Appendix E Table 2 of rule 901:10-2-14.

Phosphorus Soil Test Risk Assessment Procedure
Nitrogen and Phosphorus Application Criteria For Manure

Criteria Applicable to All Soil Test Levels:
1. Nitrogen application rates from manure, shall be based on Total Ammonium Nitrogen Content plus 1/3 of the Organic Nitrogen calculated at time of application when applied during the summer, fall, or winter for spring planted crops. When applied in the spring for spring planted crops the nitrogen application rate can be adjusted to apply the recommended nitrogen within the P2O5, K2O, and other limitations.
2. Nitrogen rates are not to exceed the succeeding crop's recommended Nitrogen for non-legume crops or the Nitrogen removal in the crop's biomass for legume crops.
3. All applications are based on current soil test results (not more than 3 years old).
4. No manufactured P2O5 applied above 40 ppm Bray P1 or equivalent test, unless recommended by appropriate industry standards or the land grant universities for specialty crops, vegetable crops, etc.
5. Manure shall be applied in accordance with the restrictions and setbacks in Appendix A Table 2 of this rule.

"P" Soil Test Level	**Application Criteria**
Bray P1 < 40 ppm (< 80 Lbs/Ac) OR Other Equivalents (e.g. Mehlich 3)	**Recommended N or P2O5.** Manure can be applied to meet the succeeding crop's recommended nitrogen requirements for non-legume crops or the nitrogen removal for legume recommended P2O5 but not to exceed the nitrogen needs of the succeeding crop.
Bray P1 40-100 ppm (80 – 200 Lbs/Ac) OR Other Equivalents (e.g. Mehlich 3)	**Recommended N or P2O5 Removal whichever is less.** The field shall have > 30% ground cover at the time of application or the manure shall be incorporated within one week. The manure can be applied to meet the succeeding crop's recommended nitrogen requirements for non-legume crops or the nitrogen removal for legume crops; or P2O5 removal (annual or multiple year applications) whichever is less.
Bray P1 100-150 ppm (200-300 Lbs/Ac) OR Other Equivalents (e.g. Mehlich 3)	**Recommended N or P2O5 Removal whichever is less.** Manure shall be applied so as not to exceed the succeeding crop's recommended nitrogen requirements for non-legume crops or the nitrogen removal for legume crops; or annual P2O5 removal, whichever is less. ~~In addition a multiple year application of Phosphorus is authorized if the following conditions are met:~~ ~~1. The application field has > 50% ground cover at the time of application; or~~ ~~2. The manure is incorporated into the application field within 7 days on fields with <50% cover.~~
Bray P1 > 150 ppm (> 300 Lbs/Ac) OR Other Equivalents (e.g. Mehlich 3)	1. No additional P2O5 – Use P2O5 Draw-down Strategies; or 2. Shall use the P Site Assessment in Appendix E Table 1.

Source: USDA-NRCS (2001). Field Office Technical Guide – Conservation Practice Standard. *Section 1.* Columbus, OH.

*** DRAFT – NOT FOR FILING ***

901:10-2-16 **Permit to operate and operating record requirements.**

(A) An operating record shall be generated as part of the permit to operate and\or NPDES permit.

(1) The ~~owner or operator~~ operating records shall be maintained ~~maintain the operating record~~ on forms identified ~~provided~~ by the ~~department~~ permit and other forms approved for use by the department ~~selected by the owner or operator for the facility~~. 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:

(a) The manure storage or treatment facility. Records required by rule 901:10-2-08 or 901:10-2-19 of the Administrative Code, including:

(i) Measurements of manure volume and the depth of liquid manure in manure storage or treatment facilities by the depth marker or other appropriate device as approved by the director in accordance with rule 901:10-2-06 of the Administrative Code as required by paragraph - ~~(A)(3)(o)~~ (A)(4)(o) of rule 901:10-2-08 of the Administrative Code which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the twenty-five year, twenty-four hour rainfall event, or, in the case of new sources subject to the requirement in paragraph (C) of rule 901:10-3-06 of the Administrative Code, the runoff and direct precipitation from a one-hundred year, twenty-four hour rainfall event, plus the levels of freeboard as required in either paragraph ~~(A)(3)(a)~~ (A)(4)(a) or paragraph ~~(A)(3)(b)~~ (A)(4)(b) of rule 901:10-2-08 of the Administrative Code;

(ii) Records of inspections of the structural integrity and vegetative management systems of the manure storage or treatment facility taken at intervals specified in the manure management plan and including evidence of erosion, leakage, animal damage, and problems of emerging vegetation..

(iii) Records of measurements of storage capacity remaining in the manure storage and treatment facility, based upon inspections conducted at intervals specified in the manure management plan.

(iv) Records of inspections of stormwater conveyances, diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the manure storage pond or manure treatment lagoon..

(v) Records of inspections of the protective vegetative cover that is maintained on all disturbed areas (lagoon or pond embankments, berms, pipe runs, erosion control areas, etc.)

(vi) Implementation dates of those best management practices necessary to operate and maintain settling basins, grass filtration or soil infiltration systems or diverting clean water and roof water away from the production area..

(vii) Records of groundwater sampling and analysis and any surface water sampling and analysis.

(viii) Records required in rule 901:10-2-19 of the Administrative Code for the insect and rodent control plan.

(ix) Records of inspections of water lines located above ground and readily accessible or visible for daily inspection, including drinking water or cooling water lines.

(x) Records of actions taken to correct any deficiencies found as a result of inspections conducted in the production area. If actions were not taken within thirty days of discovery, then the operating record shall record the reasons explaining why corrections could not be made immediately.

(xi) Records documenting the current design of any manure storage or treatment facility including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.

(xii) Records of the date, time, and estimated volume of any overflow or discharge from the production area.

(b) Manure characterization records. Manure characterization data, test methods, results, and other information as required in paragraph (E) of rule 901:10-2-10 of the Administrative Code.

