

Ohio EPA Policy	Enforcement; Enforcement Management System	
DSW-0300.001 Removed	Statutory reference: Rule reference:	Ohio EPA, Division of Surface Water Revision 0, August 1, 1988 Removed, April 30, 2003
THIS POLICY DOES NOT HAVE THE FORCE OF LAW Pursuant to Section 3745.30 of the Revised Code, this policy was reviewed and removed.		

This policy does not meet the definition of policy contained in Section 3745.30 of the Ohio Revised Code. Ohio EPA is removing this document from the Division of Surface Water Policy Manual and is considering addressing this topic in a future revision to the Division of Surface Water Guidance Manual.

For more information contact:

Ohio EPA, Division of Surface Water
Compliance/Technical Assistance Unit
P.O. Box 1049
Columbus, OH 43216-1049
(614) 644-2001

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NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 1 OF 6

Enforcement; Enforcement Management System

ATTACHMENTS: 3 (6 pgs.)

PURPOSE: To provide the Division of Surface Water with an outline of the Enforcement Management System.

POLICY: The State of Ohio has the authority to administer the National Pollutant Discharge Elimination System (NPDES) program established by the Clean Water Act. This program is designed to control the discharge of pollutants to the waters of the state by issuing permits to individual dischargers. In Ohio, the program is managed by the Ohio Environmental Protection Agency through the Division of Surface Water. The effectiveness of the NPDES program rests in part on the ability of the division to determine the compliance of dischargers with the terms of their NPDES permits and to take prompt, consistent enforcement action when noncompliance is discovered.

A sound enforcement program begins with a thorough system of compliance tracking. The division's compliance tracking system is based on the principle of self-monitoring. All dischargers holding NPDES permits are required to sample their effluent and report the results in the form of a discharge monitoring report (form 4500) to the Ohio Environmental Protection Agency on a monthly basis. Data from these reports are entered into an automated data system and used to determine the compliance of dischargers.

The Enforcement Section of the division maintains the automated data system, which consists of the Water Permits System (WPS) and the Liquid Effluent Analysis Processing System (LEAPS). This data system, which is updated regularly, contains an inventory of all NPDES permit holders and basic permit information such as name, location, permit number, permit effective and expiration dates, receiving stream network, effluent limitations, and monitoring frequencies.

Once the data from the discharge monitoring reports are entered into the automated data system, the reported values are compared with the permit limitations on file, and a list, called form 130, of non-complying dischargers showing each instance of noncompliance is printed. Another list, called form 125, of the complete file of permit limitations used for the comparison is also printed. Finally, the data system prints letters of violation to be sent to those dischargers that did not submit the required self-monitoring reports.

The Enforcement Section then sends the list of non-complying dischargers (form 130), the list of the file of permit limitations (form 125), and copies of the discharge monitoring reports to the Ohio EPA district office.

The district offices review this monthly output of compliance information and prepare warning letters to be sent to those dischargers in noncompliance with their effluent limitations. The

NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 2 OF 6

use of warning letters is a routine but important part of the enforcement program. The warning letters record the violations that have occurred, ask for an explanation of the violations, request that corrective action be taken to prevent the violations from recurring, and raise the possibility of further enforcement action should the violations continue.

The requirements of compliance schedules in NPDES permits, findings and orders, and judicial orders are tracked by the district offices. Should any discharger fail to meet a deadline established by one of these schedules, the district office includes this schedule violation in a warning letter. The basic content of a warning letter is the same for both schedule violations and effluent violations.

At the same time that the district offices are preparing warning letters, they provide a monthly update of compliance information to be included in the Quarterly Noncompliance Report. Federal regulations require the state to issue a quarterly report detailing the noncompliance of major dischargers. All major municipal, industrial, and federal dischargers are included in the report, which lists each instance of noncompliance, the reason for the noncompliance, and the enforcement action taken in response to the noncompliance.

