

3745-300-11      **Remediation.**

[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 and identification of when remedial activities are required.

- (1) Remedial activities as defined in division (Q) of section 3746.01 of the Revised Code and in of rule 3745-300-01 of the Administrative Code must be conducted to meet applicable standards when a phase II property assessment conducted in accordance with rule 3745-300-07 of the Administrative Code reveals that concentrations of chemicals of concern in any environmental media fail to comply with any of the following:
  - (a) Applicable standards as determined from the generic numerical standards in accordance with rule 3745-300-08 of the Administrative Code.
  - (b) Applicable standards as determined from a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code.
  - (c) Background levels as determined in accordance with rule 3745-300-07 of the Administrative Code, when background levels are the applicable standards.
  - (d) Any other applicable standard of this chapter.
- (2) Each complete exposure pathway for environmental media determined in accordance with paragraph (F)(1) of rule 3745-300-07 of the Administrative Code must comply with an applicable standard determined in accordance with this chapter. For complete exposure pathways which fail to comply with an applicable standard, the volunteer must implement a remedy in accordance with this rule, unless the volunteer can demonstrate that a pathway to an off-property receptor from contamination that has emanated from the property could not be remedied through diligent efforts by the volunteer. Such pathways may be omitted from the voluntary action in accordance with paragraph (D) of this rule.
- (3) An institutional control in the form of a use restriction, or activity and use limitation, as applicable, must be established in accordance with this rule to apply applicable standards to a restricted land use, pursuant to paragraph (F)(4) of rule 3745-300-07 of the Administrative Code.

- (4) An operation and maintenance plan is required as part of a no further action letter issued under this chapter and Chapter 3746. of the Revised Code for a property for which the no further action letter relies on one or more of the following:
- (a) Engineering controls that involve operation or maintenance, or both, necessary to maintain applicable standards at the property following issuance of the no further action letter.
  - (b) An on-going active or passive remedy employed at a property that does not yet meet applicable standards at the time that a no further action letter is issued. Such remedial activities must achieve applicable standards within five years, inclusive of verification, or such other time frame agreed to by the director in accordance with an operation and maintenance agreement.
  - (c) The evaluation, response and other activities related to critical resource ground water response requirements that are required by paragraph (E) (5) of rule 3745-300-10 of the Administrative Code, as applicable, that are implemented to maintain compliance with applicable standards.
- (B) Compliance with other laws. Remedial activities conducted under this chapter and Chapter 3746. of the Revised Code must be conducted in compliance with all applicable laws, regulations, rules, resolutions and ordinances, including but not limited to the following: Chapter 3734. of the Revised Code; Chapter 6111. of the Revised Code; Chapter 3704. of the Revised Code; the Safe Drinking Water Act, including the requirements applicable to class V underground injection control wells; and compliance with the laws and regulations administered by the occupational safety and health administration.
- (C) Remedial activities. If remedial activities are required to be conducted at a property pursuant to paragraph (A) of this rule, one or more of the following remedial activities must have been conducted and documented in the no further action letter, prior to issuance of a no further action letter for the property.
- (1) Passive remediation. Passive remediation must be capable of attaining applicable standards. If passive remediation has not achieved applicable standards prior to issuance of the no further action letter for the property, an operation and maintenance plan prepared in accordance with this rule for continued implementation of the passive remediation must be included with the no further action letter. If the passive remediation has not achieved applicable standards upon issuance of the no further action letter, the no further action letter must demonstrate the passive remediation is capable of attaining the applicable standards, inclusive of verification, within five years or other time frame agreed

upon by the director in an operation and maintenance agreement, in accordance with this rule.

