



# Voluntary Action Program 2023 Legislative Report



Division of Environmental Response and Revitalization  
August 2024

# Voluntary Action Program

## Annual Report to the Legislature

### Summary of Activities in 2023

- 31 No Further Action (NFA) letters were issued by certified professionals (CP).
- 10 Covenants Not to Sue (CNS) were issued by Ohio EPA for a total of 37.28 acres of property.
- Zero properties entered the Memorandum of Agreement (MOA) track.
- Six NFA letters submitted in 2023 were selected for audit; two audits selected from previous years completed.
- Zero variances requested.
- No CNSs revoked.
- Total program cost was \$9.1 million.
- Valuations exempted reported from county auditors totaled \$364,849,906.37.

### Overview

Ohio's Voluntary Action Program (VAP) was created in September 1994 and fully implemented in early 1997. The program allows eligible participants to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio (via a CNS) that no more cleanup is needed.

Prior to the creation of this program, valuable land sat idle because fear of immense liability and clean-up costs deterred potential developers, businesses, and banks from utilizing the properties. Ohio recognized the need to remove the environmental and legal barriers that could often stall the redevelopment and reuse of contaminated properties.

This report provides an update on the VAP activities for 2023. For questions, contact the Division of Environmental Response and Revitalization at 614- 644-2924.

### Definitions

**VAP (Voluntary Action Program)** — A program created to allow eligible participants to undertake a cleanup project without direct oversight and be assured the property meets specific environmental standards developed by Ohio EPA. Once cleanup is complete, the company receives a promise from the State of Ohio that no more cleanup is needed.

**NFA (No Further Action) letter** — Describes any environmental problems found at the site, how those environmental problems were investigated, mitigated if needed, and how the site meets applicable standards.

**CP (Certified Professional)** — A qualified, experienced professional such as an engineer, geologist, or environmental scientist, who is certified by Ohio EPA to issue NFA letters and conduct VAP work.

**CNS (Covenant Not to Sue)** — Legal action issued by the director of Ohio EPA that protects the property owner or operator and future owners from being legally responsible for additional investigation and cleanup at a property.

**MOA (Memorandum of Agreement)** — Agreement signed with U.S. EPA stating that sites cleaned up under Ohio's VAP also receive comfort that U.S. EPA would not ask for additional cleanup, if the volunteer incorporates public involvement and upfront oversight from Ohio EPA in the process.

**USD (Urban Setting Designation)** — Designation granted by the director exempting the cleanup of ground water to drinking water standards in urbanized areas which rely on community water systems to supply residents with safe drinking water. Other possible exposures to contaminated water such as to wildlife, surface water or streams in the area still must be addressed.

## Covenants Not to Sue

In 2023, Ohio EPA issued 10 Covenants Not to Sue (CNS). The following are examples of successful revitalization projects:

### Trolley Barn Property – Columbus, Ohio

The Former Trolley Barn Property/Trolley District consists of Parcel# 010-066585-00 located at 1610 East Oak Street, Columbus, Franklin County, Ohio, 43205, totaling 3.158 acres. The property was developed circa 1880s for a horse-drawn transportation company. The original buildings consisted of horse barns and storage sheds. By the mid-1890s, the horse-drawn system was converted over to electric trolleys. The facility expanded through the early 20th century by adding maintenance and storage units for electric trolley cars. The trolley system was converted to electrically powered buses during the late 1930s, and the facility continued to be used into the 1950s and 1960s for maintenance and storage of buses by the Columbus Transit Company and subsequently by the Central Ohio



Transit Authority (COTA). COTA operated at the property through at least 1980. By 1981, the property was listed as vacant and appears to have been unoccupied until 1989. From 1989 until 2010, the property tenants were listed under various names, including Watkins Transportation, Capital Transportation, Jackson Accessible Carrier, and JAC Transportation. These companies managed and maintained public vehicles, including school and charter buses.

