

GUIDANCE FOR PREPARATION OF AN ENFORCEMENT REFERRAL (ENTITY/FACILITY)

The following general questions and issues should be considered when preparing an enforcement referral against an entity/facility:

EXISTING VIOLATIONS

1. What violations exist at the facility/property?
2. What violations do you want to resolve through this enforcement action?

RESOLUTION REQUIRED

1. What actions are necessary to resolve the violations?
2. Can the violations be resolved (such as construction violations)?
3. If violations cannot be resolved, or have already been resolved, what enforcement action will be recommended, and why?

RESPONSIBILITY FOR RESOLUTION

1. Who is responsible for resolution of the violations (owner, operator, land owner, etc.)?
2. Is there more than one responsible party?

DOCUMENTATION

1. Have health department or Ohio EPA Notices of Violation (NOVs) been issued to the entity identifying the violations and requesting a return to compliance? How recent was the last NOV?
2. Has the entity responded to the NOVs? What responses were made?
3. Has any progress been made to resolve violations?
4. Is the entity on a schedule to obtain compliance?
5. Do the health department and the Ohio EPA have timely and appropriate documentation of violations cited and NOVs issued?
6. Have violations been photographed or video taped? Are the photographs and tapes available?

7. Is material sampling necessary to document violations, and are sampling results available?

HEALTH DEPARTMENT INVOLVEMENT

1. Is the facility/property located within an approved health district?
2. What enforcement action has the health department taken?
3. Will the health department pursue escalated enforcement action to achieve compliance at the site?
4. Has the health department requested enforcement assistance from the Ohio EPA?

[Side issue: if the health department was unwilling or unable to pursue enforcement action, how will this affect the next annual survey of the health department? Should action against the health department be considered?]

VIOLATIONS INVOLVING OTHER DIVISIONS

Consider the possibility of consolidating enforcement issues of DSIWM and any other division(s) into one enforcement action. Discussion should begin on the district level prior to preparation of the enforcement referral.

1. Have you informed other divisions that solid waste violations exist (DHWM, DWPC, DAPC, DERR, SIS)?
2. Have you contacted other divisions (DHWM, DWPC, DAPC, DERR, SIS) to inquire if they are considering enforcement?
3. Is a joint enforcement referral appropriate?

ENFORCEMENT REFERRAL FORM

Questions are often raised regarding several portions of the enforcement referral form. The following guidance is offered to help clarify the information requested.

Responsible Parties: Typically the owner, operator, permittee, and licensee of the facility are all the same person(s). If different lines of responsibility exist, you should indicate all relevant parties.

Health Department: If the health department is on the Director's approved list, enforcement action should begin there. The Ohio EPA district office should encourage local action (NOV, Board Order, license denial, referral to local prosecutor, etc.) and provide assistance to the health department as much as possible, prior to recommending separate enforcement action to be taken by the Ohio EPA.

Chronology of Events: This section can be in outline form and should include the following information:

1. Existing authorization: PTI(s) and date(s) of approval (if applicable), ODH plan approval or operational report
2. Changes in ownership of the facility, if original permit holder is different than current facility owner
3. Dates of inspection
4. Violations cited - indicate statutes and/or rule citations and specific violations committed
5. Dates of NOVs issued
6. Dates of responses from entity and summary of entity's responses
7. Documentation of related telephone conversations and/or meetings
8. Enforcement action already taken by OEPA, health department, etc.
9. Known environmental and/or health effects of violations
10. etc.

Proposed Remedies: Include possible measures to resolve existing violations and to prevent future violations. Examples are:

1. fitter control measures
2. additional cover material/vegetation needed
3. repair leachate outbreaks/permanent collection system
4. erosion/sediment control
5. explosive gas monitoring plan needed
6. assessment/remediation of ground-water contamination
7. PTI or exemption needed
8. site closure
9. warning letter (Chief's letter or Director's letter)
10. etc.

Extenuating or Mitigating Circumstances: Include issues or circumstances which may have added complexity or confusion to the situation and may have delayed compliance at the site. Such issues may include USEPA involvement, possible joint enforcement action with another division, financial problems, some degree of compliance already achieved, unusual weather conditions, etc.

