

**3745-300-07 Phase II property assessments.**

[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 paragraph (B) of rule 3745-300-01 of the Administrative Code titled "Incorporation by reference."]

**(A) Applicability.**

- (1) A phase II property assessment must be conducted in accordance with this rule if a phase I property assessment conducted in accordance with rule 3745-300-06 of the Administrative Code reveals any information that establishes any reason to believe that a release of hazardous substances or petroleum has or may have occurred on the property, or these substances are underlying or emanating from the property. This rule does not apply when a release within an identified area is demonstrated to be de minimis in accordance with the requirements of paragraph (F) of rule 3745-300-06 of the Administrative Code.
- (2) Factors affecting eligibility of a property. The volunteer must utilize information from phase I property assessments or phase II property assessments to determine that a property is eligible for the voluntary action program in accordance with the requirements of rule 3745-300-02 of the Administrative Code. At a minimum, if any of the following are discovered on the property, further analysis must be conducted to determine if all or a portion of the property may be ineligible:
  - (a) Petroleum underground storage tank systems subject to the bureau of underground storage tank regulations;
  - (b) Underground injection control wells, except class V underground injection control wells;
  - (c) Oil and gas wells;
  - (d) Any hazardous wastes which were treated, stored or disposed of at the property on or after November 19, 1980; and
  - (e) Solid waste facilities as described in paragraph (B)(5) of rule 3745-300-02 of the Administrative Code.

**(B) Purpose of a phase II property assessment.**

The purpose of a phase II property assessment is to conduct an investigation sufficient to determine whether all applicable standards are met or to determine that remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code at the property meet or will achieve applicable standards.

A volunteer may conduct remedial activities at any point during a phase II property assessment, provided that these remedial activities comply with rule 3745-300-11 of the Administrative Code, and provided that the volunteer completes the activities contained in paragraph (E) of this rule.

(C) Data quality objectives for phase II property assessments.

The volunteer must develop and implement data quality objectives consistent with U.S. EPA's "Guidance on Systemic Planning Using the Data Quality Objectives Process" according to their limitations and intended uses. In order to achieve the purpose contained in paragraph (B) of this rule, the volunteer must, at a minimum, complete one iteration of the following steps:

- (1) Identify the goals of the phase II property assessment, including the applicable standards that need to be achieved to demonstrate compliance with the voluntary action program rules;
- (2) Identify the data and information necessary to support the objectives of the phase II property assessment. Evaluate historical information from the phase I property assessment and determine if data gaps are present that should be addressed;
- (3) Define the boundaries of the phase II property assessment, including spatial and temporal limits. Determine the identified area(s) that need to be investigated or addressed, factoring in current and reasonably anticipated future use of the property;
- (4) Develop an approach to identify contaminants of concern, complete exposure pathways and current and reasonably anticipated future receptors;
- (5) Specify how the data and information collected in the phase II property assessment will be used in the decision-making process to assess identified areas. Clarify performance and acceptance/rejection criteria for the data; and
- (6) Develop a sampling and analysis plan to obtain the data.

(D) Sampling and sample analysis.

The volunteer must identify the samples and analytes that the certified laboratory must analyze, and the volunteer must ensure that:

- (1) The sampling procedures employed at the property are consistent with the sample quality requirements of the certified laboratory.

- (2) Data from the certified laboratory are adequate for use in the voluntary action. At a minimum, the volunteer must:
- (a) Notify the certified laboratory when samples are to be used for a voluntary action and when certified laboratory data are required. If this communication with the certified laboratory is not provided, a certified laboratory is not required to analyze the samples in accordance with its certification. Therefore, the certified laboratory may not be able to provide the appropriate affidavit certifying the analytical results as certified data;
  - (b) Ensure that the certified laboratory is certified for and capable of performing the analyses that are required for the property, including those necessary for forming the basis of the no further action letter. In accordance with paragraph (H)(2) of rule 3745-300-04 of the Administrative Code, the certified laboratory must disclose when it is not providing certified data whenever it is not certified for any analyte, parameter group, or method included in a request for analysis. This disclosure may be in the analytical report or by other means; and
  - (c) Communicate to the certified laboratory the applicable standards required for the property and ensure that the certified laboratory is capable of detecting the chemicals of concern in environmental media at or below the applicable standards for the property. Cumulative adjustments for multiple chemicals and pathways must be evaluated when determining the applicable standards that must be achieved when evaluating compliance with applicable standards. In accordance with paragraph (H)(78) of rule 3745-300-04 of the Administrative Code, the certified laboratory must disclose when it is not capable of detecting the chemicals of concern in environmental media at or below the applicable standards for the property. This disclosure may be in the analytical report or by other means.
- (3) Acceptable quality assurance and quality control procedures have been established and employed when collecting field data during the phase II property assessment. The field quality assurance and quality control procedures must serve to: minimize sources of error; minimize the potential for cross contamination; and maximize the representativeness of the data collected. The field quality assurance and quality control procedures must, at a minimum, include the following:
- (a) Review of the laboratory's quality assurance program plan and standard operating procedures for consistency with field quality assurance and quality control procedures; and

(b) Development of field quality assurance and quality control procedures including but not limited to the following items:

(i) Equipment decontamination;

(ii) Trip blanks, equipment blanks, field blanks, and duplicates;

(iii) Calibration of field instruments, which includes procedures for instrument correction and re-calibration when necessary;

(iv) Documentation and record maintenance;

(v) Sample handling, preservation and holding times; and

(vi) Chain-of-custody.

(4) Data collection, field testing, field screening and sampling techniques are established and used. Data collection, field testing, field screening and sampling techniques must be used in a manner that is consistent with achieving the purpose of the phase II property assessment.

[Comment: The volunteer should contact the Ohio EPA voluntary action program for questions regarding guidance documents that might be helpful in selecting data collection techniques.]

(E) Phase II property assessment data collection activities. The volunteer must collect sufficient data in accordance with the requirements contained in this paragraph to make the determinations contained in paragraphs (F)(1) to (F)(9) of this rule. The sampling activities conducted under this paragraph must be performed in accordance with the sampling procedures contained in paragraph (D) of this rule. The initial phase II property assessment activities may be limited to performing data collection activities. However, it may be necessary to later conduct additional phase II property assessment activities in order to complete the phase II property assessment. The volunteer may also have to conduct additional phase II property assessment activities based on information obtained throughout the phase II property assessment. Data collection and data evaluation may be conducted iteratively.

(1) Use of existing information and non-certified laboratory data.

(a) Phase I property assessment and other existing information. The person conducting a phase II property assessment must utilize all information from a phase I property assessment conducted in accordance with rule 3745-300-06 of the Administrative Code and any other information known to the owner or the volunteer if different from the owner which is relevant to -  
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properly characterizing environmental conditions on, underlying, or emanating from the property.

- (b) Amending phase I property assessments. If more than one hundred eighty days has elapsed since the completion of a phase I property assessment performed in accordance with rule 3745-300-06 of the Administrative Code, the volunteer must conduct additional investigations regarding the potential changes in the environmental conditions at the property or areas surrounding the property, as provided in paragraph (I)(3) of rule 3745-300-06 of the Administrative Code. Amendments to the phase I property assessment must be included in the phase II property assessment report.
- (c) Using data from prior phase I environmental site assessments. Prior phase I environmental site assessments and studies not conducted in accordance with rule 3745-300-06 of the Administrative Code may be relied upon, provided that all of the following are met:
  - (i) The information gathered and the method(s) used to collect and evaluate the data are consistent with the purposes described in paragraph (A) of rule 3745-300-06 of the Administrative Code;
  - (ii) The prior phase I environmental site assessment is amended in such a way as to comply with the requirements of rule 3745-300-06 of the Administrative Code; and
  - (iii) The prior phase I environmental site assessment is amended to comply with paragraph (I)(3) of rule 3745-300-06 of the Administrative Code if more than one hundred eighty days has elapsed since its completion.
- (d) Use of non-certified laboratory data. Data generated by non-certified laboratories and studies not conducted in accordance with this rule may be used to partially meet the requirements of this rule, provided that all of the following are met:
  - (i) The information gathered and the method(s) used to collect and evaluate the data are consistent with the purposes of this rule;
  - (ii) The data are evaluated to ensure quality and consistency with the requirements for data collected in a phase II property assessment conducted in accordance with this rule; and
  - (iii) The data are confirmed by samples analyzed using a certified laboratory whose certification was current at the time that the confirmatory samples were analyzed. Confirmatory samples must be collected as follows:

- (a) For ground water, surface water, and air, a minimum of ten per cent of the sample population of each data set in the previous study must be confirmed, provided that the samples are collected from the same sampling points that were used in the previous study; and
- (b) For all environmental media not addressed in paragraph (E)(1)(d)(iii)(a) of this rule, or if the sampling points used in the previous study cannot be used, or are not used, for collecting confirmatory samples, the volunteer must quantitatively compare the non-certified laboratory dataset and the certified laboratory dataset and demonstrate that the two are not significantly different, utilizing any method that is accepted as an academic or industry standard, by collecting a minimum of ten per cent of the sample population, or at least eight samples, whichever is greater, for each data set in the previous study.

