



**Environmental
Protection
Agency**

Hearing Summary

Rule Package: Voluntary Action Program Five-Year Rule Review: OAC Chapter 3745-300

Original filing date: November 12, 2024

Public comment start date: November 12, 2024

Public comment end date: December 20, 2024

Public hearing date: December 20, 2024

List of Rules: 3745-300-01, 3745-300-02, 3745-300-03, 3745-300-04, 3745-300-05, 3745-300-06, 3745-300-07, 3745-300-08, 3745-300-09, 3745-300-10, 3745-300-11, 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** - 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
Voluntary Action Program Five-Year Rule Review**

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

<u>Rule Number</u>	<u>Rule Title</u>
3745-300-01	Definitions – voluntary action program
3745-300-02	Eligibility for participation in the voluntary action program
3745-300-03	Voluntary action program fees
3745-300-04	Certified laboratories
3745-300-04	Certified laboratories
3745-300-05	Certified professionals
3745-300-06	Phase I property assessments for the voluntary action program
3745-300-07	Phase II property assessments for the voluntary action program
3745-300-08	Generic numerical standards
3745-300-09	Property-specific risk assessment procedures
3745-300-10	Ground water classification and potable use response requirements, and urban setting designations
3745-300-11	Remediation
3745-300-12	Variances and case-by-case determinations
3745-300-13	No further action letter content and procedures
3745-300-14	Audits
3745-300-15	Incorporated by reference – voluntary action program

This rule making addresses Voluntary Action Program regulations.

The purpose of this rule making is to accomplish the five-year rule review for Ohio Administrative Code Chapter 3745-300.

The public comment period will run until December 20, 2024. 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 December 20, 2024, in the Summer Conference Room at 11:15am. 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/5146883642009555551>

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 rule making.

Written testimony should be sent to the attention of Lisa Shook at the Division of Environmental Response and Revitalization (DERR), P.O. Box 1049, Columbus Ohio 43216-1049 or can be emailed to derr_rulecomments@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 December 20, 2024, 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 Lisa Shook, at the Division of Environmental Response and Revitalization, at 614.644.2295.

To receive a copy of the proposed rules, please contact the DERR receptionist at 614.644.2924. 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

Attendee Report: Public Hearing: Voluntary Action Program Rules (Statewide)

Report Generated:
12/20/2024 04:29 PM EST

Webinar ID	Actual Start Date/Time	Duration	# Registered	# Attended	Clicked Registration Link	Opened Invitation
227-882-811	12/20/2024 11:01 AM EST	45 minutes	14	9	45	0

Staff Details

Attended	Last Name	First Name	Email Address	Role	Join Time - Leave Time (Time in Session)	Time in Session
Yes	McCarron	Mary	mary.mccarron@epa.ohio.gov	Organizer	12/20/2024 11:01 AM EST - 12/20/2024 11:45 AM EST (45 minutes)	45 minutes
Yes	Payton	Amanda	amanda.payton@epa.ohio.gov	External Organizer	12/20/2024 11:01 AM EST - 12/20/2024 11:45 AM EST (45 minutes)	45 minutes
Yes	Graham	Madison	Madison.Graham@epa.ohio.gov	External Organizer	12/20/2024 11:12 AM EST - 12/20/2024 11:45 AM EST (33 minutes)	33 minutes
No	Shook	Lisa	lisa.shook@epa.ohio.gov	External Organizer	n/a	n/a

