

3745-300-01

Definitions - voluntary action program.

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-300-15 of the Administrative Code titled "Incorporation by reference - voluntary action program."]

The following definitions are applicable in this chapter of the Administrative Code:

(A)

(1) "Acceptance limit" is the numerical range in which an analyte shall be quantitated in a proficiency testing sample.

(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 NELAC Institute" (TNI).

(b) For analysis of any constituent other than asbestos, valid accreditation by an accreditation body recognized by "The NELAC Institute" (TNI).

~~(2)~~(3) "Activity and use limitations" are one or more restrictions or obligations created under sections 5301.80 to 5301.92 of the Revised Code with respect to real property. Activity and use limitations eliminate or mitigate exposure to a release of hazardous substances or petroleum. Examples of activity and use limitations include but are not limited to land use limitations and ground water use restrictions.

~~(3)~~(4) "Actual costs" are the actual, substantiated direct, indirect, and other costs associated with a specific voluntary action program activity.

~~(4)~~ "Additional certification" is supplemental certification to perform analyses of specific analytes or parameter groups, using designated methods, for which the laboratory is not already certified pursuant to the laboratory's current certification under rule 3745-300-04 of the Administrative Code.

- (5) "Affected media" are any environmental media present on or off property that contain concentrations of COCs.
 - (6) "Affected property" is a property, or portion thereof, for which a variance is being sought under rule 3745-300-12 of the Administrative Code.
 - (7) "Affiliated" means under common ownership or control.
 - (8) "Analyte" is a hazardous substance or petroleum, or a constituent of a hazardous substance or petroleum.
 - (9) "Applicable standards" are standards established in or pursuant to sections 3746.05, 3746.06, and 3746.07 of the Revised Code, or rule 3745-300-07, 3745-300-08, 3745-300-09, 3745-300-10, or 3745-300-11 of the Administrative Code, as applicable.
 - (10) "Audit findings" means written documentation which indicates the results of an audit conducted pursuant to rule 3745-300-14 of the Administrative Code provided to one or more of the following, as appropriate:
 - (a) A person who has performed a voluntary action.
 - (b) The current owner of a property that has been the subject of a voluntary action.
 - (c) A certified professional.
 - (d) A certified laboratory.
 - (e) An accredited laboratory.
- (B)
- (1) "Background levels" are the conditions at a property and areas surrounding a property that are unaffected by any current or past activities involving treatment, storage, or disposal of hazardous substances or petroleum. Background levels include naturally occurring substances.
 - (2) "Bioavailability" is that fraction of a COC that is available for uptake by a receptor upon exposure to a contaminated medium.
- (C)
- (1) "Capture zone" means all unsaturated and saturated subsurface areas that presently contribute or shall contribute ground water to a well.

- (2) "Central management entity" is an organization that is designated as responsible to oversee compliance with applicable standards at a property that allows for any residential use. A central management entity also may oversee compliance at a property that allows recreational or commercial use. A central management entity may consist of one or more domestic business entities that own or hold an interest in the property. A central management entity may consist of a condominium unit owner's association for the property, which is subject to Chapter 5311. of the Revised Code. A central management entity does not consist of any association formed pursuant to Chapter 5312. of the Revised Code, or other fee simple owners of the property.
- (3) "Central tendency value" is a parameter value from a probability distribution of parameter values which is an estimation of the median of that distribution.
- (4) "Certificate" is the document issued by the director to an individual laboratory, certified under rule 3745-300-04 of the Administrative Code, that does either of the following:
- (a) Authorizes ~~the laboratory~~ laboratories under the prior version of rule 3745-300-04 of the Administrative Code, with an effective date of October 17, 2019, to perform analyses in support of a request for a no further action letter for the specified analytes or parameter groups, and using the methods listed on the document.
 - (b) Acknowledges that the individual is a certified professional for the purposes of this chapter and Chapter 3746. of the Revised Code.
- (5) "Certified" or "certification" is the authorization of either of the following:
- (a) A laboratory to perform analyses in support of a request for a no further action letter for the specific analytes or parameter groups and using the methods for which the director has determined the laboratory ~~meets~~met the requirements provided in the prior version of rule 3745-300-04 of the Administrative Code, with an effective date of October 17, 2019.
 - (b) An individual to issue no further action letters under rule 3745-300-05 of the Administrative Code.
- (6) "Certified laboratory" is a laboratory ~~certified by~~ which maintains a certification from the director pursuant to the prior version of rule 3745-300-04 of the Administrative Code, with an effective date of October 17, 2019.

