



Ohio Revised Code

Section 3746.01 Voluntary action program definitions.

Effective: December 30, 2004

Legislation: House Bill 516 - 125th General Assembly

As used in this chapter:

- (A) "Activity and use limitations" has the same meaning as in section 5301.80 of the Revised Code.
- (B) "Affiliated" means under common ownership or control.
- (C) "Applicable standards," unless the context indicates otherwise, means standards established in or pursuant to sections 3746.05, 3746.06, and 3746.07 of the Revised Code, in or pursuant to rules adopted under division (B)(1) or (2) of section 3746.04 of the Revised Code, pursuant to rules adopted under division (B)(12)(b) of section 3746.04 of the Revised Code, or alternative standards and terms and conditions set forth in a variance issued under section 3746.09 of the Revised Code, as applicable.
- (D) "Background level" means 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 level" includes naturally occurring substances.
- (E) "Certified laboratory" means a laboratory certified by the director of environmental protection pursuant to rules adopted under division (B)(6) of section 3746.04 of the Revised Code, or deemed to be certified under division (E) of section 3746.07 of the Revised Code, to perform analyses in connection with voluntary actions.
- (F) "Certified professional" means a person certified by the director pursuant to rules adopted under division (B)(5) of section 3746.04 of the Revised Code, or deemed to be certified under division (D) of section 3746.07 of the Revised Code, to issue no further action letters under section 3746.11 of the Revised Code.
- (G) "Covenant not to sue" means a release from liability that is issued by the director under section



3746.12 of the Revised Code.

(H) "Environmental covenant" has the same meaning as in section 5301.80 of the Revised Code.

(I) "Hazardous substance" includes all of the following:

- (1) Any substance identified or listed in rules adopted under division (B)(1)(c) of section 3750.02 of the Revised Code;
- (2) Any product registered as a pesticide under section 921.02 of the Revised Code when the product is used in a manner inconsistent with its required labeling;
- (3) 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;
- (4) Any mixture of a substance described in divisions (I)(1) to (3) of this section with a radioactive material.

(J) "Owner or operator" includes both of the following:

- (1) Any person owning or holding a legal, equitable, or possessory interest in or having responsibility for the daily activities on a property;
- (2) 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.

(K) "Person" means any person as 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, the board of directors of a nonprofit corporation governing a special improvement district created under Chapter 1710. of the Revised Code, and the United States and any agency or instrumentality thereof.



(L) "Petroleum" means 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.

(M) "Property," except for the purposes of sections 3746.02, 3746.26, and 3746.27 of the Revised Code, means 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 and rules adopted under it.

(N) "Radioactive material" means a substance that spontaneously emits ionizing radiation.

(O) "Related" means the persons are related by consanguinity or marriage.

(P) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of any hazardous substance or petroleum into the environment, including, without limitation, the abandonment or discarding of barrels, containers, or any other closed receptacle containing any hazardous substance, petroleum, or pollutant or contaminant. "Release" does not include any of the following:

(1) Any release that results solely in the exposure of individuals to hazardous substances or petroleum in the workplace with respect to which those individuals may assert a claim against their employer and that is regulated under the "Occupational Health and Safety Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as amended, and regulations adopted under that act, or under Chapter 4167. of the Revised Code and rules adopted under it;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(3) Any release of a source, byproduct, or special nuclear material from a nuclear incident, as



"source material," "byproduct material," "special nuclear material," and "nuclear incident" are defined in the "Atomic Energy Act of 1954," 68 Stat. 919, 42 U.S.C.A. 2011, as amended, 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;

(4) Any federally permitted release as defined in section 101(10) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 3300, 42 U.S.C.A. 9601, as amended;

(5) The normal application of a fertilizer material that is intended to improve the quality or quantity of plant growth.

(Q) "Remedy" or "remedial activities" means actions that are taken at a property to treat, remove, transport for treatment or disposal, dispose of, contain, or control hazardous substances or petroleum, are protective of public health and safety and the environment, and are consistent with a permanent remedy, including, without limitation, excavation, treatment, off-site 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.

(R) "Voluntary action" means a series of measures that may be undertaken to identify and address potential sources of contamination of property by hazardous substances or petroleum and to establish that the property complies with applicable standards. "Voluntary action" may include, without limitation, a phase I property assessment conducted in accordance with rules adopted under division (B)(3) of section 3746.04 of the Revised Code or division (B) of section 3746.07 of the Revised Code, as appropriate, a phase II property assessment conducted in accordance with rules adopted under division (B)(4) of section 3746.04 of the Revised Code or division (C) of section 3746.07 of the Revised Code, as appropriate, a sampling plan, a remedial plan, or remedial activities followed by the issuance of a no further action letter under section 3746.11 of the Revised Code indicating that the property meets applicable standards upon demonstration by the person undertaking the measures either that there is no information indicating that there has been a release of hazardous substances or petroleum at or upon the property or 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 will be achieved in accordance with this chapter and rules adopted under it.