



## Ohio Revised Code

### Section 3746.10 Identification and addressing sources of contamination.

Effective: December 30, 2004

Legislation: House Bill 516 - 125th General Assembly

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(A) Except as otherwise provided in section 3746.02 of the Revised Code, any person may undertake a voluntary action under this chapter and rules adopted under it to identify and address potential sources of contamination by hazardous substances or petroleum of soil, sediments, surface water, or ground water on or underlying property and to establish that the property meets applicable standards. The voluntary action may include any one or more of the following elements:

- (1) 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;
- (2) 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;
- (3) A sampling plan;
- (4) A remediation plan;
- (5) Remedial activities;
- (6) Such other activities as the person undertaking the voluntary action considers to be necessary or appropriate to address the contamination.

When the person undertaking a voluntary action determines that the property meets applicable standards, the person may seek a no further action letter from a certified professional. A no further action letter may be issued for the property at any stage of the identification of potential hazardous substance or petroleum contamination or remedial activities after a phase I or II property assessment has demonstrated that there is no reason to believe that there has been a release of hazardous



substances or petroleum at or upon the property, that information indicates that there has been a release of hazardous substances or petroleum at or upon the property, but that the release is not in excess of applicable standards, or that if there has been such a release in excess of applicable standards, those standards have been achieved through remedial activities or will be achieved in accordance with the timeframes established in an operation and maintenance agreement entered into under division (A)(3) of section 3746.12 of the Revised Code or in such an agreement and a consolidated standards permit issued under section 3746.15 of the Revised Code.

(B)(1) A person who is participating in the voluntary action program under this chapter and rules adopted under it shall do both of the following:

(a) Utilize the services of a certified laboratory to perform any analyses that form the basis for the issuance of a no further action letter for a property and ensure that a laboratory performs in connection with a voluntary action only those analyses for which it is certified under rules adopted under division (B)(6) of section 3746.04 of the Revised Code or for which it is qualified prior to the adoption of those rules;

(b) Utilize the services of a certified professional to verify that the property and any remedial activities undertaken at the property in connection with a voluntary action comply with applicable standards and, if those standards are met, to issue to the person a no further action letter for the property. For the purposes of such a verification, the certified professional shall perform and review all work that was conducted to support the request for the no further action letter or shall ensure that the work has been performed and reviewed by other persons with expertise and competence in areas other than those of the certified professional's expertise and competence as necessary for the issuance of the no further action letter.

(2) No person who is participating in the voluntary action program shall do any of the following:

(a) If the person also is a certified professional, prepare a no further action letter in connection with a voluntary action conducted at a property that the certified professional owns or operates;

(b) Utilize the services of a certified professional who is employed by, affiliated with, or related to the participant or who was employed by or affiliated with the participant during the year preceding



the date that the participant entered into the contract to utilize the services of the certified professional in connection with the voluntary action;

(c) Utilize the services of a certified laboratory that is owned by or affiliated with the participant, that is owned by a person related to the participant, or that was owned by or affiliated with the participant during the year preceding the date that the participant entered into the contract to utilize the services of the certified laboratory in connection with the voluntary action, to perform any analyses that form the basis for the issuance of a no further action letter in connection with a voluntary action.

A covenant not to sue issued under section 3746.12 of the Revised Code to a person who violated division (B)(2)(a), (b), or (c) of this section with respect to the no further action letter upon which issuance of the covenant was based is void.

Except as otherwise provided in division (B)(2) of this section, a person who is participating in the voluntary action program may utilize an independent contractor to serve as a certified professional or certified laboratory.

(C) In order to obtain a no further action letter, a person undertaking a voluntary action shall submit to a certified professional all of the following, as applicable:

(1) Information demonstrating that there is no contamination by hazardous substances or petroleum of soil, sediments, surface water, or ground water on or underlying the property in concentrations exceeding applicable standards. The demonstrations shall be based upon the findings of a phase I or phase II property assessment.

(2) If remedial activities were conducted in connection with the voluntary action, data demonstrating that the remedy meets applicable standards or will achieve applicable standards in accordance with the timeframes established in an operation and maintenance agreement entered into under division (A)(3) of section 3746.12 of the Revised Code or in such an agreement and a consolidated standards permit issued under section 3746.15 of the Revised Code;

(3)(a) If the remedy relies on institutional controls or restrictions on the use of the property to achieve applicable standards, a demonstration that the institutional controls or the use restrictions



have been recorded in the office of the county recorder of the county in which the property is located, or have been entered in the appropriate register for registered land as defined in section 5309.01 of the Revised Code, in compliance with section 3746.14 of the Revised Code;

(b) If the person undertaking a voluntary action seeks to obtain a covenant not to sue and if the remedy relies on activity and use limitations to achieve applicable standards, a demonstration that the activity and use limitations have been developed in accordance with this chapter and rules adopted under it and are contained in a proposed environmental covenant that meets the requirements established in section 5301.82 of the Revised Code.

(4) If the remedy relies on engineering controls that contain or control the release of hazardous substances or petroleum at or from the property, a plan for the proper operation and maintenance of the engineering controls.

(D) Except as otherwise specifically provided in this chapter and rules adopted under it, voluntary actions under this chapter and rules adopted under it shall be undertaken in compliance with all applicable laws of this state and rules adopted under them and with applicable ordinances, resolutions, and rules of political subdivisions of this state.