

Authorizing and Enforcement Actions - Philosophy and Process

Ohio's Remedial Response Program strives to take actions to address releases of contaminants and/or violations of environmental law at locations where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred. The action would include any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

The mechanism used by the Remedial Response Program to address releases of contaminants to the environment will be proportional to the situation and/or violation(s), take into consideration the responsible party's compliance history, and ensure the action will be protective of human health and the environment. While each case is fact-specific, consistency is a factor in determining the action to be taken. The regulated community can expect a similar response to a comparable situation and/or violation(s), regardless of where it is in Ohio. An appropriate action, which may include a civil penalty, sends a message of deterrence to the regulated community.

A site may be referred for consideration of a cleanup action if the following activities have occurred: sufficient investigation to identify viable responsible parties; documentation of a disposal or discharge (i.e., release); identification of an environmental and/or human health harm caused by the release; and identification of an available technology with which to remedy the harm. There are a variety of enforcement tools available to Ohio EPA.

One option is to invite a responsible party to negotiate Consensual Director's Final Findings and Orders (Consensual DFFOs). The director may send a responsible party proposed DFFOs that require them to conduct remedial investigations, develop feasibility studies, conduct interim actions, develop remedial designs, conduct remedial actions, and that allow Ohio EPA to recover past and future response costs for overseeing investigation and cleanup efforts at a site. A second option is to issue a Unilateral Director's Final Findings and Orders (Unilateral DFFOs). A third option is to ask the Attorney General's Office (AGO) to bring a civil or criminal action. These options are described in more detail below.

Consensual DFFOs: These DFFOs are considered authorizing actions and involve negotiations between Ohio EPA and the responsible party to reach agreement on the content of the consensual DFFOs. The generic scope of work attached to these DFFOs may include any of the following: a remedial investigation and feasibility study (RI/FS); a remedial design and remedial action (RD/RA); or an interim action (IA) to control or remediate a source of contamination or other imminent threat to human health. DERR seeks to recover past and future response costs as part of the Consensual DFFOs and the responsible party waives its right to appeal the Consensual DFFOs. Consensual DFFOs are the preferred method of resolution when the responsible party is interested in reaching a settlement agreeable to both the PRP(s) and Ohio EPA.

Unilateral DFFOs: These DFFOs are considered an enforcement action and are issued as a final action of the director. They are generally used in a situation that poses an immediate threat to human health and the environment. Unilateral DFFOs may be issued when a responsible party refuses to negotiate consensual DFFOs and issuing an administrative order is a better alternative than referring the matter to the AGO for action. The responsible party does not negotiate these DFFOs.

Referral to the AGO: All referrals to the AGO are enforcement actions. Ohio EPA refers civil cases to the AGO when the responsible party involved has exhibited a history of recalcitrance, fails to reach agreement on Consensual DFFOs or has violated DFFOs. Ohio EPA refers all criminal cases to the AGO.