



BOB TAFT
GOVERNOR
STATE OF OHIO

December 28, 2006

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5 (R-19J)
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Ms. Gade:

The State of Ohio is pleased to submit the enclosed description of the Ohio National Pollutant Discharge Elimination System (NPDES) program and related documents for the transfer of regulatory responsibility from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). I request approval as provided under the Clean Water Act (CWA) Section 402(b) (33.U.S.C. §1343(b)) of the NPDES program.

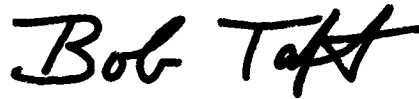
Pursuant to 40 C.F.R. Part 123, the enclosures include:

- The NPDES Program Description that explains the processes the state will use to carry out the responsibilities in accordance with 40 CFR §123.22;
- A Memorandum of Agreement that defines how the NPDES program will be administered by the ODA and reviewed by the U.S. Environmental Protection Agency, Region 5 (EPA), in accordance with 40 C.F.R. §123.24.
- Copies of all applicable portions of the Ohio Statutes and Ohio Administrative Code (OAC), including new Chapter 903 of the Ohio Revised Code for administering permits under the NPDES program, as well as related amended rules in OAC Chapters 901:10-1 to 901:10-6 covering administrative procedures, enforcement and appeal procedures, effluent limitations; and other provisions necessary to administer and enforce NPDES permits for concentrated animal feeding operations that are subject to NPDES permits under the Clean Water Act.
- A statement from the Ohio Attorney General certifying that Ohio's laws and regulations will establish adequate authority to implement a NPDES program, in accordance with 40 C.F.R. §123.23, provided that Senate Bill 393 is duly enacted into law and provided further that the Director adopts as final those rules proposed on November 9, 2006 in accordance with ORC 119.03;

In addition, the State of Ohio requests that the EPA approve a phased program approach allowed under CWA Section 402(n)(4)(A) and (B), as described in the enclosed Memorandum of Agreement for concentrated animal feeding operations.

The State of Ohio is confident that the enclosures provide sufficient documentation for the EPA to determine that the ODA possesses adequate authority to implement the proposed NPDES program, in accordance with the CWA section 402(b) and 40 C.F.R. §123. I look forward to receiving EPA's timely approval and working with you to administer this very important Clean Water Act program.

Sincerely,

A handwritten signature in black ink that reads "Bob Taft". The signature is written in a cursive, slightly slanted style.

Bob Taft
Governor

Enclosures

cc: Jo Lynn Traub, Director, Water Division (W-15J), EPA Region 5
James A. Hanlon, Director, Office of Wastewater Management (4203M), EPA Headquarters

The Ohio Department of Agriculture and the National Pollutant Discharge Elimination System Program – Program Description 40 CFR 123.22

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The Ohio Department of Agriculture and the National Pollutant Discharge Elimination System Program – Program Description 40 CFR 123.22

I. LEGAL AUTHORITY AND PERMITS

- A. Department Overview
- B. Legal Authority for the Permitting Program – A General Overview
- C. Legal Representation

A. Department Overview

The Ohio Department of Agriculture (ODA), the second oldest State agency, evolved from "An Act for the Encouragement of Agriculture" passed by the General Assembly on February 27, 1846, to establish agricultural fairs and promote farming.

ODA is responsible for enforcing State and federal laws and regulations, primarily in the areas of food safety, food production and food processing. ODA is Ohio's lead agency for enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) through the United States Environmental Protection Agency's (EPA) Office of Pesticide Programs. ODA also oversees county and independent fairs, helps assure amusement rides are safe, is the custodian of the primary weights and measures standards in Ohio, and helps Ohio farmers and food processors market their products.

State law makes the ODA responsible for environmental protection in the State and the lead agency for administration of the National Pollutant Discharge Elimination System (NPDES) Water Discharge Permit Program with respect to Concentrated Animal Feeding Operations (CAFOs) and storm water pollution attributable to Animal Feeding Operations (AFOs). ODA has responsibility for protecting water quality, ensuring disease prevention, ensuring a safe and sanitary food supply, conducting inspections, protecting livestock in Ohio, and enforcing regulatory requirements through administrative or court proceedings.

B. Legal Authority for the Permitting Program – A General Overview

NPDES permits are documents which provide authorization for potentially contaminated wastewater discharges. These permits establish effluent limitations and monitoring and reporting requirements on all pollutant discharges into the waters of the State. Permits are developed and issued by the ODA Livestock Environmental Permitting Program (LEPP) following permitting procedures established pursuant to "Concentrated Animal Feeding Facilities," Ohio Revised Code (ORC) Chapter 903 and regulations adopted under it. The permitting process allows the State to monitor and control the quantity, quality, and types of discharges to its waters.

State law provides authority to issue permits for the discharge of pollutants from existing and new facilities or activities to waters of the United States to the same extent as required under the permit program administered by the EPA pursuant to Section 402 of

the Clean Water Act, as amended, 33 U.S.C. §1251 et seq. (hereinafter "the CWA" or "the Act").

The NPDES program to be administered by ODA applies to NPDES individual permits, general permits, and construction and industrial stormwater permits for CAFOs. ODA is also responsible for the administration of the NPDES program for both construction and industrial stormwater permits for animal feeding operations (AFOs). Ohio EPA retains jurisdiction for those construction and industrial stormwater permits for agricultural activities that are not located on AFOs (i.e., grain and cropping agricultural activities) and for CAFOs that discharge to a Publicly Owned Treatment Works (POTW), cooling water and filter backwash discharges at AFOs/CAFOs, as well as grain mills located at these types of facilities.

Substitute Senate Bill 141 was effective on March 15, 2001¹. This legislation transferred from the Director of Environmental Protection to the Director of Agriculture the authority to issue NPDES permits for the discharge of manure from point sources into waters of the State and for the discharge of storm water resulting from CAFOs and AFOs. The new law requires the Director of Agriculture (hereinafter "the Director") to submit to the EPA a program for the issuance of those permits, and provides that the authority of the Director to issue NPDES permits is dependent upon approval from the EPA.

ORC Chapter 903 authorizes the Director to adopt, amend, or repeal all rules, regulations, and standards necessary for the protection of the environment from pollution attributable to concentrated animal feeding operations and to stormwater from animal feeding operations. Under Section 903.08 of the ORC the Director is given specific authority to issue, deny, modify, suspend, and revoke permits. Enforcement of NPDES permits is authorized by Section 903.17 of the ORC and rules promulgated pursuant to Section 903.10 of the ORC.

Section 903.10 grants the Director the following specific authority to establish all of the following concerning NPDES permits:

- (1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. This designation shall include those point sources for which the issuance of NPDES permits is required under the Act.
- (2) Effluent limitations governing discharges into waters of the State that are authorized by permits;
- (3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Act;
- (4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of

¹ H.B. 152, effective November 3, 2003, amended ORC Chapter 903 to conform to changes in EPA's NPDES rules for CAFOs, adopted April 14, 2003. Subsequent revisions have been made to ORC 903.08 in S.B. 393 to conform to the outcome of Waterkeeper Alliance et al. v. EPA, 399 F. 3d 486 (2d Cir. 2005).

- compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the State; and authorized duration and frequency of any discharges into waters of the State;
- (5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;
 - (6) The amount of the fee that must be submitted with an application for a permit;
 - (7) Procedures for processing permit applications, including public notice and participation requirements;
 - (8) Procedures for notifying the EPA of the submission of permit applications, the Director's action on those applications, and any other reasonable and relevant information;
 - (9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;
 - (10) Procedures for the transfer of permits to new owners or operators;
 - (11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of permits, including general permits;
 - (12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit.

Section 903.10(F) also provides that rules relating to NPDES permits shall be consistent with the requirements of the Act.

Section 903.08(A) of the ORC provides the specific statutory authority to establish ODA as the lead agency for NPDES delegation with respect to CAFOs and stormwater from AFOs. It provides the Director of ODA with the power and authority as follows:

- (1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.
- (2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 [6111.03.5] of the ORC for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the Director of Agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

Copies of the Ohio laws and rules applicable to the ODA program, including a recent amendment to ORC Chapters 903 and 6111 (Substitute Senate Bill 393) that was enacted into law effective December 27, 2006, are included in Volume 1 of this application for NPDES program revision. The Ohio Attorney General's Statement in support of the program revision is also included in Volume 1. Background information about the ODA LEPP, including annual budget, table of organization, and position descriptions, is included in Volume 2.

C. Legal Representation

The ODA uses both in-house counsel (Office of Legal Counsel) and the Office of the Ohio Attorney General (Attorney General) for legal representation. The Office of Legal Counsel exists within ODA, and is composed of the Chief Counsel, three attorneys, a paralegal plus administrative office staff. ODA's Enforcement Division provides investigative support – conducting both criminal and administrative investigations – for all of ODA's regulatory divisions.

The Office of Legal Counsel provides legal consultation to and representation for the various offices and divisions in ODA, including the Livestock Environmental Permitting Program (LEPP), in regard to permitting, enforcement, grants, contracts, personnel, legislation, intergovernmental agreements, and other such matters. Legal functions include the following:

1. Legal review of draft permit and enforcement actions;
2. Legal analysis and other training, support and direction during the legislation and regulation promulgation processes;
3. Preparation of the administrative record of proceedings and related documents, along with case support, in adjudication hearings and in appeals to the Environmental Review Appeals Commission; and
4. Coordination and direction of enforcement and criminal investigation and referrals.

Two attorneys are committed to implementation, administration, and enforcement of Chapter 903 of the ORC and LEPP. Legal counsel assist LEPP in all administrative actions, including permitting, administrative, and civil actions, and in development of all regulations promulgated by LEPP pursuant to Chapter 903 of the ORC.

In certain instances ODA is required by law to request the Attorney General to provide legal representation. The Attorney General acts as counsel to ODA in all civil suits as provided in Sections 903.16, 903.17, 903.18, and 903.99 of the ORC. This includes civil suits in courts of common pleas brought for injunctive relief under Sections 903.16 and 903.17 of the ORC as well as in enforcement matters such as penalties and compliance orders. The Attorney General's concurrence is also required by Section 109.02 of the ORC to settle or resolve any suits, disputes, or claims for penalties. Finally, criminal offenses may be prosecuted pursuant to ORC 903.99 by ODA through the Office of the Ohio Attorney General.

The prosecuting attorneys of each county have the discretion to prosecute any criminal violation of environmental law within the jurisdiction of the county. The ODA cooperates fully with county prosecuting attorneys through the Office of the Ohio Attorney General.

II. PERMITS PROGRAM – OVERVIEW²

- A. General Permitting Procedures
- B. Small and Medium CAFOs
- C. Inspections

At ODA, the NPDES is managed by LEPP. Its primary responsibility is to regulate any activity which results or may result in the discharge of any pollutant into waters of the State which is within the scope of coverage of the NPDES Permit Program in accordance with ORC Chapter 903, "Concentrated Animal Feeding Facilities."

Permit applications fall generally into one of these categories:

- 1) Individual Permits to Install issued under State authority;
- 2) Individual permits for MCAFFs³ and individual permits for CAFFs, with State operating requirements⁴ and with NPDES requirements for operations and industrial storm water (where CAFF means a Concentrated Animal Feeding Facility⁵);
- 3) General permits to operate that will include State operating requirements, NPDES requirements for operations, and NPDES requirements for industrial storm water;
- 4) Individual permits for medium and small CAFOs with NPDES coverage for operations and for industrial storm water; and
- 5) NPDES construction storm water permits, both general construction permits for AFOs and CAFOS and, where appropriate, individual construction permits.

For those permits for which EPA has not waived review, copies of the draft permit or proposed action⁶, the public notice, the fact sheet (or statement of basis), and the application will be forwarded to EPA for review. If the state and EPA agree upon the draft permit, the state will issue a public notice of the draft permit. If the state and EPA cannot agree upon the draft permit, the authority to issue the permit will transfer to EPA.

LEPP issues public notices in accordance with ORC 903.09 and OAC Chapter 901:10-6. Following publication of the notices, there is a 30-day comment period.

² See Parts III and IV below for details on permitting, public participation, inspections, and enforcement.

³ Major CAFF means a CAFF with ten times number of animals of a "large CAFO"

⁴ This type of operating permit is also referred to as "Permit to Operate" or "PTO."

⁵ Under Ohio law, ORC Chapter 903, a CAFF is a CAFO that meets the definition of a "large CAFO" and is subject not only to all federal NPDES requirements but also to State laws and regulations of operations, such as required Permits to Install.

⁶ Proposed actions under Ohio law include actions to suspend, revoke, or deny a permit or modifications of the permit that are initiated by the Director.

Once the proof(s) of publication is received, and if no significant public interest is demonstrated during the comment period, a final permit may be issued. If there is significant public interest, a public hearing is held and comments (including those presented during a public hearing and during the comment period) are collected and reviewed. A response to comments is prepared as a "Responsiveness Summary" for the Director. For those permits for which EPA has not waived review, the "Responsiveness Summary" will be forwarded to EPA for review. If there are any substantive changes to the draft permit, a permit incorporating those substantive changes is forwarded to EPA for review. Upon EPA's concurrence with the changed permit, a final permit is issued. If the state and EPA cannot agree upon the changed permit, the authority to issue the permit will transfer to EPA.

General permits will be issued by LEPP for CAFOs and AFOs with similar activities. A fact sheet, draft permit and public notice are prepared and sent to EPA for review. Upon concurrence by EPA, the draft permit is public noticed in accordance with ORC 903.09 and OAC Chapter 901:10-6. In the case of a Statewide general permit, the public notice is published in major newspapers throughout the State.

To date, LEPP has issued approximately 43 installation permits and 158 operating permits⁷ under the existing State permit program. Eighteen of the 158 State operating permits have been issued to MCAFF operations. Under ORC 903.07, ODA also has a State program that certifies livestock managers who are responsible for the management and handling of manure at an MCAFF or who annually transport and land apply quantities of manure larger than those set forth in OAC 901:10-2-06. The types and numbers of permits issued by ODA are given in Table 1. Copies of permit application forms and examples of permit orders are included in Volume 2 of this program revision application. All permits of all types are developed and tracked by LEPP Engineering staff.

**TABLE 1
PERMITS ISSUED AS OF 11/30/06**

TYPE	NUMBER
Permit to Install	43
Permit to Operate (individual)	73
Review Compliance Certificates (individual)	85
General Permits to Operate	0
MCAFF operations	18

⁷ The number of operating permits includes 85 Review Compliance Certificates or "RCCs" which are a type of permit used to transfer an effective permit issued previously by the Director of Ohio EPA to the Director of ODA for administration and enforcement. As provided in ORC 903.04, each Ohio EPA permit was examined and, in some cases, adjusted in order that the permitted entity would operate for the subsequent 5-year duration of the RCC in compliance with ORC Chapter 903.

Most of the individual operating permits issued above will be due for renewal in 2008-2009, since they have a term of 5 years. ODA estimates that a majority of the holders of individual State operating permits will seek coverage under a general permit with State operating requirements and NPDES requirements. ODA anticipates that 5-10% of the existing large CAFOs will not apply for a NPDES permit, but will still be required to obtain a State operating permit.

A. General Permitting Procedures

ODA plans to issue general permits that will require submittal of a notice of intent (NOI) by the permittee. Eligibility for permit coverage under an NPDES general permit will depend on circumstances such as the type of discharge, the number of facilities to be covered, the potential of the discharge to harm the environment, etc., which are set forth in OAC 901:10-4-01. This Section provides a description of procedures that ODA will use to issue general permits.

ODA will issue general permits that require facilities to submit a NOI form, created by LEPP and referred to in the general permit, in order to be considered for coverage. This NOI will require specific information pertaining to the facility that is seeking coverage and payment of a fee. The NOI will be reviewed by LEPP to ascertain that the facility does qualify for coverage under the general permit. When review of the application is complete and LEPP has determined that the facility may be covered under the general permit, written acceptance of coverage will be sent to the facility.

When coverage under a general permit issued using the procedure explained above expires, the permittee must send in a notification of intent to renew. Upon receipt of this notification, the entire issuance process is repeated. When an individual permit expires, the permittee must also submit a renewal application, and, at that time, LEPP will discuss whether the permittee should receive a renewed individual permit or be covered under a general permit.

Once covered under a general permit, the permittee may request to be covered under an individual permit. The Director may require any discharger authorized by a general permit to apply for and obtain an individual permit. OAC 901:10-4-04.

The general permit procedures for issuance, enforcement, surveillance, tracking, and all other administrative tasks are performed in the same manner as those for individual permits. Therefore, the discussion on individual permit issuance procedures contained here applies to general permits unless otherwise provided. The issuance of a general permit follows the procedures in OAC Chapter 901:10-6 relative to fact sheets, draft permits, EPA review, public notices, response to comments, public hearings, appeals, etc. Facilities applying for coverage under a general permit follow the basic procedures in OAC Chapter 901:10-4 relative to the application review process.

To develop an appropriate general permit, the permit writer must do extensive research into the permit conditions and effluent limitations contained in individual permits issued to that category of discharges. The permit writer must then establish appropriate applicability criteria, effluent limitations and other permit conditions for the category or type of discharge. The permit is then placed in the review process as a draft general permit and is subject to public notice requirements.

ODA will issue general permits in the future in accordance with OAC Chapter 901:10-4 with a review period of 90 days for EPA as outlined in the MOA. Once the general permit is issued, persons wishing to be covered under the general permit must apply for coverage by submitting an NOI and a Nutrient Management Plan (NMP) or Manure Management Plan (MMP)⁸.

All general permits are developed by LEPP Engineering. This group also prepares and issues individual permits for small, medium, and large CAFOs, individual and general construction stormwater permits for AFOs, and individual permits for MCAFFs. Storm Water Pollution Prevention Plans, Manure Management Plans and Annual Reports will be submitted and reviewed for verification of best management practices and regulatory compliance. Permits may be reopened and modified to address changes in State or federal regulations and statutes, changes in the State Water Quality Management Plan, changes in State Water Quality Standards, the addition of new co-permittees or operators, or other modifications, as defined in rule, that are deemed necessary to meet requirements of the Clean Water Act.

As of November 15, 2006, Ohio EPA had 33 large and 2 medium CAFOs under an individual NPDES permit. In addition, another 25 large CAFOs and 17 medium CAFOs had applied to Ohio EPA for coverage under the general NPDES permit developed by Ohio EPA, which is currently under appeal and has not issued to any operation. Depending on the outcome and future guidance and rules to be provided by USEPA based on the *Waterkeeper* decision, it is anticipated that a number of the facilities that have sought a NPDES permit from Ohio EPA will withdraw their application and not seek a permit from ODA. Below are ODA's estimates on the number of permits that could be expected based on existing regulatory conditions.

NPDES - General Permit (NOIs) Large CAFOs

ODA estimates that approximately 75 of the existing 158 Large CAFOs operating under an individual State operating permit will be eligible for a general NPDES permit/State operating permit. Assuming 20% of these would be renewed annually (5-year term of permit), approximately 15 permits would be issued per year. Expected technical workdays for each permit are 5 days, and therefore 130 technical workdays would be required per year for the general NPDES permits for Large CAFOs.

NPDES - Individual Permit for Large, Medium and Small CAFOs

ODA estimates that of the 158 Large CAFOs currently permitted under a state permit and the small/medium CAFOs that potentially could be permitted, approximately 20 individual

⁸ ODA uses the term Manure Management Plan in its program in place of Nutrient Management Plan.

NPDES permits/State operating permits will initially be issued. Assuming 20% of these would be renewed annually (5-year term of permit), approximately 4 would be issued per year. Expected technical workdays for each permit are 15 days, and therefore 60 technical workdays would be required per year for the individual NPDES permits.

NPDES – General Construction Stormwater Permit for Large, Medium and Small CAFOs
ODA estimates that 20 new construction stormwater permits will be applied for and granted for small, medium and large operations. ODA receives, on an annual basis, approximately 15 new Permits to Install on large operations that would require a construction stormwater permit and it is anticipated that another 5 small or medium facilities will also require a construction stormwater permit annually. Therefore, ODA anticipates annually approximately 20 construction stormwater permits. Expected technical workdays for each permit are 2 days, and therefore 40 technical workdays would be required per year for issuing the General Construction Stormwater permits.

Other State Permitting

A majority of the technical review currently being completed by the LEPP engineering staff on permits involves the review of the Permit to Install (PTI) and Permit to Operate (PTO). ODA estimates that 15 new PTI/PTO applications will be received annually. Based on technical hours spent on past permits, approximately 176 technical hours are spent on the more complex applications. These hours include reviewing the application, meetings and site visits with the producer and/or consultant, participating in public meetings, assisting in responsiveness summaries, being witnesses and client representatives in appeals and participating in pre-construction meetings. The technical workdays for each PTI/PTO are approximately 22 days and therefore require approximately 330 technical workdays.

Summary of Technical Time for Permitting

Summing all the technical workdays above requires 805 days per year to perform the expected permitting at the ODA. Currently, four engineers are on staff that provide 900 workdays a year, assuming 225 days of work per engineer per year. The estimates provided above are very conservative since a lot of the time accounted for in the "Other State Permitting" includes time that also relates to the review of NPDES issues. For instance, a lot of the information currently included in the state PTO covers the same information as required in the NPDES permit.

B. Small and Medium CAFOs

AFOs defined as Medium CAFOs shall apply for a permit (as required by OAC 901:10-2-01(A)(3)), and (2) ODA may elect to refrain from issuing a permit where the owner or operator has promptly eliminated the conditions that caused the AFO to be defined as a Medium CAFO.

Best Professional Judgment (BPJ) is utilized to determine permit limits. ODA anticipates approximately 3 small and medium CAFOs to be transferred from Ohio EPA to ODA for regulatory oversight.

Small and medium CAFOs will be allowed to exit the permit program after the end of the five-year permit term if they meet certain conditions. To exit the permit program, a small or medium facility would be expected to demonstrate that it has successfully addressed the conditions that caused it to be defined or designated as a CAFO and that it is fully implementing a Comprehensive Nutrient Management Plan or Manure Management Plan, as approved by ODA. The small or medium CAFO will be expected to offer evidence and certify that it is in full compliance with its permit at the end of the permit term. In the event that a small or medium CAFO that has exited the permit program has a subsequent discharge, ODA will make the facility subject to permitting.

C. Inspections

There are four (4) LEPP Inspectors available to conduct permit inspections, spill and complaint inspections, and ambient monitoring and sampling activities throughout Ohio. Sufficient personnel hours will be set aside to accomplish inspections at two full inspections per year of all permitted facilities. Additional personnel hours are dedicated to the investigation of all written citizen complaints (see OAC Chapter 901:10-5-01 and Part V, below), all verbal complaints, and unregulated facilities, and to spill response investigations reported to LEPP.

III. PERMITTING: GENERAL ADMINISTRATIVE PROCEDURES

- A. Publication of Rules
- B. Procedures for Public Hearings and Information
- C. Procedures for Conflict of Interest Questions
- D. Procedures for the Continuing Planning Process
 - 1. Statutory Requirements
 - 2. Rules in Support of the CPP and Water Quality Standards
 - 3. Agreements to Implement the CPP
- E. Procedures for Public Availability of Permit Information and Confidentiality of Information
- F. Water Quality Management Planning
- G. The Water Quality Management Plan
- H. Water Quality Management Plan Certification Procedures

A. Publication of Rules

Rules are published in the official state journal, the Register of Ohio, which is the responsibility of the Ohio Legislative Service Commission (LSC). The Register of Ohio is on the Internet and its development and administration is for agencies statewide (see ORC 103.051) to file administrative rules electronically. The Register makes available to the public, in electronic format, notice of and documents related to, proposed and emergency rule making conducted under the Ohio Administrative Procedure Act (Ohio ORC Chapter 119).

A notice and summary of the text is published in advance of adoption, and there are special procedures for emergency rules. All requirements for rule publication are found in ORC Chapter 119, specifically Section 119.03 of the ORC. A notice of intent to adopt, amend, or rescind rules is published in the Register of Ohio. The rules must be made available to the public upon request and made the subject of a public hearing. The Department must provide notice and opportunity to receive public comments concerning the proposed rules, as provided in Section 119.03 of the ORC. Emergency rule-making procedures are also found in Section 119.03 of the ORC.

A complete copy of "The Rule-Making Process," ODA, September 15, 1999, is included in Volume 1 of this application for program revision. It describes the internal procedures to be followed in publication of a rule.

The Director, Deputy Director, or, as appropriate, Assistant Director, initiates the rulemaking process for an ODA division, which becomes the originating division. The Office of Legal Counsel serves as technical expert on all rules and provides legal review for all proposed rules.

In accordance with Sections 119.03, 119.037, 121.24, and 127.18 of the ORC, a public notice, followed by submission of the fiscal and economic impact of the proposed rule (rule summary and fiscal analysis) is required. Copies of the public notice, rule summary and fiscal analysis, and proposed rule are forwarded to the Register of Ohio for publication. Copies of the public notice, rule summary and fiscal analysis, and proposed rule are also sent to the Ohio Secretary of State and the Director of the Ohio Legislative Service Commission. On the same date, these same documents and any information packets containing these documents are also made available to the public.

The Office of Legal Counsel and originating division conduct a public hearing and receive public comments. The rule, comments and the originating division's response to comments are forwarded to a legislative oversight committee, the Joint Committee on Agency Rule Review (JCARR). If amendments or revisions are necessary, these are also forwarded. The Office of Legal Counsel and originating division issue a response to comments and a concise statement of the principal reasons for and against adoption of any amendments or revisions suggested by the comments.

Finally, the originating division appears before the JCARR if legislative hearings are held. Following the close of the comment period and the conclusion of public and legislative hearings, the originating division decides whether to finalize the proposed rule. The Office of Legal Counsel, once advised of the originating division's decision, proceeds with the appropriate administrative action, e.g., an order of rule adoption for the Director's signature. Rules cannot take effect until at least 10 days following final adoption by the Director.

If JCARR proposes to invalidate a proposed rule in whole or in part, the originating division decides whether the proposed rule:

1. Should be withdrawn,
2. Should have portions unacceptable to JCARR severed,
3. Should be repropoed with substantive changes, but only after the term of the General Assembly that invalidated the proposed rules has expired, unless the General Assembly will, by concurrent resolution of both House and Senate, authorize ODA to continue rule-making proceedings.

Notice of amendment or rescission of rules that are substantive changes to the proposed rules is published in the Register of Ohio and mailed to all interested parties. A public hearing is held regarding these changes. This public hearing is in addition to the public hearing already held on the proposed rules.

An emergency rule may be adopted using the procedures described in ORC 119.03(F). An emergency rule is adopted and becomes effective when signed by the Governor. ODA may then adopt immediately the emergency rule and it becomes effective on the tenth day the rule in final form is filed with the Legislative Service Commission, JCARR, and the Secretary of State, or later if so designated by the Department. The full text of the emergency rule is published in the Register of Ohio.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date ODA may adopt the emergency rule as a non-emergency rule by complying with the regular procedure prescribed for the adoption, amendment, and rescission of non-emergency rules. The Department shall not use emergency rule proceedings to readopt the emergency rule.

B. Procedures for Public Hearings and Information

ORC 903.09 and OAC Chapter 901:10-6 provide for public notice of draft permits by sending notices to persons on a mailing list maintained by LEPP and by advertisement in the newspapers specified by rule. The notice states a public meeting⁹ may be requested and that a public meeting will be conducted if there is significant public interest. The public comment period is required to be at least 30 days from the date of the notice and may be longer to accommodate the timeframe for a public meeting. The required information to be advertised is also provided in rule.

If a public meeting is scheduled by LEPP, a public notice is made by sending notice to persons on a mailing list maintained by LEPP and by advertisement in the newspapers in the area of the facility to be permitted. A 30-day public notice period is provided prior to the public meeting.

