Ohio | Department of Agriculture
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Director Robert J. Boggs

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September 4, 2008

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NPDES PROGRAMS BRANCH
EPA, Region 5

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

Dear Ms. Buhl:

The Ohio Department of Agriculture (ODA) is pleased to submit the following updated information for consideration as part of the State's proposed transfer from the Ohio Environmental Protection Agency (Ohio EPA) to the ODA of regulatory responsibility over concentrated animal feeding operations under Clean Water Act (CWA) Section 402(b) (33.U.S.C. §1342(b)). An application for transfer of regulatory authority for CAFOs and revision of the State's NPDES Program was submitted by the State of Ohio on January 4, 2007 through a letter and 1600 page package sent by Governor Bob Taft to the Regional Administrator for the United States Environmental Protection Agency (EPA), Region 5.

This submittal includes proposed revisions to portions of the Ohio Revised Code and Ohio Administrative Code necessary to administer and enforce the NPDES program for concentrated animal feeding operations under the Clean Water Act. These revisions are proposed to address concerns and comments made by staff of EPA regarding the existing statutes and regulations previously established to govern the program. A summary of the proposed changes to each applicable statute and regulation is attached. The submittal also includes a signed Memorandum of Agreement that defines how ODA will administer the NPDES program for CAFOs, and how the program will be reviewed by EPA Region 5; the previous version was not signed.

The proposed amendments to rules included in this submittal are subject to the rulemaking and public comment procedures set forth in Chapter 119 of the Ohio Revised Code. The Department anticipates beginning these rulemaking procedures in the next 30-45 days. The Department will request that the General Assembly enact the proposed legislative changes later this year. We understand that EPA will not approve the Ohio program revision until all of the statutory and rule changes are effective. Additional statutory and regulatory changes affecting Ohio's state permit to install, state permit to operate, and state certified livestock manager programs for concentrated animal feeding facilities may be enacted as part of the same statutory and rulemaking actions. We are enclosing these changes for your information even though they are unrelated to the NPDES State program revision.

The Department is further aware that there are currently pending, in federal rulemaking procedures, revisions to the CAFO regulations in response to the *Waterkeeper* decision. The Department is committed to enacting any revisions to the State's NPDES authority that may

become necessary following this rulemaking, in accordance with the applicable timeframes for revising State programs to conform to the *Waterkeeper* rule.

The Department is confident that the enclosures provide sufficient documentation for the EPA to determine that the Ohio Department of Agriculture possesses adequate authority to implement the proposed NPDES program, in accordance with the CWA section 402(b) and 40 C.F.R. §123, conditional upon the enactment of the statutes and rule revisions in question. We look forward to working with you to approve this State program revision and to administer this very important Clean Water Act program.

Sincerely,

Robert J. Boggs, Director
Ohio Department of Agriculture

Enclosures

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

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).

This revision to the MOA is based on the August 2008 proposal to revise Ohio Revised Code Chapter 903.08 as drafted in the attached document. If through the legislative process, the draft language is significantly revised, the parties reserve the right to revise this MOA to address those changes.

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, litter and other pollutants from concentrated 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), and discharges of sewage from animal feeding operations.

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, litter and other pollutants from concentrated 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, and discharges of sewage from animal feeding operations.

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, litter and other pollutants from concentrated 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.

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.B2.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.B2.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.B2.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 draft 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 90 days to review, comment upon, provide an objection to, or make recommendations with respect to the draft permit in accordance with 40 CFR §123.44 (a), provided that USEPA files general objections to the draft permit within 30 days of receipt.

III.C.2.c. USEPA Review Without Objection.
If no general 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 general 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 revised draft or proposed individual permit or within 90 days after receipt of the revised 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 *report as* 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, recision, 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 the USEPA Regional Administrator pursuant to 40 CFR §123.24(a) and the Director of the Ohio Department of Agriculture and the Director of the Ohio Environmental Protection Agency.

In witness whereof, the parties execute this agreement:

Robert J. Boggs, Director
Ohio Department of Agriculture

9-15-08
Date

Lynn Buhl, Regional Administrator
U.S. Environmental Protection Agency

Date

Chris Korleski, Director
Ohio Environmental Protection Agency

9/10/08
Date

§ 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;

July 15, 2008 Statute Amendment

(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.

Effective Date: 11-05-2003; 03-29-2007

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.

July 15, 2008 Statute Amendment

(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.

Effective Date: 11-05-2003; 03-29-2007

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.

(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.

§ 903.07 Livestock manager certification.

(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 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~~, and requirements for manure management, handling, land application, and record keeping shall be established in rules.

July 15, 2008 Statute Amendment

903.08 Participating in national pollutant discharge elimination system.

(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~~ pollutants from a ~~point source~~ concentrated animal feeding operation into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of ~~manure~~ pollutants from a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. 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~~ pollutants from a concentrated animal feeding operation into waters of the state 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.

Effective Date: 11-05-2003; 03-29-2007

July 15, 2008 Statute Amendment

903.081 Permits not to be granted.

(A) For purposes of section 903.08 of the Revised Code, no person shall ~~issue~~ approve all or portions of 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~~ may serve on a board or commission~~, pursuant to an appeal of an action regarding a NPDES permit,~~ which approves all or portions of a NPDES permit, ~~require, or to order the director of agriculture to vacate or modify a NPDES permit,~~ including taking such action pursuant to an appeal of a NPDES permit~~, 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.[1]

(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.

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, modify, 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, modify, 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, modify, 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~~ pollutants from a concentrated animal feeding operation;

(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.

903.10. Rules.

The director of agriculture ~~shall~~ is authorized to 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, ~~;~~ and each application for a major operational change.

(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.~~ Establish rules to require corrective actions and assess an administrative penalty, if any, against the holder of a livestock manager certification.

(7) 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.~~ Establish procedures and administrative fees, if any, for additional inspections resulting from noncompliance by a concentrated animal feeding facility.

(K) Establish any other provisions necessary to administer and enforce this chapter.

903.15 Submitting complaint to director.

(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~~ related to a concentrated animal feeding facility or to a discharge from an animal feeding operation, as defined in 40 C.F.R. 122.23. 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~~ in compliance or to determine if a discharge is occurring or has occurred at the animal feeding operation.

(C)(1) If, upon completion of the investigation, the director determines that the ~~owner or operator~~ concentrated animal feeding facility or animal feeding operation is in compliance with ~~a permit or review compliance certificate,~~ applicable requirements, 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~~ concentrated animal feeding facility or animal feeding operation is not in compliance with ~~a permit or review compliance certificate~~ applicable requirements, the director shall proceed in accordance with section 903.16 or 903.17 of the Revised Code, or both, as applicable.

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) In lieu of seeking penalties under divisions (A) and (C) of this section, the director may issue, modify, or revoke orders requiring compliance with any standard or rule adopted under sections 903.01 to 903.18 of the Revised Code or term or condition of a permit. An order of the director issued without a prior proposed action may be appealed in accordance with section 119.12 of the Revised Code.

~~(C)~~(D) 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)~~ (E)(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 ***

901:10-1-01 **Definitions.**

As used in Chapters 901:10-1 to 901:10-6 of the Administrative Code, the definitions contained in Chapter 903. of the Revised Code and the following definitions are applicable:

(A) Act means the Federal Water Pollution Control Act set forth at 33 USC sections 1251 to 1387.

(B) Administrator means the administrator of the United States environmental protection agency.

(C) Agricultural drainage well means a class five underground injection control well that receives or has the potential to receive drainage from irrigation tail-waters, animal yards, feedlots or dairy runoff and any related agricultural field runoff. An injection well is any bored, drilled, or driven shaft or dug hole whose depth is greater than the largest surface dimension.

(D) Agricultural stormwater discharge means runoff generated by precipitation that drains over terrain used for agriculture as defined in section 1.61 of the Revised Code that conveys manure to waters of the state, provided that the manure has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure in compliance with the best management practices set forth in Chapter 901:10-2 of the Administrative Code.

(E) Agronomic rate means a rate of application of nutrients from any source to the land or an amount of nutrients removed by crop based on:

(1) Nutrient content of the manure to be applied;

(2) Nutrient needs of the current or planned crops; and

(3) Nutrient holding capacity of the soil.

(F) Ammonia (as N) means ammonia reported as nitrogen and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(G) Applicant means a person applying for a permit, certificate, or submitting a claim of trade secrecy to the director.

(H) Appropriate design plan means a construction plan for a manure storage or treatment facility that has been accepted by the department as meeting best management practices and recognized industry standards for construction. This includes pre-engineered design plans for the design and construction of manure storage or

treatment facilities that have been shown by the engineer, manufacturer, or distributor to conform to the requirements of Chapter 903. of the Revised Code.

(I) Appropriate examination means an examination that has been approved by the department.

(J) Appropriate training program means a training program that has been approved by the department.

