



Ohio Administrative Code

Rule 901:10-5-05 Emergency enforcement and cost recovery.

Effective: January 23, 2009

(A) If the director determines that an emergency exists requiring immediate action to protect the 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 meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately. A danger to public health, safety or the environment may include, but is not necessarily limited to, the following situations:

(1) When discharge threatens public or private drinking water supplies;

(2) When discharge threatens waters of the state;

(3) When the discharge directly causes flooding of residential housing, commercial property or industrial property, where direct use of the property would be hazardous to public health; and/or

(4) Other situations as determined by the director upon consultation with state and/or local environmental protection or health agencies.

(B) Following receipt of the emergency order, the owner or operator shall comply with the order. The order shall take effect immediately, however, the owner or operator shall be afforded the opportunity for a hearing in accordance with paragraph (C) of this rule.

(C) On application to the director, the owner or operator shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. The director's order is appealable in accordance with section 119.12 of the Revised Code. The applicant shall provide the following information to the director in writing or by telephone:

(1) A statement requesting an adjudication hearing;



(2) The date when the order was issued; and

(3) The business or home address and phone number where the owner, operator or representative can be reached during business hours.

(D) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If the owner or operator does not request a hearing, the emergency order may remain in effect for one hundred twenty days after its issuance. An order issued following an adjudicatory hearing shall not be considered an emergency order. The appeal provisions described in paragraph (C) of this rule shall apply.

(E) A person responsible for causing or allowing an unauthorized release, spill or discharge of manure is liable to the director for any costs incurred in investigating, mitigating, minimizing, removing, abating the spill, release or discharge or other acts or events that resulted in the emergency and the emergency order. If no attempt is made to repay the director for costs incurred or damages assessed within that time, the director may request the attorney general to bring a civil suit against the person responsible to recover costs and any assessed damages. Reimbursed costs shall be deposited into the livestock management fund.

(F) Livestock management fund. Funds deposited in the livestock management fund created under section 903.19 of the Revised Code shall be used for paying the costs for emergency actions. In addition to paying the costs incurred by the director under section 903.18 of the Revised Code, the director may make disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing, abating the release, spill or discharge or other acts or events that resulted in the emergency or the emergency order.