



**VAP 101 -
Introduction to the
Voluntary Action Program**

Division of Emergency and Remedial Response

Ohio EPA Voluntary Action Program



- Created in 1994 – Ohio Revised Code (ORC) 3746
- Final Rules went into effect 1996 – Ohio Administrative Code (OAC) 3745-300. Two revisions – 2002 and 2009.
- Allows a volunteer to clean up hazardous substances and petroleum on a property and receive a covenant-not-to-sue (CNS) from the State of Ohio.

What is a Voluntary Action?

- Series of measures undertaken to identify/address contamination and potential sources of contamination

- VAP encourages people to redevelop and reuse land contaminated with hazardous substances or petroleum

- Designed for timely clean-up and to make more properties usable.



VAP PROPERTY:



VAP applies to legally defined property. Contiguous parcels or portions of parcels.

Property maps and legal description

Covenant Not to Sue (CNS)

- Protects the property owner or operator and future owners from being legally responsible to the State of Ohio for further investigation and cleanup.
- Protection applies only when the property is used and maintained in the same manner as when the covenant was issued.
- A CNS and property restrictions are recorded in the County Recorder's office, and transfers with the title of the property.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

OHIO E.P.A.

NOV 29 2010

ENTERED DIRECTOR'S JOURNAL

By John Lasside Date 11-29-10

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

City of Cleveland
City Hall
Department of Economic Development
601 Lakeside Avenue, Room 210
Cleveland, Ohio 44114

Covenant Not to Sue
Director's Final Findings
and Orders

Regarding property known as:

East 57th and Chester
East 57th Street and Chester Avenue
Cleveland, Ohio

Pursuant to Ohio Revised Code ("ORC") Chapter 3746 and Ohio Administrative Code ("OAC") Chapter 3745-300, the Director of the Ohio Environmental Protection Agency (the "Director") hereby makes the following Findings and issues the following Orders ("Findings and Orders").

FINDINGS

1. A No Further Action Letter, No. 10NFA398 (the "NFA Letter"), was submitted on October 21, 2010 to the Director under the Voluntary Action Program on behalf of the City of Cleveland (the "Volunteer"), by John Zampino, HzW Environmental Consultants, LLC, a certified professional, No. CP 280, as defined in ORC 3746.01(F) and OAC 3745-300-01(A) (the "Certified Professional").
2. The Certified Professional issued the NFA Letter by his CP affidavit on September 21, 2010.
3. The NFA Letter describes the investigational activities undertaken at the approximately 0.078-acre property, known as East 57th and Chester (PPN 118-02-049; 118-02-050), located at East 57th Street and Chester Avenue, Cleveland, Cuyahoga County, Ohio (the "Property"). An exact legal description of the

How is the VAP different from other clean up programs?

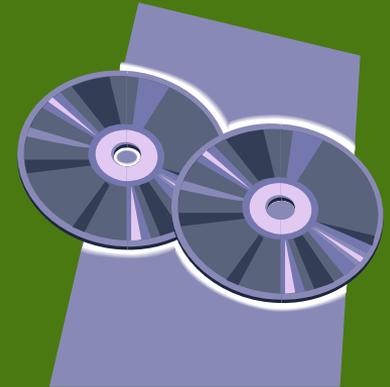
The VAP:

- is voluntary
- relies upon private parties to investigate and clean up properties
- allows cleanups tailored to current and future use
- limits the property owner's future liability
- audits a portion of the clean-ups conducted instead of direct oversight

Other Programs:

- are mandatory
- require direct oversight by the regulatory authority
- Usually conducted under an Administrative Order with the Ohio EPA

NFA Components



- Executive Summary
- Eligibility Determination
- Phase I Assessment
- Phase II Assessment -(includes Standards Determination)
- Risk Assessment - (may also include Standards Determination)
- Remedial Activities – including Activity and Use Limitations
- O&M Plan (engineering and institutional controls)

Volunteer

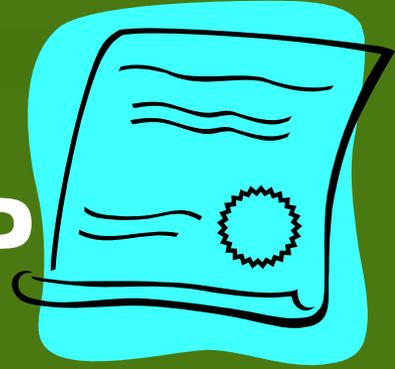


- The entity conducting a voluntary action.
 - Owner of the Property
 - Interested purchaser (developer)
 - Public entity (city, township)

Volunteer (cont.)