Aggravating Circumstances, Entity Recalcitrance/Indifference: The entity's willingness to return to compliance may be important to consider when recommending the negotiation of a consent agreement and penalty. Also, a health department's willingness to return to compliance will affect the district's recommendation to either continue working with the health department to achieve compliance or to remove the health department from the approved list.

Involvement with Other Divisions: Consider the possibility of consolidating enforcement issues of **DSIWM** and any other division(s) into one enforcement action. Discussion should begin on the district level prior to preparation of the enforcement referral. In some cases, one referral package can be prepared and sent to all divisions involved. **In** other cases, separate referrals to each division are necessary. Specific circumstances of the case will indicate whether one referral package can serve to address all violations at a facility.

If violations exist which involve more than one division, notification to the other division(s) is necessary. Options to consider are listed on the referral form.

District **Recommendation for Enforcement Action:** Specific recommendation for type of action(s) to be taken. Examples are:

1. consent agreement
2. unilateral orders
3. referral to AGO
- 4: Director's warning letter
5. Chief's warning letter
6. penalty (CO staff will calculate)
7. refer case to health department (if approved) for enforcement action
 - a. joint enforcement action with another division, specifying type of joint action to be taken
9. etc.

Index of Documents and Physical Evidence: Provide a list of all supporting documents included in the referral package. Examples are:

- | | |
|--------|--|
| (date) | letter from OEPA to entity |
| (date) | letter from entity to OEPA |
| (date) | letter from _____ department to entity |
| (date) | letter from OEPA to health department |
| (date) | photographs taken at site on (date) |
| (date) | telephone memorandum of conversation between OEPA and entity |
| (date) | etc. |

CONFIDENTIAL LAW ENFORCEMENT INVESTIGATORY RECORD
ENFORCEMENT SENSITIVE

DIVISION OF SOLID AND INFECTIOUS WASTE MANAGEMENT
ENFORCEMENT REFERRAL

To: DSIWM Enforcement Coordinator

From:

Date:

1. **Responsible Party(ies)** (Include all Operators, Owners of Operators, Owners of Tires, and any other potentially responsible party)

Name:
Address:
County:
Contact Person:
Contact Telephone No.:

Name:
Address:
County:
Contact Person:
Contact Telephone No.:

Name:
Address:
County:
Contact Person:
Contact Telephone No.:

2. **Parent Company** (if applicable)

Name:
Address:
Statutory Agent:
Contact Person:
Contact Telephone No.:

3. **Real Property Owner(s)** (From the appropriate County Recorders Office, please provide a copy of Deed, including the Legal description, for each affected parcel)

Name:
Address:
Telephone Number:

Date of Purchase:

Date and Source of Information:

4. Regulatory Status (check appropriate lines)

- | | |
|--|--|
| <input type="checkbox"/> Sanitary Landfill | <input type="checkbox"/> Infectious Waste Treatment Facility |
| <input type="checkbox"/> Residual Waste Landfill | <input type="checkbox"/> Infectious Waste Generator |
| <input type="checkbox"/> C&DD Landfill | <input type="checkbox"/> Composting Facility |
| <input type="checkbox"/> Transfer Facility | <input type="checkbox"/> Solid Waste Incinerator |
| <input type="checkbox"/> Unpermitted/Unlicensed Solid Waste Facility | <input type="checkbox"/> Infectious Waste Transporter |
| <input type="checkbox"/> Scrap Tire Transporter | <input type="checkbox"/> Scrap Tire Mobile Recovery Facility |
| <input type="checkbox"/> Other: Specify _____ | |

5. Health Department

Name:

Address:

Contact Name:

Telephone Number:

Status: Approved _____ Unapproved _____

If Health Department is on the Director's approved list, please identify all actions taken by the Health Department to redress the violations supporting this referral.

Please detail why the Agency is taking the lead on this enforcement action. (If Health Department has failed to take action, please note and consider Health Department's inaction during annual survey).

6. Description of Violation(s)

- (a) Address of Violation:
County:
- (b) What violations do you want to resolve through this enforcement action?
- (c) Chronology of events (Please include relevant approved plans/PTIs; site inspections, letters, meetings, telephone calls).
- (d) Describe all District Office and Health Department actions taken against entity for each violation (Please include copies of all letters, telephone calls, and meetings - this includes HD actions).
- (e) Describe all previous enforcement actions taken against the entity (Please include copies of previous Directors Orders, Court Orders, Adjudication Hearings, ERAC Hearings, Health Department Actions, etc.).

