

May 2009

## Urban Setting Designation

### Introduction

Ohio's Voluntary Action Program (VAP) was created to give businesses and property owners a way to investigate possible environmental contamination due to hazardous substances or petroleum releases, clean up the property if necessary and receive a covenant not to sue (CNS); that is, a promise from the State of Ohio that no more cleanup is needed.

A volunteer may evaluate the environmental conditions at a property and clean up the property, if necessary, by employing the services of either a certified professional or other qualified persons. If the property meets the applicable cleanup standards for the use of that property, a certified professional prepares a No Further Action (NFA) letter for the property. The volunteer or certified professional must employ the services of a certified laboratory to perform analyses that form the basis of the NFA letter.

Upon favorable review of a complete NFA letter submitted to the Agency, the director of Ohio EPA will issue a covenant not to sue releasing the person who undertook the voluntary action from liability for additional cleanup. This covenant is transferable to subsequent property owners.

### Ground Water Protection

Ohio EPA's ground water protection requirements for voluntary cleanups are designed to address risks to residents and the environment posed by contaminated ground water. Cleanups that bring the underground water supply quickly back to pristine conditions can be very costly without necessarily improving health and safety, and may often mean the difference between a brownfield



being cleaned up and redeveloped or remaining an abandoned scar on the urban landscape.

When developing the VAP regulations, Ohio EPA recognized that many brownfield properties are located in highly urbanized areas which rely on community water systems to supply residents with safe drinking water. In those areas, ground water that contains chemicals from prior industrial or commercial activities poses no perceptible risk to the community because the ground water is not being used and will not be used for drinking water purposes in the foreseeable future. In these situations, an Urban Setting Designation (USD) may be appropriate.

A USD recognizes that cleaning up the ground water to drinking water standards is not necessary because no one will be drinking the ground water. Other possible exposures to contaminated ground water (such as exposures to wildlife or streams in the area) still must be addressed even when a USD is granted for an area.

USDs can be granted only by the director of Ohio EPA. A written submittal to the director requesting a USD must be made by a certified professional. The request must successfully demonstrate the property (or properties) meets all the criteria of a USD as specified in Ohio Administrative Code (OAC) rule 3745-300-10 before such a designation can be granted. All USD requests must be

submitted and approved by the director prior to completion of an NFA letter which relies upon a USD for applicable ground water standards for a property.

### Threshold Criteria

In order for a property to be considered for a USD, it must, at a minimum, first meet the following criteria:

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- it must be located within the boundaries of a city or township with a population of at least 20,000 residents;
- at least 90 percent of the parcels within the city or urban township where the property lies must be connected to a community water system;
- it cannot be located within an Ohio EPA-endorsed wellhead protection area or one submitted for endorsement; and
- there can be no wells used for potable purposes located within one half mile. For properties that are above a sand and gravel aquifer that produces more than 100 gallons per minute or are above a consolidated sole source aquifer, the certified professional must show that there is no reasonable expectation that any potable water wells will be installed within one half mile. (Consolidated sole source aquifers in Ohio include the aquifer beneath Catawba Island and the Allen County combined aquifer systems located in portions of Allen, Auglaize, Mercer, Putnam and Van Wert counties in western Ohio.)



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## Approval Process

All requests for a USD must be prepared by a certified professional and must demonstrate how the threshold criteria have been met. The written request must provide the name and location of the volunteer and the property for which the designation is sought, along with a legal description of the property. The written request also must indicate if the local government favors the designation.

At the time the written request is made of the director of Ohio EPA, the local governments and all local governments within one half mile of the proposed USD property must be notified. This notice is to ensure that local governments understand the purpose and ramifications of the USD so that they may provide meaningful and informed input to Ohio EPA. The director may request additional information from the volunteer, the local government, the certified professional and area residents that may be relevant to the approval of the USD.

## Public Participation

Public participation and notification is an important part of the USD approval process. Residents and interested parties are mailed pertinent information about the proposed USD along with this fact sheet and are provided an opportunity to submit information to Ohio EPA that supports the USD or indicates that the criteria may not have been met. USD mailings are conducted within a few weeks after a USD request has been received. Information about the USD is also announced to the public through news releases issued by Ohio EPA to the media and known citizen groups in the area. If significant interest is shown or concerns are raised by residents or interested parties, Ohio EPA, along with the USD applicant, will hold a public meeting.

## Approval Criteria

Before a USD can be approved by the director, the written request must successfully demonstrate that:

- all threshold criteria have been met;
- the USD is not likely to have an adverse environmental impact on surrounding jurisdictions;
- the USD is not likely to adversely impact regional water resource needs and water resource obligations; and
- the USD is not likely to expose people in the region to contaminated ground water now and in the future. This is determined by the evaluation, among other things, of current and future regional use of ground water.

If you have any questions regarding the USD approval process or the VAP in general, please contact the VAP staff at (614) 644-2924. In addition, information is available at <http://www.epa.ohio.gov/derr/volunt.html>.

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