

# Ohio EPA Enforcement

Bill Fischbein & Todd Anderson  
Supervising Attorneys  
Ohio EPA, Legal



# The Backdrop

- ★ Number of Inspections
- ★ Number of Complaint Investigations
- ★ Number of Notice of Violation Letters
- ★ How does Ohio EPA decide which to pursue through formal enforcement actions?



# Priority Cases

- ★ Protecting Human Health/Environment
- ★ Recalcitrance in Addressing Noncompliance
- ★ Programmatic Integrity



# Case Development

- ★ Most cases are referred from district offices
- ★ Some cases are initiated by verified complaints from citizens being impacted by violations
- ★ Staff evaluate options and make a recommendation to the Director on how to proceed



# Key Players

- ★ Divisions' Enforcement Committees and District Inspectors
- ★ Ohio EPA Attorneys
- ★ Ohio Attorney General's Office, Environmental Enforcement Section
- ★ Ohio EPA Office of Special Investigations



# Types of Enforcement

- ★ Director's Findings and Orders
- ★ Judicial Enforcement (i.e. Court)
- ★ Criminal Enforcement



# Administrative Enforcement Process

- ★ Letter sent by the Director
- ★ Settlement discussions conducted with Ohio EPA attorneys and enforcement staff
- ★ If case is resolved, resolution is memorialized in Director's Findings and Orders



# Judicial Enforcement (Civil)

- ★ Some cases referred to the Attorney General's Office as initial step
- ★ Some cases are referred because of a lack of resolution in administrative process
- ★ Often opportunity to negotiate before complaint is filed



# Criminal Enforcement

- ★ Most of EPA's statutes have criminal sanctions
- ★ Office of Special Investigations along with agents from the Bureau of Criminal Identification and Investigation (BCI& I)
- ★ Criminal Enforcement often coordinated with federal agencies such as US EPA and US Attorney's Office



# What Will Agency Seek in a Case?

## ★ Administrative/Civil

- ★ “Injunctive Relief” – enforceable commitments to correct the problem
- ★ Civil Penalty
- ★ Stipulated Penalties in most civil cases

## ★ Criminal

- ★ Fines, Restitution, Jail Time



# Penalty Factors

## Penalty Factors

- Seriousness of the violation
- Level of effort in addressing violations
- Ability to pay

Goal: Deter violations and not allow economic benefit of non-compliance



# Links To Completed Cases

- ★ <http://www.epa.state.oh.us/dapc/enforcement/enforcement.aspx> - Air
- ★ <http://www.epa.ohio.gov/dhwm/aco.aspx> - Hazardous Waste
- ★ <http://www.epa.state.oh.us/dsw/enforcement/enf.aspx> - Surface Water



# Links To Completed Cases

- ★ <http://www.epa.state.oh.us/dsiwm/pages/issuedactions.aspx> - Solid Waste
- ★ <http://www.epa.state.oh.us/ddagw/enforcement.aspx> - Drinking Water
- ★ [http://www.epa.state.oh.us/derr/remedial/cleanup\\_plans/investigation\\_cleanup\\_orders.aspx](http://www.epa.state.oh.us/derr/remedial/cleanup_plans/investigation_cleanup_orders.aspx) - Remedial Response
- ★ [http://www.epa.state.oh.us/osi/enforcement\\_statistics.aspx](http://www.epa.state.oh.us/osi/enforcement_statistics.aspx)  
- criminal cases



# Ohio's Environmental Audit Privilege Law

- ★ Voluntary Approach
- ★ Benefits to Be Gained



# Privilege

- ★ Privileged with respect to both of the following:
  - ★ Contents of an environmental audit report; and
  - ★ Contents of communications between the owner and those associated with conducting the audit.



# Immunity

- ★ Immune from any administrative and civil penalties for the specific violation voluntarily disclosed;
- ★ Not immune from criminal violations;
- ★ Not immune if violation resulted in significant economic benefit.



# Considered “Voluntary” if:

- ★ Disclosure is not otherwise required by law;
- ★ Do not know or have reason to know that government has commenced an investigation or enforcement action.



# Considered “Voluntary” if:

- ★ Good faith effort made to achieve compliance as quickly as practicable;
- ★ Compliance is achieved as quickly as practicable or within such period as is reasonably ordered by the State;



# Ohio EPA Audit Process

- ★ Investigation/Follow up
- ★ Letter regarding Ohio EPA's perspective



# Questions?