- (f) Please identify any economic benefits realized as a result of the violations.
- (g) Brief description of complaint(s) from the public against the party(ies), if any.
- (h) Witness list (Please provide the name, address, and phone number of each person with firsthand knowledge related to the violation).

7. Discussion of Evidence as related to the Violations

- (a) Please complete the attached updated Compliance Report Card.
- (b) Please attach all Ohio EPA and HD NOV's. (Please include NODs if applicable to the case and include copies of all other relevant HD correspondence).
- (c) Please attach all sample results, chains of custody forms and analytical QA/QC reports.
- (d) Do the violations involve scrap tires and potential threats to human health safety and the environment from *mosquito vectors*?

_____ YES _____ NO

If yes, please attach a copy of the following:

- C the ODH mosquito identification results;
- C the corresponding Chain of Custody Form(s);
- C a list or survey of sensitive sub--populations (schools, nursing homes, parks etc.) within a 2 mile radius of the site;
- C a total human population estimate within the 2 mile radius;
- C other noteworthy vector information.

* Note: This information is optional, however this information will be vital to establish case priority.

- (e) Do the violations involve scrap tires and/or other potential threats to human health safety and the environment from *fire*?

_____ YES _____ NO

If yes, please rank the threats as either:

_____ High _____ Medium _____ Low

If high, please provide as much of the following as possible:

- C estimated proximity from site to the nearest fire station(s);
- C estimated proximity to nearest surface water body (river/lake/reservoir);
- C estimated number of private drinking water wells within a 2 mile radius;
- C estimated proximity to nearest public drinking water source (well field/reservoir/sole source aquifer);

- C likely estimated direction of overland flow (stormwater drains, road ditches, dry wells, drainage swales, etc.).

8. Request for Enforcement Action

- (a) Contacts:
District Contact:
Other Government Contact:
- (b) District recommendation for enforcement action:
- _____ Unilateral Findings and Orders
_____ Administrative Consent Order with Civil Penalty
_____ Administrative Consent Order without Civil Penalty
_____ Judicial Order with Civil Penalty (AG Referral)
_____ Judicial Order without Civil Penalty (AG Referral)
_____ Warning Letter: __ Director __ Division
_____ Other; specify _____
- (c) Proposed remedies. (Please describe possible measures to remedy the violation, e.g. specific repairs, new engineering controls, new procedures, educating employees on operational requirements and authorizing documents, waste removal, closure, etc.).
- (d) Please provide a summary of known strengths or weaknesses of the case defenses or claims that may be raised by the entity and extenuating or mitigating circumstances.
- (e) Identify any aggravating circumstances, entity recalcitrance or indifference towards the violation(s) and others.

9. Involvement with Other Divisions

- (a) Have you notified the following divisions that DSIWM is considering enforcement action? (Attach notification notes).
- DHWM ___ DAPC ___ DSW ___ DERR ___ SIU ___
- (b) Which of the following divisions, if any, are considering enforcement action against the entity?
- DHWM___DAPC ___ DSW___ DERR___ SIU ___
- (c) Which divisions should be considered part of a potential joint enforcement action?
- DHWM___DAPC ___ DSW___DERR___SIU___
- (d) Please recommend which Division should be the lead in a joint enforcement action:
- DHWM___DAPC ___ DSW___DERR___SIU___

(e) Joint referral format:

Please send a copy of DSIWM's referral package to the Central Office Enforcement Coordinators of other division(s).

Please provide a copy of the Joint referral package prepared by the district and send to the Central Office Enforcement Coordinators of all involved divisions.

Please send an IOC from DSIWM District Office Unit Supervisor to DSIWM Central Office Enforcement Coordinator, providing notification of a joint referral and specifying DSIWM violations.

10. Index of Supporting Documents and Physical Evidence

11. Copies of Supporting Documents and Physical Evidence

APPROVALS

Signed: _____
(Inspector)

Date: _____

Approved: _____
(Environmental Supervisor)

Date: _____

Approved: _____
(Manager)

Date: _____

Approved: _____
(Asst. District Chief for Multi-Media)

Date: _____

Approved: _____
(District Chief)

Date: _____