- (7) "Certified professional" is an individual certified by the director pursuant to rule 3745-300-05 of the Administrative Code to issue no further action letters under section 3746.11 of the Revised Code.
- (8) "Chemicals of concern" or "COCs" are specific constituents of hazardous substances or petroleum which are on or from a property and are identified during a voluntary action.
- (9) "Chemical-specific intake" is the measure of exposure of a receptor to the COC and is equivalent to the administered dose. Chemical specific intake is equal to the mass of a substance in contact with the exchange boundary of a receptor per unit body mass per unit time, expressed in units of milligrams per kilogram per day.
- (10) "Chemical testing method" is a method used for the preparation and analysis of an environmental sample to quantify for hazardous substances or petroleum, or constituents of hazardous substances or petroleum.
- (11) "Class C release" means a release of petroleum occurring or identified from an underground storage tank system subject to sections 3737.87 to 3737.89 of the Revised Code for which the responsible person for the release is specifically determined by the fire marshal not to be a viable person capable of undertaking or completing the corrective actions required under those sections for the release. Class C release also includes any release designated as a class C release in accordance with rules adopted under section 3737.88 of the Revised Code.
- (12) "Commercial land use" is land use with the potential for exposure of adult workers and patrons during a business day, and the potential for low frequency exposures of children who are visitors to commercial facilities during the business day. Commercial land use has the potential for exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil, incidental ingestion of soil, and inhalation of volatile compounds due to vapor intrusion to indoor air. Examples of commercial land use include, but are not limited to, the following:
 - (a) Shopping centers.
 - (b) Restaurants.
 - (c) Retail gasoline stations.
 - (d) Retail establishments.
 - (e) Professional offices.

- (f) Hospitals and clinics.
 - (g) Religious institutions.
 - (h) Hotels-, except for residential hotels, as defined in division (A)(4) of section 3731.01 of the Revised Code.
 - (i) Motels.
 - (j) Warehouses.
 - (k) Parking facilities.
 - (l) Agricultural lands and facilities when demonstrated through a property-specific risk assessment.
- (13) "Commercial land use with high frequency child exposure" is land use with the potential for exposure of adult workers and patrons during a business day, and the potential for high frequency exposures of children who are patrons to commercial facilities during the business day. Commercial land use has the potential for exposure of adults and children to dermal contact with soil, inhalation of vapors and particles from soil, incidental ingestion of soil, and inhalation of volatile compounds due to vapor intrusion to indoor air. Examples of commercial land use with high frequency child exposure include, but are not limited to, schools and child daycare facilities.
- (14) "Complete exposure pathway" is a current or reasonably anticipated exposure pathway determined to be complete after the identification of current and reasonably anticipated property use and receptor populations and as a result of a pathway completeness determination.
- (15) "Compliance audit" is the selection of any no further action letter submitted to the director with a request for a covenant not to sue for an audit for any purpose or combination of purposes described in paragraph (A) of rule 3745-300-14 of the Administrative Code. The audit may be conducted in accordance with paragraph (F) of rule 3745-300-14 of the Administrative Code or by any other means selected by the director.
- (16) "Conflict of interest" is any circumstances which would affect the laboratory's ability to objectively analyze samples in connection with a voluntary action, including circumstances similar to those in paragraph (E)(3) of rule 3745-300-05 of the Administrative Code for certified professionals.
- (17) "Consolidated saturated zone" is a saturated zone in bedrock.

- (18) "Construction activities" include invasive activities that result in potential exposure of adult workers during the business day for a portion of one year. Exposures during construction activities are of greater intensity and shorter duration than those for the commercial and industrial land use categories. Construction activities have potential exposures of adults to dermal contact with soil, inhalation of vapors and particles from soil, and ingestion of soil. Examples of construction activities include, but are not limited to, excavation, grading, bulldozing, tilling, trenching, utility installation or maintenance, building construction, operation of heavy equipment, and traffic on unpaved roads on a construction site.
- (19) "Continuing education unit" is a unit of credit customarily used for professional development courses. One continuing education unit equals ten hours of actual instruction in an approved continuing education course.
- (20) "Course" is any educational activity with a clear purpose and objective which shall maintain, improve, or expand the skills and knowledge relevant to the investigation, assessment, or remediation of hazardous substances or petroleum.
- (21) "Covenant not to sue" is a release from civil liability that is issued by the director under section 3746.12 of the Revised Code.
- (22) "Cumulative risk" is the estimate of excess lifetime cancer risk attributable to the exposure of a receptor or receptor population to one or more COC in one or more environmental media, or through one or more routes of exposure.
- (D)
- (1) "Data verification" is the process of evaluating the completeness, correctness, and conformance/compliance of a specific data set against the method, procedural, or contractual requirements.
- ~~(1)~~(2) "Determination of sufficient evidence letter" is a notification from the director, pursuant to section 3746.02 of the Revised Code and this chapter, that a person or property that is the subject of an enforcement letter may or may not participate in the voluntary action program.
- ~~(2)~~(3) "Diligent inquiry" means conducting a thorough search of all reasonably available information, and making reasonable efforts to interview persons with knowledge regarding current and past uses of the property, waste disposal practices, and environmental compliance history.

- ~~(3)~~(4) "Director" is the director of the Ohio environmental protection agency or the director's designee.
- ~~(4)~~(5) "Discretionary audit pool" is any no further action letter submitted to the director with a request for a covenant not to sue in the preceding calendar year under section 3746.11 of the Revised Code that was either not included in or was not selected for audit from the random audit pool.
- ~~(5)~~(6) "Document" is any record, device, or item, regardless of physical form or characteristic, including but not limited to, electronic or hard copy records of reports, studies, data, correspondence, and all other information.
- ~~(6)~~(7) "Drinking water source protection area" has the same definition as in rule 3745-9-01 of the Administrative Code.
- ~~(7)~~(8) "Drinking water source protection plan" means the strategies to be implemented by a public water system to prevent, detect, and respond to water quality contamination in a drinking water source protection area, as adopted by the owner of the public water system and endorsed by Ohio EPA as meeting the requirements of the wellhead protection program and the source water assessment and protection program.

