

## TO BE RESCINDED

3745-300-15            **Remediation.**

## (A) Applicability.

- (1) Remedial activities must be conducted to meet applicable standards when a "Phase II Property Assessment" conducted in accordance with rule 3745-300-07 of the Administrative Code reveals that concentrations of chemical(s) of concern in any environmental media fail to comply with:
  - (a) Applicable standards as determined from the generic numerical standards in accordance with rule 3745-300-08 of the Administrative Code;
  - (b) Applicable standards as determined from a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code;
  - (c) Background levels as determined in accordance with rule 3745-300-07 of the Administrative Code, when background levels are the applicable standards; or
  - (d) Any other applicable standard of this chapter.

[Comment: The terms "remedy" and "remedial activities" are defined collectively, in division (N) of section 3746.01 of the Revised Code and rule 3745-300-01 of the Administrative Code. Various remedies or individual remedial activities may be used in a voluntary action to meet and maintain applicable standards. Examples of remedial activities include, but are not limited to, "active remediation" (e.g., removal or treatment), "passive remediation" (e.g., monitoring the effectiveness of natural attenuation), "engineering controls" (e.g., use of a structural barrier), and "institutional controls" (e.g., land use restrictions) as the terms are defined in paragraph (B) of this rule and rule 3745-300-01 of the Administrative Code, and implemented through paragraph (D) of this rule.]

[Comment: Each existing complete exposure pathway and reasonably anticipated complete exposure pathway for environmental media determined in accordance with paragraph (D)(2) of rule 3745-300-07 of the Administrative Code must comply with an applicable standard in rules 3745-300-07 (background comparison), 3745-300-08 (generic numerical standard) or 3745-300-09 (property specific risk assessment based standard) of the Administrative Code. For the complete pathways in which the property fails to comply with an applicable standard, the

volunteer needs to implement a remedy in accordance with this rule to meet applicable standards for such pathways, or otherwise render the pathway incomplete.]

[Comment: For any property that relies on a remedy to meet applicable standards and the property has not yet achieved applicable standards consistent with a permanent remedy when a no further action letter is issued, the no further action letter must demonstrate, through interim measures, that the remedy is protective of public health and safety and the environment. Further, when it is reasonably anticipated that the property will not maintain applicable standards consistent with a permanent remedy, the no further action letter must demonstrate, through interim measures, that the remedy will remain protective of public health and safety and the environment until the permanent remedy is restored. Under these circumstances, the no further action letter also needs to demonstrate that the property will achieve applicable standards consistent with a permanent remedy within a reasonable time frame in accordance with an operation and maintenance plan or a consolidated standards permit. The criteria for demonstrating compliance with applicable standards are contained in paragraph (G) of rule 3745-300-07 of the Administrative Code.]

- (2) An institutional control must be established in accordance with this rule to apply applicable standards to a restricted land use, pursuant to paragraph (D)(5) of rule 3745-300-07 of the Administrative Code.
- (3) An operation and maintenance plan is required as part of a no further action letter issued under this chapter and Chapter 3746. of the Revised Code for a property for which the no further action letter relies on either or both of the following:
  - (a) Engineering controls that involve operation or maintenance, or both, necessary to maintain applicable standards at the property following issuance of the no further action letter; or
  - (b) A remedial activity not completed prior to issuance of the no further action letter, and in which conditions at the property are protective of public health and safety and the environment in accordance with an operation and maintenance plan. Remedial activities not completed prior to issuance of the no further action letter must be complete within five years or such other time frame agreed to by the director in accordance with an operation and maintenance agreement. Such a remedy includes but is not limited to any of the following:

- (i) An engineering control, as defined by rule 3745-300-01 of the Administrative Code;
- (ii) Passive remediation, as defined in this rule;
- (iii) Active remediation, as defined in this rule;
- (iv) The evaluation, response and other activities related to ground water required by paragraphs (F)(2)(a)(v) to (F)(2)(a)(viii), (F)(2)(c)(vi) to (F)(2)(c)(ix), (F)(3)(a)(v) to (F)(3)(a)(viii), or (F)(3)(c)(vi) to (F)(3)(c)(ix) of rule 3745-300-10 of the Administrative Code, as applicable, that are implemented to maintain compliance with applicable standards; and
- (v) An interim measure, as defined in this rule.

