



Ohio Revised Code

Section 903.16 Requiring corrective actions and assessing civil penalties [see Section 3 of H.B. 363 of the 128th General Assembly].

Effective: December 22, 2009

Legislation: House Bill 363 - 128th General Assembly

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 or division (A) of section 903.07 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 of the Revised Code, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

(1) 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.

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The director affords 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 or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation 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.



Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 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, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

(C) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, or 903.04 or division (A) of section 903.07 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 of the Revised Code; rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code; or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(D)(1) In lieu of seeking civil penalties 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 any person that has violated or is violating division (A) of section 903.07 of the Revised Code or the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 of the Revised Code.



(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, or 903.04 of the Revised Code, rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code, or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (C) or (D) of section 903.10 of the Revised Code or in the permit to install, permit to operate, or review compliance certificate issued for the facility. 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 director's determination under this division, the director's imposition of an administrative penalty under this division, or both. The director's determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.