

SOLID WASTE LICENSE DENIAL #0021

~ Cover Page

Whereas	The applicant submitted
Whereas	The Agency reviewed
Whereas	The facility has violated
Whereas	The application is denied

~ Attachment A

Specific reasons for denial

* Who does what

CO

Drafts denial document
Coordinates and participates in action through final resolution

DO

Reviews draft document for accuracy
Participates in action through final resolution

LEGAL

Coordinates review with CO and prepares briefing
memo
Participates in action through final resolution

REFERRAL TO ATTORNEY GENERAL

- ~ Letter to Attorney General
- ~ Letter to entity
- ~ Briefing memo to Director
- ~ Complete referral package to AGO

* Who does what

CO

Facilitates referral to AGO

Reviews draft documents

Coordinates Agency involvement and participates in action through final resolution

D

O

Reviews draft documents

Participates in action through final resolution

LEGAL

Prepares briefing memo and referral letter

Participates in action through final resolution, as needed

Reviews draft documents

ADMINISTRATIVE CONSENT AGREEMENT

- ~ Preamble
- ~ Jurisdiction
 - authority under which document was issued
- ~ Parties
 - who document applies to
- ~ Definitions
- ~ Findings of Fact
- ~ Orders
 - issued as a final action
- ~ Other Claims
- ~ Termination and Satisfaction
- ~ Other Applicable Laws
- ~ Notice
 - where to send documents
- ~ Reservation of Rights
- ~ Signatories
- ~ Waiver

- * Responsibilities for CO, DO, and LEGAL are the same as for Unilateral F&Os, except that action is negotiated, and LEGAL prepares the "Invitation to Dance" letter

Effective Date: September 1993

UNILATERAL FINDINGS AND ORDERS

- ~ Jurisdiction
 - authority under which document was issued
- ~ Parties
 - who document applies to
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- ~ Orders
 - issued as a final action
 - appealable to EBR
- ~ Termination and Satisfaction
- ~ Other Applicable Laws
 - Notice
 - where to send documents
- ~ Reservation of Rights
- * Who does what
 - CO
 - Drafts F&Os
 - Coordinates and participates in action through final resolution
 - DO
 - Reviews draft document
 - Participates in action through final resolution
 - Documents compliance with action
 - LEGAL
 - Coordinates review with CO and drafts briefing memo
 - Participates' in action through final resolution

Effective Date: September 1993

DIRECTORS WARNING LETTER

- ~ Letter to address specific issues
- ~ Letter to address potential remedy

* Who does what

CO

Drafts letter for DO & LEGAL review

DO

Reviews draft letter for accuracy

LEGAL

Coordinates review with CO and drafts briefing memo

Effective Date: September 1993

5. **No formal action:** The ER will either be returned to the district or brought back to SIWEC at a later date after additional case development is completed, such as a technical interpretation, or additional inspections or field investigations, etc.

Once a recommendation has been made, the Enforcement Unit staff member assigned to the case coordinates the daily development and implementation of the recommended action between the district, health department, AGO, and all sections within the Central Office. Attached is an outline of the expected internal time frames for case development. Also attached is information regarding each action and what responsibilities the Central Office (CO), the District Office (DO), and Legal have in the development of each document.

2. **Issuance and/or execution of Administrative Orders:** Administrative Orders are only used to resolve civil violation, never criminal. There are two types of Administrative Orders:
 - (a) Unilateral Findings and Orders - These orders are issued as a final action by the Director and as such are appealable to the Environmental Board of Review. Unilateral Orders are generally recommended when the violations are not considered sufficient to warrant a penalty, yet the violating **facility's** actions have shown that an order by the Director is necessary to facilitate cleanup or compliance. Unilateral Orders are also recommended as a precursor to escalated enforcement action when **perhaps** immediate cleanup of a grossly contaminated site is required to protect the health and safety of the public or the environment.

