

ENFORCEMENT PROCEDURES

for the

OHIO EPA

DIVISION OF AIR POLLUTION CONTROL

(March 2001)

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INTRODUCTION:

Since the adoption of the Clean Air Act Amendments of 1970, the federal government has promulgated National Ambient Air Quality Standards (NAAQS) for carbon monoxide, sulfur dioxide, nitrogen oxides, particulates (TSP and PM₁₀), lead and ozone. These standards were established to protect the public health and welfare, and achieving and maintaining compliance with these standards is the most important goal of Ohio EPA's air pollution control program.

As one of the most industrialized states in the nation, Ohio contains many stationary air contaminant sources that emit, at various levels, one or more of the NAAQS-related pollutants (i.e., sulfur dioxide, nitrogen oxides, particulates, lead, and organic compounds/volatile organic compounds). Collectively, the pollutants emitted from these sources have a major impact upon the ambient air quality throughout the State.

Ohio EPA's air pollution control regulations are designed to limit the emissions from stationary sources to levels that will enable the attainment and maintenance of the NAAQS. Sources that operate in violation of the allowable emission limitations and/or control requirements can interfere with or prevent the attainment and maintenance of the federal standards. An effective enforcement program is essential to ensure that any noncomplying air contaminant sources achieve compliance in an expeditious manner, and it is a key ingredient in Ohio EPA's overall efforts to achieve and maintain the NAAQS throughout the State.

Ideally, any effective enforcement program must be simple (from an administrative standpoint), consistent, fair, and timely. It must also ensure that reasonable civil penalties are assessed for violations to deter future noncompliance. The enforcement procedures developed by the Division of Air Pollution Control (DAPC) have been designed to enable an effective enforcement program, and the goal of the DAPC is to implement an air enforcement program that is one of the most effective programs in the nation.

The remainder of this document describes the DAPC's existing enforcement procedures.

(Note: This document is an update of the DAPC's "1986 Enforcement Plan for the Ohio EPA's Air Pollution Control Program.")

IDENTIFICATION OF NONCOMPLYING FACILITIES:

Within Ohio EPA's five District Offices and the seven "full-role" local air agencies (hereinafter referred to as the "field offices"), there are over 250 people who perform work related to Ohio's air pollution control program. Many of these people are involved on a day-to-day basis in activities that may identify air contaminant sources that are in violation of one or more of Ohio EPA's air pollution control regulations. These activities consist of the following:

- ✦ performing inspections;
- ✦ reviewing applications for variances, Permits to Operate (including Title V permits and federally enforceable State operating permits [FESOPs]), and Permits to Install;
- ✦ reviewing the results of emission tests;
- ✦ performing visible emission readings;
- ✦ reviewing continuous emission monitoring data;
- ✦ investigating complaints (including verified complaints);
- ✦ reviewing various reports that entities are required to submit pursuant to OAC rules, terms and conditions of permits, Findings and Orders of the Director, warning letters, and Consent Orders;
- ✦ reviewing reports of malfunctions of emissions units and/or associated air pollution control equipment; and

- ✦ reviewing self-disclosures of the results of environmental audits (submitted pursuant to Revised Code 3745.72).

(Note: Each malfunction reported by a facility in accordance with OAC rule 3745-15-06 must be evaluated on a case-by-case basis to determine if a violation has occurred that warrants enforcement action. Due to the extremely wide variety in the nature and severity of the malfunctions that are reported throughout the State on a daily basis, the DAPC prepared special guidance for the field offices to define the types of malfunction events that would warrant enforcement action. A copy of this guidance is included in Appendix A.)

Violations of Ohio EPA's air pollution control regulations also may be discovered as a result of investigations conducted by the USEPA.

When a noncomplying air contaminant source is identified, the name of the facility must be added to a list entitled the "Noncomplying Facilities Report" (NFR). (Violations that involve only minor administrative violations do not need to be added to the NFR.) The NFR is submitted by each field office to the Central Office of Ohio EPA within 30 days following the end of each calendar quarter. This form, a copy of which is included in Appendix B, contains the following information for each noncomplying facility, including any noncomplying facilities that are being handled by USEPA:

1. the name of the facility;
2. the location of the facility;

3. the 10-digit, identification number for the facility and the source number for each noncomplying emissions unit;
4. brief descriptions of the type of facility and the noncomplying emissions units;
5. the classification of the facility as either a High Priority facility or other facility, and an indication of whether or not any of the noncomplying emissions units are subject to USEPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) and/or New Source Performance Standards;
6. the current status of the enforcement efforts for each of the noncomplying emissions units;
7. the "zero" date for the violations, i.e., the date the facility was notified in writing of the violations, but not later than 30 days from when the violations were first discovered by the field office; and
8. the "target" date for the violations, i.e., the projected date for completing the next significant step in the efforts to resolve the violations (e.g., the projected date for issuing a Director's warning letter, proposed F&Os, or a draft Complaint and Consent Order).

