

# SABR Brownfield Interested Party List Newsletter

Ohio Environmental Protection Agency Division of Emergency & Remedial Response

## Clean Ohio Revitalization Fund Awards Cleanup Grants to Sixteen Communities



December 2009

Ohio Department of Development (ODOD) and the Ohio Environmental Protection Agency (OEPA) recently concluded the Clean Ohio Revitalization Fund's (CORF) Seventh grant round competition. On November 20 the Clean Ohio Counsel awarded sixteen Ohio communities cleanup grants ranging from \$297,000 to \$3 million resulting in \$28,086,685 in Clean Ohio funds being granted to brownfield sites for cleanup, acquisition and infrastructure improvement. The Counsel, which found all of these projects to be worthy of funding, voted to move approximately \$750,000 from the upcoming Round 8 funding so that every Round 7 project received the amount of grant funding they requested.

Six of the projects already have commitments from developers or business owners to develop the site and bring needed jobs to Ohio during these difficult economic times. The other ten projects are either working with or soliciting end users to build on the site once cleanup has completed.

The CORF grant projects approved for Round Seven are as follows:

Community	Project	CORF Grant
City of Akron	Landmark Building	\$1,915,050
City of Cincinnati	Fmr. NuTone Property	\$3,000,000
Cuyahoga County	BenVenue Laboratories	\$2,494,800
City of Elyria	Garden St. Redevelopment	\$1,896,539
City of Grandview Hts.	Grandview Yard	\$2,000,000
City of Hamilton	550 North 3rd Street	\$2,032,905
Hocking County	Fmr. General Clay Property	\$ 623,679
City of Lyndhurst	Penguin Cleaners	\$3,000,000
City of Marion	Linden Place	\$2,000,000
City of Middletown	STM Redevelopment	\$1,606,817
City of Newark	Fmr. Newark Processing	\$ 2,000,000

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Community	Project	CORF Grant
City of Norwalk	Norwalk Foundry	\$535,846
City of Painesville	Lake East Hospital	\$2,052,408
City of Steubenville	Cools Hoagie Property	\$297,318
Toledo/Lucas Co Port Auth.	Industrial Park at Beazer	\$1,999,980
City of Youngstown	Former YS&T Office Building	\$631,343

## Upcoming VAP Training

Ohio EPA has scheduled the Winter Certified Professional (CP) Coffee which will be held in the Agency's Central Office in Columbus on January 27, 2010 starting at 9:00 am. If you regularly attend CP Coffees, you'll note the change in location. The Winter Coffee, typically held in our Northeast District Office in Twinsburg, is being held in Columbus this year. The Spring CP Coffee will be held in the Northeast District Office instead of Columbus. We are hoping this switch will help attendees winter commute to this training. We will gauge how effective the "switch" is this year before adopting the change permanently.

The Winter Coffee is shaping up to have a robust agenda including presentation on brownfield demolition following deconstruction practices; bringing back "VAP Abby", by popular demand, to go over problems Ohio EPA reviewers note and how to resolve them; and an open session where CPs can discuss with VAP and SABR staff any questions they have along with what works/needs improvement in the VAP and Clean Ohio Fund.

As with most Ohio EPA CP Coffees, CPs will receive three (3) PDHUs for attending the Winter Coffee.

## Training Eligible for VAP PDHUs now Posted on VAP Web!

VAP Certified Professionals (CPs) are often in search of technical training opportunities and conferences to attend that will earn them Professional Development Hour Units (PDHUs). PDHUs are similar in scope to Continuing Education Units that individuals in various professions must obtain to maintain their professional certification. CPs must earn 24 PDHUs each certification year in order to maintain their VAP CP Certification.

The VAP has recently added a new item to the Resources section of the VAP Web page (<http://www.epa.state.oh.us/derr/volunt/volunt.aspx>) called "Courses that Qualify for PDHUs". As staff become aware of training that qualifies for PDHUs, either through information they've searched out or information CPs have submitted for PDHU consideration, the training information will be posted in this new section.

The VAP is always looking for PDHU eligible technical training opportunities to pass on to our CPs. If you are know of or are holding a technical training in Ohio or the surrounding states, please e-mail the training information to Ildi Pallos at [ildi.pallos@epa.state.oh.us](mailto:ildi.pallos@epa.state.oh.us).

## Business of Brownfields Conference—Call for Presentations Open

The call for presentations for the 15th Annual Business of Brownfields Conference was recently announced by the Engineer's Society of Western Pennsylvania. The conference will be held April 19-21, 2010 in Pittsburgh. The organizers of the Conference are seeking both experience- and research-based presentations from stakeholders involved in brownfields cleanup and redevelopment. Presentations with an emphasis on sustainable technical and engineering solutions are especially requested. There are opportunities available for presenting as a session speaker, panel speaker and poster presenter in any the following five main areas of interest: Public Health & Institutional Controls; Site Characterization; Working within the Legal Framework; Marketing & Finance and Site Remediation.

