

[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) No further action letter timing. For the purposes of this chapter and Chapter 3746. of the Revised Code, a no further action letter may be issued pursuant to this rule by a certified professional for a property under one or a combination of the following circumstances:

- (1) After completion of a phase I property assessment conducted in accordance with rule 3745-300-06 of the Administrative Code, a certified professional determines that there is no information that establishes any reason to believe a release of hazardous substances or petroleum has or may have occurred at or upon a property.
  - (2) After completion of a phase I property assessment conducted in accordance with rule 3745-300-06 of the Administrative Code, a certified professional determines a release of hazardous substances or petroleum occurred on the property, and the release is demonstrated in writing to be within a de minimis or previously addressed area in accordance with paragraph (E)(2) of rule 3745-300-06 of the Administrative Code.
  - (3) After completion of a phase II property assessment conducted in accordance with rule 3745-300-07 of the Administrative Code, a certified professional determines the concentrations of chemicals of concern (COCs) pertaining to the property do not exceed the applicable standards.
  - (4) After completion of a phase II property assessment conducted in accordance with rule 3745-300-07 of the Administrative Code, a certified professional determines the concentrations of COCs pertaining to the property exceed the applicable standards but one or both of the following situations occurs:
    - (a) Those applicable standards are achieved through remedial activities.
    - (b) Those applicable standards shall be achieved in accordance with one of the following mechanisms:
      - (i) An operation and maintenance plan, if required under rule 3745-300-11 of the Administrative Code.
      - (ii) A consolidated standards permit issued under section 3746.15 of the
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Revised Code and any rules adopted thereunder.

- (B) Volunteer provides supporting information to certified professional. In order to support a volunteer's request to a certified professional for a no further action letter to be issued by the certified professional, a volunteer, and other persons who perform work to support the issuance of the no further action letter, shall submit to a certified professional, by affidavit, all relevant investigatory and remedial information that pertains to the property. The information shall include, but is not limited to, the following:
- (1) Information that demonstrates that there is no contamination by hazardous substances or petroleum of soil, sediments, surface water, or ground water released on or from the property that exceeds applicable standards. Each demonstration shall be based upon the findings of a phase I property assessment in accordance with rule 3745-300-06 of the Administrative Code or a phase II property assessment in accordance with rule 3745-300-07 of the Administrative Code.
  - (2) Information that demonstrates compliance with rule 3745-300-02 of the Administrative Code regarding the eligibility of the property to participate in the voluntary action program.
  - (3) If remedial activities were conducted in connection with a voluntary action, data that demonstrates that any or all remedies meet or shall meet applicable standards in accordance with paragraph (E) of rule 3745-300-11 of the Administrative Code.
  - (4) For any no further action letter that is not to be submitted to Ohio EPA for a covenant not to sue, the institutional controls needed to restrict the use of the property to comply with applicable standards include a demonstration that all institutional controls for the property are established. The demonstration shall consist of a deed or declaration of the institutional controls that are recorded in the office of the county recorder of the county in which the property is located, or are entered as a memorial in the appropriate register for "registered land" as defined in section 5309.01 of the Revised Code, in compliance with section 3746.14 of the Revised Code. This requirement shall not apply to any no further action letter submitted to Ohio EPA with a request for a covenant not to sue, as provided by paragraphs (B)(5) and (E)(8)(e) of this rule.
  - (5) For any no further action letter that is to be submitted to Ohio EPA for a covenant not to sue, the activity and use limitations needed to comply with

applicable standards include a demonstration that the activity and use limitations were developed in accordance with this chapter and are in a proposed environmental covenant that complies with section 5301.82 of the Revised Code. This requirement applies when the volunteer intends to request from the director a covenant not to sue, or when the volunteer does not intend to request a covenant not to sue but Ohio EPA is obligated to review the no further action letter pursuant to division (C) of section 122.654 of the Revised Code.

