

OHIO ENVIRONMENTAL PROTECTION AGENCY VOLUNTARY ACTION PROGRAM

NO FURTHER ACTION LETTER FORM

Revised June 2009

This No Further Action (NFA) Letter Form is to be used for issuance of NFA Letters under Chapter 3746 of the Ohio Revised Code. Use of this NFA Form is required by rule 3745-300-13 of the Ohio Administrative Code. You must complete all sections of this form. To request a covenant not to sue, a certified professional must submit the NFA Letter with this completed NFA Form and all NFA supporting documentation to the Director of Ohio EPA Voluntary Action Program. When a Covenant Not To Sue is requested, all appropriate fees must also be submitted with the NFA Letter.

The completion of this form is required before Ohio EPA review of your submittal will commence.



INSTRUCTIONS

Ohio Environmental Protection Agency
Division of Emergency and Remedial Response
Voluntary Action Program

Instructions for Certified Professionals Use in Preparing a No Further Action (NFA) Letter and the Attached NFA Letter Form in the Format required by Ohio Administrative Code (OAC) 3745-300-13(J)

Introduction

These instructions are provided to assist you, as a Certified Professional (CP), in the proper completion of an NFA Letter, which includes completion of the attached NFA Form. This form makes up a portion of the NFA Letter but is not the **complete** NFA Letter. The NFA Form, Executive Summary and the NFA Documentation (e.g. risk assessment report, maps, Phase I and Phase II information, etc.) must be completed in order to meet the requirements of OAC 3745-300-13(J), which states that CPs must prepare an NFA Letter in a format prescribed and provided by the Agency. **Please note that the requirement to prepare an NFA Letter in the Agency's prescribed format holds true whether or not the NFA Letter is submitted to the Agency.**

This Form, specifically the Executive Summary described below, is also intended to be used to satisfy the requirement under OAC 3745-300-13(K), which requires a summary of the NFA Letter, among other items, be recorded in the office of the county recorder of the county in which the property is located.

The intent of this NFA Form is to streamline the NFA review process and allow efficient audits. When an NFA Form and NFA Letter are received by Ohio EPA, the DERR technical staff will review the NFA Form along with specific information contained in the NFA Documentation. If the NFA Form is complete and the specific information reviewed in the NFA Documentation is appropriate, the Agency will recommend issuance of a Covenant Not To Sue (CNS). If inconsistencies, incorrect information or major issues of concern are discovered during the review of the Form and the specific NFA Documentation, **denial of the request for a CNS issuance may result.**

By following these guidelines, Ohio EPA review times and internal costs will comport with the statutory deadlines and programs fees. These guidelines also allow the Agency to more effectively fulfill its other Program mandates, such as audit selection and annual reporting to the Ohio General Assembly.

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Contents of a Complete NFA Letter

A complete NFA Letter consists of:

1. A completed NFA Form placed in a three-ring binder clearly marked on the cover "NFA Form for (*property name*) Property".
2. A completed NFA Letter Executive Summary. (An example of an NFA Letter Executive Summary that can be used as a template is contained in Section B of the NFA Form.)
3. NFA Documentation (e.g. risk assessment report, maps, Phase I and Phase II information, and other information for which references are required within the NFA Form) placed in a three-ring binder(s). **NFA Documentation provided to the Agency may be organized as the CP desires but must reference all of the information as provided by the NFA Form. Regardless of the information to be referenced in the NFA Form, the CP must comply with the "minimum information for NFA Letter requirements" contained in OAC 3745-300-13(E). Failure to comply with OAC 3745-300-13(E) may result in denial of a request for a CNS.**
4. All applicable fees** (See OAC 3745-300-03 and VAP Fee Schedule). If the NFA Letter is being submitted under the alternative billing method, otherwise known as the "Pay-As-You-Go (PAYGO)" option, as described in OAC 3745-300-03(C), payment of all costs billed to date must be current.