Attendee Details

Attended	Interest Rating	Last Name	First Name	Email Address	Registration Date/Time	Join Time - Leave Time (Time in Session)	Time in Session
Yes	94	Brown	Eric	ebrown@manniksmithgroup.com	11/12/2024 05:14 PM EST	12/20/2024 11:04 AM EST - 12/20/2024 11:07 AM EST (4 minutes),12/20/2024 11:07 AM EST - 12/20/2024 11:23 AM EST (16 minutes)	19 minutes
Yes	93	Clapper	Aaron	aclapper@greaterohio.org	12/19/2024 09:51 AM EST	12/20/2024 11:11 AM EST - 12/20/2024 11:23 AM EST (12 minutes)	12 minutes
Yes	94	Florea	Holly	hflorea@settek.com	11/13/2024 10:37 AM EST	12/20/2024 11:07 AM EST - 12/20/2024 11:26 AM EST (19 minutes),12/20/2024 11:27 AM EST - 12/20/2024 11:27 AM EST (1 minute)	19 minutes
Yes	95	Fouche	Greg	greg.fouche@jcarr.state.oh.us	12/20/2024 10:34 AM EST	12/20/2024 11:16 AM EST - 12/20/2024 11:17 AM EST (2 minutes),12/20/2024 11:17 AM EST - 12/20/2024 11:40 AM EST (23 minutes)	25 minutes
Yes	97	Hamilton	Jacob	jhamilton@jcarr.state.oh.us	12/20/2024 10:37 AM EST	12/20/2024 11:15 AM EST - 12/20/2024 11:45 AM EST (31 minutes)	31 minutes
Yes	93	Henry	Keaton	khenry@trccompanies.com	12/11/2024 09:27 AM EST	12/20/2024 11:13 AM EST - 12/20/2024 11:26 AM EST (13 minutes)	13 minutes
Yes	95	Krueger	Jennifer	jennifer.krueger@gza.com	11/14/2024 12:29 AM EST	12/20/2024 11:10 AM EST - 12/20/2024 11:34 AM EST (24 minutes)	24 minutes

Yes	98	Troyer	Anne	anne.troyer@pacelabs.com	11/13/2024 10:09 AM EST	12/20/2024 11:10 AM EST - 12/20/2024 11:45 AM EST (36 minutes)	36 minutes
Yes	96	Wolff	Michelle	michelle.wolff@aecom.com	12/19/2024 02:30 PM EST	12/20/2024 11:11 AM EST - 12/20/2024 11:37 AM EST (27 minutes),12/20/2024 11:11 AM EST - 12/20/2024 11:11 AM EST (1 minute),12/20/2024 11:12 AM EST - 12/20/2024 11:12 AM EST (1 minute)	27 minutes
No	0	Alnusair	Sylvia	sylvia.alnusair@pacelabs.com	11/12/2024 05:14 PM EST	n/a	n/a
No	0	Birkenhauer	Kelly	kbirkenhauer@trihydro.com	11/13/2024 10:25 AM EST	n/a	n/a
No	0	Nottingham	Jeff	jnottingham@settek.com	11/15/2024 09:44 AM EST	n/a	n/a
No	0	Ross	Sam	sross@trihydro.com	11/13/2024 10:30 AM EST	n/a	n/a
No	0	Showalter	Eric	eric.showalter@arcadis.com	12/05/2024 02:16 PM EST	n/a	n/a

First Name	Last Name	Webinar Question 1
Aaron	Clapper	<p>The Greater Ohio Policy Center (GOPC) is proud to serve as Ohio's lead brownfields advocate. In this role, we work closely with brownfields stakeholders in the public and private sectors. Stakeholders have shared the review and revision for the rules process has been transparent and the Ohio EPA has worked closely with Certified Professionals to ensure these rules are updated in accordance with ensuring the Voluntary Action Program continues to remain successful. We commend the Ohio EPA for this process and look forward to the continued success of VAP.</p>

Attachment C - Script

DERR VAP Program Proposed Rules

December 20, 2024

Hello and welcome to Ohio EPA's public hearing regarding the Division of Environmental Response and Revitalization's proposed rules. My name is Mary McCarron, and I'm hosting today's public hearing. Madison Graham, Lisa Shook, and Mandi Payton are with me today from Ohio EPA. 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 and will save all comments submitted during it.

