



The Administrative Enforcement Process within the Division of Materials and Waste Management (Hazardous Waste Program)

We developed this fact sheet to help you understand the administrative enforcement process within the Division. If you understand the process and are adequately prepared you can help resolve this enforcement action quickly. We have included answers to the questions most frequently asked by parties involved in the Division of Materials and Waste Management's ("DMWM") administrative enforcement process.

I have been working with the District Office 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 violations are serious; (3) you have taken too long to redress the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Orders") with Ohio EPA avoids expensive and time-consuming litigation.
- It can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacles to agreement.

Should I continue working with the district inspector?

Yes, the district office inspector will be involved throughout the enforcement process and will continue to work with you to explain the technical aspects of the violations.

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

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, Ohio EPA would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644- 3037 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 you were not willing to agree to the order as written, Ohio EPA needs to know whether you: (1) disagree with the facts contained in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Please send to the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

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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. Except in the most complex cases, 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 referral to the Office of the Attorney General.

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 anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

Why do I have to pay a civil penalty settlement?

A penalty is necessary to deter future violations and to remove any economic incentive you may have realized from not complying with Ohio’s regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project that meets certain guidelines.

How did DMWM 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 in the table below. 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>				
<i>Potential For Harm</i>	Minor	\$40	\$200	\$600
		to	to	to
	\$200	\$600	\$1,200	
	Moderate	\$1,200	\$2,000	\$3,200
		to	to	to
	\$2,000	\$3,200	\$4,400	
Major	\$4,400	\$6,000	\$8,000	
	to	to	to	
\$6,000	\$8,000	\$10,000		

News releases

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 so we do not 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 our news releases at: <http://epa.ohio.gov/News/OnlineNewsRoom/NewsReleases.aspx>