

**ARCHIVE:** Archived because revisions made to VAP rules in 2002 in OAC Chapter 3745-300 necessitate revisions to this guidance. However, this document is accurate under the 1996 VAP rules. Refer to VA30010.03.005 for the updated document.

## OHIO EPA

### DIVISION OF EMERGENCY AND REMEDIAL RESPONSE VOLUNTARY ACTION PROGRAM

## FREQUENTLY ASKED QUESTION #15: Urban Setting Designation Notification Letter: Purpose of USD and Standards

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#### **PURPOSE:**

This series of fact sheets is intended to provide guidance regarding the Agency's position concerning the interpretation of certain VAP rule requirements. The information provided within these documents is based upon Agency evaluation of several Urban Setting Designation Requests submitted as well as assistance provided for several USD technical assistance projects.

#### **BACKGROUND:**

When a USD is requested, the Certified Professional must notify the appropriate legislative authority or authorized representative of any host county, township, and municipality as well as any county, township and municipality whose boundaries are within ½ mile of the proposed USD area. The notice must be contemporaneous with the USD request to the Director and include at a minimum:

- An explanation of the Voluntary Action Program (VAP).
- The purpose of the USD.
- The USD threshold criteria and the fact that the Director must approve or disapprove the designation after consulting with the host city or township.
- A copy of the USD paragraph D of the Ground Water Classification and Response Requirements Rule.

- Location and description of the property or properties for which the designation is being sought.
- The applicable standards for the ground water and source<sup>1</sup> or source areas<sup>2</sup> of ground water contamination if approval is not received.
- The applicable standards for the ground water and source or source areas of ground water contamination if approval is received.
- A statement advising the legislative authority that the Director will consult with the authority regarding the designation, and encouraging the legislative authority to provide written comments or any information relevant to the Director's consideration.
- Notification that a decision may be made by the Director within 90 days of the consultation with the host city or township

**QUESTION:**

What information should be included in the notification letter per OAC 3745-300-10(D)(2)(b) to explain the purpose of the Urban Setting Designation (USD) and to explain what standards need to be met in the conduct of a voluntary action?

**GUIDANCE:****1. What should the notice indicate regarding the purpose of an Urban Setting Designation?**

The following language can be used to explain the purpose of a USD.

An urban setting designation involves a formal recognition by the Ohio EPA that ground water in qualifying urban areas is not currently used as a source of drinking water and is not expected to be needed to meet the demands for public water supplies in the foreseeable future. An approved urban setting designation provides exceptions to certain response requirements for Critical Resources or Class A ground water in the designated areas.

A USD may be requested for properties when there is no current or future use of ground water by local residents for the purpose of drinking, showering, bathing, or cooking. There are areas within Ohio where, because of the urban nature of land use and the reliance on alternative community water systems to supply residents with safe

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<sup>1</sup> **"Source"** is defined under OAC 3745-300-01 to mean either an event which releases hazardous substances or petroleum into environmental media or a vessel or impoundment which contains hazardous substances or petroleum and from which a release of hazardous substances or petroleum has occurred or is occurring.

<sup>2</sup> **"Source area"** is defined under OAC 3745-300-01 to mean any affected media containing chemicals of concern at concentrations sufficient to contribute to an exceedance of applicable standards in any environmental media.

drinking water, ground water is not used as a potable water supply. Thus, ground water that contains chemicals from prior industrial activities poses no potable use risk to the community because it is not used and will not likely be used by humans. In these locations, an approved USD would lower the cost of cleanup and thereby promote economic redevelopment while still protecting public health and safety. Cleanups within USD areas must still protect ecological resources and human from any exposures not related to drinking, showering, bathing, or cooking.

