

**Division of Emergency & Remedial Response**

**VOLUNTARY ACTION PROGRAM**

**2004 ANNUAL REPORT**



*Polk RL Building, Cincinnati*

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**November 2005**

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## 2004 Voluntary Action Program Annual Report to the Legislature Summary

Ohio's Voluntary Action Program (VAP) was created in September 1994 and, with the adoption of rules, became fully implemented in early 1997. The program was created to allow companies a way to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio (covenant not to sue or CNS) that no more cleanup is needed. Prior to the creation of this program, valuable land sat idle because fears of immense liability and cleanup costs scared off potential developers, businesses and banks. Some developers had abandoned plans to clean up their contaminated properties because Ohio EPA, which must focus its efforts on the worst sites, could not make those properties a priority. By creating this program, Ohio recognized the need to remove the environmental and legal barriers that stalled redevelopment and reuse of contaminated properties.

The program is getting sites cleaned up. Since the program was fully implemented, certified professionals (CPs) have issued 235 No Further Action (NFA) Letters for sites they have determined meet VAP standards. Of these, 165 have received a CNS. Of the remaining NFAs issued, 14 were denied a CNS, 17 were allowed to be withdrawn during the early years of the program, 12 were issued by the CP without requesting a CNS and 27 are pending review. (Note that some of the withdrawn or denied NFAs were resubmitted and issued a CNS.) This has resulted in over 3,250 reported acres being cleaned up for possible redevelopment over the life of the program, 374 in 2004 alone. In addition, CPs use the standards developed by Ohio EPA to clean up thousands of other sites that do not get submitted for state liability release. During 2004, 25 sites received a CNS; some of these are highlighted in this report.

*Since the Voluntary Action Program began, more than 3,250 acres have reportedly been cleaned up for redevelopment, including 374 acres in 2004 alone.*

*In 2004, the amount of time it took Ohio EPA to review a No Further Action letter decreased by 39 percent after Ohio EPA worked with CPs to identify common roadblocks, and developed clearer procedures.*

The VAP has been working toward improving the efficiency of NFA reviews over the past several years. This has culminated in the implementation of the VAP Timeline Project. This project specifically focused on how to meet VAP statutory review deadlines. The knowledge Ohio EPA has gained in almost seven years of project review experience was used to determine what causes project holdups. Based on this knowledge, which looks at time lags that happen on the Agency's end as well as the CP's end (when problems and deficiencies are found during NFA reviews), a Timeline Procedure was developed and implemented at the end of September 2003. The data collected from tracking the steps

and roadblocks to reviewing the NFAs are evaluated annually to continue to identify potential problems and improve the process. The initial analysis of the progress in NFA reviews in 2004 showed a 39 percent decrease in the number of review days from receipt of the NFA to CNS issuance compared to 2003.

On December 22, 2004, Governor Taft signed the Uniform Environmental Covenants Act (HB 516). This legislation establishes environmental covenants that would impose activity and use restrictions that would transfer with the property and remain in perpetuity. This covenant generally applies to property that has undergone environmental remediation or mitigation. This bill codifies and makes uniform practices already being carried out by Ohio EPA, including the VAP. Therefore, passage of HB 516 only required procedural changes in implementation from use restrictions to environmental covenants.

This report provides an update of the program activities for 2004. Please contact the Ohio EPA Voluntary Action Program at (614) 644-2924 with questions.

## 25 Properties Receive Covenants Not to Sue

During 2004, Ohio EPA issued 25 covenants not to sue. The following are some examples of sites that received a covenant not to sue (CNS).

### Former Swan Cleaners - Columbus

Graceland Shopping Center opened in Columbus in 1954, and Swan Cleaners operated at a 0.61-acre location in the shopping center from 1954 until 1993. After 1993, the store ceased dry cleaning and became a customer drop off and pickup location only. Additional retail establishments occupied the property after 1998. The property and the shopping center are presently being redeveloped for new retail uses, including a Kroger Marketplace and Target.



*A new Target has been constructed on the site of the former Swan Cleaners.*

The property was evaluated for the presence of volatile organic compounds, primarily the dry cleaning chemical tetrachloroethane (PCE), in the soil and ground water. The property meets soil standards for residential land uses. In order to meet ground water standards, a restriction against extracting ground water has been put in place at the site, except for investigation of the ground water or construction and maintenance activities.