The High Priority facilities consist of all the Title V facilities, FESOP facilities, and synthetic minor Permit to Install facilities. As of the issuance date for this document, there are 1,182 High Priority facilities in the State. Appendix C contains a listing, by field office, of the current High Priority facilities.

The NFRs define the universe of significant, noncomplying facilities in the State, and it is important that the field offices maintain this information in a comprehensive, accurate, and up-to-date manner. At the end of each calendar month, the information contained in the NFRs is used to determine the overall compliance percentage (for the air pollution control regulations) for the High Priority facilities in the State.

ADMINISTRATIVE PROCEDURES FOR RESOLVING VIOLATIONS OF OHIO EPA'S AIR POLLUTION CONTROL REGULATIONS:

When a field office identifies a violation of Ohio EPA's air pollution control regulations, steps must be taken to resolve the violation in a timely manner. To help ensure prompt action and promote consistency throughout the State, the DAPC has developed general procedures that define how a field office should respond to a newly-discovered violation. (Violations of the NESHAP and violations that pose a threat to public health normally must be handled much faster than these general procedures allow.) These general procedures are described in the following sections:

1. Within 14 days of discovering a new violation, the field office should send a warning letter by certified mail to the noncomplying facility. The warning letter should:
 - a. identify each noncomplying emissions unit;
 - b. identify the applicable rules and explain the violations;
 - c. clearly indicate what action must be taken to resolve each violation (e.g., submit permit applications, perform emission tests, submit specific records or data, and/or submit an expeditious control plan and compliance schedule for the installation of the necessary control equipment);

- d. explain that the violation(s) may result in the assessment of civil penalties; and
- e. require a written response to the warning letter within 30 days following receipt of the warning letter.

For any violation that involves a High Priority facility, a copy of the certified warning letter also must be sent to the USEPA.

(Note: Due to the hazardous nature of the pollutant involved, the DAPC has developed specific guidance for the field offices for notification and work practice violations of the NESHAP for asbestos. This guidance addresses special field office activities leading up to the preparation of an Enforcement Action Request (EAR). A copy of the guidance is included in Appendix D.)

2. If a response is not received by the deadline specified in the warning letter, then an EAR should be prepared by the field office and submitted to the Central Office Enforcement Committee (EC) within 14 days following the deadline. (Copies of the EAR forms for asbestos and other [non-asbestos] enforcement cases are included in Appendix E.) If a deadline passes without a response from the facility, the field office has the latitude to contact the facility to determine if a response is being prepared. If a response is in preparation, the field office may establish a revised, but expeditious, deadline for responding to the warning letter.

3. If a response is received by the deadline specified in the warning letter, one of the following courses of action should be taken by the field office:
 - a. If the response is unacceptable, either a second warning letter should be sent to the facility or an EAR should be submitted to the EC within 14 days following receipt of the response. The decision to send a second warning letter will depend upon the field office's assessment of the potential success of such a letter. In general, the field office should need to send only one good warning letter concerning the violation(s). In some cases, however, a follow-up letter from the field office may be appropriate to request additional information or data, or to request a clarification or further explanation of what was submitted.
 - b. Except as noted in this paragraph, if the response provides an acceptable control plan and compliance schedule, and compliance will be achieved within 30 days, a letter should be sent to the facility within 7 days following the receipt of the response to formalize the plan and schedule and any necessary reporting requirements. However, in this situation, an EAR must be submitted to the EC, within 30 days following the receipt of the response, if the violations were longstanding (prior to the warning letter) and/or if the violations involved

substantial levels of noncomplying emissions.

If the response provides an acceptable control plan and compliance schedule, but compliance will not be achieved within 30 days, an EAR must be submitted to the EC within 30 days following the receipt of the response. In this case, the plan and schedule must be formalized by means of Findings & Orders (F&Os) or a Consent Order.