Twelve areas of the property were suspected to have known or potential contamination including a former trolley car barn service area with pits (demolished), a former paint and oil storage building, a former machine and carpenter shop, a former trolley repair area with a T-shaped pit, a former blacksmith shop/recent automotive repair area, former boiler house, former underground storage tank (UST)/existing aboveground storage tanks (ASTs), possible material storage area, possible remaining UST, a former brass foundry building, former paint barn. Soils were found to be impacted by lead, mercury, TPH, benzo(a)pyrene, Trichloroethene (TCE), naphthalene, 1-methylnaphthalene, 1,2,3- and 1,2,4-trimethylbenzene. Asbestos abatement occurred before property redevelopment. The soil present at the property is maintained by engineering controls. Remedial activities implemented at the property and included in the operation and maintenance plan consist of direct contact engineering controls (e.g., building foundations and floor slabs, pavements, or a minimum of 2-foot soil cover meeting VAP applicable direct contact soil standards in earthen landscape areas on the Property). Contaminants in the soil exceed commercial use standards. A risk mitigation plan will protect against future contaminant exposures during excavation activities. Soil vapors are present beneath the building and exceed screening values. Ground water is prohibited for potable use. Property restrictions are memorialized in an environmental covenant. Following cleanup, a No Further Action (NFA) Letter was issued in March 2023. Ohio EPA issued the Covenant not to Sue (CNS) in November 2023.

Redevelopment began in 2020 integrating the existing building remnants into the final design. The East Market is a public food

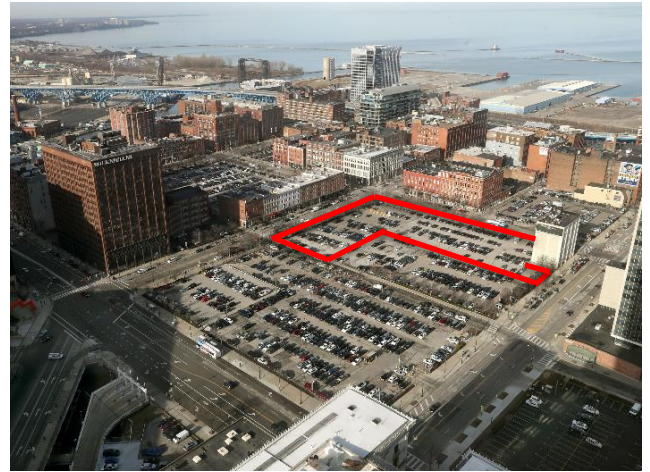


hall and marketplace in the former streetcar paint shop building. This area houses a series of commercial market stalls and restaurant and bar areas. A 13,000 sq. ft. taproom for the Columbus Brewing Company is in the former mechanic's and carpenter shop buildings. A series of office sharing spaces and Local Cantina Restaurant and Bar are in the former trolley car storage house.

## Sherwin-Williams Property 2 – Cleveland, Ohio

The 1.6234-acre Sherwin Williams Property located at 1400 W. 3<sup>rd</sup> Street, Cleveland, Ohio, was historically utilized for commercial and light industrial purposes in the late 1800s. Operations included the use of numerous passenger and freight elevators. Additionally, the property was utilized for various commercial/industrial purposes from at least 1886 until circa 1994. The property was used for various commercial establishments, offices, boilers, a laundry shop, a paints and oils store, a machine shop, a portion of a printing and book binding store, a printing shop, a ribbon factory, a wood cabinet shop, and parking lots.

Multiple areas of the property were suspected to have known or potential contamination. Soils have been remediated to meet applicable standards for commercial/industrial, restricted residential land use, and construction/excavation activities. Excavation and proper disposal of contaminated soil were conducted to meet applicable standards. The property is restricted to restricted residential and commercial/industrial. A ground water use restriction is in place via the City of Cleveland Area-Wide



Urban Setting Designation (USD), dated February 2011. Site restrictions are memorialized in an environmental covenant. A No Further Action (NFA) Letter was issued in June 2023. Ohio EPA issued the Covenant not to Sue (CNS) in October 2023.

In 2020, plans were announced for \$600 million to build a new global headquarters in downtown Cleveland of approximately 1,000,000 square feet. The project was planned to be conducted concurrently with an R&D Center nearby. Sherwin-Williams is working with several state and local partners on this project, including the State of Ohio, JobsOhio, Cuyahoga County, Cleveland-Cuyahoga County Port Authority, and the City of Cleveland.