- (2) Active remediation. Active remediation must be capable of attaining applicable standards. If active remediation has not achieved applicable standards prior to issuance of the no further action letter for the property, an operation and maintenance plan prepared in accordance with this rule for implementation of the active remediation must be included with the no further action letter. If the active remediation has not achieved applicable standards upon issuance of the no further action letter, the no further action letter must demonstrate the active remediation is capable of attaining applicable standards, within five years, inclusive of verification, or other time frame agreed upon by the director in an operation and maintenance agreement, in accordance with this rule.
- (3) Institutional controls. Institutional controls (use restrictions or activity and use limitations), as applicable pursuant to this chapter, must meet the following criteria:
  - (a) Establish restrictions or limitations on use of the property that mitigate or eliminate risk or an exposure pathway to human receptors in order to achieve applicable standards.
  - (b) Be transferable with the property and recorded with the county recorder in the same manner as a deed to the property during the period of time relied upon to comply with applicable standards.
  - (c) Be consistent with the criteria contained in paragraph (D)(3)(b)(iv)(b) of rule 3745-300-09 of the Administrative Code, as applicable.
  - (d) Be recorded with the county recorder in the same manner as a deed to the property, consistent with the requirements for recording contained in rule 3745-300-13 of the Administrative Code, as applicable.
  - (e) Be effective at eliminating or mitigating exposures to receptor populations sufficient to meet the risk goals contained in rule 3745-300-08 or 3745-300-09 of the Administrative Code, as applicable.
  - (f) Be capable of being monitored, maintained and enforced by the owner or operator of the property during the period of time which the control is used to comply with applicable standards.
  - (g) In the case of activity and use limitations, be established through an environmental covenant pursuant to Chapter 5301. of the Revised Code.

- (4) Engineering controls. Engineering controls must meet the following criteria:
- (a) Be effective and reliable for the climatic conditions and activities at the property to which the control will be applied.
  - (b) Be consistent with the criteria contained in paragraph (D)(3)(b)(iv)(b) of rule 3745-300-09 of the Administrative Code, as applicable.
  - (c) Be effective at eliminating or mitigating exposures to receptor populations sufficient to meet the risk goals of rule 3745-300-08 or 3745-300-09 of the Administrative Code, as applicable.
  - (d) Be reliable during the period of time the control is used to achieve or maintain applicable standards.
  - (e) Be capable of being monitored and maintained as required by an operation and maintenance plan developed and implemented in accordance with this rule.
- (5) Critical resource ground water activities. The evaluation, response and other activities required to protect off-property receptors when concentrations of chemicals of concern in critical resource ground water exceed unrestricted potable use standards must be implemented in accordance with rule 3745-300-10 of the Administrative Code. The activities are provided in paragraphs (E)(3) to (E)(5) of rule 3745-300-10 of the Administrative Code.
- (6) Interim measures. Interim measures must be in place for a property when a remedy has not yet achieved applicable standards prior to issuance of a no further action letter and must, at a minimum, mitigate the risks associated with complete exposure pathways to human receptor populations until a remedy has achieved applicable standards.
- (7) Risk mitigation measures. Risk mitigation measures must effectively eliminate or reduce the current or reasonably anticipated risk to persons working in areas where concentrations of chemicals of concern in environmental media exceed applicable standards or the risk is uncharacterized.
- (a) Risk mitigation measures shall only be utilized to protect workers during construction or excavation activities.
  - (b) Risk mitigation measures are necessary when excavation or construction activities do any of the following:

- (i) Breach the point of compliance for direct contact with soil for properties relying on institutional controls to achieve the applicable standard.
    - (ii) Breach an engineering control, such as pavement or a soil cap, intended to eliminate direct-contact exposure to chemicals of concern in environmental media.
    - (iii) Result in direct contact with ground water which has not been demonstrated to meet applicable standards for this exposure pathway.
  - (c) If the risk mitigation measures are necessary for the property to meet applicable standards after issuance of the no further action letter for the property, the risk mitigation measures must be implemented through a risk mitigation plan in accordance with paragraph (G) of this rule.
- (8) Ground water use limitations. Restrictions limiting the extraction or use of ground water for any purpose, potable or otherwise, established in accordance with paragraph (E)(2) of rule 3745-300-10 of the Administrative Code in order to achieve applicable standards for ground water, when one or more ground water zones has been demonstrated to exceed unrestricted potable use standards, must be applied to all ground water zones beneath the property, unless a property-specific investigation conducted in accordance with rule 3745-300-07 of the Administrative Code demonstrates the following:
- (a) The ground water zone subject to the use limitation has not demonstrated interconnection to the ground water zone to which the use limitation does not apply.
  - (b) Selective use restrictions will be implemented for each ground water zone, as necessary, to reliably restrict the use of each ground water zone for all purposes, except the specific permissible uses that have been demonstrated to ensure the following:
    - (i) The continued protection of all ground water zones that otherwise meet unrestricted potable use standards in accordance with paragraph (F) (4) of rule 3745-300-07 and paragraph (D) of rule 3745-300-10 of the Administrative Code.
    - (ii) Applicable standards are met for all complete exposure pathways for the resulting groundwater use.