### M-S Company - Norwalk

The 5.58-acre property at 100 North West Street includes a 17,000-square-foot building that is currently being leased by DITZ Designs, which manufactures gifts and home accessories. DITZ has leased the property since 1997. From its construction in 1958 until 1996, the Norwalk Thermostat Company (Norstat) assembled mechanical and electrical thermostat components there. Prior to 1958 the land use was agricultural. DITZ Designs plans on purchasing the property instead of leasing and continuing its current operation.

The primary concern of contamination on the site was an area where trichloroethane and hydraulic oil were stored. None of the chemical concentrations in the soil exceeded the applicable standards. As a precautionary measure, however, 43 tons of soil were excavated from four small



*DITZ Designs on North West Street*

areas. Due to elevated levels of trichloroethane in the ground water, a deed restriction on the property prohibits ground water from being extracted for any purpose except for investigation or remediation. The deed restriction also prohibits the construction of any basement or subsurface structures without prior approval of Ohio EPA, and limits the use of the property to commercial or industrial purposes.

### **GOJO Building - Akron**

The GOJO Building is located at 600 South Main Street, Akron, a densely urbanized area of downtown. The 6.5-acre property has been owned by the City of Akron since 1986 and contains an office building and parking area, and adjacent lawn areas. The City's sale agreement with GOJO Industries required the city to pursue a covenant not to sue.



*GOJO Building*

Prior to 1968, the property had been used primarily for residential and commercial purposes, such as stores, restaurants and hotels. However, the site was tested for possible contamination from previously operating auto and electrical repair shops and manufacturing complex which bordered the property. The chemicals of concern from historical use were metals, volatile and semi-volatile organic compounds, and total petroleum hydrocarbons. The results of sampling and modeling showed that the property meets standards for industrial

and commercial use. A deed restriction was placed on the property to limit its use to industrial and commercial uses and to prohibit the extraction of ground water.

### **R. L. Polk Building Property - Cincinnati**

The 10-story structure, located at 400 Pike Street, covers a majority of the 1.59-acre property. Since the early 1900s the property has been used for commercial purposes including business offices, printing operations, photo processing, and storage. The current owner, the Miller-Valentine Group, has refurbished the existing building into 114 residential units, a parking garage, and commercial space.

Results of the initial assessment of the property indicated no releases or potential releases to the environment. An asbestos survey documented the presence of asbestos-containing material in the boiler room, thermal system insulation, some floor



*Model kitchen in Polk Building*

tiles, and roofing felt. All asbestos-containing material was removed from the interior of the building prior to internal demolition.

### Summary of Covenants Not to Sue Issued

PROPERTY NAME, ADDRESS	ACRES	NFA NUMBER	VOLUNTEER NAME	DATE SUBMITTED	DATE ISSUED	CP
Copeland Corp. 751 Industrial Drive Wapakoneta, Auglaize Co.	12.09	03NFA166	Copeland Corp.	6/3/03	1/2/04	John Simon (CP152)
366-370 West Kemper Road Springdale, Hamilton Co.	0.7	02NFA133	City of Springdale	4/24/02	1/27/04	Lawrence Graves (CP163)
M-S Company Property 100 North West Street Norwalk, Huron Co.	5.58	03NFA170	M-S Company, Gould Electronics	6/30/03	2/23/04	Ronald Clark (CP101)
Crane Plumbingware 14909 Gaskill Drive NE Alliance, Stark Co.	32.29	00NFA080	CR/PL, LLC	1/20/00	2/24/04	Lawrence Graves (CP163)
Miami-Carey, Former 203 Garver Road Monroe, Butler Co.	29.89	98NFA032	Martin Clifford Williams US Inc.	8/4/98	2/26/04	Walter Kosinski (CP196)
Ridge Plaza Property 5375 & 5405 Ridge Avenue Cincinnati, Hamilton Co.	11.69	03NFA159	GC Acquisition Corp	1/14/03	4/15/04	John Payne (CP104)
Halliburton Energy Services 5210 St. Rte. 46 Cortland, Trumbull Co.	7.73	98NFA030	Halliburton Energy Services	7/28/98	4/26/04	Ronald Clark (CP101)
Proposed Toledo Prison Site 2001 East Central Avenue Toledo, Lucas Co.	1.22	99NFA055	Universal Cooperatives, Inc.	4/13/99	5/18/04	Michael Momenee (CP236)
GOJO Building 600 South Main Street Akron, Summit Co.	5.99	02NFA155	City of Akron	12/20/02	5/18/04	Ronald Clark (CP101)
Johnson Controls, Former 20-40 S. Airport Drive Mansfield, Richland Co.	9.44	03NFA165	City of Mansfield	5/5/03	5/18/04	Edward McCabe (CP102)
American Paper Group 8401 Southern Blvd. Youngstown, Mahoning Co.	11.09	02NFA146	American Paper Group - APCO Division; Furman South III & John Roberts IV	10/15/02	6/1/04	Guy Wilson (CP168)
Swan Cleaners, Former - Graceland Shopping Ctr. 55-63 Graceland Blvd. Columbus, Franklin Co.	0.61	04NFA181	Graceland Shoppers Limited Partnership	3/8/04	6/4/04	Bruce Savage (CP265)