[Comment: If prior data or information are used in support of a no further action letter, they should be consistent with existing property conditions.]

~~(e) Use of mobile laboratory data. A volunteer may use data generated from a non-certified mobile laboratory to partially meet the requirements of paragraph (E)(1)(d) of this rule, if the laboratory is currently certified under 3745-300-04 of the Administrative Code and the data were generated using methods and instrumentation recognized, endorsed, or published by U.S. EPA or Ohio EPA for the quantitative analysis of environmental media. These methods and instrumentation specifications must be similar to those used by a fixed-based laboratory that provides quantitative analysis of environmental media.~~

~~A mobile laboratory generating quantitative data to be used as non-certified laboratory data must ensure that all procedures are documented in standard operating procedures and quality assurance program plan to ensure that data of known quality will be generated.~~

- (2) A review and evaluation of existing regional and property-specific geologic, hydrogeologic, and physical characteristics of the property and its surrounding area by evaluating characteristics contained in paragraphs (E)(2)(a) to (E)(2)(n) of this rule. The volunteer must review reasonably available information from previous on-property investigations or other sources of information. Property-specific data must be collected as needed. The collection of additional data or information must be by methods consistent with requirements of this rule. The evaluation of information and collection of additional data must be consistent with the data quality objectives developed in accordance with paragraph (C) of

this rule. The review and evaluation must address and include, as necessary, the following:

- (a) The characteristics of major stratigraphic units and the associated depositional environments. A description of the continuous profile of the stratigraphic units beneath the property, including the thickness and lateral extent of each unit and the depth to bedrock;
- (b) Property-specific physical characteristics of saturated or unsaturated soils or bedrock, including but not limited to: porosity, effective porosity, bulk density, moisture content, grain size analysis, and soil pH. The vertical and horizontal hydraulic conductivity of saturated and unsaturated zones. The contaminant attenuation capacity and mechanisms of attenuation of soil or bedrock, including but not limited to: ion exchange capacity, organic carbon content, mineral content, and soil sorptive capacity;
- (c) Identification of regional aquifers and ground water zones beneath the property and determination of their productivity;
- (d) Identification and characterization of ground water recharge and discharge areas, and the amount of recharge and discharge;
- (e) Estimates of infiltration or evapotranspiration rates;
- (f) A description, and the potential orientation, of geomorphology and structural geologic features that may influence the ground water flow system or unsaturated flow conditions, including but not limited to: topographical features, geologic stratification, faults, joints, or fractures;
- (g) The occurrence, flow direction and gradient of surface water or ground water;
- (h) The absence or presence of commingled chemical(s) of concern from multiple sources or source areas;
- (i) The natural quality of ground water and surface water;
- (j) Any anthropogenic influences that may affect or alter the natural geology and hydrogeology underlying the property or may provide preferential migration pathways, including but not limited to: utilities, fill material, pavement, buildings and building foundations, or grading activities;
- (k) Identification of ground water use, availability or special designations such as "drinking water source protection areas for a public water system using

ground water" as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code or sole source aquifer designations;

- (l) Identification of the presence of legally-enforceable restrictions on the use of ground water including, without limitation, local rules and ordinances;
  - (m) Identification of regional availability of surface water or ground water and reasonable alternative sources of drinking water; and
  - (n) Any other characteristics or information that may be useful to meet the data quality objectives of the phase II property assessment or to determine compliance with applicable standards or the need for remedial activities.
- (3) The volunteer must identify the chemicals of concern in the identified areas by evaluating the following:
- (a) Hazardous substances or petroleum identified in a phase I property assessment conducted in accordance with rule 3745-300-06 of the Administrative Code or this rule;
  - (b) Hazardous substances or petroleum that are or have been commonly used in industrial or commercial activities similar to the activities conducted at the property; and
  - (c) Hazardous substances or petroleum that, based on reasonably available information, may be typical constituents, components, additives, impurities and degradation products of hazardous substances or petroleum identified in paragraphs (E)(3)(a) and (E)(3)(b) of this rule; and

[Comment: Naturally occurring hazardous substances or petroleum that occur in one environmental medium are considered potential chemical(s) of concern if current or past activities involving the treatment, storage, or disposal of hazardous substances or petroleum, are suspected to have caused the transfer of these naturally occurring hazardous substances or petroleum to other environmental media. Examples include, but are not limited to: (i) an acid spill that results in the leaching of metals naturally found in soil to the underlying ground water, or (ii) the mobilization to ground water of metals naturally found in soil when the mobilization is the result of anaerobic ground water associated with the biodegradation of an organic solvent ground water plume.]

- (d) Constituents of hazardous substances for which a method or technology of analysis is not available to measure the concentration of the hazardous



substance. The volunteer must obtain certified data for each constituent or set of constituents, which are representative of a hazardous substance, even

if the constituents are not listed as a hazardous substance, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code.

[Comment: An example is the compound aluminum sulfate whereby a laboratory indicates that it can analyze for aluminum which, by itself is not a hazardous substance; however, aluminum sulfate is a hazardous substance.]

(4) Evaluate identified areas.

- (a) The volunteer must evaluate all identified areas and determine within each identified area:
  - (i) All sources that are present;
  - (ii) All source areas that are present; and
  - (iii) All affected media that are present.
- (b) The volunteer must consider information from a phase II property assessment to determine if the existence, location and dimensions of each identified area designated pursuant to a phase I property assessment require adjustment. If the existence, location or dimensions of the identified areas require adjustment or redesignation to reflect the phase II property assessment information, the volunteer must make the appropriate adjustments to the identified areas and redesignate the identified areas in the phase II property assessment.

(5) Sampling environmental media.

- (a) The volunteer must collect samples from environmental media as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, in accordance with the data quality objectives and sampling procedures developed under paragraphs (C) and (D) of this rule that are proven to be reliable and representative for the environmental media being sampled, as necessary to make the determinations contained in paragraphs (F)(1) to (F)(9) of this rule.
- (b) When determining how to conduct sampling under paragraph (E)(5)(a) of this rule, the volunteer must ensure that the data collected will be sufficient for making the determinations in paragraphs (F)(1) to (F)(9) of this rule as

well as meeting the stated data quality objectives. The volunteer must ensure that the data are representative considering:

- (i) The spatial distribution of sampling locations; and
- (ii) Temporal variations in the media or in the concentrations of chemicals of concern contained in the media.

- (6) Identification of current and reasonably anticipated property use and receptor populations.

The volunteer must identify the current and reasonably anticipated uses of the property using the data quality objectives as provided in paragraph (C) of this rule. The volunteer must also identify all receptor populations reasonably anticipated to be exposed to chemical(s) of concern on the property, and all off-property receptor populations reasonably anticipated to be exposed to chemical(s) of concern emanating from the property. Receptor populations that must be identified for the purpose of making the determinations contained in paragraph (F)(1) of this rule include, at a minimum, the following:

- (a) Populations that live on the property;
  - (b) Populations that work on the property;
  - (c) Populations on the property as visitors, commercial consumers or recreational participants;
  - (d) Populations on or off the property that may be exposed to chemical(s) of concern in environmental media as a result of construction or excavation activities;
  - (e) Populations on or off the property that are reasonably anticipated to be exposed to chemical(s) of concern emanating from the property through ground water migration, surface water migration, dust emissions, volatilization and other mechanisms which transport chemical(s) of concern off the property; and
  - (f) Important ecological resources that, considering the land use and the quality and extent of habitat on the property and adjoining properties, would have reasonably been associated with the property or adjacent properties were it not for the presence of chemical(s) of concern on, underlying or emanating from the property.
- (7) The volunteer may need to conduct data collection activities necessary to determine background levels in accordance with paragraph (H) of this rule.

