

ARCHIVE: Archived due to the 2009 rule revision. Refer to VA30000.09.003 for the updated document.

TITLE: Radiological Materials under the Voluntary Action Program

DATE EFFECTIVE: August 2005

HISTORY: New addition to the Technical Guidance Compendium

KEYWORDS: Hazardous substance, radionuclides, radioactive material

RULE/ AUTHORITY: OAC 3745-300-01(A)(21) and ORC 3746.01(F)

QUESTION: Are radioactive materials a VAP hazardous substance? If so, how are radioactive materials addressed under the VAP?

ANSWER: Yes. Radionuclides or radioactive materials may be a VAP hazardous substance. The VAP statute's definition of a "hazardous substance," ORC 3746.01(F)(1), includes include "[a]ny substance identified or listed in rules adopted under [ORC 3750.02(B)(1)(c)]." SERC adopted a rule, OAC 3750-20-50(A), that incorporates by reference USEPA's list of CERCLA hazardous substances, i.e., 40 CFR Part 302, Table 302.4. This list includes "radionuclides". In addition, the VAP statute's definition of a hazardous substance, ORC 3746.01(F)(4), includes "[a]ny mixture of a substance described in [ORC 3746.01(F)(1) to (3)] with a radioactive material."

When radionuclides or radioactive material mixed with hazardous substances is detected at a property undergoing a voluntary action, the volunteer should contact the Ohio Department of Health (ODH). The cleanup of the radionuclides or radioactive material is to be conducted in compliance with ODH's requirements and be approved by ODH. After the radionuclides or radioactive material is cleaned up and the cleanup is approved by ODH, the volunteer may continue with assessment and cleanup pursuant to the VAP rules and, once applicable standards are demonstrated to be met for the hazardous substances at the property, an NFA Letter may be prepared for the property.

BACKGROUND: *I. The Definition of a Hazardous Substance*

Radionuclides or radioactive materials may be a VAP hazardous substance. The VAP statute's definition of a "hazardous substance," ORC 3746.01(F) (1), includes "[a]ny substance identified or listed in rules adopted under [ORC 3750.02(B)(1)(c)]." See also OAC rule 3745-300-01(A). SERC adopted a rule, OAC 3750-20-50(A), that incorporates by reference USEPA's list of CERCLA hazardous substances, i.e., 40 CFR Part 302, Table 302.4. This list includes "radionuclides".

In addition, the VAP statute's definition of a hazardous substance, ORC 3746.01(F)(4), includes "[a]ny mixture of a substance described in [ORC 3746.01(F)(1) to (3)] with a radioactive material." See also OAC rule 3745-300-01(A).

See also ORC 3746.01(M)(3) (definition of "release" excludes "[a]ny release of a source, byproduct, or special nuclear material from a nuclear accident . . . if the release is subject to financial protection requirements of section 170 of the [Atomic Energy Act] . . ." The exception would be unnecessary if, in general, radioactive material was not a hazardous substance. See June 11, 1996 memo from Jim Payne, AGO, EES, to Christopher Jones, AGO, EES.

II. The VAP's Approach to Radioactive Materials

When a release of radionuclides or radioactive material mixed with hazardous substances is detected at a VAP site, the certified professional should first contact the Ohio Department of Health (ODH). Any necessary decommissioning (cleanup) will be conducted pursuant to a license issued to the property owner. ODH will provide the volunteer with a list of Decontamination Service Providers (Service Providers). These Service Providers are approved and licensed by ODH to provide clean-up of radioactive material in compliance with ODH standards. Once the selected Service Provider has completed the cleanup, they will prepare the report, and submit the report to ODH for review and approval. ODH will then review the report, conduct a site inspection and conduct confirmatory sampling. (Note: Volunteers and Certified Professionals should be aware that ODH bills the licensee (usually the property owner or responsible party) for their review, site inspection and confirmatory sampling.)

Once the radioactive material cleanup has been completed and approved by ODH, the volunteer may continue with assessment and cleanup of the hazardous substances pursuant to the VAP rules and prepare a VAP NFA Letter once it has been determined that the

hazardous substances at the property meet applicable standards. If the volunteer requests that the certified professional submit the NFA Letter to Ohio for a covenant not to sue, the certified professional should include, with the NFA Letter, the approval letter from ODH indicating that the radionuclides or radioactive materials at the site have been cleaned up in accordance with ODH regulations. See OAC 3745-300-15(C) ("Remedial activities conducted under this chapter and Chapter 3746 of the Revised Code must be conducted in compliance with all applicable laws, regulations, rules and ordinances.")

SUMMARY:

Radioactive materials may be a VAP hazardous substance. The VAP statute's definition of a "hazardous substance," ORC 3746.01(F)(1), includes "[a]ny substance identified or listed in rules adopted under [ORC 3750.02(B)(1)(c)]." See also OAC rule 3745-300-01(A)(21)(a). SERC adopted a rule, OAC 3750-20-50(A), that incorporates by reference USEPA's list of CERCLA hazardous substances, i.e., 40 CFR Part 302, Table 302.4. This list includes "radionuclides". In addition, the VAP statute's definition of a hazardous substance, ORC 3746.01(F)(4), includes "[a]ny mixture of a substance described in [ORC 3746.01(F)(1) to (3)] with a radioactive material." See also OAC rule 3745-300-01(A)(21)(d).

When radionuclides or radioactive material mixed with hazardous substances is detected at a VAP site, the certified professional should contact the Ohio Department of Health (ODH). The cleanup of the radionuclides or radioactive material is to be conducted in compliance with ODH's requirements and be approved by ODH. After the radionuclides or radioactive material is cleaned up and the cleanup is approved by ODH, the volunteer may continue with assessment and cleanup pursuant to the VAP rules and, once applicable standards are demonstrated to be met for the hazardous substances at the property, an NFA Letter may be prepared for the property.

**OHIO EPA
CONTACT:**

For further information regarding this issue, please contact the Ohio EPA Central Office, VAP, at (614) 644-2924.

For further information concerning cleanup of radionuclides or radioactive materials pursuant to ODH's requirements, please contact the Ohio Department of Health, Bureau of Radiation Protection, at (614) 644-2727.