- (6) An operation and maintenance plan and a proposed operation and maintenance agreement, for the remedies that require such documents in accordance with rule 3745-300-11 of the Administrative Code.
  - (7) The affidavits required by paragraphs (O) and (P) of this rule.
- (C) Prohibition on withholding information. A person, with the purpose to deceive a certified professional, certified laboratory, or a contractor thereof, or Ohio EPA or a contractor thereof, may not withhold, conceal, or destroy any data, information, records, or documents relating to a voluntary action.
- (D) Certified professional review of information. After receipt of the information that is required to be submitted by a volunteer under paragraph (B) of this rule, a certified professional shall do the following:
- (1) Review the information to determine whether or not the property complies with the applicable standards.
  - (2) Ensure that the information is reviewed by persons with experience and competence in areas other than that of the certified professional, as necessary for the issuance of the no further action letter.
  - (3) Determine that the property meets all eligibility requirements in accordance with rule 3745-300-02 of the Administrative Code.
  - (4) Based on evaluation of the phase I property assessment, complete the following tasks:
    - (a) The certified professional shall use best professional judgment to decide which requirements in paragraphs (C) and (E) of rule 3745-300-06 of the Administrative Code shall be re-evaluated to determine whether or not phase II property assessment is required.

- (b) If any requirements in paragraphs (C) and (E) of rule 3745-300-06 of the Administrative Code require re-evaluation, documentation of the additional information gathered to comply with this paragraph shall be included in an updated phase I property assessment report.
- (5) The following activities shall be performed or completed within one hundred eighty days prior to the issuance of the no further action letter:
  - (a) All requirements in paragraphs (C) and (E) of rule 3745-300-06 of the Administrative Code pursuant to a phase I property assessment, unless paragraph (D)(4)(b) of this rule applies.
  - (b) A walk-over of the property by the certified professional.
- (6) If, in the best professional judgment of the certified professional, no change in environmental conditions at the property has occurred since the requirements in paragraphs (C) and (E) of rule 3745-300-06 of the Administrative Code were performed, such requirements need not be repeated within one hundred-eighty days prior to the issuance of the no further action letter. For purposes of this rule, a change in environmental conditions means new information about known or suspected releases to environmental media that results in one or both of the following:
  - (a) Additional identified areas at the property that are subject to phase II property assessment.
  - (b) Previously identified areas at the property that need further phase II property assessment due to the new information.
- (E) No further action letter preparation and issuance. After performing a review of documents and completion of other activities in accordance with paragraph (D) of this rule, if the certified professional concludes on the basis of best available knowledge, information, and belief that a property meets or shall meet applicable standards, a certified professional may prepare a no further action letter for the property. For any no further action letter prepared, the certified professional shall prepare the no further action letter in the format prescribed by Ohio EPA, and electronic copies of the document shall be indexed appropriately in a format prescribed by Ohio EPA. At a minimum, the no further action letter shall include the following information:

[Comment: In this rule, when "prescribed by Ohio EPA" is used, information about the format and submittal requirements are available on the voluntary action

program's web site.]

- (1) A statement that the property is eligible to participate in the voluntary action program pursuant to rule 3745-300-02 of the Administrative Code.
- (2) A statement of whether or not a risk assessment was performed pursuant to rule 3745-300-09 of the Administrative Code.
- (3) The name, title, and employer of each person who performed work, other than the certified professional, to support the no further action letter, and the nature and scope of the work performed by that person.
- (4) A list of all documents and affidavits prepared in accordance with paragraphs (O) and (P) of this rule, and the date such documents and affidavits were prepared, which were reviewed by the certified professional as described in paragraph (B) of this rule in preparing the no further action letter.
- (5) An executive summary, to be filed with deed records, of the information required to be submitted by the volunteer to the certified professional. The executive summary shall do the following:
  - (a) Reflect the content and demonstrations by which the property complies with the applicable standards.
  - (b) Meet the recording requirement of paragraph (L) of this rule.
  - (c) Reference the legal description and surveyed acreage of the property.
- (6) A detailed executive summary, not to be filed with deed records, of the information required to be submitted by the volunteer to the certified professional. The detailed executive summary shall do the following:
  - (a) Reflect the content and demonstrations by which the property complies with the applicable standards.
  - (b) Identify the applicable standards for the property that reflect the certified professional's conclusion that the property complies with the applicable standards for each complete exposure pathway identified under paragraph (F)(1) of rule 3745-300-07 of the Administrative Code.
  - (c) Verify that the demonstration of compliance with the applicable standards

is based on certified data that is generated by a certified laboratory pursuant to rule 3745-300-04 of the Administrative Code, if such data is required by rule 3745-300-07 of the Administrative Code.