(K) Aquifer means an underground consolidated or unconsolidated geologic formation or series of formations that are hydraulically connected and that have the capability to receive, store, and yield useable quantities of water to wells. Aquifer does not include perched groundwater.

(L) Application means the form and supporting documents used by an applicant to apply for an Ohio permit under this chapter.

(M) Average precipitation means the precipitation over the length of a storage period.

(N) Beneficial organisms mean predators, parasites, or pathogens that, during their life cycle, are used to suppress pest organisms or are otherwise beneficial.

(O) Best management practice (BMP) means a practice or combination of practices that is determined to be the most effective and practicable including technological, economic, and institutional controls as a means of complying with the applicable standards of Chapter 903. of the Revised Code. BMPs may include structural and nonstructural practices, conservation practices, prohibition of practices, schedules of activities, operation and maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage, or leaks, sludge or waste disposal or drainage from raw material storage.

Comment: For purposes of this chapter, institutional controls such as proprietary controls are those that involve legal instruments placed in the chain of title on the site of the property. Such proprietary controls include but are not limited to: easements, covenants, well drilling prohibitions, zoning restrictions and special building requirements.

(P) Biosecurity refers to the policies and measures taken for protecting food supply and agricultural resources from contamination. Biosecurity also refers to those measures taken to keep disease agents out of populations, herds or groups of animals where they do not already exist. Significant areas on a facility in biosecurity are sanitation, isolation of incoming or returning animals, cleaning and disinfection and traffic control to limit disease spread between all facilities in the production unit.

(Q) BOD5 means five-day biochemical oxygen demand and is listed with approved methods of analysis in table 1B at 40 CFR 136.

(R) Buffer strip means setback of an area of permanent dense vegetation, often planted along the edge or the contour of a land application site or a slope of the field usually for management practices, including practices to slow the flow of water runoff or enhance water filtration, and minimize the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. Types of buffers include filter strips, field borders, contour grass strips, vegetated cover and riparian buffers. Types of buffers include those described in "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" which includes the following:

(1) "Filter Strips/Areas, No. 393," June 2002;

(2) "Riparian Forest Buffer, No. 391," March 1997;

(3) "Field Border, No. 386," June 2002; and

(4) "Contour Buffer Strips, No. 332," June 2002.

(S) Certified livestock manager means a person that has been duly certified by the department and currently holds a valid livestock manager certification.

(T) Cold water habitat means waters designated as coldwater aquatic life habitat by the Ohio environmental protection agency as set forth in Chapter 3745-1 of the Administrative Code.

(U) Compliance plan means:

(1) A written plan prepared and submitted by the owner or operator by registered or certified mail; and

(2) A statement prepared by the owner or operator that describes the actions the owner or operator will take to eliminate the deficiencies that resulted in noncompliance and includes a schedule stating the time by which each of the actions shall be accomplished to achieve compliance.

(V) Construction, for the purposes of stormwater construction permits, means the initial disturbance of soils associated with clearing, grading or excavating activities.

(W) Department means the Ohio department of agriculture, the director, or the director's authorized representative.

(X) Design capacity means the ability to house or maintain the total number of animals confined or to be confined in open lots, housed lots, feedlots, confinement houses,

stall barns, free stall barns, milkrooms, milking centers, cowyards, medication pens, animal walkways, and stables.

(Y) Dikes mean both dikes and embankments.

(Z) Director means the director of the Ohio department of agriculture or the director's duly authorized representative.

(AA) Discharge means to add any pollutant or combination of pollutants from a point source to waters of the state.

(BB) Distribution and utilization methods means any method of manure management not under the control of the facility ~~mean written methods of how manure will be distributed and utilized in a manner that may include land application by a person other than the owner or operator and conducted in accordance with rule 901:10-2-11 of the Administrative Code~~.

(CC) Ditch means an excavation, either dug or natural, for the purpose of drainage or irrigation.

(DD) Diversion means a channel constructed across the slope for the purpose of intercepting surface runoff.

(EE) Draft action means a written statement that gives the director's intention with respect to the issuance of any permit, including a NPDES permit or a general permit, concerning which persons authorized by regulation or by section 903.09 of the Revised Code may file comments or request a public meeting, but which will not be the subject of an adjudication hearing before the director.

(FF) Drinking water source protection area for a public water system means:

(1) For a public water system using groundwater, the surface and subsurface area surrounding the well(s) of the public water system that will provide water from an aquifer to the well(s) and that is delineated or endorsed by the Ohio environmental protection agency under Ohio's wellhead protection and source water assessment and protection programs; or

(2) For a public water system using surface water, the drainage area contributing surface water runoff to the water intakes of the public water system that is delineated or endorsed by the Ohio environmental protection agency under Ohio's source water assessment and protection program.

(GG) Effluent limitation means any restriction imposed by the director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the state.

(HH) Fabricated structure means a type of manure storage or treatment facility constructed of engineered, man-made materials such as cast-in-place reinforced concrete, pre-cast concrete, masonry, timber, steel, fiberglass or plastic but does not mean a manure storage pond, a manure treatment lagoon or any of the components of either a manure storage pond or manure treatment lagoon such as described in paragraph (A)(9)(c)(ii) of rule 901:10-2-06 of the Administrative Code. A fabricated structure may contain either solid or liquid manure.

~~(II) Facility means concentrated animal feeding operation and has the same meaning as division (F) of section 903.01 of the Revised Code and refers to those operations that are subject to the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated. Facility shall also mean concentrated animal feeding facilities and has the same meaning as division (E) of section 903.01 of the Revised Code and refers to those facilities that are subject to permits to operate.~~

~~(JJ)~~(II) Fact sheet means the statement of facts provided for in paragraph (A) of rule 901:10-6-05 of the Administrative Code relative to issuance of a NPDES permit.

~~(KK)~~(JJ) Field surface furrow means an area of short-term low-gradient non-erosive concentrated surface water runoff which occurs during or shortly after precipitation events and is not a river, stream, ditch or grassed waterway. Field surface furrows are areas that are normally planted with crops each year.

~~(LL)~~(KK) Fecal coliform means fecal coliform bacteria and is listed with approved methods of analysis in table 1A at 40 CFR 136.3.

~~(MM)~~(LL) Floodplain means the area designated by the federal emergency management agency adjoining any river, stream, watercourse or lake that has been or may be covered by floodwater.

~~(NN)~~(MM) Floodway means the channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than the allowable rise as designated by the federal emergency management agency, not exceeding one foot.

~~(OO)~~(NN) Grassed waterway means a natural or constructed channel that is shaped or graded to required dimensions and established with suitable vegetation to filter and convey runoff from fields, terraces, diversions or other concentrated water runoff without causing erosion or flooding.

~~(PP)~~(OO) Ground water means any water below the surface of the earth in a zone of saturation, but does not include perched water.

~~(QQ)~~(PP) Injection means the placement of manure beneath the surface of the soil in the crop root zone but not extending beyond the boundary of a land application site and using equipment specifically designed for this purpose.

~~(RR)~~(QQ) Installation means the permanent fabrication, erection or installation of a manure storage or treatment facility or manure control equipment at the location where the manure storage or treatment facility or manure control equipment is intended to be used. The term does not include the following:

(1) The dismantling of existing equipment and control devices;

(2) The ordering of equipment and control devices;

(3) Off-site fabrication; and

(4) Site preparation.

~~(SS)~~(RR) Integrated pest management means a sustainable approach to pest management that combines the use of prevention, avoidance, monitoring and suppression strategies that minimizes and reduces the activity and presence of insects and rodents and keeps such activity and presence below economically damaging levels, minimizing chemical use to reduce pest resistance and the harmful effects of pest control on human health and environmental resources. Integrated pest management includes management, biological controls and the judicious use of chemical controls.

~~(TT)~~(SS) Karst terrain means an area where karst topography, including the characteristic surface and subterranean features, has developed as the result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features present in karst terrains may include the following:

(1) Sinkholes;

(2) Sinking streams;

(3) Caves.

~~(UU)~~(TT) Land ~~application sites or land~~ application areas means land under the control of a concentrated animal feeding operation ~~owner or operator~~, whether it is owned, rented, leased ~~or subject to access agreement with the landowner,~~ or otherwise under the control of the owner or operator, to which manure, or process wastewater from the production area is or may be applied.

~~(VV)~~(UU) Liquid manure means manure containing more than or equal to eighty percent liquid.

~~(WW)~~(VV) Livestock manure broker means a person who is in the business of buying, selling, or land applying manure.

~~(XX)~~(WW) Livestock manure applicator means a person who is in the business of transporting and land applying manure.

~~(YY)~~(XX) Manure application means the placement of manure within the boundaries of a land application site by:

(1) Spraying or spreading onto the land surface;

(2) Injection below the land surface in the crop root zone using equipment specifically designed for this purpose; or

(3) Incorporation into the soil by means of the mixing of manure with the surface soil using standard agricultural practices, such as tillage.

