

Hearing Summary

Rule Package: DERR Voluntary Action Program Laboratory Certification, "VAP Lab Cert"

Original filing date: March 3, 2023

Public comment start date: March 3, 2023

Public comment end date: April 12, 2023

Public hearing date: April 12, 2023

List of Rules: 3745-300-01, 3745-300-03, 3745-300-04, 3745-300-05, 3745-300-07,
3745-300-12, 3745-300-13, 3745-300-14, 3745-300-15

Were there any participants in this public hearing beyond Ohio EPA staff or JCARR staff?

☒ Yes

☐ No

Were there comments received during the public comment period outside of those presented at this hearing?

☒ Yes

☐ No

This hearing summary has been compiled to meet the requirements of Section 119.03 of the Revised Code.

This hearing summary includes this cover sheet and the following attachments:

1. **Attachment A** - A copy of the public notice for this hearing.
2. **Attachment B** - A copy of the sign-in sheet for this hearing.
3. **Attachment C** - A copy of the script read into the record to begin and end the hearing.
4. **Attachment D** - A copy of the response to comments.

Ohio EPA's response to comments document includes the comments received, who commented, the agency response to comments, and a statement of whether or not the rule was changed due to the comments.

Ohio EPA digitally records all public hearings for rules. The digital recordings are available upon request. These recordings may be sent out for transcription if necessary.

Attachment A: Public Notice

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**Public Notice
Proposed Rulemaking Governing
Nine Voluntary Action Program Rules**

Notice is hereby given that the Director of Environmental Protection, under the authority of Sections 3746.04 of the Ohio Revised Code and in accordance with Chapter 119, proposes to original file (propose) the following rules of the Ohio Administrative Code:

Rule #	Title:
OAC 3745-300-01 (Amend)	Definitions - voluntary action program
OAC 3745-300-03 (Amend)	Voluntary action program fees
OAC 3745-300-04 (Amend)	Certified laboratories
OAC 3745-300-05 (Amend)	Certified professionals
OAC 3745-300-07 (Amend)	Phase II property assessment for the voluntary action program
OAC 3745-300-12 (Amend)	Variances and case-by-case determinations
OAC 3745-300-13 (Amend)	No further action letter content and procedures
OAC 3745-300-14 (Amend)	Audits
OAC 3745-300-15 (Amend)	Incorporated by reference - voluntary action program

This rule address Voluntary Action Program (VAP) regulations.

The purpose of this rule making is to comply with the passage of House Bill 110 that made changes to the VAP Certified Laboratory Program. Ohio EPA plans to eliminate the duplicative laboratory certification requirement and fees associated with becoming certified by Ohio EPA to participate in the VAP, and to allow the use of other laboratory accreditations. Updates to the Incorporated by reference were made to reflect weblink changes. Also, an update was made to the “hotels” definition, as defined in section 3731.01 (A)(4) of the Revised Code.

The public comment period will run until April 12, 2023. A public hearing on this proposed rulemaking will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. Ohio EPA will be holding an in-person and virtual public hearing on the rules on April 12, 2023 at 10:30 AM in Conference Room A (Autumn). The in-person hearing will be at the same time and date and will be located at Ohio EPA, Suite 700, 50 W. Town Street, Columbus, Ohio 43215. During the hearing, the public may submit written comments on the record about the proposed rules if participating virtually and verbally if participating in person.

Citizens who want to participate virtually must register in advance for the meeting at: <https://attendee.gotowebinar.com/register/5580140687707107680>

Registration for the in-person hearing is not required. Citizens intending to give testimony at the hearing should notify the Ohio EPA Public Interest Center, P.O. Box 1049, Columbus, Ohio 43216-

1049, (614) 644-2160 or by emailing mary.mccarron@epa.ohio.gov. Prior registration will ensure that registrants are heard ahead of those individuals who register at the hearing. Oral testimony may be limited to five minutes, depending on the number of persons testifying. All interested persons are entitled to attend or be represented and to present oral and/or written comments concerning the proposed rulemaking.

Written testimony should be sent to the attention of Chelsea Lamoreaux at the Division of Environmental Response and Revitalization (DERR), P.O. Box 1049, Columbus Ohio 43216-1049 or can be emailed to Chelsea.Lamoreaux@epa.ohio.gov. Written comments may also be submitted to the Hearing Officer at the public hearing. Written testimony will receive the same consideration as oral testimony. All testimony received at the hearing or by close of business on April 12, 2023, will be considered by Ohio EPA prior to final action on this rulemaking proposal. Written comments submitted after this date may be considered as time and circumstances permit.

Questions regarding this rule package should be directed to Chelsea Lamoreaux, DERR, (614)-644-2285.