## **Slavic Village Gateway – Cleveland, Ohio**

The Slavic Village Gateway consists of four parcels (#123-23-082, #123-23-081, #123-23-301, & #123-23-302) located at 5163 Broadway Avenue, Cleveland, Cuyahoga County, Ohio 44127, totaling 5.264 acres. Historically, the property was developed with the St. Alexis Hospital and multiple residential buildings by the 1880s. According to Case Western Reserve University’s Encyclopedia of Cleveland History website, the former St. Alexis Hospital was founded in 1884 to serve workers and manufacturing concerns in Newburgh and the Cuyahoga Industrial Valley. The facility grew to the north and west in subsequent years with additions and/or new construction in 1925, 1930, 1945, 1955, and 1959. The facility permanently closed on December 19, 2003. University Hospital Health Systems donated the NFA property to the City of Cleveland in January 2004. Demolition of the facility was completed in 2007.



Ten areas of the property were suspected to have known or potential contamination attributed to operations/activities associated with the former hospital. Tetrachloroethylene (PCE) and trichloroethylene (TCE) contaminated ground water area associated with the original laundry area, newer laundry area, coal silo/ash hopper, petroleum USTs and ASTs, paint shop, coal shed, maintenance shop, transformer area, and urban fill material at the NFA property. An additional identified area was also related to surface soil staining from an individual performing personal automotive service near the former natural gas meter shed. Lastly, based on previous investigations, ground water was designated as an identified area. Soils were found to be impacted with polycyclic aromatic hydrocarbons (PAHs), lead, and arsenic. Ground water returned concentrations of VOCs (PCE, TCE, and naphthalene), PAHs (benzo(a)pyrene), and Metals (arsenic) above potable use standards. Soil gas concentrations of VOCs (PCE, TCE, and vinyl chloride) were above screening values. A risk mitigation plan will protect workers performing construction or excavation activities in soil, ground water, and soil vapor at the property. Future structures will construct vapor mitigation measures to protect current and future occupants. The property is restricted to restricted residential purposes with restricted ground water use. Site restrictions are memorialized in an environmental covenant. A No Further Action (NFA) Letter was issued in June 2023. Ohio EPA issued the Covenant not to Sue (CNS) in November 2023.

Property redevelopment and construction began in 2021 and was recently completed in 2023. The property is developed with four structures (Buildings A through D). Buildings A and B are four-story mixed-use (commercial/residential) buildings and Buildings C and D are three-story residential townhomes. The ground level (first floor) at both Buildings A and B predominantly comprises commercial office tenant spaces, with residential spaces on the upper three floors. Buildings A and B are located along Broadway Avenue, Building C along McBride Avenue, and Building D along Fowler Avenue. Asphalt parking areas are present throughout the development, and a stormwater retention pond is located on the eastern portion of Parcel #123-23-082.



Summary of Covenants Not to Sue Issued in 2023								
County	NFA #	Project Name	Date CNS Issued	CP Name, and Number	Acreage	Volunteer	Address	District
Ashtabula	21NFA804	Bensen Gas Station	5/19/2023	Smith, L CP133	0.029	Ashtabula County Land Reutilization Corp.	112 E Main St, Geneva	NEDO
Cuyahoga	21NFA803	Collinwood Properties Cleveland E 152nd St	4/4/2023	Mignery, T CP125	2.9772	The City of Cleveland	1146 E 152nd St	NEDO
Cuyahoga	22NFA816	Sherwin Williams Property 3, Cleveland	5/5/2023	Bremer, D. CP311	4.3179	The Sherwin Williams Company	1400, 1450, 1475 W. 3rd St, Cleveland	NEDO
Cuyahoga	23NFA834	Sherwin Williams Superblock SW NFA Property 2, Cleveland	10/31/2023	Bremer, D. CP311	1.6234	The Sherwin Williams Company	1400 W. 3rd Street, Cleveland	NEDO
Cuyahoga	23NFA829	Slavic Village Gateway, Cleveland	11/21/2023	Pierce, Z. CP391	5.264	Slavic Village Gateway LLC, Slavic Village Gateway Phase II Holding LLC, Slavic Village Condominium Association, University Settlement, Inc	5163 Broadway Ave, Cleveland	NEDO
Delaware	22NFA812	Gross Marathon Gasoline Station, Sunbury	10/31/2023	Egan, K CP259	0.206	The City of Sunbury	5 S Columbus St, Sunbury	CDO
Fairfield	23NFA827	The Shoppes at Turnberry	11/15/23	Allan, J. CP284	1.278	Walker's Corner III LLC	1751-1771 Hill Rd N, Pickerington	CDO
Franklin	23NFA824	Trolley Barn Property, Columbus	11/30/2023	Kuonen, P. CP383	3.158	Trolley Barn, LLC	1610 East Oak St, Columbus	CDO
Franklin	22NFA810	Lucent Columbus Works - Multifamily Parcel 1	6/27/2023	Garvey, J. CP118	16.507	Trident Broad Development, LLC and Nokia of America Corporation	6200 E. Broad St, Columbus	CDO
Franklin	21NFA797	Calgon Carbon Corp, Columbus	12/12/2023	Gross, S. CP192	1.919	BSC Columbus, LLC	835 & 935 N Cassady Ave, Columbus	CDO

