Ohio EPA RCRA and RCRA AND VAP MOA Track: Notice of VAP Technical Assistance Program and Volunteer’s Agreement to Comply

The establishment of the RCRA and Voluntary Action Program Memorandum of Agreement between the United States Environmental Protection Agency (“USEPA”) and the Ohio Environmental Protection Agency (“Ohio EPA”), effective November 8, 2007 (the “RCRA and VAP MOA Track”) was an administrative effort which required no change to program rules or statute. The RCRA and VAP MOA supersedes the VAP MOA effective July 31, 2007 which similarly required no rule or statutory changes. Because of this, it was determined that the “up-front” oversight required under the RCRA and VAP MOA Track (i.e., Ohio EPA’s review of eligibility determinations, Phase I property assessments, risk assessments, etc.), would be conducted under Ohio EPA’s VAP Technical Assistance Program. Further, volunteers must agree to this and other RCRA and VAP MOA Track procedures in accordance with the MOA. This form provides an overview of the Technical Assistance Program, and overview of the MOA requirement for the volunteer’s agreement to comply with RCRA AND VAP MOA Track procedures, and the attached template: Acknowledgment of Volunteer’s Agreement.

Overview of Technical Assistance Program

Under the conventional or “Classic” VAP Track, Ohio EPA is not required to review any documentation pertaining to a voluntary action until, at the completion of the assessment and cleanup, a no further action (“NFA”) letter for the property is submitted to the Director of Ohio EPA. In order to address the issue of volunteers and certified professionals who seek property-specific technical guidance from Ohio EPA in the largely privatized Classic VAP Track, Ohio EPA established a Technical Assistance Program. Ohio EPA's staff time spent providing technical assistance related to a voluntary action is billed to the volunteer (or person requesting the technical assistance). The charge for technical assistance is based on the hourly rate of the Ohio EPA staff member(s) providing the assistance plus fringe and overhead. For information about the average hourly rates, please see “How to Estimate Average Cost of VAP Technical Assistance”, under the Technical Assistance section of the VAP web page, www.epa.ohio.gov/portals/30/vap/docs/billable.pdf.

All oversight that is required to be conducted under the RCRA and VAP MOA Track will be conducted under the VAP Technical Assistance Program. Therefore, Ohio EPA will bill volunteers (or person requesting the technical assistance) for the time agency staff spend conducting the oversight and reviews related to the RCRA and VAP MOA Track for the property.
To help estimate the costs the volunteer will incur for Ohio EPA’s RCRA and VAP MOA Track reviews and oversight, please refer to the *average* review times listed below. Please understand that these are average amounts of time to conduct document reviews in the Technical Assistance Program (actual review times in the RCRA and VAP MOA Track will vary depending on the complexity of the property, thoroughness of the work product, etc.).

<table>
<thead>
<tr>
<th>Ohio EPA Review Conducted</th>
<th>Average Time for Review</th>
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<tbody>
<tr>
<td>Initial Investigation</td>
<td>60-90 hours</td>
</tr>
<tr>
<td>Phase II Assessment, including Applicable Standards Determination</td>
<td>40-80 hours</td>
</tr>
<tr>
<td>Risk Assessment</td>
<td>30-80 hours</td>
</tr>
<tr>
<td>Remedial Action Work Plan / O&amp;M Plan</td>
<td>50-100 hours</td>
</tr>
<tr>
<td><strong>Total Hours (on average)</strong></td>
<td>180-350 hours (mean of 265 hours)</td>
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Volunteers which are a public entity (e.g., city, county or port authority) may qualify for grant-funded technical assistance to cover costs of Ohio EPA’s oversight under the RCRA AND VAP MOA Track. Contact Ohio EPA, Central Office VAP staff at 614-644-2924 for more information on grant-funded technical assistance and to obtain a sample request letter.

***Agreement to Comply with RCRA AND VAP MOA Track Procedures***

To successfully complete a voluntary action under the RCRA and VAP MOA Track, a volunteer must demonstrate that the voluntary action meets the applicability requirements of the MOA. According to section IV of the MOA, the MOA applies to properties that meet all of the following criteria:

1. The participating volunteer provided a *Notice of Entry into the RCRA and VAP MOA Track (RCRA and VAP MOA Track Form #3)* to Ohio EPA before the volunteer began activities under the program;

2. The participating volunteer agreed to follow the procedures provided under the RCRA and VAP MOA Track and to remain in compliance with those procedures (*RCRA and VAP MOA Track Form #1*) before the volunteer began activities under the program;

3. The participating volunteer completed the voluntary action in compliance
with the RCRA and VAP MOA Track procedures, ORC Chapter 3746 and OAC Chapter 3745-300, and received a covenant not to sue, that is still in effect, from the State of Ohio; and

(4) The participating volunteer demonstrated that the property is not ineligible (RCRA and VAP MOA Track Form #7).

Therefore, to participate in the RCRA and VAP MOA Track, a volunteer must submit a completed Notice of Entry into the RCRA and VAP MOA Track, demonstrate that the property is eligible, and execute the attached Volunteer’s Acknowledgment of Agreement.