Public meetings are conducted by ODA and are held in the county where the proposed facility will be located or in a contiguous county. After the oral comments from the public meeting are transcribed and written comments are received, a response to comments or

⁹ ORC 903.09 and OAC Chapter 901:10-6 use the term "public meeting" instead of "public hearing," as used in EPA's NPDES rules.

"Responsiveness Summary," is prepared and becomes part of the public record on the permit application in question. Copies of the "Responsiveness Summary" are mailed to local officials, anyone who attended the public meeting, and anyone who presented oral comments or submitted written comments on the permit. The Responsiveness Summary and facility-specific fact sheets are also made available on the ODA website. The authority to hold a public hearing to receive public comments is found in OAC 901:10-6-04 and the requirements for notice of the public meeting are found in OAC 901:10-6-02. Examples of documents related to public participation are included in Volume 2 of this application for program revision.

C. Procedures for Conflict of Interest Questions

ORC Chapter 102 prohibits any conflicts of interest involving a public servant. In particular ORC 102.03 provides that "no public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties."

ORC 903.081 was enacted to elaborate upon the ethical requirements for public officers in Ohio set forth in ORC Chapter 102:

For purposes of section 903.08 of the Revised Code, no person shall issue a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, no person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the director of agriculture to vacate or modify a NPDES permit shall require or order the director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.

D. Procedures for the Continuing Planning Process

The Ohio EPA Division of Surface Water maintains a continuing planning process document to describe the processes utilized by Ohio EPA in the implementation of the water quality management program. Ohio EPA is responsible for periodically reviewing and revising the Continuing Planning Process (CPP) to ensure that it is up-to-date and consistent with the federal regulations which outline the required content of the CPP. The preparation of the CPP is mandated under Section 303(e)(3) of the Water Quality Act of 1987. The requirements for the continuing planning process are described and outlined in 40 CFR Part 130.5.

In Ohio, Ohio EPA's Division of Surface Water has all of the following:

- ◆ Process for updating and maintaining Water Quality Management Plans and schedules for revisions.
- ◆ Process for incorporating elements of any applicable areawide waste treatment plans under Section 208, and applicable basin plans under Section 209.
- ◆ Process for establishing and implementing water quality standards and schedules of compliance.
- ◆ Process for developing TMDLs and individual water quality-based effluent limitations under Section 303(d) of the CWA and 40 CFR 130.7.
- ◆ Process for developing effluent limitations and schedules of compliance. This must be as stringent as Sections 301(b)(1) and (2), 306, 307, and any applicable water quality standards under 303 of the CWA.
- ◆ Process for determining the priority of permit issuance.
- ◆ Process for assuring adequate controls on disposition of residual waste from water treatment processing.
- ◆ Process for assuring adequate authority for intergovernmental cooperation in implementation of the Water Quality Management Plan.

NPDES permits issued by ODA are required to conform to the elements of the CPP by statute, by rule, and through procedures for coordination and communication described in the Memorandum of Agreement (MOA) between the EPA and the State of Ohio, as well as in a Memorandum of Agreement between ODA and Ohio EPA, August 12, 2002. Copies of these MOAs are included in Volume 1 of this application for program revision.

1. Statutory Requirements

By statute, ODA is required to adhere to the Act in the Department's portion of the administration of the NPDES program in Ohio. More specifically, Section 903.08 of the ORC sets forth these requirements. Of special note is ODA's charge in division (G) of Section 903.08 of the ORC to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under Section 6111.041 of the ORC, the most current antidegradation policy adopted under Section 6111.12 of the ORC, and other requirements of the Act. That is, water quality standards in Ohio are the legal responsibility of Ohio EPA as part of that Agency's duty to carry out the CPP in Ohio. Water quality standards in Ohio are duly promulgated in accordance with Section 6111.041 of the ORC:

In furtherance of sections 6111.01 to 6111.08 of the Revised Code, the director of environmental protection shall adopt standards of water quality to be applicable to the waters of the state. Such standards shall be adopted pursuant to a schedule established, and from time to time amended, by the director, to apply to the various waters of the state, in accordance with Chapter 119. of the Revised Code. Such standards shall be adopted in accordance with section 303 of the "Federal Water Pollution Control Act" and shall be designed to improve and maintain the quality of such waters for the purpose of protecting the public health and welfare, and to enable the present and planned use of such waters for public water supplies,

industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes. Such standards may be amended from time to time as determined by the director. Prior to establishing, amending, or repealing standards of water quality the director shall, after due notice, conduct public hearings thereon. Notice of hearings shall specify the waters to which the standards relate, and the time, date, and place of hearing.

Standards of quality for the waters of the state, or any amendment or repeal thereof, become effective upon adoption by the director. The director shall implement the standards so established in the issuance, revocation, modification, or denial of permits.

In addition, ORC 903.08 provides, in pertinent part, as follows:

(A) (1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

* * * * *

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information.
- (2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.
- (3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

* * * * *

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent

consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

* * * * *

(M)(1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

2. Rules In Support of the CPP and Water Quality Standards

OAC 901:10-1-03 sets forth the Director's criteria for decision-making with respect to issuing, denying, modifying, suspending, or revoking NPDES permits. In particular, OAC 901:10-1-03(C) provides that the Director shall deny, modify, suspend, or revoke an NPDES permit if the Director determines:

- (1) Discharge from the facility will prevent or interfere with attainment or maintenance of applicable water quality standards adopted under ORC 6111.041 and the most current antidegradation policy adopted under ORC 6111.12; or
- (2) Discharge from the facility will not achieve compliance with national effluent standards; or
- (3) The administrator of the United States Environmental Protection Agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Act; or
- (4) The proposed discharge or source will conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Act; or
- (5) Forms, notices, or reports required pursuant to the terms and conditions of the NPDES permit are false or inaccurate;
- (6) The discharge is of any radiological, chemical, or biological warfare agent or high-level radioactive waste or medical waste; or
- (7) The United States Army Corps of Engineers for the district in which the discharge is located objects in writing to the issuance of the NPDES permit as substantially impairing navigation or anchorage; or
- (8) Discharge from the facility will not achieve national standards of performance for new sources; or
- (9) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (10) The permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

- (11) The applicant or owner or operator is required to obtain a state or other appropriate certification under section 401 of the Act and 40 CFR section 124.53 and that certification has not been obtained or waived;
- (12) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or
- (13) Discharge from the facility will not achieve and maintain compliance with other requirements of the Act and the regulations promulgated thereunder.

In order to make these decisions, however, the Director must provide notice and opportunity to comment to affected parties. Rules for Public Participation, OAC Chapter 901:10-6. In addition to the general public and local officials, notice must be provided to the EPA Regional Administrator, appropriate state and governmental agencies potentially affected by the draft NPDES permit, any agency responsible for an areawide waste treatment management plan or "208" plan, and the affected district office of the Army Corps of Engineers.

3. Agreements to Implement the CPP

ODA has entered into three important inter-governmental agreements for the Department's administration of the NPDES program for individual permits, general permits, and construction stormwater and industrial stormwater permits for concentrated animal feeding operations as well as the administration of the NPDES program for both construction stormwater and industrial stormwater permits for animal feeding operations. Copies of these Memoranda of Agreement are included in Volume 1 of this proposed program revision.

First, in the Memorandum of Agreement required by 40 CFR 123.24, the State of Ohio, on behalf of both Ohio EPA and ODA, makes the following commitments to EPA in order to implement the CPP.

- a. Permit Development. Draft permits will be prepared in accordance with applicable federal and state laws and regulations and the MOA. The effluent limitations will be developed in accordance with state and federal standards and limitations including effluent guidelines, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and Ohio's Water Quality Management Plan under sections 301, 302, 303, 304, 306, 307, 308, and 402 of the CWA. ODA will coordinate with Ohio EPA to develop water quality based permits, any toxic effluent limited permits (or prohibitions) and any permits limited by Ohio's Water Quality Management Plan by first providing Ohio EPA with lists of pending and approved permit applications.
- b. Areawide 208 Plans. ODA will review any areawide 208 planning document and a copy of the Ohio EPA Continuing Planning Process as updated on the Ohio EPA website. ODA will consult with Ohio EPA on a permit-by-permit basis in order to maintain compliance with the Section 208 requirements. Ohio EPA will

decide if any proposed discharge would be in conflict with Ohio's areawide 208 plans and notify ODA of that decision.

- c. Antidegradation and Related Wasteload Allocations. At least 14 days before ODA publishes public notice of receipt of an NPDES permit for which an antidegradation review is applicable, ODA will transmit copies to Ohio EPA of the NPDES Part D permit antidegradation application and ODA's preliminary determination as to whether the permit meets an exclusion or waiver under the antidegradation policy in OAC 3745-1-05(D) and whether the wasteload allocation will suffice to meet water quality based effluent limits for NPDES permits as provided in ORC 903.09(C).
- d. Adjudication Cases and Enforcement Proceedings. Ohio EPA will provide technical assistance as needed and on a case-to case basis in any legal matters concerning toxic effluent limitations or water quality based effluent limits (including a wasteload analysis in support of antidegradation review) for NPDES permits on appeal before the Environmental Review Appeals Commission, or NPDES permits subject to enforcement proceedings by ODA.
- e. General NPDES Permits. As required by OAC 901:10-4-01 general NPDES permits to operate will not be issued for new discharges associated with CAFOs requiring an NPDES permit if the receiving waters are designated as outstanding national resource waters, outstanding high quality waters, superior high quality waters, or state resource waters, or to receiving waters that discharge to a waterbody with one of these designations within two stream miles of the discharge.
- f. Total Maximum Daily Loads and Watershed Plans. ODA and Ohio EPA will coordinate fieldwork for any TMDL work occurring where waterbodies are potentially impacted by animal feeding operations, including sampling and monitoring in those watersheds where CAFOs are located or to be located.

Ohio EPA may discover animal feeding facilities or CAFOs that are unpermitted or that are discharging without the required permits. In either case, Ohio EPA shall notify ODA of its findings and transmit information to ODA for ODA's use.

Ohio EPA and ODA will work together on TMDL implementation plans, including public participation and public meetings; discussion and development of load and wasteload allocations; strategies on NPDES permit development and issuance; and coordinated permit schedules with respect to the Ohio EPA basin schedule of permit work.

The second agreement is between Ohio EPA and ODA and it is a more detailed version of actual implementation of the work described in the Memorandum of Agreement between EPA and the State of Ohio. In addition to coordinating work of the Ohio EPA CPP, this two-party agreement aids both departments in managing the transition of the NPDES

program for CAFOs from Ohio EPA to ODA. Like the third and final agreement described below, it complements the planning efforts of the CPP with coordination in implementation through inspections, complaint investigations, emergency response, and enforcement.

Finally, Ohio EPA, ODA, and the Ohio Department of Natural Resources, Division of Soil and Water Conservation (ODNR-DSWC) have agreed to coordinate with each other in the implementation and administration of this program. ODNR-DSWC is responsible for the rules enacted pursuant to ORC 1511.05 and establishing criteria and policies for agricultural pollution abatement, and cost share programs for assisting owners and operators with installing and operating best management practices in agriculture. By coordinating its efforts with Ohio EPA and ODA, ODNR-DSWC and the local Soil and Water Conservation Districts (SWCDs) can assist in achieving Ohio water quality standards through inspections, complaint investigations, emergency response, cost sharing, and enforcement.

The State of Ohio has local SWCDs in each of Ohio's 88 counties. The chief of the division of soil and water conservation enters into cooperative agreements with the board of supervisors of any SWCD desiring to enter into such agreements pursuant to ORC 1511.05 and 1515.08. Such agreements are entered into to obtain compliance with rules and orders of the chief pertaining to agricultural pollution abatement and cost share programs. The local SWCDs offer technical assistance regarding the implementation, inspection and funding of the agricultural pollution abatement program; aid farmers in creating and implementing Comprehensive Nutrient Management Plans; investigate complaints; develop operation and management plans; develop plans for the control and prevention of soil erosion; and assist and educate regarding composting.

Under ORC 903.082, if an AFO has caused agricultural pollution by failure to comply with standards under Section 1511.02 of the ORC the Chief of DSWC may issue to the Director of ODA a copy of an order issued by the Chief that specifies that the AFO has caused agricultural pollution, has failed to comply with applicable standards, and that the facility shall obtain permits from ODA.

E. Procedures for Public Availability of Permit Information and Confidentiality of Information

LEPP maintains a file system that is open to the public during normal work hours on regular workdays. The files are located at the Worthington Building, 8995 East Main Street, Reynoldsburg, Ohio on the first floor. The building, and in particular the file viewing area, is wheelchair accessible.

All written information pertaining to a facility is required to be filed in the main office file system. Documents arrive in the Office via mail, personal delivery, electronic mail or facsimile and are routed to the appropriate staff for disposition. For example, annual reports are routed to the LEPP Inspectors. After review and processing, the Annual Reports are filed in the main file. Applications are routed to Administration where fees are paid. Applications are logged in by time-stamp, copied, assigned to Engineering, and a

main office file is made for the facility if one does not already exist. The original application is filed in the main office file and the copies are sent to the reviewing engineer. An NPDES number is assigned if one is required based on facility name, county, and permit type.

When documents are received, they are reviewed to determine in which main office file they belong. If a computer or main office file does not exist for the facility, Administration will create a file. This file will be created in hard copy and electronically in the Dayhuff data management system. Both types of records can be upgraded by Administration as the need arises. For example, if a main office file entry for the facility exists for a facility's Permit to Install and Permit to Operate, and subsequently an NPDES permit application is received, an NPDES number is assigned to the operation and the file would be upgraded to the NPDES number. If it is determined during the application review period that the facility can be covered under a general permit, the permit number will again be upgraded. All this information is available to the public on request. An individual who pulls main office files for internal use or for public review must sign the outcard sheets associated with the file in order to track use and location of the file.

The public is notified of the availability of documents through several methods. LEPP maintains a website that notifies the public of draft permits issued and final permits issued. Facility-specific fact sheets are available on the website. Links to applicable laws and regulations are maintained.

The public is also notified of the availability of documents through the public notices that are required by Section 903.09 of the ORC. When draft permits are issued by LEPP, a public notice is published in newspapers.

Requests for information under the Federal Freedom of Information Act or, in Ohio, ORC Chapter 149, "Documents, Reports, and Records," are sent to the Public Information Office. The office is within LEPP. The PIO retrieves the document(s) and determines the need for clarification of the request, i.e., if the material is very extensive, the request might be specified more narrowly. The PIO then contacts the party requesting the material, acknowledges the request, and determines the extent of the request and the cost of reproducing the material. The requestor is invited to come to ODA and view the material in person in lieu of copying it. If speed is necessary, and if the requesting party asks that the material be copied and sent to them, the copies are made, an invoice is faxed, payment can be made by overnight carrier, and the material is shipped by return overnight carrier. If the need is less urgent, other arrangements are made with the requesting party. Increasingly, LEPP uses electronic mail to receive and respond to information requests.

Individuals who wish to review information in the main office file system are escorted to the file review area. An up-to-date computer printout is available to help determine the correct name and main office file number of the facility. The computer may be used to search for a particular facility if the entry cannot be easily found on the printout. The main office file is pulled by the employee and given to the individual for review. Copies of

documents in the main office file are available at a reasonable rate. Copy fees can be waived under certain circumstances.

Confidentiality provisions may be found at Sections 149.43 and 903.10(I) of the ORC, and OAC 901:10-1-05. These statutes and rule state that records kept by the Department of Agriculture in the performance of its functions shall be available to the public unless nondisclosure is requested in writing at the time of submission, and ODA determines that the information may be kept confidential.

ODA legal counsel may classify information as confidential if the Director makes a written determination that confidentiality is necessary to protect trade secrets. Ohio's public records law, specifically Section 149.43 of the ORC, also provides for nondisclosure of trial preparation records, confidential law enforcement investigatory records, or other records whose release is prohibited by State or federal law.

Division (I) of Section 903.10 of the ORC requires ODA to adopt regulations for the protection of trade secrets from public disclosure. ODA has adopted OAC 901:10-1-05 to address the protection of trade secrets. Under OAC 901:10-1-05, confidential information may be disclosed without a permittee's consent to authorized federal or state officers or employees when necessary for an enforcement action or when otherwise required by the Act. OAC 901:10-1-05(C) also provides that the following categories of information are deemed public records for which claims of trade secrecy will be denied:

- (1) The name and address of any permit applicant or permittee;
- (2) Permit forms, permit applications, permits and sampling and effluent data;
- (3) Information required by NPDES application forms provided by ODA including information submitted on the forms themselves and any attachments used to supply information required by the forms; and
- (4) Any public comments, testimony or other documentation from the public concerning a permit application.

OAC 901:10-1-05 provides that information submitted to the LEPP by a facility pursuant to the statutes or regulations may be claimed as confidential. Any claim of confidentiality must be asserted in writing in the manner described in the rule at the time of submission of the information. If no claim is asserted at the time the information is submitted, the information will be made available to the public without further notice.

A facility must submit a written request for nondisclosure specifying the basis for requesting nondisclosure. All materials submitted with this written request and marked with the words "trade secret," shall accorded confidentiality pending a determination on whether to grant the request. This determination shall be made within 45 days from the date of the request. If the Director determines that the material should not be afforded confidentiality, he will issue a written denial of the request for nondisclosure to the requestor. No written denial of the request is necessary when the material submitted as confidential falls within any of the four categories of information listed in OAC 901:10-1-05(C) for which claims of trade secrecy are denied by rule.

If the request for confidentiality is granted, the material remains confidential and is not made available to the public. Such material is maintained separately. The information determined to be confidential is segregated from the public records maintained on the same facility. It will be placed in a locked file labeled "confidential", with access appropriately controlled. ODA removes deemed confidential information from its files and returns it to the submitter when such information is no longer necessary or required for purposes of the Act or for the State regulatory program.

F. Water Quality Management Planning

In the State of Ohio as set forth in Ohio law in ORC Chapter 6111, all of the following are the legal responsibility of Ohio EPA. In order to describe the complete NPDES program for the State of Ohio, these are summarized here.

- ◆ The Water Quality Management Plan
- ◆ Continuing Planning Process
- ◆ Water Quality Standards
- ◆ Basin Boundaries and Inventories
- ◆ Integrated Water Quality Monitoring and Assessment
- ◆ The Water Quality Data Summary:
- ◆ Nonpoint Source Assessment
- ◆ Nonpoint Source Management Plan
- ◆ Wasteload Allocations

The general purpose of the water quality management and planning process is to ensure that the waters of the State meet established water quality standards, and thereby maintain all designated uses for each waterbody. The goals of the planning process are to ensure that necessary programs are established to achieve water quality goals and standards and to provide procedures to implement those programs. The planning process also provides a method for setting priorities in the state's water pollution control program based upon water quality concerns and needs for water pollution control.

G. The Water Quality Management Plan

The Water Quality Management Plan (WQMP or Plan) identifies water quality problems, details the State's objectives and strategies for their resolution, and outlines the institutional framework necessary for the effective implementation of the proposed strategies. To meet these objectives, the WQMP must contain the detail required for providing the necessary analyses and information for management decisions. The Plan is, therefore, a management tool containing a wide range of information that is integrated in an assessment of the sources and impacts of water pollution, as well as the possible management alternatives available for resolution of the problems.

The State's WQMP has been developed in a continuing planning process requiring the compilation of information and preparation of documents which are instrumental to the

effective execution of the State's water pollution control programs. The documents describe legislative authorizations and regulations, program procedures and descriptions, water quality standards, hydrologic boundary maps, water quality data, discharger inventories, problem assessments, treatment needs, assessments, and total maximum daily load and wasteload allocation reports.

Each individual component of the Plan presents information and/or data integral to the overall management and planning process. Those components are described below.

Continuing Planning Process

As discussed above, the CPP describes the processes and procedures employed by Ohio EPA, Division of Surface Water, in carrying out the requirements of the Act. Its purpose is to help identify needed improvements in organizational structure and procedure and to serve as guidance for more effective management of the State's water quality management programs.

Water Quality Standards

These standards are set forth in OAC Chapter 3745-1 and include descriptions of designated uses for which waters of the State are to be protected and numerical and narrative criteria, such as chemical concentration limits or biological criteria, that are designed to protect and measure attainment of the designated uses.

Basin Boundaries and Inventories

Water quality standards and the issuance of NPDES permits are implemented through water basin strategies and schedules that include waterbodies within each basin.

Integrated Water Quality Monitoring and Assessment

Ohio's Integrated Water Quality Monitoring and Assessment Report, which is submitted to EPA every two years, presents both a water quality inventory and assessments of impaired waters derived from the water quality inventory, in order to fulfill the reporting requirements of Sections 305(b), 303(d) and 314 of the Act. This report offers "raw" data as well as summaries and standard statistics. It presents water quality impacts and designated use impairment evaluations for each watershed or large river unit and represents a continuing review process for determining the current water quality conditions in the State. Ohio EPA utilizes this water quality information to determine magnitude, extent, and sources of water quality impairment as evidenced in the data gathered from the ambient water quality monitoring network and special studies. Water quality assessment information required by Sections 304(l) and 319 of the Act are also included in this inventory.

The Water Quality Data Summary

The Water Quality Data Summary contains various types of water quality data obtained from the State's ambient water quality monitoring network. It provides data and summary statistics for temperature, pH, dissolved oxygen, chlorides, sulfates, phosphorus, turbidity, color, solids (suspended and dissolved), metals, and other parameters in the waters of the State.

Nonpoint Source Assessment

This document presents an evaluation of the impacts of nonpoint sources of pollution upon the waters of the State, their magnitude, and origins. This assessment integrates land use factors and water quality factors into a nonpoint source impact statement for each waterbody. The Best Management Practices (BMPs) recommended for abatement of the various nonpoint problems are listed.

Nonpoint Source Management Plan

This document describes the procedures to be used to implement the nonpoint source program. The primary goal of the program is to systematically select and treat nonpoint sources of pollution that impair water quality in the State of Ohio. Topics covered in this document are problem identification, project review, interagency coordination, identification of funding sources, evaluation of BMPs and timetables for implementation. The costs involved in the implementation of the BMPs are determined and included in the assessment.

Wasteload Allocations

The procedures employed for the development of wasteload allocations involve assessment and interpretation of data, compilation of information, evaluation and review of results, and documentation. Information bases utilized in preparing NPDES permits are obtained from a variety of state agencies, federal agencies, and private sources.

H. Water Quality Management Plan Certification Procedures

Like ODA, Ohio EPA announces draft documents and proposed rules as available for public review and comment in newspapers located throughout the State and on the Ohio EPA's website. The public comment period extends for 30-90 days, depending on the nature of the document. The documents will be available for public review at the District Offices of the Ohio EPA. If sufficient public interest is shown to warrant such action, a public hearing will be considered to receive further comment. If a public hearing is deemed appropriate, a notice will be published 45 days in advance.

Comments received by Ohio EPA concerning draft documents or draft rules are responded to in a Responsiveness Summary. The response may take one of three forms: (1) incorporation of the comment into a revision to the document, (2) rejection of the

comment, or (3) simple acknowledgment of the comment. A justification will be supplied for each comment response action. The public comments and the agency responses will be kept on record at Ohio EPA and will be supplied to EPA upon request. The Responsiveness Summary will be submitted with the final document to EPA.

Upon receipt and review of the certification letter, the final document(s), and the Responsiveness Summaries, EPA will take official action on the updates. For updates not fully approved, the EPA Regional Administrator will inform Ohio EPA, in writing, of those actions which must be taken to obtain full approval. Ohio EPA will then take the necessary steps, making the revisions and additions specified by EPA, to obtain full approval by the EPA Regional Administrator.

IV. PROCEDURES FOR REQUIRING PERMIT APPLICATIONS AND RENEWAL, FOR NONCOMPLIANCE PROGRAM REPORTING, FOR PROGRAM REVIEW, AND ADMINISTRATIVE AND JUDICIAL REVIEW

- A. Procedures for Requiring Applications and Renewal Notification
- B. Permit Issuance Procedures
- C. Procedures for Public Notice and Comment
- D. Procedures for Public Hearings
- E. Noncompliance and Program Reporting
- F. Procedures for Updating the State Program
- G. Plans for Periodic Self-Analysis of State Legal Authorities and Program Effectiveness
- H. Administrative and Judicial Review of Permitting Decisions

A. Procedures for Requiring Applications and Renewal Notification

Applications for new, revised or reissued permits must be filed in accordance with the requirements set forth in OAC 901:10-1-02. This rule outlines the content, format and timing of information submitted to LEPP as an application for a NPDES permit and identifies who may act as an approved signatory on permit applications and related documents.

Notification letters are sent to unpermitted facilities referred to Legal based on field inspections conducted. Facilities that fail to respond to these notification letters are notified by a second notification letter 30-60 days after the first notification letter. The unpermitted facilities that have not responded to the second notification letter within 45 days are referred for enforcement to Legal.

Renewal notifications are sent to the permittee 210 days prior to the expiration date of the permit. Facilities that fail to submit a complete renewal application 180 days prior to the expiration date, unless permission for a later date has been granted by the Director, are referred to Legal for appropriate action.

LEPP will use the federal NPDES Permit Application forms for the NPDES program along with Part D of the ODA Permit Application Form, which is designed to assist in compliance with Ohio water quality standards, notably antidegradation requirements. These Permit Application forms may be modified when necessary, subject to EPA approval. Copies of ODA's permit application forms, including Part D, are included in Volume 2 of this application for program revision.

The Permit Issuance Procedures Table below shows the overall permit review procedures for proposed facilities and existing facilities. Each step in the table is identified by a number and also designates which organizational unit within LEPP will be responsible for each procedural step. A checklist for permit or permit modification issuance is also included in Volume 2 of this application for program revision.

