

*****DRAFT - NOT FOR FILING*******1501:3-12-06** **Chief's orders.**

(A) Issuing orders. When the chief or the chief's designee investigates a complaint and the owner, operator, or person responsible fails to implement a corrective action in accordance with paragraph (C)(6) or (D)(5) of rule 1501:3-12-05 of the Administrative Code, the chief or the chief's designee shall decide if an order will be issued. The chief, or the chief's designee, may, upon obtaining agreement with the owner, operator, or person responsible for any land, public or private, enter thereon to make inspections to determine whether or not there is compliance with these rules. If agreement is not obtained, and there is reason to believe a violation exists, the chief or the chief's designee may apply for and a judge of the court of common pleas for the county where the land is located may issue an appropriate inspection warrant as necessary to achieve the purposes of this chapter.

(1) When the chief decides that an order shall be issued, he shall issue an order and afford each person allegedly liable an adjudication hearing pursuant to Chapter 119. of the Revised Code. The chief shall sustain the order if deemed appropriate after each person allegedly liable has had a hearing or has waived his right to a hearing. Each order shall be issued in writing and contain a finding by the chief of the facts upon which the order is based and the rule that is being violated. The order shall also specify the time period for correcting the problem, indicate what, if any, technical and financial assistance is available, and indicate what action will follow if the violation is not corrected.

(2) Penalties. Any person who fails to comply with an order of the chief is guilty of a misdemeanor of the first degree. Each day of violation is a separate offense. In addition, the sentencing court may assess damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by a violation of the chief's order.

(3) Appeals. Any person claiming to be deprived of a right or protection afforded him by law by an order of the chief, except an order which adopts a rule, may appeal to the court of common pleas of franklin county. The attorney general of the state of Ohio, upon the written request of the chief, shall bring appropriate legal action in Franklin county against any person who fails to comply with an order of the chief issued pursuant to paragraph (A)(1) of this rule.

(B) Danger to public health.

(1) In addition to the above action, the chief may apply to the court of common pleas in the county where a violation of a standard occurs which is a danger to public health for an order to cease the violation and to remove the agricultural pollutant. The chief may consult with the county or state health department, soil and water conservation district and engineer's office, the Ohio environmental protection agency or other appropriate agency. A danger to public health may include, but not necessarily be limited to the following situations:

(a) When agricultural pollution threatens public or private drinking water supplies;

(b) When agricultural pollution threatens a primary contact recreation resource water;

(c) When the agricultural pollution directly causes flooding of residential housing, commercial or industrial property, such that direct use of the property would be hazardous to public health.

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

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(2) When there is a danger to public health because of animal waste spill or discharge, the chief may, without notice or hearing, issue an emergency order to correct the problem. The order shall be effective immediately.

(a) Prior to issuing an emergency order, the chief shall:

(i) Determine the extent of danger to public health which may include consultation with local health departments;

(ii) Determine that paragraphs (A) and (B) of this rule will not adequately protect public health and natural resources;

(iii) Encourage the owner or operator causing the pollution to correct the problem voluntarily.

(b) Following receipt of the emergency order, the owner or operator shall comply with the order by stopping the pollution and removing the pollutants endangering public health.

(c) The owner or operator may apply to the chief for a hearing. Such hearing shall be conducted as soon as possible, but not later than twenty days following application. The application shall be in writing and include the following information:

(i) The probable cause of the suspected public health threat;

(ii) The date when the suspected pollution started;

(iii) Business or home address and phone number where the owner, operator or representative can be reached during business hours to schedule a hearing;

(iv) Be signed by the owner or operator of the agricultural operation or business and dated.

(d) On the basis of the hearing, the chief or designee shall continue, revoke or modify the order. If no hearing is requested and/or the order is not complied with as determined by the chief, the chief or his designee may enter upon private or public lands and take action to mitigate, minimize, remove, or abate the release, spill or discharge.

(e) Any owner, operator or person responsible for causing or allowing an unauthorized release, spill or discharge of animal waste is liable to the chief for any costs incurred by the division in investigating, mitigating, minimizing, removing or abating the pollution problem. Reimbursed costs shall be deposited into the agricultural pollution abatement fund and used as specified in rule 1501:3-12-06 of the Administrative Code. The chief shall keep accurate records of all costs to abate the agricultural or silvicultural pollution including personnel, equipment, and disposal.

(f) No emergency order shall remain in effect for more than sixty days after its issuance.

(C) Forestry pollution abatement fund. Funds deposited in the forestry pollution abatement fund authorized under section 1503.55 of the Revised Code shall be used for paying the costs for emergency forestry pollution abatement actions. In addition to paying the costs incurred by the division under division (A)(3) of section 1503.54 of the Revised Code, the chief may make disbursements from the fund for any costs incurred by the division in investigating, mitigating, minimizing, removing or abating the release, spill or discharge. Money collected by the division of forestry for forestry pollution investigations, hearings, damage, repair, cleanup, mitigation and inspection are to be deposited into the forestry pollution abatement fund. Payments by

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persons so ordered by the chief or court are to be made within thirty days of the order to the division of forestry. If no attempt is made to repay the division for costs incurred or damages assessed within thirty days, the chief may request the attorney general to bring a civil suit against the person responsible to recover costs of the division and any assessed damages.

Replaces: 1501:15-5-16

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Five Year Review (FYR) Dates:

Certification

Date

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