[Comment: An operation and maintenance plan or agreement is not required for implementation of risk mitigation measures and a risk mitigation plan, which may instead be implemented as a separate condition of a covenant not to sue. Implementation through a covenant not to sue requires periodic reporting to the agency regarding implementation of the risk mitigation measures and risk mitigation plan. The use of risk mitigation measures or a risk mitigation plan does not, however, release the volunteer from fulfilling operation and maintenance plan or agreement obligations otherwise required pursuant to paragraph (A)(3) of this rule. This rule does not preclude a volunteer from implementing risk mitigation measures or a risk mitigation plan through use of an operation and maintenance plan or agreement.]

[Comment: Ohio EPA may be consulted under the voluntary action program's technical assistance program to provide volunteers, certified professionals, or other persons assistance in the development of draft operation and maintenance plans or preliminary remedial plans, submitted prior to issuance of the no further action letter. Ohio EPA may recover its costs related to the review, comment or oversight of the plans, or other documents not associated with a submitted no further action letter otherwise covered by a fee pursuant to rule 3745-300-03 of the Administrative Code.]

(B) Definitions. For the purposes of this rule:

- (1) "Active remediation" or "active remedy" means the remedial activities taken to reduce the mass, toxicity, mobility or concentration of a chemical of concern. Active remediation includes but is not limited to the removal of the hazardous substances or petroleum from the property or the design and installation of the following: air sparging; soil washing; pump and treat; steam stripping; soil vapor extraction; and enhancement of bioremediation. Active remediation may include short-term activities, such as soil removal and proper disposal, the construction of an engineering control, such as a cap, or ground water gradient reversal. Alternately, active remediation may involve long-term activities such as ground water pump-and-treat systems.
- (2) "Interim measures" means remedial activities undertaken to protect public health and safety and the environment until the property complies with applicable standards through a permanent remedy. Interim measures may include but are not limited to temporary fencing that restricts access, temporary soil cover, temporary property security restricting access, existing structures at the property restricting exposure to chemicals of concern, existing on-property pavement, risk mitigation measures, and interim exposures supported by a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code.
- (3) "Natural attenuation" means in situ biotic and abiotic processes through which passive remediation occurs. Natural attenuation processes can be non-destructive, including but not limited to the following physical processes: adsorption, absorption, advection, dispersion, diffusion, dilution from recharge, and volatilization. Natural attenuation processes can also be destructive, including but not limited to the following chemical processes: aerobic, hypoxic and anaerobic biodegradation, and chemical degradation, including abiotic oxidation processes, hydrolysis and other reactions.
- (4) "Operation and maintenance plan" means a written plan prepared in accordance with paragraph (F) of this rule. An operation and maintenance plan describes the remedy or remedial activities planned to demonstrate that the property meets and will maintain compliance with applicable standards. As applicable, an operation and maintenance plan also describes the remedial activities planned so that the property will achieve compliance with applicable standards within five years or other time frame as agreed upon by the director in an operation and maintenance agreement. The operation and maintenance plan must demonstrate that the property meets and will maintain applicable standards and the remedy continues to be protective of public health and safety and the environment.
- (5) "Other person responsible for operation and maintenance plan and agreement

implementation" means, for the purpose of this rule, the person responsible for implementation of the operation and maintenance plan and agreement through transfer of the operation and maintenance agreement, by assignment or in conjunction with acquisition of title to the property.

- (6) "Passive remediation" or "passive remedy" means the remedial activities relied upon as in situ natural methods and documented in peer-reviewed scientific literature, which reduce the mass, toxicity, mobility or concentration of a chemical of concern over distance and time through natural attenuation processes.
- (7) "Risk mitigation measures" means the health and safety precautions and other such remedial activities that mitigate or eliminate human exposure to the chemicals of concern at the property. Risk mitigation measures provide protection to persons working in construction or excavation in environmental media from exposure of chemicals of concern at concentrations above target risk goals, as defined in rule 3745-300-08 or 3745-300-09 of the Administrative Code. Risk mitigation measures reduce potential risks to receptor populations performing excavation or construction activities that may breach the point of compliance for commercial or industrial land uses.
- (8) "Risk mitigation plan" means a written plan prepared in accordance with paragraph (G) of this rule that describes the risk mitigation measures the volunteer will implement to comply with applicable standards.
- (C) Compliance with other laws. Remedial activities conducted under this chapter and Chapter 3746. of the Revised Code must be conducted in compliance with all applicable laws, regulations, rules, resolutions and ordinances.

