



August 5, 2014

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

TO: Brownfield Interested Parties Distribution List
FROM: Martin Smith - Voluntary Action Program (VAP) Manager
RE: VAP No Further Action Letter (NFA) review process for NFAs submitted after August 1, 2014

This memo outlines Ohio EPA's No Further Action (NFA) letter review process for volunteers, their consultants and certified professionals (CPs). When a CP issues an NFA letter for a volunteer and then submits that NFA letter to Ohio EPA in request of a covenant not to sue (CNS), it is expected the property for which the NFA letter was issued is VAP eligible, meets applicable cleanup standards and is positioned for a CNS.

Ohio EPA realizes that NFA letters often contain deficiencies. This review process allows the CP and volunteer two opportunities to correct these deficiencies. Examples of deficiencies may include technical issues and/or the finalization of an operation and maintenance plan and/or an environmental covenant. The first opportunity follows the issuance of a comment letter titled, "Initial Notice of Deficiency" (INOD), by the Ohio EPA NFA letter review team. If the volunteer/CP does not issue a response to this comment letter by the stated deadline or the response does not adequately address the deficiencies, Ohio EPA will issue an additional comment letter titled, "Final Notice of Deficiency" (FNOD), providing the CP/volunteer a second opportunity to submit a sufficient response.

Strict response time-lines for volunteers/CPs are implemented in order to allow for timeliness and predictability in the program.

NFA Letter Received

STEP 1

Central Office (CO) processes NFA letter package and verifies the certified professional (CP) affidavit and certification, correct fee, electronic copies, and volunteer letter. If NFA letter does not contain any of these items, it will be placed on hold until these deficiencies are rectified.

CO assigns NFA letter tracking number and enters into database.

CO assigns legal and risk staff, and distributes internal NFA letter memo to district staff.

CO loads CDs on intranet and updates tracking spreadsheets.

STEP 1 (a)

District office supervisor assigns lead reviewer.

District lead reviewer completes eligibility memo and distributes to other divisions.

Note: If it is determined that property is not VAP eligible per responses from other divisions, Ohio EPA will proceed to STEP 6.

District lead reviewer requests ground water assignment, as needed.

1st NFA Letter Review

STEP 2

Lead reviewer schedules internal review team (lead reviewer, ground water, risk and attorney) kick-off call.

Review team reviews and compiles comments for the NFA letter. Ohio EPA will move to STEP 5 if no "Initial Notice of Deficiency" (INOD) required. Lead reviewer schedules conference call with review team, CP and volunteer.

Lead reviewer coordinates comments, creates a draft Initial Notice of Deficiency (INOD) letter and distributes to review team and CO NFA coordinator for final review. Meet as needed to review comments before meeting with CP.

Note: Ohio EPA will not send comments to the CP and volunteer piece-meal. One cohesive INOD will be prepared.

Conference Call with CP & Volunteer

Lead reviewer sends "draft" INOD to review team, VAP CO NFA coordinator, CP, and volunteer.

Conference call is held with the CP (and volunteer if available), review team, and VAP CO NFA coordinator to discuss the entire draft comment letter. During this time, contact information for any operation and maintenance (O&M) agreement and/or environmental covenant (EC) negotiations should be obtained from the CP or volunteer.

Comments that are completely addressed by the CP during the conference call will be deleted from the INOD, but captured in a memo to the file.

Note: The memo to the file will list original outstanding questions in the draft INOD with an explanation of how the issues were resolved. The CP may send a follow-up email to the lead reviewer confirming the resolution of issues and the subsequent removal of draft comments. This document will be part of the record as well as provide clarity to future Ohio EPA audit reviewers.

Ohio EPA finalizes INOD letter with a 35 day response period for volunteer.

Note: No extensions to CP and volunteer's response time permitted.

INOD 35 Day Response Period - O&M Agreement & EC Negotiations

Note: Additional calls and/or meetings with CP and volunteers can take place during this time, as well as communication via e-mail.