~~(ZZ)~~(YY) Manure management plan (MMP) means a written plan that adheres to the terms in paragraph (A)(1) of rule 901:10-2-07 of the Administrative Code.

[Comment: A person preparing a manure management plan is advised to refer to guidance on comprehensive nutrient management plans that have similar components for manure management plans. Comprehensive nutrient management plan standards are prepared and published by the Natural Resource Conservation Service, an agency of the United States department of agriculture. However, the scope of comprehensive nutrient management plans exceeds the requirements of Chapter 903. of the Revised Code and rules of the chapter.]

~~(AAA)~~(ZZ) Manure residuals means settled manure solids combined with varying amounts of water and dissolved materials that remain after some form of treatment.

~~(BBB)~~(AAA) Manure spill means any unexpected, unintended, abnormal or unapproved dumping, leakage, drainage, seepage, discharge, release or other loss of manure. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

(BBB) Manure storage area means an area of an animal feeding facility used by the owner or operator for the storage of manure produced by the facility. Manure storage areas include, but are not limited to, manure storage or treatment facilities, lagoons, runoff ponds, storage sheds, stockpiles, stacking areas, under house or pit storages, liquid impoundments, and composting piles.

(CCC) 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. These facilities include manure storage ponds, manure

treatment lagoons, fabricated structures, lagoons, manure storage sheds, ~~stockpiles,~~ under house or pit storages, and composting areas.

(DDD) Manure storage pond means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to store or settle manure. A manure storage pond contains liquid manure.

(EEE) Manure treatment lagoon means a type of manure storage or treatment facility consisting of an earthen impoundment made by constructing an embankment and/or excavating a pit, the purpose of which is to biologically treat manure. A manure treatment lagoon contains liquid manure.

(FFF) Modification means one or more of the following:

(1) A material and substantial alteration of the facility including an increase of the number of animals that exceed the design capacity of an existing facility by ten per cent or more in excess of the design capacity set forth in the current permit, provided that in no case during a five year period shall the facility's or facility's capacity be modified to increase by more than ten per cent in the aggregate.

(2) Any structural change to the facility that will alter compliance with siting criteria as set forth in rule 901:10-2-02 of the Administrative Code;

(3) Any changes to the insect and rodent control plan approved by the director except as set forth in paragraphs (E) and (F) in rule 901:10-2-19 of the Administrative Code;

(4) Changes described in rule 901:10-1-09 of the Administrative Code ~~for NPDES operations~~; or

(5) Changes to the manure storage or treatment facility that result from <u>an expansion of the existing facility by ten percent or more in excess of treatment or storage capacity.</u> ~~any of the following:~~

~~(a) An expansion of the existing facility by ten per cent or more in excess of treatment or storage capacity;~~

~~(b) A significant change in treatment technology; or~~

~~(c) Closure of part of the manure storage or treatment facility and termination of permit coverage under Chapter 903. of the Revised Code.~~

(GGG) Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year in accordance with appendix e of rule 901:10-2-14 of the Administrative Code.

(HHH) Neighboring residence means any occupied permanent dwelling acquired by its current owner prior to the application for a permit to install a new animal feeding operation or prior to the initial construction of an animal feeding operation for which an application for a permit to install expansion or modification has been submitted. A neighboring residence does not include any dwelling owned by the owner or operator of the production area of the facility at the time the permit to install application is submitted.

(III) New discharger means any building, structure, facility, or installation:

(1) From which there is or may be a discharge of pollutants;

(2) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(3) Which is not a new source; and

(4) Which has never received a final effective NPDES permit for discharges at that site.

(JJJ) New source is defined at 40 CFR 122.2 and new source criteria are as defined at 40 CFR 122.29(b).

(KKK) Nitrate (as N) means nitrate reported as nitrogen and is listed with approved methods of analysis in table 1B at 40 CFR 136.

~~(LLL) Nonpoint source pollution means any source of pollutants other than those defined as point sources. Nonpoint sources include but are not limited to in-place contaminants, direct wet and dry deposition, groundwater inflow, and overland runoff. Nonpoint source pollution is generally carried off the land by stormwater runoff.~~

~~Comment: Common sources of nonpoint source pollution include agriculture, forestry, urban areas, mining and construction.~~

~~(MMM)~~(LLL) Notice of deficiencies resulting in noncompliance means a notice issued in accordance with section 903.16 or section 903.17 of the Revised Code:

(1) Informing the owner or operator of the deficiencies resulting in noncompliance, including a reference to a particular statute, administrative rule(s) or order involved, the location of the violation when appropriate and the consequences of the violation or future violations;

(2) Directing the owner or operator to perform those actions necessary to comply with the permit including rules or any orders made pursuant to this chapter and to pay a penalty;

(3) Specifying a reasonable period of time by which compliance is to be achieved or is to be implemented not to exceed thirty days after the date of notice, or if the violation requires more than thirty days to correct, a period of time contained in a compliance plan acceptable to the department;

(4) Issued by the director or the director's designated representative; and

(5) In writing and shall be served personally or by registered or certified mail.

~~(NNN)~~(MMM) Nutrient means, for purposes of Chapter 903. of the Revised Code, nitrogen or phosphorus.

~~(OOO)~~(NNN) Operating record means the written record of a facility and other activities conducted under a permit to operate maintained by the owner or operator as found in rule 901:10-2-16 of the Administrative Code.

~~(PPP)~~(OOO) Owner or operator, for the purposes of sections 903.02, 903.03, 903.04 and 903.05 of the Revised Code, means the person that owns or operates the manure storage or treatment facility or the concentrated animal feeding facility or concentrated animal feeding operation or major concentrated animal feeding facility as found in divisions (M), (N), (O), and (EE) of section 903.01 of the Revised Code.

(1) Owner means the person who has the right to control or in fact controls management of the facility or the selection of officers, directors, or managers of the facility or holds or is able to control, either directly or through a holding company or subsidiary, by means of any of the following:

(a) The person holds at least twenty-five per cent of the equity of the facility which is a business concern that is a publicly traded corporation; or

(b) The person is any other business concern not covered in paragraph (PPP)(1)(a) of this rule and holds at least fifty per cent of the equity of the facility; or

(c) The person has provided a loan to the facility with provisions for the right to control management of the facility or actual control of the facility or the selection of officers, directors, or managers of the facility.

(2) Types of ownership may include the any of the following:

(a) "Business concern" means any corporation, association, firm, partnership, trust, or other form of commercial organization.

(i) "Sole proprietorship" means a form of business concern, other than a partnership or corporation, in which one person owns all the assets and is solely liable for all the debts of the business. Sole proprietor includes any individual or entity in which an individual is an applicant or permittee or prospective owner.

(ii) "Partner" means a business concern where any person holding a position as, or similar to, a general partner, as defined in division (E) of section 1782.01 of the Revised Code, or a limited partner, as defined in division (F) of section 1782.01 of the Revised Code, or persons who share profits and liability and have management powers of a partnership, as partnership is defined in section 1775.05 of the Revised Code.

(iii) "Publicly traded corporation" means a business concern that is a corporation:

(a) Whose shares are listed on a national securities exchange; or

(b) Whose shares are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association; or

(c) With fifty or more shareholders.

(b) "Equity" means any ownership interest in a business concern, including sole proprietorship, the shares of a partner, and stock in a corporation.

(c) "Loans" means notes, mortgages, or financial loans of any kind, secured or unsecured, unless held by a chartered lending institution.

(3) "Operator" means the person responsible for the direct control or overall operations of a facility, and whose duties or responsibilities involve, in whole or part, the management of the facility and the exercise of independent or discretionary judgment. An operator may include the person who has the right to control or in fact controls management of the facility ~~and~~ or the selection of officers, directors, or managers of the facility.

~~(QQQ)~~(PPP) Overflow means the discharge of manure resulting from the filling of manure storage or treatment facilities beyond the point at which no more manure or stormwater can be contained by the facilities.

~~(RRR)~~(QQQ) Past violations for purposes of rule 901:10-5-04 of the Administrative Code means violations of Chapter 903. of the Revised Code and rules promulgated thereunder that have occurred on more than one occasion in the past five years.

~~(SSS)~~(RRR) Pests means detrimental insects and rodents.

~~(TTT)~~(SSS) Phosphorus (as P) means the same as phosphate in these rules.

~~(UUU)~~(TTT) Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, large concentrated animal feeding operation, medium concentrated animal feeding operation, small concentrated animal feeding operation, landfill leachate collection system, vessel or other flooding craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

~~(VVV)~~(UUU) Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

~~(WWW)~~(VVV) Professional engineer means a person qualified to practice engineering according to the provisions of Chapter 4733. of the Revised Code and is presently registered by Ohio's board of registration for professional engineers and land surveyors.

