

3745-300-01 **Definitions.**

(A) Except as otherwise provided in this chapter, the following definitions are applicable:

- (1) "Activity and use limitations" are one or more restrictions or obligations created under sections 5301.80 to 5301.92 of the Revised Code with respect to real property. Activity and use limitations eliminate or mitigate exposure to a release of hazardous substance or petroleum. Examples of activity and use limitations include but are not limited to land use limitations and ground water extraction limitations. The term is known as institutional controls in 3745-300-07, 3745-300-08, 3745-300-09, 3745-300-10, 3745-300-14 and 3745-300-15 of the Administrative Code.
- (2) "Affected media" are any environmental media present on or off property that contain concentrations of chemical(s) of concern.
- (3) "Affiliated" means under common ownership or control.
- (4) "Agency" or "Ohio EPA" means the Ohio environmental protection agency.
- (5) "Applicable standards," unless the context indicates otherwise, means standards established in or pursuant to sections 3746.05, 3746.06, and 3746.07 of the Revised Code, or rule 3745-300-07, 3745-300-08, 3745-300-09, 3745-300-10, or 3745-300-15 of the Administrative Code, as applicable.
- (6) "Background levels" are the concentrations of naturally occurring hazardous substances or petroleum at a property or at nearby off-property locations that are unaffected by any current or past activities involving the management, handling, treatment, storage, or disposal of hazardous substances or petroleum. Background levels include only naturally occurring substances, but exclude naturally occurring substances from anthropogenic sources.
- (7) "Certified laboratory" is a laboratory certified by the director pursuant to rule 3745-300-04 of the Administrative Code, or deemed to be certified under division (E) of section 3746.07 of the Revised Code to perform analyses in connection with voluntary actions.
- (8) "Certified professional" is a person certified by the director pursuant to rule 3745-300-05 of the Administrative Code to issue no further action letters under section 3746.11 of the Revised Code.
- (9) "Chemical(s) of concern" are specific constituents of hazardous substances or petroleum which are on, underlying or emanating from a property, and are identified during a voluntary action.

- (10) "Cumulative risk" is the total risk associated with multiple chemicals and/or multiple exposure routes.
- (11) "Director" is the director of the Ohio environmental protection agency, or the director's designee.
- (12) "Document" is any record, device, or item, regardless of physical form or characteristic, including but not limited to, electronic or hard copy records of reports, studies, data, correspondence, and all other information.
- (13) "Engineering control" is any man-made structure or system that effectively and reliably eliminates or mitigates human or important ecological resource exposure to hazardous substances or petroleum on, underlying or emanating from a property, which is protective of human health, safety and the environment. Examples of engineering controls include, but are not limited to, cap systems and ground water gradient systems.
- (14) "Environmental covenant" is, for the purposes of this chapter, a servitude that imposes activity and use limitations on property that is the subject of a no further action letter submitted with a request for a covenant not to sue under section 3746.11 of the Revised Code. An environmental covenant meets the requirements established in section 5301.82 of the Revised Code.
- (15) "Environmental media" are soil, sediment, surface water, and ground water. Environmental media also include naturally occurring transitional zones between soil, sediment, surface water or ground water, such as bedrock, soil gas, and air.
- (16) "Exposure" is contact of a receptor with a chemical(s) of concern that is quantified as the amount of the chemical(s) of concern available for absorption at the exchange boundaries of the organism, such as the skin, lungs or gastrointestinal tract.
- (17) "Exposure factor" is a parameter that defines one term in an equation used to quantify the exposure of a receptor to a chemical of concern by means of one exposure pathway. Exposure factors may be represented by point values or by a distribution of values.
- (18) "Exposure pathway" is a mechanism by which a receptor is exposed to chemical(s) of concern.
- (19) "Ground water" is, for purposes of conducting a voluntary action, water underlying a property in a saturated zone that:

- (a) Is capable of yielding, within eight hours after purging, a minimum of one and one-half gallons of water as determined in accordance with paragraph (D)(7) of rule 3745-300-07 of the Administrative Code; and
- (b) Has an in situ hydraulic conductivity greater than 5.0×10^{-6} centimeters per second as determined in accordance with standards of paragraph (D)(7) of rule 3745-300-07 of the Administrative Code.

This definition only applies to voluntary actions conducted under Chapter 3746. of the Revised Code and this chapter.

