

A guide to the . . .

Administrative Enforcement Process

within the Division of Hazardous Waste Management

Introduction

We developed this information sheet to help you understand the administrative enforcement process within the Division. If you understand the process and are adequately prepared your company can help resolve this enforcement action quickly. We have included answers to the questions most frequently asked by parties involved in the hazardous waste administrative enforcement process.

I have been working with the district inspector to fix the violations. Why is an enforcement action necessary?

We consider the following factors when we decide that an enforcement action is necessary: (1) Ohio EPA needs to obtain redress for your violations; (2) your company's violations are serious; (3) your company has taken too long to address the violations; (4) your company needs to be on a formal schedule to address the violations; and/or (5) your company is a chronic violator.

Why should I try to negotiate an administrative consent order ("Order") with Ohio EPA?

- Negotiating an Order with Ohio EPA avoids expensive and time-consuming litigation.
- It can be a swift resolution of the State's claims against your company for its non compliance.
- We can quickly identify any obstacles to agreement.

Should I continue working with the district inspector?

Yes, the district inspector is the best person to work with you to resolve the technical aspects of the violations.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If your company accepts the enclosed Order as written, sign the Order and send it to the staff attorney referenced in the

Director's letter within two weeks. If your company cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the staff attorney to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the district inspector contain the Agency's position. Since your company was not willing to agree to the Order as written, Ohio EPA needs to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information your company feels may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your company's issues within two weeks from the date of the Director's letter. Additionally, if you believe your company is financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your company's ability to pay.

What will happen at the meeting?

During the meeting, Ohio EPA will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Ohio EPA expects to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, the Agency will hold its offer of settlement open. If we do not feel we are making adequate progress, the offer of settlement may be withdrawn and the Agency may consider other enforcement alternatives, including a referral to the Office of Attorney General.

Why do I have to pay a civil penalty settlement?

A penalty is necessary to deter future violations and to remove any economic incentive your company may have realized from not complying with Ohio's hazardous waste law. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmental project (SEP). A SEP may include activities such as conducting a pollution prevention assessment, carrying out a specific pollution prevention project, arranging for the removal of wastes in school labs or other worthy environmental projects.

How did Ohio EPA arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's RCRA Civil Penalty Policy to calculate the penalty. Since U.S. EPA can seek up to \$25,000 per day per violation and Ohio can seek up to \$10,000 per day per violation, Ohio EPA adjusted the matrix accordingly. We have shown the matrix at the top of the next column. Ohio EPA uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violation. Enclosed is a summary of Ohio EPA's civil penalty settlement calculation. If you want a copy of U.S. EPA's RCRA Civil Penalty Policy contact the staff attorney at (614)644-3037.

Civil Penalty Matrix

		<i>Extent of Deviation</i>		
		Minor	Moderate	Major
<i>Potential of Harm</i>	Minor	\$40 to \$200	\$200 to \$600	\$600 to \$1,200
	Moderate	\$1,200 to \$2,000	\$2,000 to \$3,200	\$3,200 to \$4,400
	Major	\$4,400 to \$6,000	\$6,000 to \$8,000	\$8,000 to \$10,000

Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority -- specifically, the staff attorney, the district inspector, and the case coordinator from the

enforcement unit. The division's enforcement coordinator may also attend the meeting.

Who should I bring to the meeting?

Similarly, you should bring people who are familiar with the issues and have the authority to settle this matter. You may want to contact your attorney.

If we reach agreement, will Ohio EPA issue a news release?

Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and therefore we are unable to negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our Web site. You can read all of our news releases at:

<http://www.epa.ohio.gov/pic/current.aspx>.

Ohio EPA Contacts

Legal Section	(614)644-3037
Central District Office	(614)728-3778
Northeast District Office	(330)963-1200
Northwest District Office	(419)352-8461
Southeast District Office	(740)385-8501
Southwest District Office	(937)285-6357