



VAP Eligible BUSTR Release Information

Certain sites may follow Ohio EPA's voluntary action program (VAP) cleanup requirements to address petroleum underground storage tank systems regulated by the Bureau of Underground Storage Tank Regulations.

Properties with petroleum underground storage tank (UST) systems regulated by the Bureau of Underground Storage Tank Regulations (BUSTR) are subject to BUSTR requirements for tank closure, sampling and cleanup of environmental media (for example, soil and ground water). BUSTR laws for UST system closure, assessment and cleanup are contained in Ohio Revised Code sections 3737.87 to 3737.89.

House Bill 153, signed June 2011, made Class C releases eligible for the VAP. Class C releases are releases with no viable responsible person (RP) to assess and cleanup the petroleum release. Senate Bill 294, signed June 2012, did not modify the eligibility requirements for Class C releases. Instead, it expanded VAP eligibility to additional sites that meet certain requirements but do not have the Class C release designation. A flowchart detailing VAP eligibility of BUSTR releases can be found at: epa.ohio.gov/derr/SABR/class_c.aspx.

Determining VAP Eligibility of BUSTR Release Sites

Only BUSTR can determine the VAP eligibility of BUSTR sites. Prior to a VAP Certified Professional issuing a VAP no further action letter (NFA letter), the volunteer must receive a determination of VAP eligibility from BUSTR. To receive this determination from BUSTR, a BUSTR Release VAP Eligibility Determination Form must be completed and submitted to BUSTR. The form can be found at epa.ohio.gov/derr/SABR/class_c.aspx.

BUSTR will use the information included in the form to determine whether the volunteer is a RP subject to BUSTR cleanup requirements. Documentation of a BUSTR regulated petroleum release above BUSTR action levels is required and will be reviewed by BUSTR. BUSTR will then ensure the release is not subject to a BUSTR administrative order or referral to the Attorney General's Office for enforcement of cleanup requirements. Next, BUSTR will determine if the voluntary action will address non-BUSTR petroleum and/or hazardous substances that can be addressed by the VAP. If so, VAP eligibility will likely be granted. However, if the BUSTR release is the only issue at the property subject to assessment and/or cleanup, then BUSTR must designate it a Class C release in order for it to be VAP eligible.

Once BUSTR completes its evaluation, BUSTR will provide a letter documenting that the volunteer is not a RP and that the property is VAP eligible. The VAP CP will then include a copy of this letter in the VAP NFA letter documenting the VAP eligibility of the BUSTR release.

Determining if a Release is Class C

BUSTR determines whether the release of petroleum from a UST system is a Class C release by determining whether the RP is not accessible (for example, an individual is deceased or a corporation is bankrupt) or if the RP is specifically determined to be financially unable to assess and cleanup the release.

If seeking a Class C designation, the RP must complete BUSTR's financial inability to pay (FITP) form. BUSTR conducts a review of the information to make the Class C determination. If the person seeking the Class C designation is not the RP, that person may fill out a BUSTR Release VAP Eligibility Determination Form. BUSTR will then determine if an RP exists and needs to complete an FITP form.

On a case-by-case basis, BUSTR may evaluate the financial ability to pay based on publicly available information. As long as there is sufficient evidence to make such a determination, BUSTR will declare the RP financially non-viable. As of February 4, 2014, BUSTR has determined that 187 sites have Class C releases. A list of those sites and any additional sites BUSTR has subsequently determined to have Class C releases is available online.

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Cleanup vs. Closure

Although assessment and cleanup of BUSTR release can be done under the VAP, if BUSTR predetermines the release and volunteer are eligible for the VAP, it is important to note that BUSTR rules for UST closure (for example removal of the UST system) are still applicable and must be followed for closure of all UST systems that have not been previously closed. Once closure is complete, the volunteer can then choose whether to proceed with assessment and cleanup under BUSTR or VAP rules. Direct specific questions about UST closure requirements to BUSTR.

Why is a VAP Eligibility Determination letter needed prior to issuance of a VAP NFA letter?

According to the law, only BUSTR can make the determination of who is a RP subject to BUSTR cleanup requirements. The VAP Eligibility Determination letter ensures that the volunteer is eligible to conduct the voluntary action at a property with a BUSTR release.

Once a CNS is issued by Ohio EPA, will BUSTR consider the release closed in its files?

Yes, once a release predetermined by BUSTR to be eligible for the VAP receives a covenant not to sue (CNS) from Ohio EPA, Ohio EPA will notify BUSTR that the property has received a CNS. BUSTR will then issue its own letter to the volunteer indicating that the release has received a no further action status in its records. BUSTR does reserve its rights to rescind its no further action status if the CNS is ever revoked by Ohio EPA or if the CNS ever becomes void due to a violation of an institutional control.

There is an old gas station in our neighborhood we'd like to see cleaned up. We don't know who the former owners are. What steps do we need to take to determine if this is a Class C site?

The address for the property should be compared to the Class C release site list available on Ohio EPA's website at epa.ohio.gov/derr/SABR/class_c.aspx. If the site is not listed, contact BUSTR to determine the status of the UST site. If the site is new to BUSTR (not in their database), BUSTR would need to conduct a search to determine who the RPs are and whether any are financially viable. To determine if the site has a Class C release, BUSTR would evaluate the financial viability of any RPs and environmental data to document a petroleum release. If BUSTR documents a release from regulated USTs and can find no viable RP, then the site would likely be designated as a Class C release.

How will a Class C designation affect eligibility for U.S. EPA's BCRLF funding?

Having a Class C release status at a site should simplify the application process for Brownfield Cleanup Revolving Loan Fund (BCRLF) money. Any site with Class C releases should be eligible to receive this funding as long as all other funding requirements (including other eligibility requirements) are met. Having the Class C release designation should speed up the approval process. The Ohio Department of Development, (614) 728-1258, can answer questions about the BCRLF.

Since a voluntary action (other than a Class C release) must also address non-BUSTR regulated constituents, what is required to document the voluntary action will address these other issues?

VAP rules are clear that any identified area (IA) from a VAP Phase I Property Assessment must be investigated during a VAP Phase II Property Assessment. Therefore, BUSTR will accept a VAP Phase I Property Assessment that documents IAs with non-BUSTR petroleum and/or hazardous substances to demonstrate the voluntary action will address VAP issues in addition to the BUSTR release. During Ohio EPA's review of a NFA letter, Ohio EPA will also ensure that the completed voluntary action addresses non-BUSTR petroleum and/or hazardous substances in addition to the BUSTR release.

The city is considering acquiring a property and would like to pursue a voluntary action under the VAP. Should the city have any concerns about acquiring the property?

Municipalities or other forms of local government often acquire property as a first step to address abandoned or blighted property. Acquisition of property with USTs can have consequences related to continuing obligations and legal liability for closure, assessment and cleanup. Prior to acquisition, the municipality should fully understand these obligations and liabilities. Depending on the method of acquisition, a municipality could become the RP, which would make the municipality ineligible to address the BUSTR release as part of a voluntary action. It may also make the local government ineligible to receive grant funding for the site. Foreclosing on a property can provide protection from some, but not all, liability requirements. Ohio EPA and BUSTR are available to assist with a property acquisition plan to ensure limited liability and continued grant assistance eligibility. If you plan to purchase a property with USTs, refer to *So You Want to Buy an Old Gas Station* fact sheet at com.ohio.gov/documents/fire_buyGasStation.pdf.