~~(XXX)~~(WWW) Precipitation event means:

(1) A ten year, twenty-four hour rainfall event with a probable recurrence interval of once in ten years, or

(2) A twenty-five year, twenty-four hour rainfall event with a probable recurrence interval of once in twenty-five years; or

(3) A one-hundred year, twenty-four hour rainfall event.

(4) The terms ten year, twenty-four hour precipitation event, twenty-five year, twenty-four hour precipitation event, and one-hundred year, twenty-four hour

precipitation event shall mean a precipitation event with a probable recurrence interval of once in ten years or twenty-five years or one hundred years, respectively, as defined by the national weather service in technical paper number forty, rainfall frequency atlas of the United States, May 1961, and subsequent amendments or equivalent regional or state precipitation probability information.

~~(YYY)~~(XXX) Public water system, or PWS, means a system which provides water for human consumption through pipes or other constructed conveyances for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes any collection, treatment, storage and distribution facilities under the control of the operator of such system and used primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system and any water supply system serving an agriculture labor camp, as defined in section 3733.41 of the Revised Code. A public water system is either a "community water system" or a "non-community water system".

(1) Community water system or CWS means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

(2) Non-community water system or NCWS means a public water system that is not a community water system.

(a) Non-transient non-community water system or NTNCWS means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year.

(b) Transient non-community water system or TNCWS means a non-community public water system that does not regularly serve at least twenty-five of the same persons over six months of the year.

~~(ZZZ)~~(YYY) Reasonably available means a person that is within a two hour drive of the facility ~~that a livestock manager certified in accordance with rule 901:10-1-06 of the Administrative Code is physically located within the state~~ and is available by telephone or by electronic communication.

~~(AAAA)~~(ZZZ) Seasonal salmonid habitat means rivers, streams and embayments designated a seasonal salmonid aquatic life habitat by the Ohio environmental protection agency as set forth in Chapter 3745-1 of the Administrative Code.

~~(BBBB)~~(AAAA) Setback means a specified distance from surface waters, wells, neighboring residences, or potential conduits to surface waters where manure, and

process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

~~(CCCC) Significant capital expenditure means a capital expenditure that exceeds the dollar amount specified for the following per animal:~~

~~(1) Five dollars and sixty cents each for mature dairy cow, whether milked or dry;~~

~~(2) Four dollars each for cattle other than mature dairy cows or veal calves, including heifers, steers, bulls, and cow/calf pairs;~~

~~(3) One dollar and sixty cents each for swine weighing fifty-five pounds or more;~~

~~(4) Eight dollars each for horses;~~

~~(5) Seven cents each for turkeys;~~

~~(6) Four cents each for laying hens or broilers, if the animal feeding facility does or does not use a liquid manure handling system.~~

~~Comment: If private financial data is submitted to make a claim regarding significant capital expenditure, then the owner or operator may claim the data as a trade secret. The department will inform the owner or operator that the owner or operator has the option to claim private financial data as trade secret.~~

~~(DDDD)~~(BBBB) Solid manure means manure containing greater than twenty per cent total solids.

~~(EEEE)~~(CCCC) Sole source aquifer means an aquifer designated by the United States environmental protection agency as the sole or principal source of drinking water for a given aquifer service area.

~~(FFFF)~~(DDDD) Soil means unconsolidated, erodible earth material consisting of minerals or organics.

~~(GGGG)~~(EEEE) Soil horizon means a layer of soil, approximately parallel to the soil surface, with characteristics produced by soil-forming processes.

~~(HHHH)~~(FFFF) Staging or staging area means the land application area ~~site~~ used for placement of manure at the time of delivery in such a manner as to facilitate land application within fifteen days ~~twenty-four hours for the duration of the land application~~ at that site. Staging includes the transfer of liquid manure from transport vehicles to land application equipment ~~for subsurface injection~~.

*** DRAFT – NOT FOR FILING ***

~~(III)~~(GGGG) Stockpile or stockpile area means field placement of the amount of manure to be used at a land application area ~~site~~.

~~(JJJJ)~~(HHHH) Storage or storage period means the length of time anticipated between manure clean-out events provided that manure storage does not mean any form of manure containment for a period of fourteen days or less.

~~(KKKK)~~(IIII) Substantial compliance when referring to compliance with the provisions of a permit, means following the effluent limitations and best management practices set forth in the permit.

(JJJJ) Surface waters of the state means all streams, lakes, ponds, marshes, watercourses, wetlands, springs, drainage systems, and other bodies or accumulations of surface water, natural or artificial, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

~~(LLLL)~~(KKKK) Total coliform means all coliform bacteria and is listed with approved methods of analysis in table 1A at 40 CFR 136.3.

~~(MMMM)~~(LLLL) Total dissolved solids means nonfilterable residue and is listed with approved methods of analysis in table 1B at 40 CFR 136.

~~(NNNN)~~(MMMM) Trade secrets means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, improvement, business information or plans, financial information, listing of names, addresses, or telephone numbers that satisfies both of the following:

(1) It derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means by other persons who can obtain economic value from its disclosure or use.

(2) The person claiming the secrets has taken reasonable efforts under the circumstances to maintain secrecy.

~~(OOOO)~~(NNNN) Uncovered means any manure storage or treatment facility that allows exposure of manure to precipitation events or to the run-on or run-off from precipitation events.

~~(PPPP)~~(OOOO) Variance means a type of permit modification that applies to NPDES permits.

~~(QQQQ)~~(PPPP) Zoonotic diseases means illnesses that can be transmitted between humans and animals.

*** DRAFT – NOT FOR FILING ***

901:10-1-02 **General administrative requirements for permits.**

(A) Requirements for an individual permit to install, an individual permit to operate, or an individual NPDES permit:

(1) A person who is required to obtain both a permit to install pursuant to section 903.02 of the Revised Code and a permit to operate pursuant to section 903.03 of the Revised Code shall submit both applications for these permits simultaneously.

(2) A facility that is required to obtain both an 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 permit as federally enforceable. For purposes of Chapters 901:10-1 to 901:10-6 of the Administrative Code, the term NPDES permit, NPDES operation, and concentrated animal feeding operation is an animal feeding facility that is subject to the NPDES permit as established in section 402 of the 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.

Comment: A person who seeks coverage by a general permit must refer to rules 901:10-3-11, and 901:10-4-01 to 901:10-4-06 of the Administrative Code for a general permit to operate, general NPDES permit or general NPDES stormwater permit.

(3) An application for a permit to install, a permit to operate, or a NPDES permit to be deemed complete, must include:

(a) All required information as set forth in Chapter 901:10-2 and, if applicable, Chapter 901:10-3 of the Administrative Code, and shall accompany the application; and

(b) An appropriate fee as stated in rule 901:10-1-04 of the Administrative Code.

(c) Any supplemental information which is completed to the satisfaction of the director.

(d) If the application and accompanying materials submitted to the department is deemed to be incomplete, the department will notify the owner or operator with instructions as to what is missing or what needs to be completed.

(4) An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information:

(a) 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;

(b) When required by section 903.05 of the Revised Code, each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application. If the permit to install and the permit to operate are submitted simultaneously as provided in division (A)(9) of section 903.10 of the Revised Code, then the following information is sufficient to satisfy the requirements of the permits:

(i) A listing of all concentrated animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating in Ohio;

(ii) A listing of the concentrated 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 concentrated animal feeding facilities that the owner or operator has operated or is operating outside the United States;

(iii) 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 concentrated 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 concentrated animal feeding facility that the owner or operator has operated or is operating outside of the United States. The lists of

concentrated 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.

(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.

(6) In the case of an application that meets the criteria established in sections 307.204 and 505.266 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 facility will be located, certifying that, in accordance with those sections, the applicant has provided the boards with the required written notification and that final recommendations, if any, regarding improvements and costs of improvements have been made by the boards.

(7) An application for a permit to install a concentrated animal feeding facility shall contain documentation or correspondence that verifies that the owner or operator has ~~consulted with~~ notified local officials, including boards of county commissioners, county engineer, and ~~or~~ boards of township trustees to address infrastructure needs and financing of that infrastructure which includes but is not limited to:~~.~~

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

(b) Notwithstanding any exemptions that may be applicable under section 5577.042 of the Revised Code, the owner or operator shall provide the anticipated number and weights of motor vehicles traveling to and from the facility with an estimated maximum overall gross weight of vehicles upon the road surface;

(c) Operational needs of the proposed facility for access to roads and location of such access; and

(d) Operational needs of the proposed facility for access to tiles, culverts, off-site drainage, rights-of-way for manure transport.

(8) A certification statement as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. "Based on my inquiry of the

person or persons who manage the system, or those persons directly responsible for gathering information the information is, to the best of my knowledge and belief, true and accurate and complete. I am aware there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(9) A complete application is required.

(a) Any person who requires a permit shall complete, sign, and submit to the director an application for each permit required.

