



OHIO VOLUNTARY ACTION PROGRAM

ANNUAL REPORT  
TO THE  
OHIO LEGISLATURE

July 2001 - June 2002  
*Ohio Environmental Protection Agency*

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## **2001-2002 Voluntary Action Program Annual Report to the Legislature Introduction**

Ohio's Voluntary Action Program (VAP) was created in September 1994, and became fully implemented with the promulgation of rules in early 1997. The program was created to allow companies a way to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio that no more cleanup is needed. Prior to creation of this program, valuable land sat idle because fears of immense liability and cleanup costs scared off potential developers, businesses and banks. Some developers abandoned plans to clean up their contaminated properties because Ohio EPA, which must focus its efforts on the worst sites, could not make those properties a priority. By creating this program, Ohio recognized the need to remove the environmental and legal barriers that stalled redevelopment and reuse of contaminated properties.

When a certified professional believes that a site has been investigated and, if necessary, cleaned up to the standards contained in the program rules (OAC Chapter 3745-300), he or she can prepare what is called a No Further Action Letter (NFA). This document, which must be submitted in a prescribed format developed by the VAP, describes the environmental problems found at the site, how those environmental problems were investigated and how the site was cleaned up.

Somewhat a misnomer, the NFA "letter" is actually a thick document full of very detailed information about the site. The NFA includes a Phase I property assessment report that contains information concerning the certified professional's investigation of the historical and current uses of the property. This information allows the certified professional to determine whether or not there is reason to believe that a release of hazardous substances or petroleum has or may have occurred at the property. If there is reason to believe a release has occurred and the site may be contaminated, a Phase II property assessment is then conducted. The Phase II assessment includes collecting soil, ground water, surface water and sediment samples from the site as necessary. The Phase II assessment ensures that all potential contaminants identified in the Phase I assessment are adequately evaluated and compared to the appropriate VAP cleanup standards. If the Phase II assessment indicates that cleanup standards are met, and the site is protective of human health and the environment, a certified professional will make the determination that the voluntary cleanup at the site is completed and prepare the NFA.

If the Phase II assessment indicates that any of the cleanup standards have been exceeded, remedial activities will occur to make the site protective of human health and the environment. Remedial activities may include things such as soil removal, ground water treatment or barriers to contamination such as a clay or asphalt cap. At that point, an NFA can be prepared. If the volunteer wants the legal release from Ohio, the certified professional submits the NFA to Ohio EPA for review. When an NFA is received by Ohio EPA, technical staff reviews the document to determine if all of the standards (i.e.

investigation and cleanup rules contained in OAC Chapter 3745-300) have been met and accordingly issues or denies the covenant not to sue.

Many volunteers may reach this point and decide not to pursue a legal release. That choice is largely driven by business decisions concerning financing and ability to sell the property. Some lenders are comfortable enough to proceed knowing the state's cleanup standards have been met, and a legal release is not needed.

The program is getting sites cleaned up. Since full implementation through June 2002, 138 sites have been cleaned up to meet VAP standards, and have received an NFA. Ninety-six of those sites have received a liability release, or covenant not to sue (CNS), from the State of Ohio; 14 were issued this past fiscal year (July 2001 - June 2002). Some of these cleanups are highlighted in this report.

On July 31, 2001, Ohio EPA finalized and signed the Voluntary Action Program Memorandum of Agreement (MOA) with U.S. EPA. After many months of negotiations between U.S. EPA and Ohio EPA, an MOA-Track program was developed to incorporate public involvement and up-front oversight into the existing VAP process. Volunteers who follow this track of the VAP will obtain both a CNS from Ohio EPA and comfort that U.S. EPA will not require any additional cleanup at the site. The existing VAP process, known as the Classic VAP Track, is still available to volunteers who do not feel the need for federal comfort and prefer not to incorporate up-front Agency oversight or public involvement into the voluntary cleanup process.