[Comment: Various federal and state laws and regulations and local laws, rules, resolutions and ordinances may apply to remedial activities when conducted at a property undergoing a voluntary action. Examples include but are not limited to: (1) complying with hazardous waste treatment, storage and disposal requirements contained in Chapters 3745-52 and 3745-65 of the Administrative Code for the management of excavated soil or other waste that is a characteristic hazardous waste or contains a listed hazardous waste; (2) obtaining prior authorization to excavate in the subsurface of property where a solid waste facility or a hazardous waste facility operated, in accordance with rule 3745-27-13 of the Administrative Code; (3) obtaining a permit to discharge contaminated water or other environmental media to waters of the state, in accordance with Chapter 3745-33 of the Administrative Code and Chapter 6111. of the Revised Code; (4) obtaining authorization to discharge to any publicly-owned treatment works, in accordance with the requirements of that public entity and Chapter 6111. of the Revised Code; (5) abandonment of monitoring wells following their use, in accordance with

requirements of Chapters 3701-28 and 3745-9 of the Administrative Code; (6) compliance with the laws and regulations administered by the Occupational Safety and Health Administration; (7) obtaining a permit to install air contaminant sources, such as an air sparger, in accordance with Chapter 3745-31 of the Administrative Code and Chapter 3704. of the Revised Code; and (8) local zoning and property setback requirements.]

(D) Criteria for implementation of remedial activities. If remedial activities are required to be conducted at a property pursuant to paragraph (A) of this rule, one or more of the following remedial activities must have been conducted and documented in the no further action letter, or unless otherwise provided in this rule, addressed as part of an operation and maintenance plan contained in the no further action letter, prior to issuance of a no further action letter for the property.

(1) Passive remediation. Passive remediation must be capable of attaining applicable standards. If passive remediation is not complete prior to issuance of the no further action letter for the property, an operation and maintenance plan prepared in accordance with this rule for implementation of the passive remediation must be included with the no further action letter. If the passive remediation is not completed upon issuance of the no further action letter, the no further action letter must demonstrate the passive remediation is capable of attaining the applicable standards, within five years or other time frame agreed upon by the director in an operation and maintenance agreement, in accordance with this rule.

(2) Active remediation. Active remediation must be capable of attaining applicable standards. If active remediation is not complete prior to issuance of the no further action letter for the property, an operation and maintenance plan prepared in accordance with this rule for implementation of the active remediation must be included with the no further action letter. If the active remediation is not completed upon issuance of the no further action letter, the no further action letter must demonstrate the active remediation is capable of attaining applicable standards, within five years or other time frame agreed upon by the director in an operation and maintenance agreement, in accordance with this rule;

(3) Institutional controls. Institutional controls must be:

(a) Controls established by deed restriction that impose a limitation that mitigates or eliminates risk or an exposure pathway to human receptors;

(b) Transferrable with the property and recorded with the county recorder in the same manner as a deed to the property, during the period of time

which the control is used to achieve and maintain applicable standards;

- (c) Consistent with the criteria contained in paragraph (D)(3)(b)(iv)(b) of rule 3745-300-09 of the Administrative Code, as applicable;
  - (d) Consistent with the requirements for recording contained in paragraphs (B)(3) and (E)(13) of rule 3745-300-13 of the Administrative Code, as applicable;
  - (e) Effective at eliminating or mitigating exposures to receptor populations sufficient to meet the risk goals contained in rule 3745-300-08 or 3745-300-09 of the Administrative Code, as applicable; and
  - (f) Capable of being monitored, maintained and enforced by the owner or operator of the property during the period of time which the control is used to comply with applicable standards.
- (4) Engineering controls. Engineering controls must be:
- (a) Effective and reliable for the climatic conditions and activities at the property to which the control will be applied;
  - (b) Consistent with the criteria contained in paragraph (D)(3)(b)(iv)(b) of rule 3745-300-09 of the Administrative Code, as applicable;
  - (c) Effective at eliminating or mitigating exposures to receptor populations sufficient to meet the risk goals of rule 3745-300-08 or 3745-300-09 of the Administrative Code, as applicable;
  - (d) Reliable during the period of time the control is used to achieve or maintain applicable standards; and
  - (e) Capable of being monitored and maintained as required by an operation and maintenance plan developed and implemented in accordance with this rule.
- (5) Critical resource ground water activities. The evaluation, response and other activities required to protect off-property receptors when concentrations of chemicals of concern in critical resource ground water exceed unrestricted potable use standards must be implemented in accordance with rule 3745-300-10 of the Administrative Code. The activities are provided in

