



Ohio Revised Code

Section 903.17 Adjudicative hearing on corrective actions and 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 an animal feeding operation if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under division (F) 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 animal feeding operation, determined that the owner or operator is still not in compliance, and issued a notice of violation to require corrective actions.

(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 and assess a civil penalty of not more than ten thousand dollars per violation against the violator. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.



(C) To the extent consistent with the Federal Water Pollution Control Act, the director shall consider technical feasibility and economic costs in issuing orders under this section.

(D)(1) 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 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(2) In lieu of seeking civil penalties under division (A) of this section, the director may request, in writing, the attorney general to bring an action for a civil penalty of not more than ten thousand dollars per violation in a court of competent jurisdiction against any person that has violated or is violating section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section. For purposes of determining the civil penalty to be assessed under division (B) of this section, each day that a violation continues constitutes a separate and distinct 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 an animal feeding operation if the director or the director's authorized representative determines that the owner or operator has discharged pollutants into waters of the state in violation of section 903.08 of the Revised Code or the terms and conditions of a NPDES permit or the NPDES provisions of the permit to operate issued for the operation. 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.