(F) Determinations under the voluntary action program.

(1) Pathway completeness determination.

(a) The volunteer must evaluate the current and reasonably anticipated exposure pathways and must identify the following:

- (i) All sources, source areas, or affected media contributing to the pathway;
- (ii) The receptors identified under paragraph (E)(6) of this rule and any applicable points of compliance; and
- (iii) The transport mechanisms for the pathway;

[Comment: The points of compliance for a pathway may be a receptor identified in accordance with this rule, or may be determined under other rules contained in this chapter. For example, the ground water response requirements contained in rule 3745-300-10 of the Administrative Code under specific conditions require that the point of compliance is the property boundary.]

(b) The volunteer must determine which current and reasonably anticipated pathways are complete. Exposure pathways must be based on property-specific data collected in accordance with the procedures described in this chapter and must be evaluated in accordance with the procedures described in this chapter. A pathway is considered to be complete if all three of the pathway components contained in paragraphs (F)(1)(a)(i) to (F)(1)(a)(iii) of this rule are present. All exposure pathways determined to be complete under this paragraph must be identified in the phase II property assessment report.

(c) If it is determined that any of the exposure pathways on or adjoining the property are not reasonably anticipated to be complete for the chemicals of concern, the phase II property assessment report must include a written justification for the elimination of those exposure pathways from further consideration.

(2) Determination of whether the provisions for protection of ground water meeting unrestricted potable use standards apply or whether ground water classification is required.

If a ground water zone is determined to meet unrestricted potable use standards, the provisions contained in paragraph (F)(3) of this rule and paragraph (D) of rule 3745-300-10 of the Administrative Code apply to the ground water zone underlying the property. If a ground water zone is determined to exceed unrestricted potable use standards, the classification of the ground water zone

must be determined in accordance with paragraph (B) of rule 3745-300-10 of the Administrative Code. Either generic or property-specific unrestricted potable use standards may be used when making this demonstration. For each ground water zone underlying the property, the volunteer must demonstrate whether the ground water in the zone meets or exceeds unrestricted potable use standards by one of the following methods:

- (a) Sample the ground water within the zone to determine whether the ground water in that zone meets or exceeds unrestricted potable use standards. The volunteer must collect one or more ground water samples to determine the concentration of chemicals of concern in the ground water.
  - (i) Ground water samples must be collected in accordance with paragraph (F)(5)(d) of this rule from one or more ground water monitoring wells located immediately down-gradient of the source area or down-gradient and as close as possible to the source area. The samples must be analyzed by a certified laboratory for the concentrations of the chemicals of concern at the property. If more than one ground water sample is collected from a well, the second sample must be collected within forty-eight hours to ninety days after collection of the first ground water sample.
  - (ii) To evaluate whether more than one ground water sample is warranted to determine if the ground water meets or exceeds the unrestricted potable use standards, the volunteer must consider all temporal variations that could impact the determination of whether the provisions apply to the ground water zone. If additional ground water sampling events are warranted due to temporal variations, then a sufficient number of additional ground water samples must be collected over an appropriate time period to adequately characterize a representative concentration of the chemical of concern in ground water. Temporal variations include, but are not limited to:
    - (a) Seasonal variations resulting in either increased or decreased recharge and thus fluctuations in the water table elevation; or
    - (b) Other variations resulting from the impact of geologic heterogeneity (permeability, fractures, etc.), contaminant source heterogeneity or the transient nature of contaminant transport.
  - (iii) A minimum of two ground water samples are needed to determine that the ground water in a zone exceeds the unrestricted potable use standards, unless the following conditions apply:

- (a) The concentrations of the first sampling event exceed unrestricted potable use standards by at least one order of magnitude; or
  - (b) The concentrations of the first sampling event exceed unrestricted potable use standards and historical ground water data at the property indicates sources have impacted the ground water zone underlying the property in excess of unrestricted potable use standards.
- (iv) When demonstrating whether ground water meets or exceeds unrestricted potable use standards, calculations for the presence of multiple chemicals must be conducted in order to meet the human health and hazard levels described in paragraph (D)(2)(b)(i) of rule 3745-300-08 of the Administrative Code. The adjustment for multiple chemicals is required for both generic and property-specific unrestricted potable use standards. However, standards from table V in paragraph (D)(3)(b) of rule 3745-300-08 of the Administrative Code are not included in the calculations to adjust for multiple chemicals in the ground water zone. When making this demonstration, unrestricted potable use standards must not be adjusted to account for cumulative risk from exposure pathways other than potable use of ground water.
- (b) The volunteer may justify that sampling of a ground water zone underlying the property is not necessary to determine that the ground water in the zone does not contain concentrations of any chemicals of concern exceeding unrestricted potable use standards. Based on this justification, the volunteer may apply the provisions for protecting ground water meeting potable use standards contained in paragraph (F)(3) of this rule and paragraph (D) of rule 3745-300-10 of the Administrative Code. As part of this justification, the volunteer must document that it is reasonable to assume ground water does not exceed the unrestricted potable use standards based on a weight-of-evidence approach using relevant property-specific information, including, as necessary:
- (i) The nature, type, concentration, and mass of the chemicals of concern released, and the time of release(s);
  - (ii) The type, concentration, and mass of chemicals of concern present in the subsurface soil or bedrock above the saturated zone requiring protection or between ground water zones;
  - (iii) The physical and chemical characteristics of the soil or bedrock beneath the property including, but not limited to, the secondary features, soil or bedrock type, heterogeneity of the subsurface soil or bedrock, or the integrity of any confining layers separating ground water zones;

- (iv) The separation distance between the source or source area and the ground water zone, or the separation distance between ground water zones;
- (v) The results of modeling conducted in accordance with paragraph (G) of this rule, as applicable;
- (vi) The presence or absence of off-property sources that may have impacted ground water on, underlying, or emanating from the property. The impact of off-property sources must be determined in accordance with paragraph (F)(9) of this rule; and
- (vii) Any other lines of evidence the volunteer believes support the determination that the ground water in a zone underlying the property does not contain concentrations of any chemicals of concern above unrestricted potable use standards.

[Comment: In general, ground water zones may be considered to meet unrestricted potable use standards when they underlie a ground water zone that meets unrestricted potable use standards, as determined according to paragraph (F)(2) of this rule, and will continue to meet unrestricted potable use standards in the future, as determined according to paragraph (F)(3) of this rule. This generalization may be applied when it is reasonable to assume that hazardous substances or petroleum could not have been introduced into the underlying ground water zones through subsurface disposal (or some other means) and when off-property sources identified in the phase I property assessment have not introduced chemicals of concern into the underlying ground water zones.]

- (3) Demonstration of continuing compliance with the provisions for protecting ground water meeting unrestricted potable use standards.
  - (a) When the provisions for protecting ground water apply to a ground water zone, the volunteer must demonstrate that chemicals of concern from sources on the property, or environmental media impacted by sources on the property, will not migrate to the ground water zone at concentrations that exceed unrestricted potable use standards. To demonstrate this, the volunteer must:
    - (i) Demonstrate that the chemicals of concern in the subsurface do not exceed values that would result in unrestricted potable use standards being exceeded in the ground water zone; or

- (ii) Demonstrate that the provisions for protecting ground water meeting potable use standards will not be violated, using a weight-of-evidence approach. As part of this weight-of-evidence approach, the volunteer

must document that it is reasonable to assume the ground water zone will not exceed unrestricted potable use standards in the future using relevant property-specific information, including, as necessary:

- (a) The nature, type, concentration, and mass of the chemicals of concern released, and the time of release(s);
  - (b) The type, concentration, and mass of chemicals of concern present in the subsurface soil or bedrock above the saturated zone requiring protection or between ground water zones;
  - (c) The physical and chemical characteristics of the soil or bedrock beneath the property including, but not limited to, the secondary features, soil or bedrock type, heterogeneity of the subsurface soil or bedrock, or the integrity of any confining layers separating ground water zones;
  - (d) The separation distance between the source and ground water, or the separation distance between ground water zones;
  - (e) The results of modeling conducted in accordance with paragraph (G) of this rule, as applicable;
  - (f) The presence of man-made structures on the property that reduce or prevent infiltration and leaching of any chemicals of concern to the ground water zone; and
  - (g) Any other lines of evidence the volunteer believes support the determination that the ground water in a zone underlying the property will not exceed concentrations of any chemicals of concern above unrestricted potable use standards.
- (b) If it cannot be demonstrated in accordance with paragraph (F)(3) of this rule that chemicals of concern will not leach or otherwise migrate into the ground water zone(s) underlying the property, the volunteer must implement a remedy in accordance with rule 3745-300-11 of the Administrative Code that prevents the ground water zone(s) underlying the property from exceeding unrestricted potable use standards.
- (4) Determination of applicable standards. The volunteer must determine the applicable standards for the property in accordance with the requirements

specified in this chapter. Applicable standards must be determined for all chemicals of concern with respect to all exposure pathways determined to be complete under paragraph (F)(1) of this rule for which the volunteer intends to demonstrate compliance with applicable standards in accordance with paragraph (I) of this rule.

