

3745-300-14 **Audits of no further action letters.**

(A) The director shall conduct audits in connection with no further action letters issued under section 3746.11 of the Revised Code for all of the following purposes:

- (1) To determine whether, after completion of voluntary actions conducted pursuant to this chapter and Chapter 3746. of the Revised Code, the properties upon which the voluntary actions were conducted meet applicable standards;
- (2) To review the qualifications of and work performed by certified professionals under this chapter and Chapter 3746. of the Revised Code to determine whether they possess the qualifications required for certification pursuant to rule 3745-300-05 of the Administrative Code and whether their performance in the voluntary action program has resulted in the issuance of no further action letters that are not consistent with applicable standards; or
- (3) To review the qualifications of and work performed by certified laboratories to determine whether they possess the qualifications required for certification pursuant to rule 3745-300-04 of the Administrative Code and whether their performance under this chapter and Chapter 3746. of the Revised Code has resulted in the issuance of no further action letters that are not consistent with applicable standards.

An audit may be conducted for any of the purposes identified in paragraphs - (A)(1) to (A)(3) of this rule or for any combination of those purposes.

(B) The director shall audit all no further action letters in the mandatory audit pool, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code.

(C) The director shall randomly select for audit twenty-five per cent of the no further action letters contained in the priority audit pool, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code. Any no further action letter in the priority audit pool which is not randomly selected for audit under this paragraph shall be included in the random audit pool, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code.

(D) The director shall select no further action letters for audit from the random audit pool by any method the director deems necessary. However, at a minimum, the director shall select no further action letters to be audited such that the total number of no further action letters selected for audit from both the priority and random audit pools will result in:

- (1) The selection of no less than twenty-five per cent of all no further action letters involving remedial activities, submitted to the director during the preceding calendar year, and

- (2) The selection of no less than twenty-five per cent of all no further action letters not involving remedial activities, submitted to the director during the preceding calendar year.
- (E) Audits may be conducted for any purpose or combination of purposes described in paragraph (A) of this rule in accordance with one or both of the following procedures:
- (1) Tier I audit.
 - (a) Prior to commencing a tier I audit, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, of a no further action letter, the director shall provide reasonable advance notice of the audit to the volunteer for whom the no further action letter was prepared, the certified professional who prepared the no further action letter, the current owner of the property, if different from the volunteer and, as appropriate, any certified laboratory which performed analyses which formed the basis for the no further action letter. The notice shall contain a request that the certified professional who prepared the no further action letter submit or make available all documents relied upon by the certified professional and required to be itemized on the document list contained in the no further action letter pursuant to rule 3745-300-13 of the Administrative Code, and any other documents which the director determines are necessary to perform an audit pursuant to this rule.
 - (b) Following receipt of the notice provided pursuant to paragraph (E)(1)(a) of this rule, the certified professional shall deliver the requested documentation to the agency not more than thirty days following the request.
 - (c) When conducting a tier I audit, the director may do the following:
 - (i) Request that a certified professional, a certified laboratory, a volunteer or a person responsible for maintaining compliance with applicable standards at a property submit any or all documents pertaining to the no further action letter being audited;
 - (ii) Visit a property or place of business, following reasonable advance notice and during the normal operating hours of the business, to perform a review of the documents stored at that property or place of business; and
 - (iii) Conduct a site walkover of the property upon which the voluntary action was conducted.