VAP staff created procedures and documents to assist volunteers and certified professionals through a voluntary action that meets both the traditional VAP requirements and the additional public involvement and Ohio EPA review requirements for the MOA track. Several sites have already initiated the first step of the process, the notice of entry into the MOA track, including one site in SFY'02. Detailed information about the VAP's MOA-Track process, including a copy of the MOA, can be found on the program Web page (under the section titled "Final Memorandum of Agreement - July 2001") at [www.epa.state.oh.us/derr/volunt.html](http://www.epa.state.oh.us/derr/volunt.html).

In another major undertaking, VAP staff reviewed and revised the technical rules governing the program. VAP staff were assisted by an external multidisciplinary board made up of members of the environmental, industrial, local government, citizen advocacy, environmental consultant and environmental science communities, among others. The first group of final revised rules became effective on March 4, 2002, and the second group became effective on October 21, 2002.

This report provides a report of VAP activities for SFY'02 (July 2001 through June 2002). Please contact the Ohio EPA VAP at (614) 644-2924 if you have any questions.

## Summary of Urban Setting Designations Received

When developing the VAP regulations, Ohio EPA recognized that many brownfield properties are located in highly urbanized areas, which rely on community water systems to supply residents with safe drinking water. In those areas, ground water that contains chemicals from prior industrial/commercial activities poses no appreciable risk to the community, because the ground water is not used and will not be used for drinking water in the foreseeable future. In these situations, an Urban Setting Designation (USD) may be appropriate. A USD recognizes that cleaning up the ground water to drinking water standards is not necessary, because no one will drink the ground water. Other possible exposures to contaminated ground water (such as wildlife or streams in the area) still must be addressed when a USD is granted for an area.

Only the director of Ohio EPA can grant a USD. A certified professional must submit a written request for a USD to the director. The request must successfully demonstrate that the property (or properties) meets all the criteria of a USD as specified in Ohio Administrative Code (OAC) rule 3745-300-10(D) before the designation can be granted. All USD requests must be submitted and approved by the director prior to completion of an NFA letter which relies upon a USD for applicable ground water standards for a property. The following table summarizes Urban Setting Designations submitted to the Voluntary Action Program for review and USD approvals issued during SFY'02.

### Urban Setting Designations Received

Urban Setting Designation Name	City	District Office	Date Received	Total Acres in USD	Issued/Pending/Denied	Date Issued
Over-Flo Lot	Brook Park	NEDO	11/21/01	21.6	Issued	05/14/02
City of Mansfield	Mansfield	NWDO	12/28/01	1,641.8	Issued	05/29/02
City of Springfield	Springfield	SWDO	03/11/02	1,000	Issued	05/08/02
City of Toledo	Toledo	NWDO	06/12/02	125	Pending	-----

Files relating to these urban setting designations are available for review at Ohio EPA's district offices by contacting the records management officer at the following numbers:

Northeast District Office (NEDO) - (330) 963-1200  
 Northwest District Office (NWDO) - (419) 352-8461  
 Southwest District Office (SWDO) - (937) 285-6357

## 13 Properties Receive Covenants Not to Sue

During SFY'02, Ohio EPA issued 13 covenants not to sue. Following are some examples of sites that received a CNS.

### Eveready Battery Company Property - Fremont

The site of the former Eveready Battery Company, Inc., located at 1501 West State Street, Fremont (Sandusky County), was cleaned up to meet environmental standards for redevelopment as a commercial or industrial property. The 10-acre property had been used as an industrial facility that produced dry cell batteries beginning in 1904. Eveready Battery Company, Inc., has owned the property since 1986 and ceased operations in 1998. The company recently sold the property for commercial reuse.

### Findlay Machine and Tool Property - Findlay

Two land parcels known as the former Kodak or Qualex site at 1100 East Main Cross Street in Findlay (Hancock County) was evaluated and found to meet environmental standards for commercial or industrial use. This 21-acre property is owned by Findlay Machine and Tool, Inc., 1950 Industrial Drive, Findlay. After assessing the property and determining whether any hazardous substances or petroleum were released onto the property, soil remediation was implemented at two wells to remove volatile organic compounds. On the smaller parcel, soil and a concrete pad contaminated with polychlorinated biphenyls (PCBs), released from an electrical transformer, were removed. Deed restrictions have been put in place on both parcels for either commercial or industrial use, or strict industrial use only. The smaller parcel will require maintenance of a fence, and extraction of ground water located at or under the property will be prohibited for any purpose, except to test or remediate the ground water.