- A volunteer may conduct investigations and cleanup on their own
- Volunteer may also contract with a VAP CP to do the work.
- Regardless, a VAP CP must review all work performed in support of a voluntary action to issue a No Further Action Letter (NFA).

Certified Professional (CP)



- Private sector environmental professionals certified by the State of Ohio
- Must demonstrate specific qualifications before being certified
 - Relevant degree from accredited institution
 - Environmental Science, Geology, Biology, Chemistry, Hydrogeology, Toxicology, etc...
 - Eight years of relevant professional experience
 - Three of which must be in a supervisory or management role

CP Performance

- Performance of the CP during Voluntary Actions is tracked by Ohio EPA
 - Poor performance by a CP could result in disciplinary action in the form of a warning, suspension or revocation

Certified Laboratories (CL)



- A laboratory certified by the Ohio EPA to conduct analyses to support voluntary actions.
 - Certified to conduct specific analytical methods.
 - Detailed Certification process

Eligibility for VAP (OAC 3745-300-02)



- Properties that are not eligible (until closed per the specific regulatory program):
 - NPL sites
 - Solid Waste/RCRA sites requiring closure
 - Underground injection well sites
 - BUSTR Regulated USTs
 - ODNR Regulated oil wells
 - Federal or State Enforcement

- PCB and Hazardous Substance Tanks are eligible, but must still meet federal regulations.

- Asbestos is eligible



Phase I – (OAC 3745-300-06)

- Past uses of the Property
- Environmental history
- Known spills or releases
- Releases from neighboring properties onto the Property
- Property Inspection

Phase I

- Purpose:

- To determine whether there is any reason to believe that any releases of hazardous substances or petroleum have or may have occurred on, underlying, or are emanating from a property.



Phase I - Identified Areas

- Defined locations on the Property where releases of hazardous substances or petroleum have (or are likely to have) occurred.
 - Includes identification of potential contaminants of concern to be analyzed in the Phase II.
- ALL IDENTIFIED AREAS must be evaluated in a Phase II investigation.





Phase II

(OAC 3745-300-07)

- Investigation of property
- Pathway completeness determination
- Protection of clean ground water
- Determining “exposure point concentration” in environmental media
- Determining applicable standards
- Demonstrate compliance with applicable standards

A word about pathways...

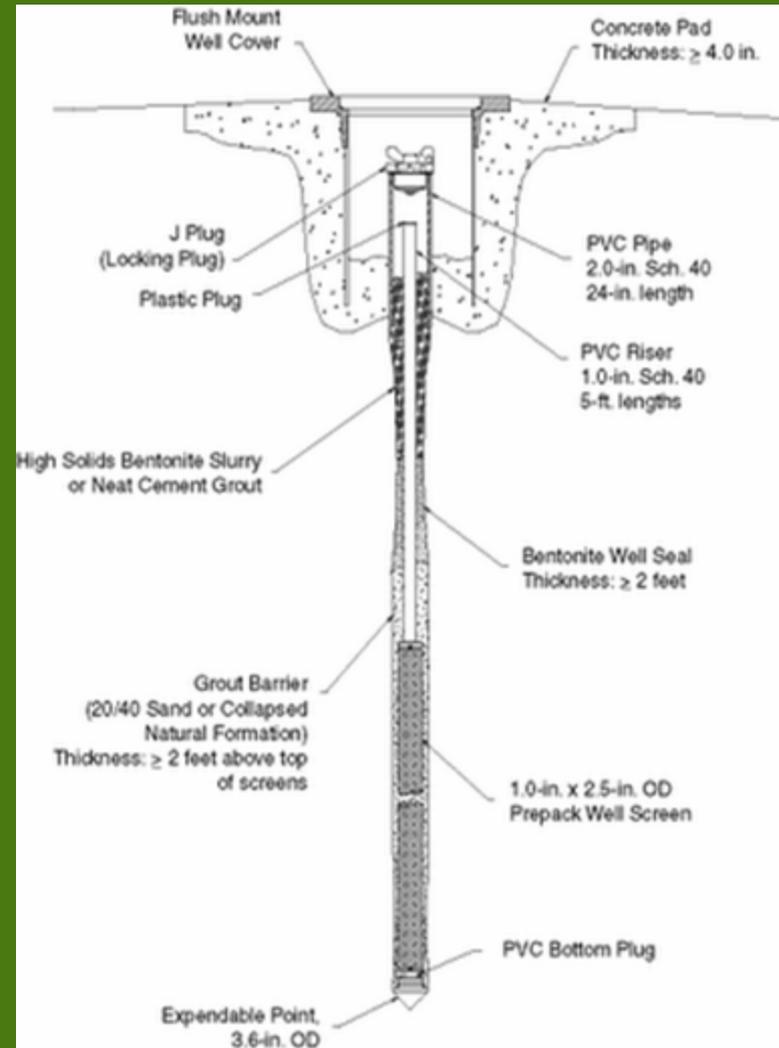
- Three components:
 - Affected media
 - Receptors and applicable points of compliance
 - Transport mechanism
- If anyone of these three components is not present or blocked through a remedy, then the pathway is not complete and an applicable standard need not be developed.