paragraphs (F)(2)(a)(v) to (F)(2)(a)(viii), (F)(2)(c)(vi) to (F)(2)(c)(ix), (F)(3)(a)(v) to (F)(3)(a)(viii), or (F)(3)(c)(vi) to (F)(3)(c)(ix) of rule 3745-300-10 of the Administrative Code.

- (6) Interim measures. Interim measures must be used for a property when a permanent remedy has not been completed prior to issuance of a no further action letter, or when it is reasonably anticipated that the temporary use of the property following issuance of the no further action letter will result in the property failing to comply with applicable standards. At a minimum, the interim measures must mitigate the risks associated with the existing and reasonably anticipated complete exposure pathways to human receptor populations until a permanent remedy is established to meet and maintain applicable standards.
- (7) Risk mitigation measures. Risk mitigation measures must effectively eliminate or reduce the existing or potential risk to persons working in areas where concentrations of chemicals of concern that exceed applicable standards remain. If the risk mitigation measures are not completed prior to issuance of the no further action letter for the property, the risk mitigation measures must be implemented through a risk mitigation plan, in accordance with paragraph (G) of this rule.

[Comment: A reasonably anticipated risk may exist under various property-specific scenarios. Examples of such scenarios include, but are not limited to, (1) the repair or replacement of an engineering control used to mitigate exposure to chemicals of concern at unknown concentrations in subsurface environmental media; (2) subsurface environmental media below the point of compliance that contain concentrations of chemicals of concern for which the risk to subsurface workers is unevaluated or uncharacterized in accordance with a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code; and (3) the exposure assumptions assessed present an unacceptable risk based on a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code.]

- (E) Verification of completion of remedial activities and determination that the property complies with applicable standards.

- (1) Verification required prior to issuance of the no further action letter. Prior to the issuance of a no further action letter the volunteer must verify that the remedial activities have been implemented in accordance with this rule and have resulted or will result in the property complying with applicable standards. Such verification must describe the remedy or remedial activities implemented at the property which are a part of the voluntary action.



Verification must include an identification of the data used to demonstrate that the property complies with the applicable standards contained in this chapter, and must include the following, as applicable:

- (a) A demonstration in accordance with paragraph (G) of rule 3745-300-07 of the Administrative Code that through implementation of the remedial activities, the property complies with applicable standards;
  - (b) A demonstration in accordance with paragraph (G) of rule 3745-300-07 of the Administrative Code that the property meets or will achieve applicable standards consistent with a permanent remedy within five years or other time frame pursuant to an operation and maintenance plan and agreement. For the purposes of this rule, the time frame for implementation of the remedial activities must be detailed in an operation and maintenance plan developed in accordance with this rule. The verification must include a demonstration that interim measures, if necessary, will be implemented in accordance with this rule; or
  - (c) In the case of an institutional control, verification must include, at a minimum, a demonstration that each institutional control relied upon in the no further action letter has been recorded, in the same manner as a deed to the property, at the county recorder's office at the county where the property is located.
- (2) Verification made after completion of remedial activities implemented through an operation and maintenance plan or agreement; termination. Upon completion of a remedial activity subject to an operation and maintenance plan or agreement, the volunteer or other person responsible for operation and maintenance plan and agreement implementation must verify completion of the remedial activity in accordance with the operation and maintenance plan and agreement. Upon completion of all remedial activities subject to the operation and maintenance plan or agreement, the volunteer or other person responsible for operation and maintenance plan and agreement implementation must demonstrate that implementation of the operation and maintenance plan or agreement is no longer necessary for the property to remain in compliance with applicable standards. To verify completion and to demonstrate that further implementation of the remedial activity is unnecessary for the property to remain in compliance with applicable standards, the demonstration must include the following:
- (a) A description of the remedial activity, for which further implementation of the operation and maintenance plan or agreement is no longer necessary to maintain compliance with applicable standards at the property;

- (b) Identification of the information relied upon to demonstrate that the property complies with applicable standards without further implementation of the remedial action;
- (c) Information that supports the verification in accordance with this rule and the termination criteria contained in the operation and maintenance plan or agreement, as applicable;
- (d) An affidavit from the volunteer or other person responsible for operation and maintenance plan and agreement implementation that the verification criteria contained in paragraph (E)(2) of this rule and termination criteria contained in the operation and maintenance plan and agreement, are satisfied; and
- (e) An affidavit from a certified professional that the property complies with applicable standards without further implementation of the remedial activity.

