A Citizen’s Guide to Filing a Verified Complaint
Public Participation Helps Protect All Ohioans

The easiest and least expensive way to get the Ohio Environmental Protection Agency to investigate and act upon a potential environmental violation is to file a verified complaint. This guide provides an explanation of the verified complaint process and a sample verified complaint template.

Introduction

Public participation in enforcing environmental law is essential to the health and quality of life of Ohio’s residents. A verified complaint is an effective way to demand the Ohio Environmental Protection Agency (OEPA) to act on a problem.

It is more formal than a general complaint and requires the OEPA to investigate and report on the results.

Verified Complaints

A verified complaint is a mechanism created by the Ohio Environmental Protection Agency under Ohio Revised Code §3745.08 to allow for citizen or government reporting of alleged violations of law regarding air pollution, water pollution, solid waste, infectious waste, hazardous waste, construction and demolition debris, public water supply, or cessation of chemical handling operations.

A verified complaint can also be filed if a person or corporation fails to meet a requirement of a license, permit, variance, or plan approval relating to any of the previously listed types.

How a Verified Complaint Works

A verified complaint is a more formal proceeding than merely calling to complain about a violation, but falls short of a full lawsuit.

After receiving the complaint, OEPA must begin a prompt investigation to determine whether a violation has occurred, is occurring, or will occur.

In essence, filing a verifying complaint speeds up the process of having the complaint resolved, and most importantly, in compliance with the law.

Before taking action, OEPA may commence a hearing. Twenty days prior to that hearing, OEPA must publish a notice in a newspaper in the county of the alleged violation and send written notice by certified mail to complainer and violator.

The investigation will result in entering orders as may be necessary, requesting the state’s Attorney General’s Office to commence legal proceedings against the violator, or dismissal if violations have been terminated and future violations of the same kind are unlikely to occur, or no violations are found.

OEPA’s goal is to have no complaints unresolved for longer than two years.
How To File a Verified Complaint

About 20 percent of all verified complaints are rejected because of technicalities, so it is vitally important to ensure that the complaint meets all requirements. Following this section is a template of an acceptable verified complaint.

Verified complaints are made up of four important sections:

(1) a section stating that the aggrieved party has standing to log a complaint;
(2) a section detailing the background of the issue;
(3) a section citing specific laws or regulations that the aggrieved party thinks are being violated; and
(4) verification.

**Standing**

To demonstrate that the aggrieved party has standing to log a complaint, the complaint must set identify the complainant is, and how he/she will be aggrieved or adversely affected by the violation that has occurred, is occurring, or will occur.

“Aggrieved and personally affected” means that the complainant is personally suffering from the violation. The complainant cannot be miles and miles away from the violation an claim to be personally affected.

Also, the complaint must be a violation that the complainant witnessed or has firsthand knowledge of. For example, the complaint cannot be based upon something read in a newspaper or environmental report.

**Background**

To aid the OEPA in fact gathering so it may take quick and appropriate action, the complainant must detail as many facts as possible.

The background section, for example, should contain specific facts and dates pertaining to the violation as well as how it has personally damaged or affected the complainant or complainant’s property.

Although not required, photographic evidence is always helpful. Photos or other documentation should be included with the verified complaint if possible.

**Violation**

For the specific law, the complaint must identify a violation of a law, rule, standard or order, license, permit, variance, or plan approval.

The OEPA prefers but does not require citation of the specific code section that is suspected of being violated. When possible, cite the general code section or title from which the violation arises.

For example you could cite the exact statute (Ohio Revised Code 6111.11(A)(1) or Ohio Administrative Code 901:10-02-2(A)(7)), or the common name for the regulation (anti-degradation or Ohio Water Quality Standards).
Specifying the alleged violation may be difficult for most individuals who witness an act of environmental degradation but are not well versed in the Ohio Revised Code.

While addressing the violation broadly as a violation of “Ohio Water Quality Laws” (for example) may be sufficient at times, it could lead to a dismissal of the complaint on a technicality. It is encouraged that an attorney reviews which specific laws are allegedly being violated.

Verification

The complaint also must be sworn and notarized, in the form of an affidavit, by the complainant, or his/her agent or attorney.

This is the part that most often results in rejection over technicalities. If it is rejected, the OEPA may still act on it at their discretion, but it will not have the force of a verified complaint. The complaint must be in writing and include the words “Verified Complaint” at the top.

Once completed, the complaint must be mailed to the Director of the OEPA. The Agency will contact the complainant upon receipt of the verified complaint.

While the OEPA must contact a complainant about the status of a verified complaint within 180 days of receipt, it is important to stay in contact with Ohio EPA on a regular basis about the status of the complaint.

Advantages of Filing a Verified Complaint

(1) Ease & Cost

Verified complaints cost nothing to file and can be done with or without legal counsel. Also, verified complaints do not have to meet the more stringent standing requirements of a citizen lawsuit in federal court or other complaint in state court.