**2. What should the notification letter indicate concerning standards that need to be met (i.e., applicable standards that apply to the ground water and source or source areas if approval for USD is not received per OAC Rule 3745-300-10 (D)(2)(b)(vi) and standards that apply if a USD is received as per (D)(2)(b)(vii))?**

The notification letter should indicate that following standards always need to be met when a NFA is issued, regardless of obtaining an USD Designation and should be conveyed in the notification letter.

1. Protecting Ground Water with Good Drinking Water Quality: Ground water zones that are of a suitable quality for drinking must retain this quality. A Volunteer will have to ensure that contaminants from sources on-property do not cause drinking water standards exceedances in any zones that meet the standard at the time the NFA is issued.
2. Keeping Property Safe: Conditions on the property have to be safe, both now and in the future. A Volunteer will have to ensure that people won't be drinking the ground water, either through a deed restriction prohibiting use, use of engineering controls like tap treatment, or actually remediating the ground water. The volunteer will also have to ensure that people will not come into contact with contaminated ground water inadvertently, such as, breathing vapors released from the subsurface into basements, contacting process water, or encountering contaminated ground water during excavations. Finally, the Volunteer will need to protect ecological receptors on the property from being exposed to ground water with contaminants above acceptable risk levels.
3. Protecting off-property receptors: If the property has caused ground water contamination, a Volunteer may need to protect receptors off the property. One way to protect off-property receptors is to ensure that contaminated ground water that has left the property does not exceed drinking water standards when it reaches wells currently used for drinking, showering, bathing, or cooking. Alternatively, the Volunteer may implement other measures to ensure that off-property ground water users have a water supply that does not exceed drinking water standards. For example, if a current resident is or will be drinking contaminated water, the volunteer will have to provide tap treatment, an alternative supply, or remediate the ground water to ensure the well produces safe water. The volunteer will also have

to ensure that people off the property will not come into contact with contaminated ground water inadvertently like breathing vapors released from the subsurface into basements, contacting process water, or encountering contaminated ground water during excavations. Finally, the Volunteer will need to protect important ecological receptors off the property from being exposed to ground water with contaminants above acceptable levels.

When a contaminant is contributed from both on-property and off-property sources, there may not be an obligation to address off-property receptors. Protecting human and ecological receptors would need to be implemented when the individual or collective effect of on-property sources has caused, or is reasonably anticipated to cause, the applicable standards to be exceeded.

Other requirements and standards will be dictated by the classification of ground water and the location of the source of the contamination and whether an Urban Setting Designation is approved for the property. The discussion of what standards need to be met can be tailored for the property, or generalized.

Applicable standards if an Urban Setting Designation is not approved: The following language can be used to explain what standards need to be met if an USD is not approved. It should be modified to fit the property specific needs.

For Class A and Critical Resource ground water, if an Urban Setting Designation is not received, then the level of contaminants in ground water leaving the property must not exceed drinking water standards at the property boundary. Because of the high yielding nature of Critical Resource ground water, an additional requirement is that the Volunteer must protect future (as well as current) off-property users.

For a contaminant contributed by both on-property and off-property sources, a Volunteer would have to address the source of contamination in a way that prevents those sources from leaching of chemicals of concern which results in exceedance of drinking water use standards at the property boundary.

Applicable standards if an Urban Setting Designation is approved: The following language can be used to explain what standards need to be met if an USD is approved. It should be modified to fit the property specific needs.

For Class A ground water, a USD provides an exemption to meeting standards at the property boundary. For Critical Resource ground water, the concentrations of contaminants in ground water leaving the property must be such that drinking water standards will not be exceeded in the ground water at points ½ mile from the property boundary as a result of contamination from sources or source areas on the Property.

For chemicals of concern contributed by both on-property and off-property sources, the Volunteer may not need to address off-property human receptors. For Critical Resource ground water, instead of meeting drinking water standards in the ground water zone ½ mile from the property boundary, a Volunteer would have to address the source of contamination in a way that prevents those sources from leaching chemicals of concern at concentrations resulting in exceedance of unrestricted potable use standards ½ mile from the property boundary.