

TITLE: Identified Areas Extending Beyond the Property Boundaries.

DATE EFFECTIVE: March 2000

HISTORY: Update of VA30007.00.001- Revision was necessary to reflect changes in the rule citations that became effective in March 2009.

KEYWORDS: Contaminated soils; extent of contamination; off-property; Identified Area determination

RULES: Identified Area Determination; OAC 3745-300-07(E)(4)-Identified Areas Extending Beyond the VAP Property.

QUESTION: What if the soil contamination defined in an Identified Area extends beyond the property line?

ANSWER: The simplest interpretation of this scenario is that an identified area at a site has been divided by a line defining two adjoining parcels. If an identified area lies partly within the boundaries of the VAP "Property" and partially outside the Property boundary, then the portion of the identified area addressed within the context of the NFA letter (for the Property) carries the liability release of the Covenant Not to Sue. The portion of the identified area lying outside the Property does not carry the liability release of the CNS. If the Volunteer is the owner of the subsequently-divided parcel, and not the owner/operator or otherwise responsible party of the undivided site, then the Volunteer is neither the owner of the impacted soil areas lying outside the Property boundary, nor otherwise a responsible party for that contamination.

If areas impacted by handling of hazardous substances or petroleum "on the Property" are contributing to complete exposure pathways of off-Property locations, then a remedy should be applied to the Identified Area on the Property. For instance, if the Identified Area on the property is contributing to off-Property contamination by leaching to ground water, fugitive dust emissions, or partitioning to water draining from the property by overland flow or controlled storm water discharge, then the contamination in the Identified Area on the Property should be remedied to concentrations which do not contribute to exceedances in contaminated media at off-Property locations.

SUMMARY:

If an Identified Area lies partly within the boundaries of the VAP "Property" and partially outside the Property boundary, then the portion of the Identified Area addressed within the context of the NFA letter (for the Property) carries the liability release of the Covenant Not to Sue. Therefore, the only portion of the Identified Area which needs to be addressed under the NFA is that which falls within the VAP Property. However, any contamination emanating from the Identified Area of the VAP Property must be remediated to concentrations which do not contribute to exceedances in contaminated media at off-Property locations.

**OHIO EPA
CONTACT:**

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