

Eligibility

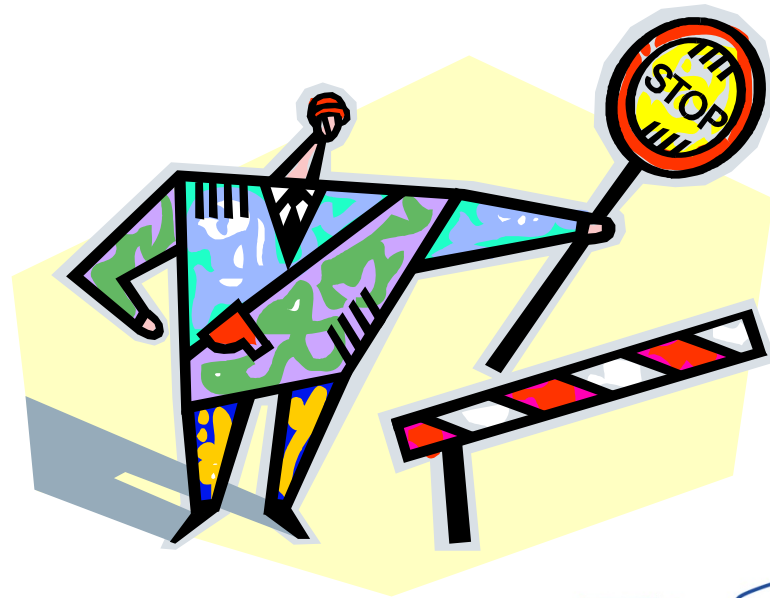
OAC 3745-300-02

Certified Professional
8-Hour Training



Which sites are eligible?

- Sites are eligible *unless* there is a regulatory or enforcement barrier.



Eight exceptions to eligibility

- Property is listed on the National Priorities List per CERCLA
- Class I, II, III, and IV underground injection control wells regulated under the Safe Drinking Water Act
 - (Class V well is eligible if it is not the subject of an order or permit requiring site assessment, removal, or remediation of hazardous substances or petroleum.)



Exceptions (cont.)

- Properties subject to federal or state corrective action permit obligations per RCRA.
- Properties subject to federal enforcement.
- Any property where closure of a hazardous waste facility or a solid waste facility is required.



Exceptions (cont.)

- Any property that is subject to site assessment, removal, or remediation of oil and gas wells per ORC 1509.
- Any property that is the subject of an enforcement letter from the director relating to a release or threatened release of hazardous substances or petroleum.
- Petroleum USTs (BUSTR), with limits



Petroleum underground storage tank systems

- Class C sites (where volunteer is determined by BUSTR not to be a responsible person pursuant to ORC 3737.87 – volunteer can follow BUSTR or VAP rules)
- Class C status is determined by BUSTR