B. Permit Issuance Procedures

steps	Description	Unit or Individual Responsible
1	A permit application is received and logged into a State database, the Dayhuff data management system (Dayhuff). A computer file and main office file for the facility is created if one does not exist. Fees are paid. An engineer is assigned and a working file is created.	Administration, Engineering
2	The application is checked for administrative completeness and accuracy and all errors and omissions are noted. Applications for MCAFFs are also checked for all applicable local certifications.	Engineering
3	If the application is incomplete, a summary of the application deficiencies is listed in a letter and electronic communication to the applicant requesting additional information. The application review is suspended pending receipt of additional information.	Engineering
4	After an application has been checked for administrative completeness, a compliance history is requested for review by Legal.	Legal
5	A copy of the original application is retained on file, in the event of an appeal. Completed applications are forwarded as follows: (a) To Ohio EPA, Division of Surface Water; (b) To LEPP Public Information Office (PIO).	Engineering
6	The engineer may visit the site to become aware of any site-specific production and/or treatment that could influence permit limitations or conditions. The engineer corresponds with the applicant regarding the application and whether the application meets the requirements for permit issuance. Based on the comments by the engineer and responses received from the applicant, the permit application may be revised or withdrawn, and/or permit limitations and conditions are developed.	Engineering

7	The engineer may decide after consultation with Ohio EPA in 5(a) that an antidegradation review is required. If an antidegradation review is required, a public notice of the receipt of the permit application is published and other notices are sent to other State, federal, and local government agencies, in accordance with OAC Chapter 901:10-6.	Engineering, PIO
8	If the application is complete in accordance with OAC 901:10-1-02(A)(9), then a fact sheet or statement of basis is prepared for the draft permit in accordance with OAC 901:10-6-05 and information meetings/public meetings are held.	Engineering, PIO
9	Effluent limitations are calculated for the draft permit.	Engineering
10	Draft permit, with compliance history, is written and routed to Engineering and Legal for review and comments.	Engineering, Legal
11	Draft permit routed to Executive Director of LEPP for review and comments.	PIO, Executive Director
12	Draft permit routed to Director for review and comments.	Executive Director, Director
13	Public notice and fact sheet of draft permit are published; if ODA is already aware of significant public interest in the draft permit or if requested by the applicant or decided at the Director's discretion, a public meeting (public hearing) is scheduled as part of the public notice.	PIO
14	Those draft permits for which EPA has not waived review are mailed to EPA for review. Draft permits are sent to Ohio EPA Division of Surface Water and the U.S. Army Corps of Engineers. Draft permits are also sent to other government agencies, such as ODNR, the local areawide planning agency, or the U.S. Fish and Wildlife Service, in accordance with the provisions of OAC Chapter 901:10-6. For each application for an individual discharge permit for a new facility location (including expansions at existing sites) the draft permit is sent to the State Historic Preservation Officer for review and comment. The draft permit is sent to the applicant or owner or operator, the board of county commissioners, the board of township trustees, the local soil and water conservation district, and local board of health.	PIO
15	A public meeting is held if previously scheduled. If significant public interest is found to exist after issuance of the public notice of the draft permit and a public meeting was not scheduled in that public notice, a second public notice scheduling the public meeting is issued before the public meeting is held.	PIO
16	The draft permit is ready for issuance and becomes the final permit (a) in the absence of comment, concern, or objection from any applicable federal or State agency and (b) upon resolution of any comment, concern, or objection which would otherwise prohibit issuance under the Clean Water Act or Chapter 903 of	PIO

	the ORC, including regulations promulgated under their authority. If ODA cannot resolve such comments, concerns, or objections that would prevent issuance of the permit, ODA may withdraw the draft permit or, if ODA continues to disagree with any comment, concern, or objection from the federal or State agency involved, ODA notifies EPA in writing and transmits a copy of the appropriate permit file to EPA, at which time all permit authority transfers to EPA.	
17	ODA finalizes the draft permit and issues it as the final permit after the close of the 30-day public notice period if (a) no comments are received and no hearing is held or (b) no significant comments are received.	Administration, PIO
18	Final permit routed to Administration to be numbered, stamped, copied and mailed to applicant, local soil and water conservation district, local health department, boards of township trustees and county commissioners. Public notice of final permit is prepared.	Administration, PIO
19	Public notice of final permit	PIO
20	If significant comments are received, a summary of significant comments (including those presented during any public hearing) and a response to comments ("Responsiveness Summary") is prepared.	PIO
21	The summary of significant public comments, the response, and the proposed final permit are sent to EPA for those permits for which EPA has not waived review in accordance the MOA and for those permits for which EPA requests or has requested review.	PIO
22	If significant changes to the draft permit are made in response to comments, those changes are incorporated into a proposed final permit that is prepared and sent to EPA for review (along with the summary of significant comments and the Responsiveness Summary) and to the applicant.	Engineering, PIO
23	When a draft permit has been prepared and sent to EPA and the applicant, the draft permit may be issued as the final permit (a) in the absence of objection or (b) after resolution of any EPA objection.	PIO
24	EPA will notify the State and the applicant of any formal objection to the draft permit. If EPA objects to the draft permit and ODA agrees with the objection, ODA may issue an amended draft permit or withdraw the draft permit. If the objection cannot be resolved, the State transmits a copy of the appropriate permit file to EPA, at which time all permit authority transfers to EPA.	Engineering, PIO
25	Any issuance of a final permit is entered into Dayhuff.	Engineering
26	After the issuance of a State PTI with an NPDES construction storm water permit, an ODA engineer conducts site inspections, attends a pre-construction meeting, and enters the date of the	Engineering

	start of construction into Dayhuff. At the conclusion of construction, the ODA engineer performs a final PTI site review, issues a final approval letter (to approve stocking of the facility and commencement of operations in accordance with the PTO with NPDES permit), and enters the date of issuance of the final approval letter into Dayhuff.	
27	After the issuance of a State PTO with an NPDES operating and industrial storm water permit, an ODA engineer and ODA inspector conduct a site visit to review PTO and NPDES permit terms and conditions and the required Operating Records with permittee.	Engineering, Inspectors

A complete permit application may require the submittal of quantitative and qualitative data for pollutants contained in a facility's effluent. This will apply for those CAFOs that may plan for a discharge that is not covered by the effluent limitations for zero discharge as required in OAC Chapter 901:10-3. The effluent must be sampled and analyzed for pollutants listed in the application form. Each applicant may be required to submit, for every outfall, data on the following pollutants:

- ◆ oil and grease
- ◆ total suspended solids (TSS)
- ◆ pH
- ◆ biochemical oxygen demand (BOD)
- ◆ chemical oxygen demand (COD)
- ◆ total organic carbon (TOC)
- ◆ ammonia (as N)
- ◆ temperature (both winter and summer)
- ◆ fecal coliform (if believed present or if sanitary waste is or will be discharged)
- ◆ total residual chlorine (TRC) (if chlorine is used)

After the application is submitted to LEPP and is deemed administratively complete, it is subjected to a technical review by Engineering. During the review process, the assigned engineer may request verification of information submitted in the application from the applicant. If the assigned engineer has questions or concerns regarding the laboratory analyses of the facility's effluent, additional scientific or technical evaluations at the outfall may be necessary. Additional details on hydrological information such as drainage routes, flow amounts, flow measurement devices, etc., may also be necessary. In addition, a determination of where the State waters begin may be needed so that sampling can occur at the appropriate location along the outfall. Some technical problems could occur which would require verifying, for example, the presence of a pollutant in the effluent that is not listed in the permit application. The applicant must conduct any requested tests and submit any additional information on the composition of the outfall requested by the assigned engineer. Once all additional information is submitted for evaluation, the assigned engineer can complete the technical review and proceed with writing a permit for the facility.

Discharge permit limits are determined by compliance with the Ohio Water Quality Standards so as to assure compliance with such standards in a receiving waterbody. Technology-based limits are imposed per the promulgated State and/or federal guidelines, or in the absence of promulgated guidelines, the limits are based on best professional judgment.

Various mechanisms are used for developing monitoring requirements in discharge permits such as field inspections and reports, compliance history, public comments and complaints, a review of Annual Reports, and Compliance Orders. Best management practices to control or abate the discharge of pollutants shall be included in permits when: (1) authorized under section 304(e) of the Act for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) numeric effluent limitations are infeasible, or (3) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Act.

Fact sheets are prepared. The purpose of the fact sheet is to provide a brief and concise compilation of information pertaining to the facility and its operation and to establish the basis for any permit effluent limitations and other permit conditions. All fact sheets contain the information required in OAC 901:10-6-05.

C. Procedures for Public Notice and Comment

ORC 903.08 and OAC Chapter 901:10-6 provide for public notice of the public comment period by advertisement in local newspapers as specified by rule and to persons on a mailing list maintained by LEPP. The notice states anyone may request a hearing. The public comment period extends for at least 30 days from the date of publication of the public notice.

If a hearing is scheduled by ODA, a public notice is made in accordance with OAC 901:10-6-02. The public comment period then extends at least through the date of any public hearing. The required information to be noticed is provided in OAC 901:10-6-02.

D. Procedures for Public Hearings

Public hearings are conducted by ODA for the purpose of receiving oral and written comments. ODA holds public hearings if there is significant public interest, in accordance with OAC 901:10-6-04. ODA also may elect to hold a public hearing in other circumstances, at the Director's discretion (see OAC 901:10-6-01(D)).

At least thirty days prior to the hearing, notice of the hearing is made in accordance with the procedures contained in OAC 901:10-6-04. The notice states the time, place, and nature of the hearing.

A response to comments (Responsiveness Summary) is prepared and becomes part of the public record on the permit application in question. Hearings are held in the area

where the proposed facility will be located, and all proceedings at such hearings are recorded.

E. Noncompliance and Program Reporting

ODA will submit all reports as required under 40 CFR 123.45. More specifically, ODA will comply with EPA's Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, and CAFOs, and Storm Water Point Sources in the Wet Weather SNC Policy. ODA's Dayhuff data management system will be developed to correlate to periodic reporting required by the Wet Weather SNC Policy.

F. Procedures for Updating the State Program

ODA will revise any State regulation affected by a change in federal regulation necessary for the program in accordance with the procedures set forth in the MOA, August 12, 2002. Authority to propose any necessary changes to rule or regulation is found in ORC Chapters 903 and 119.

The MOA provides specific mechanisms for ODA to receive timely information which will alert it to the need for a change in the State program to meet a change in the federal program.

EPA's notice to ODA of changes in the federal program, and an independent review by ODA staff of the Federal Register and other publications in which changes in the federal program are published, should ensure that federal program changes are incorporated as soon as possible in the State program.

Under current State procedures, it takes approximately six months to promulgate a new rule or regulation under ORC 119.03, although emergency rule-making procedures do exist. A rule promulgated by regular procedures cannot take effect until at least 10 days following final adoption by the Director.

Changes in the State program which do not require regulatory or statutory changes can be addressed, perhaps after a meeting scheduled under the MOA, in less than six months, and probably within sixty to ninety days of the notice to ODA.

G. Plans for Periodic Self-Analysis of State Legal Authorities and Program Effectiveness

The state will assign an individual to review all State regulations, which form part of the State program in a procedure similar to the triennial water quality standards review. The receipt of federal statutory and regulatory changes forwarded by EPA in accordance with the MOA will facilitate the early discovery of State legal authorities needing changes.

Program effectiveness will be assessed in accordance with the continuous improvement goal of total quality management, which has been implemented at ODA, and included in strategic planning and continuing planning process agendas.

Authority to implement the review procedures and to propose any necessary statutory or regulatory changes is also provided by ORC 119.032 and 121.24(D).

ODA's primary responsibility for the NPDES program includes the commitment to develop and maintain, to the maximum extent possible, the legal authority (including State regulations) and the resources required to carry out all aspects of the NPDES program to administer NPDES individual permits, general permits, and construction and industrial stormwater permits for concentrated animal feeding operations, and construction and industrial stormwater permits for animal feeding operations. In addition, ODA must maintain program effectiveness by conducting a comprehensive evaluation and assessment of compliance with schedules, effluent limitations and other conditions in permits.

Meetings between ODA and EPA are to be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the permit program. In addition, EPA will provide to the ODA technical and other assistance on permit matters as requested and on a continuing basis. This assistance could include review of proposed regulatory and statutory changes, whether drafted in reaction to State or federal legislative or judicial initiative. ODA will immediately notify the EPA Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the State.

Similarly, ODA will immediately notify the EPA Regional Administrator by telephone or otherwise of any significant administrative or judicial decision that could affect the legal authority of the program.

H. Administrative and Judicial Review of Permitting Decisions

ORC Chapter 903 NPDES permitting decisions by the Director are subject to the supervisory jurisdiction of an independent State administrative agency, the Environmental Review Appeals Commission (ERAC) and to further review by Ohio's Franklin County Court of Appeals. The Ohio Supreme Court may also review any decision by the Court of Appeals where the particular facts of the case fall within the scope of the Supreme Court's jurisdiction in Article IV, Section 2(B) of the Ohio Constitution.

A permit is effective upon signature by the Director and issuance by the Director. The Director's issuance of an NPDES permit is appealable to ERAC. ORC 903.09 provides as follows at division (D):

The director or the director's representative shall publish notice of the issuance of a final permit to install, permit to operate, or NPDES permit once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located.

The jurisdiction of ERAC over legal challenges to permits issued by the Director is set forth in ORC 3745.04 which provides, in pertinent part, as follows:

As used in this section, "action" or "act" includes the adoption, modification, or repeal of a rule or standard, the issuance, modification, or revocation of any lawful order other than an emergency order, and the issuance, denial, modification, or revocation of a license, permit, lease, variance, or certificate, or the approval or disapproval of plans and specifications pursuant to law or rules adopted thereunder.

Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it.

* * * * *

The appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.

The appeal shall be filed with the commission within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the commission.

The appeal shall be accompanied by a filing fee of seventy dollars, which the commission, in its discretion, may reduce if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.

Within seven days after receipt of the notice of appeal, the director or local board of health shall prepare and certify to the commission a record of the proceedings out of which the appeal arises, including all documents and correspondence, and a transcript of all testimony.

* * * * *

The filing of an appeal does not automatically suspend or stay execution of the action appealed from. Upon application by the appellant, the commission may suspend or stay the execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include

the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

Conversely, if the Director proposes to modify, deny or revoke an NPDES permit, then the statute describes different procedures, allowing for an adjudication hearing before the ODA on the proposed adverse action prior to a final action being issued by the Director. The Director's final action issued after the adjudication hearing is then appealable to ERAC. As stated in ORC 903.09(F):

The director shall mail to the applicant or the permittee notice of the Director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit.

* * * * *

The director shall not issue an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that finalizes the proposed action or an order issuing a permit without a prior proposed action may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.¹⁰

More specifically, for NPDES permits, ORC 903.08 provides as follows at division (L):

The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not

¹⁰ Just as the public is notified of the Director's action to issue a final effective permit, Section 903.09(F) of the ORC provides public notice of permit decisions that are adverse to the permittee or permit applicant:

The director shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director shall mail a copy of the notice of the proposed action to the board of county commissioners of the county and to the board of township trustees of the township in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director also shall provide notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to any other person that is entitled to notice under the Federal Water Pollution Control Act. The notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the director's proposed action may be submitted and the period of time during which comments will be accepted as established by rule. If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the proposed action. The notice of the public meeting shall be provided in the same manner as the notice of the director's proposed action.

apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

In accordance with Chapter 119 of the Revised Code, adjudication hearings are held before an administrative law judge or "hearing officer." ODA adjudication hearings are governed by the procedural rules and case law of Sections 119.09 and 119.10 of the ORC. The adjudication hearing process may take about 6 months from initial status conference to hearing, although the time period may be longer or shorter, depending on factors such as whether settlement negotiations lead to continuances or delays or the parties request less preparation time and the soonest available hearing date.

Thirty to 60 days after the hearing (following preparation of a transcript and consideration of post-hearing briefs), the hearing officer issues a written report and recommendation to the Director regarding the proposed action. Pursuant to ORC 119.10, the Director may approve, modify, or disapprove the recommendation when issuing a final action on the permit. The Director's decision is a "final decision or order of the Director" and reviewable at ERAC.

In addition to the appeal rights given to permittees, other affected persons are also afforded an opportunity to challenge the final order of the Director through an appeal to ERAC. OAC 901:10-5-03(F)(2) provides:

Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit that filed comments or participated in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit who failed to file comments or participate in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code to the extent the draft permit differs from the final permit.

ERAC conducts a *de novo* hearing, considering testimony and evidence from all parties, in appeals where no adjudication hearing was held before the Director. For cases where an adjudication hearing was conducted by the Director in accordance with Sections 119.09 and 119.10 of the ORC, ERAC conducts a hearing based on the record from the adjudication hearing. Section 3745.05 provides:

In hearing the appeal, if an adjudication hearing was conducted by the director of environmental protection¹¹ in accordance with sections 119.09 and 119.10 of the Revised Code, the environmental review appeals commission is confined to the

¹¹ As previously noted in the quotation from ORC 3745.04 above, ORC 3745.04 states that the term "director of environmental protection" as used in ORC 3745.04 to 3745.06 includes the director of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

record as certified to it by the director. The commission may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the director. If no adjudication hearing was conducted in accordance with sections 119.09 and 119.10 of the Revised Code, the commission shall conduct a hearing *de novo* on the appeal.

For the purpose of conducting a *de novo* hearing, or where the commission has granted a request for the admission of additional evidence, the commission may require the attendance of witnesses and the production of written or printed materials.

Any party to an ERAC appeal of an NPDES permit may appeal the ERAC's decision to the Franklin County Court of Appeals. As stated in ORC 3745.06:

Any party adversely affected by an order of the environmental review appeals commission may appeal to the court of appeals of Franklin county, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred.

Depending on the issues raised in the appeal, the Ohio Supreme Court may also review the Court of Appeals' decision. Pursuant to Article IV, Section 2(B) of the Ohio Constitution, the Ohio Supreme Court possesses jurisdiction to review decisions by the Court of Appeals, although in many instances this exercise of jurisdiction is discretionary. The Ohio Supreme Court is most likely to consider an appeal where the case is of public or great general interest or raises a substantial constitutional question under either the Ohio or United States Constitution. See Ohio Const. Art. IV, Sect. 2(B)(2)(a)(ii), 2(B)(2)(e).

V. COMPLIANCE AND ENFORCEMENT PROGRAM

A. Inspections

1. Annual Schedule of Inspections
2. Inspection Categories
3. Inspection Quarters
4. Inspection Procedures

B. Complaints

1. Intake
2. Assignments
3. Report
4. Completion

C. Enforcement Referrals

1. No Action
2. Violations
3. Formal Documentation

D. Enforcement Documents

1. Warning Letter
 2. Notices of Deficiencies Resulting in Noncompliance
 3. Notices of Violation and Notices of Hearing
 4. Final Orders of the Director
 5. Attorney General Referral
 6. Permit Revocation
- E. Enforcement Tracking and Activities
1. Data Management
 2. Data Entry
 3. Other Activities
- F. Citizen Suits

This Part provides general information about enforcement procedures of the Livestock Environmental Permitting Program (LEPP) of the Ohio Department of Agriculture (ODA). The procedures described herein are guidelines only and exceptional cases may warrant actions other than those specified in this document. Enforcement documents issued by LEPP from August 19, 2002 through November 30, 2006 under the State permit enforcement program are included in Volume 3 of this NPDES program revision application.

A. Inspections

Inspectors, who may also be assisted by engineering staff, conduct compliance inspections. Inspections are conducted in accordance with the Routine Inspection Form, ODA LEPP, Revised November 2006 (included in Volume 2 of this application). Inspectors will conduct biannual (twice per year) inspections to monitor compliance with applicable federal and state requirements. When an owner or operator of a facility is found to be out of compliance with applicable State and federal requirements, inspectors will conduct follow-up inspections in addition to the biannual inspections.

There are four (4) LEPP Inspectors available to conduct permit inspections, spill and complaint inspections, and ambient monitoring and sampling activities throughout Ohio. During calendar year 2005, the following activities were conducted:

1. Citizen Complaints - 1 workday x 90 complaints = 90 workdays.
2. Spills - 1 workday x 30 reported spills = 30 workdays
3. Activities at Unpermitted Facilities - 60 workdays
4. Permitted Facility Inspections - 1.5 workdays x 336 facility inspections = 504 workdays
5. Monitoring and Sampling Activities (not otherwise included in any complaints, spills or inspections listed above) - 60 workdays

6. Area Surveillance, Training and Continuing Education, Equipment Maintenance, Etc. - 150 workdays

Total = 894 workdays for inspectors

ODA currently has four livestock inspectors who complete a majority of the work listed above. These four inspectors provide a total of 900 workdays a year. In addition, the engineering staff is available in the case an emergency arises and no inspector is available. Two full, routine inspections per year are completed on all permitted facilities. Additional personnel hours are dedicated to the investigation of all written citizen complaints (see OAC 901:10-5-01), all verbal citizen complaints, unregulated facilities, and spill response investigations reported to LEPP. ORC 903.12 authorizes ODA inspectors to enter public or private property to make investigations and inspections as necessary for the administration and enforcement of the program. In conducting such inspections, inspectors follow the biosecurity procedures set forth in Volume 2 of this application for program revision. Some examples of inspection letters have also been included in Volume 2 under the tab labeled "Inspection Letters."

1. Annual Schedule of Inspections

Within sixty (60) days of the end of the calendar year, the inspectors provide the Executive Director of LEPP (Executive Director) with a draft schedule of inspections for the following year organized per each quarter of the year. Each inspector must plan two full "top-to-bottom inspections" per permitted facility per year using the Routine Inspection Form, ODA LEPP, Revised November 2006, which is included in Volume 2 of this application. Biannual inspections require the completion of the entire inspection form.

2. Inspection Categories

Each year the Executive Director evaluates the total number of inspections performed during the prior year. This evaluation includes the number of complaints filed and the number of complaint inspections performed. Based on this evaluation of the work conducted in the prior year, the following types or categories of inspection should be planned in the subsequent year's draft schedule of inspections:

a. Complaint inspections¹². Refer to Section B below.

b. Construction inspections. It is the responsibility of the LEPP engineering staff to inspect facilities during construction to ensure compliance with the terms of State Permits to Install. The livestock inspectors may also do these inspections, under the guidance of the engineers, or join the engineers on construction inspections. Engineers are responsible for final construction inspections and will issue written authorization to stock

¹² O.R.C. Sections 903.12 and 903.14 use the term "investigation" whereas O.R.C. Sections 903.16 and 903.17 use the term "inspection." For convenience, the term "inspection" is used here to refer to both types of activities under the named statutes.

animals prior to commencement of operations in the NPDES permit. Construction inspections are important to ensure that a facility is properly built to meet the limitations imposed in its NPDES permit and State operating permit once stocking occurs.

c. Enforcement case inspections. These are follow-up inspections used to verify information pertaining to facilities subject to enforcement.

d. Limited inspections. Unannounced inspections that are limited to only one or two issues of concern, e.g., a check on operating records and freeboard; assessing a facility's capacity to avoid winter application of manure; or examination of drinking water lines. If spill reports, complaints, or unusual events indicate problem areas, more frequent inspections will be made and may include sampling inspections, unannounced visits, focused inspections on discrete areas of the facility, e.g., inspections limited to examining the structural soundness of the production area or limited to an assessment of land application procedures, or inspections limited to examination of the Operating Record.

e. Biannual inspections. These are the two routine, complete inspections conducted for each permitted facility, as identified in section 1 above.

3. Inspection Quarters

The Executive Secretary (ES) or Administrative Assistant (AA) enter the date of every inspection, regardless of its type, into LEPP's Dayhuff data management system. At the end of each quarter, the ES or AA will print and provide copies of the list of completed routine inspections to the inspectors. The inspectors will meet with the Executive Director to revise the list of inspection targets for subsequent quarters of the year.

LEPP's data management system is referred to as "Dayhuff" because the Dayhuff Group, Columbus, Ohio, developed this system. Enforcement actions are tracked through Dayhuff in the functional specification called "Enforcement." Data entry helps to ensure compliance and serve as a tracking mechanism for all inspectors, engineers, the ES and AA, Legal, and the Executive Director to rely upon in preparing for subsequent inspections, enforcement actions, and all administrative hearings. [Both formal and informal methods of communications also exist between the various Divisions within the ODA (e.g., Animal Industry, Enforcement, and Dairy); as well as other State, federal, and county offices to ensure communication in case resolution.]

The scheduled inspection quarters and meeting dates for revising the list of inspection targets are as follows:

<u>Inspection Quarter</u>	<u>Target Meeting Date</u> ¹³
January, February, March	April 15
April, May, June	July 15
July, August, September	October 15
October, November, December	January 15

4. Inspection Procedures

Copies of past inspections, current permits, compliance schedules, enforcement actions, discharge reports, annual reports, and like documents are maintained at the main office of the ODA LEPP. Inspectors are able to access most, but not all of this information off site via computer from software files maintained by the Program. For routine inspections, inspectors have a calendar or schedule of anticipated inspections and are required to use a portion of one work day each week to review files in the central office location for those facilities targeted for upcoming inspections. This includes a review of the most recent inspection, looking for any violations cited that will require re-assessment for a "return to compliance." The inspectors check to see if there is a schedule of compliance for the operation imposed by any legal document such as a Warning Letter, Notice of Deficiencies, Notice of Violation, or administrative or judicial order. Assessing dates and compliance schedules is required to determine the number of days of violation and to compute any recommended penalty.

Before initiating a complete inspection, inspectors perform a review of the permitted facility by conducting a search of the facility's files, including previous inspection reports. If any document or report has been submitted by the permittee since the previous inspection, the document will be verified during the course of the inspection.

All inspections are reported on the following forms: Routine Inspection Form, ODA LEPP, Revised November 2006. Biannual inspections require that the entire form be completed. If a copier is made available at the facility for use by the inspector, each inspector may provide a copy of the completed inspection form at the end of the inspection to the owner or operator of the facility. It is understood that the inspection form completed at the end of the inspection is preliminary and may be handwritten. Inspectors will provide a clean, typed copy of the inspection report for the owner or operator and for LEPP files within 14 days of the inspection. The typed inspection report will be reviewed by Legal for compliance review and may be edited for form by the Public Information Officer (PIO). The Executive Director concludes the review and will return the routed document to the inspector within five business days, with comments, corrections, and/or approval. The final, approved report has a cover letter from the inspector with any explanations needed, recommended practices, violations observed and required actions. The date that the final version of the inspection report is sent to the facility is the date entered in Dayhuff by the

¹³ Noncompliance reporting, based on the findings of scheduled inspections, must be made available for review on May 31, August 31, November 30, and February 28. See Noncompliance and Program Reporting, Part IV.

ES or AA. The final inspection report including the cover letter is attached in Dayhuff and thus is readily available electronically.

B. Complaints

Aggrieved persons may file complaints either orally or in writing. Pursuant to ORC 903.15, the Director shall investigate those written complaints that are signed and dated. The Director has discretion as to whether to investigate oral complaints. The complaint procedure used by LEPP is described in rule 901:10-5-01 of the OAC. The complaint procedure endeavors to elicit information from an oral complainant that will provide the facility address, a description of the nature of the complaint, and the name and address of the complainant so that the complainant may be notified of the outcome of the investigation.

The following table gives a summary of complaints received and responded to by LEPP since August 19, 2002:

Table of Complaints

Year	Total	Flies	Health Concern	Manure App.	Manure Discharge	Manure Other	Manure Spill	Odor	Other
2002 Starting 8/19/02	11	3	0	3	0	3	0	2	0
2003	41	19	0	9	0	5	0	6	2
2004	57	21	2	14	0	15	0	4	1
2005	92	52	0	21	0	11	0	5	3
2006 As of 11/30/06	80	46	0	10	1	9	0	6	8

1. Intake

LEPP Inspectors are responsible for the investigation of reported spill incidents and citizens' complaints. Inspectors are available for such activities within a twenty-four hour period after notice. As evidenced by the MOA with Ohio EPA and the MOA including ODNR-DSWC, Ohio EPA, and ODA, the Departments routinely share information by telephone and electronically to expedite response from the nearest available person in the event of emergencies. Complaints and non-emergency chemical spills can be phoned in to the ODA via the 24-hour "hotline", or to the main office number for LEPP. In addition to the ODA's 24-hour "hotline", the ODA also receives and responds to emergency releases, which are reported to the Ohio EPA Emergency Response Hotline. Permit and/or enforcement actions are requested as appropriate following these investigations.

Any LEPP staff person may receive a complaint (oral or written). Complaints must be forwarded to the ES or AA to complete a Complaint Intake Form. Any staff person completing the Complaint Intake Form must be sure to record the name of the person

making the complaint, his/her phone number, and the location of the problem in order to investigate and follow-up on the complaint. If the complainant wishes to remain anonymous, a tracking number is established for him/her using the date and time of the initial call. This information and/or number is confirmed with the caller and the number is used in the "name" section of the Complaint Intake Form.

The ES or AA enters information from each Complaint Intake Form into the Dayhuff system.

2. Assignments

The ES or AA forwards the Complaint Intake Form to the appropriate inspector's desk. The ES or AA also sends an e-mail or telephones the inspector to alert him/her and to brief him/her about the complaint.

If the inspector cannot respond to the complaint in a timely manner, he/she will contact the Executive Director immediately and ask that another staff member be sent. If the inspector needs to seek direction on the follow-up, the inspector will contact the Executive Director immediately for clarification on the complaint. If the Executive Director is not available, the inspector will contact the engineers and ask that one of the engineers take on the complaint, or work with the Executive Director to handle the complaint. The name of individual assigned to the complaint is recorded in Dayhuff.

The inspector investigates the complaint within 10 days of receipt of the assignment. Depending on the nature of the complaint, the inspector may contact the Executive Director, Legal (e.g., regarding right of entry) or the PIO from the field for guidance or to update them on pertinent facts. If additional actions are needed, these actions should be taken. Written notes of these actions and conversations are included in the Complaint Follow-Up Report.

