

TITLE: Issuance and Submission of an Addendum to an NFA Letter Issued by Another Certified Professional

DATE EFFECTIVE: January 2003

HISTORY: Update of VA30005.03.001 - Revision was necessary to reflect changes in the rule citations that became effective in March 2009. However, the technical content of the archived TDC document remains accurate. Website hyperlink updated in 2014.

KEYWORDS: Addendum, NFA letter, certified professional, CP, affidavit

RULE/ AUTHORITY: ORC 3746.11; OAC 3745-300-05(E) and 3745-300-13

QUESTION: Under what circumstances can a certified professional (CP) issue and submit an addendum to a no further action (NFA) letter that was issued by another CP under the Voluntary Action Program (VAP)?

ANSWER: The circumstances under which a CP may prepare, issue and submit NFA letters are provided by Ohio Revised Code (ORC) 3746.11 and Ohio Administrative Code (OAC) 3745-300-13(A)-(E).

To issue an addendum to an NFA letter that was issued by another CP, the CP preparing the addendum must also review the contents of and work performed in connection with the original NFA letter, in accordance with the standard of conduct of OAC 3745-300-05(E)(1)(b). OAC 3745-300-05(E)(1)(b) provides that a CP may render a "voluntary action opinion" only when the CP has (i) managed, supervised or actually performed the work which is required to render the voluntary action opinion, or (ii) has reviewed the work, performed by other qualified persons, which is required to render a voluntary action opinion. By definition, "voluntary action opinion" includes NFA letters issued in accordance with OAC Chapter 3745-300 and ORC Chapter 3746.

The CP must complete whatever activities are necessary to ensure that the NFA letter (as amended) demonstrates the property's compliance with applicable standards, prior to issuance of the addendum. If, based upon a review of the NFA letter, the CP reaches the determinations needed to support the issuance of the NFA letter (as amended by the addendum) under OAC 3745-300-13(A)-(E) and 3745-300-05(E)(1)(b), the CP may issue the NFA letter addendum.

For the above reasons, Ohio EPA considers the CP who issues and submits the addendum responsible for the contents of and conclusions made concerning the NFA letter, both the original NFA letter and the addendum.

Because an addendum amends an NFA letter, an addendum must be submitted under an affidavit by a CP pursuant to OAC 3745-300-13(O), providing the affidavit attestations for NFA letters. VAP has prepared template affidavits that include the attestations contained in OAC 3745-300-13(O) for both NFA letters and addendum to NFA letters. The affidavit templates are provided with the NFA Form, available at <http://epa.ohio.gov/derr/volunt/volunt.aspx>

SUMMARY:

The circumstances under which a CP may prepare, issue and submit NFA letters are provided by ORC 3746.11 and OAC 3745-300-13(A)-(E). The standard of conduct in OAC 3745-300-05(E)(1)(b) also governs the CP's issuance of an NFA letter.

Under the standard of conduct, the CP may issue an addendum to an NFA letter issued by another CP. To issue an addendum, the CP must review the work done in conjunction with the voluntary action as well as the contents of the NFA letter and addendum, and find the NFA letter as amended complies with the criteria of ORC 3746.11 and OAC 3745-300-13(A)-(E).

The submission of the addendum must be accompanied by the CP's affidavit in accordance with OAC 3745-300-13(O).

**OHIO EPA
CONTACT:**

For any questions concerning this issue, please contact the VAP central office at (614) 644-2924.