(D) Pathway omission process for pathways to off-property receptors that cannot be remedied after a volunteer has applied diligent efforts.

(1) An exposure pathway that is otherwise complete pursuant to rule 3745-300-07 of the Administrative Code may be omitted from the voluntary action for contamination that has emanated from the property, when the following process has been followed and the volunteer has employed diligent efforts to remedy that pathway. The omission of the pathway may only be requested through a certified professional. A certified professional may request a pathway omission from the director for a complete exposure pathway that meets the following threshold criteria:

(a) The property or properties where the receptor is located are different from the voluntary action property.

(b) The volunteer can demonstrate they have completed reasonable measures to do the following:

(i) Determine the potential off property receptors in accordance with paragraph (E)(6) of rule 3745-300-07 of the Administrative Code.

(ii) Determine the potential complete exposure pathways to those receptors in accordance with paragraph (F) of rule 3745-300-07 of the Administrative Code.

(iii) Contact each receptor property owner. Inform each owner of each potential complete pathway and potential risks associated with the pathway. Explain to each owner the activities that might be reasonably employed to investigate and address that pathway.

(iv) Offer to the owners to pay all costs associated with installation of the remedy, including fair and reasonable compensation for repair of aesthetic impacts to the property resulting from the activities.

(v) Document discussions or correspondence with the owners that indicate the refusal to have a reasonable remedy installed.

(vi) Document, if applicable, any other reason that might prevent installation of a reasonable remedy.

(c) Notice the receptor property owners. The volunteer or certified professional must provide a written notice to each receptor property owner prior to submitting a request for approval pursuant to paragraph (D)(2) of this rule. The notice to each owner must include, at a minimum, the following:

- (i) An explanation of the voluntary action program.
  - (ii) A description of the pathway for which omission would be requested and reason for requesting its omission.
  - (iii) The location of and a description of all property for which the omission is sought.
  - (iv) A summary of the threshold criteria under this rule for requesting a pathway omission and the fact that the director ~~must~~shall approve or deny any omission request.
  - (v) An explanation that pathway omission, if approved, would exclude coverage of the pathway from any covenant not to sue issued pursuant to Chapter 3746. of the Revised Code pertaining to the voluntary action property.
- (2) Content and timing of a request for pathway omission. A certified professional may not rely upon a pathway omission in a no further action letter until the director has approved a request for a pathway omission that is documented and submitted in accordance with the following process:
- (a) Request for approval for omission of a pathway from a voluntary action. A certified professional must send a written request to the director for approval of a pathway omission. The request for approval must include, at a minimum, the following:
    - (i) A cover letter requesting the director's approval of a pathway omission, which includes the name and address of the volunteer, a description of the location and size of the voluntary action property, the pathway in question, and the receptor property or properties.
    - (ii) An affidavit by the certified professional which affirms the following:
      - (a) The pathway omission threshold criteria contained in paragraphs (D)(1)(b)(i) to (D)(1)(b)(vi) of this rule are met.
      - (b) A copy of all documents which form the basis of the certified professional's determination that the pathway omission threshold criteria in paragraph (D)(1)(b) of this rule have been met is attached.
      - (c) A description of the receptor property or properties for which the pathway omission is requested is attached.