Presentation abstracts of approximately 250 words should be submitted online at: [www.eswp.com/brownfields/abstract\\_submittal.htm](http://www.eswp.com/brownfields/abstract_submittal.htm) The deadline to submit presentation abstracts is January 24, 2010.

## Clean Ohio Success: Stein Industrial Park

The City of Canton, with help from a \$298,000 Assessment Grant and a \$699,000 Cleanup Grant from the Clean Ohio Assistance Fund, has successfully turned around a 43 acre underutilized and deteriorating industrial site and created the Stein Industrial Park. Since the 1910's, the property has been used for commercial and industrial purposes. National Iron & Metal operated a scrap metal recycling facility for 85 years in the northern and eastern portions of the property. The southern and central portions of the property were used for a variety of commercial enterprises including truck repair, sand blasting, welding and asphalt & paving.

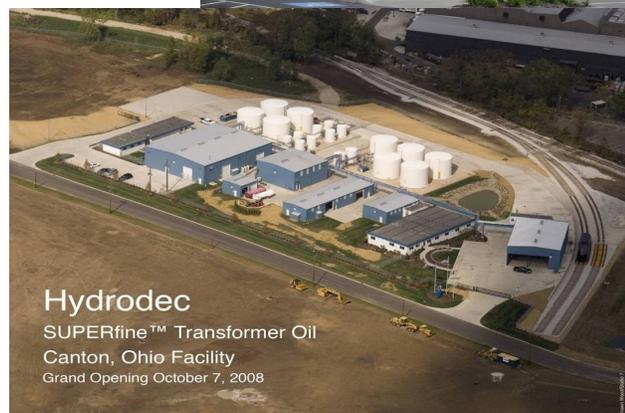
The clean up consisted of removing soils contaminated with TPH, lead and PCBs. Two new industries have moved their operations to the new industrial park. The Hydrodec Company is an oil recycling facility and the Pull-A-Part facility conducts auto recycling on the facility. Absolute Auto & Truck Technicians, Inc. are also located at Stein. Ohio EPA issued a Covenant Not to Sue for the Stein Industrial Park in the spring of 2009.

Currently, additional Clean Ohio funds are being used to expand Stein Industrial Park and to clean up the former Canton Metal Alloy (CMA) property. CMA operated a metal smelter and recycling facility on the southeast portion of the property. Industrial Recycling Services took over the business and operated the smelter until 1993. Remedial options are being evaluated to determine how to address the lead impacted soils, so that this part of the property can also be placed back into use.



**Before**

**After**



**Hydrodec**  
SUPERfine™ Transformer Oil  
Canton, Ohio Facility  
Grand Opening October 7, 2008

# VAP Certified Professional Obligations to Notify

At the VAP Certified Professional (CP) Annual Training in November 2009, Ohio EPA attorneys Mark Navarre and Sue Kroeger gave a presentation that went over various CP codes of conduct and obligations to notify that CPs are required to follow under OAC rule 3745-300-05. There has been much interest from the CP community regarding their professional obligations when conducting VAP work. Below is a table Sue Kroeger and Frank Robertson put together that provides greater detail regarding CPs obligations to notify when working in the VAP.

Notify about what? ** Rule required by.	Notify whom?	Scope of CP's notification
<p><b>Imminent hazard...</b> If a CP identifies an <i>imminent hazard</i> at a property at which the CP is providing professional services</p> <p>OAC 3745-300-05(E)(2)(b)</p>	<p>The volunteer,</p> <p>And, if different from volunteer, the property owner or operator (O/O)</p> <p>The director of Ohio EPA (director), as rule directs</p>	<p>Notify of the imminent hazard,</p> <p>And, of need to notify the director</p> <p>Further notification to director if volunteer or O/O does not submit to the CP written confirmation within 48 hours that they addressed issue or that notified director</p>
<p><b>Release reporting...</b> If a CP discovers the occurrence of a release that is subject to ORC 3750.06 requirements (release reporting)</p> <p>OAC 3745-300-05(E)(2)(c)</p>	<p>The volunteer,</p> <p>And, if different from volunteer, the property owner or operator (O/O)</p> <p>Ohio EPA's director, as rule directs</p>	<p>Notify of the release condition,</p> <p>And, of need to notify the director within ORC 3750.06-required time frames</p> <p>Further notification to director if CP is not able to notify the volunteer or O/O within applicable timeframes</p>
<p><b>Significant deviation....</b> If a CP knows or has reason to know of an action taken by a volunteer, or any person conducting work in connection with a voluntary action, that significantly deviates from any scope of work, plan or report developed to meet OAC chapter 3745-300 (VAP rules), or a director's order issued under ORC 3746.12(B)(3) (compliance schedule agreement)</p> <p>OAC 3745-300-05(E)(2)(d)</p>	<p>The volunteer, in writing</p>	<p>Notify of the deviation...</p>
<p><b>Newly-discovered information...</b> If a CP learns subsequent to his or her issuance of an NFA letter that relevant facts, data or other information existed at the time the NFA letter was issued which indicates that applicable standards were not met</p> <p>OAC 3745-300-05(E)(2)(f)</p>	<p>The volunteer,</p> <p>And, if different from volunteer, the property owner or operator (O/O)</p> <p>Ohio EPA's director as rule directs</p>	<p>Notify that the applicable standards were not met,</p> <p>And, of the need to notify the director</p> <p>Further notification to director if volunteer or O/O does not submit to the CP written confirmation within 30 days of learning of the relevant information that the director has been notified</p>
<p><b>Potential conflict of interest...</b> If a CP has, develops, or acquires any business association, direct or indirect financial interest, or other circumstance which could create an impression of influencing the CP's judgment in connection with performing professional services</p> <p>OAC 3745-300-05(E)(3)(c)</p>	<p>To the person who has contracted with the CP [CP's employer] for professional services</p>	<p>Fully disclose the nature of the business association, financial interest or other circumstance</p> <p>If CP believes any such circumstance renders the CP incapable of discharging professional services the CP must terminate his or her involvement and avoid any further involvement in the voluntary action</p>