### GM-Globe Lot Property - Norwood

Property owned by General Motors, Inc. (GM) meets environmental standards for redevelopment for commercial use. The property is located at the corner of Carthage and Old West Norwood Avenues, Norwood (Hamilton County). The 15.4-acre property was most recently used as a parking facility by GM. The property was originally developed as a wood furniture manufacturing site by Globe-Wernicke Company.



On behalf of GM, a certified environmental professional conducted an investigation at the site and determined that most of the acreage meets risk levels for commercial use. In addition, evaluations showed that the underlying buried-valley aquifer, which is used

regionally as a drinking water source, has not been impacted. However, tests showed that shallow ground water had been impacted on some portions of the property. GM has initiated on-property control measures to prevent the impacted ground water from migrating off the property.

The areas that did not meet commercial-use risk levels are limited in use through deed restrictions. The areas had elevated levels of volatile organic compounds in subsurface soils and shallow ground water. The deed restrictions prohibit excavation or building of enclosed structures in these areas.

### **Manor Motel Property - Fairview Park**



The former Manor Motel property, located at 20627 Lorain Road, Fairview Park (Cuyahoga County), has been evaluated and meets environmental standards for redevelopment as a parking lot.

The property consists of approximately two acres that previously had a small motel, house and garage on it. On behalf of the city of Fairview, a certified environmental professional conducted a preliminary investigation at the site and determined that there was no evidence of a release or potential release of

hazardous substances or petroleum at the property. The city intends to use the property as a parking lot associated with a 47,000-square-foot office building. One hundred to 200 people are expected to be employed in the building.

### **Toledo Prison Property - Toledo**

The Toledo Prison Facility, located at 2001 E. Central Ave., Toledo (Lucas County), has been evaluated and cleaned up to meet environmental standards for modified residential redevelopment. Ohio EPA issued the covenant to the city of Toledo for the property that was developed by the Ohio Department of Rehabilitation and Correction as a close-security prison. The 45-acre property is part of an area formerly known as Goose Hill. The specific area within Goose Hill that constitutes the prison facility includes the former Tuber dump, Miracle Park and a portion of the former Treasure Island Dump.



An operation and maintenance agreement between Ohio EPA, the city and Ohio Department of Rehabilitation and Correction will ensure that soil cover, pavement and

buildings are maintained. The agreement also limits use of the property to a prison facility, places restrictions on excavation and prohibits crop cultivation.

### Summary of Covenants Not to Sue Issued

Site Name & Address	NFA No.	Volunteer	Date Issued
Heritage Cleaners, Former 175 E. Alex-Bell Road, Suite 272 Dayton Montgomery County	00NFA094	UBS Brinson	7/25/01
Miranova-Commercial Portion 250 E. Broad Street Columbus Franklin County	00NFA106	Pizzuti/ Miranova Corporate Tower LLC	7/26/01
Lagrange Street Property 3751 Lagrange Street Toledo Lucas County	00NFA095	I.B.C., Inc.	9/25/01
Walworth Run Industrial Park Walworth Ave & West 65th Street Cleveland Cuyahoga County	00NFA091	WIRE-Net Development Company	9/25/01
Berry Brothers Property, Former 350 East First Avenue Columbus Franklin County	01NFA120	350 E. First Avenue, Ltd. c/o Capitol Equities Inc	10/18/01
Chilcote Company Property (Catalano Parcel & HDM Parcel) 1545 & 1563 East 21st St Cleveland Cuyahoga County	00NFA099	Baker Products Co., Inc.	12/31/01
Fairlawn Town Centre West Market Street Fairlawn Summit County	00NFA093	Fairlawn Ventures Limited Partnership	1/29/02
Eveready Battery Company, Inc. (Fremont Facility) 1501 West State Street Fremont Sandusky County	01NFA118	Eveready Battery Company, Inc.	3/11/02