- (d) Provide a description of all COCs identified in the environmental media on or from the property, the source of the COCs, if known, and the locations and concentration levels of the COCs prior to any remediation. (The no further action letter also shall provide this information in a summary table format.)
- (7) Summary of figures and maps. The no further action letter shall include an electronic file as available which includes the map data formatted in a manner prescribed by Ohio EPA. The property maps shall include, but are not limited to, the following:
- (a) Property location map, as required by paragraph (G)(5)(a) of rule 3745-300-06 of the Administrative Code, in a format that maintains readability even if reproduced without color. Include a version scaled for printing on "8.5 x 11" inch-sized paper.
  - (b) A boundary survey plat or plats completed (signed and sealed) by a professional surveyor licensed under Ohio law that includes a version scaled for printing on "8.5 x 11" inch-sized paper. Provide a simplified plat of the boundary survey that maintains readability when printed on "8.5 x 11" inch-sized paper. Such plat shall depict the following:
    - (i) The boundary of the property that is the subject of the no further action letter.
    - (ii) The acreage of the property.
    - (iii) Each current tax parcel number that applies to the property. For any portion of the property that includes less than an entire tax parcel, the plat shall indicate the affected tax parcel numbers and shall depict the included and excluded portions.

[Comment: No highly detailed survey plat, such as an "American Land Title Association/American Congress on Surveying and Mapping" (ALTA/ACSM) survey, fulfills this rule. Instead, this rule requires a simple boundary survey that presents the specified information in a reducible and reproducible plat format.]

- (c) Site maps that show the property boundary, buildings, roads, utilities, surface waters, geologic cross-section locations, and other site features, as applicable.
- (d) Geologic cross-sections, which include water level and saturated zone thickness if applicable.
- (e) Ground water flow maps, which include water level measurements if applicable.
- (f) The location of each identified area and exposure unit, if any, which were evaluated in making the determination that the property complies with applicable standards.
- (g) The locations of all borings, monitoring wells, and other sampling locations, as required by paragraph (J)(14)(a) of rule 3745-300-07 of the Administrative Code, if applicable.
- (h) Conceptual site model figure or diagram, if applicable.
- (i) Site maps that show the location of remedial activities performed, if applicable.
- (j) The locations where remedial activities were or are being implemented pursuant to rule 3745-300-11 of the Administrative Code.
- (k) A survey plat or plats, completed (signed and sealed) by a professional surveyor licensed under Ohio law, that delineates the portions of the property that are subject to engineering controls or any activity and use limitations, as required by paragraph (J)(14)(e) of rule 3745-300-07 of the Administrative Code. The plat shall be scaled for printing on "8.5 x 11" inch-sized paper. The plat shall maintain readability when printed as an attachment to the plan.
- (l) All maps required by this rule shall include the following:
  - (i) A citation that indicates accuracy including the author, and date of current source.
  - (ii) Scale. The scale shall maintain readability even if reproduced

without color.

(8) Summary tables which provide the following:

(a) Regarding all COCs identified in environmental media on or from the property, the summary tables shall include the following:

(i) A description of the COCs by name or type.

(ii) The source of such COCs, if known.

(iii) The locations and concentration levels in affected media prior to any remediation.

(iv) The concentration levels at the time of issuance of the no further action letter.

(b) Summary exposure point concentrations for current and reasonable anticipated post-remedy pathways, if applicable, in soil, ground water, and vapor intrusion pathways.

(9) When institutional controls (use restrictions or activity and use limitations) are relied upon for the property to comply with applicable standards, provide a demonstration as applicable.

(a) When the volunteer does not intend to request a covenant not to sue from the director, and Ohio EPA is not obligated to review the no further action letter pursuant to division (C) of section 122.654 of the Revised Code, the following document is required:

(i) A copy of the institutional controls (use restrictions), that is one of the following:

(a) Bearing the mark of recordation of the county recorder's office of the county in which the property is located.

