

3745-300-13 Content and scope of no further action letters.

(A) For the purposes of this chapter and Chapter 3746. of the Revised Code, a no further action letter may be issued 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 that 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 that there was a release of hazardous substances or petroleum on the property, but that the only release(s) is demonstrated in writing to be de minimis under paragraph (G) 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 that information indicates that the concentrations of chemical(s) of concern at the property do not exceed the applicable standards; or
- (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 that information indicates that-the concentrations of chemical(s) of concern at the property exceed the applicable standards identified for the property. However, the certified professional determines that those applicable standards identified for the property have been achieved through remedial activities or will be achieved in accordance with either-an operation and maintenance plan or agreement if required under rule 3745-300-15 of the Administrative Code, or a consolidated standards permit issued under section 3746.15 of the Revised Code and any rules adopted thereunder.

(B) In order to obtain a no further action letter, a volunteer must submit to a certified professional all relevant investigatory and remedial information pertaining to the property including, but not limited to:

- (1) Information demonstrating that there is no contamination by hazardous substances or petroleum of soil, sediments, surface water, or ground water on or underlying the property in concentrations exceeding the applicable standards. The demonstrations MUST be based upon the findings of a “Phase I or Phase II Property Assessment” conducted in accordance with rules 3745-300-06 and 3745-300-07 of the Administrative Code;
- (2) If remedial activities were conducted in connection with a voluntary action, data

demonstrating that any or all remedies meet or will meet applicable standards in accordance with this chapter;

- (3) If a remedy relies on restrictions on the use of the property to meet or achieve applicable standards, a demonstration that any or all use restrictions on the property have been recorded in the office of the county recorder of the county in which the property is located, or have been 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; and
 - (4) An operation and maintenance plan or agreement for any remedies described in paragraph (F)(1) of rule 3745-300-15 of the Administrative Code, when such remedies are utilized at the property.
- (C) No person, with the purpose to deceive a certified professional, certified laboratory or a contractor thereof, or the agency or a contractor thereof, may withhold, conceal, or destroy any data, information, records, or documents relating to a voluntary action.
- (D) After receiving the information which is required to be submitted by a volunteer under paragraphs (B) and (C) of this rule, a certified professional ~~shall~~ MUST perform work or review work of other persons that was conducted to support the request for the no further action letter, or must ensure that the work has been performed and reviewed by other persons with experience and competence in areas other than the certified professional's expertise and competence, as necessary for the issuance of the no further action letter.
- (E) If, on the basis of the best available knowledge, information and belief, the certified professional concludes that a property meets or will meet applicable standards, a certified professional may prepare a no further action letter for the property. The no further action letter must contain, at a minimum, the following information:
- (1) A legal description of the property;
 - (2) Site maps, including, but not limited to the following:
 - (a) The boundaries of the property to which the no further action letter pertains, as determined by a property survey conducted by a professional skilled in the appropriate discipline(s);
 - (b) The latitude and longitude of the property to the nearest second;
 - (c) The existing topography delineating streams, swamps, lakes, springs, and other surface waters, with a contour interval of no greater than five feet;
 - (d) Any improvements, including all roads, railroads and above and below ground structures and

appurtenances;

- (e) Locations of all borings, monitoring wells, or other sampling locations;
- (f) The location and identification of any engineering controls and the portion of the property to which they apply; and
- (g) The identification of any use restrictions on the property;
 - (3) The “Phase I Property Assessment” report completed in accordance with rule 3745-300-06 of the Administrative Code.
 - (4) The “Phase II Property Assessment” report completed in accordance with rule 3745-300-07 of the Administrative Code.
 - (5) Identification of the groundwater classification for the property and the basis for that classification in accordance with rule 3745-300-10 of the Administrative Code.
 - (6) Identification of all applicable standards which apply to the property.
 - (7) A summary of the information required to be submitted by the volunteer to the certified professional preparing the no further action letter as described in paragraphs (B) and (C) of this rule.
 - (8) Notification that a risk assessment was performed in accordance with rule 3745-300-09 of the Administrative Code, if such an assessment was used in lieu of or in addition to using generic numerical standards established in rule 3745-300-08 OF THE Administrative Code, and the risk assessment report completed in accordance with rule 3745-300-09 of the Administrative Code;
 - (9) Information demonstrating that the property conforms with the exposure assumptions used to calculate the generic numerical standard(s) for the land use identified, if the applicable standard(s) for the property is based upon the generic numerical standard(s) established in rule 3745-300-08 of the Administrative Code. Or the exposure assumption(s) used to determine an applicable standard under rule 3745-300-09 of the Administrative Code;
 - (10) Identification of all contaminants addressed or identified at the property, their source, if known, and their locations and concentration levels prior to and after any remediation;
 - (11) The name and qualifications of any other person, identified under paragraph (D) of this rule, who performed work IN support OF the no further action letter and the nature and scope of the work performed by that person;