3. Report

After completing the complaint investigation at the facility, the inspector drafts a Complaint Follow-Up Report that includes his/her observations; a description of problems/violations observed, if any; follow-up actions to be taken by the facility; whether this complaint is for a permitted or non-permitted farm; and the complete address and phone number of the complainant. The draft report is to be completed within 20 days. If additional information is acquired about the complaint before the report is sent out, that information is added to the report and routed as described below. If additional information on the same complaint comes in after the report is sent out, then an addendum to the initial complaint report is to be drafted and also routed as described below.

When the draft Complaint Follow-Up Report is complete, the inspector prints out a report or e-mails the report to the ES or AA to be printed and a Complaint Approval Form is dated, labeled with the name of facility and inspector, and then attached on the front of the report document. This is circulated for Legal review and editing by the PIO. The Executive Director concludes the review and returns the routed document to the inspector within five business days of the draft report's submission, with comments, corrections, and/or approval.

4. Completion

- a. The inspector finalizes the Complaint Follow-Up Report based on the Executive Director's review.
- b. If the complaint is a written complaint, the LEPP Inspector drafts a letter for the Director's signature stating that an inspection was initiated and providing a report on the inspection's conclusion. The letter for the Director is included as part of the Complaint Follow-Up Report and is part of the Report reviewed by Legal and the PIO. The ES or AA attaches a copy of the Director's letter into Dayhuff. A copy of the letter, with the Complaint Follow-Up Report, is sent to the complainant. The inspector gives a final copy of the Complaint Follow-Up Report, along with his/her notes, a copy of the complaint intake form, and any other documentation relative to this follow-up, to the ES or AA for placement into the central office files.
- d. The ES or AA attaches the final copy of the Complaint Follow-Up Report, in Dayhuff and enters either "no action" if no enforcement is required or "see enforcement" if enforcement is required, and files all complaint documentation with the facility file. If enforcement is selected, the complaint is logged into Dayhuff for enforcement tracking under "Enforcement." Legal, in consultation with the inspector, will prepare documents for any selected enforcement response.

C. Enforcement

Enforcement is used to ensure compliance with permits and federal and State laws and regulations. Enforcement options include (1) a letter from the inspector noting the violation and directing that corrective action be taken by a set date; (2) a Warning Letter issued by the Executive Director; (3) Complaint Follow-Up Reports and correspondence for the Director's signature (for written complaints)¹⁴; (4) administrative enforcement under ORC 903.09 (permit revocation), 903.16 (violations under the State permit program) and 903.17 (for NPDES violations), including Notices of Deficiencies Resulting in Noncompliance, Notices of Violation, and administrative orders (sometimes called Notices of Hearing) issued with penalty or without penalty; (5) referral to the Office of the Attorney General for civil or criminal enforcement under ORC 903.16, 903.17, and ORC 903.99; and (6) Emergency Orders under ORC 903.18. Enforcement options are discussed in detail in Section D, Enforcement Documents, below. The particular enforcement option used will depend on the nature, frequency, and severity of the violation, and whether the owner or operator is unable or unwilling to return to compliance.

Enforcement actions are generated by inspections, complaint investigations, follow-up complaint inspections, reviews of construction sites and construction activities, reviews of

¹⁴ ORC 903.15(B) requires the Director to investigate a written, signed, and dated complaint. An oral complaint may be investigated. Upon completion of the investigation, the Director may either dismiss the complaint and notify the complainant or proceed in accordance with ORC 903.17. While the Director must respond in writing to written complaints, he has discretion to also respond in writing to oral complaints.

documents (e.g., failure to renew permits, or LEPP's review of annual reports), and reviews of self-monitoring data in a facility's Operating Record. LEPP inspectors complete Weekly Reports that identify suspected violations and include a brief discussion of violations discovered. These matters are included in the agenda of the next regularly scheduled staff meeting and set for discussion. In addition, the Executive Director and Legal review all inspection or complaint reports, and may identify violations and refer these as agenda items for discussion at the next staff meeting. Finally, the ES and AA bring to the staff meeting a list of anticipated deadlines that will be "due" in the forthcoming month. This list includes the names of facilities being tracked in enforcement for compliance in Dayhuff, with compliance deadlines, corrective action schedules, and penalty payments due.

After review and discussion at the weekly staff meeting, the Executive Director may decide that enforcement action is required. If the Executive Director determines enforcement action is required, the ES or AA enters the facility into Dayhuff for "Enforcement" and subsequent case management. In addition, the Executive Director may decide that additional information or investigation is needed before an enforcement determination is made and will assign this work to the appropriate LEPP employees. This may include additional fieldwork or technical work or legal analysis to determine if sufficient evidence exists to proceed with an enforcement action. If the Executive Director finds after review and discussion or further investigation that the facility is in compliance, the ES or AA are directed to change the facility's "Enforcement Status" to "NA," "No Action," in Dayhuff, with a brief written explanation for the change attached in Dayhuff.

In situations where immediate action is required to protect the public health or safety or the environment, emergency enforcement action can be taken to address the situation without waiting for the completion of this review process. Such action may include the issuance of an emergency order under ORC 903.18 or the seeking of a temporary restraining order in Ohio's common pleas courts through a referral to the Ohio Attorney General's Office under ORC 903.17. In an emergency, the Director can also use funds in the "Livestock Management Fund," created by ORC 903.19 to take corrective actions. Any such costs incurred by the Director may be recovered from responsible persons through Director's Final Orders or by the Office of the Attorney General, acting upon request of the Director, in a judicial enforcement action.

A workload analysis of the anticipated number of enforcement actions the ODA will prepare over the next two years is difficult to project. The number of enforcement actions issued is based on the number of referrals from LEPP inspectors, the Ohio Department of Natural Resources Division of Soil and Water Conservation, the 88 local county SWCD offices, Ohio EPA, and citizens' complaints, as well as those generated by file reviews.

Currently there are 4 LEPP Inspectors that prepare enforcement actions.

Enforcement Actions Taken Against Facilities
August 19, 2002 to November 30, 2006

<u>Year</u>	<u>Warning Letter</u>	<u>Notice of Deficiency</u>	<u>Notice of Hearing</u>	<u>Emergency Order</u>	<u>Final Admin. Order</u>	<u>Final Court Order</u>	<u>Permit Revocation</u>	<u>Attorney General Referral</u>
2002 Starting 8/19/02	0	1	0	0	0	0	0	0
2003	1	4	0	0	0	0	23 ¹⁵	1
2004	22	18	3	0	3	1	0	0
2005	35	31	2	1	1	0	0	0
2006 as of 11/30/06	12	24	3	0	0	0	16 ¹⁶	1

Excluding Warning Letters and permit revocation orders, ODA estimates that approximately 70 enforcement actions will be issued against facilities over the next two years.

1. No Action

The results of routine inspections or other inspections or complaint investigations that reveal no violations are entered into Dayhuff as "No Action" or "NA." Should relatively minor violations be discovered, and the permittee shows a willingness and ability to correct the problem, enforcement action is usually not requested. However, the owner or operator will be informed of violations in the final inspection report and in the report's cover letter. The owner or operator will also be informed in the cover letter of those actions the owner or operator must take to return to compliance before the next bi-annual inspection or before a more immediate follow-up inspection. The results of complaint investigations are provided to the complainant, provided that the complaint is not anonymous. In the case of complaints, the owner or operator and the complainant (if known) will be informed of violations in the final Complaint Follow-Up Report. The owner or operator and complainant will also be informed in the final Complaint Follow-Up Report of those actions the owner or operator must take to return to compliance. Finally, if the Complaint is a written complaint, a letter summarizing the results of the investigation will be issued to the complainant with the Director's signature. Any relatively minor violations that are not corrected through this process by the time of the next inspection become subject to escalated enforcement.

¹⁵ In August 2002, ODA issued a proposed revocation of 12 permits and a proposed denial of 11 permits against the former Buckeye Egg Farm, pursuant to ORC 903.09. These permits had been issued by or applied for from Ohio EPA prior to the August 19, 2002 date when the ODA State permits program was transferred from Ohio EPA to ODA. In response to the proposed permit revocations and denials, Buckeye Egg Farm requested an adjudication hearing pursuant to ORC 903.09. After that hearing was held, the Director issued a final order revoking and denying these 23 permits in 2003.

¹⁶ ODA proposed revocation of a total of 16 permits to Ohio Fresh Eggs, LLC in 2005. After an adjudication hearing, a final order revoking the permits was issued in 2006. That revocation is currently on appeal before the Environmental Review Appeals Commission, pursuant to ORC 3745.04.

2. Violations

Inspections. Routine inspections that reveal violations are noted in the final inspection report and in the cover letter. In addition, the inspection report and the cover letter describe the corrective actions necessary to return to compliance. Depending on the nature or degree of seriousness or gravity of the violation, a Warning Letter may be issued, administrative or judicial enforcement may be commenced, or an emergency order under ORC 903.18 may be issued. In the alternative, for minor violations, the inspector may direct the owner or operator of the facility to return to compliance before the next regularly scheduled biannual inspection or a more immediate follow-up inspection. If the subsequent inspection shows that the violation revealed in the previous inspection is still not resolved, the inspector proceeds to escalate enforcement as discussed in *Unresolved, repeated, or serious violations*, below. Enforcement options are discussed in detail in Section D, Enforcement Documents.

Complaints. Complaint investigations that reveal violations are noted in the Complaint Follow-Up Report. The Complaint Follow-Up Report also describes the corrective actions necessary to return to compliance before a complaint follow-up inspection is performed. Depending on the nature or degree of seriousness or gravity of the violation, a Warning Letter may also be issued or other enforcement commenced in accordance with ORC 903.17 and 903.18. If the subsequent follow-up inspection shows that the violation revealed in the previous investigation is still not resolved, the inspector proceeds to seek escalated enforcement as discussed in *Unresolved, repeated, or serious violations*, below. Finally, if the Complaint is a written complaint, a letter summarizing the results of the investigation will be issued to the complainant with the Director's signature.

Unresolved, repeated, or serious violations. If the violation is not resolved within the time frame mandated by LEPP in its initial enforcement response, if the violation is frequent or serious, or if the facility indicates an inability or unwillingness to return to compliance, the inspector describes the violations in the Inspector's Weekly Report and refers the matter for discussion at the next staff meeting. During the staff meeting, the inspector confers with the other inspectors, engineers, Legal, and the Executive Director about appropriate escalated enforcement action. [See detailed discussion of Enforcement Documents in section D below.]

Enforcement Resulting from Surface Application of Manure on Frozen or Snow-Covered Ground: Discharges, Corrective Actions, and Prohibitions. Enforcement procedures will vary for activities related to manure application on frozen or snow-covered ground because the facility is required to obtain prior approval from the Director or his/her authorized representative before any surface application of manure during this period. Additional restrictions and setbacks are also imposed for winter application on frozen or snow-covered ground, as stated in OAC 901:10-2-14(G) and OAC 901:10-2-14, Appendix A, Table 2. Whenever possible, ODA staff shall be present at the site during the application event. In addition, if the land-applied manure discharges to waters of the State, then the facility is required to notify ODA as soon as possible or within two hours of detection of the runoff event. In any event, a discharge must be reported within 24 hours

following first knowledge of the discharge. Actions must be taken to contain or manage the spill. Other requirements for emergency response are stated in OAC 901:10-2-17 and in any NPDES permit approved and issued by the Director.

A discharge of manure to waters of the State from land application on frozen or snow-covered ground that is not the result of a precipitation event is prohibited. As required by OAC 901:10-2-14(C)(6), weather conditions must be checked and recorded 24 hours before and after application as well as during application to avoid precipitation-related runoff.

In the event that a facility fails to comply with the land application requirements for frozen or snow-covered ground including, but not limited to, prior notice to ODA of intended surface application, notification of discharges, monitoring and record-keeping requirements, then ODA will not follow an administrative enforcement progression from Warning Letter to Notice of Deficiencies and Notice of Violation but will assume that the noncompliance must be referred to the Attorney General's Office for judicial enforcement pursuant to ORC 903.17(D). Refer to Enforcement Documents in section D.5 (Attorney General Referral) below.

An enforcement action taken by ODA through the Office of the Attorney General will require the facility to take "corrective actions." The nature of corrective actions required will depend on the time and circumstances of the noncompliance, including, but not limited to, cleaning and pumping manure for correct application or disposal; maintaining dams to block manure discharges; using or maintaining tile plugs; sampling; and additional reports to supplement emergency reporting, e.g., progress reports on cleanup. In addition, ODA will develop a penalty assessment and recommend this to the Attorney General with the case referral.

In the event that a facility fails to comply with the land application requirements for frozen or snow-covered ground for more than two surface application events, then land application on any frozen or snow-covered ground will be prohibited as part of the corrective actions imposed on that facility.

On and after April 1, 2007, a facility shall be required in any enforcement to conduct the following "corrective actions:"

- 1) Collect representative grab samples from discharges of land-applied manure into waters of the State at the point that the discharge enters waters of the State (i.e., concentrated field surface runoff or field tile outlet discharge prior to entrance to surface water) and have the sample analyzed for, at a minimum, the following parameter:

00610 – Nitrogen, Ammonia (NH₃) – mg/l

- 2) The facility shall: (a) collect the sample within 30 minutes of the first knowledge of the discharge; or (b) if sampling in that period is inappropriate due to dangerous

weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay.

3) The facility shall report the results of the discharge sample(s) to ODA LEPP within 14 days of occurrence. The report shall, at a minimum, contain the sample results, describe the reason for the discharge, the location, estimate of quantity and duration of the discharge, and duration of any precipitation leading up to the event, as well as any measures taken to clean up and eliminate the discharge and required land application records stated above. Laboratory results not available at the time of the report submittal shall be submitted to ODA within five days of receipt.

If the ammonia nitrogen level in a water quality sample is determined to be 26 mg/L or greater in the discharge at the point it enters waters of the State, then any additional surface application of manure to frozen or snow-covered ground is prohibited on the field where the runoff event occurred. In the event that the facility follows the permit requirements and runoff from frozen or snow-covered fields discharges to waters of the State with an ammonia nitrogen content of 26 mg/L or greater in a total of three surface land application events, then surface application of manure on any frozen or snow covered ground is prohibited for that facility for the permit duration.

The facility is responsible for complying with land application activities conducted on each site where the facility, or anyone employed by the facility, owns, operates, or land applies manure generated by the facility or is otherwise responsible for determining the timing and amount of manure to be applied on fields not otherwise owned, rented, or leased by the facility.

The facility or the inspector may provide information based on the site-specific facts of noncompliance that may mitigate referral to the Attorney General's Office and allow issuance of an administrative Notice by the Director.¹⁷

3. Formal Documentation

To address violations, Legal prepares the appropriate Enforcement Document. The initial draft is submitted to the engineers and the inspector to check factual accuracy and for technical review. Drafts of Notices of Deficiency Resulting in Noncompliance, Notices of Violation, Notices of Hearing, Final Orders, and Emergency Orders are concurrently reviewed by the Assistant Attorney General to analyze sufficiency of the evidence and related case development prior to the enforcement action being issued.

Legal prepares a final version of the Enforcement Document for the approval of the Executive Director. The Executive Director signs Warning Letters, Complaint Follow-Up Reports (for written complaints), Notices of Deficiency Resulting in Noncompliance, Notices of Violation, Final Orders, Emergency Orders, and referrals to the Office of the

¹⁷ ORC 903.17(A)(1): "The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance."

Attorney General for judicial enforcement are signed by the Director. For Enforcement Documents signed by the Director, Legal works with the Director's executive secretary to have documents signed by the Director and entered into the Director's Journal.¹⁸

The Enforcement Document is given to the ES or AA for mailing to the complainant (where applicable), the facility, the local SWCD office, Ohio EPA, and ODNR. The ES or AA mails a courtesy copy of the Enforcement Document to any other individual or entity that the Executive Director believes should receive a copy. Enforcement Documents are sent by Certified Mail to the facility. The issuance of each Enforcement Document is entered into Dayhuff through data entry and a copy of the document is attached in Dayhuff. The ES or AA also places a copy of the Enforcement Document in the central office file.

D. Enforcement Documents

Enforcement actions are conducted principally in accordance with Sections 903.09, 903.15, 903.16, 903.17, 903.18 and 903.99 of the ORC. ORC 903.12 governs the right of entry to the facility and access to records. In addition, rules set forth in Chapter 901:10-5 of the OAC govern enforcement procedures, including penalty assessments and emergency enforcement.

There are several types of enforcement documents prepared by LEPP. The criteria for determining which type of enforcement document will be used is based on the degree of seriousness of the violation and the degree of environmental and/or health effect as analyzed in the context of OAC 901:10-5-04 and any other factors that advance the goals of ORC Chapter 903. The Significant Noncompliance (SNC) Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources will also be used to evaluate enforcement decisions when that policy is finalized.

1. Warning Letter: A Warning Letter is issued at the discretion of the Executive Director, based on the results of an inspection, complaint investigation, or file review, together with analysis of supporting documentation including field reports and sampling results, and Legal analysis and discussion of enforcement at the weekly staff meeting.

A Warning Letter may be issued for a first-time violation, a minor violation of moderate to low seriousness, or a minor violation of medium to low effect. Warning Letters are issued by Certified Mail. A Warning Letter includes a brief statement of the nature of the violation; the statute and rules violated; the facts relied upon by the Executive Director in concluding that a violation has occurred; and the requirements that must be met in order for the facility to return to compliance, including a schedule for returning to compliance or a deadline for returning to compliance.

¹⁸ A Notice of Hearing is not entered into the Director's Journal because it is not a final action of the Director. The Notice of Hearing is sent to the Office of General Counsel, ODA, in order to prepare for hearing, in the event that a hearing is requested.

The date the Warning Letter is sent, the Warning Letter, and any date or deadlines for compliance (the compliance schedule) are attached and entered in Dayhuff. Depending on the type, circumstances, and severity of the violation, the Director may opt not to issue a Warning Letter and instead proceed directly to issuing a Notice of Deficiencies Resulting in Noncompliance (NOD) or referring the matter to the Ohio Attorney General's Office for judicial enforcement.

2. Notices of Deficiencies Resulting in Noncompliance: The NOD is a type of administrative enforcement action issued by the Director in accordance with ORC 903.16¹⁹ for violations of state CAFO permitting requirements or ORC 903.17 for NPDES violations.

As with the Warning Letter, the Director's NOD includes a brief statement of the nature of the violation; the statute and rules violated; the facts relied upon by the Director in concluding the violation occurred; and the requirements that must be met in order for the facility to return to compliance, including a schedule of compliance or a deadline to return to compliance. The Notice of Deficiencies Resulting in Noncompliance is sent by Certified Mail. Thereafter, continued NPDES noncompliance will result in a Notice of Violation (NOV), which may be issued with a Notice of Hearing so as to obtain a civil penalty through ORC 903.17 administrative proceedings.

The NOD letters and the dates they are sent are attached and entered in Dayhuff. Where ODA seeks to obtain a penalty in an administrative proceeding in response to violations, re-inspection of the facility is required under ORC 903.17(A) to determine whether the owner or operator has returned to compliance before an administrative civil penalty can be imposed. Therefore, at the time that the Director's NOD is issued, the schedule of compliance dates imposed in the NOD is also entered into Dayhuff, and an inspector is assigned to re-inspect the facility on those dates, or immediately thereafter. As noted above, every inspection date must be entered into Dayhuff.

3. Notices of Violation and Notices of Hearing: If, upon re-inspection the owner or operator is still not in compliance, the next administrative enforcement order issued is an NOV under ORC 903.17. At the time of issuing an NOV, the Director has the discretion to propose to assess an administrative civil penalty for the violations through a Notice of Hearing for an adjudication hearing to be conducted pursuant to ORC Chapter 119 and ORC 903.17(A) and (B).

If the Director proposes a civil penalty, the Director may include a brief statement regarding the seriousness and gravity of the violation, as well as the proposed penalty, as determined under the provisions of OAC 901:10-5-04.

Notices of Violation and Notices of Hearing are sent by Certified Mail to the owner or operator and are attached in Dayhuff. The date each Notice is sent is entered into

¹⁹ The State program includes regulatory authority over insect and rodent control as well as odor control at concentrated animal feeding facilities. Since these requirements are not part of the NPDES program they are not discussed here.

Dayhuff. The owner or operator has fifteen days from the date of a Notice of Hearing to request an adjudication hearing before the Director. If a hearing is requested, this request is entered in Dayhuff and the adjudication hearing is scheduled.

4. Final Orders of the Director:

a. Non-emergency final orders

Following the issuance of a Notice of Hearing, the Director issues a final order.

Pursuant to ORC 903.17(B), final orders may be issued without an adjudication hearing if the owner or operator waives the opportunity for adjudication hearing by not requesting a hearing in response to the Notice of Hearing. The Director may issue a final order with or without a penalty.

If the owner or operator requests an adjudication hearing pursuant to ORC 903.17, the Director may either issue a final order at the conclusion of a hearing, or he may issue a Final Order as a result of a Joint Stipulation and Settlement Agreement entered into by the parties prior to the adjudication hearing. All final orders are attached and entered in Dayhuff.

b. Emergency Orders

Emergency orders are final orders of the Director, issued pursuant to ORC 903.18, instead of ORC 903.17. These orders are issued without notice or an adjudication hearing. Emergency orders must state that an emergency exists and that the emergency requires immediate action to protect the public health or safety or the environment. Emergency orders take effect immediately and the person to whom the order is directed is required to comply with the emergency order immediately. The person to whom the emergency order is directed may apply for an adjudication hearing in accordance with ORC Chapter 119. The adjudication hearing shall be held as soon as possible but not later than 30 days after the application for the hearing. At the hearing, the Director decides either to continue the order, to revoke the order, or to modify the order. Pursuant to ORC 903.18, an emergency order shall remain in effect for no more than 120 days. All emergency orders are attached and entered in Dayhuff.

In an emergency, the Director can use funds in the "Livestock Management Fund," created by ORC 903.19, to take corrective actions. Any such costs incurred by the Director may be recovered from responsible persons through Director's final orders or by the Office of the Attorney General, acting upon request of the Director.

5. Attorney General Referral: This enforcement option may be appropriate in a number of circumstances, including cases in which:

- a. As an alternative to emergency orders, described above, the Director may seek immediate action through the Attorney General as necessary to prevent imminent and substantial endangerment to the public health and/or to the environment. The Office of the Attorney General can seek a Temporary

Restraining Order or Temporary Injunction through a court action in an Ohio court of common pleas.

- b. Violations of a Director's final order have occurred;
- c. Department resources and policy may dictate case referral to the Attorney General. Factors to be taken into consideration when deciding whether to refer a case to the Attorney General include the amount of civil penalties assessed, recovery of costs incurred by the Director in an emergency action, challenges to the legality or policy of the program, serious or egregious violations, continuing violations, criminal cases, and other such matters as justice requires.
- d. Civil penalties are sought for the violation and the circumstances of the case make it inappropriate or impractical to seek penalties through the NOD/NOV/NOH procedure set forth in ORC 903.17(A) and (B) that governs penalties obtained through administrative, as opposed to judicial, enforcement actions.

Legal will prepare a letter from the Director to the Attorney General naming the owner or operator or both and the operation being referred to the Attorney General for enforcement action and will identify the Director's legal authority to make the referral. The referral will be attached and entered into Dayhuff on the day the Director signs the referral letter.

Legal will prepare a confidential memorandum for the Office of the Attorney General describing the nature of the case, the reason for referral, and the relief requested. Legal will prepare and send relevant inspection reports, memos from staff, correspondence, photos, sampling results, penalty calculation worksheets, a chronology of the case, and any other materials required in support of the case.

6. Permit Revocation: Pursuant to ORC 903.09, the Director is authorized to revoke both State installation and operating permits and NPDES permits. Grounds for permit revocation are set forth in OAC 901:10-1-03. To revoke a permit, the Director first issues a proposed action stating the Director's intention to revoke the permit and the reasons for the permit action. Pursuant to ORC 903.09(F) and OAC Chapter 901:10-6, notice of the proposed revocation is sent to the permittee by Certified Mail and public noticed in a newspaper in the county where the facility is located or proposed to be located. As in other permitting actions, notice of a proposed revocation is also given to county commissioners, township trustees, and any other person entitled to receive notice under the Act, public comments may be received, and a public hearing may be held. A final order regarding the proposed revocation is not issued until the permittee has had an opportunity for an adjudication hearing in accordance with 903.09(F) and ORC Chapter 119. Appeal procedures for permit revocations are set forth in Section 4.H (Administrative and Judicial Review of Permitting Decisions) above. Like other permitting actions, proposed permit revocations and final revocations are attached and entered into Dayhuff.

E. Enforcement Tracking and Activities

1. Data Management

Inspections, complaints, and the various actions in support of "Enforcement Status," including preparing and tracking all of the Enforcement Documents described above, are listed and discussed here. Data from the Compliance and Enforcement Program will be provided to U.S. EPA on a quarterly basis as set forth in the Memorandum of Agreement between U.S. EPA and the State of Ohio, Ohio Department of Agriculture.

2. Data Entry

The ES or AA enters all complaints into Dayhuff.

The ES and AA enter all routine inspection dates and complaint investigation dates into Dayhuff.

Routine Inspection Reports, Complaint Follow-Up Reports, including any letter from the Director for written complaints, and Warning Letters issued by the Executive Director on violations, are given to the ES or AA to be attached and entered into Dayhuff. The EA or AA will also mail all Complaint Follow-Up Reports, letters from the Director, or Warning Letters from the Executive Director to the complainant, the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director. The mailing dates are then entered into Dayhuff.

Inspections, cover letters, and complaint investigations that reveal no or minor violations are given to ES or AA and are attached and entered into Dayhuff as "No Action" or "NA." (This includes minor violations, violations in which the permittee is willing and able to correct the problem, and violations that cannot be proven.) The ES or AA mails the inspection reports, cover letters, or Complaint Follow-Up Reports to the complainant, the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director.

The AA or ES enters data relating to "Enforcement Status" for each facility whose enforcement status is discussed and decided upon at the weekly staff meeting. Any final signed and dated Enforcement Document is attached in Dayhuff by the ES or AA. This includes Warning Letters, Notices of Deficiencies Resulting in Noncompliance, Notices of Violation, Notices of Hearing, Final Orders, Emergency Orders, and a referral to the Office of the Attorney General for judicial enforcement signed by the Director.

3. Other Activities

- a. Cases Referred to the Attorney General: Legal works with the Assistant Attorney General (AAG) in developing the case, particularly by assisting the drafting and review of the Complaint; drafting and responding to interrogatories; scheduling depositions; and drafting and reviewing any settlement agreements, penalty

demands, and preliminary and final orders. Legal serves as a liaison between the AAG and LEPP staff and ODA management.

- b. Preparation of Final Order Documents: In administrative cases under ORC 903.17 or ORC 903.09 where the owner or operator waives the right to an adjudication hearing or otherwise forgoes the right to challenge the Director's Notice of Hearing, Legal prepares a draft administrative order using the appropriate order "shell" or "form" for the final order. Legal prepares the cover letter to be sent to the owner or operator of the facility. Each order is tailored to the specific technical and regulatory requirements of the case and includes any penalty calculated by the inspector or engineer assigned to the case. The assigned engineer and inspector, where applicable, review the draft administrative order for technical and factual accuracy. The draft administrative order is also given to the AAG and Executive Director for review. Following the review, the draft administrative order is returned to Legal for corrections and/or modifications. After review of the draft order by LEPP staff is complete, the order is given to the Director for his or her review and signature. The final order that is approved and signed by the Director is given to the AA or ES to attach in Dayhuff and for mailing to the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director. The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5).
- c. Final Order as a result of a Joint Stipulation and Settlement Agreement: The parties may engage in negotiation following the owner or operator's request for an adjudication hearing arising out of a Notice of Hearing issued under ORC 903.17 or a proposed revocation under ORC 903.09. If an agreement can be reached through the process of negotiation without a hearing, Legal will prepare a joint stipulation and settlement agreement and a draft Director's order using the appropriate order "shell" or "form." It is anticipated that the parties may negotiate the allegations, penalty, and corrective actions to be contained in the settlement agreement and draft order. During negotiations, Legal may recommend changes to the settlement agreement and draft order based on the owner or operator's case as follows:

Additional factual information that affects the assessment of the violation or the penalty calculation;

The owner or operator proposes a Supplemental Environmental Project as part of the penalty to be paid;

Corrective actions, compliance schedule, and penalty-payment schedule may be negotiable.