Soil Sample Collection



Ground Water Sampling



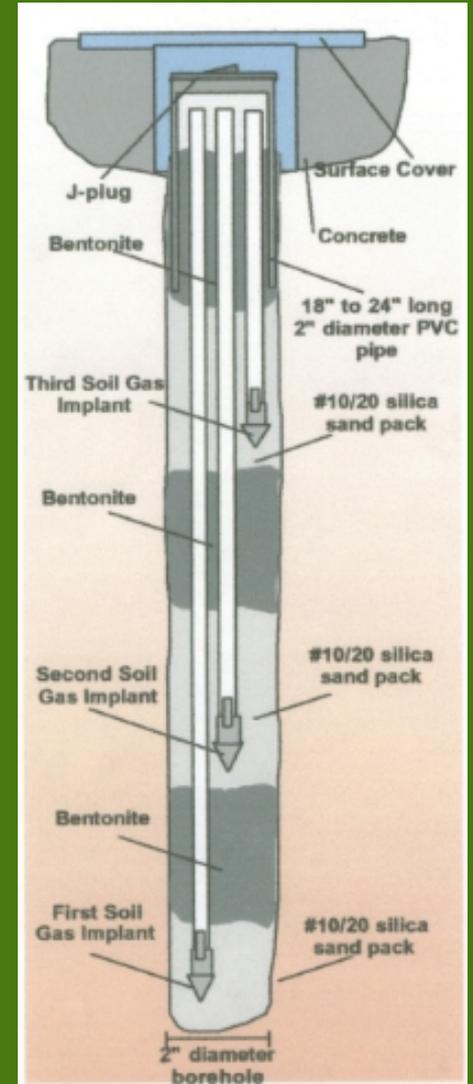
Soil Gas Collection



Stainless steel implant



Lung box sampling of nested implants



Mobile Lab

used for on-site screening of a large number of samples at a fraction of the cost of fix-based labs



Generic Numerical Standards (OAC 3745-300-08)

- Generic Standards for:
 - “direct contact” with soil
 - Considers ingestion, inhalation and skin contact
 - potable use of ground water
 - Considers ingestion; inhalation and dermal contact while showering
 - surface water
 - sediments



Generic Numerical Standards (OAC 3745-300-08)

- Soil standards (for human health):
- Listed for residential and commercial/industrial receptors and construction/excavation activities

Look-up values

CAS #	COC	Single Chemical Noncarcinogen	Single Chemical Carcinogen	Soil Saturation	Soil Standard for a Single Chemical (mg/kg)
Volatile Organic Chemicals					
67-64-1	Acetone	64,000	NA	100,000	64,000
71-43-2	Benzene	94	64	920	64
56-23-5	Carbon Tetrachloride	5.5	6.6	1,400	5.5
108-90-7	Chlorobenzene	410	NA	740	410
75-00-3	Chloroethane	10,000	3,700	2,200	2,200
67-66-3	Chloroform	300	6.6	3,400	6.6

- Lowest of cancer, non cancer or soil saturation levels
- Are generated based on the presence of a single chemical
- The values must be adjusted to account for multiple chemicals

Point of Compliance

- For soils, the depth at which the applicable standard must be met.
 - Residential or unrestricted: 10 feet
 - Commercial/industrial: 2 feet
 - Construction/excavation: variable

Important Ecological Resources:

- Terrestrial habitats

- Surface water Ohio

- water quality standards

- Sediments

- Sediment reference values

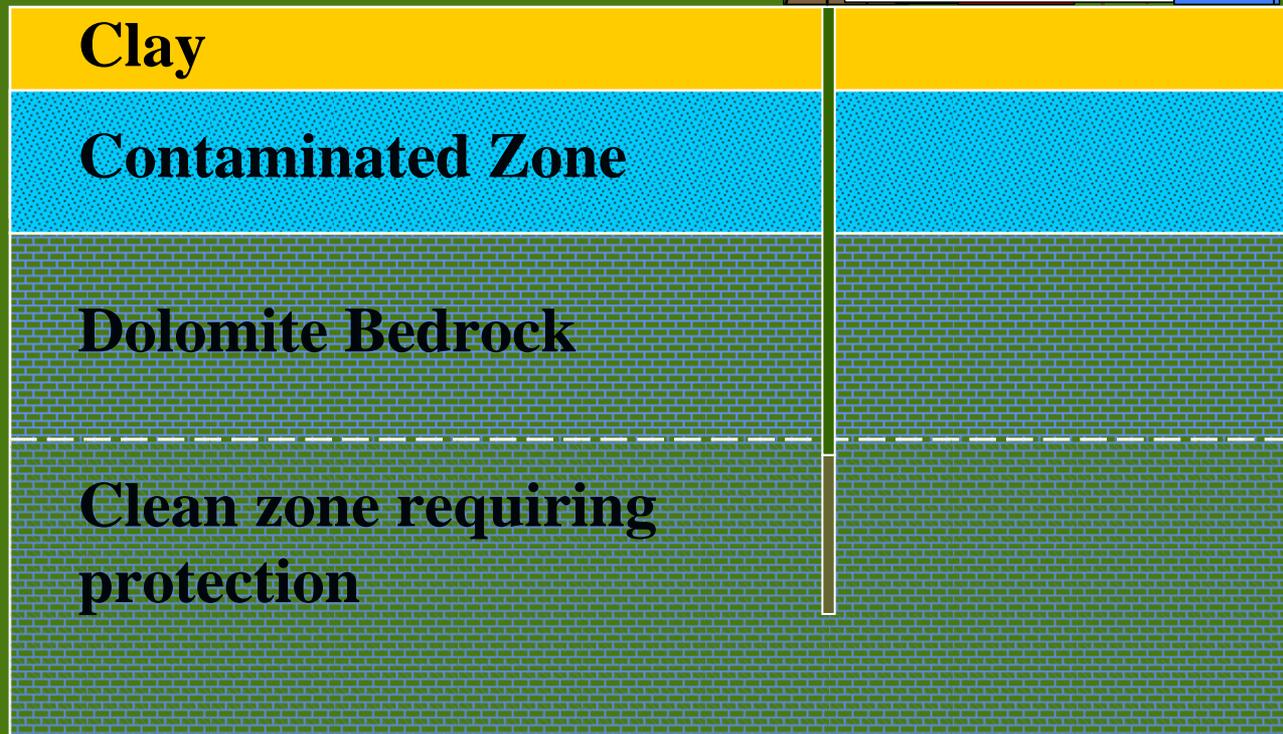
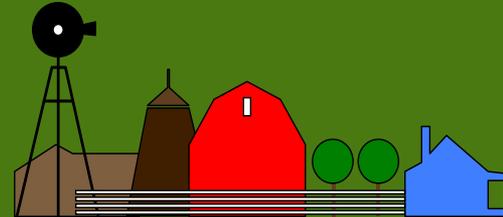
- Toxicity screening levels



Ground Water Classification and Response Requirements (OAC 3745-300-10)

- Potential potable use depends on yield or whether it is currently used
- If GW is contaminated and capable of being used as a potable source, must meet the potable use standards at the property boundary (point of compliance for groundwater)