- c. If the response provides a schedule for performing emission tests, submitting applications, or supplying additional information, the field office should ensure that the commitments are met expeditiously. If the commitments are not met by the facility, an EAR must be submitted to the EC in a timely manner.
- d. If the response from the facility indicates the violation has been rectified, the field office should inspect the noncomplying emissions unit within 14 days following receipt of the response. A follow-up letter confirming compliance should be sent to the facility within 30 days following receipt of the response, even when an inspection of the emissions unit is not required. In this situation, an EAR must also be submitted to the EC, within 30 days following the receipt of the response, if the violations were longstanding (prior to the warning letter) and/or if the

violations involved substantial levels of noncomplying emissions.

(Note: The above-mentioned procedures do not apply to a noncomplying emissions unit that is the subject of a verified complaint. When a valid verified complaint is received by Ohio EPA, pursuant to Revised Code 3745.08, the field office is requested by the Central Office to conduct a thorough investigation of the complaint and submit a detailed report to the EC contact person within 60 days. [Appendix F contains a summary of the detailed administrative procedures for the processing of verified complaints.]

All verified complaints and other violations that cannot be resolved completely at the field office level must eventually be referred to the EC. The EC is an administrative body which has been formed by the DAPC to provide assistance to the field office enforcement activities. It consists of the following members:

- ✦ the DAPC Enforcement Coordinator
- ✦ all the air attorneys in the Legal Office
- ✦ four field office contact persons - one for NEDO, HAMCO DES, Akron RAQMD, Canton City Health Department, Lake County General Health District, and Mahoning-Trumbull APC Agency; one for CDO, SWDO, RAPCA, Toledo DES, and Portsmouth City Health Department; one for NWDO, SEDO, and Cleveland Department of Public Health & Welfare; and one for the Toxic Release Inventory reporting program

The map included in Appendix G shows the jurisdictions of each of the 12 full-role field offices and the 2 partial-role field offices.

Each valid verified complaint received by the DAPC and each EAR submitted to the EC by a field office are added to the EC case docket (by facility name) and assigned a case number. Copies of the verified complaints, the subsequent verified complaint investigation reports, and the EARs are given to both the EC contact person and the assigned staff attorney.

It is the responsibility of the contact person, and his or her staff, to review each initial verified complaint investigation report and EAR submission for completeness. If the initial submission does not contain all the required information, the field office is asked to provide additional information within a reasonable period of time.

Once the submission is complete, the contact person will determine a recommended course of action to resolve the violation or verified complaint and calculate the civil penalty, if applicable. In determining a recommended course of action, the contact person will consult, as appropriate, with the field office, the assigned staff attorney, and the Enforcement Coordinator. There are several options the contact person may pursue to resolve an enforcement case. The options are listed below.

1. For a verified complaint:

- a. issue F&Os
- b. schedule an Agency adjudication hearing
- c. dismiss the complaint
- d. refer the case to the Attorney General's Office for legal action

2. For other violations:

- b. issue F&Os
- c. issue a DAPC warning letter (signed by the Chief of the DAPC)
- d. issue a Director's warning letter
- e. refer the case to the Attorney General's Office for legal action
- f. refer the case to the USEPA (generally signed by the Chief of the DAPC)
- g. take no action and return the case to the field office

After the proper enforcement option is determined, the contact person, and his or her staff, proceed to implement that recommended action by preparing all the necessary paperwork. Options 1.a through 1.d, 2.a, 2.c and 2.d require an official action by the Director. The paperwork prepared for the Director's approval constitutes the DAPC's official recommendation concerning a particular verified complaint or enforcement case. In general, if a warning letter is being issued, a verified complaint is being dismissed, or an adjudication hearing is being scheduled, the document that the Director signs is self-explanatory; and no additional paperwork is required. When F&Os are being issued or when a referral to the Attorney General's Office is recommended, a detailed briefing memo

is prepared in addition to the official document which is signed by the Director.

(Note: When a verified complaint or enforcement case involves solid waste, hazardous waste, and/or wastewater violations, the DAPC must coordinate its efforts with the other Division(s). To ensure that proper communication occurs between Divisions, the Agency has developed procedures that must be followed in handling multi-media verified complaints and enforcement cases. These procedures are contained in a guidance document entitled "Multi-Media Enforcement Protocol," a copy of which is included in Appendix H.)

The EC meets regularly every two weeks. At each meeting, the full committee is updated concerning all the official actions signed by the Director. Policy, procedural, negotiation, penalty, and personnel issues also may be discussed at the meetings. Each enforcement case remains on the docket of the EC until it is resolved or closed by one of the following actions:

1. For a verified complaint:
 - a. Final F&Os are issued.
 - b. An Agency adjudication hearing is scheduled.
 - c. The complaint is dismissed.
 - d. The complaint is referred to the Attorney General's Office for legal action.