Because all violations by major dischargers are included in the Quarterly Noncompliance Report, Technical Review Criteria (shown as attachment 1) have been developed to indicate which monthly effluent violations are especially significant. The district office supply the review criteria to all effluent violations and then classify the violations as significant or insignificant. Insignificant are those violations that fall below the significant category but exceed the permit limitation. These classifications will later play an important role in determining the compliance status of the major dischargers and whether or not formal enforcement action will be taken.

The Enforcement Section in the central office receives the monthly updates to the Quarterly Noncompliance Report from the district offices. The central office reviews the updates to assure consistent reporting throughout the districts. Once the information for a full quarter has been collected, the central office assembles the quarterly report, assigns a quarterly compliance status to each discharger on the report, and sends the report to U.S. EPA to be released as public information. The quarterly report is used internally to track the compliance of major dischargers with the terms of their NPDES permits and to evaluate the necessity of taking formal enforcement action.

In its final form, the Quarterly Noncompliance Report lists only those major dischargers that have had instances of noncompliance during the quarter. Of these, the dischargers that have been assigned the quarterly status of significant noncompliance require special attention and possibly formal enforcement action. significant noncompliance refers to noncompliance with either effluent limitations or compliance schedule requirements.

NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 3 OF 6

Significant noncompliance with effluent limitations depends on the magnitude and frequency of the violations. When final effluent limitations are in effect, a discharger is said to be in significant noncompliance when it has had two or more significant violations (as determined by the technical review criteria) of monthly average effluent limitations in a six-month period. Additionally, four violations of any magnitude (significant or insignificant) in a six-month period will cause a discharger to be in significant noncompliance.

When interim effluent limitations are in effect, and they are less stringent than the final effluent limitations, a violation of monthly average effluent limitations of any magnitude during the quarter will cause a discharger to be in significant noncompliance.

Finally, any violations of effluent limitations established in a judicial order will cause a discharger to be in significant noncompliance.

Significant noncompliance with the requirements of compliance schedules occurs when the deadlines established for starting construction, completing construction, and attaining operating level are not met. A discharger is in significant noncompliance when it fails to complete any of these operations within ninety days after the scheduled completion date. Furthermore, a discharger is in significant noncompliance when it fails to comply with any deadline established in a judicial order within ninety days after the scheduled date of completion.

After the Quarterly Noncompliance Report has been completed and the major dischargers in significant noncompliance have been identified, the need to take formal enforcement action is evaluated. Any major discharger in significant noncompliance for two consecutive quarters must be addressed by formal enforcement action unless circumstances warrant other action. At the end of each quarter, the central office prepares a list of all major dischargers in significant noncompliance for two consecutive quarters and sends the list to the district office. The district offices review the list and determine what action to take in each case.

The action that a district office takes in response to chronic significant noncompliance by a major discharger is in part determined by whether interim or final effluent limitations are in effect. When a discharger is in significant noncompliance with interim effluent limitations for two consecutive quarters, the district will take one of the following actions:

- a. If the discharger has been able to meet the interim effluent limitations in the past and has the capacity to meet the limitations now, the district will initiate formal enforcement action.
- b. If circumstances beyond the control of the discharger have prevented it from meeting the interim effluent limitations, and it cannot reasonably be expected to meet the limitations in the future, the district will revise the interim limitations and not take formal enforcement action.

NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 4 OF 6

- c. If the discharger has been unable to meet the interim effluent limitations but has taken action to return to compliance, the district will take no formal enforcement action until the next quarter's compliance information can be evaluated.

When a discharger is in significant noncompliance with final effluent limitations for two consecutive quarters, the district will take one of the following actions:

- d. If the discharger has the capacity to meet the final effluent limitations but has taken no action to return to compliance, the district will initiate formal enforcement action.
- e. If the discharger has been unable to meet the final effluent limitations but has taken action to return to compliance, the district will take no formal enforcement action until the next quarter's compliance information can be evaluated.

Chronic significant noncompliance involving compliance schedules is addressed much the same as chronic significant noncompliance with effluent limitations, except there are fewer options to consider. If the discharger has been in significant noncompliance for two consecutive quarters for failing to meet a deadline in a compliance schedule, the district will prepare an enforcement referral package to begin formal enforcement action.