(F) Operation and maintenance plan and agreements.

- (1) Content of operation and maintenance plan. When a remedy is required to have an operation and maintenance plan in accordance with this rule, the volunteer must develop and implement an operation and maintenance plan that includes the following components as applicable, for each of the remedial activities subject to the operation and maintenance plan:
  - (a) A summary of the applicable standards for the property and the purpose of the remedial activities;
  - (b) A plan for implementing the remedial activities, including normal operation and maintenance. A description of tasks that will be done to implement the normal operation and maintenance of the remedial activities, including, but not limited to:
    - (i) A description of the tasks for operation of the remedial activities;
    - (ii) A description of the tasks and procedures for maintaining the remedial activities, including but not limited to a plan for periodic preventive measures;
    - (iii) A description of prescribed treatment or operating conditions for

the remedial activities; and

- (iv) Schedules for implementing remedial activities and for operation and maintenance tasks.
- (c) A plan for evaluating the effectiveness of the remedial activities. A plan for evaluating the effectiveness of each remedial activity must be included in the operation and maintenance plan. The plan must include, at a minimum, the following:
- (i) The purpose and objective of the activities planned to evaluate the effectiveness of the remedy;
  - (ii) A description of the activities that will be performed to determine the effectiveness of the remedial activities in meeting or maintaining compliance with applicable standards;
  - (iii) A description of the activities that will be performed to evaluate or confirm assumptions and predictions of a property-specific risk assessment conducted in accordance with rule 3745-300-09 of the Administrative Code, if a property-specific risk assessment was conducted;
  - (iv) A description of the activities that will be conducted, to comply with the response requirements for critical resource ground water in accordance with paragraphs (F)(2)(a)(v) to (F)(2)(a)(viii), (F)(2)(c)(vi) to (F)(2)(c)(ix), (F)(3)(a)(v) to (F)(3)(a)(viii), or (F)(3)(c)(vi) to (F)(3)(c)(ix) of rule 3745-300-10 of the Administrative Code, as applicable;
  - (v) If data collection, field testing, sampling or data analyses activities are appropriate for the monitoring activities, a summary of these procedures developed in accordance with paragraph (E) of rule 3745-300-07 of the Administrative Code; and
  - (vi) A description of the anticipated length and planned frequency of each monitoring activity that will be performed to evaluate the effectiveness of the remedial activities.
- (d) Equipment requirements. A description of equipment required to operate and maintain the remedial activities, including:

- (i) A description of the monitoring and remedial equipment that has been or will be installed, and the criteria for installation; and
  - (ii) A schedule for the maintenance and replacement of monitoring and remedial equipment, as appropriate for each remedial activity.
- (e) A plan for adjustments to normal operation and maintenance. A description of reasonably anticipated adjustments and criteria establishing when the adjustments will be taken to normal operation and maintenance of the remedial activities so that the remedial activities remain effective;

[Comment: Examples of adjustments that may be necessary to maintain the effectiveness of a remedial activity, but which may not be within the scope of normal operation and maintenance, include changing the pumping rates of pumps installed in water extraction wells being used to control ground water gradient, or the installation of additional wells or larger pumps to achieve gradient control. Installation of a different form of an engineering control or interim measure from that specified in the operation and maintenance plan would be considered a modification of a remedial activity and may require the issuance of a new no further action letter.]