(Note: In accordance with Ohio Administrative Code (OAC) 3745-300-3(H), Voluntary Action Program fees described in OAC 3745-300-03(C)(6) to (C)(10) and (4) will increase annually on July 1 by the percentage of increase (if any) from the previous year of the Consumer Price Index [as defined in OAC 3745-300-03(A)(2)]. For the most current VAP Fee Schedule, please see the VAP web page at www.epa.state.oh.us)

Contents of this packet of information

This packet should contain the following items:

- a. **Instructions** for Completing the Attached NFA Form (this document).
- b. The **NFA Form**.
- c. An **example** "Notification of No Further Action Letter". (This example Notification can be used by volunteers to fulfill their notification requirements under ORC 3746.11(A) and OAC 3745-300-13(G). This example notification is provided to CPs to share with volunteers. Use of this example Notification is **optional**.)

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- d. The **VAP Technical Guidance Compendium (TGC) Index** (Note: This index is current only as of the revision date of this form. Check our web site www.epa.state.oh.us/derr/vap/tdc/tdcindex.html for the most current list of technical documents available).
- e. The **“Ohio EPA Derived Leach-Based Soil Values Technical Guidance Document” (2008)** and **“Ohio EPA Derived Leach-Based Soil Values Appendix Technical Support Document” (2008)**, both in .pdf format.
- f. The **“Support Document for the Development of Generic Numerical Standards and Risk Assessment Procedures (2008)”** in .pdf format.
- g. **Template affidavits** to use to meet the requirements of ORC 3745-300-13.

Submission of the NFA Letter

Submit to the Director of Ohio EPA, at the Central Office location, the **original plus one electronic disk copy** of the NFA Letter. **The electronic disk copy should be in .pdf format and indexed by section and attachments.** Also, submit an additional **two** hard copies to the appropriate District Office (see addresses below).

The **original** check(s) or money order(s) (made out to **“Treasurer, State of Ohio”**) **should be included with the Original NFA Letter documentation sent to Central Office.** A photocopy of the check should be included in all copies of the NFA Letter.

All submittals should be sent by certified mail or other form of mail accompanied by a receipt (e.g. UPS, Fed Ex, etc...).

If the NFA Letter is being submitted under the alternative billing method or “Pay-As-You-Go (PAYGO)” option as described in OAC 3745-300-03(C), payment of all costs billed to date must be current. NFA Letters submitted under PAYGO must include the **PAYGO Administrative Processing Fee**, as specified in OAC 3745-300-03.

****All of the above-mentioned fees are non-refundable pursuant to OAC 3745-300-03(H)**

Central Office:

Mailing Address

Ohio EPA/DERR
Voluntary Action Program
Attn: VAP Supervisor
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Physical Address

Ohio EPA/DERR
Voluntary Action Program
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215

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Central *District* Office:

CDO VAP Coordinator: Doug Crandall (614) 387-6181

Mailing Address:

Ohio EPA/DERR-CDO
Central **District** Office
Attn: VAP District Coordinator
P.O. Box 1049
Columbus, OH 43216-1049

Physical Address

Ohio EPA/DERR-CDO
Central **District** Office
Attn: VAP District Coordinator
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215

Northeast District Office:

VAP Coordinator: Sue Netzly-Watkins (330) 963-1200

Ohio EPA/DERR
Northeast District Office
Attn: VAP District Coordinator
2110 Aurora Road
Twinsburg, OH 44087

Northwest District Office:

VAP Coordinator: Archie Lunsey (419) 373-3035

Ohio EPA/DERR
Northwest District Office
Attn: VAP District Coordinator
347 North Dunbridge Rd.
Bowling Green, OH 43402

Southeast District Office:

VAP Coordinator: Mark Stello (740) 380-5265

Ohio EPA/DERR
Southeast District Office
Attn: VAP District Coordinator
2195 Front St.
Logan, OH 43138

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Southwest District Office:

VAP Coordinator: Joe Smindak (937) 285-6064

Ohio EPA/DERR
Southwest District Office
Attn: VAP District Coordinator
401 E. Fifth Street
Dayton, OH 45402-2911

Note: Any addenda to the NFA Letter must also be submitted as described above.