- (iii) Documentation of the notice provided to each receptor property owner, as required by paragraph (D)(1)(c) of this rule.
  - (b) Information. After receipt of a complete request for approval of a pathway omission, the director may request any additional information from the certified professional, the volunteer, local jurisdictions or residents, which may be relevant to determining whether or not to approve the pathway omission. Failure by a certified professional or volunteer to cooperate with any request under this paragraph may result in the director's refusal to consider the request for approval.
  - (c) Criteria for approval or denial. The director ~~may~~shall approve or deny a request for pathway omission ~~if~~after consideration of whether all applicable threshold criteria contained in paragraph (D)(1)(b) of this rule have been met. The director may also consider whether approving the requested pathway omission would result in improved environmental conditions.
  - (d) Costs. The volunteer seeking the pathway omission is responsible for reimbursing the agency for all of its costs incurred to review and consider the request for approval of the pathway omission. A statement of costs will be sent to the volunteer after the request for approval is approved, denied, or withdrawn. The volunteer must pay the costs, in full, within sixty days of receipt of the statement of costs, pursuant to paragraph (E) of rule 3745-300-03 of the Administrative Code.
  - (e) Timing. The director ~~will~~shall approve or deny a request for ~~approval of a~~ pathway omission within ninety days after receiving a complete request, as set forth in paragraph (D)(2)(a) of this rule. The director may extend the time for approving or denying a request if the director determines that an extension of time is necessary to properly consider the request. If the director extends the time for considering the request for approval the agency will notify the volunteer, and other interested persons, of the extended deadline.
- (E) Verification of completion of remedial activities and determination that the applicable standards are met. When remedial activities are completed under this chapter and Chapter 3746. of the Revised Code, the volunteer must verify that the remedial activities have been implemented in accordance with this rule and have resulted in compliance with applicable standards. Such verification must describe the remedy or remedial activities implemented that are a part of the voluntary action. Verification must include an identification of the data used to demonstrate the compliance with applicable standards, and must include the following, as applicable:

- (1) A demonstration of compliance with applicable standards in accordance with paragraph (I) of rule 3745-300-07 of the Administrative Code through implementation of the remedial activities. The demonstration also requires the following, when applicable:
  - (a) A demonstration that each institutional control relied upon in the no further action letter has been developed in accordance with paragraph (C) of this rule, and implemented in accordance with rule 3745-300-13 of the Administrative Code, and division (C)(3)(a) or (C)(3)(b) of section 3746.10 of the Revised Code, as applicable.
  - (b) A demonstration that each engineering control or remedy requiring operation or maintenance under this rule is made the subject of an operation and maintenance plan and agreement, as applicable, developed in accordance with paragraph (F) of this rule.
  - (c) A demonstration that each risk mitigation measure under this rule is made the subject of a risk mitigation plan, as applicable, in accordance with paragraph (G) of this rule.
- (2) Termination of remedial activities. To document that a remedial activity is no longer necessary for compliance with applicable standards and may be terminated, the volunteer or other person responsible for remedy implementation must demonstrate that the criteria set forth in this rule have been met. The demonstration must include the following, at a minimum:
  - (a) A description of the remedial activity that is no longer necessary to maintain compliance with applicable standards.
  - (b) Identification of the information relied upon to demonstrate the continued compliance with applicable standards without further implementation of the remedial activity.
  - (c) Information that supports the verification necessary to document the termination of the remedial activity in accordance with this rule and other criteria governing the remedial activity, such as the criteria set forth in an operation and maintenance plan or agreement, environmental covenant or risk mitigation plan.
  - (d) An affidavit from a certified professional, certifying that applicable standards are met without further implementation of the remedial activity.
  - (e) An affidavit from the volunteer or other person responsible for remedy implementation that attests to the completion of the remedy,

demonstration of compliance with applicable standards or understanding that the remedy may be terminated based on criteria in this rule and any other applicable criteria, as applicable.

(F) Operation and maintenance plan and agreement.