(E)

- (1) "Enforcement letter" is a notification, in the form of an invitation to negotiate from the director, that the director intends to pursue enforcement under Chapter 3704., 3734., or 6111. of the Revised Code relating to a release or threatened release of hazardous substances or petroleum.
- (2) "Engineered fill" is soil or aggregate materials derived from on-property or off-property locations which has been placed on the property to meet specific engineering requirements for the construction of buildings, utility lines, roadway sub-grade, or other structures. Engineered fill includes structural fill.
- (3) "Engineering control" is any structure, system, or barrier, which is protective of human health, safety, and the environment, that effectively and reliably eliminates or mitigates human or important ecological resource exposure to hazardous substances or petroleum on, underlying, or emanating from a property.
- (4) "Environmental covenant" is a servitude that imposes activity and use limitations on property that is the subject of a no further action letter submitted with a request for a covenant not to sue under section 3746.11 of the Revised Code.

An environmental covenant meets the requirements in section 5301.82 of the Revised Code.

- (5) "Environmental media" are soil, sediment, surface water, and ground water. Environmental media also include naturally occurring transitional zones between soil, sediment, surface water, or ground water, such as bedrock, soil gas, and air.
- (6) "Exposure" is contact of a receptor with a COC that is quantified as the amount of the COC available for absorption at the exchange boundaries of the organism, such as the skin, lungs, or gastrointestinal tract.
- (7) "Exposure factor" is a parameter that defines one term in an equation used to quantify the exposure of a receptor to a COC by means of one exposure pathway. Exposure factors may be represented by point values or by a distribution of values.
- (8) "Exposure factor point value" is a single numeric value selected from a distribution of numeric values of the exposure factor, selected on the basis of the value's representativeness of a central tendency or upper-bound value.
- (9) "Exposure pathway" is a mechanism by which a receptor is exposed to a COC.
- (10) "Exposure point concentration" is the mass of a COC per unit quantity of medium which is available for intake by a receptor.
- (11) "Exposure route" is the manner in which a chemical or physical agent comes into contact with an organism (for example, ingestion, inhalation, or dermal contact with soil).
- (12) "Exposure unit" is a geographic area within which an exposed receptor may reasonably be assumed to move at random and where contact with environmental media is equally likely at all sub-areas.

(F)

~~(1) "Fixed-base laboratory" is a laboratory at a permanent location that provides for the analysis of environmental media.~~

~~(2)~~(F) "Free product" is a separate liquid hydrocarbon phase that has a measurable thickness of greater than one one-hundredth of a foot.

(G)

- (1) "Gallons" means U.S. gallons.
- (2) "Generic direct-contact soil standard" is a generic numerical standard based on a single chemical exposure that results from ingestion of soil, dermal contact with soil, and inhalation of volatile and particulate emissions from soil.
- (3) "Generic numerical standard" is a concentration of a hazardous substance or petroleum that ensures protection of public health and safety and the environment for the reasonably anticipated exposures associated with a residential, commercial, or industrial land use, construction activities, or potable ground water use. The generic numerical standard is determined pursuant to rule 3745-300-08 of the Administrative Code.
- (4) "Good moral character" is such character as enables an individual to comply with the ethical responsibilities of a certified professional.
- (5) "Ground water" is water underlying a property in a saturated zone that meets the following criteria:
 - (a) Capable of yielding, within eight hours after purging, a minimum of one and one-half gallons of water as determined in accordance with paragraph (F)(2)(b) of rule 3745-300-07 of the Administrative Code.
 - (b) The in situ hydraulic conductivity is greater than 5.0×10^{-6} centimeters per second as determined in accordance with standards of paragraph (F)(2)(b) of rule 3745-300-07 of the Administrative Code.
 - (c) This definition applies only to voluntary actions conducted under this chapter and Chapter 3746. of the Revised Code.

(H)

- (1) "Hazard index" is a numerical value that describes the potential for an adverse non-cancer threshold effect to occur in an individual as a result of exposure of a receptor or receptor population to one or more COC in one or more environmental media through one or more routes of exposure over a specific time exposure period. This numerical value is expressed as the unitless sum of the hazard quotient values for each COC, each environmental medium, and each route of exposure.
- (2) "Hazardous substance" includes any of the following:
 - (a) Any substance identified or listed in rules adopted under division (B)(1)(c) of section 3750.02 of the Revised Code.

- (b) Any product registered as a pesticide under section 921.02 of the Revised Code when the product is used in a manner inconsistent with the product's required labeling.
 - (c) Any product formerly registered as a pesticide under that section for which the registration was suspended or canceled under section 921.05 of the Revised Code.
 - (d) Any mixture of a radioactive material with a substance described in paragraphs (H)(2)(a) to (H)(2)(c) of this rule.
- (3) "Hazard quotient" is the value which quantifies non-carcinogenic risk for one chemical for one receptor population over a specified exposure period. The hazard quotient is equal to the ratio of a chemical-specific intake to the reference dose.
- (4) "Historical records" means sources of information which assist in identifying current or past uses or occupants of a property, including but not limited to, aerial photographs, fire insurance maps, property tax files, recorded land title records, U.S. geological survey 7.5 minute topographic maps, local street directories, building department records, zoning or land use records that identify past uses or occupants of the property from the property's first commercial or industrial use through the present use, and records in the files of an owner or operator of the property.