Completion of the NFA Form and the NFA Review Process

A complete NFA Form consists of completed Sections "A" through "J" of the NFA Form. You will note that each tabbed section contains questions that the CP must answer, or provide a reference. With a few exceptions, these questions correlate to specific requirements contained in the VAP rules. For example, under the Phase I section, the CP is asked if a physical inspection of the property was conducted. The Phase I rule requires that this inspection be conducted for all sites. In other instances, the Form asks if certain information is present in the NFA Documentation. For example, in Section C (Description of Voluntary Action), the CP is asked if the NFA Letter contains the names of other people who worked on the NFA Letter. This is required by the statute and the rules.

The NFA Form must be filled out completely with all required references to the NFA Documentation noted on the Form. In addition, the NFA Form must contain a copy of the NFA Letter Executive Summary placed behind Section B of the NFA Form. The NFA Letter Executive Summary has been designed not only to serve as summary of the NFA Letter to aid in the Agency's review of the NFA Letter, but also to fulfill the Agency's requirement to provide the CP with a form for fulfilling the requirements contained in OAC 3745-300-13(J).

Failure to provide the Agency with a complete NFA Letter as described above may result in denial of a request for a CNS for the property for which the NFA Letter was issued.

Contents of the NFA Form Sections

Section A General Information. The CP must provide basic information concerning the NFA Letter, including property name and address, acreage, volunteer's name, NFA Letter review period (30 or 90 days), etc.

Section B Executive Summary. The CP must provide an executive summary of the NFA Letter. An outline of what should be included in the executive summary is included in Section B of the NFA Form.

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- Section C Eligibility.** The CP must respond to VAP eligibility issues and reference the location of more detailed eligibility findings within the NFA Letter.
- Section D Property Maps and Table Requirements.** The CP must affirm that maps required by the rules are included in the NFA Documentation. References for the location of all maps within the NFA Documentation are also required. This section also includes sample formats of tables that must be included in the NFA Documentation. The table formats are optional, but the tables provided must include all the elements identified in the sample formats.
- Section E Phase I Property Assessment.** The CP must indicate that the activities required under the Phase I rule have been performed. References are required to assist in the NFA Letter review.
- Section F Phase II Property Assessment.** The CP must indicate that certain activities required under the Phase II rule, based upon the outcome of the Phase I, have been performed, and provide the location (within the NFA Letter) of the specific Phase II findings.
- Section G Phase II Property Assessment -Ground Water.** The CP must indicate that several activities, which may be required based upon the existence and type of ground water underlying the property, have been performed. In some instances, the CP is asked to provide the result of a particular evaluation in a “Yes or No” format. References are required in some instances to assist the NFA Letter review.
- Section H Generic Numerical Standards and Property Specific Risk Assessment Procedures.** The CP is asked to provide information regarding the applicable standards chosen and how they are consistent with the exposure assumptions found at the property.
- Section I Demonstration of Compliance with Applicable Standards.** The CP is asked to provide summary information (in the form of a table) regarding the applicable standards, and references concerning the remedies employed at the property.
- Section J All Affidavits.** Locations, within the NFA Documentation, of all affidavits required to be prepared in connection with the voluntary action are to be provided in this Section. Template affidavits are provided as an attachment for use by the CP.

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List of Attachments to NFA Form

- 1. Instructions – Fee Schedule**
- 2. Instructions - Attachment I**
“Notification of No Further Action Letter (example)”
- 3. Instructions - Attachment II**
“The VAP Technical Decision Compendium (TDC) Index”
- 4. Section G – Attachment I**
“Ohio EPA Derived Leach-Based Soil Values Technical Guidance Document” (2008)
- pdf file only
- 5. Section G – Attachment II**
“Appendix - Ohio EPA Derived Leach-Based Soil Values Technical Support Document” (2008) - pdf file only
- 6. Section H - Attachment I**
“Support Document for the Development of Generic Numerical Standards and Risk Assessment Procedures” (2008) - pdf file only
- 7. Section J - Attachment I**
“Affidavit Templates ”