



Ohio Revised Code Section 3734.101 Civil action.

Effective: October 29, 1993

Legislation: Senate Bill 165

(A) Except as provided in division (C) or (H) of this section, any person aggrieved or adversely affected by an alleged violation of this chapter or a rule, permit, license, variance, or order issued or adopted under it may commence a civil action on his own behalf against any person, the state, or a political subdivision that is alleged to be in violation of this chapter or a rule, permit, license, variance, or order issued or adopted under it. Actions against the state or a political subdivision under this division may only relate to its activities involved in generating, transporting, storing, treating, or disposing of hazardous waste, infectious waste, or solid wastes, but may not relate to any such activities involved in the cleanup of a hazardous waste facility, infectious waste treatment facility, or solid waste facility, to the selection of scrap tire facilities for cleanup, or to any regulatory activity, including, without limitation, inspections conducted by it in accordance with this chapter and rules adopted under it.

(B) An action under division (A) of this section may be commenced no sooner than one hundred fifty days after the aggrieved or adversely affected person has given notice of the alleged violation to the director of environmental protection, the attorney general, and the alleged violator. Notice required under this division shall be delivered by certified mail and shall describe in detail the alleged violation for which the action may be commenced.

(C)(1) No action may be commenced under division (A) of this section if, within one hundred fifty days after the aggrieved or adversely affected person has given notice under division (B) of this section, one of the following occurs:

(a) The director, with the written concurrence of the attorney general, has issued an administrative enforcement order requiring compliance by the alleged violator with the particular provision of this chapter, rule, permit, license, variance, or order in question;

(b) The attorney general, prosecuting attorney of a county, city director of law, or village solicitor is prosecuting a civil or criminal action in any court to require compliance by the alleged violator with



the particular provision of this chapter, rule, permit, license, variance, or order in question.

(2) Any person who has given notice under division (B) of this section may intervene, as a matter of right, in any administrative enforcement action under division (C)(1)(a) of this section or in any civil action under division (C)(1)(b) of this section.

(3) If the attorney general gives his written concurrence to the director's administrative enforcement order under division (C)(1)(a) of this section, he shall send by certified mail an exact photographic copy of the written concurrence to the person who gave notice under division (B) of this section.

(D) If the director is not a party in any action commenced under this section, he may intervene in it as a matter of right.

(E) Only the court of common pleas in the county in which an alleged violation occurs has original jurisdiction over actions authorized by division (A) of this section. The court may do either or both of the following:

(1) Compel the alleged violator to comply with the particular provision of this chapter, rule, permit, license, variance, or order in question;

(2) Award, as the court considers appropriate, costs of litigation, including reasonable attorney's fees and expert witness fees, to either of the following:

(a) A plaintiff who substantially prevails in the action;

(b) A defendant who substantially prevails if the court ultimately determines that the action was brought in bad faith.

(F) Nothing in this section restricts any right that any person or class of persons may have under any statute or common law to seek enforcement of this chapter or rules, permits, licenses, variances, or orders issued or adopted under it or to seek any other relief.

(G) The Rules of Civil Procedure generally applicable in civil actions apply to actions commenced



under this section except as this section expressly provides otherwise.

(H) This section does not apply to the enforcement of sections 3734.90 to 3734.9013 of the Revised Code or any rules adopted or assessments made under those sections.