(b) Entered in the appropriated register for "registered land," as defined in section 5309.01 of the Revised Code.

(ii) The institutional controls shall be consistent with rule 3745-300-11



of the Administrative Code and other applicable laws.

(b) When the volunteer intends to either request a covenant not to sue from the director, or to request that the director make a determination pursuant to division (C) of section 122.654 of the Revised Code, the following document is required:

(i) A copy of the proposed environmental covenant for the property that is both of the following:

(a) In compliance with section 5301.82 of the Revised Code.

(b) Includes the activity and use limitations developed in accordance with rule 3745-300-11 of the Administrative Code and other applicable laws.

(ii) If only a portion of the property is the subject to the activity and use limitations (i.e., the activity and use limitations do not apply to the entire property), the environmental covenant shall include additional legal description and survey plat of the portion of the property that is subject to the activity and use limitations. The survey plat shall be completed by a professional surveyor under Ohio law. The plat shall be scaled for printing on "8.5 x 11" inch-sized paper. The plat shall maintain readability when printed as an attachment to the environmental covenant.

(10) A legal description of the property that is subject to the no further action letter.

(11) A copy of the operation and maintenance plan and a copy of the proposed operation and maintenance agreement prepared in accordance with rule 3745-300-11 of the Administrative Code, if the documents are required by that rule.

(12) A copy of the risk mitigation plan prepared in accordance with rule 3745-300-11 of the Administrative Code, if the plan is required by that rule.

(13) A copy of the consolidated standards permit and supporting documents issued pursuant to section 3746.15 of the Revised Code, if any.

(14) A copy of the approval of a variance or case-by-case determination obtained pursuant to rule 3745-300-12 of the Administrative Code, if any.

- (15) A copy of the affidavit prepared in connection with the voluntary action by which the certified professional issued the no further action letter in accordance with paragraph (Q) of this rule and rule 3745-300-05 of the Administrative Code.
  - (16) Any other information the certified professional considers relevant.
- (F) Certified professional's request to the volunteer. Upon issuance of a no further action letter, the certified professional shall send a copy of the no further action letter to the volunteer. The no further action letter shall be accompanied by the following:
- (1) A written request that the volunteer notify the certified professional as to whether or not the volunteer directs the certified professional to submit the no further action letter to Ohio EPA.
  - (2) A written notice informing the volunteer of the following:
    - (a) The no further action letter may be submitted to Ohio EPA only by a certified professional.
    - (b) The volunteer may receive a covenant not to sue in connection with the voluntary action only if the certified professional submits the no further action letter to Ohio EPA on behalf of the volunteer.
  - (3) An affidavit, prepared in accordance with paragraph (Q) of this rule, by the certified professional who issued the no further action letter.
- (G) Volunteer's notice to certified professional. Promptly after receipt of the no further action letter and the request described in paragraph (F)(1) of this rule, the volunteer shall do the following:
- (1) Provide notice to the certified professional which indicates whether or not the volunteer directs the certified professional to submit the no further action letter to Ohio EPA in a manner prescribed by Ohio EPA.
  - (2) Provide notice to Ohio EPA which indicates whether or not the volunteer directs the certified professional to submit the no further action letter to Ohio EPA.
- (H) Certified professional's response to volunteer's notice. Promptly after receipt of the written notice pursuant to paragraph (G) of this rule, the certified professional shall

do either of the following:

- (1) Submit an electronic version of the no further action letter to Ohio EPA, in a manner prescribed by Ohio EPA, on behalf of the volunteer, if the volunteer's notice indicates that the volunteer directs the certified professional to submit the no further action letter to Ohio EPA. The no further action letter shall include the following:
    - (a) The certified professional's original affidavit executed in accordance with paragraph (Q) of this rule.
    - (b) Administrative information, in accordance with paragraph (I) of this rule.
    - (c) A transmittal letter, in accordance with paragraph (F) of this rule.
    - (d) Volunteer notification to the certified professional, in accordance with paragraph (G) of this rule.
  - (2) Send the original no further action letter to the volunteer promptly after receipt of the notice, if the notice indicates that the volunteer does not direct the certified professional to submit the no further action letter to Ohio EPA.
- (I) Request for a covenant not to sue. When the certified professional submits the no further action letter to Ohio EPA, in accordance with paragraph (G) of this rule, the certified professional shall submit the no further action letter in the format prescribed by Ohio EPA and described in paragraph (E) of this rule, and shall provide administrative information for Ohio EPA to process the request. The administrative information shall include the following:
- (1) Identification of the tax parcel numbers and the taxing districts for the property. If any portion of the property includes less than an entire tax parcel, the no further action letter shall include a map that indicates the affected tax parcel numbers, and the included and excluded portions, as described in paragraph (E)(7) of this rule.
  - (2) Payment and fees information based on the current fee structure defined by Ohio EPA.
  - (3) Eligibility determination of class C releases and non-class C releases of underground storage tank systems regulated by the bureau of underground storage tank regulations.

- (4) Property information including the name and contact information of the volunteer, the certified professional, and the property owner.
  - (5) Remedy information, including whether or not the no further action letter includes a proposed environmental covenant, an operation and maintenance plan, or a risk mitigation plan.
  - (6) The date that remedial activities began for the property, and a description of the remedial activities that began on that date.
- (J) [Reserved.]
- (K) Withdrawal of request for a covenant not to sue. The volunteer may, through the certified professional, withdraw from Ohio EPA the submittal of a no further action letter for the property and the request for a covenant not to sue.
- (L) Recording of documents by the volunteer. If a covenant not to sue is issued by the director, the volunteer who is issued the covenant not to sue shall ensure that the certified professional's executive summary of the no further action letter, in the format described in paragraph (E) of this rule, the covenant not to sue, and the environmental covenant for the property, if any, are recorded, in the same manner as a deed to the property, in the office of the county recorder of the county in which the property is located.
- (M) Submittal of supporting documentation. Upon receipt of the covenant not to sue by the volunteer, the certified professional shall provide, at a minimum, the following supporting documentation evaluated by the certified professional in accordance with paragraph (D) of this rule to determine that the property meets or shall meet applicable standards and that the property was eligible to participate in the voluntary action program, as applicable:
- (1) The phase I property assessment report completed in accordance with rule 3745-300-06 of the Administrative Code, and any updates to the phase I property assessment report.
  - (2) Any sampling plans, remediation reports, closure reports, laboratory reports with dates, and compliance reports.
  - (3) The phase II property assessment report completed in accordance with rule 3745-300-07 of the Administrative Code.

- (4) A description of all COCs identified in environmental media, the source of such COCs, if known, and the locations and concentration levels of such COCs prior to and after any remediation.
  - (5) A property-specific risk assessment report completed in accordance with rule 3745-300-09 of the Administrative Code, if such a property-specific assessment was used in lieu of, or in addition to, generic numerical standards established in rule 3745-300-08 of the Administrative Code.
  - (6) Information that demonstrates that the property conforms with each of the exposure assumptions used to calculate the applicable standards for the property, including all exposure assumptions used to calculate the generic numerical standards established in rule 3745-300-08 of the Administrative Code and all exposure assumptions used to determine the applicable standards under rule 3745-300-09 of the Administrative Code, as applicable to the property.
  - (7) All affidavits prepared in connection with the voluntary action in accordance with paragraphs (O) to (Q) of this rule, and as required by rules 3745-300-04 and 3745-300-05 of the Administrative Code.
  - (8) Documentation of the measures completed to justify a pathway deferral, if a pathway deferral was completed in accordance with rule 3745-300-11 of the Administrative Code.
  - (9) Any other information the certified professional considers relevant.
- (N) Transfers. A no further action letter, a covenant not to sue, and any agreement authorized to be entered into under Chapter 3746. of the Revised Code and this chapter may be transferred by the recipient to any other person by assignment or in conjunction with the acquisition of title to the property to which such document applies.
- (O) Affidavit requirement for volunteers and persons who performed work to support a request for issuance of a no further action letter. When a volunteer or a person who performed work to support a request for the issuance of a no further action letter submits information, data, documents, or reports to a certified professional, a certified laboratory, or Ohio EPA, the volunteer or person shall provide the submittal under affidavit. The affidavit shall be based on the knowledge, information, and belief of that volunteer or person, and shall include the following:
- (1) The name of the affiant.

