Ohio | **Department of Agriculture**

Governor Ted Strickland • Lt. Governor Lee Fisher
Director Robert J. Boggs

Livestock Environmental Permitting Program
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September 22, 2008

Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency, Region 5 (R-19J)
77 W. Jackson Blvd.
Chicago, Ill. 60604

Dear Ms. Buhl:

It has been brought to my attention that the enclosed three items which are the correct versions of rules 901:10-1-08 and 901:10-1-10, as well as statute 903.16, were not received by you in the package mailed on September 16, 2008.

Please accept our apologies for any error on our part or confusion this may have caused.

Sincerely,

Kevin Elder
Executive Director

Enclosures

cc: Timothy Henry, Acting Director, Water Divsiion (W-15J), EPA Region 5
James A. Hanlon, Director, Office of Watewater Management (4203M), EPA Headquarters

903.16 Requiring corrective actions and assessing civil penalties.

(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), (B), (C), (D), (E), or (J) 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), (B), (C), (D), (E), or (J) 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, or division (A) of section 903.07 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), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code; or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(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, or division (A) of section 903.07 of the Revised Code, rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code, or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(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.

*** DRAFT – NOT FOR FILING ***

901:10-1-08 **Permit transfer.**

(A) Transfers of permits for concentrated animal feeding facilities and concentrated animal feeding operations are permissible.

(B) In this rule, transferor means the current holder of a permit to install and/or permit to operate and/or NPDES permit. Transferee means the person making application to acquire the existing permit.

(1) The director shall be notified in writing by the transferor at least thirty days prior to any proposed transfer of a permit. The transferee shall inform the director that it will assume the responsibilities of the transferor.

(2) The notice shall include a written agreement between the transferor and transferee containing a specific date for transfer of permit responsibility, coverage and liability between the parties..

(C) In order to satisfy the requirements of paragraph (B) of this rule, the following information shall be submitted by the transferee:

(1) The name and address of the transferor and the transferee. The transferee shall identify all partners if the transferee is a partnership or all officers and directors if the transferee is a corporation, and of any other person who has a right to control or in fact controls management of the transferee or the selection of officers, directors, or managers of the transferee. If the transferee is an owner or operator, ~~as these terms are defined in paragraph (MMM) of rule 901:10-1-01 of the Administrative Code~~ the transferee must satisfy the requirements of this rule.

(2) In the case of an application for a transfer of a permit for a major concentrated animal feeding facility, written proof that includes copies of certificates or authenticating documentation that they will employ a certified livestock manager.

(D) Each application to transfer a permit that is submitted by a new owner or operator 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 for transfer shall be accompanied by all of the following:

(1) A listing of all ~~concentrated~~ animal feeding facilities that the transferee has operated or is operating in this state;

(2) A listing of the ~~concentrated~~ animal feeding facilities that the transferee has operated or is operating elsewhere in the United States and that are regulated

under the Act together with a listing of the concentrated animal feeding facilities that the transferee has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued in connection with the transferee; all civil actions in which the transferee 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; all criminal actions in which the transferee pleaded guilty or was convicted during the five years immediately preceding the submission of the application for transfer 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 ~~concentrated~~ animal feeding facility that the transferee 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 concentrated animal feeding facility that the transferee has operated or is operating outside the United States. The lists of concentrated animal feeding facilities operated by the transferee within or outside this state or outside the United States shall include, respectively, all such facilities operated by the transferee during the five-year period immediately preceding the submission of the application.

(E) Denial of transfer of permits to install, permits to operate, or NPDES permits. The director may deny the application for transfer if the director finds from the application, the information submitted and pertinent information obtained by the director at the director's discretion that the transferee and persons associated with the transferee in the operation of ~~concentrated~~ 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 transferee 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. In evaluating a history of substantial noncompliance the director shall consider the information required to be submitted pursuant to rule 901:10-1-03 of the Administrative Code. A denial by the director may be appealed by the owner or operator in accordance with Chapter 119. of the Revised Code.

(F) If the director does not notify the transferor or the transferee of an intention to object to the transfer, then the permit will be transferred. The director may also notify both the transferor and the transferee of the director's decision.

(G) The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the act.

*** DRAFT – NOT FOR FILING ***

901:10-1-10 **Prohibitions.**

(A) 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 section 903.02 of the Revised Code.

(B) Except for a concentrated animal feeding facility that is operating under an installation permit issued by the director of environmental protection or a review compliance certificate issued by the director, on and after the date on which the program has been finalized under section 903.01 of the Revised Code, no person shall operate a concentrated animal feeding facility without a permit issued by the director under section 903.03 of the Revised Code.

(C) No person to whom a NPDES permit has been issued shall discharge or cause to be discharged, in any waters of the state any manure, pollutants, or stormwater resulting from an animal feeding facility in excess of the permissive discharges specified under an existing permit.

(D) 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, no person shall discharge pollutants from a point source into waters of the state unless authorized by a valid and unexpired NPDES permit issued by the director or unless an application for renewal of such NPDES permit has been submitted by the person and is pending.

(E) Any person who discharges or proposes to discharge pollutants shall apply for a NPDES permit ~~All concentrated animal feeding operations have a duty to seek coverage under a NPDES permit. In the alternative, a concentrated animal feeding operation may seek a "no potential to discharge" determination from the director in accordance with rules 901:10-3-01 and 901:10-6-01 to 901:10-6-06 of the Administrative Code~~.

(F) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director, no person shall discharge stormwater resulting from an animal feeding facility unless authorized by a NPDES permit when such a permit is required by the Act and subsequently issued by the director of agriculture pursuant to section 903.08 of the Revised Code.

(G) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.

(H) No person shall violate any effluent limits established by rule.

(I) No person shall violate any other provision of a NPDES permit issued by the director.

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Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency, Region 5 (R-19J)
77 W. Jackson Blvd.
Chicago, Ill. 60604

Dear Ms. Buhl:

Per the request received by my office, I have enclosed statute 903.082 which we believe was in the package mailed on September 16, 2008.

Sincerely,

Kevin W. Elder

Kevin Elder
Executive Director

Enclosure

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

903.082 Determination of size of concentrated animal feeding facility by director.

(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 facility ~~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 facility ~~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 facility ~~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.