- (f) A plan for addressing potential problems with the remedial activities, including, but not limited to:
- (i) A description and analysis of the potential operating and maintenance problems with the remedial activities;
  - (ii) A description of the means for detecting the problems with the remedial activities, including but not limited to, the schedule for periodic inspection of each remedial activity;
  - (iii) A description of reasonably anticipated activities that will be conducted and equipment utilized to correct potential problems with the remedial activities, including but not limited to the reasonably anticipated inspection responses and repair methods, and the criteria for implementing a contingency plan developed in accordance with paragraph (F)(1)(f)(iv) of this rule; and
  - (iv) A contingency plan that details the measures that will be taken to maintain the property's compliance with applicable standards and

protection of public health and safety and the environment until normal operation or maintenance of the remedial activities is restored.

- (g) Records and reporting mechanisms. The operation and maintenance plan must contain a description of all records that will be kept for the purpose of documenting the requirements of paragraphs (F)(1) and (F)(2) of this rule are met; and
- (h) A plan for termination of the remedial activities, including, but not limited to:
  - (i) An identification and description of the data and information that will be collected to support the criteria for termination of the remedial activities subject to the operation and maintenance plan to verify completion of the remedial activities in accordance with paragraph (E)(2) of this rule; and
  - (ii) An identification and description of the criteria for termination, as appropriate, of the monitoring activity to verify completion of the remedial activity in accordance with paragraph (E)(2) of this rule.
- (2) Reporting evaluation of the effectiveness of remedial activities subject to an operation and maintenance plan.
  - (a) At least once annually following issuance of a no further action letter, or at such other interval as agreed upon in an operation and maintenance agreement, the volunteer or other person responsible for operation and maintenance plan and agreement implementation, must submit a letter, statement or report to the director, under affidavit, that includes the following:
    - (i) The results from all evaluation activities performed in accordance with paragraph (F)(1)(c) of this rule.
    - (ii) A description of the activities, if any, performed under a contingency plan;
    - (iii) A demonstration of the performance of all remedial activities subject to the operation and maintenance plan; and
    - (iv) A demonstration of how compliance with applicable standards will

be met or maintained, including the measures used to maintain the remedy's protectiveness of public health and safety and the environment until the property achieves compliance with applicable standards through a permanent remedy within five years, or other time frame as agreed upon by the director in an operation and maintenance agreement.

- (b) Confirmation made under paragraph (F)(1)(c) of this rule related to an engineering control, interim measure, active remediation or passive remediation, as applicable, is necessary for as long as the remedial activity is necessary to achieve or maintain applicable standards at the property. Confirmation made under paragraph (F)(1)(c) of this rule related to on-going remedial activities is necessary until the remedial activity is complete, or is no longer needed for the property to comply with the applicable standards, and verification has been conducted according to paragraph (E)(2) of this rule.

[Comment: Monitoring or evaluation activities may be modified in order to meet the requirements of this paragraph.]

- (3) Submission of an operation and maintenance plan. When an operation and maintenance plan is required in accordance with this rule, the operation and maintenance plan must be prepared and, as appropriate to maintain applicable standards, implemented, prior to issuance of the no further action letter. The no further action letter must include the operation and maintenance plan. If the no further action letter is submitted to the director with an accompanying request for a covenant not to sue in accordance with this chapter and Chapter 3746. of the Revised Code, a copy of the operation and maintenance plan must also be submitted to the director.
- (4) Operation and maintenance agreement. When requesting a covenant not to sue from the director pursuant to this chapter and Chapter 3746. of the Revised Code for a property subject to a remedial activity that requires an operation and maintenance plan pursuant to this rule, the volunteer must enter into an operation and maintenance agreement with the director.
- (a) At a minimum, the operation and maintenance agreement must include the following:
- (i) An operation and maintenance plan for the property developed in accordance with paragraphs (F)(1) and (F)(2) of this rule and approved by the director;

- (ii) A provision that the volunteer agrees to implement the operation and maintenance plan;
- (iii) A provision requiring periodic reporting to the director of monitoring results and evaluation of the effectiveness of the remedial activities subject to the operation and maintenance plan, in accordance with paragraph (F)(2) of this rule, to the extent the operation and maintenance plan does not provide for such periodic reporting to the director;
- (iv) A provision requiring notification to the director within a specified time of all adjustments made to normal operation and maintenance as specified in the operation and maintenance plan, and of implementation of the contingency plan activities specified in the operation and maintenance plan;
- (v) A provision requiring that proposed modifications to a remedial activity, other than adjustments or contingency plan activities developed in accordance with paragraphs (F)(1)(e) to (F)(1)(f) of this rule and contained in the operation and maintenance plan, must be submitted to the director for review and approval prior to implementation of the proposed modification;
- (vi) A provision requiring that prior notification, within a specified reasonable time frame, be provided to the prospective buyers or transferees of the property of the remedy subject to the operation and maintenance plan and agreement;
- (vii) A provision requiring notice to the director within a specified reasonable time frame of each transfer of the property subject to the operation and maintenance plan and agreement;
- (viii) A provision requiring notice to the director within a specified reasonable time frame of the transfer of the operation and maintenance plan and agreement, and of the terms and conditions of the transfer;
- (ix) The establishment and description of financial assurances that the remedy subject to the operation and maintenance plan and agreement will remain operational and functional;
- (x) A provision for inspection of the property by Ohio EPA or its

