

May 2009

Superfund Memorandum of Agreement for the Voluntary Action Program

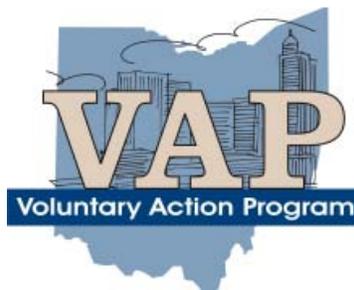
Introduction

Ohio's Voluntary Action Program (VAP) was created to give businesses and property owners a way to investigate possible environmental contamination due to hazardous substances or petroleum releases, clean up the property if necessary and receive a covenant not to sue (CNS); that is, a promise from the State of Ohio that no more cleanup is needed.

The VAP maximizes resources and expertise in the private sector by using qualified, experienced professionals such as engineers and scientists certified by Ohio EPA as certified professionals (CP). To ensure high quality laboratory data, Ohio EPA also designates qualified laboratories as certified laboratories (CL) to test environmental samples which generate data used to support environmental cleanups.

When a CP determines after site investigation and, if necessary, cleanup that the property meets the standards contained in the program rules (OAC Chapter 3745-300), he or she can prepare what is called a No Further Action (NFA) letter. 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.

VAP technical staff reviews NFA letters submitted to Ohio EPA to determine if program standards are met and that the site is protective of public health, safety and the environment. When cleanup requirements are met, the director of Ohio EPA issues a



CNS. This covenant protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup. This protection applies only when the property is used and maintained in the same manner as when the covenant was issued.

MOA Track History

On July 31, 2001, Ohio EPA finalized and signed the VAP Memorandum of Agreement (MOA) with U.S. EPA. The MOA track program incorporates public involvement and up-front oversight by Ohio EPA personnel into the existing VAP process. Volunteers who follow this track of the VAP 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.

In 2005 Ohio EPA and U.S. EPA came to an agreement that changes in the review and approval process for the MOA track from a four-step to a two-step process would be beneficial to Brownfield Cleanup Revolving Loan recipients participating in the MOA

track along with all other MOA track volunteers. The proposed process change offers more flexibility to volunteers yet does not change any of the oversight conducted by Ohio EPA or lessen any of the public participation opportunities available to the general public and interested parties.

VAP and Ohio EPA's Division of Hazardous Waste Management put the finishing touches on the MOA between the Ohio EPA and U.S. EPA in 2007. Ohio EPA and U.S. EPA have come up with a revised MOA which covers both sites that fall under the Superfund (aka CERCLA) liability scheme and those sites subject to Resource Conservation and Recovery Act (RCRA) Corrective Actions. Eligible sites that follow the MOA track version of the VAP will receive comfort from U.S. EPA that they will not seek additional cleanup work for the site.

MOA Track Process

Volunteers electing to pursue the MOA track are required to notify Ohio EPA in writing of their intent to participate in the VAP. The volunteer is also required to publish a notice of their entry into the MOA track of the VAP in the local newspaper. This public notice must contain basic information about the property such as the name and location and how to obtain additional information about the property and cleanup process. Ohio EPA also publishes this information in the Weekly Review, a publication that lists all Agency actions (<http://www.epa.state.oh.us/legal/pubnots.html>).



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The volunteer also has to create a document depository available to the public in a local library, for example. The document depository will include the notice of intent to participate in VAP and any associated documents. The volunteer must publish the proposed cleanup work plan, which must be made available for review and comments. The volunteer will also host a public meeting to discuss the plan. The comment period is 30 days from the date of the notice.

Once a site enters the MOA track and notice is made to the public, all documents that are required to be submitted to Ohio EPA for review and approval under the MOA track are held in the public document depository that was established in the vicinity of the site. In addition, the public can contact Ohio EPA at any time and request and receive copies of or access to any document pertaining to the site. These documents include:

1. Phase I Property Assessment Report
2. Initial Eligibility Determination
3. Phase II Sampling Plan

4. Phase II Property Assessment Report
5. Risk Assessment Report
6. Proposed Remedial Action Work Plan
7. Documentation of any Significant changes to the Voluntary Action
8. The NFA letter and request for a CNS.

In addition to the first public meeting, if at any time during the MOA track process a request for a public meeting is made or Ohio EPA determines that there is significant public interest, an additional public meeting can be held.

The scope of the public meeting is determined by the public interest expressed regarding the site.

The CNS that is issued for the NFA letter is subsequently treated the same as any CNS issued for an NFA letter that was submitted under the classic VAP, such as:

- It can be audited;
- Ohio EPA, must visually inspect each site receiving a CNS that relies on institutional controls at least once every five years; and
- Ohio EPA can reopen the covenant and compel volunteers to do additional work if a property which has been issued a CNS under the VAP is found not to meet applicable standards,

Information

If you have questions regarding the VAP or the MOA track, please contact one of the staff at (614) 644-2924.