PROPERTY NAME, ADDRESS	ACRES	NFA NUMBER	VOLUNTEER NAME	DATE SUBMITTED	DATE ISSUED	CP
Finishing Corp. Of America, Former 3770 Wilson Avenue Campbell, Mahoning Co.	36.42	04NFA179	City of Campbell	1/28/04	6/10/04	Jim Smith (CP121)
Sermatech-Lehr Plants 2 & 3 11495 Deerfield Rd Blue Ash, Hamilton Co.	11.38	01NFA115	Sermatech-Lehr	5/3/01	6/21/04	Michael Weinstein (CP126)
Sheffield Measurement Facility, Former 721 Springfield St Dayton, Montgomery Co.	16.57	02NFA134	Giddings & Lewis Controls Measurement & Sensing	5/24/02	7/23/04	Lewis Rhodes, Jr. (CP201)
Sermatech-Lehr Plant 1 11230 Deerfield Rd Cincinnati, Hamilton Co.	9.23	02NFA144	Teleflex, Inc.	10/8/02	8/4/04	Michael Weinstein (CP126)
Chevron Texaco Toledo Refinery Areas 3 & 6 2935 Front Street Toledo, Lucas Co.	7.51	03NFA171	Chevron USA, Inc.; Honeywell International, Inc.	7/1/03	9/21/04	James Burns (CP145)
Lake Abrams Holding Ponds Engle Road Middleburg Heights, Cuyahoga Co.	12.98	02NFA141	Engle Rd II Associates, LP	9/12/02	9/28/04	Matthew Knecht (CP105)
Armored Plastics Site, Former 303 Dura Avenue Toledo, Lucas Co.	2.94	04NFA182	United Technologies Corp.	4/20/04	11/9/04	Bruce Baker (CP198)
Polk RL Bldg 400 Pike St Cincinnati, Hamilton Co.	1.59	04NFA188	Park Place at Lytle LLC	10/8/04	11/10/04	Michael Weinstein (CP126)
Miami Valley Skeet Club Property 9643 Bunnell Hill Road Clear Creek Twp, Warren Co.	77.17	03NFA160	Pollution Risk Services LLC	2/24/03	11/19/04	Keith Egan (CP259)
Niles Mfg. & Finishing, Inc. 465 Walnut Street Niles, Trumbull Co.	18.61	02NFA148	Robert K. Hendricks	10/17/02	11/19/04	Michael Pardus (CP238)
American Tissue Mills 101 North Cooper Avenue Lockland, Hamilton Co.	7.2	04NFA183	Village of Lockland	5/3/04	12/14/04	Ronald Clark (CP101)
Lockland Commerce Park 401 South Cooper Avenue Lockland, Hamilton Co.	19.08	04NFA177	L&L Holding Co. (fka Lockland Development)	1/9/04	12/17/04	Michael Weinstein (CP126)