- (a) The volunteer must determine the applicability of generic numerical standards at the property in accordance with paragraph (A)(1)(a) of rule 3745-300-08 of the Administrative Code. If generic direct-contact soil standards for commercial, industrial, or other restricted land use are used to meet applicable standards, institutional control(s) must be used to limit the property's land use as described in paragraphs (B)(2)(d) and (C)(2)(c) of rule 3745-300-08 of the Administrative Code. The institutional controls must be implemented in accordance with rule 3745-300-11 of the Administrative Code.
- (b) When a property-specific risk assessment is performed at the property, the volunteer must determine the applicability of standards derived through a property-specific risk assessment conducted in accordance with paragraph (A) of rule 3745-300-09 of the Administrative Code.
- (c) The volunteer must determine the applicability of any other standards contained in this rule or in rule 3745-300-08, 3745-300-09, 3745-300-10, or 3745-300-11 of the Administrative Code.
- (d) The volunteer must consider the performance of a remedy employed at the property when its use is intended to meet or maintain applicable standards. The remedy must be implemented in accordance with rule 3745-300-11 of the Administrative Code.
- (e) The volunteer does not need to determine applicable standards in accordance with rule 3745-300-08 or 3745-300-09 of the Administrative Code for chemicals of concern when the concentrations of the chemicals of concern on, underlying or emanating from the property are at or below background levels determined in accordance with paragraph (H) of this rule.
- (f) The volunteer does not need to determine applicable standards for chemicals of concern, if any of the following apply:
  - (i) The chemicals of concern were the result of a de minimis release as defined in paragraph (F) of rule 3745-300-06 of the Administrative Code.
  - (ii) The volunteer makes the determination that infrequent detections of chemicals of concern are a product of artifacts in the data and may not



be related to the site operations or disposal practices. Such a determination must include, at a minimum, the following considerations:

- (a) Historical information reported in the phase I property assessment report and other historical data from the property;
- (b) The concentration(s) at which the detections are reported, provided that detection limits are not elevated due to matrix interferences;
- (c) The detections do not indicate the presence of previously unknown area(s) of high concentration (i.e., new "hot spots");

[Comment: The discovery of new hot spots may indicate the presence of identified areas that require adjustment or redesignation in accordance with paragraph (E)(4) of this rule.]

- (d) The chemical of concern is not detected in any other sampled environmental media;
  - (e) The likelihood that the detected constituent(s) are degradation or by-products of chemical(s) of concern on the property; and
  - (f) The type of environmental media in which the detections are reported.
- (iii) The chemicals of concern are demonstrated to be tentatively identified compounds without an indication of historical use on the property or evidence that they might be degradation compounds or by-products of one or more other chemicals of concern used at the property.
  - (iv) The chemicals of concern are demonstrated through appropriate quality assurance and quality control data to be the result of contamination due to field sampling activities or laboratory processes.

- (5) Determination of the concentrations of chemicals of concern in identified areas or exposure units as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code. The volunteer must determine the concentrations of the chemicals of concern in accordance with paragraphs (F)(5)(a) to (F)(5)(e) of this rule as necessary to make the determinations contained in paragraphs (F)(1) to (F)(9) of this rule. All samples collected in accordance with this paragraph must be analyzed by a certified laboratory, and certified data provided, in order to support the determinations.

- (a) To determine the concentrations of the chemicals of concern in surface water, the volunteer must follow a sampling and analysis plan developed in accordance with:
- (i) Ohio EPA's "Biological Criteria For the Protection of Aquatic Life: Volume II: ~~Users~~User's Manual For Biological Field Assessment Of Ohio Surface Waters," and
  - (ii) Ohio EPA's "Manual of Ohio EPA Surveillance Methods And Quality Assurance Practices."
- (b) To determine the concentrations of the chemicals of concern in sediments for the purposes of comparing the concentrations to the applicable standards identified in paragraphs (G) and (H) of rule 3745-300-08 of the Administrative Code, the volunteer must sample the sediments in the identified areas in accordance with the procedures contained in the "Sediment Sampling Guide and Methodologies." The data collected must be analyzed by a certified laboratory to determine its representative concentration or maximum concentration in the identified area. For purposes of determining representative or maximum concentrations in identified areas, the volunteer must derive the concentrations in accordance with paragraph (F)(5)(c) of this rule.
- (c) To determine the concentrations of the chemicals of concern in soil, the data collected must be analyzed by a certified laboratory, and certified data provided, in order to determine the representative concentrations or maximum concentrations of the chemicals of concern in the identified area or exposure unit. For purposes of determining representative or maximum concentrations of the chemicals of concern in identified areas or exposure units, the volunteer must:
- (i) Derive the representative concentration by calculating the ninety-five per cent upper confidence limit, as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code, of the arithmetic mean. The ninety-five percent upper confidence limit of the arithmetic mean must be calculated for each data set. Data sets must be comprised of a sufficient number and quality of samples as to derive a normal, log-normal, or other applicable frequency distribution. In addition to meeting the requirements of paragraph (D) of this rule, the volunteer must use techniques for sampling normal or log-normal distributions based on appropriate equations contained in U.S. EPA's "Calculating Upper Confidence Limits for Exposure Point Concentrations at Hazardous Waste Sites," or by other peer-reviewed statistical methodology for normal or log-normal distributions; or

- (ii) Derive the maximum concentration within the identified area or exposure unit. When information exists which allows the volunteer to reliably bias sampling activities within the identified area or exposure unit to the point of highest concentration, the volunteer may use the maximum concentration in the data set to represent the identified area or exposure unit concentration, provided that a minimum of three or more samples are collected and analyzed by a certified laboratory; or
  - (iii) Derive the representative concentration using the incremental sampling technique based on guidance provided in Mason's "Preparation of Soil Sampling Protocols: Sampling Techniques and Strategies" and Gerlach and Nocerino's "Guidance for Obtaining Representative Laboratory Analytical Subsamples from Particulate Laboratory Samples." The volunteer may use the representative concentration from incremental sampling as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code conducted in the identified area or exposure unit, provided that the samples are analyzed by a certified laboratory.
- (d) To determine the concentrations of the chemicals of concern in ground water, the volunteer must perform sampling activities in compliance with the following criteria:
- (i) The method of sample collection must be capable of producing ground water quality appropriate for evaluating the pathway of concern;
  - (ii) The volunteer must collect a sufficient number of samples to adequately characterize a representative concentration of the chemicals of concern in ground water. In determining the number and timing of samples collected, the volunteer must consider temporal variations that could result in an ~~exceedence~~ ~~exceedance~~ of applicable standards. Temporal variations include, but are not limited to:
    - (a) Seasonal variations resulting in either increased or decreased recharge and thus fluctuations in the water table elevation; and
    - (b) Other variations resulting from the impact of geologic heterogeneity (permeability, fractures, etc.) or contaminant source heterogeneity or the transient nature of contaminant transport;
  - (iii) Sample locations must be appropriately located to evaluate all reasonably anticipated pathways to ensure applicable standards will not be exceeded at the point(s) of compliance or receptors based upon:
    - (a) The direction of ground water flow;

- (b) The size of the plume;
  - (c) The date of the release;
  - (d) Field screening techniques and methods; and
  - (e) Other methods or information, as appropriate.
- (iv) One or more sampling locations must be biased toward the location that is, or would be anticipated to be, the area of highest concentration of chemicals of concern. If sample locations cannot be reliably biased towards the area of highest concentration, the volunteer must take samples from a number of additional sample locations sufficient to determine the area of highest concentration;
- (v) All samples collected in accordance with this paragraph must be analyzed by a certified laboratory;
- (vi) For purposes of determining compliance with applicable standards, the volunteer must evaluate the data from each location separately;
- (vii) If it is necessary to take a ground water sample directly beneath a source area, the volunteer must use methods for monitoring well installation, construction, sampling and maintenance that will not cause cross-contamination between saturated units; and
- (viii) Methods and procedures must be followed, according to their limitations and intended uses, and based on:
- (a) Documents containing data collection, field testing and sampling techniques which are demonstrated to:
    - (i) Be field-validated;
    - (ii) Be documented and peer-reviewed;
    - (iii) Ensure the representativeness of samples taken following the technique; and
    - (iv) Be proven capable of achieving the data quality objectives identified in paragraph (C) of this rule; or
  - (b) Ohio EPA's "Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring." If any portion of

the "Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring" document would be inconsistent with the purpose of the phase II property assessment and this chapter then that portion should not be used.