- (1) Content of operation and maintenance plan. When a remedy is required to have an operation and maintenance plan in accordance with this rule, the volunteer must develop and implement an operation and maintenance plan that includes the following components as applicable, for each of the remedial activities subject to the operation and maintenance plan:
  - (a) A summary of the applicable standards for the property and the purpose of the remedial activities;
  - (b) A plan for implementing the remedial activities, including normal operation and maintenance and a description of tasks that will be done to implement the normal operation and maintenance of the remedial activities, including, but not limited to the following:
    - (i) A description of the tasks for operation of the remedial activities.
    - (ii) A description of the tasks and procedures for maintaining the remedial activities, including but not limited to a plan for periodic preventive measures.
    - (iii) A description of prescribed treatment or operating conditions for the remedial activities.
    - (iv) Schedules for implementing remedial activities and for operation and maintenance tasks.
  - (c) A plan for evaluating the effectiveness of the remedial activities. A plan for evaluating the effectiveness of each remedial activity must be included in the operation and maintenance plan. The plan must include, at a minimum, the following:
    - (i) The purpose and objective of the activities planned to evaluate the effectiveness of the remedy.
    - (ii) A description of the activities that will be performed to determine the effectiveness of the remedial activities in meeting or maintaining compliance with applicable standards.

- (iii) A description of the activities that will be performed to evaluate or confirm assumptions and predictions of a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code, if a property-specific risk assessment was conducted.
  - (iv) A description of the activities that will be conducted, to comply with the response requirements for critical resource ground water in accordance with paragraphs (E)(3) to (E)(5) of rule 3745-300-10 of the Administrative Code, as applicable.
  - (v) If data collection, field testing, sampling or data analyses activities are appropriate for the monitoring activities, a summary of these procedures developed in accordance with paragraph (F) of rule 3745-300-07 of the Administrative Code.
  - (vi) A description of the anticipated length and planned frequency of each monitoring activity that will be performed to evaluate the effectiveness of the remedial activities.
- (d) Equipment requirements. A description of equipment required to operate and maintain the remedial activities, including the following:
- (i) A description of the monitoring and remedial equipment that has been installed, and the criteria for installation.
  - (ii) A schedule for the maintenance and replacement of monitoring and remedial equipment, as appropriate for each remedial activity.
- (e) A plan for adjustments to normal operation and maintenance. A description of reasonably anticipated adjustments and criteria establishing when the adjustments will be taken to normal operation and maintenance of the remedial activities so that the remedial activities remain effective.
- (f) A plan for addressing potential problems with the remedial activities.
- (g) Records and reporting mechanisms. The operation and maintenance plan must contain a description of all records that will be kept for the purpose of documenting the requirements of paragraphs (F)(1) and (F)(2) of this rule are met.
- (h) A plan for termination of the remedial activities, including, but not limited to the following:

- (i) An identification and description of the data and information that will be collected to support the criteria for termination of the remedial activities subject to the operation and maintenance plan to verify completion of the remedial activities in accordance with paragraph (E)(2) of this rule.
  - (ii) An identification and description of the criteria for termination, as appropriate, of the monitoring activity to verify completion of the remedial activity in accordance with paragraph (E)(2) of this rule.
- (i) A property map or maps showing that portion of the property subject to the remedial activities under the operation and maintenance plan. In cases when an engineering control applies to a portion of the property, the operation and maintenance plan must include a plat of the portion of the property. The survey plat must be completed (signed and sealed) by a professional surveyor under Ohio law.
- (2) Reporting evaluation of the effectiveness of remedial activities subject to an operation and maintenance plan and agreement. At least once annually following issuance of a covenant not to sue pursuant to Chapter 3746. of the Revised Code, or at such other interval as agreed upon in an operation and maintenance plan or agreement regarding the property, the volunteer or other person responsible for operation and maintenance plan and agreement implementation, must submit a letter, statement or report to the agency, under affidavit, that includes the following:
  - (a) The results from all evaluation activities performed in accordance with paragraph (F)(1)(c) of this rule.
  - (b) A description of the activities, conducted to address remedy problems encountered, if any.
  - (c) A demonstration of the performance of all remedial activities subject to the operation and maintenance plan.
  - (d) A demonstration of how compliance with applicable standards will be met or maintained, including the measures used to maintain the remedy's protectiveness of public health and safety and the environment, until the property achieves compliance with applicable standards through a remedy within five years, or other time frame as agreed upon by the director in an operation and maintenance agreement.