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<p><b>Incomplete or unreliable Phase I...</b> If a CP finds that relevant information submitted by a volunteer is not complete or reliable for the purposes of issuing an NFA letter</p> <p>OAC 3745-300-06(I)(1)</p>	The volunteer	Notify that the additional information is needed in order to meet the requirements of OAC 3745-300-06 (for purposes of issuing an NFA letter)	No
<p><b>Can't issue NFA letter...</b> If a CP determines he or she cannot issue an NFA letter, i.e., after reviewing the demonstrations required to be submitted under ORC 3746.10(C) (assessments, standards, remedy demonstrations)</p> <p>ORC 3746.11(B) and OAC 3745-300-13(A) to (E)</p>	The volunteer	<p>Notify of the CP's finding that the voluntary action property does not comply with applicable standards</p> <p>And of the CP's inability to issue a NFA letter for the property</p>	No
<p><b>Findings regarding another CP's issued voluntary action opinion or other professional services...</b> If a CP discovers another CP's NFA letter contains deficient property assessment activities, inaccurate standards determination, data errors or other problems, or if a CP disagrees with another CP's BPJ on a key issue in the voluntary action.</p> <p>OAC 3745-300-05(E)(2)(d)</p>	The volunteer	A CP's involvement in a given voluntary action <i>may</i> require notification related to what is discovered regarding another person's significant deviation from a scope of work, per OAC 3745-300-05(E)(2)(d) <b>regardless of CP status.</b>	No

\* This table covers the VAP requirements that impose a duty or standard of conduct on certified professionals (CP) to proactively notify, under the circumstances set forth in Ohio Revised Code (ORC) chapter 3746 or in Ohio Administrative Code (OAC) 3745-300-05, also known as the CP rule. This summary, however, does not cover document production requirements that Ohio EPA initiates, for example, under a no further action letter audit pursuant to ORC 3746.17 or 3746.18 or OAC 3745-300-14.

\*\* For the definition of "professional services," "voluntary action," "property," "imminent hazard," and other terms given in this summary, please refer to OAC 3745-300-01 (VAP's definitions rule), which contains and adds to the definitions given by ORC 3746.01.

## VAP Covenant not to Sue Changes

The VAP has recently revised language in their template used for preparing all VAP Covenants not to Sue (CNS). The purpose of this revision is to streamline the rather complicated summary of applicable standards and to clarify the scope of the liability release in the CNS.

The summary of applicable standards has been categorized into four groups: a) generic numeric standards determined in accordance with OAC Rule 3745-300-08; b) property-specific risk assessment standards developed in accordance with OAC Rule 3745-300-09; c) background standards determined in accordance with ORC 3746.06(A) and OAC Rule 3745-300-07(H); and d) standards for residential (potable) use of groundwater in the designated clean zone under the property per ORC 3746.06(B). Grouping the applicable standards in this manner will make drafting of the standards in the CNS easier for Ohio EPA and should make for a clearer read of the CNS applicable standards for the volunteer and other interested parties.

The scope of the liability release in the CNS has been clarified to encompass all exposure pathways to hazardous substances. Previously, the CNS placed limitations on the release of liability granted that may have excluded any release unaccounted for by the no further action letter (NFA). With the changes to the CNS liability language, liability encompasses all hazardous substance or petroleum releases that have occurred on the property that is subject to the NFA letter.

Therefore, the CNS liability release will continue to apply to a property that has undergone a rule-compliant voluntary action. This liability protection applies even if the NFA letter had not identified a particular release, as long as it is demonstrated that the property remains compliant with the applicable standards upon which the CNS was based.

The VAP will continue to use the "opportunity to cure" process, detailed in ORC 3746.12(B), to address any non-compliance with the applicable standards at a property that has received a CNS. That process affords volunteers and other responsible parties to return the property to compliance under a compliance schedule agreement, before a CNS is revoked.