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PROPERTY NAME, ADDRESS	ACRES	NFA NUMBER	VOLUNTEER NAME	DATE SUBMITTED	DATE ISSUED	CP
Mayer China (former Bailey Walker China Co.) 24400 Solon Road Bedford Heights, Cuyahoga Co.	25.12	04NFA185	Bedford Land Development Co.	6/22/04	12/22/04	Keith Egan (CP259)

## VAP Superfund Memorandum of Agreement Track

On July 31, 2001, Ohio EPA finalized and signed the Voluntary Action Program Memorandum of Agreement (MOA) with U.S. EPA. After many months of negotiations between U.S. EPA and Ohio EPA, an MOA-Track program was developed to incorporate public involvement and up-front oversight into the existing VAP process. Volunteers who follow this track of the VAP will obtain both a CNS from Ohio EPA and comfort that U.S. EPA will not require any additional cleanup at the site. The existing VAP process, known as the Classic VAP Track, is still available to volunteers who do not feel the need for federal comfort and prefer not to incorporate up-front Agency oversight or public involvement into the voluntary cleanup process.

VAP staff created procedures and documents to assist volunteers and certified professionals through a voluntary action that meets both the traditional VAP requirements and the additional public involvement and Ohio EPA review requirements for the MOA track. Detailed information about the VAP's MOA-Track process, including a copy of the MOA, can be found on the program Web page (under the section titled "Final Memorandum of Agreement - July 2001") at <http://www.epa.state.oh.us/derr/vap/moa/moa.html>.

Five sites initiated the first step of the process, the notice of entry into the MOA track, in 2004. These properties are listed in the table below:

PROPERTY NAME AND ADDRESS	VOLUNTEER	DATE ENTERED MOA TRACK
Royal China Property, Former 95 South 15 <sup>th</sup> Street Sebring, Mahoning Co.	Village of Sebring	4/10/04
IMC 3509 Middle Road Ashtabula, Ashtabula Co.	Ashta Chemicals, Inc.	5/4/04
Mansfield Reformatory, Former 100 Reformatory Road Mansfield, Richland Co.	Edward Meehan	8/25/04
SPECO Kelsey-Hayes Mfg. Facility 1205 West Columbia Street Springfield, Clark Co.	City of Springfield, Office of City Manager	10/15/04
800 Mogadore Site 800 Mogadore Road Kent, Portage Co.	Lamson & Sessions Co.	12/24/04

## Audits of No Further Action Letters

Ohio EPA annually audits at least 25 percent of all No Further Action (NFA) letters submitted to the Voluntary Action Program in each calendar year. These audits can be limited to a review and analysis of the documents pertaining to the NFA letter to determine compliance with program requirements (Tier I Audit), or be expanded to include sampling and analysis of soils, surface water, air, sediments or ground water (Tier II Audit). Audits are conducted to determine if the properties meet applicable standards after completion of the remedial activities. Audits also are conducted to ensure that certified professionals and certified laboratories that performed work in support of the NFAs possess the qualifications necessary to perform work under the VAP and that their work results in NFAs that are consistent with applicable standards.

OAC 3745-300-14 describes the procedures for selecting and conducting audits of NFA letters. The rule establishes three "pools" of NFA letters to prioritize their selection for audits. These are the mandatory, priority and random audit pools. The *mandatory audit pool* includes NFA letters meeting one of six criteria that provide reason to believe the NFA letter was issued fraudulently or that performance of the certified professional who issued the NFA letter or the certified laboratory that performed analyses in support of the NFA letter was inadequate. The *priority audit pool* includes NFA letters that included a risk assessment or employed an engineering control (such as a fence) or institutional control (such as a deed restriction) as a remedial activity. The *random audit pool* includes all other NFA letters, including those from the priority audit pool that are not selected during the initial random selection as described below. Properties were selected according to criteria and procedures described in OAC 3745-300-14.

In addition to auditing all NFA letters in the mandatory audit pool, OAC 3745-300-14 requires Ohio EPA to audit at least 25 percent of NFA letters for properties where remedial activities occurred and 25 percent of those where no remedial activities occurred. Letters are randomly selected from the priority audit pool and the random audit pool to meet the 25 percent quota.