(I)

- (1) "Identified area" is a location at a property where a release of hazardous substances or petroleum has or may have occurred.
- (2) "Imminent hazard" is any condition which poses an immediate risk of harm to public health, safety, or the environment. Examples of imminent hazards include, but are not limited to, the following:
 - (a) Threats of explosion.
 - (b) Discharges of hazardous substances or petroleum to surface water.
 - (c) Discharges to ground water of hazardous substances or petroleum that threatens existing drinking water supplies.
 - (d) Releases of hazardous substances or petroleum into the air which could result in an exposure at or to a concentration of chemicals that is immediately dangerous to life or health.

- (e) Migration or releases of hazardous substances or petroleum which would threaten to immediately harm public health, safety, or the environment.
- (3) "Important ecological resource" or "IER" is any specific ecological community, population, or individual organism protected by federal, state, or local laws and regulations, or ecological resources that provide important natural or economic resource functions and values. Important ecological resources include, but are not limited to, the following:
- (a) Any surface water of the state, as that term is used in Chapter 3745-1 of the Administrative Code.
 - (b) Any wetland regulated under federal law and Chapter 6111. of the Revised Code.
 - (c) Any dedicated natural area or preserve.
 - (d) Any federally-listed or state-listed threatened or endangered species and the associated habitat.
 - (e) Any state of Ohio special interest or declining species and the associated habitat.
 - (f) Any state park or national park.
 - (g) Any federally designated wilderness area.
 - (h) Any national lakeshore recreational area.
 - (i) Any national preserve.
 - (j) Any state wildlife refuge or national wildlife refuge.
 - (k) Any federal, state, local, or private land designated for the protection of natural ecosystems.
 - (l) Any federally-designated or state-designated scenic or wild river.
 - (m) Any federal or state land designated for wildlife or game management.
 - (n) Wildlife populations and the associated important nesting areas and food resources, taking into consideration land use and the quality and extent of habitat on and in the vicinity of the property.

- (4) "Incremental sampling" is a technique used to obtain a reproducible estimate of the exposure point concentration. An incremental sample is comprised of randomly collected sub-samples combined to form the sample.
- (5) "Individual" is any person (as "person" is defined in section 1.59 of the Revised Code and in this rule), but not a corporation, business trust, estate, trust, partnership, or association. Individual is also not this state, any political subdivision of this state, any other body of this state or of a political subdivision of this state, and the United States and any agency or instrumentality thereof.
- (6) "Indirect costs" are all costs other than direct costs which may be attributed to a fee source including, but not limited to, administrative overhead, training of personnel, reporting to the legislature, rule development, guidance development, program marketing, database management, and word processing. Indirect costs are determined by multiplying direct costs by the indirect rate.
- (7) "Indirect rate" is the rate or per centage by which direct costs are multiplied to determine the indirect costs for a given fee or activity.
- (8) "Industrial fill" is non-soil material that is derived from industrial or manufacturing operations and that has been placed on a property for the purpose of disposal, grading, or construction.
- (9) "Industrial land use" is land use with the potential for exposure of adult workers and patrons during a business day, and the potential for low frequency exposures of children who are visitors to commercial or industrial facilities during the business day. Industrial land use has the potential for exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil, incidental ingestion of soil, and inhalation of volatile compounds due to vapor intrusion to indoor air. Industrial land use is considered appropriate for an alternate cumulative cancer risk goal through a property-specific risk assessment in accordance with paragraph (B)(3)(b) of rule 3745-300-09 of the Administrative Code. Examples of industrial land use include, but are not limited to, manufacturing facilities such as metal-working shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants, and plastics plants; assembly plants; non-public airport areas; lumber yards; power plants; limited access highways; railroad switching yards; and marine port facilities.
- (10) "Initial certification" is any first certification issued to ~~either of the following:~~ an individual who is certified by the director to issue no further action letters under rule 3745-300-05 of the Administrative Code.

~~(a) A laboratory to perform analyses of specific analytes or parameter groups, using designated methods, under rule 3745-300-04 of the Administrative Code.~~

~~(b) An individual who is certified by the director to issue no further action letters under rule 3745-300-05 of the Administrative Code.~~

(11) "Institutional control" is a restriction that is recorded in the same manner as a deed which limits access to or use of the property such that exposure to hazardous substances or petroleum are effectively and reliably eliminated or mitigated. Activity and use limitations are considered institutional controls when required pursuant to sections 5301.08 to 5301.92 of the Revised Code. Examples of institutional controls include land and water use restrictions.

(12) "Interim measures" are remedial activities undertaken to protect public health and safety and the environment until the property complies with applicable standards through a permanent remedy.

(13) "Investigatory auditing activities" means activities conducted prior to the issuance of audit findings, including, but not limited to, document review and analysis, field screening or sampling activities, and laboratory analysis.

(J) [Reserved.]

(K) "Key property personnel" means an individual or individuals identified by the owner or operator of a property, and confirmed by the volunteer, as having reliable knowledge of the uses or physical characteristics of the property.

(L)

(1) "Laboratory" is ~~a fixed-base laboratory or mobile laboratory that provides for the analysis of environmental media.~~ an accredited laboratory or certified laboratory as defined by this rule.

