TITLE: **Issuing NFA Letters for Non-contiguous Parcels**

DATE EFFECTIVE: January 2003

HISTORY: Update of VA30013.09.002 - Revision was necessary to reflect changes in the rule citations that became effective in August 2014.

KEYWORDS: Non-contiguous, parcels, property

RULE/ AUTHORITY: ORC 3746.02(B); OAC 3745-300-01, 3745-300-07, 3745-300-13

QUESTION: Under what circumstances may non-contiguous parcels be the subject of one NFA letter under the Voluntary Action Program (VAP)?

ANSWER: Parcels of property the subject of a voluntary action may be bisected by (i) a railroad spur, roadway, right-of-way, or (ii) an area "carved out" of a parcel pursuant to Ohio Revised Code (ORC) 3746.02(B). ORC 3746.02(B) allows portions of property ineligible for participation in the VAP to be "carved out", so that eligible portions of the property may participate. The non-contiguous parcels resulting from a bisected or "carved out" area may be considered "property" pursuant to Ohio Administrative Code (OAC) 3745-300-01 and addressed under a single NFA letter in accordance with OAC 3745-300-13.

Non-contiguous parcels should be within close proximity of each other such that the bisected or "carved out" area is the reason the parcels are separated. The NFA letter must indicate, with the property information provided pursuant to OAC 3745-300-13(E), the reason for the non-contiguous parcels, i.e., by stating why an area of the parcel was "carved out" or why the property parcels are otherwise non-contiguous.

The NFA letter also needs to address the bisected or "carved out" area when evaluating the complete exposure pathways to receptors at the property, in accordance with OAC 3745-300-07. The NFA letter must evaluate any impact the bisected or "carved out" area may have on the property in the determination of the applicable standards for the property under OAC 3745-300-07(F)(5) and in the resulting demonstration of the property's compliance with applicable standards under OAC 3745-300-07(I).

In cases of ground water contaminated by hazardous substances or petroleum, the bisected or "carved out" area needs to be evaluated in accordance with OAC 3745-300-07(F)(9) to determine whether releases from source areas originating from the bisected or "carved out" area are impacting the property. Contamination due to a source area originating from the "carved out" area would not qualify for the ground water response requirements for source areas located off-property, assuming that the property owner or volunteer caused or contributed to the contamination from the "carved out" area as provided by OAC 3745-300-10(E)(1)(b). Where the conditions of OAC 3745-300-10(E)(1)(b) apply, the response requirements for the ground water contamination are effectively the same as if the off-property source area was located at the property.

OHIO EPA CONTACT:

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