The AAG and Executive Director must sign off and agree on any changes before the negotiated settlement is approved. Joint stipulations and settlement agreements are drafted contingent on the Director's issuance of a final order that is identical in substance to the draft order contained in the joint stipulation and settlement agreement. The Director, as the final decisionmaker under ORC Chapter 119, is not involved in the negotiation of settlement agreements when an

adjudication hearing is pending and may choose whether to issue a final order consistent with the settlement agreement. If the Director issues a final order identical in substance with the draft order in the settlement agreement, the final order is sent to the owner or operator and the case is settled. If the Director does not issue an order consistent with the settlement agreement, the settlement is nullified and the Director's decision is appealable by the owner or operator in accordance with Section 4.H, above. The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5).

- d. Contested Administrative Enforcement Cases: If no agreement can be reached through the process of negotiation, the matter will be referred to a Hearing Examiner, employed by the Department. A hearing will be conducted in accordance with ORC Chapter 119. At the conclusion of the hearing, the Hearing Examiner will issue a Report and Recommendation pursuant to ORC Chapter 119 regarding whether the action sought in the Notice of Hearing or proposed revocation should be approved as a final order, disapproved, or modified. The Report and Recommendation is transmitted to the Office of the Director, ODA, for review and consideration. The Director, in consultation with the Chief Counsel, reaches a determination and issues a final order. The final order is sent by Certified Mail to the facility or its attorney, if any, from the adjudication hearing.

The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5), allowing for public notice and an opportunity to file a Notice of Appeal with the Environmental Review Appeals Commission. The final order is also attached into Dayhuff.

e. Penalty Payments:

- 1) Data entry: At the time that a signed final order is given to the AA or ES for publication, the AA or ES shall enter the anticipated date for penalty payment in Dayhuff. Tracking payments by Dayhuff enables enforcement actions to be commenced in the event of nonpayment.
- 2) For administrative enforcement: Final Orders of the Director require that the "proposed civil penalty in the amount of \$_____ be paid by check made payable to 'Treasurer, State of Ohio, for the Livestock Management Fund 5L8,' which shall be delivered by mail, or otherwise, to Peggy Jackson, Administrative Assistant, or her successor at the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068."
- 3) For judicial enforcement: Judicial settlements reached by the Office of the Attorney General provide: "Defendant is hereby ordered and enjoined to pay a civil penalty of \$_____ within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty shall be paid by certified or

cashier's check for the appropriate amount, made payable to 'Treasurer, State of Ohio, for deposit to the Livestock Management Fund 5L8,' which check shall be delivered by mail, or otherwise, to the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400."

- 4) Inability to Pay: Owners or operators may present evidence in an effort to prove that they are unable to pay all or part of a proposed penalty. Alternatively, the owner or operator may present evidence in an attempt to prove that he/she requires additional time in order to pay the penalty, or needs to pay the penalty in installment payments. The owner or operator must present financial documents to substantiate a claim of inability to pay, such as copies of actual tax returns filed for the three-year period immediately prior to the case. Prompt submittal of the financial documentation is required and the final decision on the amount of penalty is made by the State.
 - 5) Failure to Pay: In the event that an owner or operator fails to pay the penalty at the conclusion of the enforcement proceedings, the matter is referred to the Office of the Attorney General for collection proceedings.
- f. Compliance with Final Orders: The inspectors will monitor the provisions of any enforcement order issued as a result of enforcement proceedings to determine whether corrective actions are fully complied with. The ES or AA will check to determine if the penalty payment requirements are met. Any subsequent noncompliance is reported in the weekly report and scheduled for discussion at the next staff meeting. Failure to achieve compliance with the provisions of any final order issued by the Director is considered a major violation according to OAC 901:10-5-04. In such a case, further enforcement action will be pursued through a referral to the Office of the Attorney General.

F. Citizen Suits

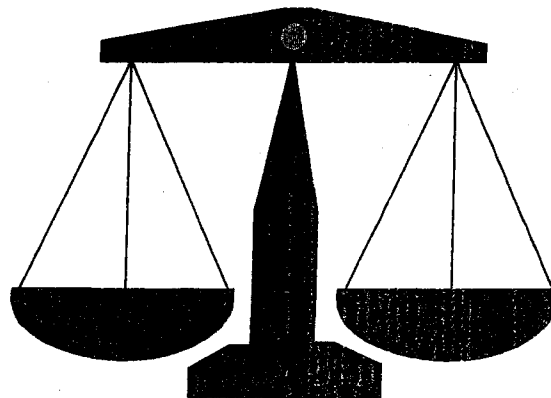
If the Director has taken no action against a violator, ODA like Ohio EPA recognizes that a person having an interest, which is or may be adversely affected by a violation of the Federal Water Pollution Control Act, may commence a civil action in his or her own behalf against the violator pursuant to Section 505 of the Act (33 USC 1365). Before commencing such an action, the plaintiff must send a 60-day notice of his or her intent to file suit to the EPA Administrator, ODA, and the alleged violator of the Act. If the Director commences a court case against the alleged violator in response to the 60-day notice, ODA recognizes that the aggrieved person may file a motion to intervene in that action.

End of Program Description



Ohio Department of Agriculture

The Rule-Making Process



September 15, 1999

**A GUIDE TO THE RULE-MAKING PROCESS
OF THE
OHIO DEPARTMENT OF AGRICULTURE**

REGULATORY MISSION

Ohio's Department of Agriculture has regulatory responsibility in four broad areas:

1. Ensuring the safety and wholesomeness of food and food products from production through processing and distribution to the consumer;
2. Ensuring that the goods and services purchased by farmers meet the standards established by law;
3. Ensuring the safe storage, handling and application of agricultural chemicals that can adversely affect the environment; and,
4. Control and eradicate plant and animal diseases that pose a threat to human health and the economic viability of agriculture.

In addition to the foregoing, the Department of Agriculture is responsible for regulating the sealing of weighing and measuring devices used in Ohio, inspection of amusement rides and carnival games, and overseeing the establishment and operation of agricultural commodity marketing and promotion programs.

DEPARTMENT ORGANIZATION

The Department has seven divisions which are directly responsible for the development and enforcement of administrative rules applicable to their areas of responsibility. These divisions and their primary areas of responsibility are:

1. **Division of Animal Industry.**

This division is responsible for the enforcement of rules governing the importation and intra-state movement of animals, and the eradication and control of animal diseases. The division also oversees the licensing and regulation of livestock dealers and renderers.

2. **Dairy Division.**

The processing of raw milk into Grade A milk and milk products such as cheese and ice cream is regulated by this division.

3. **Division of Food Safety.**

The inspection of food products, other than meat, poultry, and milk products, from processing through retail sale is carried out by this division. Inspection helps ensure that food products sold in Ohio are safe and wholesome and comply with labeling laws.

4. **Division of Meat Inspection.**

The processing of meat and poultry for food and food products is regulated by this division.

5. **Division of Plant Industry.**

This division is divided into five sections; Apiary, Pesticides, Plant Pest Control, Feed and Fertilizer and Grain Warehouse.

Collectively the first four sections are responsible for the accurate labeling of feeds, fertilizers, pesticides, and nursery stock being offered for sale. They are also responsible for the safe application, storage and handling of pesticides and fertilizers and the control and prevention of pests and diseases affecting both bees and plants. The division's Grain Warehouse section licenses and audits agricultural commodity dealers for financial integrity.

6. **Division of Ride Safety.**

Amusement rides and carnival games are licensed and inspected by this division.

7. **Division of Weights and Measures.**

All weighing and measuring devices used in commercial transactions in Ohio are inspected and tested for compliance with accuracy standards established by rule.

8. **Division of Markets.**

This division oversees the implementation and operation of agricultural commodity marketing programs adopted by farmers. It also manages the Ohio Proud marketing program.

RULE-MAKING AUTHORITY

As a state agency the Department of Agriculture does not have inherent authority to adopt rules. Authorization to do so must be expressly granted by the General Assembly and is found in the statutes that create the policies and programs the General Assembly intends the Department to carry out.

It is through rules, which have the force and effect of law, that the substantive details necessary to implement legislation are enacted.

**STEPS IN THE
RULE MAKING PROCESS AND PUBLIC PARTICIPATION**

ORIGIN OF RULES

Rules are adopted by the Department either because they are required by newly enacted legislation or because existing rules, due to fundamental changes in a regulated subject area, no longer effectively implement the intent of the underlying legislation. In the latter case a proposal for rule changes may originate in a division or may come from an interested group outside the Department.

RULE DRAFTING

Initially rules are drafted by the division responsible for their enforcement. At this stage the Department has input from a number of different committees, created either by statute or ad hoc, trade associations and public interest groups that are representative of the different interest of people most directly affected by the rules.

REVIEW AND FILING

When completed, a draft of the rules is sent to the Department's legal section for review. If the rules are in accordance with law and formatted properly they are proposed for adoption and filed with the Joint Committee for Agency Rule Review, the Legislative Service

Commission, the Secretary of State and the Department of Development's Office of Small Business.

NOTICE AND AGENCY PUBLIC HEARING

At the time the rules are filed a public hearing is scheduled and notice is published in the Columbus Dispatch. Notice of the hearing and a copy of the rule is also sent to any organizations or persons the Department determines to be directly affected by the proposed rule. Copies of the rule are also sent to anyone who has notified the Department he or she wants to be notified and pays the cost of copying and mailing. In addition to the notices given by the Department, the Office of Small Business publishes a summary of the ruled filed with it and notice of the hearing in its newsletter.

At the Department's public hearing any person affected by the proposed rules may appear, testifying in person or through an attorney, or both, and may present his position either orally or in writing, offer and examine witnesses and present evidence in support of or in opposition to the proposed rule.

PUBLIC HEARING - JOINT COMMITTEE ON AGENCY RULE REVIEW

In addition to the Department's hearing, the Joint Committee on Agency Rule Review, a permanent legislative committee composed of members from both houses of the General Assembly, holds a public meeting in conjunction with its review of the proposed rules. The Committee's review is to ensure that:

- 1) the rules do not exceed the scope of the rule-making agency's statutory authority;
- 2) the rules do not conflict with a rule of that agency or another rule-making agency;
- 3) the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed; and,
- 4) the rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.

The open meetings serve a two-fold purpose. Committee members may question representatives from state agencies about any concerns they have regarding a rule and members of the public have an opportunity to bring any concerns they have to the Committee's attention.

The Committee's meeting dates and the rules on their agenda may be obtained from their website: www.jcarr.state.oh.us/ or by calling them at (614) 466-4086.

SUMMARY

While the Department has a legal duty to implement legislation through the adoption of rules, the Department needs and welcomes input from members of the public who are affected by the rules. Their expertise and perspective help assure the rules will have both a sound factual and legal basis.

Members of the public affected by Department rules may:

- Obtain copies of proposed rules and notice of public hearings by writing the Department and stating the type of proposed rules, by subject matter they wish to receive and paying the cost of copying and postage. Requests should be sent to:

Ohio Department of Agriculture
Legal Section / Rules
8995 East Main Street
Reynoldsburg, Ohio 43068

- Participation in the rulemaking process:

Indirectly - Through their representatives in various trade associations, boards and commissions and interest groups which help the Department formulate rules.

Directly - By testifying at the public meetings held by the Joint Committee on Agency Rule Review.

- By testifying at the public hearings held by the Department.

**REVISION
OF THE
MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF OHIO
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ON BEHALF OF
THE OHIO DEPARTMENT OF AGRICULTURE
AND
THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

Section I. Purpose and Responsibilities

I.A. Purpose.

On March 11, 1974, the Ohio Environmental Protection Agency (OEPA) and the United States Environmental Protection Agency (USEPA) entered into a Memorandum of Agreement (MOA) for the purpose of establishing procedures for implementing the NPDES permitting program in Ohio. Since March 11, 1974, the MOA has been modified four times to address (1) Federal Facilities (January 14, 1983), (2) Pretreatment (July, 27, 1983), (3) General Permits (August 17, 1992), and (4) Sewage Sludge (March 16, 2005).

This revision to the Memorandum of Agreement (Agreement/MOA) establishes revisions to policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Ohio through the Ohio Department of Agriculture (ODA) for concentrated animal feeding operations, including individual and general permits, including industrial and construction storm water permits, the discharging, transporting, or handling of process, wastewater, storm water, manure and litter from animal feeding operations, and those animal feeding operations designated as concentrated animal feeding operations (CAFOs) in accordance with 40 CFR 122.23 as reviewed and authorized by Region 5 and the Administrator of the United States Environmental Protection Agency (USEPA).

I.B. Responsibilities.

ODA has primary responsibility for implementing the NPDES program in Ohio as applied to animal feeding operations or "AFOs" and "CAFOs" (concentrated AFOs). Implementation will be done in accordance with this MOA and the Federal Clean Water Act (CWA), 33 U.S.C. §1251, *et seq.*, as applicable under state legal authority set forth in Chapter 903 of the Ohio Revised Code and regulations promulgated thereunder, the applicable requirements of 40 CFR Parts 122-125 and any other applicable federal regulations ODA storm water will also give consideration to USEPA Region 5 and national NPDES policies, goals, and objectives such as the annual State/USEPA Enforcement Agreement (SEA).

I.C. Scope of Authorization.

The NPDES program to be administered by ODA applies to NPDES individual permits and general permits, including industrial and construction storm water permits, for the discharging, transporting, or handling of process wastewater, storm water, manure and litter from animal feeding operations. OEPA retains jurisdiction for those industrial and construction storm water permits and industrial permits for agricultural activities that are not located on livestock and poultry farms, e.g., grain and cropping agricultural activities and for CAFOs that discharge to a publicly owned treatment works (POTW), cooling water and filter backwash at CAFOs/AFOs, as well as Grain Mills located at CAFOs/AFOs.

I.D. Additional Agreements.

Strategies and priorities for issuance, compliance monitoring and enforcement of NPDES permits are set forth in a Memorandum of Agreement between OEPA and ODA, August 12, 2002. In addition, there is a Memorandum of Agreement among OEPA, the Ohio Department of Natural Resources, Division of Soil and Water and ODA, August 29, 2005. Other agreements may be established from time-to-time in order to set forth in more detail the annual 106 State Program Plan or to otherwise establish subsequent working agreements. If requested by any party to this MOA, meetings will be scheduled at reasonable intervals between ODA, OEPA, and USEPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the NPDES program.

I.E. Withdrawal.

The USEPA may withdraw its approval and authority for the NPDES program from the ODA in the manner specified by federal law or regulation (Section 402(c)(3) of the CWA, 40 CFR 123.63, 123.64).

Section II. Program Responsibilities

II. Ohio Responsibilities.

In accordance with Ohio law, both the OEPA and ODA are authorized to participate in the NPDES program in accordance with the Federal Water

Pollution Control Act. Except for responsibilities transferred to ODA by statute, OEPA is responsible for and has the legal authority to carry out the NPDES requirements for permitting (40 CFR 123.25), for compliance evaluations (40 CFR 123.26), and for enforcement authority (40 CFR 123.27) with respect to all other point sources in Ohio, including the pretreatment program (40 CFR 403.10) and for the sewage sludge program (40 CFR 122.21, referencing 501.15(a)(2) and 123.27). The NPDES program to be administered by ODA applies to any NPDES permits for the discharging, transporting, or handling of process wastewater, storm water, manure and litter from animal feeding operations. These permits include NPDES individual and general permits, and industrial and construction storm water permits. OEPA retains jurisdiction for those construction storm water permits and industrial permits for agricultural activities that are not located on livestock and poultry farms, e.g., grain and cropping agricultural activities, CAFOs that discharge to a POTW, cooling water and filter backwash at CAFOs/AFOs, as well as Grain Mills located at CAFOs/AFOs.

The Ohio Environmental Protection Agency

OEPA is responsible for the annual 106 State Program Plan. OEPA is responsible for the issuance of all NPDES permits except those to be issued, denied, revoked, revised or modified by ODA as described below. OEPA's responsibilities include responsibility for processing new, modified, and renewed NPDES permits for non-domestic wastewater discharges, including industrial, commercial, and applicable silviculture discharges. OEPA is responsible for processing new, modified, and renewed NPDES permits for domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works.

OEPA is responsible for sewage sludge management, including use, processing and disposal of sewage sludge.

OEPA is responsible for storm water discharges regulated under NPDES, including municipal separate storm sewer systems and storm water associated with industrial activity, except discharge, transport, or handling of storm water from an animal feeding facility as regulated by ODA.

OEPA is responsible for an enforcement program for unauthorized discharges from all but animal feeding facilities in its regulatory program and for pretreatment violations. OEPA shall take timely and appropriate actions in accordance with the CWA, National and Regional Guidance, applicable state laws (Chapters 3745 and 6111 of the Ohio Revised Code), the principles of this MOA, and the NPDES enforcement management system developed by OEPA for OEPA's use.

OEPA is responsible for the water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the antidegradation policy adopted under section 6111.12 of the Revised Code, which ODA shall adhere to in establishing terms and conditions of NPDES permits in accordance with section

903.08 of the Revised Code and rules promulgated thereunder.

The Ohio Department of Agriculture

ODA is responsible for and has the legal authority to carry out the NPDES requirements for permitting (40 CFR 123.25), for compliance evaluations (40 CFR 123.26), and for enforcement authority (40 CFR 123.27) with respect to NPDES permits for concentrated animal feeding operations, including animal feeding operations regulated in accordance with 40 CFR 122.23, and for NPDES permits for the discharge, transport, or handling of industrial and construction storm water from an animal feeding operation and of manure in Ohio. ODA is responsible for the enforcement program for unauthorized discharges of process wastewater, storm water, manure and litter from animal feeding operations in Ohio by taking timely and appropriate actions in accordance with the CWA, National and Regional Guidance, applicable state law (Chapter 903. of the Ohio Revised Code and rules promulgated thereunder), the principles of this MOA, and the NPDES enforcement management system (EMS) developed by ODA for ODA's use.

In accordance with the priorities and procedures established in this Agreement, the ODA will, with respect to all AFOs and CAFOs in Ohio:

II.A. Maintain the legal authority (including state regulations) and the resources required to carry out those aspects of the NPDES program for AFOs and CAFOs.

II.B. Process in a timely manner and propose to issue, reissue, modify, revoke and reissue, terminate, or deny all NPDES permits within the scope of ODA's jurisdiction. ODA will require that all Ohio facilities subject to NPDES requirements apply for and receive an NPDES permit.

II.C. Comprehensively evaluate and assess compliance with all State enforcement documents including permits, regulations, administrative orders, consent agreements, consent orders and court orders which deal with all applicable issues including compliance schedules, effluent limitations, operation and maintenance and storm water as well as other conditions in NPDES permits.

II.D. Maintain a vigorous enforcement program for NPDES permits and unauthorized discharges by taking timely and appropriate actions in accordance with all applicable state laws and regulations.

II.E. Maintain adequate public files at the central office (which must be easily accessible to USEPA for audit purposes) for each permittee. Such files must, at a minimum, be retained for a period of five years and shall include copies of all of the following documents within the possession of ODA:

- Permit applications
- Draft permits

- Proposed permits
- Issued permits
- Public notices and fact sheets (as applicable)
- All comments received during the public comment period
- Responses to comments
- Discharge monitoring reports for three (3) years
- All inspection reports
- All enforcement actions
- Construction reports
- Approved storm water construction reports
- Approved storm water program documents-
- Annual reports
- Requests for appeals, evidentiary hearings, stays of permit and/or specific permit
- Conditions, and other legal documentation
- All compliance and noncompliance documents
- Nutrient Management Plans
- Other pertinent information and correspondence

All of the above-listed documents pertaining to the NPDES program will be made available to the public in accordance with Ohio law as set forth in Section 149.43 of the Ohio Revised Code.

II.F. Submit to the USEPA Regional Administrator the information described in Section V. Reporting and Transmittal of Information of this Agreement, and applicable portions of 40 CFR Part 123. Additionally, ODA shall submit specific information and allow access to files necessary for evaluating administration of the NPDES program administered by ODA.

II.G. Assess and collect penalties appropriate to the violation for violations of those state laws and regulations enforced by ODA.

II.H. Within the scope of ODA's jurisdiction, provide timely input of NPDES permit and enforcement data into the National Permit Compliance System (PCS).

II.I. Within the scope of ODA's jurisdiction, ODA will be responsible for the conduct of state inspections and receipt and review of self-monitoring reports for all animal feeding operations that are not under the enforcement lead of USEPA.

II.J. USEPA will retain authority to administer the NPDES program in any Indian Country (as defined in 18 U.S.C. 1151) in Ohio.

Section III. Permit Review and Issuance

III. A. ODA Responsibilities.

December 2006

For those permits within its jurisdiction, ODA is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, revoking and reissuing, denying and terminating permits in accordance with Section V. Reporting and Transmittal of Information below, applicable provisions of 40 CFR Parts 122-125 and any other applicable regulations.

III.A.1.a. Consultation with OEPA.

ODA shall continue to coordinate with Ohio EPA as needed in furtherance of work completed pursuant to III.B of this Agreement.

III.A.1.b. Consultation with Agencies with Fish, Shellfish, and Wildlife Jurisdiction.

ODA shall provide notice to and consult with the appropriate agency having jurisdiction over fish, shellfish, and wildlife, and the U.S. Fish and Wildlife Service.

III.A.1.c Consultation with Agencies with Jurisdiction over Historic Preservation.

ODA shall provide notice and permit application information to, and consult with, the State Historical Office.

III.A.1.d Cooperation.

ODA and USEPA will cooperate to implement the applicable requirements of the Endangered Species Act and the National Historic Preservation Act. To this end, ODA will provide the U.S. Fish and Wildlife Service and the State Historical Office with the opportunity to comment on state drafted NPDES permits and/or applications in accordance with the agreements with these agencies. ODA will address and attempt to resolve any issues raised by these agencies. In the event that agreement is not reached on any issue raised by these agencies, then ODA shall notify USEPA in writing prior to permit issuance.

III. B. Application Review and Permit Development.

III.B.1. Receipt of New Permit Applications by the ODA.

ODA shall be responsible for the administrative review of all NPDES permit applications within its jurisdiction. ODA is responsible for timely review and entry of information into USEPA's National Permit Compliance System (PCS) for those NPDES permits related to animal feeding operations, including industrial storm water and construction storm water NPDES permits.

III.B.2. Permit Development.

For those permits within its jurisdiction, ODA will prepare a draft permit in accordance with applicable federal and state laws and regulations and this MOA. ODA will develop effluent limitations in accordance with state and federal standards and limitations including effluent guidelines, water quality standards, standards of performance, toxic effluent standards or prohibitions, best

management practices, and Ohio's Water Quality Management Plan under sections 301, 302, 303, 304, 306, 307, 308, and 402 of the CWA.

ODA will coordinate with OEPA to develop water quality based permits; any toxic effluent limited permits (or prohibitions) and any permits limited by Ohio's Water Quality Management Plan as follows:

III.B.2.a. General Information.

ODA will provide OEPA on a quarterly basis an updated list of pending and approved permit applications for both permits to install and NPDES permits within ODA's jurisdiction.

III.B.2.b. Consistency with areawide 208 Plans.

ODA will review any areawide 208 planning document and a copy of the OEPA Continuing Planning Process as updated. Prior to approval of a NPDES permit application; ODA will consult with OEPA on a permit-by-permit basis in order to maintain compliance with the Section 208 requirements. OEPA will decide if any proposed discharge would be in conflict with Ohio's areawide 208 plans and notify ODA of that decision.

III.B.2.c. Antidegradation and related wasteload allocations.

At least 14 days before ODA publishes public notice of receipt of an NPDES permit for which an antidegradation review is required, ODA will transmit copies to OEPA of the NPDES Part D permit antidegradation application and ODA's preliminary determination of:

III.B.2.c(1) whether the discharge or facility covered by the permit application or NOI meets an exclusion or waiver under the antidegradation policy in rule 3745-1-05(D) of the Ohio Administrative Code;

III.B.2.c(2) the preliminary wasteload allocation, based on water quality based effluent limits, for NPDES permits to be issued by ODA. OEPA shall endeavor to confirm the preliminary wasteload allocation and water-quality-based effluent limits proposed by ODA within 60 days of receipt of those proposed limits in order that ODA can conduct a public meeting on the antidegradation issues concurrently with the public meeting on the permit to install and NPDES permits and permit to operate as provided in section 903.09(C) of the Revised Code.

III.B.2.d. Adjudication cases and enforcement proceedings.

OEPA will provide technical assistance as needed and on a case-by-case basis in any legal matters concerning toxic effluent limitations, water quality based effluent limits (including a wasteload analysis in support of antidegradation review) for NPDES permits on appeal before the Environmental Review Appeals Commission, or NPDES permits subject to enforcement proceedings by ODA.

III.B2.e. General NPDES permits.

The ODA has the responsibility for developing and issuing NPDES general permits within the scope of its jurisdiction. After identifying discharges appropriately regulated by a general permit, ODA will collect sufficient information to develop permit conditions and requirements and prepare the draft general permit. General permits will require the same or similar effluent limitations, operating conditions and monitoring.

As required by rule 901:10-4-01 of the Administrative Code, General NPDES permits will not be issued for new discharges associated with CAFOs requiring an NPDES permit if the receiving waters are designated as outstanding national resource waters, outstanding high quality waters, superior high quality waters, or state resource waters, or to receiving waters that discharge to a water body with one of these designations within two stream miles of the discharge.

OEPA will notify ODA of any proposed changes to water quality use designations in Ohio. ODA will notify OEPA of any proposed changes with the scope, extent, and applicability of the NPDES general permit "Notification" means notice to each of the parties when preliminary work plans and schedules are in early stages of development. Each party shall allow the other meaningful time to examine and critique work proposed, in regards to any effect the proposed work may have on the other party's programs.

III.B2.f. Total maximum daily loads and watershed plans.

ODA and OEPA agree to meet at least annually to coordinate fieldwork for any TMDL work occurring where water bodies are potentially impacted by animal feeding operations. The parties will endeavor to plan the fieldwork so that ODA can support OEPA in sampling and monitoring in those watersheds where CAFOs are located or to be located.

OEPA will also conduct fieldwork and may discover animal feeding facilities or CAFOs that are unpermitted or that are discharging without the required permits. In either case, OEPA shall notify ODA of its findings and transmit information to ODA for ODA's use.

OEPA will notify ODA of the development of plans for TMDLs within any watershed where one or more CAFOs hold permits issued by ODA. ODA will coordinate with OEPA in monitoring, sampling, and surveillance and in the preparation of any reports for related TMDLs.

The parties agree to work together on TMDL implementation plans, including public participation and public meetings; discussion and development of load and wasteload allocations; strategies on NPDES permit development and issuance; and coordinated permit schedules with respect to the OEPA basin schedule of permit work.

As a result of fieldwork and related studies of water quality or TMDLs, OEPA may periodically notify ODA of any plans to recommend restricted use of, restrictions on the scope of, or applicability of, NPDES general permits, including both construction storm water and industrial storm water permits, for facilities regulated pursuant to Chapter 903 of the Revised Code.

III. C. USEPA Review of Draft Permits, Proposals to Deny Permits, and Permit Modifications.

III.C.1. Transmit Draft Permits to USEPA.

Except as provided in Section III.I. Permit Issuance or Notice of Intent to Deny a Permit, ODA shall consult with the USEPA Regional Administrator (or appropriate designee) before issuing public notice of a draft permit. The ODA shall transmit to the USEPA Regional Administrator appropriate portions of working documents in connection with the consultation.

III.C.2. Individual Permits.