(c) Land application ~~site~~ area records shall be recorded and maintained in the operating record. Records for each land application area shall include ~~site, including~~:

(i) The owner or operator shall maintain or have access to adequate land application equipment and record this in the operating record.

(ii) The owner or operator shall list or otherwise describe those acres of land in the operating record for land application of manure, whether the land

is owned or leased. In the alternative, use of a distribution and utilization plan should be recorded in the operating record.

(iii) When liquid manure is applied to a land application area ~~site~~ with subsurface drains, document the periodic observations of the drain outlets for liquid manure flow during and after application in the operating record.

(iv) When liquid manure is applied to a land application area ~~site~~ with a subsurface drain, document the use of drain outlet plugs or other devices in the operating record.

(v) Land application areas ~~sites~~ as described on a soil survey map.

(vi) All soil tests within the last five years. Soil test results shall be maintained in the operating record with the information required in rule 901:10-2-13 of the Administrative Code.

(vii) ~~Implementation dates of those best management practices~~ Site inspections to inspect setbacks used to maintain vegetative cover and protect stream channels or areas adjacent to such stream channels and as required by rule 901:10-2-14 of the Administrative Code.

(viii) Records of the cropping schedule for each land application site for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year.

(ix) Targeted crop yield for each crop in each land application ~~site~~ based based on:

(a) Soil productivity information;

(b) Historical yield data;

(c) Potential yield; or

(d) Combinations of yield data.

(x) An additional ten per cent may be added to the potential and/or historical yields to account for improvements in management and technology.

(a) When historical yield data is not available a realistic yield may be based on local research or on yields from similar soils and/or cropping systems in the area.

(b) For new or potential crops or varieties, industry yield estimates may be used until actual yields are available for documentation in the operating record.

(xi) Actual yield, if available.

(xii) Results of the nitrogen leaching risk assessment procedure and the phosphorus soil test assessment procedure and an explanation of the basis for determining manure application rates, as provided in rule 901:10-2-14 of the Administrative Code.

(xiii) The number of years needed to reach one hundred fifty parts per million Bray P1 or equivalent if manure application rates exceed the phosphorus crop removal rates.

(xiv) Date, rate, quantity and method of application of the nutrient, and/or form and source of manure, commercial fertilizer and/or other organic by-products.

(xv) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied.

(xvi) Condition of soil at the time of application including, but not limited to, available water capacity and evidence of soil cracks and related information on soil conditions.

(xvii) Temperature, including general weather conditions at time of application and for twenty-four hours prior to and following application..

(xviii) Implementation dates of those best management practices necessary to reduce the risk of nitrogen or phosphorus runoff by crop rotation, cover crops or residue management in accordance with paragraphs (B) to (E) of rule 901:10-2-14 of the Administrative Code.

(xix) Record the annual projected nutrient budget for nitrogen and phosphorus for each site for the plant production sequence and/or crop rotation.

(d) Unless otherwise recorded with the insect and rodent control plan implementation or land application records, records of inspections and actions taken at manure stockpile or manure transfer sites.

(e) The records for implementation of distribution and utilization methods, if used, shall include:

(i) Quantity of manure transferred off-site for each twelve month period (tons/gallons);

(ii) Date of off-site transfer for distribution;

(iii) Name and address of recipient of manure; and

(iv) Record that the recipient was provided with a copy of the appendices A, B and F to rule 901:10-2-14 of the Administrative Code, a copy of the most recent manure analysis consistent with the rules.

(f) Disposal of dead livestock. The records for implementing the plan for the disposal of dead livestock shall include, but not be limited to:

(i) The disposal method used for removal of dead livestock;

(ii) A record of the date and time of inspection of each facility; and

(iii) Those best management practices necessary to implement the disposal of dead livestock.

(B) Records shall be generated by certified livestock managers to comply with the requirements of rule 901:10-1-06 of the Administrative Code. The operating records shall be maintained on forms approved for use by the department. A certified livestock manager employed by a major concentrated animal feeding facility may use the major concentrated animal feeding facility's operating record to comply with the requirements of this rule and rule 901:10-1-06 of the Administrative Code, to the extent the records required to be kept by the certified livestock manager are already maintained in the facility's operating record. The operating record for a certified livestock manager 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:

(1) Records shall be maintained for each land application area.

(2) The certified livestock manager shall list or otherwise describe the acres of land for land application of manure.

(3) When liquid manure is applied to a land application area with subsurface drains, documentation shall be made of the periodic observations of subsurface drains, drain outlet plugs, drain outlets or other devices for liquid manure flow during and after application in the operating record.

(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~~

*** DRAFT – NOT FOR FILING ***

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.

(4) All soil tests within the last five years. Soil test results shall be maintained in the operating record with the information required in rule 901:10-2-13 of the Administrative Code.

(5) Site inspections to inspect setbacks used to maintain vegetative cover and protect stream channels or areas adjacent to such stream channels and as required by rule 901:10-2-14 of the Administrative Code.

(6) Date, rate, quantity and method of application sources of the nitrogen and phosphorus, and/or form and source of manure, commercial fertilizer and/or other organic by-products.

(7) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied.

(8) Condition of soil at the time of application including, but not limited to, available water capacity and evidence of soil cracks and related information on soil conditions.

(9) Temperature, including general weather conditions at time of application and for twenty-four hours prior to and following application.

*** DRAFT – NOT FOR FILING ***

901:10-2-19 **Permit to operate: insect and rodent control plan.**

(A) Purpose and applicability.

(1) This rule establishes the best management practices to minimize the presence and negative effects of insects and rodents at the concentrated animal feeding facility and in surrounding areas, including land on which the manure is stored or applied. Subject to the requirements set forth in rules 901:10-2-07 and 901:10-2-08 of the Administrative Code, and rule 901:10-1-06 of the Administrative Code no person shall own or operate a concentrated animal feeding facility unless an insect and rodent control plan for the facility has been approved by the director.