- (3) When an operation and maintenance plan is required in accordance with this rule, the operation and maintenance plan must be prepared and, as appropriate to maintain applicable standards, implemented, prior to issuance of the no further action letter. The no further action letter must include the operation and maintenance plan. If an operation and maintenance plan is required for an engineering control or other remedy following the receipt of a covenant not to sue issued pursuant to Chapter 3746. of the Revised Code, the operation and maintenance plan may be included in a remedy revision notice prepared pursuant to paragraph (H) of this rule.
- (4) Operation and maintenance agreement. When requesting a covenant not to sue from the director pursuant to this chapter and Chapter 3746. of the Revised Code for a property subject to a remedial activity that requires an operation and maintenance plan pursuant to this rule, the volunteer must enter into an operation and maintenance agreement with the director.
  - (a) At a minimum, the operation and maintenance agreement must include the following:
    - (i) An operation and maintenance plan for the property developed in accordance with paragraphs (F)(1) and (F)(2) of this rule and approved by the director.
    - (ii) A provision that the volunteer agrees to implement the operation and maintenance plan.
    - (iii) A provision requiring periodic reporting to the director of monitoring results and evaluation of the effectiveness of the remedial activities subject to the operation and maintenance plan, in accordance with paragraph (F)(2) of this rule, to the extent the operation and maintenance plan does not provide for such periodic reporting to the director.
    - (iv) A provision requiring notification to the director within a specified time of all adjustments made to normal operation and maintenance as specified in the operation and maintenance plan, and of implementation of the contingency plan activities specified in the operation and maintenance plan.
    - (v) A provision requiring that proposed modifications to a remedial activity, other than adjustments or plan activities developed in accordance with paragraphs (F)(1)(e) to (F)(1)(f) of this rule and contained in the operation and maintenance plan, must be submitted

to the director for review and approval prior to implementation of the proposed modification. The provision must be written in such a manner consistent with paragraph (H) of this rule.

- (vi) A provision requiring that prior notification, within a specified reasonable time frame, be provided to the prospective buyers or transferees of the property of the remedy subject to the operation and maintenance plan and agreement.
- (vii) A provision requiring notice to the director within a specified reasonable time frame of each transfer of the property subject to the operation and maintenance plan and agreement.
- (viii) A provision requiring notice to the director within a specified reasonable time frame of the transfer of the operation and maintenance plan and agreement, and of the terms and conditions of the transfer.
- (ix) The establishment and description of financial assurances that the remedy subject to the operation and maintenance plan and agreement will remain operational and functional.
- (x) A provision for inspection of the property by Ohio EPA or its representatives to determine compliance with the operation and maintenance plan and agreement.
- (xi) Mechanisms for providing reports to Ohio EPA, including, but not limited to the following:
  - (a) Daily operating logs.
  - (b) Laboratory analytical data and supporting records.
  - (c) A procedure for reporting emergencies.
  - (d) Maintenance records.
  - (e) A description of the reports that will be provided to Ohio EPA and the frequency for reporting.
- (xii) Other provisions necessary to protect public health and safety and the environment or to demonstrate effectiveness of the remedial activities subject to the operation and maintenance plan or agreement.

- (b) The operation and maintenance agreement may specify a reasonable time frame within which the property must attain applicable standards through the remedial activities specified in the operation and maintenance plan or agreement.
- (c) Operation and maintenance agreements may be transferred by the volunteer to another person by assignment or in conjunction with the acquisition of title to the property that is the subject of the agreement. The volunteer may choose to but is not required to transfer its operation and maintenance agreement to another person (e.g., the subsequent property buyer). The "other person responsible for operation and maintenance plan and agreement implementation" is defined in rule 3745-300-01 of the Administrative Code for this purpose.