III.C.2.a. Transmittal of draft permits.

USEPA will review draft permits rather than proposed permits as provided for in 40 CFR §123.44(j). Thirty days prior to issuance of a public notice of a permit action ODA shall send the USEPA one copy of the public notice, the application, the draft permit, and the fact sheet (if applicable) for each facility. If the permit is for a possible new source under CWA section 306, the submittal must be accompanied by a new source/new discharger determination.

III.C.2.b. USEPA review.

Upon receipt of the draft permit and the other information specified above, USEPA shall have 30 days to review, comment upon, provide a general objection to, or make recommendations with respect to the draft permit in accordance with 40 CFR §123.44.

III.C.2.c. USEPA Review Without Objection.

If no comments are made to the ODA within 30 days of receipt, and USEPA has not requested an additional 30 days to review the draft permit, then ODA may proceed with the issuance of the public notice. If no comments have been received by the close of the public comment period regarding any draft permit, then ODA may assume USEPA has no objection to issuance of the draft NPDES permit.

III.C.2.d. USEPA Review With Objections.

Within 30 days after receipt of a draft permit, if USEPA objects to the draft permit, USEPA shall notify the ODA of its objection. This notice shall set forth in writing the general nature of the objection.

III.C.2.d (1) The USEPA shall send a copy of any comment, objection or recommendation made by or transmitted to USEPA to the permit applicant, in accordance with 40 CFR 123.44(a)(1).

III.C.2.d (2) Within 90 days following receipt of a draft permit to which USEPA has objected and has filed a general objection, the USEPA shall set forth in writing and transmit to the ODA:

- (i) A statement of the reasons for the objections including the section of the CWA or regulations that support the objection, and

- (ii) The actions that must be taken by ODA to eliminate the objection.

III.C.2.d (3) If the initial permit information supplied by the ODA is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, USEPA may file an "interim objection" under 40 CFR §123.44(d)(2) and request the ODA to transmit the complete record (or portion thereof) of the permit proceedings. The full period for USEPA review shall commence upon receipt of the requested information.

III. C.3. General Permits.

USEPA shall have 90 days from the date of receipt of a draft general permit from ODA to comment upon, object to, or make recommendations with respect to the draft general permit in accordance with 40 CFR §123.43 and §123.44. If USEPA fails to provide an objection to a draft general permit within 90 days from the receipt of the draft general permit, ODA may assume that U.S. USEPA has no objections to the draft general permit. In the event USEPA does object to a general permit, it will provide in writing, the reasons for its objection and the actions necessary to eliminate the objection. The state has the right to request a public hearing on the objection in accordance with 40 CFR 123.44(e). If USEPA's concerns are not satisfied and the state has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to USEPA.

III. D. Comments in Response to Public Notices.

III.D.1. ODA shall provide USEPA copies of any and all significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permits (40 CFR 123.43(c)(2)).

III.D.2. ODA may issue the permit without further review by USEPA if (a) the permit to be finalized does not differ from the draft permit submitted to USEPA in accordance with **Section III. C.2.a.** of this MOA; (b) USEPA has not objected to

the draft permit; and (c) significant public comments have not been made (40 CFR 123.43(c)(2)).

III.D.3. Proposed Permits.

III.D.3.a. In all other cases, ODA will send one copy of the draft or proposed permit that is modified as a result of ODA changes or public comments and the information used in developing it to USEPA along with recommendations from any other affected state and any federal or state agencies, and copies of written comments and hearing records, including the response to comments prepared under 40 CFR §124.17 to USEPA for review. Whenever ODA prepares a written explanation to an affected state explaining the reasons for rejecting any of its written recommendations, ODA shall transmit a copy to the USEPA Regional Administrator.

III.D.3.b. USEPA will, within 45 days after receipt of the draft or proposed individual permit or within 90 days after receipt of the draft or proposed general permit, notify the ODA and any permit applicant of any formal objections authorized under 402(d) of the CWA. This notification shall set forth in writing the general nature of the objection.

III.D.3.c. Within ninety (90) days following receipt of the draft or proposed permit to which USEPA has objected, the USEPA shall notify the ODA in writing with a detailed statement of the reasons for the objections and the actions that must be taken to eliminate the objections.

III. E. USEPA Public Hearings.

ODA may request that a public hearing be held by the USEPA on the USEPA objections to draft or proposed permits. State requests for a hearing on the objection and the procedure for resolving the objection shall be governed by 40 CFR §123.44.

III. F. USEPA Assumes Permit Authority.

If EPA's concerns are not satisfied within the time limits set forth in 40 CFR §123.44, then ODA may not issue the permit and exclusive authority to issue the permit vests in USEPA.

III. G. Request for Permit Action by USEPA.

III.G.1. With respect to modifications or revocations and reissuances of permits by ODA, USEPA waives the right to review any permit that qualifies as a minor modification as defined in 40 CFR §122.63 or that qualifies as an operational change as listed in the appendix to rule 901:10-1-09 of the Ohio Administrative Code (OAC), except that USEPA does not waive its right to review when

operational changes result in changes in permit conditions derived from 40 CFR 122; provided, that if the change proposed by any permittee is not a modification and is not listed in rule 901:10-1-09 of the OAC, ODA will send to USEPA a copy of the Director's decision as to whether the change proposed is a modification or an operational change.

III.G.2. USEPA may request in writing that ODA issue, reissue or modify a permit. USEPA will provide to the ODA specific reasons why USEPA is requesting permitting action.

If within six months after the initial request the State has been unable to issue said permit, USEPA, at its discretion, will conduct a public hearing to review the facts surrounding the nonissuance of the subject permit.

III. H. Public Participation.

III.H.1. Permit applications, draft permits, public notices, and fact sheets prepared by ODA or statements of basis (when prepared by ODA) will be made available to any party upon request.

III.H.2. ODA will prepare and distribute copies of all public notices and fact sheets in accordance with 40 CFR Parts 124.8 and 124.10 unless otherwise waived by the specific organization.

III.H.3. All draft NPDES permits before the ODA shall be public noticed in a daily or weekly newspaper within the area affected by the activity in accordance with 40 CFR §124.10(c)(2)(i).

III. I. Permit Issuance or Notice of Intent to Deny.

III.I.1 If the final determination is to issue the permit, ODA shall issue a response to comments in accordance with 40 CFR §124.17 for NPDES permits. The final permit will be forwarded to the permit applicant and to anyone who commented during the public notice comment period, along with a response specifying which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes. A response to all significant comments on the draft permit raised during the public comment period or during a hearing will also be forwarded with the final permit. Also ODA shall forward a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to USEPA in accordance with the schedule contained in Section V. Reporting and Transmittal of Information of this Agreement.

III.I.2. If the final determination is to deny the permit, the notice of intent to deny shall be given to USEPA and to the applicant in accordance with NPDES regulations applicable to ODA. (40 CFR 123.43(a)(2)).

III. J. Termination, Modification, or Revocation and Reissuance of Permits.

For those permits identified in III. C.2.a. Transmittal of Draft Permits, ODA shall notify USEPA whenever ODA intends to terminate an issued NPDES permit and shall transmit to USEPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in III.C. USEPA Review of Draft Permits, Proposals to Deny Permits, and Permit Modifications shall be followed with respect to modifications by ODA of any issued permit and, for purposes of this agreement, each permit proposed to be modified or revoked and reissued shall be deemed to be a new draft permit.

III. K. Administrative or Court Action.

If the terms of any permit issued or modified by ODA, including any permit for which review has been waived pursuant to paragraph III. H. Request for Permit Action by USEPA are affected in any manner by administrative or court action, ODA shall transmit to USEPA a copy of the judicial or administrative decision and a copy of the permit that has been affected by the court action or the final disposition or any administrative appeal with changes identified. The procedures set forth for general and specific objections as found in 40 CFR §123.44 shall be followed with respect to permit issuance, modification, revocation and reissuance or termination as required by a judicial or administrative decision.

III. L. Variances.

ODA shall conduct an initial review of all requests for fundamentally different factors (FDFs) variances, for variances under §§301(c), (g), (k) and (n) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

III.L.1. With regard to CWA §§301(i) and (k) variances, ODA may deny or approve the request. A copy of the determination shall be sent to the requester, USEPA and all other interested parties.

III.L.2. With regard to FDFs, CWA §301(c), (g), and (n) variances, and CWA §302 modifications, ODA may determine to deny the request, and such determination shall be forwarded to the requester and USEPA. If ODA determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to USEPA. If USEPA denies a variance request, ODA shall so notify the requestor. If USEPA approves a variance request, then ODA will prepare a draft permit factoring in the variance.

III. M. Evidentiary Hearings.

ODA will provide USEPA with a copy of all precedent setting settlements and administrative decisions that adversely impact ODA's ability to implement the NPDES program in accordance with the federal requirements

III. N. Public Hearings.

ODA shall hold public hearings in accordance with 40 CFR §124.12 and rules set forth in Chapter 901:10-6 of the Ohio Administrative Code whenever it is determined that there is significant public interest in a draft permit.

Section IV. Enforcement.

IV. A. General.

ODA agrees to maintain a vigorous enforcement program, including a compliance assessment of all facilities and activities subject to the Department's jurisdiction and to take timely and appropriate enforcement actions for violations of program requirements. Discharges endangering public health shall receive immediate and paramount attention.

IV. B. Compliance Monitoring.

ODA shall operate a timely and effective compliance monitoring program including the input of appropriate data into the Permit Compliance System (PCS) for the purpose of determining compliance with conditions of NPDES permit issued by ODA. For purposes of this MOA, the term "compliance monitoring" includes all activities taken by ODA to assure full compliance with NPDES program requirements. ODA has monitoring programs that consist of two main activities: Compliance Review (including inspections) and Enforcement Response.

IV.B.1. Compliance Review.

ODA shall conduct timely and substantive reviews and keep complete records of all written and electronic materials relating to the compliance status of NPDES permittees under ODA's jurisdiction, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, Compliance Investigation Reports, and Annual Reports and any other reports that permittees may be required to submit under the terms and conditions of an NPDES permit or administrative orders or court order.

IV.B.1.a ODA shall operate systems to determine if:

- The self-monitoring reports required by permit are submitted,
- The submitted reports are timely, complete and accurate,
- Records retained at the facility, such as operating records, are complete and accurate; and -The permit conditions are met.

IV.B.1.b ODA shall initiate appropriate enforcement actions for violations under ODA's jurisdiction, including whenever required performance is not achieved or when reports are not received or available for inspection. Priorities for reviewing these reports and for initiating enforcement actions are specified in the Enforcement Response Guide (ERG) contained in the Enforcement Management System.

IV.B.2. Compliance Inspection.

ODA shall conduct field activities to determine the status of compliance with program requirements under ODA's jurisdiction, including sampling and nonsampling inspections. Inspection procedures will be in accordance with applicable USEPA, Ohio EPA and Ohio ODA inspection guidance. For purposes of this MOA, the term "compliance inspection" includes evaluation inspections, USEPA performance audits, and sample inspections.

IV.B.2.a. Annually, the USEPA Regional Administrator and ODA will develop lists of permittees and other CAFOs to be the subject of state compliance inspections, pursuant to a neutral inspection scheme consistent with the annual 106 program. ODA shall also furnish an estimate of the number of other compliance inspections to be performed at CAFOs, and for NPDES storm water construction permits within ODA's jurisdiction issued during the year.

IV.B.2.b USEPA or ODA may determine that additional compliance inspections are necessary to assess permit compliance. If USEPA makes a determination that additional compliance inspections are necessary, it shall notify ODA as appropriate to each department's jurisdiction and may request ODA to conduct these inspections. USEPA retains the right to perform compliance inspections of any permittee or other CAFO at any time, but, unless circumstances warrant otherwise, will normally notify ODA in advance of the inspection to give the State an opportunity to participate and keep ODA informed of its plans and results.

IV.B.2.c Reports on compliance inspections conducted by ODA or USEPA shall be available for review by the other party, unless circumstances warrant otherwise. Reports prepared by ODA will be submitted to USEPA in accordance with Section V. of this MOA, Reporting and Transmittal of Information, within 30 days of the completion of the inspection including receipt of laboratory results. ODA shall thoroughly review each report to determine what, if any, enforcement action shall be initiated. ODA shall utilize its *Enforcement Response Guide* when reviewing the inspection and shall initiate the appropriate enforcement action as identified in its *Enforcement Management System*.

IV. B.3. Information Requests.

Whenever any party to this MOA requests additional information not listed under Section V., Reporting and Transmittal of Information, of this MOA concerning a specific discharger under ODA jurisdiction and the requested information is

available from ODA files, ODA will provide that information to the requesting party in a timely manner.

IV. C. Action Against Violators.

The ODA is responsible for taking timely and appropriate enforcement action against persons in violation of Chapter 903 of the Ohio Revised Code and supporting regulations, compliance schedules, effluent limitations, reporting requirements, any other permit conditions, and any other NPDES program requirements under ODA jurisdiction. This includes violations detected during state or federal inspections.

IV. C.1. Public Information.

The ODA shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations under ODA jurisdiction.

IV. C.2. Notice of Substantial Endangerment.

The ODA shall immediately notify the USEPA Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the state and the proposed response to the violations.

Section V. Reporting and Transmittal of Information

V.A. ODA Reporting and Transmittals.

The ODA will submit the following to USEPA:

-ITEM-	-DESCRIPTION- -	FREQUENCY
-V.A.1.-	-Copies of all preliminary draft NPDES permits, and draft permit modifications, including public notices, fact sheets and applications for those permits identified in III.C.2.a. Individual Draft Permits-	As issued
-V.A.2.-	-Copies of all public notices, except those for which USEPA has waived review	As issued
-V.A.3.-	-A copy of all NPDES permits. -	As issued
-V.A.4.-	-Copies of all NPDES permit applications and public notices for which USEPA has waived review -	Upon request

V.A.5.- -For all NPDES permits issued in a quarter, a letter of transmittal listing NPDES permit number, permittee's name, facility location, date signed, effective date, and expiration date - Quarterly by the 10th working day of the month following the end of the quarter
-V.A.6.- -A copy of settlements and decisions in NPDES permit appeals. - -As issued
-V.A.7.- -A list of large CAFOs scheduled for compliance inspections. - -With submission of the annual 106 State Program Plan by June 30 of each year
-V.A.8.- -Proposed revisions to the scheduled compliance inspections. - -As needed
-V.A.9.- -A list of compliance inspections performed during the previous quarter. - -Quarterly
-V.A.10.- -For large CAFOs, copies of all compliance inspections, report forms, data, and transmittal letters. - -Within 30 days of inspection completion
-V.A.11.- -For small and medium CAFOs, copies of all compliance inspection reports and transmittal letters. - -As requested
-V.A.12.- -For large CAFOs, a quarterly narrative and noncompliance <i>report as</i> specified in 40 CFR §123.45 (a). - -Quarterly, as specified in 40 CFR §123.45(d)
-V.A.13.- -For small and medium CAFOs, an annual noncompliance report as specified in 40 CFR §123.45(c). - -Within 60 days of the end of the calendar year, as specified in 40 CFR §123.45(d) (2)
-V.A.14.- -Copies of all enforcement actions against large CAFOs (including letters, notices of violation, administrative orders, initial determinations, referrals to the Attorney General for judicial action, and petitions for civil judicial action). - -As issued
-V.A.15.- -Copies of Evidentiary Hearing Requests for facilities where USEPA retains enforcement authority. - -Within 15 days of receipt of the request
-V.A.16.- -For major dischargers, a semi-annual statistical summary report as required in 40 CFR §123.45 (b)- -Semi-annually, as specified in 40 CFR §123.45 (b)

VI. B. USEPA Reporting and Transmittals.

USEPA shall transmit the following information to the ODA

ITEM	DESCRIPTION	FREQUENCY
V.B.1.	A list of compliance inspection USEPA intends to conduct jointly with ODA as part of its State Overview Plan.	-- Annually
V.B.2.	Proposed revisions to the schedule of compliance inspections.	-- As needed

Section VI. Program Review.

VI. A.

Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directive, which has been approved by USEPA; and prior to the adoption of any new statute, regulation, or directive ODA shall notify the USEPA Regional Administrator and shall transmit the text of any such change or new form to the USEPA Regional Administrator (see 40 CFR §123.62 which provides that the change may trigger a program revision, which will not become effective until approved by USEPA).

VI. B.

If an amendment, rescission, or repeal of any statute, regulation, or directive described in paragraph VI.A above shall occur for any reason, including action by the Ohio legislature or a court ODA shall, within 10 days of receipt by either, notify the USEPA Regional Administrator and shall transmit a copy of the text of such revision to the USEPA Regional Administrator.

VI. C.

Prior to the approval of any **test method** other than those specified as required for NPDES permitting, ODA shall notify the USEPA Regional Administrator and, where appropriate, seek U.S. USEPA approval.

VI. D.

ODA shall seek such legislation, adopt such regulations, provide Attorney General opinions, and take such further actions that may be necessary to preserve and maintain any compliance with NPDES program requirements.

VI. E.

ODA will keep the USEPA fully informed of any proposed modifications to the basic statutory or regulatory authority, the NPDES forms, and NPDES program procedures. Either ODA or USEPA may initiate program revision. Any revisions shall be made in accordance with 40 CFR 123.62.

Section VII. Independent USEPA Powers.

Nothing in this MOA shall be construed to limit the authority of USEPA to take action pursuant to any applicable federal laws or regulations including Sections 308, 309, 311, 402, 405, 504, or other sections of the CWA.

Section VIII. Computations of Time.

VIII. A.

In computing any period of time prescribed by this MOA, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday, or a legal holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded from the computation.

VIII. B.

For the purpose of USEPA's review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until received by USEPA.

Section IX. Modification

This MOA shall take effect immediately upon approval by the USEPA Regional Administrator and Governor, State of Ohio. It shall be reviewed jointly and revised appropriately. ODA or USEPA may initiate action to modify this MOA at any time.

Section X. MOA Effective Date

This Memorandum of Agreement shall become effective when signed by both the USEPA Regional Administrator pursuant to 40 CFR §123.24(a) and the Governor, State of Ohio.

In witness whereof, the parties execute this agreement:

AN ACT

To amend sections 903.08 and 6111.04 and to enact section 6111.451 of the Revised Code to make changes to the national pollutant discharge elimination system program with respect to concentrated animal feeding facilities, to require the Director of Environmental Protection to adopt rules specifying certain construction activities that may be conducted prior to approval of plans for a treatment or disposal works under the Water Pollution Control Law, and to establish the Preconstruction Rules Working Group for the purpose of developing the rules.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 903.08 and 6111.04 be amended and section 6111.451 of the Revised Code be enacted to read as follows:

Sec. 903.08. (A)(1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section,

the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge manure from a point source into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. ~~The owner or operator of a concentrated animal feeding operation~~ Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of manure shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. ~~A concentrated animal feeding operation is deemed to be a point source that discharges manure into the waters of the state unless the director has determined that the concentrated animal feeding operation has no potential to discharge manure into the waters of the state. If an owner or operator of a concentrated animal feeding operation receives notice from the director that the director has determined that the concentrated animal feeding operation has no potential to discharge manure, the owner or operator is not required to apply for an individual NPDES permit or for coverage under a general NPDES permit for that operation. The director's determination shall be made in accordance with rules~~ The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of manure prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when

such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

- (1) The application contains misleading or false information.
- (2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.
- (3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general

permit than by an individual permit.

(3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K)(1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and

conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M)(1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

Sec. 6111.04. (A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(B) If the director of environmental protection administers a sludge management program pursuant to division (S) of section 6111.03 of the Revised Code, both of the following apply except as otherwise provided in division (B) or (F) of this section:

(1) No person, in the course of sludge management, shall place on land located in the state or release into the air of the state any sludge or sludge materials.

(2) An action prohibited under division (B)(1) of this section is hereby declared to be a public nuisance.

Divisions (B)(1) and (2) of this section do not apply if the person placing or releasing the sludge or sludge materials holds a valid, unexpired permit, or renewal of a permit, governing the placement or release as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(C) No person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.

(D) No person to whom a sludge management permit has been issued shall place on the land or release into the air of the state any sludge or sludge materials in excess of the permissive amounts specified under the existing sludge management permit without first receiving a modification of the existing sludge management permit or a new sludge management permit to do so from the director.

(E) The director may require the submission of plans, specifications, and other information that the director considers relevant in connection with the issuance of permits.

(F) This section does not apply to any of the following:

(1) Waters used in washing sand, gravel, other aggregates, or mineral products when the washing and the ultimate disposal of the water used in the washing, including any sewage, industrial waste, or other wastes contained in the waters, are entirely confined to the land under the control of the person engaged in the recovery and processing of the sand, gravel, other aggregates, or mineral products and do not result in the pollution of waters of the state;

(2) Water, gas, or other material injected into a well to facilitate, or that is incidental to, the production of oil, gas, artificial brine, or water derived in association with oil or gas production and disposed of in a well, in compliance with a permit issued under Chapter 1509. of the Revised Code, or sewage, industrial waste, or other wastes injected into a well in compliance with an injection well operating permit. Division (F)(2) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States

environmental protection agency.

(3) Application of any materials to land for agricultural purposes or runoff of the materials from that application or pollution by animal waste or soil sediment, including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307. or ~~1515. 1511.~~ of the Revised Code; Division (F)(3) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(4) The excrement of domestic and farm animals defecated on land or runoff therefrom into any waters of the state; Division (F)(4) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(5) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, ~~storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or manure, as defined in that section~~ any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture;

(6) The discharge of sewage, industrial waste, or other wastes into a sewerage system tributary to a treatment works. Division (F)(6) of this section does not authorize any discharge into a publicly owned treatment works in violation of a pretreatment program applicable to the publicly owned treatment works.

(7) A household sewage treatment system or a small flow on-site sewage treatment system, as applicable, as defined in section 3718.01 of the Revised Code that is installed in compliance with Chapter 3718. of the Revised Code and rules adopted under it. Division (F)(7) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(8) Exceptional quality sludge generated outside of this state and contained in bags or other containers not greater than one hundred pounds in capacity. As used in division (F)(8) of this section, "exceptional quality sludge" has the same meaning as in division (Y) of section 3745.11 of the Revised Code.

(G) The holder of a permit issued under section 402 (a) of the Federal Water Pollution Control Act need not obtain a permit for a discharge authorized by the permit until its expiration date. The ~~Except as otherwise~~

provided in this division, the director of environmental protection shall administer and enforce those permits within this state and may modify their terms and conditions in accordance with division (J) of section 6111.03 of the Revised Code. On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, the director of agriculture shall administer and enforce those permits within this state that are issued for any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture.

Sec. 6111.451. Not later than one hundred eighty days after the effective date of this section, the director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code specifying construction activities that do not, by themselves, constitute installing works for the treatment or disposal of sewage or other waste for which approval of plans is required under section 6111.44 or 6111.45 of the Revised Code. The activities shall include the grading and clearing of land, on-site storage of portable parts and equipment, and the construction of foundations or buildings that are not directly related to the installation of treatment or disposal works. The rules also shall allow specified initial activities that are part of the installation of treatment or disposal works, such as the installation of electrical and other utilities for the works, prior to the approval of the plans for the works, provided that the owner or operator of the works has submitted the complete plans for the works to the director and has notified the director that this activity will be undertaken prior to the approval of the plans. Any activity that is undertaken under the rules adopted under this section shall be at the risk of the owner or operator. The rules adopted under this section, to the extent possible, shall be consistent with rules adopted under division (F)(5) of section 3704.03 of the Revised Code.

SECTION 2. That existing sections 903.08 and 6111.04 of the Revised Code are hereby repealed.

SECTION 3. (A) There is hereby created the Preconstruction Rules Working Group consisting of the following members appointed by the Governor:

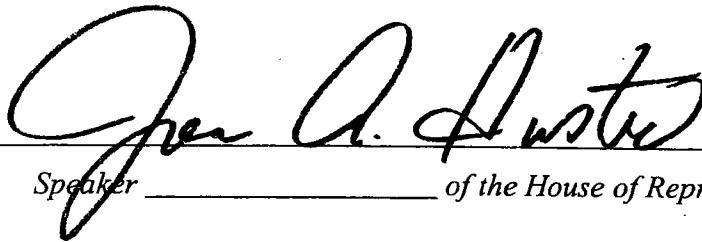
- (1) A representative of the Ohio Farm Bureau Federation;
- (2) A representative of the Ohio Manufacturers' Association;
- (3) A representative of the Ohio Homebuilders Association;

(4) A representative of a statewide environmental advocacy organization;

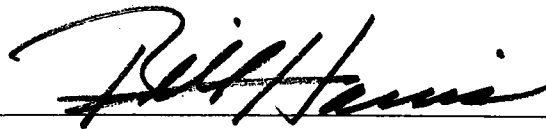
(5) A person representing the Ohio utility industry.

(B) The Governor shall make appointments to the Working Group not later than thirty days after the effective date of this section. Vacancies on the Working Group shall be filled in the manner provided for original appointments.

(C) The Preconstruction Rules Working Group shall work with the Director of Environmental Protection in the development of proposed rules for the purposes of section 6111.451 of the Revised Code as enacted by this act. The proposed rules shall be developed not later than one hundred eighty days after the effective date of this section. The Director then shall proceed to adopt the rules as required by section 6111.451 of the Revised Code. Upon the expiration of the one-hundred-eighty-day period for the development of the proposed rules, the Preconstruction Rules Working Group shall cease to exist.



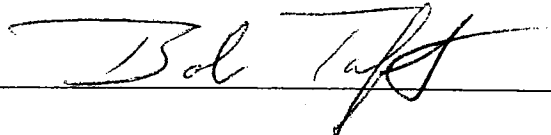
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed December 19, 2006

Approved December 27, 2006



Governor.

Sub. S. B. No. 393

11

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
___ day of _____, A. D. 20___.

Secretary of State.

File No. _____ Effective Date _____

AN ACT

To amend sections 903.08 and 6111.04 and to enact section 6111.451 of the Revised Code to make changes to the national pollutant discharge elimination system program with respect to concentrated animal feeding facilities, to require the Director of Environmental Protection to adopt rules specifying certain construction activities that may be conducted prior to approval of plans for a treatment or disposal works under the Water Pollution Control Law, and to establish the Preconstruction Rules Working Group for the purpose of developing the rules.

Introduced by

Senators Mumper, Grendell, Niehaus, Schuler, Harris
Representatives Aslanides, Domenick, Gibbs, Schlichter,
Widener, Distel, McGregor, J., Core, Reinhard, Blessing,
Collier, Combs, Dolan, Evans, C., Hagan, Hood, Schneider,
Setzer

Passed by the Senate,

December 5, 2006

Passed by the House of Representatives,

December 13, 2006

*Filed in the office of the Secretary of State at
Columbus, Ohio, on the*

_____ day of _____, A. D. 20_____

Secretary of State.

*(Concurred in House amendments
December 19, 2006)*

[§ 307.20.4] § 307.204. Procedure concerning proposed new or expanded concentrated animal feeding facility.

(A) As used in this section:

(1) "Concentrated animal feeding facility" and "major concentrated animal feeding facility" have the same meanings as in section 903.01 of the Revised Code.

(2) "Facility" means a proposed new or expanded major concentrated animal feeding facility.

(3) "Improvement" means the construction, modification, or both of county infrastructure.

(B) A person who proposes to do any of the following shall provide written notification as required under division (C) of this section to the board of county commissioners of the county in which a facility is or is to be located:

(1) Establish a new major concentrated animal feeding facility;

(2) Increase the design capacity of an existing major concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable;

(3) Increase the design capacity of an existing concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable, and to a design capacity of more than ten times the number of animals specified in any of the categories in division (H) of section 903.01 of the Revised Code.

(C) The person shall notify the board in writing by certified mail of the proposed construction or expansion of the facility and include the following information:

(1) The anticipated travel routes of motor vehicles to and from the facility;

(2) The anticipated number and weights of motor vehicles traveling to and from the facility.

