application shall be submitted before certification expires to maintain continuous certification. Submittal of a renewal application after the expiration date shall result in a lapse in the individual's certification.
- (2) A complete renewal application shall include the following:

- (a) Full payment of the annual fee described in paragraph (B)(2) of rule 3745-300-03 of the Administrative Code.
 - (b) Compliance with the standards of conduct described in paragraph (E) of this rule.
 - (c) Fulfillment of the continuing education requirements described in paragraph (C)(3) of this rule.
 - (d) Completion of initial certification training, if applicable, in accordance with paragraph (A)(2)(d) of this rule.
 - (e) All documents and information submitted to Ohio EPA pursuant to this paragraph shall be accompanied by an affidavit from the individual, affirming that upon knowledge, information, and belief, all information submitted in support of the renewal application is true, accurate, and complete.
- (3) To maintain certification, a certified professional either shall demonstrate to the director's satisfaction that the certified professional has completed a minimum of twelve professional development hour units in the certification period, as described in this rule, of relevant continuing education, or shall obtain an excuse or modification of those requirements in accordance with paragraph (C)(10) of this rule. Professional development hour units may be earned as follows:
- (a) Attendance at and successful completion of any of the following:
 - (i) Relevant college courses.
 - (ii) Relevant continuing education courses.
 - (iii) Seminars.
 - (iv) In-house courses.
 - (v) Workshops.
 - (vi) Meetings.

- (vii) Conventions.
 - (viii) Conferences pertaining to investigation, assessment, or remediation of hazardous substances or petroleum.
- (b) Presentation and instruction at any of the following:
- (i) Courses, seminars, workshops, or other meetings identified in paragraph (C)(3)(a) of this rule.
 - (ii) Instruction of courses in biology, chemistry, environmental sciences, geology, hydrogeology, toxicology, scientific subdisciplines, hazardous waste management, appropriate areas of engineering.
 - (iii) Other core courses that do not qualify under paragraph (C)(3)(a) of this rule, but demonstrate the certified professional's knowledge of the subject matter relevant to the investigation, assessment, or remediation of hazardous substances or petroleum.
- (c) 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.
- (4) The conversion of other units of credit to professional development hour units is as follows:
- (a) Once college or unit semester hour equals twenty professional development 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.

- (5) A certified professional's initial presentation or instruction of a course, seminar, workshop, or other meeting described in paragraph (C)(3) of this rule shall be eligible to receive credit for twice the professional development hour units that would be credited for attendance of 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.
- (6) Professional development hour units shall not be earned for the following:
- (a) Any worker health and safety training.
 - (b) Any course, seminar, or workshop designed primarily for hazardous waste facility personnel as 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.
 - (c) Attendance at a course, seminar, or workshop more than once in a certification period.
- (7) A certified professional shall earn a minimum of six of the twelve professional development hour units in the certification period by attendance of courses and seminars conducted by Ohio EPA that are approved for professional development hour units.
- (8) A certified professional who has not submitted a no further action letter to the director in request of a covenant not to sue within the past four calendar years shall demonstrate having done either of the following:
- (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.
 - (b) Attended and completed an alternative Ohio EPA-sponsored course or third-party course approved by Ohio EPA pertaining to the technical implementation of this chapter, and the standards of conduct applicable to a certified professional under this chapter. The course shall be completed within one year prior to any application for certification.
- (9) Documents used to support professional development hour units claimed shall

be submitted with the renewal application and shall include the following:

- (a) A personal log or attendance verification document that shows the date of the activity, type of activity claimed, sponsoring organization, and the actual hours of instruction.
 - (b) Course summaries or conference agendas with details of the sessions attended.
- (10) 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 the following:
- (a) Health reasons, as certified by a medical doctor.
 - (b) Active service in the armed forces of the United States.
- (11) Within fourteen days after receipt, Ohio EPA shall conduct a completeness review of an individual's renewal certification application, as follows:
- (a) Ohio EPA shall not consider an incomplete application, and shall notify the individual of any reasons the application is incomplete, and of any additional information required for further consideration of the application.
 - (b) The director shall not approve or deny an application until Ohio EPA determines that the application is complete.
 - (c) Nothing in this rule prevents Ohio EPA from requiring the individual to promptly provide any information necessary to determine whether to approve or deny certification.
 - (d) If the individual provides the additional information required to complete the application after the expiration date of certification, there shall be a lapse between certification periods. Individuals shall verify that there was no lapse in certification at the time the individual issues any voluntary action opinions.
- (12) The certified professional has thirty days after notification of an incomplete

application to provide additional documentation, such as completion of professional development hour units within the certification period, and to submit such documentation as an addendum in accordance with paragraphs (C)(1) to (C)(2) of this rule.