- (20) "Hazard index" is a numerical value that describes the potential for threshold-effect non-carcinogenic toxicity to occur in an individual as a result of exposure to multiple chemicals of concern over a specified time period through an exposure pathway(s). This numerical value is expressed as the unitless sum of the hazard quotient values for each of the chemical(s) of concern and for each pathway.
- (21) "Hazardous substance" includes all of the following:
 - (a) Any substance identified or listed in rules adopted under division (B)(1)(c) of section 3750.02 of the Revised Code;
 - (b) Any product registered as a pesticide under section 921.02 of the Revised Code when the product is used in a manner inconsistent with its required labeling;
 - (c) Any product formerly registered as a pesticide under that section for which the registration was suspended or canceled under section 921.05 of the Revised Code; and
 - (d) Any mixture of a substance described in paragraphs (A)(21)(a) to (A)(21)(c) of this rule with a radioactive material.
- (22) "Identified area" is a location at a property where a release of hazardous substances or petroleum has or may have occurred.
- (23) "Important ecological resource" is any specific ecological community, population or individual organism protected by federal, state or local laws and regulations, or ecological resources that provide important natural or economic resource functions and values. Important ecological resources include, but are not limited to: any surface water, as that term is used in Chapter 3745-1 of the Administrative Code; any wetland regulated under federal law and state of Ohio's water quality laws; any dedicated natural area or preserve; any federally-listed or state-listed threatened or endangered species and its associated habitat; any state of Ohio special interest or declining species and its associated habitat;

any national park; any federally designated wilderness area; any national lakeshore recreational area; any national preserve; any national or state wildlife refuge; any federal, state or local land designated for the protection of natural ecosystems; any federally-designated or state-designated scenic or wild river; any federal or state land designated for wildlife or game management; and wildlife populations and their associated important nesting areas and food resources, taking into consideration land use and the quality and extent of habitat on and in the vicinity of the property.

[Comment: The definition of important ecological resource is, however, meant to exclude terrestrial areas such as mowed or maintained green spaces (e.g., manicured lawns), industrial, or other areas that do not exhibit, or exhibit only minimal, natural functions. In addition, because they are not members of natural communities, any of the following should not be considered "ecologically important": any pest and opportunistic species that populates an area because of artificial or anthropogenic conditions; any domestic or once domesticated animals (e.g., pets, livestock, or feral animals); any plant or animal whose existence is maintained by continuous human intervention (e.g., agricultural crops).

Industrialized properties may have limited green space around buildings, roadways, parking lots, etc., and there may be a limited number of trees with nests, but this type of situation generally would not be considered to be providing important nesting areas and food resources to wildlife populations. However, there may be situations where industrialized properties contain limited habitat capable of supporting populations or individuals of important receptors and therefore would require an ecological evaluation. For example, a small area (less than 0.5 acre) may be considered an important ecological resource if important functions are provided by the area (e.g., a vernal pool that provides breeding habitat for a state declining species of amphibian).

Thus, the determination as to whether a particular property contains or could potentially impact an important ecological resource, requires an evaluation of habitat on and in the locality of the property. Habitat evaluation is the critical decision criterion for determining whether an important ecological resource is or is potentially associated with the property and therefore trigger the requirement for an ecological risk assessment.]

- (24) "Institutional control" is a restriction that is recorded in the same manner as a deed which limits access to or use of the property such that exposure to hazardous substances or petroleum are effectively and reliably eliminated or mitigated. Examples of institutional controls include land and water use restrictions.

- (25) "Ninety-five percent upper confidence limit" or "ninety-five percent UCL" is the upper limit of an interval within a frequency distribution curve in which the observed mean of a data set will occur ninety-five percent of the time.
- (26) "Owner or operator" includes both of the following:
- (a) Any person owning or holding a legal, equitable, or possessory interest in or having responsibility for the daily activities on a property; and
 - (b) In the case of property title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state, any person who owned, operated, or otherwise controlled activities occurring on the property before the conveyance.
- (27) "Peer-reviewed" is a document or study that meets the following criteria:
- (a) The document or study has been published in a recognized scientific journal or publication;
 - (b) The document or study is generally-accepted within the scientific community as being accurate and reliable; and
 - (c) The results contained in the document or study have been independently reproduced or the methods described in the document or study have been proven to produce consistent results.
- (28) "Person" is defined in section 1.59 of the Revised Code and also includes this state, any political subdivision of this state, any other body of this state or of a political subdivision of this state, and the United States and any agency or instrumentality thereof.
- (29) "Petroleum" is oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, used oil, substances or additives utilized in the refining or blending of crude petroleum or petroleum stock, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, and mixtures of natural gas and synthetic gas.
- (30) "Phase I Property Assessment" is all the activities required to evaluate a property in accordance with rule 3745-300-06 of the Administrative Code, Chapter 3746. of the Revised Code and the standards provided in division (B) of section 3746.07 of the Revised Code.
- (31) "Phase II Property Assessment" is all the activities required to evaluate a property in accordance with rule 3745-300-07 of the Administrative Code,

Chapter 3746. of the Revised Code and the standards provided in division (C) of section 3746.07 of the Revised Code.