Site Name & Address	NFA No.	Volunteer	Date Issued
Manor Motel Property, Former 20627 Lorain Road Fairview Park Cuyahoga County	01NFA124	City of Fairview Park	4/23/02
Proposed Toledo Prison Site East Central Ave. Toledo Lucas County	97NFA005	City of Toledo	4/23/02
Globe Lot Property Carthage & Old West Norwood Avenue Norwood Hamilton County	01NFA112	General Motors Corporation	5/8/02
Findlay Machine & Tool, Inc. 1100 East Main Cross Street Findlay Hancock County	01NFA113	1100 East Main Cross Street	6/12/02
New Albany Apartments 4701 Rexwood Drive Columbus Franklin County	02NFA129	Summit Properties	6/12/02

## **Low-Interest Loans Issued to Properties Undergoing Voluntary Actions**

The Water Pollution Control Loan Fund (WPCLF) is administered by Ohio EPA's Division of Environmental and Financial Assistance. Any environmental investigation or remediation performed under the VAP rules that will result in water quality benefits to surface and/or ground water is eligible for WPCLF financing. This can include activities such as literature searches, site evaluation studies, sampling, monitoring, laboratory analyses and cleanup activities. The WPCLF will provide up to \$3 million to a project for these eligible activities

Ohio EPA made two major changes to the program recently. First, private borrowers are limited to a maximum repayment term of 10 years so future development of cleaned-up sites is not unduly subsidized. Second, an application fee of 0.5 percent of the requested loan amount is charged to help defray the costs of the State's additional expenses necessary to complete financial and legal reviews.

An ongoing concern is the length of the time involved, not only to mutually agree upon sufficient sources of security and repayment, but to review and accept the documentation in support of those sources. For example, Ohio EPA may agree on a first mortgage on the property as security, then find the appraisal deficient or overly optimistic in its appraised value of the property. Ohio EPA is beginning to explore alternatives, which could include an interest buy-down arrangement with a private lender (relieving Ohio EPA of making credit judgements).

Of course, the most difficult situations are those that present serious and immediate environmental problems, but where applicants have profound financial difficulties that make it very difficult to financially justify the investment of WPCLF. The financial risk/environmental benefit ratio must be addressed on a case-specific basis.

No loans were issued for VAP properties in SFY'02.

## Audits of No Further Action Letters

Ohio EPA annually audits at least 25 percent of all No Further Action (NFA) letters submitted to the Voluntary Action Program. These audits can be limited to a review and analysis of the documents pertaining to the NFA letter to determine compliance with program requirements (Tier I Audit), or be expanded to include sampling and analysis of soils, surface water, air, sediments or ground water (Tier II Audit). Audits are conducted to determine if the properties meet applicable standards after completion of the remedial activities. Audits also are conducted to ensure that certified professionals and certified laboratories that performed work in support of the NFAs possess the qualifications necessary to perform work under the VAP and that their work results in NFAs that are consistent with applicable standards.

OAC 3745-300-14 describes the procedures for selecting and conducting audits of NFA letters. The rule establishes three "pools" of NFA letters to prioritize their selection for audits. These are the mandatory, priority and random audit pools. The *mandatory audit pool* includes NFA letters meeting one of six criteria that provide reason to believe the NFA letter was issued fraudulently or that performance of the certified professional who issued the NFA letter or the certified laboratory that performed analyses in support of the NFA letter was inadequate. The *priority audit pool* includes NFA letters that included a risk assessment or employed an engineering control or institutional control as a remedial activity. The *random audit pool* includes all other NFA letters, including those from the priority audit pool that are not selected during the initial random selection as described below. Properties were selected according to criteria and procedures described in OAC 3745-300-14.

In addition to auditing all NFA letters in the mandatory audit pool, OAC 3745-300-14 requires Ohio EPA to audit at least 25 percent of NFA letters for properties where remedial activities occurred and 25 percent of those where no remedial activities occurred. Letters are randomly selected from the priority audit pool and the random audit pool to meet the 25 percent quota.