In addition to chronic significant noncompliance by major dischargers, formal enforcement action can be initiated in response to other conditions. The district office will immediately initiate formal enforcement action in situations where pollution threatens human health or causes severe environmental degradation. The district office may also decide to initiate formal enforcement action against those minor dischargers that have had a history of noncompliance.

Once the decision has been made to initiate formal enforcement action, the district offices begins by preparing an enforcement referral package. The referral package describes the violations that have made formal enforcement action necessary, recommends the enforcement action to be taken, and contains documentation to support the referral (i.e., warning letters, correspondence between the district office and the discharger, inspection reports, etc.). A detailed description of the contents of a referral package is shown as Attachment 3.

Management control of the enforcement referral process is exercised at both the district and central office levels. Once the district staff person prepares an enforcement referral package, it must be reviewed and approved by the district unit supervisor and by the district chief before the package is sent to central office. In central office, management control is exercised by the enforcement coordinator throughout the Water Pollution Enforcement Committee.

NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 5 OF 6

The enforcement coordinator for the division has the responsibility to develop the division's enforcement program, to set enforcement priorities, and to recommend enforcement action to the director of the Ohio EPA. To aid the enforcement coordinator in managing these responsibilities, the Water Pollution Enforcement Committee was created.

The committee is made up of the enforcement coordinator, an Ohio EPA legal representative, the manager of the Enforcement Section, and enforcement staff members. The committee meets bi-weekly to consider the referral packages that have been received from the district offices. Prior to each meeting, an agenda of enforcement cases to be discussed is distributed to committee members.

Based on the case established by the referral package, the committee can recommend that the director send a warning letter, issue findings and orders, or refer the case to the Ohio Attorney General. If the referral package does not support the request for enforcement action, the committee can dismiss the case and return the package to the district office.

During each committee meeting, minutes are taken that summarize each case discussed and the enforcement action decided upon. Since the cases discussed by the committee are confidential until the director has taken final action, the minutes are distributed selectively: minutes are sent to the director, to members of the enforcement committee, and to division personnel involved in the case under consideration. Minutes are also sent to the enforcement coordinators of other Ohio EPA divisions to keep them informed of any case that might involve their programs.

After the committee has made its recommendation, the enforcement document (warning letter, findings and orders, or referral letter to the Ohio Attorney General) is drafted and sent to the director for his approval and signature. Formal enforcement action has officially been taken once the director signs the enforcement document. The enforcement action recommended by the committee and acted upon by the director is recorded in the Water Pollution Enforcement Committee case summary.

The case summary is a historical tracking log that covers every case brought before the committee. The log, presented as a series of narrative summaries with dates, follows the progress of all enforcement cases from referral to the committee through final action by the director. Copies of the log, which is updated regularly, are distributed selectively within the division and to the enforcement coordinators of other Ohio EPA divisions.

Enforcement tracking does not stop with the director's signature on an enforcement document. The division must assure strict compliance with the director's actions. The district offices and enforcement staff are responsible for monitoring compliance with director's warning letters and findings and orders. Should the requirements of these documents be violated, referral to the Ohio Attorney General is immediately considered.

NUMBER: DSW-0300.001
ISSUED: 8-1-88
STATUS: FINAL
DIVISION: DSW
PAGE: 6 OF 6

The central office is responsible for monitoring the progress of all cases referred to the Ohio Attorney General. The division maintains an Attorney General case summary, which records the attorney in charge, the date and reason for referral, and the progress made in resolution for each case referred. Additionally, if the case has been closed, the date and action taken to close the case are reported. This summary is updated quarterly and is distributed within the division.

Enforcement Referral Form

To: Water Pollution Enforcement Committee

From: Name _____, _____ District Office

Date: _____

1) a) Name of entity: _____

b) Complete address of entity: _____

c) Telephone number of entity: _____

d) Name(s) of responsible entity personnel: _____

e) Permit status: _____

2) Violation description

a) Location of violation (be specific): _____

b) Nature of violation. Include a brief description of how long or how after violation has occurred, and environmental and/or health effects of violation.

