



Ohio Revised Code

Section 939.07 Assessment of corrective actions and penalties.

Effective: January 1, 2016

Legislation: House Bill 64 - 131st General Assembly

(A)(1) The director of agriculture may propose to require corrective actions and assess a civil penalty against the owner or operator of agricultural land or an animal feeding operation if the director or the director's designee determines that the owner or operator is doing one of the following:

(a) Not complying with a standard established in rules adopted under division (E)(1) of section 939.02 of the Revised Code;

(b) Not operating in accordance with an approved operation and management plan that is developed under division (A) of section 939.03 of the Revised Code, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required by the director under division (A)(2) of this section;

(c) Not complying with a standard established in rules adopted under division (E)(5)(a) of section 939.02 of the Revised Code;

(d) Not operating in accordance with a composting plan that is approved in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code or required by the director under division (A)(2) of this section.

(2) The director may include in the corrective actions a requirement that an owner or operator do one of the following:

(a) Operate under an operation and management plan approved by the director or the director's designee under section 939.02 of the Revised Code;

(b) If the owner or operator has failed to operate in accordance with an existing operation and



management plan, operate in accordance with that plan;

(c) Prepare a composting plan in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code and operate in accordance with that plan;

(d) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.

(3) The director may impose a civil penalty only if all of the following occur:

(a) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(b) After the time period specified in the notice has elapsed, the director or the director's designee has inspected the agricultural land or animal feeding operation, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(c) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(4) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that noncompliance has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(5) A person who has violated rules adopted under division (E) of section 939.02 of the Revised Code shall pay a civil penalty in an amount established in rules adopted under that section.

(B) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against a person violating or threatening to violate



rules adopted under division (E) of section 939.02 of the Revised Code or an order issued under division (A)(4) of this section.

(C)(1) In lieu of imposing a civil penalty under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against a person that has violated or is violating a rule adopted under division (E) of section 939.02 of the Revised Code.

(2) The civil penalty for which an action may be brought under division (C)(1) of this section shall not exceed ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

(D) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against the owner or operator of agricultural land or an animal feeding operation if the director or the director's designee determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (E) of section 939.02 of the Revised Code. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee under this division, the director's imposition of an administrative penalty under this division, or both. The determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

(E) Notwithstanding any other provision in this section, if the director determines that an emergency exists requiring immediate action to protect public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to address the emergency. The order shall take effect immediately. A person to whom the order is issued shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible, but not later than thirty days after the director's receipt of the application. Following the hearing, the director shall continue the order in effect, revoke it, or



modify it. The order may be appealed in accordance with section 119.12 of the Revised Code. An emergency order shall not remain in effect for more than one hundred twenty days after its issuance.

If a person to whom an order is issued does not comply with the order within a reasonable period of time as determined by the director, the director or the director's designee may enter on private or public lands to investigate and take action to mitigate, minimize, remove, or abate the conditions that are the subject of the order.

(F) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs.

(G) Money recovered under division (F) of this section and money collected from civil penalties assessed under this section shall be paid into the state treasury to the credit of the agricultural pollution abatement fund created in section 939.10 of the Revised Code.

(H) As used in this section, "noncompliance" means doing one of the actions specified in division (A)(1) of this section.