Anyone who can show that she/he has been or will be adversely affected by a violation of an environmental law may file a verified complaint. There is an injury requirement for these administrative actions, but no “live controversy” requirement as there is for formal lawsuits.

Moreover, these complaints can be very short, as the statute only requires a brief statement of the allegations along with a notarized affidavit.

(2) Effective

Verified complaints, if procedurally valid, must be acted on by the OEPA within 180 days.

(3) Appeals to ERAC

If the OEPA declines to accept the verified complaint for any reason, or the agency’s investigation does not yield further action, the OEPA will dismiss the verified complaint.

Dismissals of verified complaints are final decision of the Director of Ohio EPA, and thus are appealable to the Ohio Environmental Review Appeals Commission (ERAC).
ERAC provides a second avenue to hold environmental violators accountable. Although not free, it is a low-cost procedure to find resolution of the issue through the administrative process.

Decisions of ERAC, although they can take time and resources to pursue, end in legally binding findings of fact and conclusions of law. Such decisions by ERAC also are appealable to state court.

[See separate booklet “A Citizen’s Guide to the Ohio Environmental Review Appeals Commission.”]

**Disadvantages of Filing a Verified Complaint**

(1) No Impartial Decision Maker

One disadvantage is that a verified complaint does not have the same force as a lawsuit. A lawsuit, filed either pursuant to a federal statute or a common law claim, has the potential to compel an agency or private action through an injunctive order or damage award.

When a plaintiff brings a lawsuit, a court decides the merits of the case. With a verified complaint, however, the Director of OEPA or the Director of Ohio Department of Agriculture has the sole discretion to either dismiss the complaint or take action.

Therefore, there is a risk that meritorious complaints will be denied because administrative agencies are either unable or unwilling to investigate the claim.

(2) Delay in Response

One disadvantage, especially if a quick and decisive response is needed, is that the OEPA is not required to respond to the verified complaint for at least 180 days.

It is important for the complainant to follow up with the agency on a regular basis after the complaint is accepted to keep officials on track and engaged in the process.

**Verified Complaint Template**

While there is no specific complaint form or format beyond the required information explained above, the template at the end of this booklet may be helpful in developing a verified complaint.

Whatever the format, it is always useful to have an attorney draft or review a verified complaint before it is sent to the OEPA.

**How the OELC Can Help**

The staff attorneys at the Ohio Environmental Law Center can assist with any questions during the drafting or following up of a complaint.
SAMPLE OF VERIFIED COMPLAINT

(month, day, year)

Director, Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, Ohio 43215

Re: Verified Complaint against Name of Violator

Dear Director:
As authorized under Ohio Law, Name of Complainant (YOU) submits for your consideration and prompt review this verified complaint regarding the subject of the complaint (Spill on Captina Creek from the slurry impoundment owned and operated by X—for example). It is very likely that there will be continued future violations if this matter is not resolved. As outlined below, sewage overflow violates Ohio water law and the federal Clean Water Act.

Standing
Name of Complainant (YOU) is a resident of (Example: the City of Brecksville, Cuyahoga County and the State of Ohio) who has been/will be directly adversely affected by the subject of the complaint. Describe in detail how you, the complainant, was or will be adversely impacted, and be sure to say that it is based on personal knowledge of things you have observed. Courts have held that a complainer relying solely on a report did not fulfill the personal knowledge requirement (Martin v. Schregardus)

Background
This section should contain specific facts pertaining to the event that sparked the complaint and any more information on the complainant’s individual situation. Dates are important as well as detailed description of incident that has caused damage to the complainant or the complainant’s property. Although not a requirement, photos would be a good addition to show the severity of the problem and if available should be attached and referenced in this section.
Complaint

I. In this section, state the law, statute, regulation that was violated and a very brief sentence or two on how it was violated

II. You can either state the exact statute/reg (ex. Ohio Revised Code 6111.11(A)(1) or Ohio Administrative Code 901:10-02-2(A)(7)) or the common name for the regulation (anti-degradation or Ohio Water Quality Standards)

Conclusion

Brief statement on the urgent nature of addressing these violations, Name of Complainant (YOU) urges you to investigate this situation, pursue other appropriate orders and proceedings pursuant to your authority under Ohio Law to stop these violations of Ohio law and perform whatever other steps which are or may be necessary to protect the waters/air quality of the state of Ohio.

Thank you in advance for your prompt attention to this important issue.

STATE OF OHIO
_______________ COUNTY SS

THE UNDERSIGNED _____________________, BEING FIRST DULY SWORN AND CAUTIONED, STATES THAT THE FACTS AND ALLEGATIONS OF THE ABOVE COMPLAINT ARE TRUE TO THE BEST OF HIS/HER KNOWLEDGE.

________________________________
Name of Complainant (YOU)

THE ABOVE COMPLAINT WAS SIGNED AND SWORN TO BEFORE ME AND IN MY PRESENCE BY THE ABOVE NAMED _____________________ A PERSON KNOWN TO ME ON THE ____ DAY OF _________________, 20xx.

__________________________
NOTARY PUBLIC