(D) At the request of the board, the county engineer may review the written notification and advise the board on both of the following:

(1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on county infrastructure that is anticipated as a result of the facility, including increased travel or the types of vehicles on county roads;

(2) The projected costs of the improvements and maintenance.

Not later than ten days after receiving the written notification, the board may request the person to provide additional reasonable and relevant information regarding the impact of the facility on county infrastructure. The person shall provide the information not later than ten days after the request is made.

(E) (1) Not later than thirty days after the initial written notification is received by the board, the board shall submit to the person its recommendations, if any, concerning the improvements that will be needed as a result of the facility and the cost of those improvements.

(2) Not later than fifteen days after receipt of the board's recommendations, the person shall notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they shall be considered to be the board's final recommendations.

(3) If the board receives alternative recommendations or modifications under division (E)(2) of this section, the board shall select final recommendations and submit them to the person not later than thirty days after the receipt of the alternative recommendations or modifications.

(F) The board shall prepare a written, dated statement certifying that the written notification required under this section was submitted and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board shall provide the person with the original of the statement so that the person can include it with the application for a permit to install for the facility as required under division (C)(4) of section 903.02 of the Revised Code. The board shall retain a copy of the statement for its records.

(G) The person shall construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board shall notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations.

The board shall allow sufficient time for the person to apply for and proceed to obtain, for the purpose of financing the construction, modification, or maintenance of the improvements, exemptions from taxation under sections 5709.63, 5709.632, 5709.73, and 5709.78 of the Revised Code or state or federal grants that may be available.

If the person remains out of compliance with the final recommendations, the board may initiate mediation with the person in order to resolve the differences between them. If mediation

fails to resolve the differences, the board and the person first shall attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas.

(H) If the person subsequently submits an application under section 903.02 of the Revised Code for a permit to modify the facility, or if the routes of travel to or from the facility change for any reason other than road construction conducted by the county, the board or the person may request that additional information be provided in writing and shall proceed as provided in this section for the notification and recommendation proceedings.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, deleted "Animal unit" from the beginning of (A)(1); deleted "number of animal units of" following "Increase the" in (B)(2) and (3); substituted "times the number of ... the Revised Code" for "thousand animal units" in (B)(3); and made minor stylistic changes.

Ohio Administrative Code

Department of agriculture, livestock environmental permitting -
Concentrated animal feeding facilities. OAC ch. 901:10-1 et seq

[§ 505.26.6] § 505.266. Procedure concerning proposed new or expanded concentrated animal feeding facility.

(A) As used in this section:

(1) "Concentrated animal feeding facility" and "major concentrated animal feeding facility" have the same meanings as in section 903.01 of the Revised Code.

(2) "Facility" means a proposed new or expanded major concentrated animal feeding facility.

(3) "Improvement" means the construction, modification, or both of township infrastructure.

(B) A person who proposes to do any of the following shall provide written notification as required under division (C) of this section to the board of township trustees of the township in which a facility is or is to be located:

(1) Establish a new major concentrated animal feeding facility;

(2) Increase the design capacity of an existing major concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable;

(3) Increase the design capacity of an existing concentrated animal feeding facility by ten per cent or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under section 903.02 or division (J) of section 6111.03 of the Revised Code, as applicable, and to a design capacity of more than ten times the number of animals specified in any of the categories in division (M) of section 903.01 of the Revised Code.

(C) The person shall notify the board in writing by certified mail of the proposed construction or expansion of the facility and include the following information:

- (1) The anticipated travel routes of motor vehicles to and from the facility;
- (2) The anticipated number and weights of motor vehicles traveling to and from the facility.

(D) At the request of the board, the county engineer may review the written notification and advise the board on both of the following:

- (1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on township infrastructure that is anticipated as a result of the facility, including increased travel or the types of vehicles on township roads;
- (2) The projected costs of the improvements and maintenance.

Not later than ten days after receiving the written notification, the board may request the person to provide additional reasonable and relevant information regarding the impact of the facility on township infrastructure. The person shall provide the information not later than ten days after the request is made.

(E) (1) Not later than thirty days after the initial written notification is received by the board, the board shall submit to the person its recommendations, if any, concerning the improvements that will be needed as a result of the facility and the cost of those improvements.

(2) Not later than fifteen days after receipt of the board's recommendations, the person shall notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they shall be considered to be the board's final recommendations.

(3) If the board receives alternative recommendations or modifications under division (E)(2)

of this section, the board shall select final recommendations and submit them to the person not later than thirty days after the receipt of the alternative recommendations or modifications.

(F) The board shall prepare a written, dated statement certifying that the written notification required under this section was submitted and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board shall provide the person with the original of the statement so that the person can include it with the application for a permit to install for the facility as required under division (C)(4) of section 903.02 of the Revised Code. The board shall retain a copy of the statement for its records.

(G) The person shall construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board shall notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations.

The board shall allow sufficient time for the person to apply for and proceed to obtain, for the purpose of financing the construction, modification, or maintenance of the improvements, exemptions from taxation under sections 5709.63, 5709.632, 5709.73, and 5709.78 of the Revised Code or state or federal grants that may be available.

If the person remains out of compliance with the final recommendations, the board may initiate mediation with the person in order to resolve the differences between them. If mediation fails to resolve the differences, the board and the person first shall attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas.

(H) If the person subsequently submits an application under section 903.02 of the Revised Code for a permit to modify the facility, or if the routes of travel to or from the facility change for any reason other than road construction conducted by the township, the board or the person may request that additional information be provided in writing and shall proceed as provided in this section for the notification and recommendation proceedings.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, deleted "Animal unit" from the beginning of (A)(1); deleted "number of animal units of" following "Increase the" in (B)(2) and (3); substituted "times the number of ... the Revised Code" for "thousand animal units" in (B)(3); and made minor stylistic changes.

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Ohio Administrative Code

Department of agriculture, livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1 et seq.

§ 903.01. Definitions.

As used in this chapter:

(A) "Agricultural animal" means any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, and swine; horses; and any other animal included by the director of agriculture by rule. "Agricultural animal" does not include fish or other aquatic animals regardless of whether they are raised at fish hatcheries, fish farms, or other facilities that raise aquatic animals.

(B) "Animal feeding facility" means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

"Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.

Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure.

(C) "Best management practices" means best management practices established in rules.

(D) "Cattle" includes, but is not limited to, heifers, steers, bulls, and cow and calf pairs.

(E) "Concentrated animal feeding facility" means an animal feeding facility with a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section.

(F) "Concentrated animal feeding operation" means an animal feeding facility that complies with one of the following:

(1) Has a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section;

(2) Satisfies the criteria in division (M), (Q), or (EE) of this section;

(3) Is designated by the director of agriculture as a medium or small concentrated animal feeding operation pursuant to rules.

(G) "Discharge" means to add from a point source to waters of the state.

(H) "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C. 1251 et. seq., as amended, and regulations adopted under it.

(I) "Finalized," with respect to the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code, means that all rules that are necessary for the administration of this chapter have been adopted and all employees of the department of agriculture that are necessary for the administration of this chapter have been employed.

(J) "General permit" has the meaning that is established in rules.

(K) "Individual permit" has the meaning that is established in rules.

(L) "Installation permit" means a permit for the installation or modification of a disposal system or any part of a disposal system issued by the director of environmental protection under division (J)(1) of section 6111.03 of the Revised Code.

(M) "Large concentrated animal feeding operation" means an animal feeding facility that stables or confines at least the number of animals specified in any of the following categories:

(1) Seven hundred mature dairy cattle whether milked or dry;

(2) One thousand veal calves;

(3) One thousand cattle other than mature dairy cattle or veal calves;

(4) Two thousand five hundred swine that each weigh fifty-five pounds or more;

(5) Ten thousand swine that each weigh less than fifty-five pounds;

(6) Five hundred horses;

(7) Ten thousand sheep or lambs;

(8) Fifty-five thousand turkeys;

(9) Thirty thousand laying hens or broilers if the animal feeding facility uses a liquid manure handling system;

(10) One hundred twenty-five thousand chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(11) Eighty-two thousand laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(12) Thirty thousand ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(13) Five thousand ducks if the animal feeding facility uses a liquid manure handling system.

(N) "Major concentrated animal feeding facility" means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the categories in division (M) of this section.

(O) "Manure" means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

(P) "Manure storage or treatment facility" means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure.

(Q) "Medium concentrated animal feeding operation" means an animal feeding facility that satisfies both of the following:

(1) The facility stables or confines the number of animals specified in any of the following categories:

(a) Two hundred to six hundred ninety-nine mature dairy cattle whether milked or dry;

(b) Three hundred to nine hundred ninety-nine veal calves;

(c) Three hundred to nine hundred ninety-nine cattle other than mature dairy cattle or veal calves;

(d) Seven hundred fifty to two thousand four hundred ninety-nine swine that each weigh fifty-five pounds or more;

(e) Three thousand to nine thousand nine hundred ninety-nine swine that each weigh less than

fifty-five pounds;

- (f) One hundred fifty to four hundred ninety-nine horses;
- (g) Three thousand to nine thousand nine hundred ninety-nine sheep or lambs;
- (h) Sixteen thousand five hundred to fifty-four thousand nine hundred ninety-nine turkeys;
- (i) Nine thousand to twenty-nine thousand nine hundred ninety-nine laying hens or broilers if the animal feeding facility uses a liquid manure handling system;
- (j) Thirty-seven thousand five hundred to one hundred twenty-four thousand nine hundred ninety-nine chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (k) Twenty-five thousand to eighty-one thousand nine hundred ninety-nine laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (l) Ten thousand to twenty-nine thousand nine hundred ninety-nine ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (m) One thousand five hundred to four thousand nine hundred ninety-nine ducks if the animal feeding facility uses a liquid manure handling system.

(2) The facility does one of the following:

- (a) Discharges pollutants into waters of the United States through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans;
- (b) Discharges pollutants directly into waters of the United States that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility.

"Medium concentrated animal feeding operation" includes an animal feeding facility that is designated by the director as a medium concentrated animal feeding operation pursuant to rules.

(R) "Mortality composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

(S) "NPDES permit" means a permit issued under the national pollutant discharge elimination system established in section 402 of the Federal Water Pollution Control Act and includes the renewal of such a permit. "NPDES permit" includes the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

(T) "Permit" includes an initial, renewed, or modified permit to install, permit to operate,

NPDES permit, and installation permit unless expressly stated otherwise.

(U) "Permit to install" means a permit issued under section 903.02 of the Revised Code.

(V) "Permit to operate" means a permit issued or renewed under section 903.03 of the Revised Code and includes incorporated NPDES permit provisions, if applicable.

(W) "Person" means any legal entity defined as a person under section 1.59 of the Revised Code, the state, any political subdivision of the state, any interstate body created by compact, the United States, or any department, agency, or instrumentality of any of those entities.

(X) "Point source" has the same meaning as in the Federal Water Pollution Control Act.

(Y) "Process generated waste water" means water that is directly or indirectly used in the operation of an animal feeding facility for any of the following:

(1) Spillage or overflow from animal watering systems;

(2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;

(3) Direct contact swimming, washing, or spray cooling of animals;

(4) Dust control.

(Z) "Process waste water" means any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs.

(AA) "Production area" means any of the following components of an animal feeding facility:

(1) Animal confinement areas, including, but not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, animal walkways, and stables;

(2) Manure storage areas, including, but not limited to, manure storage or treatment facilities;

(3) Raw material storage areas, including, but not limited to, feed silos, silage bunkers, commodity buildings, and bedding materials;

(4) Waste containment areas, including, but not limited to, any of the following:

(a) An egg washing or egg processing facility;

(b) An area used in the storage, handling, treatment, or disposal of mortalities;

(c) Settling basins, runoff ponds, liquid impoundments, and areas within berms and

diversions that are designed and maintained to separate uncontaminated storm water runoff from contaminated water and to contain and treat contaminated storm water runoff.

(BB) "Public meeting" means a nonadversarial public hearing at which a person may present written or oral statements for the director of agriculture's consideration and includes public hearings held under section 6111.12 of the Revised Code.

(CC) "Review compliance certificate" means a certificate issued under section 903.04 of the Revised Code.

(DD) "Rule" means a rule adopted under section 903.10 of the Revised Code.

(EE) "Small concentrated animal feeding operation" means an animal feeding facility that is not a large or medium concentrated animal feeding operation and that is designated by the director as a small concentrated animal feeding operation pursuant to rules.

(FF) "Waters of the state" has the same meaning as in section 6111.01 of the Revised Code.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.01, amended and renumbered RC § 3335.56 in 139 v H 583, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, rewrote (A) through (F); inserted present (M) and redesignated the remaining subsections accordingly; substituted "times the number of animals specified in any of the categories in division (M) of this section" for "thousand animal units" in present (N); inserted present (Q), (AA), and (EE) and redesignated the remaining subsections accordingly; and made minor stylistic changes.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Definitions. OAC 901:10-1-01.

§ 903.02. Program for issuance of permits to install.

(A) (1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to install under this section.

(2) On and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to install shall submit an application to the director on a form that the director prescribes and provides together with a fee in an amount established by rule. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain;

(3) Designs and plans for the proposed construction of the concentrated animal feeding facility that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the director requires by rule;

(4) In the case of an application for a concentrated animal feeding facility that meets the criteria established in sections 307.204 [307.20.4] and 505.266 [505.26.6] of the Revised Code, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility would be located certifying that, in accordance with those sections, the applicant has provided the boards with the required written notification and that final recommendations were selected regarding improvements, if any, to county or township infrastructure that are needed as a result of the new or expanded concentrated animal feeding facility and the costs of those improvements;

(5) A statement of the quantity of water that the concentrated animal feeding facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water;

(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act required to be provided under section 903.05 of the Revised Code, if applicable;

(7) Any other information required by rule.

Information required to be included in an application for the modification of a permit to install, together with the applicable fee amount, shall be established in rules.

(D) The director shall issue permits to install in accordance with section 903.09 of the Revised Code. The director shall deny a permit to install if either of the following applies:

- (1) The permit application contains misleading or false information.
- (2) The designs and plans fail to conform to best management practices.

Additional grounds for the denial of a permit to install shall be those established in this chapter and rules.

(E) A permit to install shall expire after a period specified by the director unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The director may extend the expiration date of a permit to install upon request of the applicant.

(F) The director may modify, suspend, or revoke a permit to install in accordance with rules.

(G) Nothing in this chapter affects section 1521.16 of the Revised Code.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.02 (GC § 1172; 106 v 122(123), § 7; 109 v 105(126); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The provisions of § 4 of SB 141 (148 v -) read as follows:

SECTION 4. (A) As used in this section, "concentrated animal feeding operations," "animal feeding facilities," and "manure" have the same meanings as in section 903.01 of the Revised Code, as enacted by this act.

(B) On the date on which the Director of Agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, as enacted by this act, the Director of Environmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for the installation of disposal systems for concentrated animal feeding operations, animal feeding facilities, or manure that were issued on or before that date together with any related information that the Director of Agriculture requests;

(2) All permit applications and accompanying information that were submitted under division (J)(1) of section 6111.03 of the Revised Code prior to the date specified in division (B) of this section for the

installation of disposal systems identified in that division.

(C) On the date on which the United States Environmental Protection Agency approves the NPDES program submitted by the Director of Agriculture under section 903.08 of the Revised Code, as enacted by this act, the Director of Environmental Protection shall provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued under division (J)(1) of section 6111.03 of the Revised Code for the discharge of manure and the discharge of storm water from concentrated animal feeding operations or animal feeding facilities that were issued on or before that date together with any related information that the Director of Agriculture requests;

(2) All permit applications and accompanying information that were submitted under division (J)(1) of section 6111.03 of the Revised Code prior to the date specified in division (C) of this section for the activities identified in that division.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in (A)(1); and substituted "animals" for "animal units" in (C)(2).

Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

Permit to install. OAC 901:10-2-01 et seq.

ALR

Hog breeding, confining, or processing facility as constituting a nuisance. 93 ALR5th 621.

§ 903.03. Program for issuance of permits to operate.

(A) (1) Not later than one hundred eighty days after the effective date of this section, the director of agriculture shall prepare a program for the issuance of permits to operate under this section.

(2) Except for a concentrated animal feeding facility that is operating under an installation permit or a review compliance certificate, on and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall operate a concentrated animal feeding facility without a permit to operate issued by the director under this section.

(B) The director or the director's authorized representative may help an applicant for a permit to operate during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to operate shall submit a fee in an amount established by rule together with, except as otherwise provided in division (E) of this section, an application to the director on a form that the director prescribes and provides. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act that is required to be provided under section 903.05 of the Revised Code, if applicable;

(3) A manure management plan for the concentrated animal feeding facility that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule;

(4) An insect and rodent control plan for the concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(5) In the case of an application for a major concentrated animal feeding facility, written

proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

(1) The permit application contains misleading or false information;

(2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

Additional grounds for the denial of a permit to operate shall be those established in this chapter and in rules.

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, shall submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual permit to operate.

(F) A permit to operate shall be valid for a period of five years.

(G) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing applications for permits to operate that are established under this section and by rules, including requirements pertaining to public notice and participation.

(H) The director may modify, suspend, or revoke a permit to operate in accordance with rules.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.03 (GC § 1171; 106 v 122, § 2; 109 v 105(126); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

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Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

Permit to operate. OAC 901:10-2-07 et seq.

§ 903.04. Transfer of authority concerning previously issued installation permits; review compliance certificate for existing facility.

(A) As used in this section, "existing concentrated animal feeding facility" or "existing facility" means a concentrated animal feeding facility that was in existence prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.03 of the Revised Code and that has received an installation permit prior to that date.

(B) On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, the authority to enforce terms and conditions of installation permits that previously were issued to animal feeding facilities shall be transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code, an installation permit concerning which enforcement authority has been transferred shall be deemed to have been issued under this section.

(C) A person to whom an installation permit has been issued by the director of environmental protection prior to the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.03 of the Revised Code may continue to operate under that permit until either of the following occurs:

(1) The installation permit is terminated through the denial of a review compliance certificate under division (F) of this section.

(2) The person is required under division (H) of this section to obtain a permit to operate.

(D) Except as otherwise provided in this division, on and after the date that is two years after the date on which the director has finalized the program required under division (A)(1) of section 903.03 of the Revised Code, and until the issuance of a permit to operate, no person shall operate an existing concentrated animal feeding facility unless the person holds a review compliance certificate.

This division does not apply to a person who has made a timely submittal of the information required under division (E)(2) of this section and who is waiting for the director to issue or deny a review compliance certificate. Such a person may continue the operation of the existing concentrated animal feeding facility until, if applicable, the director issues an order denying the review compliance certificate.

(E) Not later than two years after the date on which the director has finalized the program required under division (A)(1) of section 903.03 of the Revised Code, both of the following apply:

(1) The director shall review the installation permit that previously was issued to an existing concentrated animal feeding facility and shall inspect the facility to determine if it is in compliance with that permit.

(2) Except as otherwise provided in division (E)(2) of this section, the owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(a) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility;

(b) The type of livestock and number of animals that the facility has the design capacity to raise or maintain;

(c) A manure management plan for the facility that conforms to best management practices

regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule. However, if a manure management plan submitted under division (E)(2)(c) of this section does not conform with best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility, the director nevertheless shall deem the plan to conform with best management practices if the owner or operator does all of the following:

(i) Performs a phosphorous index risk assessment procedure or a phosphorous soil test risk assessment procedure in accordance with rules;

(ii) Demonstrates that the facility cannot comply with best management practices before the date on which the review compliance certificate is to be issued;

(iii) Includes in the manure management plan an implementation plan under which the facility will comply with best management practices on or before December 31, 2006.

(d) An insect and rodent control plan for the facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(e) In the case of a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code.

The owner or operator need not furnish any information otherwise required under division (E)(2) of this section if that information is included in the installation permit that was issued for the existing facility.

(F) After a review of the existing installation permit, an inspection of the facility, and a review of the information furnished under division (E)(2) of this section, and upon determining that the existing facility is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the facility and in surrounding areas, the director shall issue an order issuing a review compliance certificate to the facility. In issuing the certificate, the director shall consider technical feasibility and economic costs. The director shall not require a significant capital expenditure, as defined by rule, by the facility before issuing a certificate.

The director may issue an order denying a review compliance certificate if the facility's insect and rodent control plan or manure management plan does not conform to best management practices and the requirements established in section 903.06 of the Revised Code and in rules. The denial of a review compliance certificate terminates the existing installation permit that was issued to the facility.

The issuance of a review compliance certificate shall not require public notice or a public meeting. However, notice shall be provided to persons who own property that is contiguous to the production area of the concentrated animal feeding facility for which the review compliance certificate is to be issued. Such persons may submit written comments to the director within a time established by the director.

The issuance of a review compliance certificate shall not be subject to appeal under Chapter 119. or sections 3745.04 to 3745.06 of the Revised Code. The denial or revocation of a review compliance certificate or the amendment of an installation permit resulting from a certificate may be challenged by the applicant in an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that denies or revokes a certificate or amends an installation permit as a result of a certificate may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(G) Upon the issuance of a review compliance certificate, the certificate automatically shall merge and become a part of the previously issued installation permit. If any of the terms and conditions of the installation permit and the review compliance certificate are in conflict, the terms and conditions of the review compliance certificate are controlling.

(H) (1) A review compliance certificate is valid for a period of five years. Not later than one hundred eighty days prior to the expiration date of the review compliance certificate, the owner or operator shall apply for a permit to operate.

(2) The director may revoke a review compliance certificate issued to an existing facility after the director has issued an order as a result of a hearing held under Chapter 119. of the Revised Code in which the facility has been found to be in violation of the terms and conditions of the review compliance certificate. An existing facility whose review compliance certificate is revoked shall obtain a permit to operate and, if applicable, a NPDES permit in order to resume operating.

(I) An existing facility that is issued a review compliance certificate shall comply with the previously issued installation permit, as amended by the certificate.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.04 (GC § 1171-1; 106 v 122, § 3; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL
ASSEMBLY *
* AND FILED WITH THE SECRETARY OF STATE THROUGH NOVEMBER 7, 2006 *
* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2006 *

TITLE 9. AGRICULTURE -- ANIMALS -- FENCES
CHAPTER 903. CONCENTRATED ANIMAL FEEDING FACILITIES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 903.05 (2006)

§ 903.05. Applicants who have not operated an Ohio facility for two of five past years; persons seeking to acquire facility that has been issued a permit

(A) Each application for a permit to install or permit to operate a concentrated animal feeding facility that is submitted by an applicant who has not operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating in this state;

(2) A listing of the animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the animal feeding facilities that the owner or operator has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any animal feeding facility that the owner or operator

has operated or is operating outside the United States.

The lists of animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five-year period immediately preceding the submission of the application.

(B) If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of an animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and persons associated with the applicant, in the operation of animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(C) A person who seeks to acquire a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to operate shall submit to the director the information specified in divisions (A)(1) to (3) of this section prior to the transfer of the permit. The permit shall not be transferred as otherwise provided in division (I) of section 903.09 of the Revised Code if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

History:

♦ 148 v S 141. Eff 3-15-2001; ♦ 151 v H 66, § 101.01, eff. 9-29-05.

Section Notes:

The effective date is set by § 612.03 of ♦ 151 v H 66.

Not analogous to former RC § 903.05 (GC § 1171-4; 106 v 122(123), § 6; 123 v 862(920); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

EFFECT OF AMENDMENTS

◆ 151 v H 66, effective September 29, 2005, deleted "concentrated" preceding "animal feeding" nine times throughout; and, in the introductory language of (A), inserted "a concentrated animal feeding facility".

✦ **Related Statutes & Rules:**

Cross-Reference to Related Statutes:

Program for issuance of permits to operate, RC § 903.03.

✦ **OH Administrative Code:**

Contents of an application for--

NPDES permit. OAC 901:10-3-01.

Permit to install. OAC 901:10-2-01.

Permit to operate. OAC 901:10-2-07.

Not analogous to former RC § 903.05 (GC § 1171-4; 106 v 122(123), § 6; 123 v 862(920); Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Contents of an application for -

NPDES permit. OAC 901:10-3-01.

Permit to install. OAC 901:10-2-01.

Permit to operate. OAC 901:10-2-07.

§ 903.06. Insect and rodent control plan for each facility.

(A) As used in this section, "plan" means an insect and rodent control plan prepared under this section.

(B) An owner or operator of a concentrated animal feeding facility shall prepare and submit to the director of agriculture in accordance with rules an insect and rodent control plan designed to minimize the presence and negative effects of insects and rodents at the concentrated animal feeding facility and in surrounding areas, including land on which manure is stored or applied. The plan shall conform to best management practices established in rules. The director shall approve or deny the plan within the time period established in rules by the director and may require modification of the plan at that time or a later time in accordance with rules.

(C) On and after the date that is established in rules by the director, no person shall own or operate a concentrated animal feeding facility unless an insect and rodent control plan for the facility has been approved by the director. The owner or operator of a concentrated animal feeding facility shall not violate the facility's insect and rodent control plan.

(D) The director shall enforce an insect and rodent control plan in accordance with rules and

shall assess a civil penalty in accordance with rules and section 903.16 of the Revised Code against an owner or operator of a concentrated animal feeding facility who operates it without a plan approved by the director or who violates the facility's plan.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.06 (133 v H 531), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Corrective actions, civil penalties; injunctions, RC § 903.16.

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Permit to operate: insect and rodent control plan. OAC 901:10-2-19.

§ 903.07. Livestock manager certification required for management and handling of manure.

(A) On and after the date that is established in rules by the director of agriculture, both of the following apply:

(1) The management and handling of manure at a major concentrated animal feeding facility, including the land application of manure or the removal of manure from a manure storage or treatment facility, shall be conducted only by or under the supervision of a person holding a livestock manager certification issued under this section. A person managing or handling manure who is acting under the instructions and control of a person holding a livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling.

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued

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under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination. The director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked livestock manager certification in accordance with rules.

(C) Information required to be included in an application for a livestock manager certification, the amount of the application fee, and requirements regarding training and the examination shall be established in rules.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.07 (GC § 1170-1; 124 v 298, § 1; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "and land apply annually or buy, sell, or land apply" for "buy or sell" in (A)(2).

Cross-References to Related Sections

Corrective actions, civil penalties; injunctions, RC § 903.16.

Program for issuance of permits to operate, RC § 903.03.

Ohio Administrative Code

Certified livestock manager. OAC 901:10-1-06.

Contents of manure management plan. OAC 901:10-2-08 et seq.

§ 903.08. Participation in national pollutant discharge elimination system; permit.

(A) (1) The director of agriculture is authorized to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than one hundred eighty days after March 15, 2001, the director shall prepare a state program in accordance with 40 C.F.R. 123.21 for point sources that are subject to this section and shall submit the program to the United States environmental protection agency for approval.

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 [6111.03.5] of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the director of agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

(B) (1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge manure from a point source into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. The owner or operator of a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. A concentrated animal feeding operation is deemed to be a point source that discharges manure into the waters of the state unless the director has determined that the concentrated animal feeding operation has no potential to discharge manure into the waters of the state. If an owner or operator of a concentrated animal feeding operation receives notice from the director that the director has determined that the concentrated animal feeding operation has no potential to discharge manure, the owner or operator is not required to apply for an individual NPDES permit or for coverage under a general NPDES permit for that operation. The director's determination shall be made in accordance with rules. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of manure prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C) (1) On and after the date on which the United States environmental protection agency

approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(E) The director of agriculture shall issue NPDES permits in accordance with this section and section 903.09 of the Revised Code. The director shall deny an application for a NPDES permit if any of the following applies:

(1) The application contains misleading or false information.

(2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.

(3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

Additional grounds for the denial of a NPDES permit shall be those established in this chapter and rules.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

(1) Any discharges authorized by a general permit will have only minimal cumulative adverse

effects on the environment when the discharges are considered collectively and individually.