(2) "Laboratory audit" is an evaluation of a laboratory ~~to determine the laboratory's qualifications for certification under rule 3745-300-04 of Administrative Code, or to determine compliance of a laboratory that is certified with such~~ with the laboratory's obligations under rule 3745-300-04 of the Administrative Code. Laboratory audits may consist of a review of documents or other information submitted to Ohio EPA, or an on-site visit to the laboratory to review the laboratory's operations and to evaluate the facility and personnel.

(M)

- (1) "Method" is the analytical procedure used to identify and calculate the concentration of an analyte or parameter group and is often designated by a method number from a compendium of standardized test methods (e.g., hazardous waste test methods included in U.S. EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," U.S. EPA publication SW-846). If the method has been revised, the method includes the method number plus the revision suffix (e.g., "A, B, C," etc.). Therefore, proper citation of the method shall include the method number plus the revision suffix, if any.
- (2) "Method detection limit study" is a procedure used by a laboratory to determine the laboratory's ability to reliably and accurately report to a specific concentration for an analyte or parameter group using the method for which the laboratory is applying for certification.
- ~~(3) "Mobile laboratory" is a laboratory that is not fixed at a permanent location. Mobile laboratory data provide real-time analysis of environmental media at a location on or near a property.~~

(N)

- (1) "Native fill" is soil material derived from the property and transferred from one area of the property and placed in another area in such a manner that the original soil structure and physical properties may be altered from the initial pre-excavation conditions, but the chemical and physical properties remain consistent with other undisturbed native soils at the property.
- (2) "Natural attenuation" is the in situ biotic and abiotic processes through which passive remediation occurs. Natural attenuation may include the following:
 - (a) Non-destructive processes, including but not limited to, the following physical processes:
 - (i) Adsorption.
 - (ii) Absorption.
 - (iii) Advection.
 - (iv) Dispersion.
 - (v) Diffusion.
 - (vi) Dilution from recharge.

(vii) Volatilization.

(b) Destructive processes, including but not limited to, the following chemical processes:

(i) Aerobic biodegradation.

(ii) Hypoxic biodegradation.

(iii) Anaerobic biodegradation.

(iv) Chemical degradation, including abiotic oxidation processes, hydrolysis, and other reactions.

(3) "Ninety-five per cent upper confidence limit" is the upper limit of an interval within a frequency distribution curve in which the observed mean of a data set occurs ninety-five per cent of the time.

(4) "No further action letter" is a document issued by a certified professional under affidavit upon determination by the person undertaking a voluntary action that either there is no information indicating there has been a release of hazardous substances or petroleum at or upon the property, or there has been a release of hazardous substances or petroleum at or upon the property and applicable standards were not exceeded or have been or shall be achieved in accordance with Chapter 3746. of the Revised Code and rules adopted thereunder.

(5) "No further action letter submitted to the director" means no further action letters submitted to the director for either of the following:

(a) A covenant not to sue has been requested from the director under division (D) of section 122.654, sections 3746.11 and 3746.12 of the Revised Code and paragraph (H)(1) of rule 3745-300-13 of the Administrative Code.

(b) A covenant not to sue has not been requested from the director, but Ohio EPA is obligated to review the no further action letter under division (C) of section 122.654 of the Revised Code.

(O)

(1) "Ohio EPA" means the Ohio environmental protection agency.

(2) "Operation and maintenance plan" is a written plan prepared in accordance with paragraph (F) of rule 3745-300-11 of the Administrative Code. An operation

and maintenance plan describes the remedy or remedial activities planned to demonstrate that the property meets and maintains compliance with applicable standards. As applicable, an operation and maintenance plan also describes the remedial activities planned so that the property achieves compliance with applicable standards within five years, or such other time frame as agreed upon by the director in an operation and maintenance agreement.

- (3) "Other person responsible for operation and maintenance plan and agreement implementation" is 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.
- (4) "Owner or operator" includes both of the following:
 - (a) Any person owning or holding a legal, equitable, or possessory interest in or having responsibility for the daily activities on a property.
 - (b) In the case of property title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state, any person who owned, operated, or otherwise controlled activities occurring on the property before the conveyance.

(P)

- (1) "Parameter group" is a group of analytes similar in chemical characteristics quantitated using a specific method and technology.
- (2) "Pathway deferral" is a demonstration made in accordance with rule 3745-300-11 of the Administrative Code that access to an off-property area known to contain or suspected to contain a complete exposure pathway has been refused following informed requests to access in order to complete assessment or remedy in accordance with this chapter. Compliance with applicable standards associated with the pathway are deferred until access to the off-property area is attained and the remedy is implemented and verified in accordance with this chapter.
- (3) "Pathway exclusion" is a demonstration made in accordance with rule 3745-300-11 of the Administrative Code and approved by the director that excludes the releases of hazardous substances or petroleum associated with a potentially complete or complete exposure pathway to an off-property area from the release of liability provided by the covenant not to sue, and from

any demonstration of compliance with applicable standards that is otherwise required for issuance of the no further action letter.