- (13) If the director determines that the certified professional has not submitted documentation of a completed application, or the certified professional has not complied with a standard of conduct in performance of professional services as described in this rule, the director may deny the renewal certification application. If the director denies renewal of a certification, the director shall provide a letter that describes the reasons for the denial of certification renewal.
- (14) The individual may provide professional services and may render voluntary action opinions under this chapter only when in possession of certification that is issued and is unexpired. Certification expires one year after the date of issuance, unless the certification is suspended or revoked prior to expiration. An individual whose certification expired and was not renewed within sixty days after the expiration date of the certificate shall not apply for renewal certification pursuant to paragraph (C)(1) of this rule, but may apply for certification pursuant to paragraphs (A) and (B) of this rule.

(D) Biocriteria certification.

- (1) If the qualitative habitat evaluation index, index of biotic integrity, modified index of well-being, and the invertebrate community index are used in support of a no further action letter, the certified professional or the certified professional's designated representative shall do the following:
 - (a) Conduct these indices in accordance with the procedures in "Biological Criteria for the Protection of Aquatic Life" (referred to as the "biocriterial manual") only for those indices for which the certified professional or the certified professional's designated representative received approval for under paragraph (D)(1)(b) of this rule.
 - (b) Receive approval by the director for status under paragraph (B) of rule 3745-4-03 of the Administrative Code to be a qualified data collector for level 3 credible data for any one or a combination of the following:
 - (i) Stream habitat assessment.
 - (ii) Fish community biology.

(iii) Benthic macroinvertebrate biology.

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

(2) Qualified data collector level 3 status shall be renewed every two years before qualified data collector level 3 status automatically expires. To renew to qualified data collector level 3 status, the certified professional or the certified professional's designated representative shall meet the renewal requirements for status as a level 3 qualified data collector under paragraph (C) of rule 3745-4-03 of the Administrative Code.

(E) Standards of conduct. The following standards apply to a certified professional only when the certified professional provides professional services under Chapter 3746. of the Revised Code and this chapter:

(1) Professional competency.

(a) A certified professional shall act with care and diligence, and shall 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 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 done either of the following:

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

(ii) Reviewed the work performed by other qualified persons which is required to render the voluntary action opinion.

(2) Professional responsibility.

(a) A certified professional shall hold paramount public health, safety,

welfare, and the environment in the performance of professional services.

- (b) If a certified professional identifies an imminent hazard at a property at which the certified professional is providing professional services, the certified professional shall do the following:
 - (i) Immediately notify the volunteer, or the owner or operator of the property if different from the volunteer, of the imminent hazard.
 - (ii) Immediately notify the volunteer, or the owner or operator of the property if different from the volunteer, of the need for the volunteer or the owner or operator of the property to notify Ohio EPA of the imminent hazard.
 - (iii) Notify Ohio EPA 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 after the imminent hazard was identified that the hazard was addressed, or the director was notified.
- (c) If a certified professional discovers the occurrence of a release at or from a property that is subject to section 3750.06 of the Revised Code, the certified professional shall do the following:
 - (i) Immediately advise the volunteer, or the owner or operator of the property if different from the volunteer, of the condition and the need for the volunteer, owner, or operator of the property if different from the volunteer, to notify Ohio EPA within the applicable time frame established in section 3750.06 of the Revised Code.
 - (ii) Notify Ohio EPA 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 who conducts work in connection with a voluntary action, that significantly deviates from any scope of work, plan, or report developed to comply with this chapter or an order of the director issued under division (B)(3) of section 3746.12

of the Revised Code, the certified professional shall promptly notify the volunteer in writing of such deviation. For purposes of this rule, scope of work or plan includes any operation and maintenance plan and risk mitigation plan that is applicable to the property.