NOTE: Ohio EPA Districts: CDO = Central District (Columbus); NEDO = Northeast District (Twinsburg); NWDO = Northwest District (Bowling Green); SEDO = Southeast District (Logan); SWDO = Southwest District (Dayton)

## VAP Memorandum of Agreement Track

The MOA track program incorporates public involvement and up-front oversight into the existing VAP process. Volunteers who follow this track of the VAP obtain both a CNS from Ohio EPA and assurance that U.S. EPA will not require any additional cleanup at the site. No properties entered the MOA track in 2023. The original VAP process, known as the classic VAP track, is also available to volunteers who are not seeking federal assurance and prefer not to incorporate up-front Agency oversight or public involvement into the voluntary cleanup process.

Detailed information about the VAP's MOA track process, including a copy of the MOA between the Ohio EPA and the U.S. EPA, can be found at [epa.ohio.gov/static/Portals/30/vap/docs/Superfund%20Agreement%20for%20the%20VAP%20factsheet.pdf](https://epa.ohio.gov/static/Portals/30/vap/docs/Superfund%20Agreement%20for%20the%20VAP%20factsheet.pdf)

## Audits of No Further Action Letters

The VAP is required to audit at least 25 percent of the NFA letters submitted to the Ohio EPA that requested a CNS during the previous calendar year. NFA letters may also be audited on a discretionary basis. Ohio Administrative Code 3745-300-14 defines the audit pools and the selection process. The random audit pool and discretionary audit pool are established annually from the previous year's NFA letters that requested a CNS. Another audit type, a compliance audit, may be conducted at any time for any NFA letter with a CNS.

NFA letters selected for audit from the random audit pool must follow the audit review procedures of a Tier I/Tier II audit outlined in the rule. Both the discretionary audits and compliance audits follow the procedures of a Tier I/Tier II audit, but the program also has the flexibility within the rule to deviate from those procedures. The Tier I audit involves the review and analysis of the NFA letter and supporting documents and includes a property walkover. The Tier II audit is performed, as needed, following the completion of a Tier I. A Tier II audit typically consists of a physical inspection and field investigation to confirm applicable standards were met.

Six audits of NFA letters requesting a CNS submitted during the previous year (2023) were initiated. The following table summarizes the name and address of the properties audited, the NFA number, the basis for selecting the property for audit, and the status of the audit. Two audits initiated in previous years were completed in 2023.

### NFA Letters Received in 2023 Selected for Audit in 2024

County	Project Name	Address	Volunteer	NFA #	District	Audit Pool
Summit	BF Goodrich and Henkel Corp	500-540 Main St, 123-125 W Bartges St	Canal Place A LLC, Canal place D LLC, Canal Place E LLC, Akron Initiative LLC, and Canal Place 2027 LLC	23NFA819	NEDO	Discretionary
Cuyahoga	Babbitt Rd Expansion	1261 Babbitt Road, Euclid	ECCOZH20, LLC	23NFA828	NEDO	Discretionary
Cuyahoga	Slavic Village Gateway	5163 Broadway Ave, Cleveland	Slavic Village Gateway, LLC, Slavic Village Phase II Holding LLC, Slavic Village Condominium Association, and University Settlement, Inc	23NFA829	NEDO	Discretionary
Hamilton	9617 Kenwood Rd Development	9651, 9617, 9573, 9569, and 9565 Kenwood Rd, Blue Ash	9617 Kenwood Road Development, LLC	23NFA833	SWDO	Discretionary
Jefferson	Former Big Darby Creek Shooting Range Property	875 Middle Pike, West Jefferson	Battelle Memorial Institute	23NFA843	CDO	Discretionary
Franklin	2025, 2045-2055 S High St Property	2025, 2045-2055 S High St, Columbus	2055 South High, LLC, Broadleigh Properties, Steelton Village, LLC	23NFA847	CDO	Discretionary