- (4) "Peer-reviewed" is a document or study that meets the following criteria:
- (a) The document or study have been published in a recognized scientific journal or publication.
 - (b) The document or study is generally accepted within the scientific community as being accurate and reliable.
 - (c) The results in the document or study have been independently reproduced, or the methods described in the document or study have been proven to produce consistent results.
- ~~(5) "Performance-based method" is a method designed to quantitate for an analyte or parameter group that is not listed in a method published or endorsed by U.S. EPA or Ohio EPA.~~
- ~~(6)~~(5) "Persistent, bioaccumulative and toxic (PBT) chemicals" are those chemicals which do not readily degrade via biogeochemical processes, remain in the environment for long periods of time (as measured by a half-life or $t_{1/2}$ of greater than sixty days), are highly toxic and bioaccumulate in animal tissue (as indicated by an octanol water coefficient or k_{ow} , of greater than 4.5 and a bioaccumulation factor or BCF of greater than one thousand).
- ~~(7)~~(6) "Person" is defined in section 1.59 of the Revised Code and also includes this state, any political subdivision of this state, any other body of this state or of a political subdivision of this state, and the United States and any agency or instrumentality thereof.
- ~~(8)~~(7) "Petroleum" is oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, used oil, substances or additives utilized in the refining or blending of crude petroleum or petroleum stock, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, and mixtures of natural gas and synthetic gas.
- ~~(9)~~(8) "Phase I property assessment" is all the activities required to evaluate a property in accordance with rule 3745-300-06 of the Administrative Code, Chapter 3746. of the Revised Code, and the standards provided in division (B) of section 3746.07 of the Revised Code.

- ~~(10)~~(9) "Phase II property assessment" is all the activities required to evaluate a property in accordance with rule 3745-300-07 of the Administrative Code, Chapter 3746. of the Revised Code, and the standards provided in division (C) of section 3746.07 of the Revised Code.
- ~~(11)~~(10) "Point of compliance" is any location on or off the property to which applicable standards shall be met and maintained.
- ~~(12)~~(11) "Practically reviewable" means information provided in a manner and in a form that, upon examination, yields information relevant to the property. Records that cannot feasibly be retrieved by reference to the location of the property, the geographic area in which the property is located, or the name of the owner or operator of the property are not practically reviewable.
- ~~(13)~~(12) "Professional development hour unit" is a unit hour for tracking continuing education, as required by paragraph (C) of rule 3745-300-05 of the Administrative Code.
- ~~(14)~~(13) "Professional services" is any conduct in connection with a voluntary action or in rendering a voluntary action opinion.
- ~~(15)~~(14) "Proficiency" is a demonstration of competence in projects similar in type and scope to voluntary actions.
- ~~(16)~~ "Proficiency testing provider" is any entity that is accredited to provide proficiency testing samples and to evaluate proficiency testing results by a proficiency testing oversight body or proficiency testing provider accreditor designated by the national environmental laboratory accreditation conference institute.
- ~~(17)~~ "Proficiency testing result" is the result derived by the laboratory from the analysis of a proficiency testing sample.
- ~~(18)~~ "Proficiency testing sample" is a material or matrix spiked with a known concentration of one or more specific analytes representative of the analyte or parameter group. The proficiency testing sample is used to evaluate a laboratory's ability to identify and quantitate an analyte or parameter group using a specific method or technology.
- ~~(19)~~(15) "Property" is any parcel of real property, or portion thereof, and any improvements thereto, the limits of which have been described in writing by the owner of record or a legally appointed representative of the owner and that is or has been the subject of a voluntary action under this chapter.

~~(20)~~(16) "Property-specific risk assessment" is an analysis conducted in accordance with rule 3745-300-09 of the Administrative Code. This process includes the following steps:

- (a) Selection of COCs.
- (b) Exposure assessment.
- (c) Toxicity assessment.
- (d) Risk characterization, including uncertainty.

~~(21)~~(17) "Publicly available" means the source of the information allows access to the information by anyone upon request.

(Q) "Quality assurance program plan" or "QAPP" is a written document that details the data collection, storage, analysis, and quality assurance or quality control procedures used by a laboratory to assure that all data generated are scientifically valid, defensible, and of known precision and accuracy.

(R)

(1) "Radioactive material" is a substance that spontaneously emits ionizing radiation.

(2) "Random audit pool" is the pool of all of the no further action letters submitted to the director with a request for a covenant not to sue in the preceding calendar year under section 3746.11 of the Revised Code. Properties with a remedy or a risk assessment that have been issued and submitted after completion of the process and procedures, as defined by Ohio EPA, to comply with the "2007 Memorandum of Agreement," between Ohio EPA and U.S. EPA region 5, are excluded from the random audit pool.

(3) "Reasonably available" is any of the following situations:

- (a) Information is publicly available or known of and available to the volunteer or owner or operator of the property.
- (b) Information is provided or made available by the source within ninety days after receipt of a written request.
- (c) Information is practically reviewable.

(4) "Receptor" or "receptor population" means humans or important ecological resources that are reasonably anticipated to come in contact with COCs, based

on the distribution of the COCs on the property and the activity patterns of those humans or important ecological resources on or off the property.

