



Ohio Revised Code

Section 3746.07 [Repealed effective 9/30/2021 by H.B. 110, 134th General Assembly] Standards and requirements governing voluntary actions prior to adoption of rules.

Effective: September 28, 1994

Legislation: Senate Bill 221 - 120th General Assembly

(A) Until such time as the director of environmental protection adopts rules under divisions (B)(1), (2), and (10) of section 3746.04 of the Revised Code, the following standards and requirements shall govern voluntary actions taken under this chapter:

(1) All point source discharges of pollutants into the waters of the state, as defined in section 6111.01 of the Revised Code, that occur from or on the property shall comply with the applicable effluent limitations established pursuant to Chapter 6111. of the Revised Code.

(2) For hazardous substances having carcinogenic effects that are present in media other than ground water, the carcinogenic risk shall be reduced to within the range of one excess cancer in a population of ten thousand to one excess cancer in a population of one million. For hazardous substances having noncarcinogenic effects that are present in media other than ground water, the noncarcinogenic risk shall be reduced to a level not exceeding a hazard index of one. In either case, the determination of the appropriate risk level shall take into account all of the following:

(a) Actual human exposures to the hazardous substance contaminating the property of persons on and off the property due to the presence of the hazardous substance at the property and its migration off the property;

(b) The current and proposed uses of the property;

(c) The uses of the surrounding land.

For the purposes of division (A)(2) of this section, "carcinogenic effects," "carcinogenic risk," "noncarcinogenic effects," "noncarcinogenic risk," and "hazard index of one" have the same meanings as in the "risk assessment guidance for superfund, volume I health evaluation manual (part



A), interim final," (EPA/540/1-89/002, December, 1989).

(3) A covenant not to sue shall not be issued under section 3746.12 of the Revised Code for property if ground water underlying the property, emanating from the property, or both is contaminated.

(4) For releases of petroleum that are not subject to the corrective action requirements established in rules adopted under division (B) of section 3737.882 of the Revised Code, the voluntary action shall reduce the level of petroleum hydrocarbons and petroleum product constituents to levels at or below the action levels for which a corrective action is required by those rules.

(B) Until such time as the director adopts rules establishing standards governing phase I property assessments under division (B)(3) of section 3746.04 of the Revised Code, standard E 1527 practice for environmental site assessments: phase I environmental site assessment process by the American society for testing and materials shall govern phase I property assessments conducted for the purposes of this chapter. If a phase I property assessment conducted under this division reveals facts that establish a reason to believe that hazardous substances or petroleum have been treated, stored, managed, or disposed of on the property, and if the person undertaking the phase I property assessment wishes to obtain a covenant not to sue under section 3746.12 of the Revised Code, a phase II property assessment shall be conducted in accordance with division (C) of this section or with rules adopted under division (B)(4) of section 3746.04 of the Revised Code, as appropriate.

(C) Until such time as the director adopts rules establishing standards governing phase II property assessments under division (B)(4) of section 3746.04 of the Revised Code, a phase II property assessment shall demonstrate that any contamination present at the property does not exceed applicable standards or that the remedial activities conducted at the property have achieved compliance with applicable standards. A phase II property assessment conducted pursuant to this division shall consist of an evaluation of the current environmental conditions of the property, including, at a minimum, all of the components identified in divisions (B)(4)(a) to (f) of section 3746.04 of the Revised Code and the identification through sampling of all sources of contamination on or at the property.

