

ARCHIVE: Archived because this document no longer provides current guidance.

TITLE: Response Requirements for Off-Property Ground Water Contamination in a Class A Aquifer if Adjacent Property Owner is Uncooperative

DATE

EFFECTIVE: March, 2000

KEYWORDS: Contaminated ground water; Response Requirements; Off- Property; No Access; UPUS Exceedance; Class A Ground Water

RULE/

AUTHORITY: Ground Water; OAC 3745-300-09 (F) - Response Requirements for Class A Ground Water without an Urban Setting Designation.

QUESTION: It appears that there is ground water contamination migrating off-property above (UPUS). The VAP Rules state that ground water response requirements for a Class A ground water zone require the Volunteer to remediate ground water on and off site to UPUS levels. If the volunteer is not provided access to the adjacent property, it may not be possible to address the off-site contaminant levels. What can the Volunteer do?

ANSWER: If a ground water zone underlying the Property has been classified as a Class A ground water zone without an Urban Setting Designation, then the response requirements are those described in Paragraph (F)(4) of Rule 3745-300-10. The response requirements depend upon whether the ground water contamination is a result of sources from on-Property locations only, from off-Property locations only, or from a combination of on-Property and off-Property locations; the appropriate response requirements are thus found in Paragraphs (F)(4)(a), (F)(4)(b) or (F)(4)(c), respectively. The UPUS values would not necessarily need to be met at the down-gradient Property boundary if the response requirements in (F)(4)(b) or (F)(4)(c) apply; only the contribution from the on-Property source areas need to meet the UPUS at the down-gradient property boundary, as described in Paragraph (J) of Rule 3745-300-15. Therefore, the CP may wish to determine if the identified area extends beyond the property boundaries (see Response #2).

Assuming that the source areas for the ground water contamination emanating from the Property are from on-Property sources only, the response requirements in paragraph (F)(4)(a) of Rule 3745-300-10

apply. In this instance, the Volunteer would need to do the following so that the response requirements would be met:

(1) In accordance with Paragraph (F)(4)(a)(i), establish an on-Property ground water use restriction, or remediate the ground water to the concentrations which meet the UPUS, at all points underlying the Property. Either option would demonstrate compliance with applicable standards on-property under the VAP rules.

(2) In accordance with Paragraph (F)(4)(a)(ii), implement a remedy (*e.g.*, source removal; barriers to ground water recharge; barriers to migration of contaminant; pump and treat systems; passive remediation; cross-gradient pumping; or some other remedy or combination thereof) which would either at the time of the issuance of the NFA letter, or at the end of a period of time not exceeding 5 years under an Operation and Maintenance Agreement (unless agreed to by the Director in accordance with Paragraph (D) of Rule 3745-300-15), ensure that the UPUS will be met at the down-gradient Property boundary so that all ground water emanating from the VAP Property would meet the UPUS.

(3) In accordance with Paragraph (F)(4)(a)(iii), either restore ground water exceeding the UPUS at off-Property (*i.e.*, down-gradient) locations to the UPUS, or provide an adequate alternative potable use water supply to all impacted off-Property receptors (presumably, all impacted potable use wells identified within the 0.5 mile radius investigated in accordance with Paragraphs (D)(1)(c)(xi), (D)(3), (F)(4) and (I)(3)(d) of Rule 3745-300-06, Paragraph (D)(1)(g)(iv) of Rule 3745-300-07, and Paragraph (C)(2)(a) of Rule 3745-300-10) until such that time that the UPUS are met in the ground water at each identified off-Property potable use well location. If no potable wells exist, this demonstration must be included in the NFA Letter to address this requirement.

(4) If complete exposure pathways at both on-Property and off-Property locations exist, a risk assessment or applicable standards comparison should be conducted to demonstrate which pathways are impacted by the contaminants on or emanating from the VAP Property. The Volunteer then must implement a remedy to ensure that risk-based or other applicable standards are met for all exposures based upon pathways identified as complete in accordance with Paragraph

(D)(2) of Rule 3745-300-07, for all receptor populations identified in accordance with Paragraph (D)(1)(g) of Rule 3745-300-07.

If a Volunteer cannot gain off-Property (*i.e.*, down-gradient) access, his ability to identify the response requirements, implement a remedy for all impacted off-Property receptors, and to demonstrate compliance with the response requirements described in Items #3 and #4 above may be impaired. The Volunteer may be able to conduct modeling in accordance with Paragraph (G) of Rule 3745-300-07 to determine exposure point concentration as described in Paragraph (D)(3)(b)(iii)(B)(2) of Rule 3745-300-09) to determine which off-Property receptors are impacted, and where compliance with applicable standards for these off-Property receptors may be demonstrated. In this circumstance, off-Property access may not be required to determine response requirements. However, the consent of off-Property receptors may be required to complete a remedy in accordance with Paragraph (F)(4)(a)(ii) of Rule 3745-300-10, which requires that the Volunteer provide an adequate, alternative potable use supply to off-Property receptors.

SUMMARY:

If the Volunteer is required to address off-Property ground water contamination, then a “good faith” effort to comply with the VAP rules must be demonstrated and included in the NFA package. However, the adjacent property owner holds “veto” power over his/her Property and can decline access and remedial efforts from the Volunteer. However, all response requirements for the VAP property must be complied with, as well as, mitigation of ground water contaminants exceeding UPUS migrating off Property.

**OHIO EPA
CONTACT:**

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