- (e) Non-intrusive or indirect field testing may be used to assist in selecting sampling locations, but these techniques must not be used to demonstrate that concentrations of chemical(s) of concern meet or exceed applicable standards.
- (6) The volunteer must assume that the water in a saturated zone is ground water or must otherwise make a demonstration that the saturated zone falls below one of the criteria for ground water as that term is defined in paragraph (A) of rule 3745-300-01 of the Administrative Code. If the volunteer chooses to make this demonstration, then the volunteer must:
  - (a) Determine the ground water yield in accordance with paragraph (F)(8) of this rule, using a sufficient number of properly developed wells that are constructed to the minimum standards of a two-inch diameter, five-foot long manufactured screen placed in the saturated zone in a six-inch diameter borehole; or
  - (b) Determine the in situ hydraulic conductivity of the saturated zone using appropriate field test methods. Sampling points must be sufficient in number to represent the hydraulic conductivity of the saturated zone underlying the property.
- (7) Classify the ground water. To classify the ground water on, underlying, or emanating from the property in accordance with paragraphs (A) and (B) of rule 3745-300-10 of the Administrative Code, the volunteer must conduct the following data collection activities:
  - (a) The volunteer must determine if the ground water on, underlying or emanating from the property is being used. To make the determination, the volunteer must, at a minimum:
    - (i) Identify any visual evidence of ground water use in areas where ground water has or is reasonably anticipated to have concentrations of chemical(s) of concern in excess of unrestricted potable use standards; and
    - (ii) Review Ohio department of natural resources water well log information for the properties on which ground water contains or is

reasonably anticipated to contain concentrations of chemical(s) of concern in excess of unrestricted potable use standards.

- (b) For the purpose of determining that the yield of a saturated zone falls below the criterion for critical resource ground water as described in paragraph (B)(1) of rule 3745-300-10 of the Administrative Code, the yield of the saturated zone must be based on one or more of the following sources of information or methods:
  - (i) The ground water resource maps published by the Ohio department of natural resources or other published and verified data for the saturated zone being classified; or
  - (ii) Determined from a sufficient number of properly developed wells constructed to the minimum standards of an eight-inch diameter manufactured screen in a twelve-inch diameter borehole, in accordance with paragraph (F)(8) of this rule. The well screen must extend through at least eighty per cent of the thickness of the saturated zone or the volunteer must otherwise demonstrate that shorter screen lengths would not produce yield resulting in a different classification of the ground water.
- (c) For the purpose of determining that the yield of a saturated zone falls below the criteria for class A ground water in paragraph (B)(2) of rule 3745-300-10 of the Administrative Code, the yield of the saturated zone being classified must be determined in accordance with paragraph (F)(8) of this rule; and
  - (i) For an unconsolidated saturated zone, a determination of yield based on a sufficient number of properly developed wells, that are constructed to the minimum standards of a four-inch diameter manufactured screen in an eight-inch diameter borehole or a two-inch diameter manufactured screen in a six-inch diameter borehole. When wells with dimensions of a two-inch diameter manufactured screen in a six-inch diameter borehole are used to determine yield, the yield must be multiplied by a factor of 1.15 for purposes of this paragraph. The well screen must extend through at least eighty per cent of the thickness of the saturated zone or the volunteer must otherwise demonstrate that shorter intake lengths would not produce yield resulting in a different classification of the ground water;
  - (ii) For a consolidated saturated zone that is monitored using wells with screens, a determination of yield based on a sufficient number of properly developed wells, that are constructed to the minimum

standards of a four-inch diameter manufactured screen in an eight-inch diameter borehole or a two-inch diameter manufactured screen in a six-inch diameter borehole. When wells with dimensions of a two-inch diameter manufactured screen in a six-inch diameter borehole are used to determine yield, the yield must be multiplied by a factor of 1.15 for purposes of this paragraph. The well screen must extend through at least eighty per cent of the thickness of the saturated portion of the saturated zone or the volunteer must otherwise demonstrate that shorter intake lengths would not produce yield resulting in a different classification of the ground water; or

- (iii) For a consolidated saturated zone that is monitored using wells with open hole intakes, a determination of yield based on a sufficient number of wells that are properly constructed and developed to appropriate minimum standards of an eight-inch diameter borehole or a six-inch diameter borehole. When wells with a six-inch diameter borehole are used to determine yield, the yield must be multiplied by a factor of 1.15 for purposes of this paragraph. The open hole intakes must extend through at least eighty percent of the thickness of the saturated zone or the volunteer must otherwise demonstrate that shorter intake lengths would not produce yield resulting in a different classification of the ground water.
  - (d) For the purpose of comparing the yield of the ground water zone being classified to another ground water zone present below the property in accordance with the criterion of paragraph (B)(2)(c) of rule 3745-300-10 of the Administrative Code, the yield of the other ground water zone, which is the likely source of water used for potable purposes within one mile of the property, must be determined based on the lowest yield of any wells within one mile of the property. If no wells used for potable purposes exist within one mile of the property, the ground water resources maps published by the Ohio department of natural resources may be used to determine the yield of another ground water zone present under the property, which would likely be the source of water used for potable purposes within one mile of the property should a well be developed.
- (8) Determination of ground water yield. Whenever testing is conducted for purposes of determining the yield of a saturated zone underlying a property, the volunteer must conduct sufficient testing to determine the yield that is representative of the amount of ground water available from the saturated zone for potable purposes. The determination must be made in accordance with the following criteria:
- (a) Temporal considerations. The volunteer must demonstrate either:

- (i) The statistical average yield for the aquifer over a twelve month period;  
or
    - (ii) The maximum yield for the aquifer, provided that yield tests are biased towards the period of the highest yield; and
  - (b) Spatial considerations. The volunteer must bias the yield testing locations to the area of highest yield.
- (9) Determination of sources or source areas. To determine whether ground water contamination is attributable to sources or source areas located on the property, sources or source areas located off the property, or a combination of the two, the volunteer must conduct ground water sampling sufficient to determine:
- (a) The sources or source areas located on the property that contribute or contributed to the chemicals of concern in excess of unrestricted potable use standards in ground water on, underlying and emanating from the property;
  - (b) The extent to which on-property sources or source areas have affected the ground water on, underlying, or emanating from the property;
  - (c) If off-property sources or source areas may have affected the ground water on, underlying, or emanating from the property;
  - (d) The extent to which off-property sources or source areas have affected the ground water on, underlying, or emanating from the property; and
  - (e) Compliance with rule 3745-300-10 of the Administrative Code.
- (G) Use of modeling.
- (1) The volunteer must identify all models relied upon as part of the phase II property assessment activities to determine a property's compliance with applicable standards or used to evaluate remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code. The modeling must be conducted in accordance with this rule.
  - (2) The model(s) must be:
    - (a) Generally accepted within the scientific community and peer reviewed, or:
      - (i) Code-verified. To be code-verified, the model must be shown to produce reliable and mathematically accurate results for all functions of the model; and



