

ARCHIVE: Archived due to the 2009 rule revision. Refer to VA30006.09.004 for the updated document.

TITLE: Requesting Records from Ohio EPA for Properties Undertaking a Voluntary Action

DATE EFFECTIVE: August 2005

HISTORY: New addition to the Technical Decision Compendium

KEYWORDS: Public records request, agency file review, diligent inquiry, Phase I site assessment, environmental history review

RULE/ AUTHORITY: OAC 3745-300-06(D)(2)(b)

QUESTION: When conducting an environmental history review on a VAP Property, how can the volunteer or certified professional ensure that all Ohio EPA records are requested for review?

BACKGROUND: When conducting an environmental history review of a VAP property during a Phase I Property assessment, VAP rules require a diligent inquiry of reasonably available information from state and federal agencies, including Ohio EPA. See OAC 3745-300-06(D)(2)(b). OAC 3745-300-06(A)(2) defines “diligent inquiry” and 3745-300-01(A)(38) defines “reasonably available”. Consistent with these definitions a diligent inquiry requires a review of all agency records related to the VAP property, which means requesting files directly from Ohio EPA (or the other agencies) for review. Relying solely on third-party private database search companies (e.g., reports from Environmental Data Resources Inc. or similar companies) is not consistent with VAP rule requirements. OAC 3745-300-01(A)(38) states that information is considered reasonably available when it can be obtained from a source within 90 days after receiving a written request.

ANSWER: To ensure that all Ohio EPA records have been requested for review, the volunteer or certified professional should contact each division within Ohio EPA’s central office as well as the appropriate district office. A fact sheet explaining Ohio EPA’s procedures for public records requests and file reviews is available on the agency’s web site (see <http://www.epa.state.oh.us/pic/facts/records.pdf>). Requests for information should clearly indicate all known property information including the property name and any former names or aliases for the site and/or prior property owners. Property information should also include the street address or addresses, the county name, and the zip code. GIS and Federal ID information may also be helpful, if known.

Finally, the request should specify the information being requested (i.e., all files for the property) and that the request is for a Phase I Property Assessment.

Alternatively, requests for files located in Ohio EPA's central office can be made to Ohio EPA's Office of Legal Services; however, requests for district office files should still be made directly to the applicable district office. Requests for central office files made to Ohio EPA's legal office should specify the division's files you are requesting and that the request is being made in conjunction with a Phase I Property Assessment. This will help to expedite and ensure that the request is forwarded to all divisions of Ohio EPA for response.

It is important to review files located in the district office as well as files located in Ohio EPA's central office, because important information may only be located within one set of files. Situations have arisen where information in one set of files seems to indicate a property is eligible for the VAP, whereas another set of files indicates the property may have eligibility issues arising from past closure obligations that were never completed. Identified areas have also been missed when information contained in one set of agency files indicate known or potential release areas are present and the files were either not reviewed or the information was overlooked during the site assessment. Therefore, a careful search of all Ohio EPA files for the property prior to completion of the Phase I and Phase II Assessments will prevent missing these potential eligibility issues and identified areas, and will avoid unnecessary delays or the potential denial of a CNS.

SUMMARY:

VAP rules require a diligent inquiry of reasonably available historic information from state and federal agencies, including Ohio EPA, when conducting an environmental investigation and assessment of a VAP property. To be consistent with this requirement, all agency records from Ohio EPA (or other agencies) related to the VAP property must be requested for review. When requesting information from Ohio EPA, it is important to request files individually from each division within Ohio EPA's central office as well as the appropriate district office. Alternatively, requests for files located in Ohio EPA's central office can be made to Ohio EPA's legal office. However, requests to review district office files should still be sent directly to the appropriate district office.

**OHIO EPA
CONTACT:**

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