## VAP Expenditures for Calendar Year 2023

### Personnel

Fund 4R9 - VAP Fund	\$1,730,723
Hazardous Waste Management Fund (505)	\$3,025,729
Environmental Protection Fund (5BC)	\$2,346,379
U.S. EPA Grants (Federal dollars)	\$736,664

**Total Cost of Personnel** \$7,839,496

### Maintenance of the Program

Fund 4R9 - VAP Fund	\$349,232
Hazardous Waste Management Fund (505)	\$396,489
Environmental Protection Fund (5BC)	\$37,445
U.S. EPA Grants (Federal dollars)	\$32,849

**Total Cost of Maintenance** \$816,015

### Equipment

Fund 4R9 - VAP Fund	\$0
Hazardous Waste Management Fund (505)	\$10,979
Environmental Protection Fund (5BC)	\$1,054
U.S. EPA Grants (Federal dollars)	\$0

**Total Cost of Equipment** \$12,032

### Contractual and Other

Fund 4R9 - VAP Fund	\$21,861
Hazardous Waste Management Fund (505)	\$14,930
Environmental Protection Fund (5BC)	\$1,579
U.S. EPA Grants (Federal dollars)	\$473,259

**Total Cost of Contractual and Other** \$511,630

**Total VAP Program Cost** \$9,179,173

## VAP Revenues for Calendar Year 2023

### VAP Administration Fund Revenue

Certified Professional Fees	\$383,600
No Further Action (NFAs) Fees	\$714,327
Technical Assistance Cost Recovery	\$1,535,997
CP Training Reimbursements	\$0
AGO Collected	\$1,334
Misc. - Intra-governmental, photocopying, etc.	\$0

**Total VAP Administration  
Fund Revenue** \$2,645,308

## Tax Abatements in 2023

According to Ohio Revised Code 5709.87, parcels included in a CNS issued by the Director of Ohio EPA are exempt from the increase in assessed value between the commencement of remedial activities and issuance of the CNS. The exemption allows for a 10-year abatement period. The following is a list of the counties with parcels eligible for tax exemption and the valuation exempted from real property taxation.

County	Number of properties	Valuation Exempted 2023
Allen	1	\$0.00
Ashland	2	*
Ashtabula	4	\$0.00
Auglaize	1	\$785,010.00
Belmont	3	\$25,950.00
Butler	8	\$73,660.00
Carroll	1	\$0.00
Champaign	3	\$0.00
Clark	1	\$91,000.00
Clinton	1	\$0.00
Columbiana	2	*
Coshocton	1	*
Crawford	2	\$0.00
Cuyahoga	57	\$103,035,000.00
Darke	1	\$0.00
Delaware	2	\$41,091,400.00
Erie	5	\$0
Fairfield	4	\$73,660.00
Franklin	38	\$194,439,400.00
Fulton	1	*
Geauga	1	*
Greene	2	\$4,212,730.00
Hamilton	20	*
Hancock	3	\$1,069,420.00
Hardin	1	\$21,560.00
Henry	1	\$0.00
Jackson	3	*
Jefferson	6	*
Knox	1	\$4,536.37
Lake	4	*
Lawrence	2	\$0.00
Lorain	8	*
Lucas	12	\$5,262,200.00

County	Number of properties	Valuation Exempted 2023
Madison	1	\$1,140.00
Mahoning	5	\$1,605,490.00
Marion	1	\$353,400.00
Medina	1	*
Mercer	1	*
Miami	4	\$3,030,200.00
Monroe	1	\$3,500.00
Montgomery	12	*
Muskingum	1	\$101,400.00
Ottawa	1	\$0.00
Perry	1	\$38,900.00
Pike	1	\$257,860.00
Portage	5	*
Putnam	1	\$379,240.00
Richland	4	*
Sandusky	2	*
Seneca	2	\$0.00
Stark	9	*
Summit	10	*
Trumbull	6	*
Van Wert	1	*
Warren	1	\$8,893,250.00
Wayne	4	\$0.00
Williams	2	\$0.00
Wood	1	\$0.00
<b>Totals</b>	<b>280</b>	<b>\$364,849,906.37</b>

\*County did not provide a report



**Environmental  
Protection  
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