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

On this slide, you will see an example screenshot of your Attendee interface. You should see something similar 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, try refreshing your browser. If that doesn't work, try logging off and logging back in.

Please submit public comments by clicking 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 audience.

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

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 the time to attend this hearing before Ohio EPA. Today's hearing is to obtain comments from any interested person regarding Ohio EPA's proposed rules.

Notice is hereby given that Ohio Environmental Protection Agency proposes to original file rules relating to the Voluntary Action Program. These rules are found in Ohio Administrative Code Chapters:

- 3745-300-01 Definitions – voluntary action program
- 3745-300-02 Eligibility for participation in the voluntary action program
- 3745-300-03 Voluntary action program fees
- 3745-300-04 Certified laboratories
- 3745-300-05 Certified professionals
- 3745-300-06 Phase I property assessments for the voluntary action program
- 3745-300-07 Phase II property assessments for the voluntary action program
- 3745-300-08 Generic numerical standards
- 3745-300-09 Property-specific risk assessment procedures
- 3745-300-10 Ground water classification and potable use response requirements, and urban setting designations
- 3745-300-11 Remediation
- 3745-300-12 Variances and case-by-case determinations
- 3745-300-13 No further action letter content and procedures
- 3745-300-14 Audits
- 3745-300-15 Incorporated by reference – voluntary action program

The purpose of this rule making is to accomplish the five-year rule review for Ohio Administrative Code Chapter 3745-300.

These rules have been filed with the Joint Committee on Agency Rule Review. Copies of the rules are available for public review on our website.

All interested persons are entitled to attend or be represented and to present comments concerning the proposed rules. The director of Ohio EPA will consider all comments received as part of the official record.

To be included in the official record, Ohio EPA must receive comments by the close of business today, Dec. 20, 2024. These comments may be typed into the GoTo platform today, spoken in person, or emailed to derr_rulecomments@epa.ohio.gov. All emailed comments submitted for the record receive the same consideration as comments given today.

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

This hearing allows the public 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 XXXXX to allow 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 _____ and this hearing is concluded.

Attachment C - Response to Comments



Rules: Ohio Administrative Code Chapter 3745-300

Agency Contact for this Package: Lisa Shook, Division of Environmental Response and Revitalization, 614.644.2295, lisa.shook@epa.ohio.gov

Ohio EPA held a public hearing on December 20, 2024, and comment period from November 12, 2024, to December 20, 2024, regarding the Voluntary Action Program 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 EPA’s Voluntary Action Program (VAP) and comments them for their transparency in the rulemaking process and work with Certified Professionals. (Aaron Clapper, Greater Ohio Policy Center)**

Response 1: Ohio EPA’s Voluntary Action Program thanks the Greater Ohio Policy Center for their continued support of the VAP and brownfields program.

3745-300-04(D) (New): Certified laboratories – retention of documents and data.

Comment 2: **The commenter suggests updating paragraph (D) to remove language referencing paragraph (A)(3) as the new rule does not have a paragraph (A)(3). (Anne Troyer, Pace Analytical Services)**

Response 2: Ohio EPA will update the language to read as follows:
“The documents and data shall be retained until the notice described in paragraph ~~(A)(3)~~(C) of this rule is provided to Ohio EPA, and Ohio EPA notifies the certified laboratory in writing whether Ohio EPA will obtain the documents and data.”

3745-300-13(P): Affidavit requirement for laboratories.

Comment 3: **The commenter suggests rescinding this section as the creation of a laboratory affidavit for Ohio EPA causes the laboratory to incur significant costs. (Anne Troyer, Pace Analytical Services)**

Response 3: Ohio Revised Code 3746.20 requires any information, data, documents, or reports submitted by an accredited laboratory be submitted by affidavit. In order to make this change in the Administrative Code, a statute change would need to be made first. Ohio EPA will take this comment under advisement for future statute changes.

End of Response to Comments