2. For other violations:

- a. The emissions unit achieves compliance with the applicable rule(s) and the case is closed.
- b. Final F&Os are issued.
- c. The case is referred to the Attorney General's Office for legal action.
- d. The case is referred to the USEPA.
- e. The case is returned to the field office with no further action.

When an enforcement case is resolved by the issuance of final F&Os, it the responsibility of the field office and the EC contact person to monitor the facility's status of compliance with all the requirements of the Orders, including the payment of any civil penalties. Also, when an enforcement case is referred by the Director to the Attorney General's Office for legal action, it is the responsibility of the Enforcement Coordinator and the EC contact person to closely monitor the status of the case and to assist, as necessary, in resolving the enforcement action. This responsibility continues until the enforcement case is finally closed by the Attorney General's Office, at which time it is the field office's responsibility to monitor the facility's status of compliance with the Consent Order or Court Order.

Figures I, II and III, respectively, are flow diagrams that summarize (a) the way in which verified complaints and other violations are handled administratively by the DAPC, (b) the general sequence of events and time line for responding to violations at the field office level, and (c) the various enforcement options that are available for resolving verified complaints and other violations.

FIGURE I: DAPC ENFORCEMENT PROCEDURES

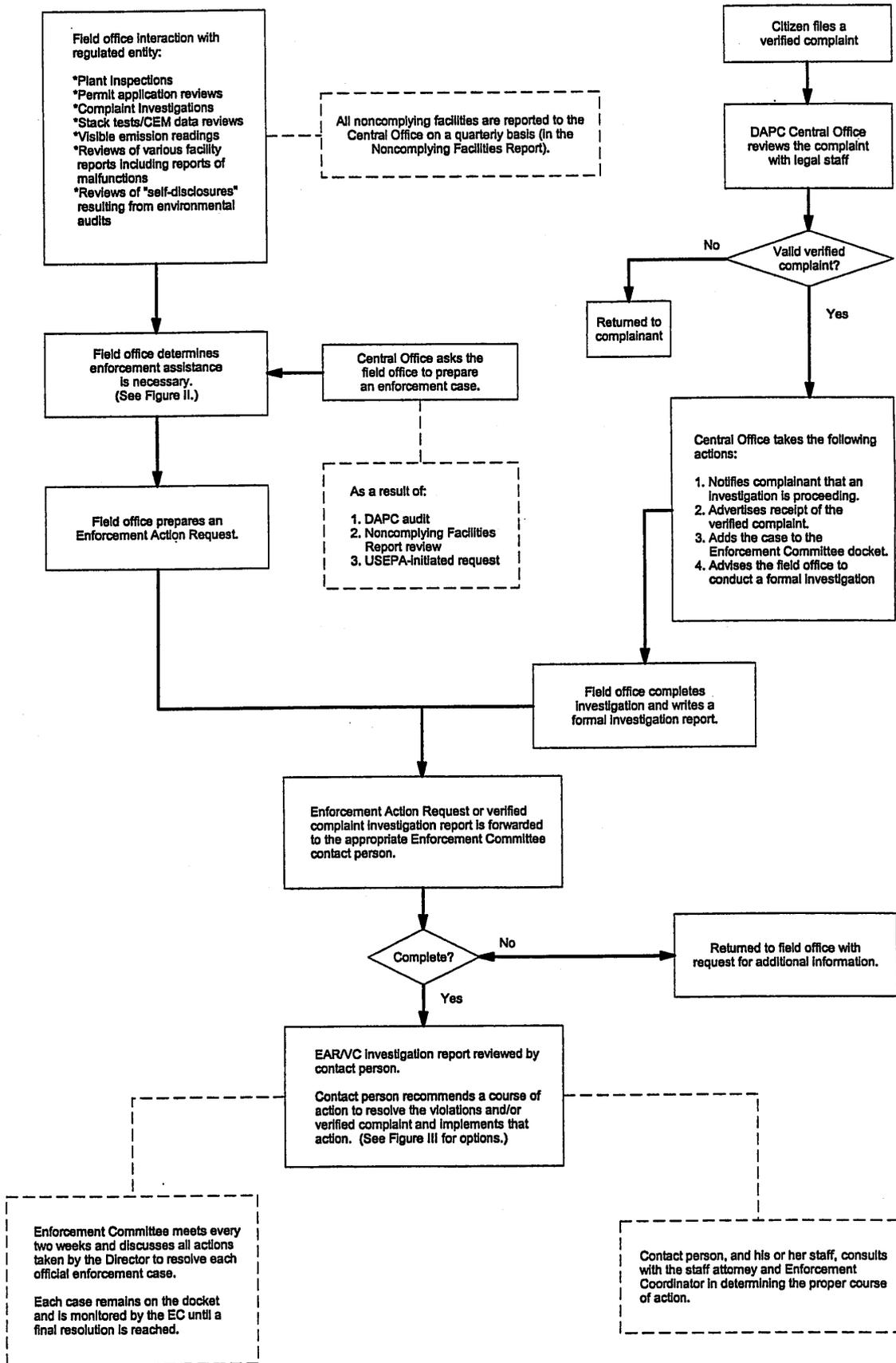


FIGURE II: GENERAL TIME LINE AND SEQUENCE OF EVENTS FOR RESPONDING TO AIR VIOLATIONS AT THE FIELD OFFICE LEVEL

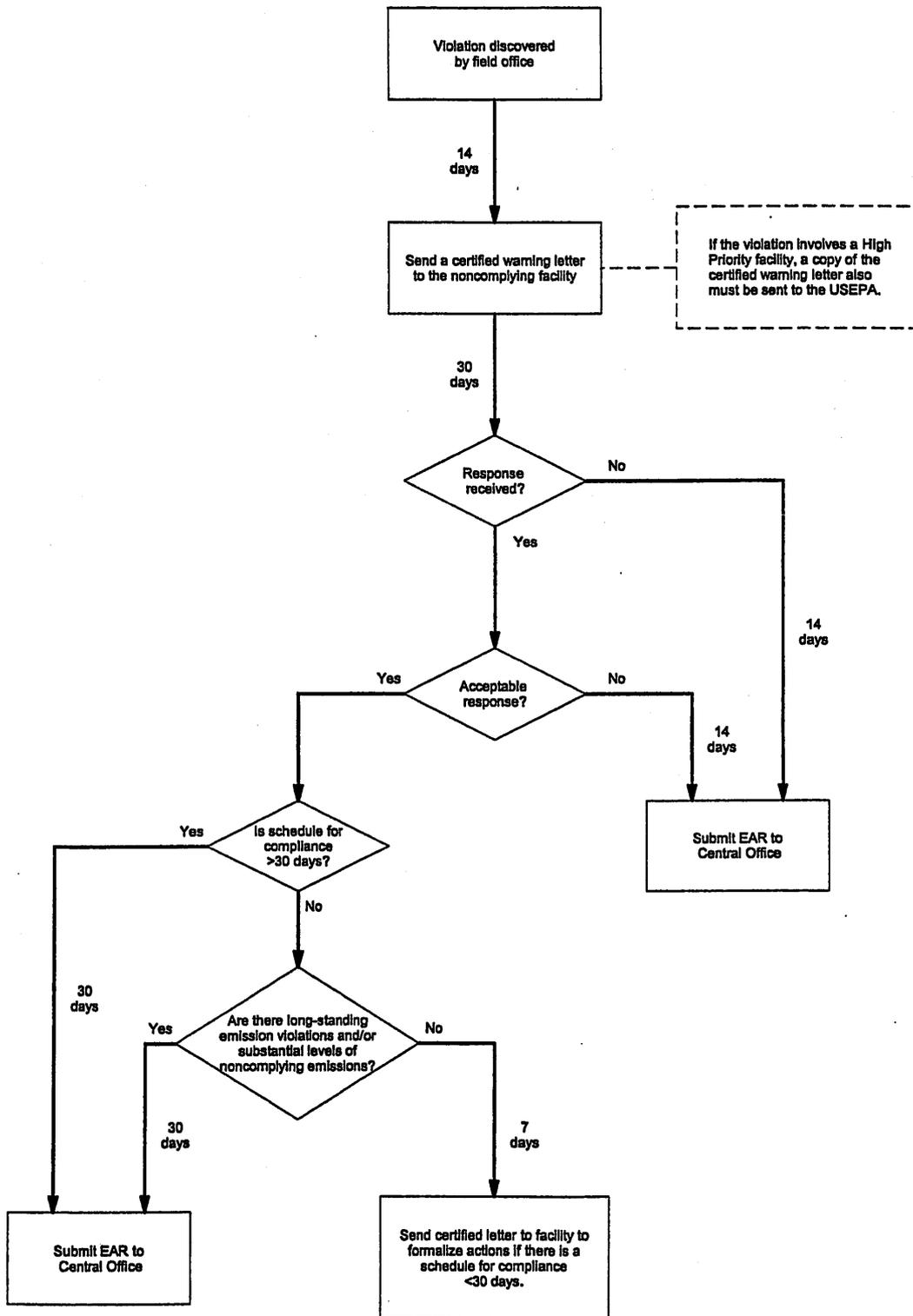
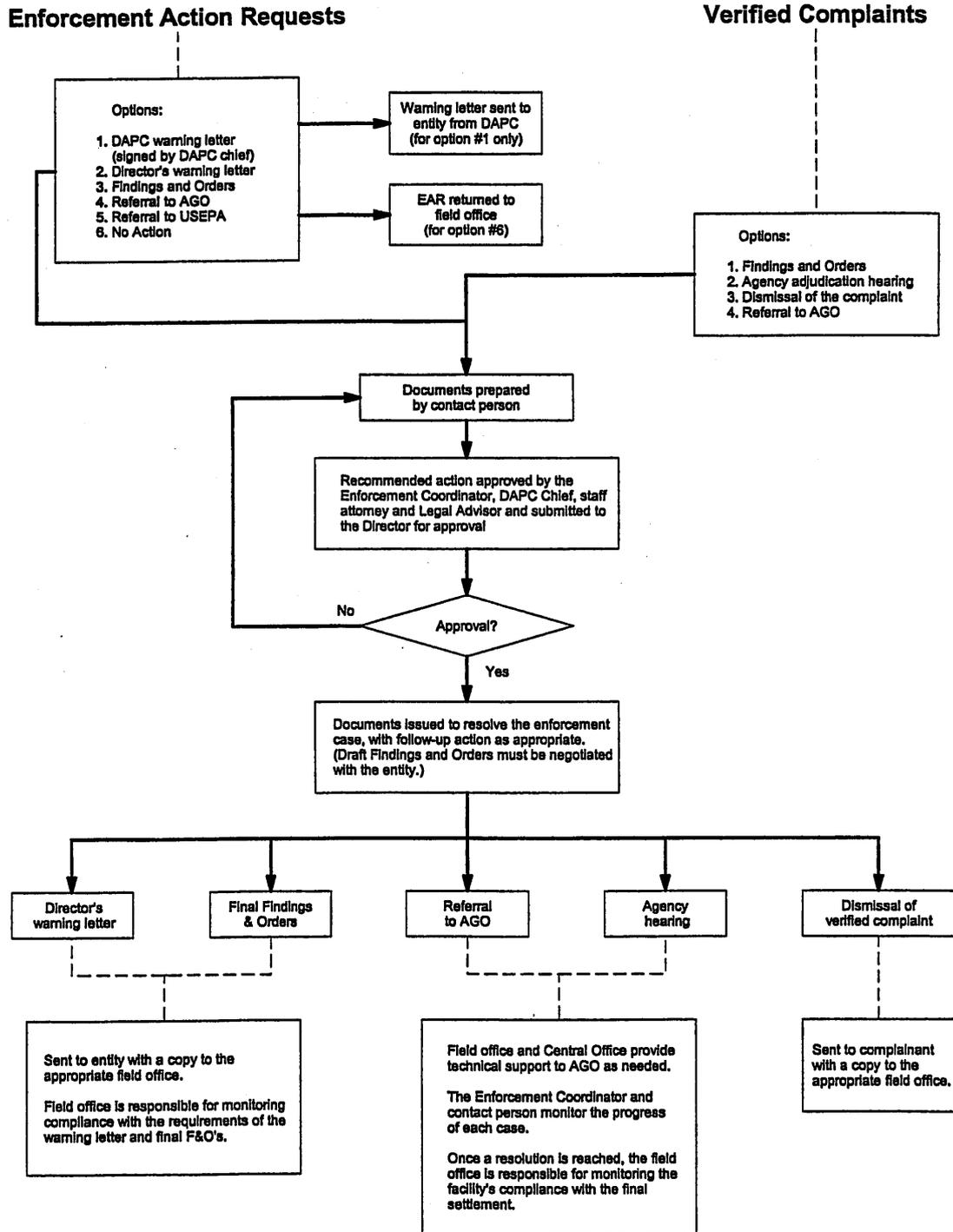


FIGURE III: OPTIONS FOR RESOLVING VERIFIED COMPLAINTS AND OTHER AIR POLLUTION VIOLATIONS



CIVIL PENALTY DETERMINATIONS:

On December 19, 1980, Ohio law (Revised Code section 3704.06) was revised to provide authority for air civil penalties of up to \$25,000 per day per violation.