- (5) "Recognized educational institution" is an institution which is accredited by an appropriate regional board or association of institutions of higher education.
- (6) "Recreational activities" are highly variable exposure scenarios that require determination of applicable standards through a property-specific risk assessment conducted pursuant to rule 3745-300-09 of the Administrative Code. Recreational activities may have the potential for exposure of adults and children to dermal contact with soil or sediment, inhalation of vapors and particles from soil, incidental ingestion of soil or sediment, dermal contact with surface water, incidental ingestion of surface water, ingestion of fish, and inhalation of volatile compounds due to vapor intrusion to indoor air.
- (7) "Reference concentration" is an estimate of a continuous inhalation exposure to the human population, including sensitive subgroups, that is likely to be without an appreciable risk of deleterious effects during a lifetime.
- (8) "Reference dose" is a value representative of a daily exposure level for the human population, including sensitive subpopulations, that is not likely to cause an adverse non-cancer health effect during a specified period of time. For example, an acute, short-term, subchronic or chronic exposure period.
- (9) "Release" is any past or current spilling, leak, pump, pour, emission, empty, discharge, injection, escape, leach, migration, dump, or disposal of any hazardous substance or petroleum into the environment, including, without limitation, the abandonment or discard of barrels, containers, or any other closed receptacle that contains any hazardous substance, petroleum, or pollutant or contaminant. "Release" does not include any of the following:
 - (a) Exposure of individuals to hazardous substances or petroleum in the workplace with respect to which those individuals may assert a claim against the individuals' employer and that is regulated under the Occupational Health and Safety Act and regulations adopted thereunder, or under Chapter 4167. of the Revised Code and rules adopted thereunder.
 - (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.
 - (c) Source material, by-product material, or special nuclear material from a nuclear incident, as "source material," "by-product material," "special nuclear material," and "nuclear incident" are defined in the Atomic

Energy Act, if the release is subject to financial protection requirements under section 170 of that act, unless any such material is mixed with a hazardous substance or petroleum.

- (d) Any federally "permitted release" as defined in section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act.
 - (e) The normal application of a fertilizer material that is intended to improve the quality or quantity of plant growth.
- (10) "Relevant professional experience" is experience obtained through conducting or supervising voluntary actions or projects similar in type and scope to voluntary actions. Such experience shall indicate that the applicant is competent to conduct voluntary actions or to render voluntary action opinions. Relevant professional experience does not include experience that involves non-scientific or non-technical activities associated with assessment or remediation projects such as contract management, budget control, or other similar management activities.
- (11) "Remedy" or "remedial activities" are actions that are taken at a property to treat, remove, transport for treatment or disposal, dispose of, contain, or control hazardous substances or petroleum, which are protective of public health and safety and the environment, and which are consistent with a permanent remedy, including, without limitation, excavation, treatment, off-property disposal, the use of engineering or institutional controls or activity and use limitations, the issuance and implementation of a consolidated standards permit under section 3746.15 of the Revised Code, and the entering into and implementation of an operation and maintenance agreement pursuant to section 3746.12 of the Revised Code.
- (12) "Renewal certification" is ~~either of the following:~~ the renewal of a certified professional's certification under rule 3745-300-05 of the Administrative Code.
- ~~(a) The renewal of a laboratory's current certification under rule 3745-300-04 of the Administrative Code.~~
 - ~~(b) The renewal of a certified professional's certification under rule 3745-300-05 of the Administrative Code.~~
- (13) "Residential land use" is land use with the potential for a high frequency of exposure of adults and children to dermal contact with soil, inhalation of vapors and particles from soil, incidental ingestion of soil, and inhalation of

volatile compounds due to vapor intrusion to indoor air. Examples of residential land use include, but are not limited to, residences, condominiums, dormitory residences, nursing homes, elder care and other long-term health care facilities, residential hotels, as defined in division (A)(4) of section 3731.01 of the Revised Code, and correctional facilities.

- (14) "Restricted residential land use" is residential land use that requires the implementation of institutional controls, engineering controls, any other remedial activities to comply with applicable standards for residential land use. Restricted residential land use is considered protective for, and may be applied to, residential land uses appropriate for a point of compliance less than the minimum depth of ten feet that is required by rule 3745-300-07 of the Administrative Code, vapor intrusion remedies, or ground water use restrictions. Restricted residential land use requires a central management entity to implement or oversee the institutional controls, engineering controls, and any other remedial activities used to comply with applicable standards pursuant to rule 3745-300-11 of the Administrative Code.
- (15) "Risk mitigation measures" are the health and safety precautions and other such remedial activities that mitigate or eliminate human exposure to the COCs at the property as a result of excavation or construction activities. Risk mitigation measures reduce potential risks and provide protection to persons who perform excavation or construction activities or to other persons who would be exposed to COCs in environmental media as a result of the excavation or construction activities.

(S)

- (1) "Sediment" is unconsolidated inorganic and organic material that has precipitated and deposited below surface waters. Sediment includes the following:
- (a) Materials below the water surface under bankfull conditions in streams, lakes, and ditches.
 - (b) Materials below normal pool elevation for reservoirs.
 - (c) Materials within the federal and state jurisdictional boundaries of wetlands.
 - (d) Materials below maximum capacity for ponds and lagoons.
 - (e) Materials found below the ordinary high water mark of lake Erie, as defined by "International Great Lakes Datum."