Protection of Ground Water Meeting Unrestricted Potable Use Standards



Clay

Contaminated Zone

Dolomite Bedrock

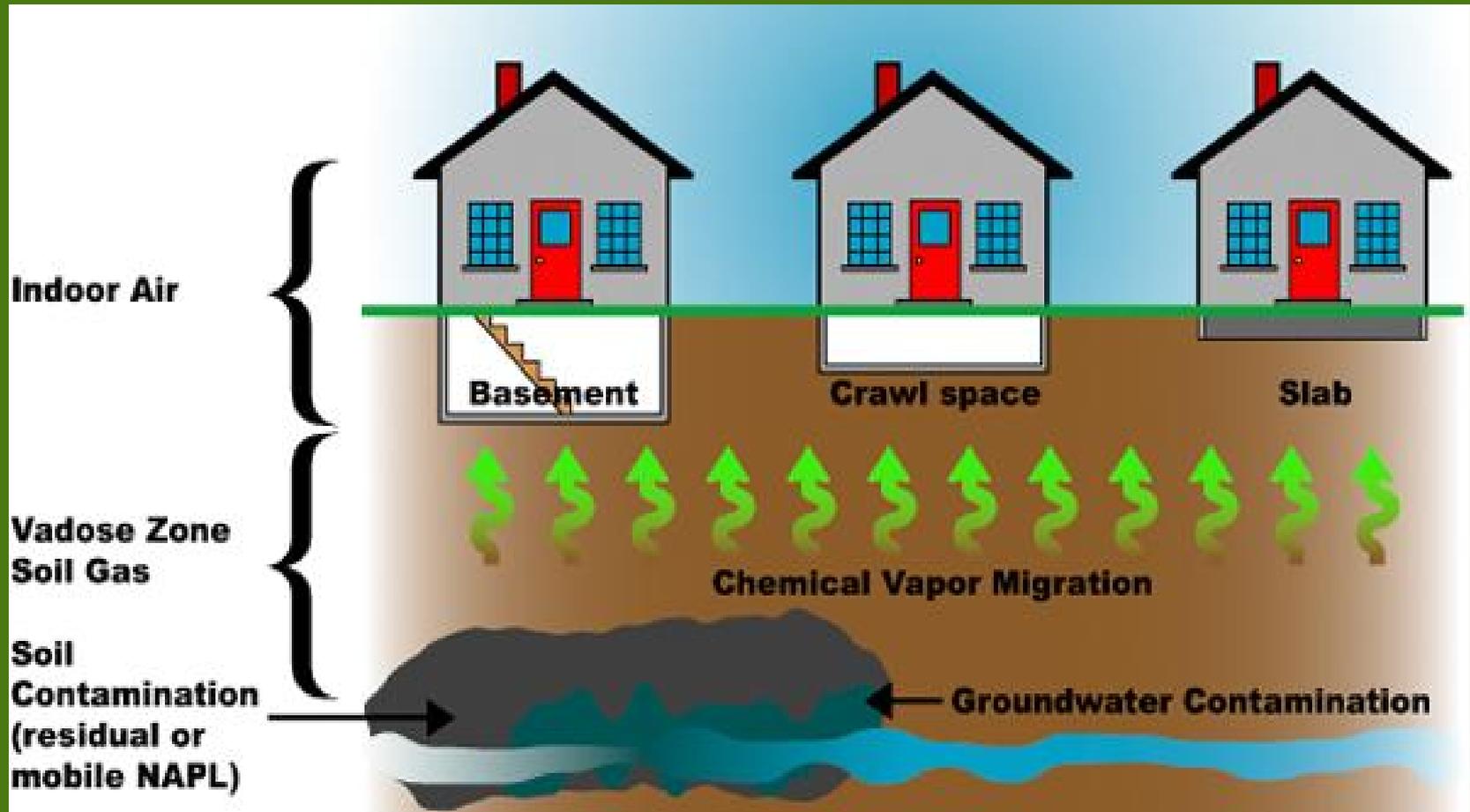
Clean zone requiring protection



Property-Specific Risk Assessment (OAC 3745-300-09)

- In lieu of generic standards
- When pathways exist that the generic standards did not consider (example: vapor intrusion)
- When terrestrial eco receptors are present or surface water/sediment contaminants exceed generic standards
- Prescribed format

Vapor Intrusion



Remedy (OAC 3745-300-11)

- Activity and use limitations
 - Recorded with deed
- Active remedy (dig and haul, ground water pump and treat)
- Passive remedy (natural attenuation)
- Risk Mitigation – specifically for construction/excavation workers
- O&M required – for remedies not complete at the time of the NFA Letter or for barrier engineered controls