- (ii) Scientifically valid for the processes being modeled.
  - (b) Used with assumptions and limitations reasonably consistent with conditions throughout the modeled area. The assumptions and limitations of the computer code, mathematical solution, technology utilized and computer code structure must be consistent with the conditions throughout the modeled area and the application of the model;
  - (c) Used in a manner consistent with the model's documentation and intended use; and
  - (d) Appropriate for the environmental media and application being modeled.
- (3) The modeling must adequately address the intended purpose of the modeling evaluation, such as to show compliance with applicable standards or to evaluate remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code. Depending on the intended purpose of the modeling evaluation or type of model, the model may need to be calibrated to the geologic, hydrogeologic, or physical conditions throughout the modeled area. The model may need to be field-verified to determine if favorable comparisons exist between the modeled conditions and observed field conditions for the area being modeled. In some cases field verification may require monitoring and evaluation under an operation and maintenance plan.
- (4) The modeling must be evaluated to determine its sensitivity to the input parameters or other components of the model (for example, boundary conditions). The volunteer must consider the sensitivity of the input parameters when utilizing a model to determine whether a property meets the applicable standards or when evaluating remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code. Input parameters or other components of the model determined to be sensitive to the modeling results must be:
- (a) Based on scientifically-valid conservative assumptions. The inputs must be based on property-specific data, or information from peer-reviewed literature and best professional judgment; or
  - (b) Accounted for through an uncertainty analysis to quantitatively determine compliance with applicable standards or to evaluate remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code. The inputs for the uncertainty analysis must be:
    - (i) Based on property-specific data collected in accordance with rule 3745-300-07 of the Administrative Code; and

- (ii) Based on scientifically-valid and appropriate assumptions using either best professional judgment or information from peer-reviewed scientific literature or publications.
- (5) The modeling evaluation and the results must be documented within the phase II property assessment report or within a separate modeling report addressing paragraphs (G)(1) to (G)(4) of this rule. If a separate modeling report is written it must be attached to the phase II property assessment report.

[Comment: The applicability of any given model is ~~dependant~~dependent upon the correlation between the model's underlying principles and assumptions and the geomorphology at the property, all of which must be reported in the no further action letter. Questions regarding the applicability of specific models to a particular property or soil type may be directed to Ohio EPA.]

- (H) Determination of background levels. Background levels as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code may be used as the applicable standard after demonstrating the chemicals of concern are not the result of current or past activities involving the treatment, storage, or disposal of a hazardous substance or petroleum. The volunteer must provide a demonstration as part of paragraph (J)(7) of this rule that chemicals of concern for which a background determination is being made meet the requirements of this paragraph.
- (1) Background levels in soil. If the background levels, as determined in accordance with this rule, for a chemical of concern do not meet the applicable standard derived for the property in accordance with rule 3745-300-08 or 3745-300-09 of the Administrative Code, the volunteer can select, as the applicable standard, a comparison demonstrating that the concentration of any such chemical of concern on the property is at or below background levels.
- (a) When determining background levels in soils, the samples must be taken in soil media native to the property and may not be taken in areas identified in paragraph (H)(1)(b) of this rule. Native fill as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code may be used for determining background levels when the native fill was not moved from or is not currently in an area described in paragraph (H)(1)(b) of this rule. If no areas on a property are appropriate under this rule to sample for background, to determine background levels, the volunteer may collect samples from a nearby, representative off-property location which would meet the requirements of this paragraph.
  - (b) The following areas are inappropriate to sample when determining background levels:

- (i) The following types of fill areas:
  - (a) Engineered fill as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code,
  - (b) Structural fill, or
  - (c) Industrial fill as defined in paragraph (A) of rule 3745-300-01 of the Administrative Code;
- (ii) Areas in which management, treatment, handling, storage or disposal activities of any of the following are known or suspected to have occurred:
  - (a) Hazardous substances or petroleum,
  - (b) Solid or hazardous wastes,
  - (c) Waste waters, or
  - (d) Material handling areas;
- (iii) Areas within three feet of a roadway. This restriction only applies when the chemicals of concern is one that would normally be associated with the activities conducted on the roadway;  
  
[Comment: For example, a volunteer may not sample within three feet of a roadway when the volunteer is trying to determine a background level for lead.]
- (iv) Parking lots and areas surrounding parking lots or other paved areas. This restriction only applies when the chemicals of concern is one that would normally be associated with the activities conducted in the parking lots;
- (v) Railroad tracks or railway areas or other areas affected by their runoff. This restriction only applies when the chemicals of concern are those that would normally be associated with the activities conducted on or around the railroad tracks;
- (vi) Areas of concentrated air pollutant depositions or areas affected by their runoff;

- (vii) Storm drains or ditches presently or historically receiving industrial or urban runoff; or
  - (viii) Spill areas.
- (c) Background levels must be representative of the zones or depth intervals to which the background levels may be applied; and
- (d) The following method must be followed to determine a representative numerical value for background levels in soils at a property:
- (i) Collecting background level samples. At a minimum, eight soil sampling points must be taken to represent a background level within each zone, or soil horizon which will be compared to samples taken to determine the concentrations of chemical(s) of concern in identified areas.
  - (ii) Determining the numerical value for background concentrations for chemicals of concern at the property. The volunteer may use any statistically valid methodology to determine a background concentration whereby the statistical means of the distribution of background and the impacted area datasets are compared. The volunteer may refer to U.S. EPA's "Guidance for Comparing Background and Chemical Concentrations in Soil for CERCLA sites" and "Statistical Methods for Evaluating the Attainment of Cleanup Standards" for guidance. Alternatively, a statistical method that may be applied to establish background concentrations is as follows:

- (a) The background mean, referred to as:  $\bar{X}_b$  must be calculated by dividing the sum of the total background readings by the total number of background readings:

$$\bar{X}_b = \frac{X_1 + X_2 + X_n}{n_b}$$

- (b) The background standard deviation, referred to as:  $S_b$  must be calculated by taking the square root of the sum of the squares of each reading minus the mean, divided by the degrees of freedom, which is the total number of background samples minus one ( $n_b - 1$ ):

$$S_b = \sqrt{\frac{(X_1 - \bar{X}_b)^2 + (X_2 - \bar{X}_b)^2 + \dots + (X_n - \bar{X}_b)^2}{n_b - 1}}$$

- (c) The coefficient of variation, referred to as "C<sub>v</sub>" must be calculated by dividing the background standard deviation by the background mean:

$$C_v = \frac{S_b}{\bar{X}_b}$$

The coefficient of variation is used as a means to evaluate the data distribution. Normally distributed background data should generally have "C<sub>v</sub>" less than 0.5 for granular soils, and less than 0.75 for cohesive soils, or an explanation accounting for higher "C<sub>v</sub>" values. If the "C<sub>v</sub>" exceeds 1.0 and the volunteer determines that the data are not distributed normally, the data may be normalized by an appropriate transformation and a maximum allowable limit may be calculated for the transformed data in accordance with paragraph (H)(1)(d)(ii)(d) of this rule. If "C<sub>v</sub>" exceeds 1.0 then the volunteer must conduct a thorough evaluation to account for this variability. If the "C<sub>v</sub>" exceeds 1.0 and the volunteer determines that a data point does not accurately represent background conditions or if a quality assurance and quality control problem exists which has invalidated the data point, the invalidated and inaccurate data points may be dropped, or additional samples must be collected and analyzed to ensure a sufficient representative data population is maintained.

- (d) For normally distributed data apply:  $\bar{X}_b + 2 * S_b$  of background data as the maximum allowable limit or upper limit, where  $2 * S_b$  represents two times the standard deviation and  $\bar{X}_b$  represents the background mean.

Each sample point from the background dataset must be compared to the calculated maximum allowable limit or upper limit analyzed from background data. If a value from the background dataset is found to be an outlier which is not representative of background conditions, it must be replaced by another sample that is not an outlier to maintain at least eight samples for the background determination for soils.