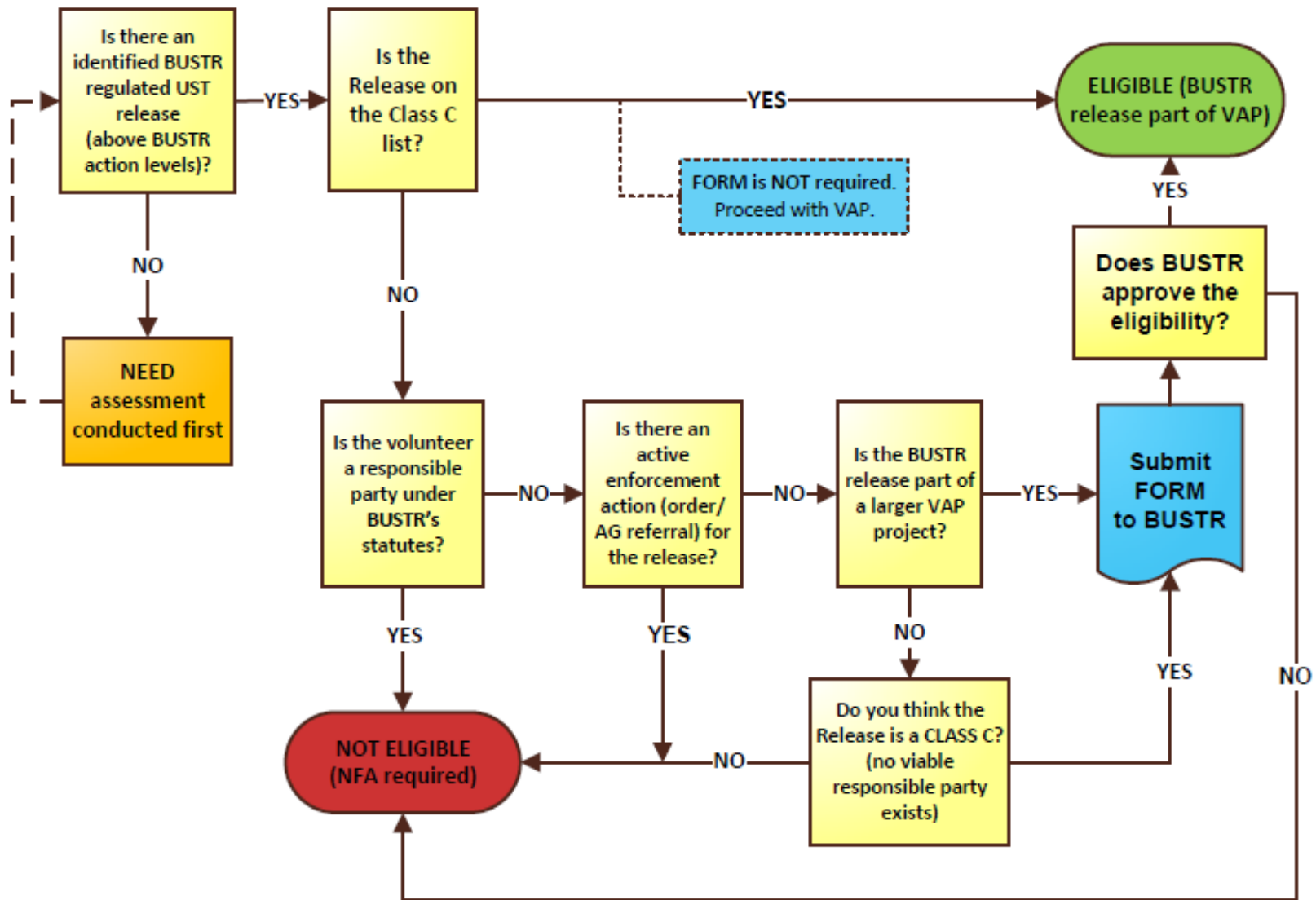
Other eligible BUSTR sites

For releases other than a BUSTR Class C release, provided the following:

- Volunteer is not a responsible person pursuant to ORC 3737.87
- The voluntary action also addresses other non-BUSTR hazardous substances (*i.e.*, those not subject to ORC 3737.882)
- BUSTR has not issued an administrative order concerning the release or referred the release to the Ohio Attorney General



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Is ineligibility forever?

- No, if the property is no longer subject to the laws or regulations which made it ineligible.
- Written statement from the applicable state or federal agency or department which confirms that the property is no longer subject to such requirements



How to determine eligibility

- Check with the various state and federal programs that could make the site ineligible
- Include various district offices in addition to the central office for the various programs
- One way is to open a technical assistance account and have the VAP staff consult the various regulatory programs
- Remember – eligibility issues can crop up any time!



VAP Guidance

http://epa.ohio.gov/portals/30/vap/tgc/TGC_Index.pdf

VA30002.00.000 – Eligibility for Participation in the VAP

- [VA30002.09.001](#) - Area of Waste Placement
- [VA30002.09.002](#) - Generator Closure
- [VA30002.09.003](#) - Foundry Sands & VAP Eligibility
- [VA30002.09.004](#) - Area of Waste Placement
- [VA30002.09.005](#) - Generator Self-Closure & Division of Hazardous Waste Management Review
- [VA30002.09.006](#) - Hazardous Waste Management Units Subject to Closure
- [VA30002.09.007](#) - Soils and Debris Contaminated By Hazardous Waste Regulated Under RCRA at VAP Sites
- [VA30002.09.008](#) - Consolidation of Hazardous Contaminated Soils Regulated Under RCRA at VAP Sites
- [VA30002.09.009](#) - Reconsolidation of Hazardous Waste Regulated Under RCRA at VAP Sites
- [VA30002.09.011](#) - VAP Eligibility of Hazardous Waste Facilities Subject to Closure, Corrective Action, or Federal or State Enforcement
- [VA30002.09.012](#) - VAP Eligibility of Unlicensed, Unpermitted Solid Waste Disposal Facilities
- [VA30002.10.001](#) - VAP Eligibility of Properties with Petroleum UST Systems Removed or Properly Closed-In-Place Prior to December 22, 1988

What is an Enforcement Letter?

- An “invitation to negotiate” letter sent to a PRP to negotiate Director’s Final Findings and Orders (DFFOs), attached to the letter
- The letter, and the Findings in the Orders, include information on the release (or threatened release) of hazardous substances or petroleum on, underlying or emanating from the property/facility, which pose a threat to human health/environment



Sufficient Evidence of Entry into the VAP

A property subject to an enforcement letter may be eligible for VAP participation upon a satisfactory (sufficient evidence) demonstration that the volunteer, prior to the date of the enforcement letter, entered the VAP and is proceeding expeditiously to address the release (threat) identified in the enforcement letter



Sufficient Evidence Demo

Within 30 days of receipt of an enforcement letter, a volunteer must submit the following:

- A phase I property assessment
- A detailed summary (and schedule) of planned data collection activities
- Documentation of recent/ongoing activity at the property, demonstrating that the proposed volunteer is proceeding expeditiously to achieve “milestones” which address the threat identified in the enforcement letter (and attached DFFOs)



Milestones

- Conducting a voluntary action via the achievement of “milestones” which address the release (threat) identified in the enforcement letter within 3 years unless otherwise established by the Director
- Milestones include completion of the following: assessing identified areas; Phase II work plan, field work and report; risk assessment; remedial action bench scale, treatability, pilot or other study; RAP, soil and/or groundwater remedies; and submittal of a NFA letter to the Director.



Sufficient Evidence Demo

Within 60 days the volunteer must:

- Provide a copy of the contract between the volunteer and a certified professional (CP), or an affidavit, to complete the voluntary action, and demonstrate that the CP has reviewed all the existing documents and data
- Submit a schedule for completing a phase II property assessment
- Submit a schedule that specifies milestone dates for completing the voluntary action, through submission of an NFA letter.



Determination Letter and Next Steps

- Upon evaluation of all information submitted, the Director will issue a letter indicating whether the Agency intends to proceed with enforcement or considers the proposed volunteer a participant in the VAP
- In order to remain eligible (after a successful demonstration), the volunteer must comply with the schedules and submit quarterly progress reports documenting actions taken to achieve milestones and milestone target dates (schedule)



Assistance With Eligibility Issues

Contact one of the VAP duty attorneys in our Legal office at (614) 644-3037