[Comment: In preparing the plan, the owner or operator is advised to refer to the Food Quality Protection Act (FQPA); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and worker protection standards (WPS).]

(2) An insect and rodent control plan that specifies plans to minimize the activity of insects and rodents and their presence at the facility is to be integrated with other requirements of the permit to operate in accordance as set forth in rules 901:10-2-07 to 901-10-2-19 of the Administrative Code.

(B) Contents of an insect and rodent control plan.

(1) An insect and rodent control plan shall be prepared by the owner or operator and shall be submitted to the director for approval. Upon approval by the director, the insect and rodent control plan shall be incorporated into the permit to operate. The insect and rodent control plan shall be specific to the agricultural animal species of the facility.

(2) An insect and rodent control plan shall:

(a) Include a narrative description of balanced integrated pest management to minimize the presence and negative effects of insects and rodents;

(b) Set forth with specificity the standard operating procedures for actions to minimize the activity and reduce the presence of insects and rodents at the facility; and

(c) Set forth methods of monitoring and procedures for record keeping in the operating record to document inspection results and actions performed.

[Comment: The department may make available scientific references concerning the methods for monitoring and recommendations for control of

insect and rodent populations to owners or operators or direct them to other resources.]

(3) Standard operating procedures set forth in paragraphs (B)(3)(a) to (B)(3)(d) and paragraph (C) of this rule set forth some but not all of the necessary integrated pest management actions to minimize the activity and reduce the presence of insects and rodents at the facility.

(a) Management controls. The following management controls require regular inspections to be conducted by the owner or operator in intervals as described in the insect and rodent control plans. Monitoring records and inspection records shall be maintained in the operating record as required by rule 901:10-2-16 of the Administrative Code. Management controls consist of the following:

(i) The owner or operator shall specify inspection intervals in the insect and rodent control plan and shall conduct and document inspections as specified in the plan.

(ii) The owner or operator shall inspect for the presence or absence of watering and feeding system leaks. If any leaks are detected, appropriate repairs shall be undertaken promptly.

(iii) The owner or operator shall inspect and record observations made regarding the presence and level of pest activity. Appropriate control actions shall be undertaken promptly when activity of insects and rodents is observed that requires actions as described in the plan required by paragraph (B)(2) of this rule.

(iv) The owner or operator shall manage moisture levels in manure to minimize the activity and reduce the presence of insects and rodents at the facility. Methods to control moisture may include but are not limited to: building design; adequate ventilation; mechanical aeration; leak detection and repair; proper site grading and drainage and maintenance of watering and feeding systems.

(v) Except for manure storage ponds and manure treatment lagoons, manure storage or treatment facilities shall be covered unless the runoff and drainage is collected and stored, or directed to a specifically designed infiltration area or other adequate treatment system. Appropriate control actions shall be undertaken prior to the removal of manure to minimize the activity and reduce the presence of insects and rodents at the facility.

(vi) Except for manure storage ponds and manure treatment lagoons, the owner or operator shall inspect manure storage or treatment facilities

for pest activity prior to the removal of manure. Appropriate control actions shall be undertaken prior to the removal of manure to minimize the activity and reduce the presence of insects and rodents.

(vii) The owner or operator shall inspect land application ~~sites~~ areas during and after the land application of manure.

(viii) The owner or operator shall monitor manure stockpiles for insect and rodent activity on a seasonally appropriate basis.

(b) The following management actions are required but do not require record keeping and consist of the following:

(i) Maintain sanitation procedures designed to minimize the activity and reduce the presence of insects and rodents including: maintenance of vegetation around the buildings; cleaning of the facility; removal of dead or trapped animals at a frequency that prevents their accumulation and utilization of covered receptacles for food, feed, dead animals or refuse that are durable, cleanable, inaccessible to insects or rodents, leak proof and nonabsorbent;

(ii) Buildings shall be maintained and managed in such a manner as to minimize the activity and reduce the presence of insects and rodents. The director may consider the function, purpose and age of the buildings;

(iii) The owner or operator shall maintain or have prompt access to appropriate insect and rodent control equipment;

(iv) The owner or operator shall maintain or have prompt access to suitable cleaning implements and supplies as necessary for effective cleaning of the facility; and

(v) The owner or operator shall maintain or have prompt access to insect and rodent monitoring methods and devices.

(c) Biological controls may be used to minimize the activity and reduce the presence of insects and rodents as part of integrated pest management. Biological controls shall include standard operating procedures designed to encourage the development and preservation of beneficial organisms.

[Comment: Beneficial organisms may be appropriate when contained within the facility but may not be appropriate when removed from the facility. Prior to manure removal, the owner or operator is advised to evaluate the potential effects of beneficial organisms outside of the facility, e.g., at any site used for land application of manure.]

(d) Chemical controls may be used to minimize the activity and reduce the presence of insects and rodents as part of integrated pest management.

[Comment: Utilization of chemical controls may require, but not be limited to, asking the owner or operator to become a certified pest control applicator and keep accurate records on methods or products used and on dosage rates under Chapter 921. of the Revised Code.]

(e) Utilization of chemical controls may include, but not be limited to the following:

(i) Insecticides, larvicides, rodenticides, space sprays, fly baits, vapor strips;

(ii) Chemical application equipment; and

(iii) Inside and outside control measures.

(C) Storing, stockpiling and land applying manure.

(1) The insect and rodent control plan shall be consistent with the manure management plan in order to minimize the activity and reduce the presence of insects and rodents at the facility and shall include both the manure storage or treatment facility and the land application area ~~site~~.