- (2) Determination of soil background levels from off-property investigations. Upon demonstration that it is not possible to find sampling locations in accordance with paragraph (H)(1) of this rule, the volunteer may use information from off-property investigations in accordance with this paragraph to determine the background concentrations of chemical(s) of concern at the property. When evaluating the applicability of the data collected as part of the off-property investigation, the criteria contained in paragraphs (H)(1)(b) and (H)(1)(c) of this rule must be satisfied in order to consider the data as potentially applicable for determining background levels in soils for the purposes of this rule. In addition,

if the information is not representative of conditions at the property, the volunteer cannot use this method to demonstrate background levels in soil. Appropriate off-property investigations that may be used for the purposes of this paragraph include investigations using data demonstrated to be reliable and representative of background levels for the property. At a minimum, to be reliable and representative, the investigations must:

- (a) Be conducted on soil that is representative of the soil type at the property for which the background level is being determined and are located within or immediately adjacent to the state of Ohio;
- (b) Employ data demonstrated to be reliable and representative that at a minimum meet the following criteria:
  - (i) Employ data quality objectives consistent with paragraph (C) of this rule;
  - (ii) Employ quality assurance and quality control procedures that serve to minimize sources of error and the potential for cross contamination of field samples, and maximize the representativeness of the data collected; and
  - (iii) Employ data collection and sampling techniques that are consistent with the criteria listed in paragraphs (D)(1) to (D)(4) of this rule; and
- (c) Employ methods for calculating background levels consistent with the methods described in paragraph (H)(1)(d) of this rule or otherwise use methods that are demonstrated to be statistically verifiable.

Appropriate investigations may include: peer-reviewed information; research reports generated or sponsored by local, state, or federal agencies; or college or university research reports including theses and dissertations.

(3) Ground water background levels.

- (a) Property-specific determination of ground water background levels. If the background levels, as determined in accordance with this rule, for a chemical of concern do not meet the applicable standard derived for the property in accordance with rule 3745-300-08 or 3745-300-09 of the Administrative Code, the volunteer can select, as the applicable standard, a comparison demonstrating that the concentration of any such chemical of concern on the property is at or below background levels. To determine background levels in ground water, samples must be taken up-gradient at appropriate locations and depths which are unaffected by anthropogenic

sources of contamination. Background sampling points may include points not hydraulically up-gradient of the identified area(s) where:

- (i) Hydrogeologic conditions do not allow the volunteer to determine which direction is hydraulically up-gradient; or
  - (ii) Sampling at other points will provide an indication of background ground water quality that is representative or more representative than that provided by the up-gradient points.
- (b) The number and kind of samples collected to establish background in ground water must be:
- (i) Appropriate for the method used for determining whether concentrations of chemical(s) of concern exceed background, following generally accepted principles; and
  - (ii) As large as necessary to ensure with reasonable confidence that a contaminant release to the ground water from a property will be detected.
- (c) The method chosen must be applied separately for each chemical of concern and must comply with the following performance standards:
- (i) Capable of accounting for data below the limit of detection using the lowest practical quantitation limit that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the volunteer. The practical quantitation limit must be below the potable ground water standard;
  - (ii) Contain procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data;
  - (iii) Should a statistical method be chosen, the method must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution is shown to be inappropriate for a normal theory test, then the data must be transformed or a distribution-free theory test must be used. If the distributions for the chemicals of concern differ, more than one statistical method may be needed; and
  - (iv) Complies with the performance standards set in U.S EPA's "Statistical Analysis of Ground Water Monitoring Data at RCRA Facilities: Addendum to the Interim Final Guidance."

(4) Determination of ground water background levels from off-property investigations. Upon a demonstration that it is not possible to find sampling locations in accordance with paragraph (H)(3) of this rule, the volunteer may use information from off-property investigations in accordance with this paragraph to determine the background concentrations of chemical(s) of concern at the property. When evaluating the applicability of the data collected as part of the off-property investigation, the criteria contained in paragraphs (H)(3)(b) and (H)(3)(c) of this rule must be satisfied in order to consider the data as potentially applicable for determining background levels in ground water for the purposes of this rule. In addition, if the information is not representative of conditions at the property, the volunteer cannot use this method to demonstrate background levels in ground water. Appropriate off-property investigations that may be used for the purposes of this paragraph include investigations using data demonstrated to be reliable and representative of background levels for the property. At a minimum, to be reliable and representative, the investigations must:

- (a) Be conducted on soils and ground waters representative of the soil type, ground water conditions, and saturated zone at the property for which the background level is being determined and are located within or immediately adjacent to the state of Ohio;
- (b) Employ data demonstrated to be reliable and representative and at a minimum meet the following criteria:
  - (i) Employ data quality objectives consistent with paragraph (C) of this rule;
  - (ii) Employ quality assurance and quality control procedures that serve to minimize sources of error and the potential for cross contamination of field samples, and maximize the representativeness of the data collected; and
  - (iii) Employ data collection and sampling techniques that are consistent with the criteria listed in paragraphs (D)(1) to (D)(4) of this rule; and
- (c) Employ methods for calculating background levels that are demonstrated to be statistically verifiable.

[Comment: Appropriate investigations may include: information from the Ohio EPA division of drinking and ground water regarding ambient ground water quality monitoring; peer-reviewed information; research reports generated or sponsored by local, state, or federal agencies; or college or university research reports including theses and dissertations.]



- (5) If background levels in soil or ground water cannot be determined using paragraphs (H)(1) to (H)(4) of this rule, background levels cannot be used as the applicable standards for either the soil or ground water.

(I) Demonstration of compliance with applicable standards.

- (1) Data collection. The data collected in accordance with this rule must be sufficient to determine whether applicable standards are met or to determine that remedial activities conducted in accordance with rule 3745-300-11 of the Administrative Code result in the property complying with applicable standards. This includes data sufficient to assess existing exposure pathways and reasonably anticipated exposure pathways determined to be complete in accordance with paragraph (F)(1) of this rule and all points of compliance for soil, ground water, and other environmental media, including the following:

(a) Points of compliance for soil.

- (i) Applicable standards based on direct-contact with soils. A volunteer must meet and maintain compliance with the direct-contact soil standards to the following minimum soil depths:

- (a) For properties having unrestricted land use or residential land use, the point of compliance for applicable standards is from the ground surface to a minimum depth of ten feet. The volunteer must comply with applicable standards at depths below ten feet when it is reasonably anticipated that soil will be made available for direct-contact through circumstances other than those specified in paragraph (I)(1)(a)(i)(c) of this rule.

The volunteer must also comply with applicable standards at depths greater than ten feet when it is reasonably anticipated soils will be made available for chronic, direct-contact exposure through excavation, grading, utilities maintenance or other similar circumstances. In these scenarios, the applicable point of compliance extends from the ground surface to the maximum depth of reasonably anticipated activities.

- (b) For properties having institutional controls that limit a property's land use and where the institutional controls have been implemented in accordance with rule 3745-300-11 of the Administrative Code, the point of compliance for applicable standards is from the ground surface to a minimum depth of two feet.

The volunteer must comply with applicable standards at depths below two feet when it is reasonably anticipated that soil will be made available for direct-contact through circumstances other than those specified in paragraph (I)(1)(a)(i)(c) of this rule. The volunteer must also comply with applicable standards at depths greater than two feet when it is reasonably anticipated soil will be made available for chronic, direct-contact exposure through excavation, grading, utilities maintenance or other similar circumstances such as when soil below two feet is brought to the surface and left on the surface or otherwise incorporated into the soil remaining within the two foot point of compliance. In these scenarios the applicable point of compliance extends from the ground surface to the maximum depth of reasonably anticipated activities.

- (c) For properties where it is reasonably anticipated that excavation, grading, or other construction activities will occur on the property the volunteer must comply with applicable soil standards for such excavation or construction activities. The point of compliance for applicable standards is from the ground surface to a minimum depth equal to the maximum depth reasonably anticipated for activities at the property.

[Comment: Applicable standards for excavation or construction activities can be either generic direct-contact soil standards for excavation construction activities, standards derived using a property-specific risk assessment, or background levels determined in accordance with paragraph (H) of this rule.]

- (ii) Applicable soil standards based on leaching of chemical(s) of concern from soils to ground water. The point of compliance for applicable soil standards based on leaching of chemical(s) of concern from soils to ground water, when such leaching must be prevented in accordance with paragraph (D) of rule 3745-300-10 of the Administrative Code, is the depth from the ground surface to the top of the ground water zone requiring protection in accordance with paragraphs (F)(2) and (F)(3) of this rule.
- (iii) Applicable soil standards based on other identified complete exposure pathways. The point of compliance for applicable soil standards developed pursuant to rule 3745-300-08 or 3745-300-09 of the Administrative Code for complete exposure pathways identified in paragraph (F)(1) of this rule, other than those identified in paragraphs

(I)(1)(a)(i) and (I)(1)(a)(ii) of this rule, must be determined so that the exposure to receptors is appropriately addressed.