(G) Risk mitigation plans.

When risk mitigation measures are to be employed after issuance of a no further action letter, a risk mitigation plan must be developed and implemented.

- (1) The risk mitigation plan must contain, at a minimum, the following components:
  - (a) A description of the purpose of the risk mitigation plan.
  - (b) A summary of the potential health risks associated with the chemicals of concern at the property.
  - (c) A description of the specific precautions against exposure to be taken at the property.
  - (d) Directions on how to handle environmental media at the property that may contain chemicals of concern.
  - (e) Provisions for when the risk mitigation plan will be implemented at the property, consistent with the results of a property-specific risk assessment, if applicable, conducted in accordance with rule 3745-300-09 of the Administrative Code.
  - (f) Provisions for the locations at the property where the risk mitigation plan will be implemented, consistent with the results of a property-specific risk assessment in accordance with rule 3745-300-09 of the Administrative Code. If, based on the results of the property-specific risk assessment, the entire property is not subject to the risk mitigation plan, a plat of survey completed (signed and sealed) by a professional surveyor under Ohio law

of that portion of the property subject to the risk mitigation plan must be attached to and referenced in the risk mitigation plan.

- (g) A property map or maps showing that portion of the property subject to the risk mitigation plan, including the survey plat, if required by paragraph (G)(1)(f) of this rule.
  - (h) Provisions for giving notice of the risk mitigation plan to contractors and subcontractors and their employees, and other persons working in areas where risk mitigation measures are necessary.
  - (i) A summary explanation of the precautions that each contractor must require of and communicate to its employees and subcontractors.
  - (j) For property where a covenant not to sue is requested, provisions for annually notifying the director as to whether implementation of the risk mitigation plan occurred; and if implemented, of the events that required implementation of the risk mitigation plan, the exposures to hazardous substances or petroleum that may have occurred, and the risk mitigation measures undertaken in accordance with the risk mitigation plan.
  - (k) The criteria for termination of the risk mitigation plan, as appropriate.
- (2) For a covenant not to sue issued pursuant to Chapter 3746. of the Revised Code, the risk mitigation plan is developed as a separate plan for implementation as a condition of a covenant not to sue.
- (H) Post covenant not to sue remedy changes.
- (1) A volunteer, including persons responsible for compliance with applicable standards, may revise an existing remedy or remedies relied upon to meet applicable standards. In order to ensure a covenant not to sue issued pursuant to Chapter 3746. of the Revised Code remains effective, the volunteer shall do the following:
    - (a) Continue to comply with all existing institutional controls, operation and maintenance plan activities, risk mitigation measures, and other remedies required for compliance, until they are replaced or terminated under this chapter.
    - (b) Collect any data necessary to scope and support the remedy revision in accordance with rule 3745-300-07 of the Administrative Code.
    - (c) Implement the remedy revision in accordance with this chapter.

- (i) For remedial activities that do not conflict with an existing requirement in an operation and maintenance plan or agreement, institutional control, or risk mitigation plan, remedial activities must be implemented prior to submission of the remedy revision notice outlined in paragraph (H)(2) of this rule.
    - (ii) For remedial activities that conflict with an existing requirement in an operation and maintenance plan or agreement, institutional control, or risk mitigation plan, agency agreement with the modification is required before the remedial activities can be implemented.
  - (d) Take any steps necessary to ensure that the property will comply with all applicable standards prior to, during, and after the remedy revision.
  - (e) Ensure remedial activities are implemented in accordance with this rule.
- (2) The volunteer may choose to demonstrate that revised remedial activities comply with applicable standards, and submit a remedy revision notice to the agency under an affidavit from a certified professional in a format prescribed by the agency. Should the volunteer choose to submit a remedy revision notice to the agency, the notice shall include the following:
- (a) A description of the remedial activity necessary to achieve or maintain compliance with applicable standards.
  - (b) A statement in an affidavit from the certified professional that the property complies with applicable standards through implementation of the remedial activities in accordance with this rule and paragraph (I) of rule 3745-300-07 of the Administrative Code.
  - (c) A list of the data, information, records and documents relied upon by the certified professional to determine and verify that the property complies with applicable standards.
  - (d) A description of any remedial activity that will no longer be relied upon for compliance with applicable standards, with supporting documentation for termination of the remedial activity in accordance with paragraph (E) of this rule.
  - (e) If compliance with applicable standards requires a new or revised institutional control, each such institutional control must be developed as an activity and use limitation in accordance with paragraphs (C) and (E) of this rule, and consistent with rule 3745-300-13 of the Administrative