(2) The storing, stockpiling and land application of manure shall be done in accordance with standard operating procedures set forth in this paragraph and in the owner or operator's insect and rodent control plan in order to minimize the activity and reduce the presence of insects and rodents. These standard operating procedures may include but are not limited to:

(a) Treatment of pests at the land application site;

(b) Setback distances during land application that are consistent with the manure management plan for the facility and with rule 901:10-2-14 of the Administrative Code;

(c) Extended stockpiling times after removal from the facility for thermal treatment and prior to land application;

(d) Covering of the manure storage or treatment facility or covering the stockpile for thermal treatment;

(e) Implementing appropriate control measures for manure staged or stockpiled more than one week; and

(f) Chemical treatment of the manure ~~or~~ at the facility prior to the removal of manure from the manure storage or treatment facility, monitoring and observing fields spread with that manure for pest activity during application, and a final inspection of those fields when applications are complete;

~~(g) Manure stockpiled for over one week shall have appropriate control actions implemented.; and~~

~~(h)~~(g) If the presence of insect and rodent activity is not minimized and/or reduced prior to the removal of manure from the manure storage or treatment facility, the owner or operator shall visually monitor and observe fields spread with that manure for pest activity during application and shall conduct a final inspection of those fields when applications are complete.

(D) Emergency procedures. Each facility shall develop and maintain emergency procedures of action in order to minimize the activity and reduce the presence of insects and rodents at the facility.

(E) Compliance. Compliance with an insect and rodent control plan shall be determined as follows:

(1) Before proceeding with the procedures set forth in rule 901:10-5-03 of the Administrative Code, the director shall review the operating record, together with the insect and rodent control plan, examine any records of management actions taken, records of implementation of standard operating procedures and other appropriate control actions, and any monitoring data collected in the operating record.

(2) The director shall determine if insect and rodent activity has been minimized and the presence of the insects and rodents reduced by evaluating the records and assessing trends and making visual observations at the facility as evidenced by implementation of the insect and rodent control plan over an appropriate period of time and during periodic inspections at the facility. In making this determination for an appropriate period of time, consideration will be given, but not limited to the following: prevailing wind patterns, siting criteria, precipitation patterns, seasonal effects and weather conditions.

(3) Upon completion of the evaluation described in paragraphs (E)(1) and (E)(2) of this rule, the director may do the following:

(a) If the owner or operator is in compliance with the plan, the director may seek voluntary action by the owner or operator to modify the insect and rodent control plan including but not limited to further minimizing and reducing the activity and presence of insects and/or rodents at the facility; or

(b) If the owner or operator will not consent to modifying the plan, or if the owner or operator is not in compliance with the plan, then the director may propose to modify the insect and rodent control plan or the owner or operator may submit an application to modify the plan, in accordance with the procedures in rule 901:10-1-09 of the Administrative Code.

(4) The director is not required to comply with paragraphs (E)(1) to (E)(3) of this rule if the director determines:

(a) An emergency exists as described in rule 901:10-5-05 of the Administrative Code; or

(b) In consultation with federal, state or local health agencies, the director determines that there exists a high risk of zoonotic disease.

(F) Criteria for approving, disapproving or modifying an insect and rodent control plan including any major operational change to an insect and rodent control plan.~~:~~

(1) The director shall consider the following criteria in determining an action on an insect and rodent control plan:

(a) Compliance with paragraphs (B) to (D) of this rule.

(b) Completeness and appropriateness of the methods for disposal of rodents on a daily or weekly basis or if there is an emergency. The director will require compliance with rule 901:10-2-15 of the Administrative Code.

(c) In order to comply with rule 901:10-1-09 of the Administrative Code for any proposed major operational change of the insect and rodent control plan, the owner or operator shall:

(i) Demonstrate that insect and rodent activity has been minimized; or

(ii) Demonstrate that the proposed major operational change will improve the management of pests; and

(iii) Authorize the director or the director's representative to evaluate the operating records and assess trends and make visual observations at the facility of implementation of the insect and rodent control plan over an appropriate period of time and during periodic inspections at the facility. In making a determination under this paragraph and rule 901:10-1-09 of the Administrative Code, the director may consider the following: prevailing wind patterns, siting criteria, precipitation patterns, seasonal effects, weather conditions, and applicable scientific and technical references for monitoring and control of insect and rodent populations.

(2) The director must act upon, approve or deny an insect and rodent control plan within ninety days of receiving it.

(G) Penalties. The director or his designated representative will determine civil penalties for violations of this rule in accordance with the rule 901:10-5-04 of the Administrative Code.

*** DRAFT – NOT FOR FILING ***

901:10-2-20 **Annual report.**

The owner or operator of a concentrated animal feeding operation with a ~~NPDES~~ permit must submit an annual report to the director. The annual report must include:

(A) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, chickens other than laying hens, swine weighing fifty-five pounds or more, swine weighing less than fifty-five pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(B) Estimated amount of total manure generated by the facility in the previous twelve months (tons/gallons);

(C) Estimated amount of total manure transferred to other persons ~~person~~ by the facility in accordance with rule 901:10-2-11 of the Administrative Code;

(D) Total number of acres for land application covered by the manure management plan developed in accordance with rule 901:10-2-07 of the Administrative Code;

(E) Total number of acres under control of the facility that were used for land application of manure in the previous twelve months;

(F) Summary of all manure discharges from the production area that have occurred in the previous twelve months, including date, time, and approximate volume; and

(G) A statement indicating whether the current version of the facility's manure management plan was developed or approved by a certified nutrient management planner.

*** DRAFT – NOT FOR FILING ***

901:10-3-01 **Additional requirements for a NPDES permit application.**

(A) Concentrated animal feeding operations must have or seek to obtain coverage under a NPDES permit within the time frame provided in accordance with 40 C.F.R. 122.23(g) and in division (J) of section 903.08 of the Revised Code.

(B) Unless otherwise indicated, the application for an individual NPDES permit and the NPDES permit (if issued by the director) shall contain the following information:

(1) The information required in rule 901:10-1-02 of the Administrative Code for NPDES permits.

(2) To the extent required by federal law, a manure management plan that complies with the requirements of rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and rule 901:10-2-18 of the Administrative Code.