Enforcement Referral Form for: _____

b) _____

DSW-0300.001 ATTACHMENT 1 (CONT.)

- c) Have there been complaints from the public against this entity? Describe briefly.

- d) Describe enforcement action already taken against the entity for this violation (including letters, telephone calls, meetings). Attach copies of all correspondence with entity regarding this violation.

- e) What is entity's history of compliance or noncompliance? Describe briefly entity's past violations, when they occurred, and whether the entity took steps to remedy such violations.

Enforcement Referral Form for: _____

- f) Are there extenuating circumstances which explain or justify the violation? Describe.

DSW-0300.001 ATTACHMENT 1 (CONT.)

g) Describe any possible measure to remedy the violation.

3) Request for Enforcement Action

a) Name and phone number of all Ohio EPA personnel responsible for or having information on this entity or violation:

b) What type of enforcement action do you recommend?

c) Do you recommend this violation be made public?

Enforcement Referral Form for: _____

d) The attached copies of correspondence, memoranda, laboratory and inspection data, photographs, permits, etc., relate to this violation. The following is a brief listing of all attachments relating to this referral.

DSW-0300.001 ATTACHMENT 1 (CONT.)

4) Technical Feasibility

a) Does the technology exist to abate the current acts of pollution?

b) Is the technology required of a specialized or innovative type? (If so, state the type and reasons for such.)

5) Economic Reasonableness

a) Is the recommended action reasonable considering the current economic status of the entity?

Enforcement Referral Form for: _____

b) Is the recommended action of a type which has been commonly employed to abate similar problems in the area? (Describe similar actions if applicable; if not, briefly note why the recommended procedure is needed.)

c) Will the recommended action result in an undue economic hardship on the entity? (Explain all extenuating circumstances.)

DSW-0300.001 ATTACHMENT 1 (CONT.)

d) Should a detailed economic analysis be performed on the situation? (If yes, give the reasons for your recommendation.)

Signed: _____ Date _____

Unit Supervisor: _____ Date _____

District Chief: _____ Date _____

Section Manager: _____ Date _____

Enforcement Coordinator: _____ Date _____

DSW-0300.001 ATTACHMENT 2

Group I Pollutants - TRC = 1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demand
Total Organic Carbon
Other

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Group II Pollutants - TRC = 1.2

Metals (all Forms)

Other metals not specifically
listed in Group I

Organics

All organics are Group II except
those specifically listed in
Group I

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAs

NTA
Oil and Grease
Other detergents or algicides

Metals

Aluminum
Cobalt
Iron
Vanadium

Inorganic

Cyanide
Total Residual Chlorine

DSW-0300.001 ATTACHMENT 3

Contents of an Enforcement Referral Package

A complete, well-organized enforcement referral package that accurately represents the facts of a case is necessary to expedite enforcement action. When preparing an enforcement referral package, the district office should include the following information.

- 1) A completed Enforcement Referral Form (attachment 3).
- 2) Copies of permits, findings and orders, or judicial orders, where pertinent. If the discharger does not have a permit, this should be noted.
- 3) Copies of all correspondence including warning letters, letters from the discharger, inter-office communications, meeting notes, and telephone memoranda.
- 4) Copies of discharge monitoring reports covering the period of violation, where pertinent.
- 5) Copies of inspection reports and sampling results. If the discharger would not allow access to the property to conduct an inspection or take samples, this should be noted.
- 6) A description of any environmental degradation or threat to human health caused by the violation.
- 7) An index of all documents in the district file if the case is to be referred to the Ohio Attorney General.
- 8) A chronology of events leading to enforcement action.
- 9) An outline of what the discharger must do to correct the violations and return to compliance.
- 10) A draft inter-office communication summarizing the facts of the case and requesting the director's signature on the warning letter, findings and orders, or letter of referral to the Ohio Attorney General.
- 11) A draft copy of the director's warning letter, findings and orders, or letter of referral to the Ohio Attorney General.