(b) The director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit.

(c) Permit applications must comply with the signature and certification requirements of this rule.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied in accordance with division (F) of section 903.09 of the Revised Code and appropriate enforcement actions may be taken under applicable provisions of the Chapter 903. of the Revised Code and rules promulgated there under.

(B) The owner or operator shall maintain a copy of the current permit to install, permit to operate or NPDES permit issued by the department at the facility site office.

(C) Duration and renewal.

(1) Permit to install.

(a) A permit to install shall expire after twenty-four months 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.

(b) The director may extend the expiration of a permit to install upon request of the applicant. An extension, if approved, will be valid for twelve months.

(c) Any further extensions are at the discretion of the director.

(2) Permit to operate.

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

(b) 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 application for permits to operate that are established by rules, including rules 901:10-2-07 to 901:10-2-20 of the Administrative Code.

(D) NPDES permit.

(1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by a general permit under Chapter 901:10-4 of the Administrative Code, must submit a complete application to the director in accordance with this rule and Chapter 901:10-2 of the Administrative Code. ~~All concentrated animal feeding operation owners or operators must seek coverage under an NPDES permit, unless the owner or operator has received from the director notification of a determination that the concentrated animal feeding operation has "no potential to discharge" manure.~~

(2) Any person proposing a new discharge shall submit an application at least one hundred and eighty days before the date on which the discharge is to commence unless permission for a later date has been granted by the director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred and eighty days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity.

(3) When a concentrated animal feeding operation is owned by one person but is operated by another person, the operator may obtain a permit.

(4) Facilities undergoing construction activities that include clearing, grading, excavating, grubbing and/or filling activities that result in the disturbance of one or more acres shall submit applications at least ninety days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits.

(5) Applicants for concentrated animal feeding operations must submit form 2B.

(6) A NPDES permit shall be valid for a period not to exceed five years.

(7) A NPDES permit may be renewed. An application for renewal of a NPDES permit shall be submitted to the director at least one hundred eighty days prior to the expiration date of the NPDES permit and shall comply with the requirements governing applications for permit to operate and NPDES permit applications that are established in Chapters 901:10-2 and 901:10-3 of the Administrative Code.

(E) A permit to operate application that is not connected with an application for a NPDES permit or a permit to install shall be acted upon not later than ninety days after

receipt of a complete application as provided by paragraph (A)(9) of this rule. The director or the director's authorized representative may provide guidance and technical assistance to the applicant, provided that the owner or operator is responsible for compliance with the permit and the director shall not be estopped from enforcement.

*** DRAFT – NOT FOR FILING ***

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

(A) Criteria for decision making by the director. The director shall deny, modify, suspend or revoke a permit to install or permit to operate if:

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

(2) The designs and plans fail to conform to best management practices and to the rules in this chapter or if the owner or operator fails to build the facility in accordance with design plans as approved in the permit to install or in accordance with amended and approved design plans; or

(3) The plans for the manure management plan, the insect and rodent control plan and any other plans governing the operation fail to conform to best management practices and to rules of this chapter; or

(4) The director determines that the designs and plans describe a proposed discharge or source for which a NPDES permit is required under this chapter and that will conflict with an areawide waste treatment plan adopted in accordance with section 208 of the Act; or

(5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality; or

(6) The director determines that the applicant or owner or operator has not complied with rule 901:10-1-10 of the Administrative Code.

(B) The director may deny, modify, suspend or revoke a permit to install or permit to operate if:

(1) The applicant or owner or operator and persons associated with the applicant or owner or operator, 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 environmental laws of another country that indicates that the applicant or owner or operator lacks sufficient reliability, expertise and competence to operate the ~~proposed new or modified~~ facility in substantial compliance with Chapter 903. of the Revised Code and this chapter.

(a) In evaluating a history of substantial noncompliance as required, the director may consider all of the following for a period of five years preceding the date of the application:

(i) Any information submitted on ownership and background pursuant to rule 901:10-1-02 of the Administrative Code, including the following:

(a) If the applicant or permittee is a publicly traded corporation, provide the full name, date of birth, and business address of each individual or business concern holding more than twenty-five per cent of the equity in the applicant or permittee; or

(b) If the applicant or permittee is a sole proprietor or any other business concern, provide the full name, date of birth, and business address of each individual or business concern holding more than fifty per cent of the equity in the applicant or permittee;

(c) If the applicant or permittee is a partnership, as partnership is defined in section 1775.05 of the Revised Code, provide the full name, date of birth, and business address of each individual or business concern holding more than fifty per cent of the equity in the applicant or permittee; and

(d) If the applicant or permittee is the recipient of a financial loan to the facility with provisions for the right to control management of the facility or actual control of the facility or the selection of officers, directors, or managers of the facility, identify the full name, date of birth, and business address of each individual or business concern providing the loan.

(ii) Any administrative enforcement action (including an administrative order or notice of violation), civil suit, or criminal proceeding that is:

(a) Pending against the applicant or a business concern owned or controlled by the applicant;

(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

(ii) Cessation or suspension of operations.

~~*(iii)*~~*(c)* Any revocation, suspension, or denial of a license or permit or equivalent authorization; or

~~*(iv)*~~*(d)* With respect to paragraph (B)(1)(a) of this rule, any explanation that the applicant or owner or operator may choose to submit.

(C) In addition to the criteria set forth in paragraphs (A) and (B) of this rule, 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 section 6111.041 of the Revised Code and the most current antidegradation policy adopted under section 6111.12 of the Revised Code; 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.

*** DRAFT – NOT FOR FILING ***

901:10-1-05 **Trade secrets requests for confidentiality.**

(A) Applicant means a person submitting a claim of trade secrecy to the director or to the director's authorized representative.

(B) Records, reports or other information obtained under Chapter 903. of the Revised Code or rules thereunder may be entitled to protection as trade secrets. In order to be protected, the applicant shall demonstrate to the director's satisfaction that all or part of such records, reports or other information, (including attachments that are required to be submitted), or other part thereof (other than effluent data) to which the director has access under this rule, if made public would divulge methods or processes or other information entitled to protection as trade secrets. If the director determines that the claim for trade secret is satisfied, the director shall consider such records, reports, or other information or part thereof confidential and manage the records, reports or other information pursuant to this rule.

(C) The following information is considered a public record 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 the department 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.

(D) A request for confidentiality shall be submitted to the director simultaneously with submission of the specific record, report or other information. The applicant shall clearly indicate the record, report or information as trade secret and shall label it "trade secret". Failure to make such request simultaneously shall constitute a waiver of the right to prevent public disclosure. A request for confidentiality shall be accompanied by documents that support the request which include:

(1) Describe the measures the applicant has taken to safeguard the confidentiality of the information.

(2) Indicate whether or not others are bound by a confidentiality agreement.

(E) A decision as to the confidentiality request shall be made by the director within forty-five days of receipt of a request filed in accordance with this rule. Until such decision is made, the record, report or other information or part thereof, shall be

confidential and maintained by the director in a separate file labeled "confidential". The applicant shall be notified by mail of the decision.

(F) Any record, report or other information determined to be confidential may be disclosed without the applicant's consent 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.

~~(G) Ten days prior to release of the trade secret to those described in paragraph (E) of this rule, the director shall give notice to the claimant of the release of the information.~~

*** DRAFT – NOT FOR FILING ***

901:10-1-06 **Certified livestock manager.**

(A) Purpose and applicability.

(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~~ that has a current livestock manager certification and that is reasonably available to the facility.

(2) No person who is a livestock manure broker shall buy, sell, or land apply annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(3) No person who is a livestock manure applicator shall land apply and transport annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.

(4) Any person subject to this rule who is either a livestock manure broker or a livestock manure applicator shall maintain an operating record on forms provided by the department and other forms selected by the livestock manure broker or livestock manure applicator and approved by the director. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document the following information for land application:

(a) Paragraphs ~~(A)(1)(c)(ii) to (A)(1)(c)(iv)~~ (B) of rule 901:10-2-16 of the Administrative Code; ~~and~~

~~(b) Paragraphs (A)(1)(c)(xiv) to (A)(1)(c)(xvii) of rule 901:10-2-16 of the Administrative Code.~~

(5) In order for a person to manage or handle manure at a major concentrated animal feeding facility or for a person to either transport and land apply manure or to, buy, sell or land apply annually more than four thousand five hundred dry tons of solid manure or more than twenty-five million gallons of liquid manure in this state, they shall obtain a livestock manager certification from the department. In the alternative, the person may present a certified copy of an equivalent and valid manure manager certification from another state, which has been verified by the director or his designated representative, together with the appropriate fee as listed in the fee rule.

