

901:10-5-03 **Enforcement procedures.**

(A) Applicability. This rule applies to facilities, major concentrated animal feeding facilities, and facilities operated pursuant to review compliance certificates. The term facility is used to denote all types of facilities.

(B) An agent or employee of the department shall conduct inspections and determine if the owner or operator is not in compliance with sections 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate or review compliance certificate issued for the facility, including the requirements established under paragraph (C) of section 903.06 or paragraph (A) of section 903.07 of the Revised Code, paragraph (B) of section 903.08 of the Revised Code, rule 901:10-1-10 (D) of the Administrative Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under paragraph (F) of section 903.10 of the Revised Code. Violations shall be described in an inspection report.

(C) Upon observation by an agent or employee of the department during an inspection, through notification by another agency or through a written complaint from a person, the director will initiate an investigation in order to determine if there is a violation of Chapter 903. of the Revised Code and the rules adopted thereunder. Violations shall be described in an inspection report.

(D) If the inspection report indicates a violation, the director shall do the following:

(1) Evaluate the facts established by the inspection report.

(2) Issue a "notice of deficiencies resulting in noncompliance" in writing and via certified mail to the owner or operator that he or she has a period of time to complete actions to correct the violations. The period of time and the actions required shall be determined and specified by the director in the notice.

(3) After the time period specified in the notice has elapsed, the director shall re-inspect the facility. If the director determines that the owner or operator is still not in compliance, the director shall issue a notice of an opportunity for an adjudication hearing; or

(4) After the time period specified in the notice issued pursuant to section 903.17 of the Revised Code to an owner or operator of a point source has elapsed and the director's duly authorized representative has inspected the point source and determined that the owner or operator is still not in compliance, then the director shall issue a notice of violation to require corrective actions.

(5) The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance, that an order be issued or the permit suspended or revoked or the imposition of the civil penalty.

(6) The owner or operator may waive the right to an adjudication hearing.

(E) Penalties. Penalties assessed by the director shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with rule 901:10-5-04 of the Administrative Code.

(F) Appeals from an order by the director.

(1) Civil penalties. Any party adversely affected by an order of the director issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code may appeal the order in accordance with section 119.12 of the Revised Code.

(2) Permitting actions.

(a) A permit applicant or permit holder adversely affected by an order of the director whether or not issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code issuing, denying, suspending, modifying, or revoking a permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(b) Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit who filed comments or participated in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(c) Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit who failed to file comments or participate in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code to the extent the draft permit differs from the final permit.

(3) Review compliance certificate. Any party adversely affected by an order of the director issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code denying a review compliance certificate may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

Replaces: 901:10-5-03
Effective: 09/15/2005
R.C. 119.032 review dates: 08/15/2010

CERTIFIED ELECTRONICALLY

Certification

08/17/2005

Date

Promulgated Under: 119.03
Statutory Authority: 903.08, 903.10
Rule Amplifies: 903.02, 903.03, 903.04, 903.07, 903.08, 903.082,
903.09, 903.10, 903.12, 903.15, 903.16, 903.17
Prior Effective Dates: 07/02/2002