- (d) All documents requested pursuant to paragraph (E)(1)(c)(i) of this rule shall be submitted to the director not later than thirty days following the request.
- (2) Tier II audit, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code.
 - (a) If the documents produced and reviewed pursuant to paragraph (E)(1) of this rule are inadequate to substantiate the no further action letter, or if the director has a reasonable belief that the no further action letter has been based on fraudulent or inaccurate information or documentation, the director may:
 - (i) Inspect a property, following reasonable advance notice, investigate or inspect conditions, equipment or practices and conduct sampling to determine compliance with applicable standards, this chapter or Chapter 3746. of the Revised Code; or
 - (ii) Take any other action the director deems necessary to determine whether the no further action letter was prepared in compliance with applicable standards, this chapter or Chapter 3746. of the Revised Code.
 - (b) In addition to tier II audits conducted pursuant to paragraph (E)(2)(a) of this rule, the director may, at the director's discretion, randomly perform tier II audits on any no further action letter(s) selected for audit.
 - (c) Nothing in this rule shall diminish the director's ability to conduct criminal or other investigations under Chapters 3704., 3714., 3734., 3746., 3750., 3753., 6109. or 6111. of the Revised Code.
- (F) The director shall complete all investigatory auditing activities, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, by the thirty-first of December of the year in which an audit is conducted pursuant to paragraphs (B) to (E) of this rule and division (B) of section 3746.17 of the Revised Code, and the director shall issue all audit findings, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, by the first of March of the year following that in which an audit is conducted.
- (G) The person responsible for maintaining compliance with applicable standards at a property subject to an audit may request one informal meeting with the Ohio EPA to discuss the technical aspects of that audit. The Ohio EPA shall be available for such meeting following the conclusion of all investigatory auditing activities and prior to the issuance of audit findings.
- (H) The time limits required by this rule shall not prevent the director, at the director's discretion, from granting one thirty day extension to any person subject to this rule.

The director may also extend any time limits imposed upon the director under this rule for a period not to exceed thirty days.

- (I) An audit of a no further action letter shall be completed in accordance with paragraphs (E)(1) and (E)(2) of this rule if either of the following apply:
 - (1) If the certification of the certified professional who prepared the no further action letter has been revoked pursuant to rule 3745-300-05 of the Administrative Code as a result of the certified professional's commission of fraud; or
 - (2) If the certification of the certified laboratory which performed the laboratory analyses in support of the no further action letter has been revoked pursuant to rule 3745-300-04 of the Administrative Code as a result of its commission of fraud.
- (J) If requested by the director, upon proper identification and stating the necessity and purpose of the inspection, the volunteer or current owner of a property shall allow the director access to the property to conduct all audit activities pursuant to this rule. Nothing in this rule shall limit the authority of the director provided in section 3746.21 of the Revised Code.
- (K) The Ohio EPA shall provide the person responsible for maintaining compliance with applicable standards at a property with a split sample, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, of any soil, water or sediment sample obtained or removed from a property, if prior to sampling, a written request is made by the person responsible for maintaining compliance with applicable standards at a property. With sufficient prior notice, the Ohio EPA shall provide, at cost, appropriate sampling containers to the person making such a request.
- (L) The director shall issue audit findings pursuant to this rule which include a determination of whether applicable standards, and all other requirements established under this chapter or Chapter 3746. of the Revised Code have been met and whether additional actions are required to attain compliance. After an audit is completed:
 - (1) If the director finds that a certified professional or certified laboratory either did not possess the required qualifications for certification or that work performed by the certified professional or certified laboratory in connection with a voluntary action has resulted in the issuance of a no further action letter that is not consistent with the applicable standards, the director may either suspend or revoke the certification of the certified professional or certified laboratory;
 - (2) If the director finds that the performance of a certified professional or certified laboratory has resulted in the issuance of no further action letters that are not consistent with applicable standards, the director shall notify persons for whom the certified professional or certified laboratory has performed work in connection with a voluntary action of his findings;

- (3) If the director finds that a property no longer complies with the applicable standards upon which issuance of a covenant was based, the director shall, by certified mail, return receipt requested, notify the person responsible for maintaining compliance with those standards of that finding and of the requirements of division (B)(3) of section 3746.12 of the Revised Code;
- (4) Unless the recipient of a notice provided under paragraph (L)(3) of this rule and division (B)(2) of section 3746.12 of the Revised Code, within thirty days after the mailing of the notice, notifies the director of the recipient's intention to return the property to compliance with the applicable standards upon which the covenant was based and enters into a compliance schedule agreement with the director, the director, by issuance of an order as a final action under Chapter 3745. of the Revised Code, shall revoke the covenant not to sue issued for the property. The compliance schedule agreement shall establish a reasonable period of time for returning to compliance with those applicable standards; and
- (5) If the director finds that a person with whom the director has entered into a compliance schedule agreement under this rule and division (B)(3) of section 3746.12 of the Revised Code has failed to return the property to which the agreement pertains to compliance with the applicable standards within the time established in the agreement, the director, by issuance of an order as a final action under Chapter 3745. of the Revised Code, shall revoke the covenant not to sue issued for the property.

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