(a) Inspections required in rule 901:10-2-08 of the Administrative Code.

(b) Information on nutrient budget, manure characterization, soil tests, distribution and utilization methods for manure (if applicable to the facility), and land application of manure as required in rules 901:10-2-09 to 901:10-2-14 of the Administrative Code.

(3) An operating record developed in accordance with rule 901:10-2-16 of the Administrative Code with the use of forms prescribed by the director and other forms selected by the owner or operator for the facility and approved by the director. The operating record shall be maintained at the site office at all times. Upon approval of the NPDES permit, the operating record shall be deemed part of the NPDES permit.

(4) An emergency response plan containing the information required in rule 901:10-2-17 of the Administrative Code.

(C) Any person who discharges or proposes to discharge pollutants and who does not have an effective NPDES permit, except persons covered by a general NPDES permit, must submit a complete application to the director in accordance with this rule. The director shall not issue a NPDES permit before receiving a complete application for a NPDES permit except NPDES general permits. An application for a NPDES permit is complete when the director receives an application form and any supplemental information which are completed to his or her satisfaction. All applicants for NPDES permits must provide the following information to the director:

(1) The activities conducted by the applicant, which require it to obtain a NPDES permit~~:~~;

(2) The following information about the applicant's facilities:

(a) Information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, chickens other than layers, swine weighing fifty-five pounds or more, swine weighing less than fifty-five pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

(b) The types of manure storage areas, waste containment areas, and total capacity for manure storage (tons/gallons);

(c) The total number of acres under control of the applicant available for land application of manure;

(d) Estimated amounts of manure generated per year (tons/gallons);

(e) Estimated amounts of manure transferred to other persons per year (tons/gallons); and

(f) For operations that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

~~(2)~~ (3)The name and address of the owner and operator and information required by paragraph (C)(1) of rule 901:10-2-01 of the Administrative Code;

~~(3)~~ (4) Whether the operation is located on Indian lands;

~~(4)~~ (5) A listing of all permits or construction approvals received or applied for under any of the following programs:

(a) Hazardous waste management program under the Resource Conservation and Recovery Act (RCRA);

(b) Underground injection control (UIC) program under the Safe Drinking Water Act (SDWA);

(c) The Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(d) Non-attainment program under the Clean Air Act;

(e) National Emissions Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(f) Dredge or fill permits under section 404 of the Clean Water Act;

(g) Other relevant environmental permits, including state permits;

~~(5)~~ (6) Latitude and longitude of the production area (entrance to the production area); and

~~(6)~~ (7) A topographic map of the geographic area in which the concentrated animal feeding operation is located showing the specific location of the production area.

(D) Purpose and applicability of the individual NPDES permit.

~~(1) On or after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture, each concentrated animal feeding operation as defined in rule 901:10-3-07 of the Administrative Code has a duty to seek coverage under a NPDES permit issued by the director of agriculture. A concentrated animal feeding operation is not required to seek coverage under a NPDES permit only if 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 in accordance with this rule and rules 901:10-6-01 to 901:10-6-06 of the Administrative Code.~~

~~(2)~~ (1) Persons that have been issued a NPDES permit by the director are required to comply with the following requirements as determined by the director:

(a) Rule 901:10-3-10 of the Administrative Code;

(b) Rules 901:10-3-02 to 901:10-3-06 of the Administrative Code;

(c) Applicable water quality standards adopted under section 6111.041 of the Revised Code;

(d) National standards of performance for new sources;

(e) The antidegradation policy adopted under section 6111.12 of the Revised Code; and

(f) Other applicable requirements of the act.

(E) In establishing the terms and conditions of the NPDES permit, the director, to the extent consistent with the act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

~~(F) The director, upon request, may make a case-specific determination that a large concentrated animal feeding operation has no potential to discharge manure to waters~~

~~of the state. In making this determination, the director must consider the potential for discharges from both the production area and any land application areas. The director must also consider any record of prior discharges by the operation. In no case may the concentrated animal feeding operation be determined to have no potential to discharge if it has had a discharge within the five years prior to the date of the request submitted under this paragraph. For purposes of this rule, the term no potential to discharge means that there is no potential for any manure to be added to waters of the state under any circumstance or climatic condition. A determination that there is no potential to discharge for purposes of this rule only relates to discharges of manure covered by this rule.~~

~~(1) In requesting a determination of no potential to discharge, the owner or operator must submit any information that would support such a determination. Such information shall be submitted within the time frame provided in accordance with 40 C.F.R. 122.23(g) or 40 C.F.R. 122.23(h) and must include all of the information specified in paragraph (C) of this rule. The director has discretion to require additional information to supplement the request, and may also gather additional information through on-site inspection of the concentrated animal feeding operation.~~

~~(2) The director must base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the permitting authority. The director must notify any concentrated animal feeding operation seeking a no potential to discharge determination of its final determination within ninety days of receiving the request.~~

~~(3) If the director's final decision is to deny the no potential to discharge determination, the owner or operator must seek coverage under a NPDES permit within thirty days after the denial.~~

~~(4) Any unpermitted operation that discharges manure into waters of the state is in violation of this chapter even if it has received a no potential to discharge determination from the director. Any operation that has received a determination of no potential to discharge, but who anticipates changes in circumstances that could create the potential for a discharge, should contact the department and apply for and obtain permit authorization prior to the change of circumstances.~~

~~(5) Where the director has issued a determination of no potential to discharge, the director retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is other reason for the director to determine that the operation has a potential to discharge.~~

~~(G)~~ (F) In addition to conditions required in all permits to meet the requirements of rule 901:10-3-10 of the Administrative Code, the director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the act and regulations. These shall include conditions under 40 CFR sections 122.44, 122.46, 122.47, 122.48 and 40 CFR Part 132 which establishes compliance schedules and authority to set interim compliance dates.