In calendar year 2001, the VAP audited seven NFA Letters submitted to Ohio EPA during the previous year (2000). The following table summarizes the properties audited, the name of the volunteer for each property and the basis for selecting the property for audit. A Tier II audit was conducted at the Crane Plumbingware property; Tier I audits are being conducted at the other six properties. Audits have not been completed for the Transport Road Parcel and the Hamlet Avenue BP Parcel. The completed audits found the properties to be protective of human health and the environment.

## 2000 NFA Letters Selected for Audit in 2001/2002

<b>Property Name and Address</b>	<b>Name of Volunteer(s)</b>	<b>County</b>	<b>Audit Pool</b>
<b>Virginia Dornbusch Estate</b>	J. D. Byrider System, Inc.	Hamilton	Selected from Priority Audit Pool.
<b>Transport Road Parcel, Former No. 1 Refinery</b>	BP America and BP Exploration & Oil, Inc.	Cuyahoga	Selected from Priority Audit Pool.
<b>Crane Plumbingware</b>	CR/PL, L.L.C.	Stark	Selected from Priority Audit Pool.
<b>Hamlet Avenue BP Parcel</b>	BP America Inc.and Standard Oil Co.	Cuyahoga	Selected from Priority Audit Pool.
<b>Heritage Cleaners, Former</b>	UBS Brinson & Friendship Cove, LLC	Montgomery	Selected from Priority Audit Pool.
<b>Carthage Mills Facility, Former</b>	The City of Cincinnati	Hamilton	Selected from Priority Audit Pool.
<b>Vacant Land, Hopewell Drive</b>	LANGAR Enterprises, Inc.	Licking	Selected from Random Audit Pool.

## VAP EXPENSES FOR SFY '02

### PERSONNEL

Fund 4R9 - VAP Fund	\$ 141,399.42
Hazardous Waste Management Fund	-0-
General Revenue Fund	712,411.22
Superfund Grants (Federal dollars)	<u>468,633.00</u>
<b>Total Cost of Personnel</b>	<b>\$ 1,322,443.64</b>

### MAINTENANCE COST OF THE PROGRAM

Fund 4R9 - VAP Fund	\$ 165,204.36
Hazardous Waste Management Fund	-0-
General Revenue Fund	425,810.87
Superfund Grants (Federal dollars)	<u>30,740.72</u>
<b>Total Cost of Maintenance</b>	<b>\$ 621,755.95</b>

### EQUIPMENT

Fund 4R9 - VAP Fund	\$ -0-
Hazardous Waste Management Fund	-0-
General Revenue Fund	2,031.47
Superfund Grants (Federal dollars)	<u>10,960.57</u>
<b>Total Cost of Equipment</b>	<b>\$ 12,992.04</b>

### OTHER - CONTRACTUAL SERVICES

Fund 4R9 - VAP Fund	\$ 336.00
Hazardous Waste Management Fund	-0-
General Revenue Fund	593.56
Superfund Grants (Federal dollars)	<u>65,474.37</u>
<b>Total Cost of Other Contractual Services</b>	<b>\$ 66,403.93</b>

### OPEN ENCUMBRANCE SFY2002

Fund 4R9 - VAP Fund	\$ 8,106.27
Hazardous Waste Management Fund	-0-
General Revenue Fund	49.73
Superfund Grants (Federal dollars)	<u>\$ 14,558.99</u>
<b>Total Open Encumbrance SFY2002</b>	<b>\$ 22,714.99</b>

<b>TOTAL VAP PROGRAM COST FOR SFY '02</b>	<b>\$ 2,046,310.55</b>
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## VAP REVENUE FOR SFY '02

Certified Professional Fees	\$ 208,500.00
Certified Laboratory Fees	50,828.55
No Further Action (NFAs) Fees	86,029.90
Technical Assistance Cost Recovery	<u>122,800.61</u>
<b>TOTAL REVENUE FOR SFY '02</b>	<b>\$ 468,159.06</b>