(6) This rule does not apply to a person who is an owner or operator of a concentrated animal feeding facility permitted by the director in accordance with section 903.02 of the Revised Code or section 903.03 of the Revised Code, unless that person applies other manure from another animal feeding facility, concentrated animal feeding facility, or major concentrated animal feeding facility in excess of four thousand five hundred tons per year of solid manure or more than twenty-five million gallons of liquid manure per year.

(7) A person is considered to be under supervision of a certified livestock manager if the holder of the certification is reasonably available, but not necessarily physically present, during the management and handling of manure. The certified livestock manager cannot claim the lack of presence as a defense under Chapter 903. of the Revised Code.

(B) Application and certification procedures.

(1) In order to be a certified livestock manager, the applicant must meet the requirements in paragraphs (D)(1) to (D)(5) of this rule.

(2) The applicant for a livestock manager certification shall file an application on a form provided by the director. The application shall include but not be limited to: address and telephone number of the applicant; the results of the applicant's test results for any examination completed by the applicant as described in paragraphs (D)(1) to (D)(5) of this rule; and if applicable, the quantity of manure managed or handled by the applicant.

(3) All certifications issued shall expire on December thirty-first of the third year after the year in which the certificate was issued and each December thirty-first triennially thereafter, unless renewed in accordance with this rule. Any certification issued shall be valid for three years and thereafter be subject to renewal. A renewal shall be valid for three years.

(4) The department shall charge an appropriate fee as listed in the fee rule 901:10-1-04 of the Administrative Code for the issuance and renewal of a livestock manager certification.

(5) In order for a certification to be renewed, the holder must accumulate ten hours of continuing education credit over a three year period immediately preceding the date of application..

(C) Enforcement.

(1) The director may suspend, revoke or deny a livestock manager certification if the certified livestock manager:

(a) Engages in fraud or deceit in obtaining a certification; or

(b) Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager; or

(c) Is incompetent or otherwise unable to properly perform the duties of a certified livestock manager; or

(d) Has violated or caused to be violated any provision of ~~or~~ rules of Chapter 903. of the Revised Code.

(2) If a livestock manager certification is suspended, the suspension shall be in effect for a period of not less than two hundred seventy days. After the required two hundred seventy days has passed and if there is substantial evidence that the conditions leading to the suspension have been corrected, the director may issue a certificate to reinstate the suspended livestock manager certification. A person may apply in writing for reinstatement. The petition must include any relevant facts concerning changes to conditions under which suspension or revocation occurred.

(3) If a livestock manager certification is revoked, the livestock manager has a right to a hearing in accordance with Chapter 119. of the Revised Code.

(4) If a livestock manager certificate is denied, the livestock manager is entitled to a hearing in accordance with Chapter 119. of the Revised Code.

(5) If a certified livestock manager fails to renew his certification within thirty days of its expiration, he or she must make application for certification and meet the requirements of paragraph (B) of this rule.

(6) Violations of section 903.07 of the Revised Code and division (E) of section 903.10 of the Revised Code and this rule will be considered to be category II and low gravity as set forth in rule 901:10-5-04 of the Administrative Code.

(D) Training and examination procedures.

(1) The department may offer a training program and an examination for a livestock manager certification. The applicant shall have 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 for disposal of dead animals and manure management, including practices that control odor and protect the environment. The applicant shall be expected to have knowledge of how to devise and implement a manure management plan and an insect and rodent control plan. In addition, the applicant shall understand the laws and rules related to animal feeding facilities.

(2) An applicant for a livestock manager certification shall pay a fee as required by rule 901:10-1-04 of the Administrative Code.

(3) The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(4) The director has determined that the following training and certification programs satisfy this rule:

(a) If an applicant for a livestock manager certification demonstrates that he or she has the knowledge of information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training provided in accordance with the "certified crop advisor" program conducted by the "American Society of Agronomy" and demonstrates that he or she has successfully passed the examination, then the applicant will be eligible for a certificate issued in accordance with this rule; or

(b) If the applicant for a livestock manager certificate demonstrates that he or she has the knowledge of the information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training and certification of the United States department of agriculture natural resource conservation service relating to being a certified planner to prepare comprehensive nutrient management plans, then the applicant will be eligible for a certificate issued in accordance with this rule.

(5) The department may cooperate with or enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or other academic or private institutions for the purpose of administration of the training and examination portions of Chapter 903. of the Revised Code.

(6) In accordance with section 903.20 of the Revised Code, the director may call upon the concentrated animal feeding facility advisory committee to assist in establishing the standards of training and examination.

(7) Training and examination opportunities will be provided at such times and places as determined by the department in consideration of the number and location of requests.

*** 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 ***

901:10-1-09 **Permit modifications.**

(A) No facility or ~~activities~~ activity regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified ~~as that term is defined in rule 901:10-1-01 of the Administrative Code~~ unless the ~~permit~~ modification is ~~modified~~ in compliance with this rule. When a permit is modified, only the conditions subject to modification are reopened. A draft permit ~~modification~~ incorporating the proposed changes must be prepared and is subject to public notice and public participation procedures as set forth in rules 901:10-6-01 to 901:10-6-06 of the Administrative Code.

(B) The director may propose to modify a permit ~~for the following reasons which include, but are not limited to:~~ and may seek the consent of the owner or operator modifying the permit. The director may modify a permit for the following reasons which include, but are not limited to:

(1) ~~If the director receives information~~ Information submitted by the owner or operator requesting to modify the permit; ~~or~~

(2) ~~If the director receives information~~ Information obtained through inspections; ~~or~~

(3) ~~If the director reviews a~~ A permit is reviewed by the director, or~~.~~

(4) Other causes as provided in 40 CFR section 122.62(a).

~~The director may seek the consent of the owner or operator before the director modifies the permit. The director shall issue a notice of the proposed permit modification with an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.~~

(C) If the director seeks to modify the permit with the consent of the owner or operator and the owner or operator does not consent to the director's modification, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(D) If the director seeks to modify the permit without seeking the consent of the owner or operator, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

~~(C)~~(E) Either the director or any interested person including the permittee may ~~propose~~ request to modify a NPDES permit or revoke and reissue a NPDES permit or both for the following reasons:

(1) Alterations. There are material and substantial alterations, additions or expansions to the operation which occurred after a permit was issued ~~issuance~~ which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The director has received new information. NPDES permits may be modified during their term for this cause only if the information was not available at the time of permit issuance (other than revised rules or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For a new source of an NPDES discharge this cause shall include any significant information derived from effluent testing required after issuance of the permit.

(3) New regulations. The standards or rules on which the NPDES permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued. NPDES permits may be modified during their terms for this cause only as follows:

(a) For promulgation of amended standards or rules, when:

(i) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or on promulgated water quality standards or water quality standards approved by the United States environmental protection agency; and

(ii) ~~U.S.EPA~~ The United States environmental protection agency has revised, withdrawn or modified that portion of the rule or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(iii) An owner or operator requests modification within ninety days after Federal Register notice of the action on which the request is based.

(b) For judicial decisions, when: a court of competent jurisdiction has remanded and stayed rules; if the remand and stay concern that portion of the rules or guidelines on which the permit condition was based; and a request for a permit modification is filed by the owner or operator within ninety days of judicial remand.

(4) Compliance schedules. The director determines good cause exists for modification of a compliance schedule of a NPDES permit, such as acts of nature or acts of third parties, strike, flood, materials shortage or other events over which the owner or operator has little or no control and for which there is

no reasonably available remedy. However, in no case may a NPDES permit compliance schedule be modified to extend beyond any applicable statutory deadline in the act.

(5) When the owner or operator has filed a request for a variance under rule 901:10-3-08 of the Administrative Code or for a "fundamentally different factors" variance within the time specified in 40 CFR section 122.21. or 40 CFR section 125.27(a) for an NPDES permit.

(6) To correct technical mistakes (other than the operational changes ~~defined in paragraph (F) of this rule and~~ listed in the appendix to this rule), such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

(7) When the owner or operator is required by the director to incorporate an applicable toxic effluent standard or prohibition pursuant to Section 307(a) of the Act.

(8) When the owner or operator is required by the director to reopen conditions in a permit which are established in the permits for toxic effluent limitations and standards.

(9) Upon request of the owner or operator who qualifies for effluent limitations on a net basis under 40 C.F.R. section 122.45(g), or when a discharger is no longer eligible for net limitations, as provided in 40 C.F.R. 122.45(g)(1)(ii).

(10) Upon failure of the director to notify as required by rule 901:10-6-03(C) of the Administrative Code, another state whose waters may be affected by a discharge from the facility.

(11) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the facility under 40 C.F.R. section 125.3(c).

(12) To establish a notification level for toxic pollutants as provided in 40 C.F.R. section 122.44(f).

~~(D)~~(F) The owner or operator may submit a written application for modification ~~request~~ to the director for approval by the director if the following apply:

(1) The owner or operator ~~desires to accomplish~~ is requesting material or substantial alterations or expansions or additions to the facility or other changes defined as a modification; or

(2) New information or data obtained by the owner or operator justify permit conditions in addition to or different from those in the existing permit.