(e) A certified professional shall do the following:

- (i) Exercise independent professional judgment, and be objective in any professional report, statement, or testimony.
- (ii) Comply with 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.
- (iv) When a voluntary action opinion is rendered, 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) If, subsequent to the date a certified professional issued 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 shall do the following:

- (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 for the certified professional to notify Ohio EPA.
- (ii) Notify Ohio EPA that applicable standards were not met if required. For purposes of this rule, the certified professional is required to notify Ohio EPA 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 after the certified professional learns of the relevant facts, data, or other information, that the volunteer, owner, or operator notified Ohio

EPA.

- (g) In the event that a volunteer prevents or attempts to prevent a certified professional from acting in accordance with paragraphs (E)(2)(e)(i) to (E)(2)(e)(iv) of this rule, the certified professional shall sever the certified professional's relationship with the volunteer.
 - (h) A certified professional shall 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 shall cooperate fully in the conduct of audits by the director and shall 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 shall promptly and completely respond to all document requests made by the director under this chapter and Chapter 3746. of the Revised Code.
- (3) Conflicts of interest and contingent fees.
- (a) A certified professional shall 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 shall 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.
 - (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.
 - (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 shall 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 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, either shall terminate the business association, financial interest, or circumstances, or shall 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 shall terminate the certified professional's involvement regarding that voluntary action and shall avoid any further involvement regarding such action.
- (d) A certified professional shall not solicit or accept financial or other consideration from any person in return for specification of or endorsement of the products or services of such person in connection with a voluntary action.
- (e) A certified professional shall not 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 shall 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 determines that all requirements of Chapter 3746. of the Revised Code and this chapter are satisfied.
- (4) Affidavit requirement- voluntary action opinions. Certified professionals shall submit each voluntary action opinion by affidavit pursuant to this paragraph except for no further action letters that are subject to the affidavit provisions of paragraph (Q) of rule 3745-300-13 of the Administrative Code. The certified professional shall submit an affidavit based upon the certified professional's knowledge, information, and belief, which includes the following:
- (a) 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 submitted.
 - (d) Identification of the information, data, documents, or reports included with the voluntary action opinion submitted with the affidavit.
 - (e) Statement attesting that the certified professional has read all of the standards of conduct in paragraph (E) of this rule and is in compliance with the standards of conduct regarding the voluntary action opinion.
 - (f) Statement attesting that 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 shall 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 certification or any information in connection with a voluntary action was falsified.

- (2) 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 any of the following:
 - (a) The certified professional's performance resulted in the issuance of a no further action letter that is not consistent with applicable standards in this chapter or Chapter 3746. of the Revised Code.
 - (b) The certified professional did not substantially comply with section 3746.31 of the Revised Code or paragraph (I)(2) of this rule.
- (3) The director may suspend for a period of not more than five years, or may permanently revoke, a certification if the director finds any of the following:
 - (a) The certified professional violated or failed to comply with the standards of conduct established in paragraph (E) of this rule.
 - (b) The certified professional was denied certification for performing environmental work in this state, another state, or under federal programs.
 - (c) The certified professional's certification to perform environmental work in this state, another state, or under federal programs was revoked or suspended.
 - (d) The certified professional used the certified professional seal described in paragraph (L) of this rule in an unauthorized manner.
 - (e) The certified professional committed an act involving dishonesty, fraud, or deceit.
 - (f) The certified professional's certification was suspended or revoked under this chapter on at least two occasions.
 - (g) The certified professional 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.