[Comment: Other identified complete exposure pathways for chemicals of concern in soil to receptor populations may include but are not limited to volatile emissions of chemicals of concern in soil to indoor air or the migration of chemicals of concern in soil to surface water or sediments.]

- (b) Points of compliance for ground water. The points of compliance for each ground water zone on, underlying or emanating from a property must be determined in accordance with paragraphs (D) and (E) of rule 3745-300-10 of the Administrative Code.
  - (c) Points of compliance for other environmental media. The points of compliance for each complete exposure pathway identified in paragraph (F)(1) of this rule for each environmental medium other than those identified in paragraphs (I)(1)(a) and (I)(1)(b) of this rule, must be determined in accordance with the procedures in rule 3745-300-08 or 3745-300-09 of the Administrative Code.
- (2) Data analysis. The volunteer must verify the assumptions and applicability of models, statistical methods, or any other data analysis method(s) used for determining compliance with applicable standards, determining the concentration of chemical(s) of concern, deriving applicable standards, or demonstrating the effectiveness of a remedial activity. At a minimum, the following must be demonstrated:
- (a) Models were used in accordance with paragraph (G) of this rule;
  - (b) Statistical methods used are appropriate and valid for their intended use;
  - (c) Adjustment of applicable standards for multiple chemicals of concern was conducted in accordance with rules 3745-300-08 and 3745-300-09 of the Administrative Code, if applicable. All final cumulative human health carcinogenic risk and non-carcinogenic hazard levels are based on one significant figure;
  - (d) If non-certified laboratory data ~~data generated by a mobile laboratory~~, or studies not conducted in accordance with this rule are used to partially meet the requirements of this rule, the data must be confirmed in accordance with paragraphs (E)(1)(d) and (E)(1)(e) of this rule. The volunteer must demonstrate in the phase II property assessment report how the non-certified laboratory data was confirmed using certified laboratory data; and

- (e) If applicable standards were not determined for chemicals of concern on the property because the chemicals of concern meet the criteria of paragraph (F)(4) of this rule, the volunteer must demonstrate in the phase II property assessment report how the criteria are met.

(3) Compliance with applicable standards.

- (a) The volunteer must verify compliance with applicable standards for all current exposure pathways and reasonably anticipated exposure pathways determined to be complete in accordance with the procedures described in paragraph (F)(1) of this rule, or the volunteer must implement a remedy pursuant to paragraph (I)(4)(b) of this rule.
- (b) To verify compliance with applicable standards, the volunteer must compare the concentration of each chemical of concern determined in accordance with paragraph (F)(5) of this rule to the applicable standard identified in paragraph (F)(4) of this rule. Compliance with an applicable standard is verified if the concentration of each chemical of concern does not exceed the applicable standard. All final cumulative human health carcinogenic risk and non-carcinogenic hazard levels are based on one significant figure.

Applicable standards may include but are not limited to standards derived from generic numerical standards, background levels determined in accordance with paragraph (H) of this rule, a property-specific risk assessment, or a combination of these standards. If generic direct-contact soil standards for commercial or industrial land use are used to meet applicable standards, institutional control(s) must be used to limit the property's land use as described in paragraph (C)(2)(c) of rule 3745-300-08 of the Administrative Code. The institutional control(s) must be implemented in accordance with rule 3745-300-11 of the Administrative Code.

(4) Implementation of remedial activities.

- (a) If concentration(s) of chemical(s) of concern exceed applicable standards for any existing exposure pathway or reasonably anticipated exposure pathway determined to be complete in accordance with (F)(1) of this rule, the volunteer must implement a remedy in accordance with rule 3745-300-11 of the Administrative Code. If the applicable point(s) of compliance for environmental media at the property cannot be met or maintained, the volunteer must implement a remedy in accordance with rule 3745-300-11 of the Administrative Code.
- (b) If compliance with applicable standards cannot be determined or is not determined for an existing exposure pathway or reasonably anticipated

exposure pathway determined to be complete in accordance with paragraph (F)(1) of this rule, the volunteer must implement a remedy in accordance with rule 3745-300-11 of the Administrative Code. The volunteer must demonstrate that the remedy renders the pathway incomplete as to all potential receptors and that all points of compliance as specified in paragraph (I)(1) of this rule have been addressed.

(J) A volunteer must complete a phase II property assessment written report that at a minimum includes:

- (1) An introduction identifying the property, including the legal description of the property; the dates over which the phase I property assessment and the phase II property assessment were conducted and the date that the written report for each was finalized; and the name and job title of each person conducting the phase II property assessment;
- (2) A summary of any amendment to the phase I property assessment required by paragraph (E)(1)(b) of this rule;
- (3) A statement of the limitations or qualifications, if any, which impact the phase II property assessment;
- (4) A summary of the sampling procedures employed in accordance with paragraph (D) of this rule and the rationale for the sampling and testing activities conducted in accordance with the requirements of this rule;
- (5) A summary of the data collection activities conducted under paragraph (E) of this rule, the data collected as a result of these activities, and a determination of the data usability based on the quality control information. The summary should include a discussion noting if the data meets the data quality objectives as required by paragraph (C) of this rule;
- (6) A summary of the determinations made under paragraphs (F)(1) to (F)(9) of this rule and a summary of the rationale for the determinations made under paragraphs (F)(1) to (F)(9) of this rule;
- (7) A summary of the background determination activities, if any, conducted under paragraph (H) of this rule;
- (8) A summary of any models used in accordance with paragraph (G) of this rule and inclusion of the documentation required by paragraph (G)(5) of this rule;

- (9) If an urban setting designation is being relied upon in part to address potable use pathway(s), a summary of the activities conducted in accordance with paragraph (C)(3) of rule 3745-300-10 of the Administrative Code;
- (10) If a property-specific risk assessment was conducted to determine applicable standards, a copy of the written risk assessment report must be attached to the phase II property assessment report;
- (11) A summary of any remedial activities implemented prior to the issuance of the no further action letter as required by paragraph (I)(4) of this rule;
- (12) A discussion of whether the property complies with applicable standards and whether remedial activities have been or are being implemented to meet or maintain applicable standards in accordance with rule 3745-300-11 of the Administrative Code, and a summary of the applicable standards demonstration conducted in accordance with paragraph (I) of this rule;
- (13) Property maps and cross-sections, as applicable:
  - (a) Map(s) indicating the locations of all borings, monitoring wells, or other sampling locations;
  - (b) Map(s) depicting the existing topography with a contour interval of no greater than five feet and delineates on or adjacent to the property any existing streams, swamps, lakes, springs, or other surface water features;
  - (c) Geologic cross-sections representing the subsurface geologic and hydrogeologic conditions underlying the property including all saturated zones evaluated during the phase II property assessment;
  - (d) Property map(s) indicating the locations of the identified areas and exposure units at the property, and the concentration and physical distribution of the chemical(s) of concern identified in environmental media on, underlying or emanating from the property; and
  - (e) Map(s) showing the portion(s) of the property where remedial activities have been implemented or will be implemented pursuant to rule 3745-300-11 of the Administrative Code, including the institutional controls, risk mitigation measures, and engineering controls subject to an operation and maintenance plan prepared under that rule. If a remedial activity does not apply to the entire property, include a survey map showing the portion of the property to which the remedial activity applies. Map(s) may be included in the operation and maintenance plan, written pursuant to rule 3745-300-11 of the

Administrative Code, instead of including it in the phase II property assessment report;

- (14) An elevation survey as required by paragraph (D)(1)(d) of rule 3745-300-11 of the Administrative Code, if applicable;

[Comment: An elevation survey is not required for properties that have not completed a remedy at the time of issuance of the no further action letter. However, in accordance with paragraph (E)(1)(c) of rule 3745-300-11 of the Administrative Code, the operation and maintenance plan must include a requirement to complete the elevation survey upon completion of remedial activities.]

- (15) A bibliography of references which identifies, to the extent available, the description, date, source, and location of the documents reviewed as part of the phase II property assessment and the identification of all laboratories that performed analyses as part of the phase II property assessment; and
- (16) Appendices for appropriate supporting documentation.

Effective: 04/23/2012

R.C. 119.032 review dates: 03/01/2014

CERTIFIED ELECTRONICALLY

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Certification

04/02/2012

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Date

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Rule Amplifies: 3746  
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