By signing the Acknowledgment before a notary public, the volunteer participating in the RCRA and VAP MOA Track acknowledges the volunteer’s agreement to follow the procedures provided under the RCRA and VAP MOA Track (outlined in RCRA and VAP MOA Track Form #1) and remain in compliance with those procedures in conducting the voluntary action. The participating volunteer also acknowledges its agreement to reimburse Ohio EPA for its technical assistance costs. Keep in mind that the volunteer reserves the right to withdraw from the RCRA and VAP MOA Track at any time prior to submission of a no further action letter for the Property provided that Ohio EPA is given written notice of the withdrawal within 14 days after the withdrawal.

Further, the volunteer acknowledges its agreement to allow Ohio EPA and USEPA access to the property to conduct site visits or other visual inspections of the property for purposes of overseeing the voluntary action under the RCRA and VAP MOA Track. In cases where the volunteer is not a property owner or operator, but otherwise has made arrangements with the property owner allowing access for state and federal government oversight purposes, the volunteer may indicate the access arrangement. To the extent the volunteer lacks authority to provide Ohio EPA or USEPA access for oversight of the voluntary action, the agreement requires the Volunteer’s best efforts to obtain such access from the property owner.
ACKNOWLEDGMENT OF VOLUNTEER’S AGREEMENT

The RCRA and Voluntary Action Program Memorandum of Agreement between the Ohio Environmental Protection Agency ("Ohio EPA") and the United States Environmental Protection Agency ("USEPA"), effective November 8, 2007 (the “RCRA and VAP MOA Track”) was an administrative effort which required no change to program rules or statute. The RCRA and VAP MOA supersedes the VAP MOA effective July 31, 2007 which similarly required no rule or statutory changes. The MOA requires that participating volunteers agree to comply with the procedures provided under the RCRA and VAP MOA Track and to remain in compliance with those procedures. This requirement is met through this form: Acknowledgment of Volunteer’s Agreement.

Compliance with RCRA and VAP MOA Track Procedures: By signature to this agreement, ____________________________(name of RCRA and VAP MOA Track Volunteer) (the “Volunteer”) agrees to follow the procedures provided under the RCRA and VAP MOA Track (as outlined in RCRA and VAP MOA Track Form #1). The Volunteer agrees to remain in compliance with those procedures for the____________ (name) property identified in the Notice of Entry Into the RCRA and VAP MOA Track submitted on ________________________(date) (the “Property”) until submission of a no further action (“NFA”) letter issued for the Property in accordance with Ohio Revised Code (“ORC”) 3746.11 and Ohio Administrative Code (“OAC”) Chapter 3745-300.

VAP Technical Assistance Program and Ohio EPA Oversight: By signature to this agreement, ____________________________(name of Volunteer or other person agreeing to pay for technical assistance) agrees to reimburse Ohio EPA its actual costs related to RCRA and VAP MOA Track oversight of the Property, including those costs incurred in conducting document reviews, site visits, and other activities necessary to complete the RCRA and VAP MOA Track. Ohio EPA’s invoices for technical assistance costs should be mailed or directed to: ____________________________(name, job title, of contact person with Volunteer / payor), at ____________________________(address). [Note: If the Volunteer is a public entity and is requesting grant-funded technical assistance to cover RCRA and VAP MOA Track oversight costs, submit with this Agreement the Volunteer’s request letter for grant-funded technical assistance.]

Duration of Agreement; Withdrawal: The RCRA and VAP MOA Track begins upon submission of a Notice of Entry (RCRA and VAP MOA Track Form #3) and ends upon submission of an NFA letter issued in compliance with ORC Chapter 3746 and the rules adopted thereunder in OAC Chapter 3745-300. The Volunteer reserves the right to withdraw from the RCRA and VAP MOA Track at any time prior to submission of a no further action letter for the Property. If the Volunteer withdraws the Property from the RCRA and VAP MOA Track, the Volunteer agrees to provide Ohio EPA written notice of the withdrawal within 14 days after the withdrawal.
Consent to access: The Volunteer, as owner or operator of the Property, consents to Ohio EPA, USEPA and their respective representatives entering the Property during reasonable hours. [Alternate provision for use when the Volunteer is not an owner or operator of the Property, but has already secured access for state or federal oversight under the RCRA and VAP MOA Track: The owner of the Property is ________________ (name of Property owner), who through an access agreement with the Volunteer agrees to provide access to Ohio EPA, USEPA and its respective representatives for the purposes of overseeing the voluntary action under the RCRA and VAP MOA Track.] -or- [Alternate provision for use when the Volunteer is not an owner or operator of the Property and does not yet have Property owner’s consent to access: The owner of the Property is ________________ (name of Property owner). The Volunteer agrees to use best efforts to secure access from the Property owner for the purposes of this agreement. The Volunteer agrees to contact Ohio EPA once a consent to access is obtained.]

The consent to access for the purposes of this agreement extends to site visits or other visual inspections of the Property related to Ohio EPA or USEPA oversight of the voluntary action at the Property. By giving consent under this agreement, the Volunteer does not waive or otherwise compromise the Volunteer's rights under federal, state or local law.

It is so agreed:

________________________________________
(Signature)

________________________________________, authorized representative of ________________________________
(Printed/typed name) (Name of Volunteer)

Acknowledgment

Before me, a Notary Public, appeared the above-named individual who acknowledged signing of the foregoing Agreement to be his / her own free act.

In testimony whereof, I have hereto subscribed my name and affixed my seal this _____ day of __________________, 20__.

________________________________________
(Signature)

________________________________________
(Typed/printed name)

Notary Public; my commission expires on __________________, 20__.