Since there is some question regarding the Agency's ability to assess a penalty for violations of solid and infectious waste regulations, Unilateral Findings and Orders (**F&Os**) are never used when a civil penalty is necessary.
 - (b) Negotiated Findings and Orders (Consent Orders) - The **SIWEC** will recommend negotiated **F&Os** for civil violations which warrant a penalty. A penalty is generally assessed for violations which either pose a significant deviation from the regulations or a significant potential for harm to the environment or public health. A penalty may also be assessed due to the repeated occurrence of a violation. The orders, including the penalty amount, in negotiated (**F&Os**) are consensual in nature and as a result, the facility involved waives its right to appeal the document subsequent to execution. Negotiated **F&Os** are only recommended when the violator has shown a willingness (cooperation) to settle.
3. **Referral to Attorney General's Office (AGO):** All criminal cases are referred to the AGO. Civil cases are referred to the AGO when the entity involved has exhibited a history of recalcitrance and therefore is not expected to cooperate in the negotiation of administrative **F&Os**. Other factors influencing the AGO referral, recommendation include the need for escalated enforcement, **the** fact that the case involves multi-media violations, the fact that the case involves contempt of an earlier consent order or judgment obtained by the AGO, or if the facility has either declared or appears to be on the verge of declaring bankruptcy.
4. **Revocation or Denial of Permit or Solid Waste License:** This option is used when the facility is grossly out of compliance with its permit or the operational rules or both. Revocation or denial would be used in cases where operations at the facility need to be stopped to prevent further degradation to the environment or continued recalcitrance of the entity to comply with the appropriate rules.

ENFORCEMENT REFERRAL & ENFORCEMENT COMMITTEE ACTIVITIES

To initiate an escalated enforcement action, the district office typically sends an enforcement referral (ER) to the Solid and Infectious Waste Enforcement Unit. In addition to **ERs** from the district offices, the Enforcement Unit may also receive **ERs** from the Special Investigations **Section** (SIS) of the Division of Emergency and Remedial Response (DERR). **SIS's** referrals result from either their investigation of a complaint or their response to a Division of Solid and Infectious Waste Management (DSIWM) request to investigate a case, due to the potential involvement of criminal conduct on behalf of the facility or its officers. Criminal violations differ from civil in that they involve a willful, knowing, or reckless intent on behalf of the **facility** or its individual officers to violate the law.

An ER is submitted to the Enforcement Coordinator for DSIWM. The referral package identifies the names and addresses of the responsible parties, the regulatory status of the facility (i.e., permitted or unpermitted, transporter, large or small generator, etc.), the health department status where facility is **located**, the nature and frequency of the violations which have occurred, and whether the district considers the entity a **HPV**, **MPV**, etc. (See Enforcement Guidelines.) The **referral** also describes the degree of public involvement (i.e., complaints) in the case, documentation and physical evidence to support the case, witness lists, extenuating or mitigating circumstances, possible measures which could remedy the violations, involvement with other divisions (e.g., do violations of other divisional rules exist and is enforcement action being considered?), and the district's recommendation as to what type of enforcement action should be taken. Upon receipt of an ER by **DSIWM's** Central Office, the case is assigned to a member of the Enforcement Unit staff and also to a member of the Ohio EPA's Legal staff. These two individuals are responsible for the continued development of the case and subsequent presentation of the case to the Solid and Infectious Waste Enforcement Committee (SIWEC). If the case is a joint referral with another division, the Enforcement Unit staff person of each division involved will be the lead contacts for organizing and processing the case. (See Procedure for Processing Joint Enforcement Action.)

The SIWEC consists primarily of the Enforcement Coordinator, all members of the Enforcement Unit, all members of the Legal staff who are assigned to perform work for the DSIWM, and the district and/or SIS inspector involved with the case. In addition, individuals from **DSIWM's** Engineering staff participate for cases which involve closure or permitting requirements or when a **technical** interpretation is required. The SIWEC meets biweekly on pay week Thursdays, when necessary.

Once the SIWEC has discussed an enforcement referral case, recommendations are made which involve one of the following:

1. Issuance of Warning Letters: These can be issued at either the Director or Division level. In either event, a letter is sent from the Central Office to the violator advising that legal action is being considered but offering the opportunity for voluntary compliance. This letter provides a last chance for the violator to comply and may cite the measures required for compliance and a date by when the compliance inspection will be conducted.

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