

ARCHIVE: Archived due to the 2009 rule revision. Refer to VA30013.09.001 for the updated document.

TITLE: Multiple Land Uses Under One NFA Letter

DATE EFFECTIVE: December 2000

KEYWORDS: Multiple land use, deed restriction, use restriction, declarations of restriction

RULES: OAC 3745-300-08, OAC 3745-300-09, OAC 3745-300-13

QUESTION: What must I consider and what documentation must I submit with my NFA letter so that the Agency can determine that the appropriate applicable standards have been met for multiple land uses under one NFA letter?

ANSWER: First, the CP and Volunteer should be aware that there is an important distinction between two cases of multiple land use on one NFA Property.

The first case is “**universal multiple land use**,” where the entire Property is demonstrated to be in compliance with applicable standards for more than one land use (e.g., commercial and industrial) throughout the entire Property. Compliance with applicable standards for universal multiple land use is demonstrated by meeting the most stringent standard for each chemical of concern (whether the standard for commercial land use or the standard for industrial land use) across the entire Property. For an NFA letter relying on “universal multiple land use”, the CP must submit the standard documentation demonstrating the use restriction (e.g., a deed restriction or declaration of restriction restricting the Property to “commercial or industrial use only”) has been recorded in the deed records of the county recorder’s office.

The second case is “**spatially separated multiple land use**,” where one standard applies over one portion of the Property (e.g., residential), and a different standard applies over another portion of the Property (e.g., industrial). For instance, compliance with residential standards should be demonstrated over the portion of the Property with defined residential land use; and compliance with

industrial land use standards should be demonstrated over the portion of the Property with defined industrial land use.

For an NFA letter relying on “spatially separated multiple land use”, the CP must submit or demonstrate all of the following:

1. The portion of the Property identified for each land use restriction must constitute a practical exposure unit with respect to human exposures at the Property. Thus, the portions of the Property for which each land use restriction applies must be of a practical size, shape and contour and be consistent with current use and plausible future use scenarios. The Phase II Property Assessment data that support the NFA letter must be adequate to support the demonstration of compliance with applicable standards in each portion of the Property.
2. A separate legal description must be provided for each portion of the Property over which a unique use restriction applies. Thus, the NFA letter supporting a Property with a single residential land use portion and a single industrial land use portion would require three legal descriptions (the entire Property which is the subject of the NFA letter; the portion of the Property with the residential land use restriction; and the portion of the Property with the industrial land use restriction).
3. A map delineating the boundaries of each portion of the Property over which a unique use restriction applies relative to the boundaries of the entire Property must be provided with the NFA letter.
4. A separate practical description must be provided in the NFA letter for each portion of the Property over which a unique use restriction applies. The practical description refers to markers, boundaries, structures and other features which allow the general public to identify the respective portions of the Property over which separate use restrictions apply.

A violation of any restriction at a Property voids the Covenant Not to Sue for the Property, in accordance with Section 3746.05 of the Ohio Revised Code. Thus, for example, the conduct of residential activities at the portion of the Property restricted to industrial land use would

constitute a violation of the use restriction and void the Covenant for the entire Property.

**OHIO EPA
CONTACT:**

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