In 2004, the VAP audited 10 of the 19 NFA Letters requesting a CNS that were submitted to Ohio EPA during the previous year (2003), or 53 percent. The following table summarizes the name and address of the properties audited, the NFA number, the basis for selecting the property for audit, and the status of the audit. The completed audits found the properties to be protective of human health and the environment.

### 2003 NFA Letters Selected for Audit in 2004

PROPERTY NAME AND ADDRESS	NFA NUMBER	AUDIT POOL	STATUS
Ridge Plaza Property 5375 and 5404 Ridge Avenue Cincinnati, Hamilton Co.	03NFA159	Selected from Random Audit Pool	Audit completed 10/6/04
Fogg West 140 Street - Puritas Industrial Park Property 4565 Industrial Parkway Cleveland, Cuyahoga Co.	03NFA163	Selected from Random Audit Pool	Audit completed 9/19/05
Johnson Controls 20-40 South Airport Drive Mansfield, Richland Co.	03NFA165	Selected from Priority Audit Pool	Tier I Audit in Progress
Collinwood Parcels C1 & C3 577 East 152 Street Cleveland, Cuyahoga Co.	03NFA168	Selected from Priority Audit Pool	Audit completed 10/27/05
Collinwood Parcel C2 577 East 152 Street Cleveland, Cuyahoga Co.	03NFA169	Selected from Priority Audit Pool	Audit completed 10/27/05
Chevron Texaco Toledo Refinery Areas 3 & 6 2935 Front Street Toledo, Lucas Co.	03NFA171	Selected from Random Audit Pool	Audit completed 4/4/05
Oaks Foundry Western Disposal Area 700 Bronze Road Warren, Trumbull Co.	03NFA172	Selected from Random Audit Pool	Tier I Audit in Progress
Ben Venue Labs Inc. 270 Northfield Road Bedford, Cuyahoga Co.	03NFA173	Selected from Priority Audit Pool	Tier I Audit in Progress
Siemens Energy Automation, Inc. 145 Dellinger Road Urbana, Champaign Co.	03NFA174	Selected from Priority Audit Pool	Tier I Audit in Progress
Wellsville 421 Main Street Wellsville, Columbiana Co.	03NFA176	Selected from Random Audit Pool	Audit completed 9/27/05

## VAP Expenses and Revenues for 2004

### VAP PROGRAM COST

#### PERSONNEL

Fund 4R9 - VAP Fund	\$	347,347.47
Hazardous Waste Management Fund	\$	270,012.29
General Revenue Fund	\$	642,203.17
Superfund Grants (Federal dollars)	\$	259,967.50

Total Cost of Personnel \$ 1,519,530.43

#### MAINTENANCE COST OF THE PROGRAM

Fund 4R9 - VAP Fund	\$	95,464.52
Hazardous Waste Management Fund	\$	15,422.78
General Revenue Fund	\$	152,792.88
Superfund Grants (Federal dollars)	\$	91,332.81

Total Cost of Maintenance \$ 355,012.99

#### EQUIPMENT

Fund 4R9 - VAP Fund	\$	-0.00-
Hazardous Waste Management Fund	\$	-0.00-
General Revenue Fund	\$	61.73
Superfund Grants (Federal dollars)	\$	349.00

Total Cost of Equipment \$ 410.73

#### OTHER - CONTRACTUAL SERVICES

Fund 4R9 - VAP Fund	\$	8,243.85
Hazardous Waste Management Fund	\$	5,000.00
General Revenue Fund	\$	1,918.62
Superfund Grants (Federal dollars)	\$	3,422.32

Total Cost of Other Contractual Services \$ 18,584.79

**TOTAL VAP PROGRAM COST FOR 2004** **\$ 1,893,538.94**

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### VAP FEE REVENUE FOR 2004

Certified Professional Fees	\$	198,000.00
Certified Laboratory Fees	\$	91,580.92
No Further Action (NFAs) Fees	\$	70,150.00
Technical Assistance Cost Recovery	\$	151,139.75
AGO Collected	\$	807.31
Misc. - photocopying, etc.	\$	9,764.00

**TOTAL FEE REVENUE FOR CY04** **\$ 521,441.98**