(D) Until such time as the rules adopted by the director under division (B)(5) of section 3746.04 of the Revised Code require the certification of professionals to issue no further action letters under



section 3746.11 of the Revised Code, a person who, on the effective date of this section, meets any of the following is hereby deemed to be a certified professional for the purpose of issuing no further action letters under that section pertaining to all investigations and remedies:

(1) A person who is a professional engineer registered under Chapter 4733. of the Revised Code, who has at least five years' practical experience in the investigation or remediation of releases of hazardous substances or petroleum into the environment, and who has at least three years' experience in directly supervising projects that remediated releases of hazardous substances or petroleum into the environment;

(2) A person who has been duly certified as a professional geologist by the American institute of professional geologists, who has at least five years' practical experience in the investigation or remediation of releases of hazardous substances or petroleum into the environment, and who has at least three years' experience in directly supervising projects that remediated releases of hazardous substances or petroleum into the environment;

(3) A person who has been duly certified as an industrial hygienist by the American board of industrial hygiene, who has at least five years' practical experience in the investigation or remediation of releases of hazardous substances or petroleum, and who has at least three years' experience in directly supervising projects that remediated releases of hazardous substances or petroleum into the environment;

(4) A person holding at least a master's degree in toxicology or a related field from an accredited university, who has at least five years' practical experience in evaluating the human health risk and environmental risk associated with releases of hazardous substances or petroleum into the environment, and who has at least three years' experience in directly supervising projects that remediated releases of hazardous substances or petroleum into the environment.

Prior to his first submission of a no further action letter to the director under section 3746.11 of the Revised Code, any such person shall submit to the director a copy of his credentials, a certified statement of his relevant practical experience, a statement indicating that he has not been disqualified by an agency in this state or another state from performing environmental work, and a fee of two thousand dollars. Upon payment of that fee, the person need not pay another fee to the



director for the purposes of this chapter until he is certified by the director pursuant to the rules adopted under division (B)(5)(c) of section 3746.04 of the Revised Code.

(E) Until the rules adopted by the director under division (B)(6) of section 3746.04 of the Revised Code require the certification of laboratories to conduct analyses for the purposes of the voluntary action program under this chapter, laboratories that, on the effective date of this section, meet either of the following are hereby deemed to be certified laboratories for the purposes of this chapter:

(1) Any laboratory that is participating in the contract laboratory program of the United States environmental protection agency and that meets the requirements set forth in the "user's guide to the contract laboratory program" (1991) of the office of emergency and remedial response of that agency and the "statement of works for organic and/or inorganic analyses" of that agency;

(2) Any laboratory approved by the director under division (C)(6) of section 6109.04 of the Revised Code to perform analyses of drinking water parameters.

Prior to first performing work for the purpose of a voluntary action under this chapter, any such laboratory shall pay a fee of two thousand dollars to the director. Upon payment of that fee, the laboratory need not pay another fee to the director for the purposes of this chapter until it is certified by the director pursuant to the rules adopted under division (B)(6)(b) of section 3746.04 of the Revised Code.

(F) Until such time as the director adopts rules under division (B)(7) of section 3746.04 of the Revised Code, a no further action letter prepared under section 3746.11 of the Revised Code shall include the information specified in divisions (B)(7)(a) to (e) of section 3746.04 of the Revised Code.

(G) Until such time as the director adopts rules under divisions (B)(5), (6), and (8) of section 3746.04 of the Revised Code, he shall not accept any no further action letters under section 3746.11 of the Revised Code on and after the date one year after the effective date of this section and shall issue not more than two hundred covenants not to sue under section 3746.12 of the Revised Code.

(H) Until such time as the director adopts rules under division (B)(8) of section 3746.04 of the



Revised Code establishing methods for determining fees to be paid for services provided by the environmental protection agency, the director may do both of the following:

(1) Establish the fee to be paid for reviewing an application for and issuing a consolidated standards permit under section 3746.15 of the Revised Code. Any such fee shall be established on a case-by-case basis in an amount sufficient to defray the direct and indirect costs incurred by the agency for reviewing the application and issuing the permit.

(2) Require any person with whom the director has entered into an operation and maintenance agreement under division (A)(3) of section 3746.12 of the Revised Code to pay the agency for the direct and indirect costs incurred by the agency in monitoring compliance with the agreement. The director shall negotiate a schedule with any such person for the payment of those costs.

Any fee or payment required under division (H) of this section is in addition to the fee established under division (C) of section 3746.13 of the Revised Code for the issuance of a covenant not to sue.