Active Remediation



Vapor Intrusion

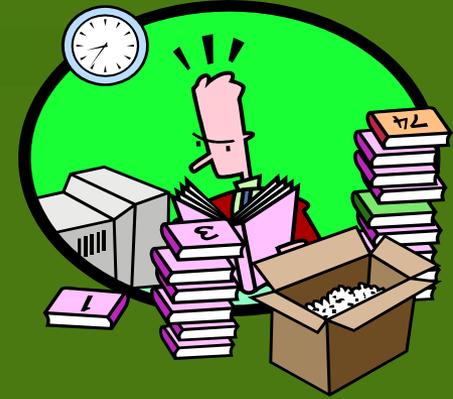


Review of NFA Letter



- CP issues NFA Letter that documents that the Property meets or will meet applicable standards.
 - Phase I NFA - No releases
 - Phase I/II NFA (with/without remedy) all standards met.
 - Phase I/II NFA + O&M Plan, an ongoing remedy or permanent barrier.

Review of NFA Letter



- Review Guidelines (these are total times for Ohio EPA review, clock stops when more information is required from CPs/Volunteers)
 - 30 day: no consolidated permits or no engineering/institutional controls.
 - 90 day: permits or controls present.
 - Issue a Covenant not to Sue (CNS); or
 - Denial of a CNS



Voluntary Action Program Fee Schedule effective July 1, 2010



In accordance with Ohio Administrative Code (OAC) 3745-300-03(G), Voluntary Action Program fees described in OAC 3745-300-03(B)(6) to (B)(10) and (C)(3)(b) will increase annually on July 1 by the percentage of increase (if any) from the previous year of the Consumer Price Index [as defined in OAC 3745-300-01(A)(20)]. The average annual CPI from 2008 to 2009 increased by 3%. Therefore, the VAP fees will increase on July 1, 2010.

	Fee as of July 1, 2009		Fee as of July 1, 2010
<u>No Further Action Letters submitted for a covenant not to sue</u>			
NFA includes only a Phase I investigation with no releases identified	\$2,980.00	plus 3%	\$3,070.00
NFA includes only a Phase I investigation with asbestos as the only contaminant identified	\$8,270.00	plus 3%	\$6,460.00
NFA includes both a Phase I and Phase II assessment	\$12,760.00	plus 3%	\$13,140.00
NFA includes both a Phase I and Phase II assessment and an operation and maintenance plan and agreement	\$17,650.00	plus 3%	\$18,180.00
<u>Variance</u>			
Variance from Applicable Standards	\$23,810.00	plus 3%	\$24,520.00
<u>PAYGO Administrative Processing Fee</u>			
Processing fee charged to volunteers submitting a No Further Action Letter in request of a covenant not to sue under the Pay-As-You-Go (PAYGO) process	\$1,060.00	plus 3%	\$1,090.00

CNS

- The CNS is issued to the Volunteer, protects them from future Ohio EPA enforcement for the described releases.
- The CNS is recorded in the same manner as a deed to property.

Audits of NFA Letters

- At a minimum, 25% of NFA Letters received by Ohio EPA will be audited to ensure that the applicable standards have been met and appropriate protocols were followed.
- Tier I Audit = Paper Review
- Tier II Audit = Sampling



The VAP Memorandum of Agreement Process (MOA)

- A Partnership with USEPA –
- Public notification
- Protection under the MOA (upon issuance of CNS) gives the volunteer “comfort” that US EPA will not over file at VAP sites (except under limited circumstances)

PAYGO Process

- Alternative to paying NFA Fee
- Pay As You Go Process (PAYGO)
 - Must be entered BEFORE the NFA is issued by the CP.
 - \$1,000 “retainer” is paid to Ohio EPA upon entry
 - All review (pre- and post- NFA issuance) billed as Technical Assistance (hourly rate plus fringe and overhead of the agency personnel performing the review)
 - Administrative Fee (currently \$1,090) is also paid when NFA is submitted for review

Summary

- Program is VOLUNTARY
- Program is privatized in that it relies on certified individuals in the private sector
- Fee and direct-billing based
- Certified Professionals and Certified Laboratories
- Technical Assistance
- NFA Letter – issued by CP
- CNS – liability protection from state (not 3rd party suit)
- MOA Track – provides federal “comfort”
- PAYGO Process – alternative to NFA fees – billed as TA

Contact Information

- VAP Web page
 - <http://www.epa.ohio.gov/derr/volunt/volunt.aspx>
- Audrey Rush
 - audrey.rush@epa.ohio.gov

Questions???