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901:10-3-02 **Effluent limitations definitions and applicability.**

(A) Rules 901:10-3-02 to 901:10-3-11 of the Administrative Code are applicable to concentrated animal feeding operations that are subject to a NPDES permit and establish effluent limitations for both the production area and the land application area as those terms are defined in section 903.01 of the Revised Code. The discharge of manure to waters of the state by the owner or operator of a concentrated animal feeding operation to land application areas under the control of the owner or operator, is a discharge from that concentrated animal feeding operation and subject to a NPDES permit unless the discharge is an agricultural stormwater discharge. Where 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, then a precipitation-related discharge of manure from land application areas under the control of an owner or operator is an agricultural stormwater discharge.

(B) An animal feeding facility is defined as a concentrated animal feeding operation ~~only~~ if the specific threshold specified in division (M) of section 903.01 of the Revised Code is met for any one animal species. "Concentrated animal feeding operation" - ~~may~~ also ~~mean~~ means any animal feeding facility that meets the criteria of division (Q) or division (EE) of section 903.01 of the Revised Code. Once an operation is defined as a concentrated animal feeding operation, the NPDES requirements apply with respect to all animals in confinement at the operation and all manure generated by those animals or the production of those animals, regardless of the type of animal.

(C) Best practicable control technology currently available or BPT means the degree of effluent reduction attainable through the application of the best control measures and practices currently available which shall be determined by taking into account the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impacts (including energy requirements) and such other factors as deemed appropriate.

(D) Best available technology economically achievable or BAT means the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods and other alternatives. BAT shall be determined by taking into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements) and such other factors as deemed appropriate.

(E) Any facility or operation subject to Chapter 903. of the Revised Code that introduces manure, including process wastewater, into a publicly owned treatment works must comply with 40 CFR part 403 and Chapter 6111. of the Revised Code and rules promulgated thereunder.

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901:10-3-04 **Dairy cows and cattle other than veal calves.**

This rule applies to operations defined as concentrated animal feeding operations under ~~paragraph (HH) of rule 901:10-1-01 of the Administrative Code~~ division (F) of section 903.01 of the Revised Code and includes the following animals: mature dairy cows, either milking or dry; cattle other than mature dairy cows or veal calves. Cattle other than mature dairy cows includes but is not limited to heifers, steers, and bulls. This rule does not apply to such concentrated animal feeding operations with less than the following capacities: seven hundred mature dairy cows whether milked or dry; one thousand cattle other than mature dairy cows or veal calves.

(A) Effluent limitations attainable by the application of the best practicable control technology currently available (BPT). Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BPT:

(1) For the concentrated animal feeding operation production areas. Except as provided in paragraphs (A)(1) to (A)(2) of this rule, there must be no discharge of manure into waters of the state from the production area.

(a) Whenever precipitation causes an overflow of manure, pollutants in the overflow may be discharged into waters of the state provided:

(i) The production area is designed, constructed, operated and maintained to contain all manure including the runoff and the direct precipitation from a twenty-five year, twenty-four hour rainfall event;

(ii) The production area is operated in accordance with the requirements set forth in the manure management plan in rule 901:10-2-08 of the Administrative Code and the records required by rule 901:10-2-16 of the Administrative Code.

(b) Voluntary alternative performance standards. Any concentrated animal feeding operation subject to this rule may request the director to establish NPDES permit effluent limitations based upon site-specific alternative technologies that achieve a quantity of pollutants that would be discharged under the baseline performance standards as provided by paragraph (A)(1)(a) of this rule.

(i) Supporting information. In requesting site-specific effluent limitations to be included in the NPDES permit, the concentrated animal feeding facility owner or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the director. The supporting technical analysis must include calculation of

the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated and maintained to contain all manure including the runoff from a twenty-five year, twenty-four hour rainfall event. The technical analysis of the discharge of pollutants must include:

(a) All daily inputs to the manure storage or treatment facility, including manure, direct precipitation, and runoff.

(b) All daily outputs from the manure storage or treatment facility, including losses due to evaporation, manure residuals removal, and the removal of process wastewater or process generated wastewater for use on cropland at the concentrated animal feeding operation or transport off site.

(c) A calculation determining the predicted median annual overflow volume based on a twenty-five year period of actual rainfall data applicable to the site.

(d) Site-specific pollutant data, including N, P, BOD5, and total suspended solids (TSS) for the concentrated animal feeding operation from representative sampling and analysis of all sources of input to the storage system or other pollutant data.

(e) Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs (A)(1)(b)(i)(a) to (A)(1)(b)(i)(d) of this rule.

(ii) The director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the concentrated animal feeding operation.

(c) The concentrated animal feeding operation shall attain the limitations and requirements of this rule as of the date of permit coverage.

(2) For concentrated animal feeding operation land application areas.

Discharges from land application areas are subject to the following requirements:

(a) Develop and implement the best management practices set forth for the manure management plan in paragraph (A)(1) of rule 901:10-2-07 of the Administrative Code;

(b) Maintain the records specified in rule 901:10-2-16 of the Administrative Code; and

(c) The concentrated animal feeding operation shall attain the limitations and requirements of this rule by December 31, 2006.

(B) Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

(1) Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BCT:

(a) For the concentrated animal feeding operation production areas: the operation shall attain the requirements in paragraph (A)(1) of this rule.

(b) For the land application areas: The operation shall attain the same limitations and requirements set forth for the manure management plan in paragraph (A)(2) of this rule.

(C) Effluent limitations attainable by the application of the best available technology economically achievable (BAT).

(1) Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BAT:

(a) For concentrated animal feeding operation production areas: The operation shall attain the same limitations and requirements set forth in paragraph (A)(1) of this rule.

(b) For the operation land application areas: the facility shall attain the same limitations and requirements as those set forth for the manure management plan in paragraph (A)(2) of this rule.

(D) New source performance standards (NSPS).

(1) Any new point source subject to this rule must achieve the following effluent limitations representing the application of NSPS:

(a) For the concentrated animal feeding operation production areas, the facility shall comply with the requirements of paragraph (A)(1) of this rule.