- (12) A list of all documents, and the date such documents were prepared, which were reviewed by the certified professional in preparing the no further action letter;
- (13) A copy of any deed restriction on the use of the property, if applicable, bearing the mark of recordation of the office of the county recorder for the county in which the property is located. a copy of any deed restriction for the property is not required pursuant to this paragraph if the volunteer is not the owner of the property in which the voluntary action is being conducted, and as a condition of the covenant not to sue the recordation of any use restriction is required before the covenant not to sue becomes effective;
- (14) A copy of any consolidated standards permit and supporting documents issued pursuant to section 3746.15 of the Revised Code, and any rules adopted thereunder;
- (15) A copy of any operation and maintenance plan or agreement, if required pursuant to paragraph (F)(3)(b) of rule 3745-300-15 of the Administrative Code;
 - (16) Identification of the tax parcel number(s) and the taxing district(s) for the property;
 - (17) All affidavits prepared in connection with the voluntary action; and
 - (18) Any other information the certified professional considers relevant.
- (F) Upon completion of a no further action letter, the certified professional ~~shall~~ MUST send a copy of the no further action letter to the volunteer. The no further action letter ~~shall~~ MUST be accompanied by:
 - (1) A written request that the volunteer notify the certified professional as to whether the volunteer wishes to submit the no further action letter to the director; and
 - (2) A written notice informing the volunteer that the original letter may be submitted to the director only by a certified professional and that the volunteer may receive a covenant not to sue from the director in connection with the voluntary action only if the ORIGINAL no further action letter for the voluntary action is submitted to the director on behalf of the volunteer by the certified professional.
- (G) Promptly after receipt of the no further action letter and the request described in paragraph (F)(1) of this rule, the volunteer must:
 - (1) Send written notice to the certified professional which indicates whether or not the volunteer wishes to submit the letter to the director; and
 - (2) Send a copy of the notice, described in this paragraph, to the director.

If the volunteer's notice indicates that he wishes to have the no further action letter submitted to the director, the certified professional must, promptly after receipt of the notice described in this paragraph, submit the original no further action letter to the director by certified mail on behalf of the volunteer. If the volunteer notifies the certified professional that he does not wish to submit the no further action letter to the director, the certified professional must send the original no further action letter to the volunteer promptly after receiving the notice.

- (H) The certified professional must prepare a no further action letter in a format prescribed and provided by the agency.
- (I) The certified professional must prepare a summary of the no further action letter on a form provided by the director for purposes of meeting the filing requirement of paragraph (J) of this rule.
- (J) If a covenant not to sue is issued by the director as a result of the submittal of a no further action letter prepared pursuant to this rule, the volunteer who is issued the covenant not to sue must ensure that a summary of the no further action letter, on the form described in paragraph (I) of this rule, the covenant not to sue and the restrictions on the use of the property, if any, are recorded in the office of the county recorder of the county in which the property is located. The no further action letter, including all information as required in paragraph (E) of this rule will be made available by the agency.
- (K) 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.
- (L) Any information, data, documents, or reports submitted by a volunteer to any person, including, but not limited to, a certified professional, a certified laboratory, or the director, for the purposes of conducting a voluntary action must be submitted by affidavit. Each time that information, data, documents, or reports are submitted by a volunteer for the purposes of conducting or completing a voluntary action, the volunteer must submit an affidavit based upon his knowledge, information and belief, which includes the following:
 - (1) The name of the affiant;
 - (2) That the affiant is authorized to submit the affidavit on behalf of the volunteer;
 - (3) The name and address of the property on which the voluntary action is being conducted or completed;

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

[Comment: for example, if samples and quality assurance/quality control documents are being submitted by a volunteer to a certified laboratory, they must be accompanied by an affidavit which states that the purpose of the submittal is to obtain certified laboratory results for purposes of conducting or completing a voluntary action.]