(2) The discharges are more appropriately authorized by a general permit than by an individual permit.

(3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K) (1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(L) The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(M) (1) No person shall violate any effluent limitation established by rule.

(2) No person shall violate any other provision of a NPDES permit issued under this section.

(3) Compliance with a NPDES permit issued under this section constitutes compliance with this section.

(N) This section, including the state program authorized in division (A)(1) of this section, shall be administered in a manner consistent with the Federal Water Pollution Control Act.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.08 (GC § 1170-2; 124 v 298, § 2; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

See provisions, § 4 of SB 141 (148 v -), at RC § 903.02.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in (A)(1); and rewrote (B)(1).

Cross-References to Related Sections

Penalties, RC § 903.99.

Corrective actions, civil penalties concerning NPDES permits; injunction, RC § 903.17.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Criteria for decision-making. OAC 901:10-1-03.

Fees. OAC 901:10-1-04.

General administrative requirements. OAC 901:10-1-02.

Prohibitions. OAC 901:10-1-10.

NPDES permit. OAC ch. 901:10-3.

Effluent limitations. OAC 901:10-3-02 et seq.

Variances. OAC 901:10-3-08.

[§ 903.08.1] § 903.081. Effect of receipt of income from permittee or applicant for permit.

(A) For purposes of section 903.08 of the Revised Code, no person shall issue a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, no person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the director of agriculture to vacate or modify a NPDES permit shall require or order the director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.

(B) As used in this section:

(1) "Significant portion of income" means ten per cent or more of gross personal income in a calendar year or fifty per cent or more of gross personal income in a calendar year if the recipient of the income is more than sixty years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement.

(2) "Income" includes retirement benefits, consultant fees, and stock dividends. "Income" does not include mutual fund payments or other diversified investments for which the recipient does not know the identity of the primary sources of the income.

(3) "Permittee" and "applicant for a NPDES permit" does not include any department or agency of the state.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

[§ 903.08.2] § 903.082. Additional facilities that may be required to be permitted as medium or small feeding operation.

(A) The director of agriculture may determine that an animal feeding facility that is not a medium concentrated animal feeding operation or small concentrated animal feeding operation as defined in section 903.01 of the Revised Code nevertheless shall be required to be permitted as a medium or small concentrated animal feeding operation when all of the following apply:

(1) The director has received from the chief of the division of soil and water conservation in the department of natural resources a copy of an order issued under section 1511.02 of the Revised Code that specifies that the animal feeding facility has caused agricultural pollution by failure to comply with standards established under that section and that the animal feeding facility therefore should be required to be permitted as a medium or small concentrated animal feeding operation.

(2) The director or the director's authorized representative has inspected the animal feeding facility.

(3) The director or the director's authorized representative finds that the facility is not being operated in a manner that protects the waters of the state.

(B) If an animal feeding facility is required to be permitted in accordance with this section, the owner or operator of the facility shall apply to the director for a permit to operate as a concentrated animal feeding operation. In a situation in which best management practices cannot be implemented without modifying the existing animal feeding facility, the owner or operator of the facility also shall apply for a permit to install for the facility.

(C) In the case of an animal feeding facility for which a permit to operate is required under this section, a permit to operate shall not be required after the end of the five-year term of the permit if the problems that caused the facility to be required to obtain the permit have been corrected to the director's satisfaction.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

§ 903.09. Draft NPDES permit; public meetings; application of antidegradation policy; proceedings on application for permit.

(A) Prior to issuing or modifying a permit to install, permit to operate, or NPDES permit, the director of agriculture shall issue a draft permit. The director or the director's representative shall mail notice of the issuance of a draft permit to the applicant and shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director or the director's representative also shall provide notice of the issuance of a draft NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act. Notice of the issuance of a draft permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the draft permit may be submitted and the period of time during which comments will be accepted as established by rule.

If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, in the draft permit, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the draft permit. The notice of the public meeting shall be provided in the same manner as the notice of the issuance of the draft permit.

(B) If a person is required to obtain both a permit to install and a permit to operate, including any permit to operate with NPDES provisions, and public meetings are required for both permits, the public meetings for the permits shall be combined.

(C) The director shall apply the antidegradation policy adopted under section 6111.12 of the Revised Code to permits issued under this chapter to the same degree and under the same circumstances as it applies to permits issued under Chapter 6111. of the Revised Code. The director shall hold one public meeting to consider antidegradation issues when such a meeting is required by the antidegradation policy. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

(D) The director or the director's representative shall publish notice of the issuance of a final permit to install, permit to operate, or NPDES permit once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located.

(E) Failure of the director to provide notice or a public meeting shall invalidate a permit only if the failure is raised by, and was relied upon to the detriment of, a person that is entitled to appeal the permit. Notice or a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.

(F) The denial, modification, suspension, or revocation of a permit to install, permit to

operate, or NPDES permit without the consent of the applicant or permittee shall be preceded by a proposed action stating the director's intention to issue an order with respect to the permit and the reasons for it.

The director shall mail to the applicant or the permittee notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit. The director shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director shall mail a copy of the notice of the proposed action to the board of county commissioners of the county and to the board of township trustees of the township in which the concentrated animal feeding facility or concentrated animal feeding operation is located or proposed to be located. The director also shall provide notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to any other person that is entitled to notice under the Federal Water Pollution Control Act. The notice of the director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the director's proposed action may be submitted and the period of time during which comments will be accepted as established by rule. If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the proposed action. The notice of the public meeting shall be provided in the same manner as the notice of the director's proposed action.

The director shall not issue an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that finalizes the proposed action or an order issuing a permit without a prior proposed action may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

(G) (1) The director shall issue an order issuing or denying an application for a permit to operate that contains NPDES provisions or for a NPDES permit, as well as any application for a permit to install that is submitted simultaneously, not later than one hundred eighty days after receiving the application.

(2) In the case of an application for a permit to install or permit to operate that is not connected with an application for a NPDES permit, the director shall issue or propose to deny the permit not later than ninety days after receiving the application. If the director has proposed to deny the permit to install or permit to operate under division (G)(2) of this section, the director shall issue an order denying the permit or, if the director decides against the proposed denial, issuing the permit not later than one hundred eighty days after receiving the application. If the

director denies the permit, the director shall notify the applicant in writing of the reason for the denial.

(H) All rulemaking and the issuance of civil penalties under this chapter shall comply with Chapter 119. of the Revised Code.

(I) Upon the transfer of ownership of an animal feeding facility for which a permit to install, an installation permit, a review compliance certificate, or a permit to operate that contains no NPDES provisions has been issued, the permit or certificate shall be transferred to the new owner of the animal feeding facility except as provided in division (C) of section 903.05 of the Revised Code. In the case of the transfer of ownership of a point source for which a NPDES permit or a permit to operate that contains NPDES provisions has been issued, the permit shall be transferred in accordance with rules.

(J) Applications for installation permits for animal feeding facilities pending before the director of environmental protection on the date on which the director of agriculture has finalized the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code shall be transferred to the director of agriculture. In the case of an applicant who is required to obtain a permit to install and a permit to operate under sections 903.02 and 903.03, respectively, of the Revised Code, the director of agriculture shall process the pending application for an installation permit as an application for a permit to install and a permit to operate.

(K) Applications for NPDES permits for either of the following that are pending before the director of environmental protection on the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code shall be transferred to the director of agriculture:

(1) The discharge of manure;

(2) The discharge of storm water resulting from an animal feeding facility. In the case of an applicant who is required to obtain a NPDES permit under section 903.08 of the Revised Code, the director of agriculture shall process the pending application as an application for a NPDES permit under that section.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.09 (GC § 1174; 103 v 304(324), § 97; 106 v 122(123), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, inserted "permit" following "draft NPDES" in (A); inserted the second paragraph in (F); and made minor stylistic changes.

Ohio Administrative Code

NPDES permit. OAC ch. 901:10-3.

Permit modifications. OAC 901:10-1-09.

Permit transfer. OAC 901:10-1-08.

Public notices. OAC ch. 901:10-6.

§ 903.10. Rules.

The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(A) Establish all of the following concerning permits to install and permits to operate:

- (1) A description of what constitutes a modification of a concentrated animal feeding facility;
- (2) The amount of the fee that must be submitted with each permit application and each application for a permit modification;
- (3) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;
- (4) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;
- (5) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;
- (6) Any additional information that must be included with a permit application;
- (7) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;
- (8) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to the grounds established in division (D) of section 903.02 and division (D) of section 903.03 of the Revised Code;

(9) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously;

(10) A definition of "general permit to operate" that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for issuing a general permit to operate and the criteria for determining a person's eligibility to operate under a general permit to operate.

(B) Establish all of the following for the purposes of review compliance certificates issued under section 903.04 of the Revised Code:

(1) The form of a certificate;

(2) Criteria for what constitutes a significant capital expenditure under division (D) of that section;

(3) Deadlines and procedures for submitting information under division (E)(2) of that section.

(C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application.

(2) Disposal of dead livestock;

(3) Any other activity that the director considers appropriate.

Best management practices established in rules adopted under division (C) of this section shall not conflict with best management practices established in rules that have been adopted under any other section of the Revised Code and that are in effect on March 15, 2001. The rules adopted under division (C) of this section shall establish guidelines that require owners or operators of concentrated animal feeding facilities to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure.

(D) Establish all of the following concerning insect and rodent control plans required under section 903.06 of the Revised Code:

(1) The information to be included in an insect and rodent control plan;

(2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;

(3) Criteria for determining compliance with or violation of an insect and rodent control plan;

(4) Procedures and standards for monitoring insect and rodent control plans;

(5) Procedures and standards for enforcing insect and rodent control plans at concentrated animal feeding facilities at which insects or rodents constitute a nuisance or adversely affect public health;

(6) The amount of civil penalties for violation of an insect and rodent control plan assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code, provided that the rules adopted under division (D)(6) of this section shall not establish a civil penalty of more than ten thousand dollars for a violation involving a concentrated animal feeding facility that is not a major concentrated animal feeding facility and shall not establish a civil penalty of more than twenty-five thousand dollars for a violation involving a major concentrated animal feeding facility;

(7) The time period within which the director must approve or deny an insect and rodent control plan after receiving it;

(8) Any other provisions necessary to administer and enforce section 903.12 of the Revised Code.

(E) Establish all of the following concerning livestock manager certification required under section 903.07 of the Revised Code:

(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant for a livestock manager certification. The training shall include and the examination shall test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;

(4) The length of time during which livestock manager certifications will be valid and

procedures for their renewal;

(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;

(6) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.

(F) Establish all of the following concerning NPDES permits:

(1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. This designation shall include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;

(6) The amount of the fee that must be submitted with an application for a permit;

(7) Procedures for processing permit applications, including public notice and participation requirements;

(8) Procedures for notifying the United States environmental protection agency of the submission of permit applications, the director's action on those applications, and any other reasonable and relevant information;

(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(10) Procedures for the transfer of permits to new owners or operators;

(11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of permits, including general permits;

(12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit.

The rules adopted under division (F) of this section shall be consistent with the requirements of the Federal Water Pollution Control Act.

(G) Establish public notice and participation requirements, in addition to the procedures established in rules adopted under division (F)(7) of this section, for the issuance, denial, modification, transfer, suspension, and revocation of permits to install, permits to operate, and NPDES permits consistent with section 903.09 of the Revised Code, including a definition of what constitutes significant public interest for the purposes of divisions (A) and (F) of section 903.09 of the Revised Code and procedures for public meetings. The rules shall require that information that is presented at such a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting.

(H) Establish the amount of civil penalties assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code for violation of the terms and conditions of a permit to install, permit to operate, or review compliance certificate, provided that the rules adopted under this division shall not establish a civil penalty of more than ten thousand dollars per day for each violation;

(I) Establish procedures for the protection of trade secrets from public disclosure. The procedures shall authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act. The rules shall require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. Rules adopted under this division do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under section 903.08 of the Revised Code or rules adopted under division (F) of this section.

(J) Establish any other provisions necessary to administer and enforce this chapter.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.10 (GC § 1176; 103 v 304(324), § 99; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53; 137 v H 42), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" in the final paragraph in (C); substituted "that is not a major concentrated animal feeding facility" for "with a total design capacity of ten thousand or fewer animal units" in (D)(6); substituted "and land applied annually or the volume of manure that must be bought, sold, or land applied" for "bought or sold" in (E)(5); and substituted "divisions (A) and (F)" for "division (A)" in (G).

Cross-References to Related Sections

Corrective actions, civil penalties concerning NPDES permits; injunction, RC § 903.17.

Corrective actions, civil penalties; injunctions, RC § 903.16.

Ohio Administrative Code

Department of agriculture; livestock environmental permitting -

Complaints; inspections; penalties. OAC ch. 901:10-5.

Concentrated animal feeding facilities. OAC ch. 901:10-1.

Trade secret requests for confidentiality. OAC 901:10-1-05.

General permits to operate. OAC ch. 901:10-4.

NPDES permit. OAC ch. 901:10-3.

Public notices. OAC ch. 901:10-6.

Public meetings. OAC 901:10-6-04.

Permit to install; permit to operate; management plans. OAC ch. 901:10-2.

§ 903.11. Contracts or agreements to implement chapter; grants and loans.

(A) The director of agriculture may enter into contracts or agreements to carry out the purposes of this chapter with any public or private person, including the Ohio state university

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extension service, the natural resources conservation service in the United States department of agriculture, the environmental protection agency, the division of soil and water conservation in the department of natural resources, and soil and water conservation districts established under Chapter 1515. of the Revised Code. However, the director shall not enter into a contract or agreement with a private person for the review of applications for permits to install, permits to operate, NPDES permits, or review compliance certificates that are issued under this chapter or for the inspection of a facility regulated under this chapter or with any person for the issuance of any of those permits or certificates or for the enforcement of this chapter and rules adopted under it.

(B) The director may administer grants and loans using moneys from the federal government and other sources, public or private, for carrying out any of the director's functions. Nothing in this chapter shall be construed to limit the eligibility of owners or operators of animal feeding facilities or other agricultural enterprises to receive moneys from the water pollution control loan fund established under section 6111.036 [6111.03.6] of the Revised Code and the nonpoint source pollution management fund established under section 6111.037 [6111.03.7] of the Revised Code.

The director of agriculture shall provide the director of environmental protection with written recommendations for providing financial assistance from those funds to agricultural enterprises. The director of environmental protection shall consider the recommendations in developing priorities for providing financial assistance from the funds.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.11 (GC § 1177; 103 v 304(325), § 100; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.12. Right of entry; access to records.

(A) The director of agriculture or the director's authorized representative at reasonable times may enter on any public or private property, real or personal, to make investigations and inspections, including the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties that are necessary for the administration and enforcement of this chapter. The director or the director's authorized representative at reasonable times may examine and copy any records pertaining to discharges that are subject to this chapter or any records that are required to be maintained by the terms and conditions of a permit or

review compliance certificate issued under this chapter. If refused entry, the director or the director's authorized representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant.

(B) No person to whom a permit or review compliance certificate has been issued under this chapter shall refuse entry to the director or the director's authorized representative or purposely hinder or thwart the director or the director's authorized representative in the exercise of any authority granted under division (A) of this section.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.12 (GC § 1177-1; 103 v 304(325), § 101; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Permit to operate and operating record requirements. OAC 901:10-2-16.

Right to enter property for investigations and inspections. OAC 901:10-5-02.

§ 903.13. Affirmative defenses in private nuisance action.

In a private civil action for an alleged nuisance related to agricultural activities conducted at a concentrated animal feeding facility, it is an affirmative defense if the person owning, operating, or otherwise responsible for the concentrated animal feeding facility is in compliance with best management practices established in the installation permit, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility and the agricultural activities do not violate federal, state, and local laws governing nuisances.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.13 (GC § 1177-2; 103 v 304(325), § 102; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53; 138 v H 275; 139 v H 95), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Requirements of specific management plans and practices -

Closure or discontinuance of facility. OAC 901:10-2-18.

Disposal of dead livestock. OAC 901:10-2-15.

Emergency response. OAC 901:10-2-17.

Insect and rodent control. OAC 901:10-2-19.

Manure management. OAC 901:10-2-08 et seq.

Operating records. OAC 901:10-2-16.

§ 903.14. Nonbinding arbitration prior to filing private nuisance action.

Prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a concentrated animal feeding facility, the parties to the dispute shall submit the dispute to an arbitrator for nonbinding arbitration. The parties shall pay the arbitrator a reasonable compensation based on the extent and duration of actual service rendered. The cost of the arbitrator's services shall be divided proportionately among the parties.

If the decision reached by the arbitrator is not accepted by all parties to the dispute, the complaining parties may file a civil action and the claim shall proceed as if it had not been submitted to nonbinding arbitration. No oral or written statement prepared for or made in the nonbinding arbitration by the arbitrator or any of the parties, including any mental impression, recommendation, or decision by the arbitrator, is subject to discovery or admissible into evidence in any litigation or proceeding for any purpose, including impeachment. The arbitrator shall be disqualified as a witness, consultant, or expert on any subject that is related to the arbitration.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.14 (GC § 1177-3; 103 v 304(325), § 103; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.15. Complaint submitted to director; investigation.

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(A) A person who is aggrieved or adversely affected by an alleged nuisance related to a concentrated animal feeding facility may submit a complaint to the director of agriculture alleging that the nuisance exists. The complaint may be made orally or in writing. If the complaint is made in writing, it shall be signed by the person making it and dated.

(B) After receiving a written, signed, and dated complaint, the director shall, or after receiving an oral complaint the director may, cause an investigation to be conducted to determine if the owner or operator of the concentrated animal feeding facility is complying with a permit or review compliance certificate.

(C) (1) If, upon completion of the investigation, the director determines that the owner or operator is in compliance with a permit or review compliance certificate, the director shall dismiss the complaint and notify the complainant and the owner or operator of the dismissal.

(2) If the director determines that the owner or operator is not in compliance with a permit or review compliance certificate, the director shall proceed in accordance with section 903.16 or 903.17 of the Revised Code, or both, as applicable.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.15 (GC § 1177-4; 103 v 304(325), § 104; 106 v 122(125), § 9; 109 v 45; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Complaints for nuisances. OAC 901:10-5-01.

Enforcement procedures. OAC 901:10-5-03.

ALR

Hog breeding, confining, or processing facility as constituting a nuisance. 93 ALR5th 621.

§ 903.16. Corrective actions, civil penalties; injunctions.

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(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate, or rules adopted under division (A) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

(C) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, or 903.04 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code; rules adopted under division (A) of section 903.10 of the Revised Code; or an order issued under division (B) of this section.

(D) (1) In lieu of seeking civil penalties under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, or 903.04 of the Revised Code, rules adopted under division (A) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.16 (GC § 1177-6; 103 v 304(326), § 106; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, in the introductory language of (A) and in (B)(1), inserted "section 903.02, 903.03, or 903.04 of the Revised Code" and "or the rules adopted under division (A) of section 903.10 of the Revised Code"; and inserted "under" in (C).

Cross-References to Related Sections

Emergency orders, RC § 903.18.

Ohio Administrative Code

Civil penalties. OAC 901:10-5-04.

Enforcement procedures. OAC 901:10-5-03.

§ 903.17. Corrective actions, civil penalties concerning NPDES permits; injunctions.

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a point source if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under division (F) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the point source, determined that the owner or operator is still not in compliance, and issued a notice of violation to require corrective actions.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order and assess a civil penalty of not more than ten thousand dollars per violation against the violator. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(C) To the extent consistent with the Federal Water Pollution Control Act, the director shall consider technical feasibility and economic costs in issuing orders under this section.

(D) (1) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(2) In lieu of seeking civil penalties under division (A) of this section, the director may request, in writing, the attorney general to bring an action for a civil penalty of not more than ten thousand dollars per violation in a court of competent jurisdiction against any person that has violated or is violating section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section. For purposes of determining the civil penalty to be assessed under division (B) of this section, each day that a violation continues constitutes a separate and distinct violation.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.17 (GC § 1177-5; 103 v 304(326), § 105; 106 v 122(125), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Emergency orders, RC § 903.18.

Ohio Administrative Code

Civil penalties. OAC 901:10-5-04.

Enforcement procedures. OAC 901:10-5-03.

§ 903.18. Emergency orders.

(A) Notwithstanding sections 903.16 and 903.17 of the Revised Code, if the director of agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. The director's order is appealable in accordance with section 119.12 of the Revised Code. No emergency order shall remain in effect for more than one hundred twenty days after its issuance.

(B) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure that requires emergency action to protect public health or safety or the environment is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs. Moneys recovered under this division shall be paid into the state treasury to the credit of the livestock management fund.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.18 (GC § 1175; 103 v 304(324), § 98; 106 v 122(124), § 9; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

Ohio Administrative Code

Emergency enforcement and cost recovery. OAC 901:10-5-05.

Emergency response plan. OAC 901:10-2-17.

§ 903.19. Livestock management fund.

All money collected by the director of agriculture from application fees under sections 903.02, 903.03, 903.07, and 903.08 of the Revised Code, all money collected from civil penalties under sections 903.16 and 903.17 of the Revised Code, and all money collected under division

(B) of section 903.18 of the Revised Code shall be deposited in the livestock management fund, which is hereby created in the state treasury. Money credited to the fund shall be used solely in the administration of this chapter.

HISTORY: 148 v S 141. Eff 3-15-2001.

Not analogous to former RC § 903.19 (GC § 1177-8; 103 v 304(326), § 108; 106 v 122(126), § 9; 109 v 46; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

The effective date is set by section 5 of SB 141.

§ 903.20. Concentrated animal feeding facility advisory committee.

(A) There is hereby created the concentrated animal feeding facility advisory committee consisting of the directors of agriculture, development, environmental protection, and natural resources and the dean of the college of food, agricultural, and environmental sciences of the Ohio state university, or their designees, as members ex officio, and sixteen members to be appointed by the director of agriculture. Of the appointed members, one shall be an elected local government official whose jurisdiction has a concentrated animal feeding facility located in it at the time that the official is appointed to the committee, one shall be a person who is licensed to practice veterinary medicine under Chapter 4741. of the Revised Code, one shall represent the interests of poultry producers, one shall represent the interests of swine producers, one shall represent the interests of dairy farmers, one shall represent the interests of beef cattle producers, one shall represent the interests of sheep producers, one shall represent the interests of drinking water utilities, one shall represent the interests of wastewater utilities, one shall represent the Ohio environmental health association, two shall represent the interests of statewide environmental advocacy organizations, and four shall represent the interests of the public. Prior to making the appointment of the member who is an elected local government official, the director shall solicit a list of suggested candidates from the appropriate statewide associations that represent the interests of local governments. Prior to making an appointment of a member representing the interests of poultry, swine, beef cattle, or sheep producers or dairy farmers, the director shall solicit from the appropriate statewide trade associations a list of suggested candidates to represent the interests of the species category on the committee. The members representing the public shall not be owners or operators of concentrated animal feeding facilities or associated with such facilities by contract.

Not later than thirty days after March 15, 2001, the director shall make appointments to the committee. Of the initial appointments, six shall be for terms ending one year after March 15, 2001, five shall be for terms ending two years after March 15, 2001, and five shall be for terms

ending three years after March 15, 2001. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

The committee shall meet at times that the chairperson or a majority of the committee members considers appropriate, provided that no meeting shall be held on the call of the chairperson unless at least seven days' written notice first is provided to all members of the committee. At the first meeting of the committee in each calendar year, the director of agriculture shall designate one member of the committee to serve as its chairperson and one member to serve as its vice-chairperson. A majority vote of the members of the committee is necessary to take action on any matter. A vacancy on the committee does not impair the right of the other members to exercise all of the committee's powers.

Serving as an appointed member of the committee does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The director of agriculture, after notice and a public meeting, may remove any appointed member of the committee for misfeasance, nonfeasance, or malfeasance in office.

Appointed members of the committee shall serve without compensation for attending committee meetings. Members of the committee shall be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the committee.

(B) The committee may do either or both of the following:

- (1) Adopt rules or procedures governing the conduct of its internal affairs;
- (2) Request from the director of agriculture, and the director shall provide, meeting space, staff support, services, and data to enable it to carry out its functions.

(C) The committee shall do all of the following:

- (1) Advise the director of agriculture in the administration of this chapter;
- (2) Keep abreast of advances in manure management practices and annually advise the directors of agriculture, environmental protection, and natural resources of the recent advances in

those areas and regarding the need for amending what constitutes best management practices;

(3) In consultation with the director of agriculture, prepare and, upon request, distribute written materials designed to assist persons who propose to establish a new or modify an existing concentrated animal feeding facility in applying for a permit to install or permit to operate. The materials also shall include information stating that, in addition to obtaining a permit to operate, it may be necessary to obtain a NPDES permit for the discharge of manure or storm water. In addition, the written materials shall include information on the meaning of a "complete application" for all of the permits, information on the public meeting process in connection with the relevant permits issued under this chapter, and a summary of the antidegradation policy established under section 6111.12 of the Revised Code together with an indication of the possibility that the owner's or operator's proposed new or modified disposal system for manure or discharges may be subject to that policy.

(D) Sections 101.82 to 101.87 of the Revised Code do not apply to the committee.

HISTORY: 148 v S 141. Eff 3-15-2001; 150 v H 152, § 1, eff. 11-5-03.

Not analogous to former RC § 903.20 (GC § 1177-7; 103 v 304(326), § 107; 106 v 122(125), § 9; 110 v 156; Bureau of Code Revision, 10-1-53), repealed 139 v H 583, § 2, eff 3-16-82.

Effect of Amendments

H.B. 152, Acts 2003, effective November 5, 2003, substituted "March 15, 2001" for "the effective date of this section" four times in the second paragraph of (A); deleted former (C)(4); and substituted "Sections 101.82 to 101.87 of the Revised Code do" for "Section 101.84 of the Revised Code does" in (D).

§ 903.21. Repealed.

Repealed, 139 v H 583, § 2 [GC §§ 1177-9; 103 v 304(326), § 109; 106 v 122(122); § 9; Bureau of Code Revision, 10-1-53; 127 v 717(718), § 1; 130 v 248, § 1]. Eff 3-16-82.

This section concerned disposition of unused county farms.

§ 903.25. Other requirements pertaining to manure, insects, rodents, odor, or siting not to be imposed.

An owner or operator of an animal feeding facility who holds a permit to install, a permit to

operate, a review compliance certificate, or a NPDES permit or who is operating under an operation and management plan, as defined in section 1511.01 of the Revised Code, approved by the chief of the division of soil and water conservation in the department of natural resources under section 1511.02 of the Revised Code or by the supervisors of the appropriate soil and water conservation district under section 1515.08 of the Revised Code shall not be required by any political subdivision of the state or any officer, employee, agency, board, commission, department, or other instrumentality of a political subdivision to obtain a license, permit, or other approval pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility.

HISTORY: 150 v H 152, § 1, eff. 11-5-03.

§ 903.99. Penalties.

(A) Whoever violates division (A)(2) of section 903.02 or division (A)(2) of section 903.03 of the Revised Code is guilty of a misdemeanor of the third degree on a first offense, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense.

(B) Whoever violates the terms and conditions of a permit to install issued under section 903.02 of the Revised Code or of a permit to operate issued under section 903.03 of the Revised Code, division (B)(1), (C)(1), or (M)(1) or (2) of section 903.08 of the Revised Code, or the NPDES provisions of a permit to operate shall be fined not more than twenty-five thousand dollars. Each day of violation constitutes a separate offense.

(C) Whoever knowingly violates division (K) of section 903.08 of the Revised Code shall be fined not more than twenty-five thousand dollars. Each day of violation constitutes a separate offense.

HISTORY: 148 v S 141. Eff 3-15-2001.

The effective date is set by section 5 of SB 141.

Cross-References to Related Sections

Penalties for felony, RC § 2929.11; misdemeanor, RC § 2929.21.