- (32) "Point of compliance" is any location on or off the property to which applicable standards must be met and maintained.
- (33) "Property," except for the purposes of sections 3746.02, 3746.26, and 3746.27 of the Revised Code, is any parcel of real property, or portion thereof, and any improvements thereto, the limits of which have been described in writing by the owner of record or a legally appointed representative of the owner and that is or has been the subject of a voluntary action under this chapter and Chapter 3746. of the Revised Code.
- (34) "Property-specific risk assessment" is an analysis conducted in accordance with the requirements of rule 3745-300-09 of the Administrative Code. This process - includes the following steps:
 - (a) Selection of chemicals of concern;
 - (b) Exposure assessment;
 - (c) Toxicity assessment; and
 - (d) Risk characterization, including uncertainty.
- (35) "Radioactive material" is a substance that spontaneously emits ionizing radiation.
- (36) "Reasonably available" is a situation under which information is:
 - (a) Publicly available or known of and available to the volunteer or owner/operator of the property;
 - (b) Provided or made available by the source within ninety days of receiving a written request; and
 - (c) Practically reviewable.
- (37) "Receptor or receptor population" means humans or important ecological resources that are reasonably anticipated to come in contact with chemicals of concern, based on the distribution of the chemicals of concern on the property and the activity patterns of those humans or important ecological resources on or off the property.
- (38) "Release", as defined in section 3745.01 of the Revised Code, is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, migrating, dumping, or disposing of any hazardous substance or petroleum into the environment, including, without limitation, the abandonment or discarding of barrels, containers, or any other closed receptacle containing any hazardous substance, petroleum, or pollutant or contaminant. "Release" does not include any of the following:

- (a) Any release that results solely in the exposure of individuals to hazardous substances or petroleum in the workplace with respect to which those individuals may assert a claim against their employer and that is regulated under the "Occupational Health and Safety Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended, and regulations adopted under that act, or under Chapter 4167. of the Revised Code and rules adopted under it;
 - (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
 - (c) Any release of a source, byproduct, or special nuclear material from a nuclear incident, as "source material," "byproduct material," "special nuclear material," and "nuclear incident" are defined in the "Atomic Energy Act of 1954," 68 Stat. 919, 42 U.S.C.A. 2011, as amended, if the release is subject to financial protection requirements under section 170 of that act unless any such material is mixed with a hazardous substance or petroleum;
 - (d) Any federally permitted release as defined in section 101(10) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 3300, 42 U.S.C.A. 9601, as amended; or
 - (e) The normal application of a fertilizer material that is intended to improve the quality or quantity of plant growth.
- (39) "Remedy" or "remedial activities" are actions that are taken at a property to treat, remove, transport for treatment or disposal, dispose of, contain, or control hazardous substances or petroleum, which are protective of public health and safety and the environment, and which are consistent with a permanent remedy, including, without limitation, excavation, treatment, off-property disposal, the use of engineering or institutional controls or measures, the issuance and implementation of a consolidated standards permit under section 3746.15 of the Revised Code, and the entering into and implementation of an operation and maintenance agreement pursuant to section 3746.12 of the Revised Code.
- (40) "Revised Code" is the Ohio Revised Code, a codification of all of the Ohio statutes of a general and permanent nature.
- (41) "Sediment" is unconsolidated inorganic and organic material that has precipitated and deposited below surface waters. Sediment includes:

- (a) Materials below the water surface under bankfull conditions in streams, lakes and ditches;
 - (b) Materials below normal pool elevation for reservoirs;
 - (c) Materials within the federal jurisdictional boundaries of wetlands;
 - (d) Materials below maximum capacity for ponds and lagoons; and
 - (e) Materials found below the ordinary high water mark (OHWM) of lake Erie, as defined by International Great Lakes Datum (IGLD).
- (42) "Source" is either:
- (a) An event which releases hazardous substances or petroleum into environmental media; or
 - (b) A vessel or impoundment which contains hazardous substances or petroleum and from which a release of hazardous substances or petroleum has occurred or is occurring.
- (43) "Source area" is any affected media containing chemical(s) of concern that is acting, has acted, or has the potential to act as a source of chemical(s) of concern to other environmental media.
- (44) "This chapter" is Chapter 3745-300 of the Administrative Code.
- (45) "Unrestricted potable use standard" means ground water standards based on the assumption that ground water will be used as a source of water for drinking, cooking, showering, and bathing. Unrestricted potable use standards include generic unrestricted potable use standards in accordance with rule 3745-300-08 of the Administrative Code and risk-derived unrestricted potable use standards developed in accordance with rule 3745-300-09 of the Administrative Code.
- (46) "Upper-bound value" is a parameter value from a distribution of such values which is contained within the highest decile (ten percent) of that distribution.
- (47) "Voluntary action" is a series of measures that may be undertaken to identify and address contamination and potential sources of contamination of properties by hazardous substances or petroleum and to establish that the property complies with applicable standards. "Voluntary action" may include, without limitation: a Phase I property assessment; a Phase II property assessment; a sampling plan; a remedial plan; remedial activities; or such other actions the volunteer considers to be necessary or appropriate to address the contamination, followed by the issuance of a no further action letter indicating that the property complies with applicable standards. To demonstrate that applicable standards

have been met, the person undertaking such measures must establish either that there is no information indicating that there has been a release of hazardous substances or petroleum at or upon the property or that there has been a release of hazardous substances or petroleum at or upon the property and that applicable standards were not exceeded or have been or will be achieved in accordance with Chapter 3746. of the Revised Code and this chapter.

- (48) "Volunteer" is a person conducting a voluntary action and any authorized representative of the person conducting the voluntary action.

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Certification

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