- (2) "Sole source aquifer" is an aquifer designated as a sole source aquifer under section 1424(e) of the Safe Drinking Water Act.
- (3) "Source area" is any abandoned or discarded barrels, containers, or any other closed receptacle in environmental media, or any affected media, originally impacted by a release from which contamination is acting, has acted, or has the potential to act as a point of origin for the migration of the release throughout the environment.
- (4) "Split sample" is a material or medium that consists of two or more individual samples collected at the same time and location and that are analyzed independently, with each sample analyzed at a different laboratory.
- (5) "Standard operating procedures" or "SOPs" are a laboratory's written procedures to prepare samples and perform measurements of analytes or parameter groups.
- ~~(6) "Suspension period" is the period of time listed on the final findings and orders issued by the director to a certified laboratory, in which the certified laboratory is suspended for an analyte or parameter group and corresponding method.~~

(T)

- (1) "Technology" is the laboratory instrumentation used to quantify an analyte or parameter group. Examples include, but are not limited to, gas chromatography, mass spectrometry, and inductively coupled plasma.
- (2) "Tier I audit" is a review and analysis of documents that pertain to a no further action letter held or produced by a certified professional, a volunteer, the current owner of the property, an accredited laboratory, or a certified laboratory, as appropriate, and a site walkover of the property, in order to determine compliance with applicable standards, this chapter, or Chapter 3746. of the Revised Code.
- (3) "Tier II audit" is a physical inspection and investigation of a property upon which a voluntary action was conducted in order to determine compliance with applicable standards, this chapter, or Chapter 3746. of the Revised Code, including sampling and analysis of soils, surface water, air, sediments, or ground water.

(U)

- (1) "Unconsolidated saturated zone" is any saturated zone that is not in bedrock, including, but not limited to, saturated zones in soil, gravel, sand, silt, clay, or fill materials.

- (2) "Unrestricted potable use standard" means ground water standards based on the assumption that ground water shall be used as a source of water for drinking, cooking, showering, and bathing. Unrestricted potable use standards include generic unrestricted potable use standards based on maximum contaminant levels or other established regulatory criteria in accordance with rule 3745-300-08 of the Administrative Code, generic risk-derived unrestricted potable use standards developed in accordance with rule 3745-300-08 of the Administrative Code, or property-specific risk-derived unrestricted potable use standards developed in accordance with rule 3745-300-09 of the Administrative Code.
 - (3) "Unrestricted residential land use" is considered protective for, and may be applied to, any land use, without further restriction.
 - (4) "Upper-bound value" is a parameter value from a distribution of such values which is within the highest decile (ten per cent) of that distribution.
 - (5) "Urban setting designation" is an area where the potable use pathway is determined to be incomplete under paragraph (C) of rule 3745-300-10 of the Administrative Code. An urban setting designation does not eliminate the volunteer's responsibility to address non-potable pathways or to protect ground water that meets unrestricted potable use standards.
 - (6) "U.S. EPA" means the United States environmental protection agency.
- (V)
- (1) "Voluntary action" is a series of measures that may be undertaken to identify and address contamination and potential sources of contamination of properties by hazardous substances or petroleum and to establish that the property complies with applicable standards.
 - (a) "Voluntary action" may include, without limitation, any of the following:
 - (i) A phase I property assessment.
 - (ii) A phase II property assessment.
 - (iii) A sampling plan.
 - (iv) A remedial plan.
 - (v) Remedial activities.

- (vi) Such other actions the volunteer considers to be necessary or appropriate to address the contamination, followed by the issuance of a no further action letter that indicates the property complies with applicable standards.
- (b) To demonstrate that applicable standards have been met, the person undertaking such measures shall establish either of the following:
 - (i) That there is no information indicating that there has been a release of hazardous substances or petroleum at or upon the property.
 - (ii) That there has been a release of hazardous substances or petroleum at or upon the property and that applicable standards were not exceeded or have been or shall be achieved in accordance with this chapter and Chapter 3746. of the Revised Code.
- (2) "Voluntary action opinion" is any of the following:
 - (a) A no further action letter issued in accordance with this chapter and Chapter 3746. of the Revised Code.
 - (b) A written notice pursuant to division (B) of section 3746.11 of the Revised Code that the certified professional is not able to issue a no further action letter for a property because the property does not comply with applicable standards.
 - (c) An application for a variance pursuant to rule 3745-300-12 of the Administrative Code and section 3746.09 of the Revised Code.
 - (d) A request for an urban setting designation pursuant to paragraph (C) of rule 3745-300-10 of the Administrative Code.
 - (e) A summary report prepared pursuant to division (C) of section 3746.11 of the Revised Code.
 - (f) A request for a case-by-case determination pursuant to paragraph (B) of rule 3745-300-12 of the Administrative Code.
 - (g) A request for a pathway exclusion pursuant to paragraph (D) of rule 3745-300-11 of the Administrative Code.
 - (h) Verification of completion of remedial activities and determination of compliance with applicable standards pursuant to paragraph (E) of rule 3745-300-11 of the Administrative Code.

- (i) A statement in support of a remedy revision notice that demonstrates the property complies with applicable standards through implementation of the remedial activities pursuant to paragraph (H)(2) of rule 3745-300-11 of the Administrative Code.
 - (j) Any other circumstance in which a certified professional determines compliance with applicable standards in a document submitted to Ohio EPA on behalf of a volunteer pursuant to this chapter.
- (3) "Voluntary action program" means the program created under this chapter and Chapter 3746. of the Revised Code to provide a way to voluntarily investigate and clean up possible environmental contamination.
- (4) "Volunteer" is a person who conducts a voluntary action and any authorized representative of the person who conducts the voluntary action. Volunteer does not include a "responsible person," as defined in section 3737.87 of the Revised Code, for a class C release on the property that is the subject of a voluntary action.

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CERTIFIED ELECTRONICALLY

Certification

05/24/2023

Date

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