- (4) The director may request the certified professional to provide documents, data, or other information to verify the qualifications of the certified professional or to audit the performance of the certified professional. If the certified professional fails to comply with the director's request, the director shall permanently revoke the certification of the certified professional.
 - (5) A certified professional whose certification was suspended or revoked shall immediately provide notification of the suspension or revocation, by certified mail, to all persons who contracted with the certified professional for professional services, or who had a no further action letter prepared by the certified professional. The certified professional shall provide to the director a copy of all notifications required by this paragraph within ten days after the date of the certified mailing.
 - (6) Unless the director first consults with the director of the department of commerce, the director shall not revoke the certification of a certified professional who conducts voluntary actions only at properties contaminated solely with petroleum.
 - (7) The director shall provide at least thirty days prior notice to a certified professional of an ensuing suspension or revocation action by the director. The notice shall include a general explanation of the suspension or revocation action.
- (G) Recertification after suspension or revocation. An individual whose certification was suspended or revoked may apply for recertification after suspension or revocation. Such application shall comply with paragraphs (A) and (B) of this rule.
- (H) If a certified professional no longer intends to retain certification, the certified professional shall return the certificate with a written notice to Ohio EPA indicating intent to withdraw from certification.
- (I) Document retention and production.
- (1) The certified professional's document retention requirements are as follows:
 - (a) A certified professional shall maintain all documents and data prepared or acquired in connection with a voluntary action for a period of at least ten years.

- (b) After ten years, if a certified professional does not intend to retain such documents, the certified professional shall notify Ohio EPA by certified mail of such intent and shall provide Ohio EPA the opportunity to obtain all documents.
 - (c) Documents shall be retained by the certified professional until the notice described in paragraph (I)(1)(d) of this rule is provided and Ohio EPA notifies the certified professional in writing that Ohio EPA does intend to obtain the documents.
 - (d) If Ohio EPA notifies the certified professional in writing that Ohio EPA does not intend to obtain the documents, the certified professional may discard the documents.
 - (e) Notification to Ohio EPA is not required pursuant to this rule as long as a certified professional continues to retain all documents.
 - (f) Upon withdrawal, the certified professional promptly shall provide Ohio EPA the opportunity to obtain all documents maintained under this chapter in the same manner as identified in paragraph (I)(1)(a) of this rule.
- (2) Procedures to address requests for documents that are not in Ohio EPA's possession are as follows:
- (a) Upon the written request of any person for documents not in the possession of Ohio EPA and described on a list included in a no further action letter submitted to the director, Ohio EPA shall send a written request to the certified professional to submit such documents to Ohio EPA within a reasonable period of time.
 - (b) Upon receipt of the written request from Ohio EPA, the certified professional shall submit the original documents to Ohio EPA, within the time period specified in the director's request.
 - (c) Within a reasonable period of time after Ohio EPA receives the requested documents, the Ohio EPA shall provide copies of the documents to the requestor in the same manner as a public record.
 - (d) Any request for reproduction of documents shall be made through Ohio EPA.

(J) Summary reports. A certified professional shall prepare a voluntary action summary report. This report shall do the following:

- (1) Be consistent with the executive summary requirements of rule 3745-300-13 of the Administrative Code.
- (2) Detail 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.
- (3) Be retained by the certified professional.

(K) 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 provided in Chapter 3745. of the Revised Code.

(L) Certified professional's seal.

- (1) To render a voluntary action opinion, each certified professional shall procure and use a device to mark a seal. The separate stamp may be used in addition to the seal device to record the individual's certification dates. The design, arrangement, size, and wording of the seal shall conform with the specifications prescribed by Ohio EPA.
- (2) The certified professional's seal shall apply to the certified professional's official use only in connection with voluntary action opinions for which the certified professional is responsible, and shall not transfer.
- (3) A certified professional shall use the seal to attest that, in the certified professional's professional judgment, the voluntary action opinion upon which the seal appears complies with this chapter and Chapter 3746. of the Revised Code.
- (4) A certified professional shall 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 expired and was not renewed, or was revoked or suspended shall 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.

(M) Out-of-state certified professionals.

- (1) As a condition of certification under this rule, certified professionals located outside the state of Ohio consent to service of process and to personal jurisdiction of any Ohio court or the Ohio environmental review appeals commission in proceedings that 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.
- (2) Out-of-state certified professionals also consent to Ohio EPA'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.

Effective: 10/17/2019
Five Year Review (FYR) Dates: 7/31/2019 and 10/17/2024

CERTIFIED ELECTRONICALLY

Certification

10/07/2019

Date

Promulgated Under: 119.03
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