

Content and Scope of No Further Action Letters

OAC 3745-300-13

Certified Professional
8-Hour Training



Purpose of NFA Letter

- Provide Legal Documentation of Voluntary Action
- Document Site Assessment and Remedial Activities
- Document Compliance with Applicable Standards and/or Protectiveness of Remedies



Principal Players in Voluntary Action

- Volunteer
- Property Owner
- Certified Professional
- Certified Laboratory
- Other Environmental Professionals (e.g. subcontractors)
- Other Interested Parties (banks, developers, signatory to O&M Agreement)



Volunteer's Responsibilities

- Must submit all relevant information to CP
- Requests that the NFA Letter be issued
- Directs CP as to whether or not a CNS from the agency should be requested
- Records the CNS with the county recorder's office



Certified Professional's Responsibilities

- CP is responsible for all areas of the NFA Letter, even those areas outside the CP's area of expertise
- If CP concludes the property meets or will meet applicable standards, then prepare NFA Letter
- Issuance of NFA Letter to Volunteer
- Submittal of NFA Letter to agency with a request for a CNS



Phase I Update

- I. Must ensure Phase I was performed no more than 180 days prior to the date of the NFA Letter
 - Otherwise a Phase I Update is necessary
- II. Required when conditions at property change that could impact the Phase II Assessment
- III. CP must use best professional judgment to decide what must be re-evaluated to determine whether additional Phase II property assessment is required



Eligibility

- Prior to issuing NFA Letter, CP must determine property is eligible for VAP
- Resolve outstanding issues prior to NFA Letter issuance.
- Final eligibility determination must be made before the NFA Letter is issued.



Redefined Content of NFA Letter

- Submit NFA Letter using the NFA Letter Template and CNS Request Form
- Review Process will remain the same and is covered later in presentation.
- Technical Assistance (TA) still available prior to NFA submittal
- Submittal of supporting documentation after CNS issuance



New NFA Letter Template

- Administrative Information
 - Similar to Section A of old NFA checklist
- Certified Professional (CP) Affidavit
 - Template Available
- Transmittal letter from CP to Volunteer
- Volunteer's notification affidavit
 - Template Available
- No Further Action NFA Letter Summary
 - 5 Statutory Elements, including the Executive Summary



Content of NFA Letter

NFA Letter Statutory Elements contains 5 parts:

1. Eligibility Statement
2. Whether a risk assessment was performed?
3. List of people who performed work in support of the NFA Letter
4. List of all data, records and information relied upon for NFA Letter (e.g. [Phase I, Phase II, Lab report dates, etc.](#))
5. Summary of the Voluntary Action
[Executive Summary Template](#)



Executive Summary

- **Section 1.0** – Summary of the Property History
- **Section 2.0** – General Property Description
 - Phase I Summary
 - Phase II Summary, including media specific summaries
 - Asbestos Survey and Abatement Summary
 - Approvals prior to NFA Letter issuance
- **Section 3.0** – Summary of Data Collection and Evaluations
 - Summary of pathways and receptors
 - Risk Assessment summaries
 - Modeling
 - POGWMUPUS Demonstration



Executive Summary

- **SECTION 4.0** –Summary of Remedial Activities Implemented and How the Activities Comply with Applicable Standards
- **Section 5.0** – Engineering Controls and O&M
- **Section 6.0** – Risk Mitigation Plan Summary
- **Section 7.0** – Environmental Covenant Summary
- **Figures and Attachments**



Attachments to Executive Summary

- Proposed Environmental Covenant
 - Note: if covenant will be for area smaller than Property, a legal description and survey map of the area must be included
- O&M Plan
- Draft O&M Agreement
- Risk Mitigation Plan

Templates are available for each of these



NFA Letter Review Process

Keeping the same process we have had in the past

- Initial review of NFA letter determines eligibility and whether a comment letter is needed (Initial Notice of Deficiency)
- Comments are sent as one cohesive INOD from the review team
- Conference call with volunteer/CP to discuss draft INOD and remove comments resolved in the meeting



Response to INOD Comments

- Volunteer/CP has defined timeframe to respond to INOD comments – 35 days
- Additional communication can take place, but complete response has to be submitted under affidavit as the first NFA letter addendum
- Submit NFA Letter addenda as one document rather than piece-meal and submit only the changes requested
- Negotiations for O&M agreement or Environmental Covenant should begin and continue from this point forward



Final Notice of Deficiency

- Review team prepares Final Notice of Deficiency (FNOD) if there are still outstanding issues to address
- FNOD is generated even if only outstanding issues relate to O&M agreement or EC negotiations
- Volunteer/CP has 35 days to address issues and submit second NFA letter addendum under affidavit



NFA Letter Review Process

- Review team determines whether CNS should be issued or denied
- If recommend issuing CNS but signatory documents remain outstanding, volunteer has 30 days to finalize
- If recommend denial, volunteer receives written notification of impending denial and last opportunity to withdraw CNS request
- Volunteer has 10 days to withdraw request



Post CNS Actions

- **Recording of Documents**
 - CNS with Executive Summary of NFA Letter
 - Environmental Covenant
- **Submittal of supporting documentation of NFA Letter**
 - e.g., Phase I, Phase II, risk assessment, remedy documentation, supporting affidavits, etc.
 - Information will be on file for potential audit



Affidavits Are Required When...

- CP, CL, or Volunteer transfers information to any other party
- Other persons perform work to support a request for an NFA Letter
 - e.g., persons responsible for writing Phase I, Phase II, PSRA, or other related reports not employed by CP, CL or Volunteer



Affidavits Are Not Required When...

- Information provided in response to public information requests (e.g., government employees)
- Persons interviewed for Phase I, as long as the interviewer attests to the interview under affidavit
- Individuals who are the employees of the Volunteer, CP, or CL



Program Fees Updated

Justification for Updates

- Changes to NFA letter and audit processes
- Evaluated average staff hour costs for application, NFA letter, audit reviews
- Costs of NFA letter reviews also needs to cover audits and institutional control inspections



Tiered Fees for NFA Letters

- NFA with no environmental covenant: \$15,700
- NFA with environmental covenant: \$18,200
- NFA after completing the MOA track: \$10,000
- NFA completing MOA track with environmental covenant: \$12,500



NFA Fees - PAYGO

- No more PAYGO
- Current PAYGO projects will be converted to straight VAP TA if NFA not submitted prior to effective rule date
- Traditional TA still in effect