- (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 by the volunteer in support of a no further action letter, a statement that:
 - (i) The voluntary action was conducted in compliance with all applicable local, state and federal laws and regulations; and
 - (ii) 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;
- (7) That all information, data, documents, or reports submitted by the affiant for the purposes of conducting or completing the voluntary action are true, accurate and complete.

(M) Any information, data, documents, or reports submitted by a certified laboratory to a volunteer, a certified professional, the director, or any other person for purposes of conducting or completing a voluntary action must be submitted by affidavit. each time that information, data, documents or reports are submitted by a certified laboratory for the purposes of conducting or completing a voluntary action, a representative of the certified laboratory must submit an affidavit based upon his knowledge, information and belief, which includes the following:

- (1) The name of the affiant;
- (2) That the affiant is authorized to submit the affidavit on behalf of the certified laboratory.
- (3) Name and address of the property where the voluntary action is being conducted or completed;
- (4) The purpose for which the information, data, documents, or reports are being submitted;

- (5) An identification of all information, data, documents, or reports submitted with the affidavit; and
 - (6) That all information, data, documents, or reports submitted by the certified laboratory for the purposes of conducting or completing the voluntary action are true, accurate and complete.
- (N) Any information, data, documents, or reports submitted by a certified professional to a volunteer, a certified laboratory, or any other person for the purposes of conducting or completing a voluntary action must be submitted by affidavit. Each time information, data, documents or reports are submitted by a certified professional for purposes of conducting or completing a voluntary action, the certified professional must submit an affidavit based upon his knowledge, information and belief, which includes the following:
- (1) The name of the certified professional;
 - (2) Name and address of the property where the voluntary action is being conducted or completed;
 - (3) The purpose for which the information, data, documents, or reports are being submitted;
 - (4) An identification of all information, data, documents, or reports submitted with the affidavit; and
 - (5) That all information, data, documents, or reports submitted by the certified professional for the purposes of conducting or completing the voluntary action are true, accurate and complete.
- (O) Any information, data, documents, or reports submitted by any person, other than a volunteer, a certified professional, or a certified laboratory for the purposes of conducting or completing a voluntary action must be submitted by affidavit including, but not limited to, persons performing a risk assessment, a phase i or phase ii property assessment, or any remedial activities at a property. this paragraph does not apply to information, data, documents, or reports submitted by federal, state, or local government entities in response to a public records request. each time that information, data, documents or reports are submitted by a person, other than a volunteer, a certified professional, or a certified laboratory, for the purposes of conducting or completing a voluntary action, that person must submit an affidavit based upon his knowledge, information and belief, which includes the following:
- (1) The name of the affiant;

- (2) Name and address of the property where the voluntary action is being conducted or completed;
 - (3) The purpose for which the information, data, documents, or reports are being submitted;
 - (4) An identification of all information, data, documents, or reports submitted with the affidavit; and
 - (5) That all information, data, documents, or reports submitted by that person for the purposes of conducting or completing the voluntary action are true, accurate and complete.
- (P) For each no further action letter submitted to the director for a covenant not to sue, the certified professional must submit an affidavit based upon his knowledge, information and belief, which includes the following:
- (1) The name of the certified professional;
 - (2) The name and address of the voluntary action property for which the no further action letter is being issued;
 - (3) A statement that all standards of conduct contained in paragraph (F) of rule 3745-300-05 of the Administrative Code have been met while rendering professional services to the volunteer regarding the property which is the subject of the no further action letter;
 - (4) That the property is eligible for the "Voluntary Action Program" pursuant to rule 3745-300-002 of the Administrative Code and section 3746.02 of the Revised Code;
 - (5) That the voluntary action has been conducted and the no further action letter issued in accordance with Chapter 3745-300 of the Administrative Code and Chapter 3746. of the Revised Code;
 - (6) That the voluntary action was conducted in compliance with all applicable local, state, and federal laws and regulations; and
 - (7) 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.

Effective: _____

Certification: _____

Date: _____

Promulgate under: RC Chapter 119

Rule amplifies: RC Chapter 3746.

Rule authorized by: RC Chapter 3746.04

Prior effective dates: December 29, 1995