Almost all of the air enforcement cases that are resolved with F&Os or a Consent Order or Court Order are resolved with civil penalties. The civil penalties are assessed to recoup any economic benefit derived from the violations and to deter future violations not only at the specific facilities that are involved in the enforcement actions by the Agency, but also at all the facilities Statewide that are subject to the air pollution control regulations.

For most air enforcement cases where civil penalties are assessed, the USEPA's "Clean Air Act, Stationary Source, Civil Penalty Policy," dated October 25, 1991, is used to calculate the civil penalty. (A copy of the USEPA's policy is included in Appendix I.) This policy is followed closely to calculate the various components that comprise the total civil penalty, except for the component that addresses administrative penalties for not applying for and obtaining a Permit to Install for an emissions unit prior to construction and for not applying for and obtaining an operating permit for an emissions unit. It has been the DAPC's experience that the strict application of the policy for these components generally results in unreasonably high values - values that are not commensurate with the administrative violations. As a result, the DAPC has chosen to use a penalty figure varying generally from \$2,500 to \$15,000 per emissions unit for a Permit to Install violation and a dollar-per-day figure (usually not greater than \$150/day) for each day an emissions unit

operates without an operating permit. The specific figure used for a Permit to Install violation and the dollar-per-day figure for an operating permit violation are determined on a case-by-case basis.

In addition to the above-mentioned administrative violations, there are three other types of enforcement cases or violations where the USEPA's policy is not used to calculate a civil penalty, namely, open burning violations, violations of Stage I (vapor balance) control requirements at gasoline dispensing facilities, and violations of the Toxic Release Inventory reporting requirements. For open burning violations, \$200 per incident is assessed for each residential violation and \$1,000 per incident is assessed for each commercial, institutional, or industrial violation. For Stage I violations at gasoline dispensing facilities, \$1,000 per incident is assessed for the first offense, and for subsequent violations the penalty amount is equal to \$1,000 times the number of incidents that have occurred at that particular site (e.g., the penalty for a third incident at a site would be \$3,000). The civil penalties for open burning and Stage I violations can be augmented significantly if the violations are considered to be flagrant. For Toxic Release Inventory reporting violations, the DAPC has created a specific procedure for calculating the civil penalty - one that is unlike the USEPA's policy. (A copy of the civil penalty calculation procedures used for Toxic Release Inventory violations is included in Appendix J.)

During any civil penalty negotiation, Supplemental Environmental Projects (SEPs) can be proposed by a facility to offset the payment of a portion of the cash civil penalty. In evaluating SEP proposals, the DAPC does not strictly follow the USEPA's guidance

document concerning SEPs. In accordance with the USEPA's guidance, the DAPC does not allow SEPs to offset any portion of the economic benefit, nor more than 75% of the "gravity" component of the civil penalty. In addition, the DAPC requires that each SEP must provide a quantifiable environmental benefit of some kind (not necessarily air-related) that goes beyond any legal obligations; it must be implemented for the life of the emissions unit; and the DAPC must be able to describe the SEP in the settlement agreement in a way that makes the SEP requirements enforceable by the Agency. If a SEP proposal meets these conditions, the DAPC will assign a dollar value for the SEP that reflects the quantified environmental benefit of the project. In no case would the SEP credit exceed the total installed cost for the SEP. In spite of what may appear to be rather onerous requirements to obtain approval of a SEP, SEPs are proposed fairly frequently in civil penalty negotiations.

By statute, 50% of any cash air civil penalty, whether it be in F&Os or a Consent Order, must be directed to Ohio EPA's Environmental Education Fund. The other 50% goes into a rotary fund that is used exclusively to fund activities and equipment purchases within the DAPC. For an enforcement case settlement that involves a facility located within the jurisdiction of a local air agency, half of the percentage of the civil penalty deposited in the rotary fund will be directed to the local air agency if the local air agency actively participated in the development and resolution of the enforcement case.

RECORD KEEPING ASSOCIATED WITH THE DAPC'S ENFORCEMENT ACTIVITIES:

No enforcement program can function effectively without adequate record keeping. Considerable time and effort are spent by the field offices and the DAPC Central Office to maintain accurate, up-to-date records concerning all facets of the enforcement process. The major purposes of such records are (a) to document all actions taken by Ohio EPA to resolve each enforcement case and (b) to keep all parties who are involved in the enforcement activities informed as to the current status of each case. The following sections describe the various records used by the DAPC in the enforcement program:

1. Noncomplying Facilities Report:

This Report is described in detail in the portion of this document entitled "Identification of Noncomplying Facilities."