To receive a copy of the proposed rules, please contact the DERR receptionist at (614) (644-2068). In addition, full copies of all proposed rules are available for review at any Ohio EPA district office and at the Ohio EPA central office. The proposed rules are also accessible on DERR's web page at <https://epa.ohio.gov/divisions-and-offices/environmental-response-revitalization/regulations/proposed-rules>

To request a reasonable accommodation due to a disability, visit <https://epa.ohio.gov/ada>

Attachment B: Sign-In Sheet

Last Name	First Name	Email Address	Join Time - Leave Time (Time in Session)
Banvard	Honor	honor.banvard@jcarr.state.oh.us	04/12/2023 10:31 AM EDT (1 minute),04/12/2023 10:32 AM EDT - 04/12/2023 10:32 AM EDT (1
Cochran	Lisa	lisa.cochran@epa.ohio.gov	04/12/2023 10:30 AM EDT - 04/12/2023 10:31 AM EDT (1 minute)
Corbin	Erik	ecorbin@patrioteng.com	04/12/2023 11:00 AM EDT (2 minutes)
Duran	Sara	skidd@settek.com	04/12/2023 10:45 AM EDT (16 minutes)
Ewing	Sarah	sewing@verdantas.com	04/12/2023 10:26 AM EDT - 04/12/2023 10:54 AM EDT (28 minutes)
Leeson	Dorothy	dorothy.leeson@et.eurofinsus.com	04/12/2023 10:27 AM EDT - 04/12/2023 10:45 AM EDT (19 minutes)
Magness	Susan	susan.magness@alsglobal.com	04/12/2023 10:30 AM EDT - 04/12/2023 10:50 AM EDT (21 minutes)
			04/12/2023 10:28 AM EDT - 04/12/2023 10:36 AM EDT (9 minutes),04/12/2023 10:36 AM EDT -
			04/12/2023 10:37 AM EDT (1 minute),04/12/2023 10:38 AM EDT - 04/12/2023 10:41 AM EDT (4
			minutes),04/12/2023 10:41 AM EDT - 04/12/2023 10:42 AM EDT (2 minutes),04/12/2023 10:43
			AM EDT - 04/12/2023 11:00 AM EDT (18 minutes)
Parr	Jerry	jerry.parr@nelac-institute.org	04/12/2023 10:32 AM EDT (2 minutes)
Rasik	Carrie	carrie.rasik@epa.ohio.gov	04/12/2023 10:31 AM EDT - 04/12/2023 10:38 AM EDT (7 minutes)
Wetzel	Douglas	dwetzel@hzwenv.com	

Attachment C: Public Hearing Script

DERR VAP Lab Certification Proposed Rules

April 12, 2023

Hello and welcome to Ohio EPA's public hearing regarding Division of Environmental Response and Revitalization's proposed rules. My name is Mary McCarron and I'm hosting today's public hearing. With me today from Ohio EPA's Division of Environmental Response and Revitalization are Lisa Shook, Madison Graham, and Chelsea Lamoreaux and our Agency Rules Coordinator Mandi Payton. In a moment, we will move to the public hearing where we will take official comments on the proposed rules.

I'd like to note that we are recording this hearing. We will save all comments submitted during the hearing.

Before we get started, I'd like to go over a few items to help our online participants navigate the GoTo platform.

On this slide here you will see an example screenshot of your Attendee interface. You should see something that looks like this on your computer desktop on the right-hand side of your screen. For this public hearing you are listening in using your computer audio. If you are having sound issues or if the slides stop advancing, try refreshing your browser. If that doesn't work, try logging off and logging back in.

Please submit public comments by clicking on the question mark icon and typing them into the Questions pane on your attendee interface. All comments submitted online will be read aloud for the whole audience to hear.

(You can also click on the document icon to view included handouts.)

For those attending in person, you may submit your testimony verbally by moving close to the broadcast tablet, stating your name, and proceeding with your testimony when we call on you.

We will now begin the hearing.

PUBLIC HEARING SPEECH

Thank you for taking time to attend this hearing before Ohio EPA. The purpose of the hearing today is to obtain comments from any interested person regarding Ohio EPA's proposed rules.

Notice is hereby given that the director of Ohio EPA, proposes to original file the following rules of the Ohio Administrative Code:

- OAC 3745-300-01 Definitions - voluntary action program
- OAC 3745-300-03 Voluntary action program fees
- OAC 3745-300-04 Certified laboratories
- OAC 3745-300-05 Certified professionals
- OAC 3745-300-07 Phase II property assessment for the voluntary action program
- OAC 3745-300-12 Variances and case-by-case determinations
- OAC 3745-300-13 No further action letter content and procedures
- OAC 3745-300-14 Audits
- OAC 3745-300-15 Incorporated by reference - voluntary action program

These rules address Voluntary Action Program (VAP) regulations.

The purpose of this rule making is to comply with the passage of House Bill 110 that made changes to the VAP Certified Laboratory Program. Ohio EPA plans to eliminate the duplicative laboratory certification requirement and fees associated with becoming certified by Ohio EPA to participate in the VAP, and to allow the use of other laboratory accreditations. Updates to the Incorporated by reference were made to reflect weblink changes. Also, an update was made to the "hotels" definition, as defined in section 3731.01 (A)(4) of the Revised Code.