representatives to determine compliance with the operation and maintenance plan and agreement;

(xi) Mechanisms for providing reports to Ohio EPA, including, but not limited to:

(a) Daily operating logs;

(b) Laboratory analytical data and supporting records;

(c) A procedure for reporting emergencies;

(d) Maintenance records; and

(e) A description of the reports that will be provided to Ohio EPA and the frequency for reporting.

(xii) Other provisions necessary to protect public health and safety and the environment or to demonstrate effectiveness of the remedial activities subject to the operation and maintenance plan or agreement.

(b) The operation and maintenance agreement may specify a reasonable time frame within which the property must attain applicable standards through the remedial activities specified in the operation and maintenance plan or agreement.

[Comment: By law, operation and maintenance agreements entered into under this chapter and Chapter 3746. of the Revised Code may be transferred by the recipient to another person by assignment or in conjunction with the acquisition of title to the property that is the subject of the agreement. See section 3746.14 of the Revised Code. The volunteer may choose to but is not required to transfer its operation and maintenance agreement to another person, e.g., the subsequent property buyer. The term "other person responsible for operation and maintenance plan and agreement implementation" is defined in paragraph (B) of this rule to account for such transfers.]

(G) Risk mitigation plans. Whenever risk mitigation measures are employed, a risk mitigation plan must be implemented. The risk mitigation plan must contain, at a minimum, the following components:



- (1) A description of the purpose of the risk mitigation plan;
- (2) A summary of the potential health risks associated with the chemicals of concern at the property;
- (3) A description of the specific precautions against exposure to be taken at the property;
- (4) Directions on how to handle environmental media at the property that may contain chemicals of concern;
- (5) Provisions for when the risk mitigation plan will be implemented at the property, consistent with the results of a property-specific risk assessment, if applicable, conducted in accordance with rule 3745-300-09 of the Administrative Code;
- (6) Provisions for the locations at the property where the risk mitigation plan will be implemented, consistent with the results of a property-specific risk assessment in accordance with rule 3745-300-09 of the Administrative Code. If, based on the results of the property-specific risk assessment, the entire property is not subject to the risk mitigation plan, a legal description of that portion of the property subject to the risk mitigation plan must be attached to and incorporated by reference in the risk mitigation plan;
- (7) A property map showing that portion of the property subject to the risk mitigation plan;
- (8) Provisions for giving notice of the risk mitigation plan to contractors and subcontractors and their employees, and other persons working in areas where risk mitigation measures are necessary;
- (9) A summary explanation of the precautions that each contractor must require of and communicate to its employees and subcontractors;
- (10) For property where a covenant not to sue is requested, provisions for annually notifying the director as to whether implementation of the risk mitigation plan occurred; and if implemented, of the events that required implementation of the risk mitigation plan, the exposures to hazardous substances or petroleum that may have occurred, and the risk mitigation measures undertaken in accordance with the risk mitigation plan; and

- (11) The criteria for termination of the risk mitigation plan, as appropriate.
- (H) "Class V" underground injection control wells. A voluntary action which includes remedial activities conducted to address hazardous substances or petroleum associated with "Class V" underground injection control wells at a property must be consistent with the remedial standards, as applicable standards, established in the Safe Drinking Water Act for those "Class V" underground injection control wells. If standards established under the Safe Drinking Water Act are inconsistent with the standards contained in this chapter, the standards established under the Safe Drinking Water Act become the applicable standards.

Effective:

R.C. 119.032 review dates: 11/26/2008

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Certification

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Date

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Rule Amplifies: 3746, 5301  
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