2. Case files:

A master file is maintained for each enforcement case that is listed in the EC docket. Each case file remains open until the noncomplying facility achieves compliance with all applicable air pollution control regulations or it is determined that no further enforcement action is necessary. When the enforcement case is closed, the case file is either sent to the appropriate field office or, if the field office does not want or need the file, it is archived by the DAPC.

3. Minutes of EC Meetings:

Minutes are taken during each biweekly EC meeting. The minutes document and summarize the actions taken, if any, concerning each case on the EC docket. The EC minutes are approved (by signature) by the Chief of the DAPC, and copies of the EC minutes are distributed to the field offices, EC contact persons, Enforcement Coordinator, staff attorneys, and the USEPA (Region 5).

4. EC Case Docket:

The case docket is a list of all pending EC cases, and it is updated at each biweekly EC meeting. For each case, the docket shows the case number, the name of the facility, the date the EAR was received by the Central Office, the responsible field office, and the initials of the staff attorney assigned to the case.

5. Summary of Compliance with Effective F&Os:

This table summarizes all the requirements in final F&Os, including penalty payments, that a facility must comply with following the issuance of the F&Os. For each facility, the table specifies each requirement contained in the F&Os along with the deadline in the F&Os for complying with that requirement. When a facility complies with a specific requirement, the actual completion date is also added to the table

opposite the deadline date.

6. Status Report for Pending Verified Complaints:

Each month, a report is prepared for the Director's Office concerning the status of all pending verified complaints. For each verified complaint, the report identifies the following: the EC case number; the facility name; the dates the complaint and investigation report were received; the DAPC staff and attorney assigned to the complaint; the numbers of days the complaint has been pending since its receipt by the Agency and since the receipt by the DAPC of a complete investigation report; the current status of the efforts to resolve the complaint; and the date of the final resolution. When the verified complaint is resolved, it is then dropped from the next month's status report.

7. Summary of Environmental Improvements Resulting from Case Settlements:

Beginning in calendar year 2001, a tabular summary is being maintained for each case settlement (F&Os and Consent/Court Orders) that quantifies the environmental improvement associated with each settlement. The environmental improvement will be expressed in terms of the tons/year of reductions that occurred at the facility in achieving compliance, and it will include the reductions that have or will occur as a result of implementing a SEP.

8. Summary of Resolved Cases:

For each calendar year, a summary is kept of all cases resolved by the EC. The summary is updated at each EC meeting. For each resolved case, it provides the case number, the name of the facility, the responsible field office, the initials of the contact person and staff person involved in the case, the date the EAR or verified complaint was received by the Central Office, the type of action(s) taken to resolve the case, and the date of each such action.

9. Summary of the Enforcement Cases Referred to the Attorney General's Office:

The DAPC maintains a listing of all the cases that have been referred by the Director to the Attorney General's Office for legal action. The listing is divided into two categories: pending cases and closed cases. For each pending case, the referral date and the attorney(s) handling the case are noted. For each closed case, the referral date, the type of action taken to resolve the case, and the date of that action are noted.

10. Summaries of Civil Penalties:

The DAPC keeps a running summary of all the air enforcement cases that are resolved with civil penalties by Ohio EPA, jointly by Ohio EPA and the Attorney General's Office, USEPA, and the local air agencies. The summary includes the name of each facility, the type of settlement

involved, a brief description of the noncomplying emissions units, the rule and/or statute violations, the cash civil penalty assessed, and any civil penalty credit projects (SEPs) along with the dollar value for each project. A running summary also is kept of just the civil penalties assessed each calendar year. This summary provides the cash civil penalties, the credit project values, and the total civil penalties (including penalty credit projects) for all the cases resolved by Ohio EPA, jointly by Ohio EPA and the Attorney General's Office, USEPA, the local air agencies, and all entities combined.

11. Summaries of the EC Activities and Overall Compliance Percentage for High Priority Facilities:

On a monthly basis, statistical and graphical summaries of the EC activities and the compliance percentage for High Priority facilities are prepared for the DAPC's monthly program report.

12. Annual Summary of the DAPC's Enforcement Activities:

Each year, the Enforcement Coordinator prepares a report of the DAPC's enforcement activities during the previous calendar year. The report includes graphical summaries of data relating to the enforcement activities, a summary of the "highlights" from the previous year's efforts, as well as the enforcement goals and objectives for the next calendar year.

All of the above-mentioned documents and records are considered to be public information, except for the Noncomplying Facilities Reports, the enforcement case files, the minutes of the EC meetings, and the status reports for pending verified complaints. (Examples of all the public documents and records are contained in Appendix K.)