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~~(E)~~(G) An application for permit modification ~~or a major operational change submitted by the owner or operator~~ shall contain the following information:

(1) The name of the owner or operator and the name and address and telephone number of the facility or operation;

(2) A description of the exact nature of the changes to be made;

(3) An explanation of why the modification ~~or major operational change~~ is needed or requested ~~desired~~; and

(4) Applicable technical information in support of the request for modification ~~or major operational change,~~ including but not limited to, data, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.

(5) If the director decides that the request for modification is not justified, the requester and the owner or operator shall be notified in writing and provided the reasons for the director's determination.

(H) If the owner or operator plans a type of change that is not listed in the appendix to this rule, the owner or operator shall submit the information listed in paragraph (J) of this rule to the director. The director shall:

(1) Exercise discretion to determine if the type of change proposed by the owner or operator is a modification, an operational change, or a major operational change;

(2) Notify the owner or operator in writing of the director's determination that the submitted change is a modification, an operational change, or a major operational change; the approval or denial of the submitted change and the reasons for such determination to approve or deny.

(3) The owner or operator shall not commence any change until the director has acted in accordance with the requirements in paragraph (H)(2) of this rule.

(I) Major operational changes. The owner or operator shall submit to the director's authorized representative any planned major operational change listed in the appendix to this rule in accordance with paragraph (J) of this rule.

(1) The owner or operator shall not commence with any changes proposed in the planned major operational change submitted to the department until:

(a) The department has approved the planned major operational change and has notified the owner or operator in writing of such approval.

(b) If the department determines the planned major operational change submitted by the owner or operator is not approved, the owner or operator shall be notified in writing and provided the reasons for the department's determination.

(J) An owner or operator's application for a major operational change shall contain the following information:

(1) The name of the owner of operator and the name, address and telephone number of the facility or operation;

(2) A description of the exact nature of the changes requested;

(3) An explanation of why the major operational change is requested; and

(4) Applicable technical information in support of the request for the change, including but not limited to: date, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.

~~(F)~~(K) Operational changes. The owner or operator shall record operational changes in the operating record to be maintained at ~~Changes to~~ the facility. ~~that are not modifications as that term is defined in rule 901:10-1-01 of the Administrative Code may be either operational changes or major operational changes. Appended to this rule is a list of types of changes or activities that are operational changes and major operational changes. The owner or operator shall notify the director of any planned major operational change in accordance with paragraph (E) of this rule. The owner or operator shall provide the director or the director's authorized representative with an opportunity for a site inspection and with a thirty-day review of technical information. If the type of change or activity is not a modification and is not listed in the appendix, then the director shall exercise discretion to decide if the change proposed by the owner or operator or by the director is a modification or an operational change or a major operational change. Upon the request of the director or as initiated by the owner or operator, operational and major operational changes may be made by the owner or operator and shall be recorded in the operational record required by rule 901:10-2-16 of the Administrative Code.~~

(1) The director's authorized representative may review any operational change and any applicable information with the operational change; and

(2) The director's authorized representative may approve the operational change in writing. The director's authorized representative may signify approval of an operational change by the representative's signature and date in the operating record.

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(L) Operational changes and/or major operational changes made by the owner or operator and approved by the director in accordance with the requirements of this rule shall be recorded in the operating record as required in rule 901:10-2-16 of the Administrative Code and in the permit to install or permit to operate as applicable.

Appendix to rule 901:10-1-09 Operational Changes.

Operational change	Comment
To correct technical mistakes, such as errors in calculation made in determining land application rates; record changes and calculations in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rule 901:10-2-14 of the Administrative Code.
Administrative changes in Emergency Response Plan or Closure Plan, e.g., changes in personnel or telephone numbers; record in the emergency response plan or the operating record as applicable, in accordance with either rule 901:10-2-17 or 901:10-2-16 of the Administrative Code.	See rules 901:10-2-17 [emergency response] and 901:10-2-18 [closure plans] of the Administrative Code.
Changes in methods of handling and disposing of dead livestock; record in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rule 901:10-2-15 of the Administrative Code
Changes in rates of land application of nitrogen or phosphorus made for each land application ~~site~~ area that do not impact the total nutrient budget by more than ten per cent; compare to total nutrient requirements for the farm and record in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rule 901:10-2-14 of the Administrative Code.
Changes in frequency of sampling or monitoring or reporting of soil at the land application ~~sites~~ area or of manure at the manure storage or treatment facility that do not exceed the minimum requirements in rules 901:10-2-10 and 901:10-2-13 of the Administrative Code; record changes in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rules 901:10-2-13 [soil sampling and results] and 901:10-2-10 [manure characterization] of the Administrative Code.
Changes due to use of a Distribution and Utilization Plan that will either add or decrease the amount of manure to be managed by land application; record in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rule 901:10-2-11 of the Administrative Code.
Equipment replacement or upgrading with new or functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls) or to use technological advancements; record in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	See rule 901:10-2-08 of the Administrative Code.
Changes made in using different land application areas: identify and record new land application areas in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.	
If applicable, changes in any biosecurity plan maintained at the facility. Notify the Director in correspondence.	

Major operational changes.	Comment
Changes or addition of any manure storage or treatment facility, change in animal species or size, that is less than a 10 per cent increase in design capacity. Any additional manure volume generated less than 10 percent from the permitted design capacity including contaminated stormwater	See rule 901:10-2-02 of the Administrative Code.
Additional or advanced treatment systems (e.g., sand separators, solid separators, screen presses, screw presses and anaerobic digesters)	See rules 901:10-2-04 and 901:10-2-08 of the Administrative Code.
Changes to the Insect and Rodent Control Plan.	See rule 901:10-2-19 (F) of the Ohio Administrative Code.

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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. No person to whom an 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 land application areas.

(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.

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

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901:10-2-01 **Permit to install: purpose and applicability.**

(A) Purpose and applicability of a permit to install.

(1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director.

(2) Any person who plans to construct a large concentrated animal feeding operation or a concentrated animal feeding facility or major concentrated animal feeding facility shall comply with applicable rules 901:10-2-01 to 901:10-2-06 of the Administrative Code.

(3) Any animal feeding facility that is a small or medium concentrated animal feeding operation may be required by the director to comply with applicable rules 901:10-2-01 and 901:10-2-03 to 901:10-2-06 of the Administrative Code.

(a) If the director has made a determination that the medium or small animal feeding facility shall be required to be permitted as a medium or small concentrated animal feeding operation; and

(b) If the director determines that the existing animal feeding facility requires modifications in order to comply with best management practices.

(4) A person that is required to obtain both a permit to install pursuant to section 903.02 of the Revised Code and a permit to operate pursuant to section 903.03 of the Revised Code shall submit both applications for those permits simultaneously.

(B) Administrative procedures for a permit to install.

(1) In order to obtain a permit to install, the owner or operator shall submit:

(a) A properly completed application in accordance with paragraph (C) of this rule; and

(b) An appropriate fee as stated in rule 901:10-1-04 of the Administrative Code.

(2) The owner or operator may amend the application for a permit to install prior to the conduct of any public meeting that may be held for the draft permit to install and/or while the permit to install application is pending before the director. - ~~Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted to demonstrate compliance with paragraph (A) of rule 901:10-2-05 or paragraph (A) of rule~~

~~901:10-2-06 of the Administrative Code and shall be submitted for the permanent record. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals.~~

(3) The owner or operator shall notify the department prior to beginning actual construction of the manure storage or treatment facility.

(4) Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department.

(a) A copy of the completed and approved as-built plans shall be submitted to demonstrate compliance with paragraph (A) of rule 901:10-2-05 or paragraph (A) of rule 901:10-2-06 of the Administrative Code and shall be submitted for the permanent record.

(b) After submitting a copy of the completed as-built plans and after the facilities are inspected by the director or an authorized representative as required by this rule, an authorized representative of the director will issue authorization to stock animals or use a new manure storage or treatment facility and to thereby commence operations in accordance with any permit to operate issued for the facility. Facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking with animals or using any new manure storage or treatment facility.

~~(3)~~(5) The owner or operator shall maintain a copy of the current permit to install issued by the department at the concentrated animal feeding facility's site office. A copy of the completed and approved plans will be kept at the office of the facility.

~~(4)~~(6) A permit to install may be modified in accordance with rule 901:10-1-09 of the Administrative Code. The owner or operator shall not modify the concentrated animal feeding facility without obtaining a permit modification.

(C) Contents of an application for a permit to install.

Unless otherwise indicated, an application for a permit to install shall contain the information and criteria as required in rules 901:10-1-02 and 901:10-1-03 of the Administrative Code and shall attach and/or include 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 and the anticipated beginning and ending dates for work performed.

(3) 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 the water utilized and a statement identifying the source of the water.