(b) For the land application areas, the operation shall attain the requirements as listed for the manure management plan in paragraph (A)(1) of rule 901:10-

2-07 of the Administrative Code and the records required in rule 901:10-2-16 of the Administrative Code.

(c) The facility shall attain the limitations and requirements of this rule as of the date of permit coverage.

(d) Any source subject to this rule that commenced discharging after April 14, 1993 and prior to April 14, 2003 which was a new source subject to the standards specified in paragraph (C) of rule 901:10-3-03 of the Administrative Code, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in paragraphs (A)(1) and (A)(2) of this rule.

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901:10-3-07 **Designated operations and determinations by the director.**

(A) The director may designate any animal feeding facility as a concentrated animal feeding operation in accordance with division (F)(1) of section 903.10 of the Revised Code upon determining that it is a significant contributor of manure to waters of the state. In making a designation, the director shall consider the following factors:

(1) The size of the animal feeding facility and the amount of manure reaching waters of the state;

(2) The location of the animal feeding facility relative to waters of the state;

(3) The means of conveyance of manure into waters of the state;

(4) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure into waters of the state; and

(5) Other relevant factors.

(B) No animal feeding facility shall be designated under this rule unless the director has conducted an on-site inspection of the animal feeding facility and determined that the facility should and could be regulated under the permit program. In addition, no animal feeding facility with numbers of animals below those established in division (Q) of section 903.01 of the Revised Code may be designated as a concentrated animal feeding operation or concentrated animal feeding facility unless:

(1) Manure is discharged into waters of the state through a constructed ditch, flushing system, or other similar constructed device; or

(2) Manure is discharged directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the facility.

(C) The director may determine that an animal feeding facility that is not a medium concentrated animal feeding operation or a small concentrated animal feeding operation is a concentrated animal feeding ~~operation~~ facility in accordance with section 903.082 of the Revised Code.

(D) If the director determines that an animal feeding facility shall ~~nevertheless~~ be required to be permitted as a medium or small concentrated animal feeding operation, then the owner or operator shall apply to the director for ~~a~~ an NPDES-permit ~~to operate~~ as a concentrated animal feeding operation. ~~If the director determines that best management practices~~ If the director determines that the existing facility cannot comply with best management practices in Chapter 901:10-2 or

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Chapter 1505:15-5 of the Administrative Code, ~~cannot be met~~ without modifying the existing facility, the owner or operator shall apply for a permit to install.

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901:10-3-08 **Variances.**

(A) A variance may be requested in accordance with section 301 or section 302 of the Federal Water Pollution Control Act. A request for a variance will be decided upon by the director, but the director's decision shall not be incorporated into any term or condition of a NPDES permit until the United States environmental protection agency regional administrator grants or denies the request for a variance or, in the case of variances under paragraph (B)(4) or (B)(5) of this rule, the administrator grants or denies the request for a variance.

(B) The regional administrator may deny, forward or submit to the United States environmental protection agency office director for water enforcement and permits a recommendation for approval for a request for a variance listed in paragraph (B) of this rule that has been forwarded by the director:

(1) Extensions based on delay in completion of a publicly owned treatment works provided that the extension meets the requirements of section 301(i) of the act;

(2) Extensions based on the use of innovative technology where effluent reduction will be significantly reduced with significantly reduced cost. The variances may provide an extended two-year period to comply provided that the extension meets the requirements of section 301(k) of the act;

(3) A variance based on the economic capability of the applicant provided that the variance shall meet the requirements of section 301(c) of the act. The owner or operator must show progress in reductions with the maximum use of technology while utilizing economic capability;

(4) A variance based on the presence of "fundamentally different factors" or "FDF" that meets the requirements of section 301(n) of the act. A FDF variance is not timely unless filed when effluent limits are to be modified in a rulemaking procedure. A FDF variance shall be "no less stringent a limit than justified by fundamental differences" while also demonstrating that the existing limit will cause adverse affect; or

(5) A variance that meets the requirements of section 301(g) of the act for nonconventional pollutants that include ammonia, chlorine, color, iron, and total phenols.

(6) A variance based on water quality related effluent limitations under section - 302(b)~~301~~ of the act applies only to the owner or operator requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect or require corresponding changes to the water quality standard for the waterbody as a whole.

(a) Eligibility. The owner or operator is not eligible for a variance under this paragraph if the following apply:

(i) The owner or operator is a new discharger or the owner or operator of a facility that commenced a discharge after March 23, 1997.

(ii) If the variance would likely jeopardize the continued existence of an endangered or threatened species listed under section four of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(iii) If standards will be attained by implementing effluent limits required under sections 301 (b) and 306 of the act and by the owner or operator implementing cost-effective and reasonable best management practices for nonpoint source control.

(b) Timeframe for variances. A water quality based variance issued under paragraph (B)(6) of this rule shall not exceed five years or the term of the NPDES permit whichever is less. A water quality based variance shall be reviewed and modified if necessary as part of each water quality standards review pursuant to section 303(c) of the act.

(c) Conditions to grant a variance. A variance may be granted if:

(i) The owner or operator demonstrates to the director that attaining the water quality standard is not feasible because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the water quality standard;

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the water quality standard, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable the water quality standard to be met without violating water conservation requirements;

(c) Human-caused conditions or sources of pollution prevent the attainment of the water quality standard and cannot be remedied, or would cause more environmental damage to correct than to leave in place;

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the water quality standard, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the water quality standard;

(e) Physical condition related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of the water quality standard; or

(f) Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact.

(ii) In addition to the requirements of paragraph (B)(6)(c)(i) of this rule the owner or operator shall also:

(a) Show that the variance requested conforms to the requirements of the antidegradation policy as set forth in section 6111.12 of the Revised Code; and

(b) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the water quality standard absent the variance, such that the director is able to conclude that any such increased risk is consistent with the protection of the public health, safety and welfare.