Code and division (C)(3)(b) of section 3746.10 of the Revised Code, as applicable.

- (f) If compliance with applicable standards relies on an engineering control, a new or revised operation and maintenance plan and agreement, as applicable, must be developed in accordance with paragraph (F) of this rule.
  - (g) If compliance with applicable standards relies on a risk mitigation measure, a new or revised risk mitigation plan, as applicable, must be developed in accordance with paragraph (G) of this rule.
  - (h) A request for either a remedy revision acknowledgment or a remedy revision approval.
- (3) Request to the agency for remedy revision approval. A volunteer who submits a remedy revision notice and requests a remedy approval letter shall do the following:
- (a) Include copies of all relevant data, information, records and documents referenced in paragraph (H)(2)(c) of this rule.
  - (b) Respond to questions or requests from the agency sufficient to support issuance of a remedy approval letter.
  - (c) Reimburse the agency for its costs incurred to review the remedy revision notice and prepare and process the remedy approval letter. The applicant must establish a direct billing schedule for receipt of such costs charged pursuant to paragraph (E) of rule 3745-300-03 of the Administrative Code. A statement of costs will be sent to the applicant after the request is approved, denied, or withdrawn. The applicant must pay the costs, in full, within sixty days of receipt of the statement of costs.
- (4) Request to the agency for remedy revision acknowledgment. A volunteer who submits a remedy revision notice and requests a remedy acknowledgment letter shall do the following:
- (a) Include copies of all relevant data, information, records and documents referenced in paragraph (H)(2)(c) of this rule.
  - (b) Respond to questions or requests from the agency sufficient to support the issuance of a remedy acknowledgment letter, if the remedy revision requires a new or modified operation and maintenance plan or agreement, institutional control, or risk mitigation plan.

- (c) Reimburse the agency for its actual costs incurred to review the remedy revision notice and prepare and process the remedy acknowledgment letter, and a new or modified operation and maintenance plan or agreement, institutional control, or risk mitigation plan, as applicable. The applicant must establish a direct billing schedule for receipt of such costs charged pursuant to paragraph (E) of rule 3745-300-03 of the Administrative Code. A statement of costs will be sent to the applicant after agreement is reached on these documents or the request is withdrawn. The applicant must pay the costs, in full, within sixty days of receipt of the statement of costs.
- (5) A remedy revision that includes the modification or establishment of institutional controls for a restricted land use must apply the criteria of paragraph (F)(5) of rule 3745-300-07 of the Administrative Code. The institutional control must be developed in accordance with paragraphs (C) and (E) of this rule, and consistent with rule 3745-300-13 of the Administrative Code and division (C)(3)(b) of section 3746.10 of the Revised Code, as applicable.
- (6) A remedy revision that requires the establishment or modification of an operation and maintenance agreement must have the agreement established or modified in accordance with paragraph (F)(4) of this rule.
- (7) A remedy revision that involves a land use change that cannot be supported by data gathered for the original no further action letter requires issuance of a new no further action letter in support of the land use change.

Effective: 7/30/2018

Five Year Review (FYR) Dates: 8/1/2019

CERTIFIED ELECTRONICALLY

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Certification

07/12/2018

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Date

Promulgated Under: 119.03  
Statutory Authority: 3746.04  
Rule Amplifies: 3746, 5301  
Prior Effective Dates: 12/29/1995, 07/01/2006, 03/01/2009, 04/23/2012,  
08/01/2014, 05/26/2016