(4) Copies of recorded water well logs on file with the Ohio department of natural resources division of water and their locations within a one thousand foot radius of the manure storage or treatment facility, as located on a map that includes the well locations.

(5) A scaled map adequate to show detail that includes, but is not limited to:

(a) Approximate overall dimensions of the manure storage or treatment facility;

(b) Boundaries of the concentrated animal feeding facility;

(c) Location and siting distances from the manure storage or treatment facility. For purposes of identifying and illustrating the siting criteria, the owner or operator of a large concentrated animal feeding operation or a concentrated animal feeding facility or a major concentrated animal feeding facility is to submit a document that demonstrates compliance with the siting criteria in rule 901:10-2-02 of the Administrative Code; and

(d) Identify the approximate location of all known subsurface drains within one hundred feet of the proposed manure storage or treatment facility.

(6) The report required by paragraph (C) of rule 901:10-2-03 of the Administrative Code, including the information on the soils, ground water sampling and analysis, hydrology, subsurface geology and topography of the land area used for the manure storage or treatment facility based on the subsurface geological exploration conducted in accordance with rule 901:10-2-03 of the Administrative Code. The report may also include site-specific information and conclusions derived from the site's subsurface geological exploration. If required as a result of the subsurface geological exploration conducted pursuant to rule 901:10-2-03 of the Administrative Code, additional groundwater monitoring shall be included.

(7) Designs, plans and detailed engineering drawings for the proposed construction of the concentrated animal feeding facility that comply with rules 901:10-2-04, 901:10-2-05 and/or 901:10-2-06 of the Administrative Code and include the proposed location of the construction site, and design and construction plans and

specifications, including anticipated beginning and ending dates for the work performed.

[Comment: Include detailed engineering drawings, for example; cross sections, pipe requirements, concrete or earthwork specifications, illustrations and profiles for construction of the manure storage or treatment facility.]

(8) The precipitation runoff and stormwater grading plans required by rule 901:10-2-04 of the Administrative Code.

(9) Manure characterized in accordance with rules 901:10-2-04 and 901:10-2-10 of the Administrative Code.

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901:10-2-02 **Permit to install: siting criteria.**

Manure storage or treatment facilities shall be designed and constructed in accordance with the criteria in paragraphs of (A) to ~~(N)~~ (O) of this rule. In this rule siting means a measure of horizontal or vertical distance for purposes of installing the manure storage or treatment facility.

(A) Water wells, class five agricultural wells together referred to hereinafter as "well".

(1) A fabricated structures shall be at least fifty horizontal feet from a well.

(2) A manure storage pond or manure treatment lagoon shall be at least three hundred horizontal feet from a well.

(B) Source water protection for public water systems.

(1) Public water wells.

(a) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within three hundred feet of a well serving a public water system that is owned or operated by the owner or operator of the facility and is a public water system located on the property of the owner or operator of the facility.

(b) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within the one-year time-of-travel contour from a well for which the Ohio environmental protection agency has delineated or endorsed a ground water source protection area and that serves a non-community water system not listed in paragraph (B)(1)(a) of this rule. If no ground water source protection area has been delineated or endorsed, then the fabricated structure, manure storage pond, or manure treatment lagoon shall not be located closer than three hundred feet from the well.

(c) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located within the one-year time-of-travel contour from a well for which the Ohio environmental protection agency has delineated or endorsed a ground water source protection area and that serves a community water system not listed in paragraph (B)(1)(a) of this rule or one thousand feet from a public water well whichever is greater.

(d) A fabricated structure, manure storage pond, and manure treatment lagoon shall not be located between the one-year and five-year time-of-travel contours from a well identified as highly susceptible unless additional ground water monitoring, or additional engineered controls or both are added, installed, and implemented as approved by the director.

(2) Surface water intake.

(a) A fabricated structure shall be located no closer than one thousand five hundred feet from a surface water intake.

(b) A manure storage pond or manure treatment lagoon shall be installed no closer than one thousand five hundred feet from a surface water intake.

(C) Streams.

(1) A fabricated structure on a concentrated animal feeding facility shall be located a minimum of one hundred twenty horizontal feet from a stream or three hundred horizontal feet from a stream if the fabricated structure is on a major concentrated animal feeding facility, unless additional design criteria are added, installed, and implemented as approved by the director.

(2) A manure storage pond or manure treatment lagoon on a concentrated animal feeding facility shall be located a minimum of three hundred horizontal feet from a stream or six hundred horizontal feet if the manure storage pond or manure treatment lagoon is located on a major concentrated animal feeding facility, unless additional design criteria are added, installed, and implemented as approved by the director.

(D) Cold water habitat and seasonal salmonid streams.

(1) A fabricated structure shall be located a minimum of three hundred horizontal feet from a cold water habitat or seasonal salmonid stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(2) A manure storage pond or manure treatment lagoon shall be located a minimum of six hundred horizontal feet from a cold water habitat and seasonal salmonid stream, unless additional design criteria are added, installed, and implemented as approved by the director.

(E) Aquifer.

A fabricated structure, manure storage pond or manure treatment lagoon shall have fifteen vertical feet of low permeability material, between the waste placement location and the uppermost aquifer, unless additional design criteria or groundwater monitoring are added, installed, and implemented as approved by the director. ~~As used in this rule and in Chapter 901:10-2 of the Administrative Code, low permeability material means low permeability among the soil types of geologic material presented in figure 7-11, Chapter 7, "Geologic and Ground Water~~

~~Considerations," part 651, "Agricultural Waste Management Field Handbook," June 1999.~~

(1) If additional design criteria or groundwater monitoring are added, installed or implemented, the manure storage pond or manure treatment lagoon shall have a minimum of five vertical feet of low permeability material, between the waste placement surface and the uppermost aquifer.

(2) As used in this rule and in Chapter 901:10-2 of the Administrative Code, low permeability material means low permeability among the soil types of geologic material presented in figure 7-11, Chapter 7, "Geologic and Ground Water Considerations," part 651, "Agricultural Waste Management Field Handbook," June 1999.

(F) Sole source aquifer.

A manure storage pond or manure treatment lagoon shall not be located above a sole source aquifer without design of ground water monitoring or engineered controls or both that are installed and implemented as approved by the director.

(G) Floodplains and floodways.

(1) The production area of a facility shall not be located in a one hundred year floodplain, as those boundaries are shown on the applicable maps prepared under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, without design of additional monitoring or engineered controls or both that are installed and implemented as approved by the director and in accordance with the following.

(a) The manure storage pond or manure treatment lagoon embankments and any wall of a fabricated structure shall be designed and constructed to withstand the hydrostatic pressures from a one hundred year flood that may be exerted on the embankments or walls during a flood event;

(b) The elevation of the top of the manure storage or treatment facility shall be at the summation of the elevation of the one hundred year flood plus a minimum freeboard height of two feet;

(c) Any monitoring wells installed pursuant to this rule shall be physically protected from the floodwaters.

~~(1)~~(2) A manure storage pond or manure treatment lagoon or fabricated structure - shall not be located in established regulatory floodways as designated by the federal emergency management agency. ~~a one hundred year floodplain without design of additional monitoring or engineered controls or both that are installed and implemented as approved by the director and by other appropriate permits.~~

~~(2) A manure storage pond or manure treatment lagoon shall not be located in established regulatory floodways as designated by the federal emergency management agency.~~

(H) Karst areas.

A fabricated structure, manure storage pond or manure treatment lagoon shall not be located in a karst area without design of groundwater monitoring or engineered controls or both that are installed and implemented as approved by the director.

(I) Bedrock.

A fabricated structure, manure storage pond or manure treatment lagoon shall be located a minimum of three feet, between the bottom of the waste placement location and bedrock where no aquifer is present.

(J) Mines.

A manure storage or treatment facility shall not be located in an area of potential subsidence, due to an underground mine known to be in existence prior to the date the application for a permit to install is submitted, without design of groundwater monitoring or engineered controls or both that are installed and implemented as approved by the director.

(K) Property lines, which are defined in this paragraph as property lines not under common ownership of the owner or operator of a facility covered by this rule and public roads.

A fabricated structure, manure storage pond or manure treatment lagoon shall be located no closer than one hundred horizontal feet from a property line or public road.

(L) Neighboring residences.

(1) A manure storage or treatment facility for solid manure at a concentrated animal feeding facility shall be no closer than five hundred horizontal feet from a neighboring residence. The manure storage or treatment facility for solid manure at a major concentrated animal feeding facility shall be no closer than one thousand horizontal feet from a neighboring residence.

(2) A manure storage or treatment facility for liquid manure at a concentrated animal feeding facility shall be no closer than one thousand horizontal feet from a neighboring residence. A manure storage or treatment facility for liquid manure at a major concentrated animal feeding facility shall be no closer than two thousand horizontal feet from a neighboring residence.