Note: DRAFT addendum should not be sent by CP during this period. Technical issues can be discussed and clarifications sought, but documents should not be reviewed by Ohio EPA staff until received under formal CP affidavit via the 1st NFA letter addendum.

Note: Legal communication with volunteer's representative regarding O&M agreement and/or EC should occur during this time period.

1st NFA Letter Addendum Review

STEP 3

Review team reviews and compiles comments for the NFA letter addendum. Ohio EPA will move to STEP 5 if no "Final Notice of Deficiency" (FNOD) required.

Lead reviewer compiles comments, distributes to review team, and meets as needed.

Ohio EPA finalizes FNOD letter with a 35 day response period for volunteer. FNOD signed by VAP supervisor.

Note: Extension past 35 day response date only warranted on a case by case basis with Ohio EPA - VAP manager approval. A rare example of where an extension may be granted is if the CP of record is suspended between the INOD and the FNOD, we may allow the volunteer time to hire a new CP. Note: FNODs will be developed by Ohio EPA even if the only outstanding issue relates to O&M agreement and/or EC language negotiations.

VAP manager, in consultation with VAP supervisor and VAP CO NFA coordinator, reviews and processes FNOD for distribution.

Note: FNOD letters are common practice in the VAP to finalize any outstanding issues with the NFA letter submittal. FNOD letters do not, in any way, equate to an actual NFA letter denial. NFA denial may only occur if the 2nd NFA letter addendum fails to meet applicable standards, or verify eligibility.

FNOD 35 Day Response Period - O&M Agreement and EC Negotiations

Note: Additional calls and/or meetings with CP and volunteers can take place during this time, as well as communication via e-mail.

Note: DRAFT addendum should not be sent by CP during this period. Technical issues can be discussed and clarifications sought, but documents should not be reviewed by Ohio EPA staff until received under formal CP affidavit via the 2nd NFA letter addendum.

Note: Legal communication with volunteer's representative regarding O&M agreement and/or EC should be finalized during this time period.

2nd NFA Letter Addendum Review

STEP 4

Review team and CO NFA coordinator reviews and compiles comments for 2nd NFA letter addendum.

Note: All technical and legal comments must be addressed at this point. The only outstanding issues that may remain are signatures for the O&M agreement and/or EC, and financial assurance demonstrations. No further negotiations of the O&M agreement/plan or EC should occur.

Ohio EPA review team will coordinate whether project should proceed to covenant not to sue (CNS) issuance (Step 5) or denial (Step 6).

Note: If the review team is proceeding with CNS denial, they will notify VAP Manager and move to STEP 6.

CNS Issuance

STEP 5

Lead reviewer will develop electronic CNS package documents and distribute for internal review.

If signatory documents remain outstanding, lead reviewer prepares "Notice of Deadline to Submit Owners' Executed Remedy Documents" for VAP manager's signature. This letter will have a 30 day response time.

Note: This step can also include financial assurance demonstrations. If documents remain outstanding past due date, Ohio EPA will proceed to STEP 6.

Lead reviewer finalizes CNS package and coordinates district sign-off.

Note: Once district sign-off has occurred, CNS package will be sent to CO.

CNS package should be in director's office within two weeks.

Denial of CNS Request (Notice of Impending Denial)

STEP 6

CO provides written notification to CP and volunteer via Notice of Impending Denial giving last opportunity to withdraw CNS request.

Note: This notification may also include eligibility issues related to STEP 1.

If the request to withdraw CNS is not received within 10 days of Ohio EPA written notification to volunteer, lead reviewer will work with review team to complete a CNS denial package. Additional costs will be incurred by the volunteer if the CNS request was made under a PAYGO account and a withdraw request is not submitted to Ohio EPA.

Note: Ohio EPA's goal is not to expend resources on preparing a CNS denial package if volunteer plans to withdraw CNS request. A withdraw request may be received at any time up until the Ohio EPA director signs the CNS denial package.