(2) A statement that the affiant is authorized to submit the affidavit on behalf of the volunteer, with the name of the entity with whom the affiant is employed or retained if the affiant is not employed or retained by the volunteer.

(3) The name and address of the property subject to the voluntary action.

(4) The purpose for which the information, data, documents, or reports are submitted.

[Comment: For example, when a person performs work to support a request for issuance of a no further action letter, such as a consultant who completes a phase I property assessment or a property-specific risk assessment report, the consultant's affidavit identifies the submittal purpose and the report name.]

(5) An identification of all information, data, documents, or reports submitted with the affidavit.

(6) When information, data, documents, or reports are submitted to a certified professional to support a request for issuance of a no further action letter, a statement that the work indicated by the submittal was conducted in compliance with all applicable local, state, and federal laws and regulations.

(7) A statement attesting that all information, data, documents, or reports submitted by the affiant are true, accurate, and complete.

[Comment: Paragraph (O) of this rule does not apply to information, data, documents, or reports provided by any federal, state, or local governmental entity in response to a public records request.]

(P) Affidavit requirement for certified laboratories. The information, data, documents, or reports submitted by a certified laboratory to a volunteer, a certified professional, Ohio EPA, or any other person to support a request for issuance of a no further action letter shall be submitted by affidavit. Each time that information, data, documents, or reports are submitted by a certified laboratory in order to conduct or complete a voluntary action, an authorized representative of the certified laboratory shall submit an affidavit based upon the certified laboratory's knowledge, information, and belief, that includes the following:

(1) The name of the affiant.

(2) A statement attesting that the affiant is authorized to submit the affidavit on behalf of the certified laboratory.

- (3) Name and address of the property that is the subject of the voluntary action.
  - (4) A statement attesting that the purpose for which the information, data, documents, or reports are submitted is to support a request for issuance of a no further action letter.
  - (5) An identification of all information, data, documents, or reports submitted with the affidavit.
  - (6) A statement attesting that the certified laboratory performed the analyses documented in the submittal in accordance with the laboratory's current certificate issued under the voluntary action program, and that the laboratory was certified for each analyte, parameter group, and method used at the time the laboratory performed the analyses.
  - (7) A statement attesting that, at the time of analysis, the analyses were performed pursuant to the certified laboratory's standard operating procedures and quality assurance program plan in accordance with rule 3745-300-04 of the Administrative Code.
  - (8) A statement attesting that all information, data, documents, or reports submitted by the certified laboratory in support of the request for issuance of a no further action letter are true, accurate, and complete.
- (Q) Affidavit requirement for the certified professional. For each no further action letter issued to a volunteer or submitted to Ohio EPA that requests a covenant not to sue from the director, the certified professional shall submit an affidavit with the no further action letter. Each affidavit shall be issued based upon the certified professional's knowledge, information, and belief, and shall include the following:
- (1) The name of the certified professional.
  - (2) The name and address of the property that is the subject of the no further action letter, each volunteer, and the property owner.
  - (3) A statement attesting that the certified professional read all standards of conduct in paragraph (E) of rule 3745-300-05 of the Administrative Code and met the standards of conduct while the certified professional rendered professional services regarding the voluntary action at the property.
  - (4) A statement attesting that the property is eligible for the voluntary action

program pursuant to rule 3745-300-02 of the Administrative Code and section 3746.02 of the Revised Code.

- (5) A statement attesting that the voluntary action was conducted, and that the no further action letter was issued in accordance with this chapter and Chapter 3746. of the Revised Code.
- (6) A statement attesting that the voluntary action was conducted in compliance with all applicable local, state, and federal laws and regulations and any previous noncompliance was addressed in accordance with such laws and regulations.
- (7) A statement attesting that the no further action letter, and any information, data, documents, or reports submitted with the no further action letter are true, accurate, and complete.

[Comment: To assist in compliance with this rule, Ohio EPA provides example affidavit language on Ohio EPA's voluntary action program web site.]



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Certification

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