This rule has been filed with the Joint Committee on Agency Rule Review. Copies of the rule are available for public review on our website and in the handouts section in GoTo.

All interested persons are entitled to attend or be represented, and to present written comments concerning the proposed rule. All written comments received as part of the official record will be considered by the director of Ohio EPA.

To be included in the official record, written comments must be received by Ohio EPA by the close of business, today, April 12, 2023. These comments may be typed into the GoTo platform today, spoken in person, or emailed to Chelsea.Lamoreaux@epa.ohio.gov. All emailed comments submitted for the record receive the same consideration as typed comments given today.

Written statements submitted after today may be considered as time and circumstances permit but will not be part of the official record of the hearing.

This hearing affords citizens an opportunity to provide input. Therefore, we will not be able to answer questions today.

YOU MAY NOW SUBMIT COMMENTS. I will read aloud any comments we receive in the GoTo platform. If you are attending in-person and would like to submit testimony, please raise your hand and wait to be called on. I will keep the GoTo platform open until 11am to provide time for participants to type in comments.

CLOSING

After the hearing closes, we will accept written comments through 5:00 p.m. today. You can send those comments to the email address on the screen.

Thank you for your comments, cooperation, and participation in Ohio EPA's decision-making process. The time is now 11am and this hearing is concluded.

Attachment D: Response to Comments



Division of Environmental Response and Revitalization Response to Comments

Rule: 3745-300-01 Definitions

3745-300-03 Voluntary action program fees

3745-300-04 Certified laboratories

3745-300-05 Certified professionals

3745-300-07 Phase II property assessments

3745-300-12 Variances and case-by-case determinations - no comments received

3745-300-13 Content and scope of no further action letters

3745-300-14 Audits

3745-300-15 Incorporated by reference – voluntary action program - no comments received

Agency Contact for this Package

Division Contact: Chelsea Lamoreaux, Division of Environmental Response and Revitalization, 614-644-2285, Chelsea.Lamoreaux@epa.ohio.gov

Ohio EPA held a public hearing on April 12, 2023, and comment period from March 3, 2023, to April 12, 2023, regarding the Voluntary Action Laboratory rules. This document summarizes the comments and questions received at the public hearing and during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

Comment 1: **The commenter supports Ohio's proposed transition the Ohio VAP laboratory accreditation program from a state-run program to one which allows accreditation from a TNI-recognized Accreditation Body. (Jerry Parr, The NELAC Institute (TNI))**

Response 1: Ohio EPA thanks the commenter for their support of Ohio EPA's adoption of this rule package and the above changes to the Ohio VAP laboratory accreditation program.

3745-300-01 Definitions.

Comment 2: The commenter recommends revising the current name of the NELAC Institute (TNI) in paragraph (A)(2) to match the below text. (Jerry Parr, The NELAC Institute (TNI))

- (2) "Accredited laboratory" means a laboratory that is accredited as follows:
- (a) For analysis of asbestos, valid accreditation by one of the following:
 - (i) The American industrial hygiene association, asbestos analysts registry;
 - (ii) The national institute of standards technology, national voluntary laboratory accreditation program for asbestos fiber analysis;
 - (iii) An accreditation body recognized by The ~~national environmental laboratory accreditation conference~~ **NELAC Institute (TNI)**.
 - (b) For analysis of any constituent other than asbestos, valid accreditation by one of the following:
 - (i) ~~An accreditation body recognized by The NELAC Institute (TNI). The national environmental laboratory accreditation program;~~
 - (ii) ~~A national environmental laboratory accreditation program accreditation from an accreditation body recognized by the national environmental laboratory accreditation conference.~~

Response 2: Ohio EPA concurs and will make this change.

3745-300-04 Certified laboratories.

Comment 3: The commenter proposes comparable editorial changes to paragraph (B)(1)(e), as shown below (Jerry Parr, The NELAC Institute (TNI)).

- (e) ~~Accreditations for any constituent other than asbestos "National Environmental Laboratory Accreditation Program" (NELAP) accreditation.~~ A laboratory that holds certification ~~of the~~ for analysis of any constituent other than asbestos may rely on current ~~NELAC~~ accreditation from an accreditation body that is recognized by TNI.

Response 3: Ohio EPA concurs and will make this change.

Comment 4: The commenter proposes changes to paragraph (C)(1)(b) to make it more rigorous, as shown below (Jerry Parr, The NELAC Institute (TNI)).

- (b) The certified laboratory shall order proficiency testing samples from a proficiency testing provider that is ~~approved~~ **accredited to ISO/IEC 17043 or to TNI Standard Volume 3** to produce the proficiency testing samples and evaluate the proficiency testing results.

Response 4: Ohio EPA will maintain the certified laboratory language for proficiency testing. These requirements will remain in effect for certified laboratories.

End of Response to Comments