(d) Submittal of the variance application. The owner or operator shall submit an application for a variance to the director. The application shall include:

(i) All relevant information demonstrating that attaining the water quality standard is not feasible based on one or more of the conditions in paragraphs (B)(6)(c)(i) and (B)(6)(c)(ii) of this rule.

(e) Public notice of preliminary decision. Upon receipt of a complete application for a variance and upon making a preliminary decision regarding the variance the director shall provide public notice of the request and preliminary decision for a public comment pursuant to the procedures set forth in Chapter 901:10-6 of the Administrative Code. The director shall notify the other Great Lakes States and Tribes of the preliminary decision for discharges in the Lake Erie basin. This public notice requirement may be satisfied by including the supporting information for the variance and the preliminary decision in the public notice of the draft NPDES permit.

(7) The director shall issue a final decision on the variance request within ninety days of the expiration of the public comment period required in paragraph (B)(6)(e) of this rule. If the director decides to grant or deny a variance then the director shall do so in accordance with Chapter 119. of the Revised Code. If all or part of the variance is approved by the director, the decision shall include all

permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:

(a) Compliance with an initial effluent limitation which, at the time the variance is granted, represents the level currently achievable by the owner or operator and which is no less stringent than that achieved under the previous permit;

(b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;

(c) When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and

(d) A provision that allows the director to reopen and modify the permits based on any triennial water quality standards revisions to the variance.

The director shall deny a variance request if the permittee fails to make the demonstrations required under paragraph (B)(6)(c) of this rule.

(8) Incorporating into the permit. The director shall establish and incorporate into the NPDES permit all conditions needed to implement the variance as determined in paragraph (B)(7) of this rule.

(9) Renewal of the variance. A variance may be renewed subject to the requirements of paragraph (B)(8) of this rule. As part of any renewal application, the owner or operator shall again demonstrate that attaining a water quality standard is not feasible based on the requirements of paragraph (B)(6)(c) of this rule. The application shall also contain information concerning compliance with the conditions incorporated into its permit as part of the original variance pursuant to paragraphs (B)(7) and (B)(8) of this rule. Renewal of a variance may be denied if the owner or operator did not comply with the conditions of the original variance.

(10) All variances and supporting information shall be submitted by the director to the regional administrator and shall include:

(a) Relevant applications as set forth in paragraph (B)(6)(d) of this rule;

(b) Public comments and records of any public hearings pursuant to paragraph (B)(6)(e) of this rule;

(c) The final decision of the director; and

(d) The NPDES permit.

(e) Information required by this paragraph shall be submitted by the director within thirty days of the date of the final variance decision. The information required by paragraph (B)(6)(d) of this rule shall be submitted in accordance with the terms of the memorandum of agreement with the regional administrator pursuant to 40 CFR 123.24.

(11) All variances shall be transmitted to the Ohio environmental protection agency and appended to the water quality standard rules adopted in accordance with section 6111.041 of the Revised Code.

(C) The United States environmental protection agency regional administrator or the United States environmental protection agency office of the director for water enforcement and permits may approve or deny any variance request submitted under paragraph (B) of this rule. If the regional administrator or office director approves the variance, the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance has been approved or denied shall identify the applicable procedures for appealing that decision. An owner or operator shall be afforded an appeal of the decision in accordance with 40 C.F.R. section 124.64 and Chapter 119. of the Revised Code.

901:10-3-09 **Appeals of variances.**

When the director issues a permit on which the United States environmental protection agency has made a variance decision, separate appeals of the state permit and of the United States environmental protection agency variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the regional administrator will decide, in consultation with state officials, which case will be heard first.

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901:10-3-10 **Standard permit terms and conditions.**

(A) ~~This rule describes the~~ The following terms and conditions ~~that~~ are applicable to NPDES permits. ~~In establishing the terms and conditions of a NPDES permit, the director, to the extent consistent with the Federal Water Pollution Control Act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the terms and conditions of the permit.~~ The owner or operator shall comply with all terms and conditions of the NPDES permit.

(B) Duty to mitigate. The owner or operator shall take all reasonable steps to minimize or prevent any discharge or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. This permit may be modified, suspended or revoked for cause.

(C) Permit actions. The NPDES permit may be modified, revoked and reissued, or terminated for cause. The filing by the owner or operator of a request for permit modification, suspension, revocation or a notification of planned changes or anticipated noncompliance does not stay or suspend any permit term or condition.

(D) Duty to comply. ~~The owner or operator shall comply with all conditions of the permit.~~ Any permit noncompliance constitutes a violation of the act and Chapter 903. of the Revised Code and is grounds for an enforcement action; for permit revocation; suspension; modification; or denial of a permit renewal application.

(E) General effluent limitations. The effluent shall, at all times, comply with Ohio water quality standards.

(F) Duty to reapply. If any person who wishes to commence a discharge or to continue any activity regulated by the permit after the expiration date of this permit, an application for a permit or renewal of a permit shall be submitted to the director at least one hundred eighty days prior to discharge or the expiration date of the permit.

(G) The permit does not convey any property rights of any sort or any exclusive privilege.

(H) Inspection and entry. The owner or operator shall allow the director or an authorized representative upon the presentation of proper identification, at reasonable times and in compliance with biosecurity procedures:

(1) To enter the facility or operation where any records are kept under the terms and conditions of the permit;

(2) To have access for review and copying any records that must be kept under the terms and conditions of the permit;

(3) To inspect, at reasonable times:

(a) Equipment, (including any monitoring and control equipment) or method;

(b) Any manure storage or treatment facility;

(c) Practices required or regulated under the permit; and

(4) To sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the act, any substances or parameters at any location.

(I) Duty to provide information. The owner or operator shall furnish to the department within a reasonable time any information that the department may request to determine whether cause exists for modifying, revoking, and reissuing or terminating the permit or to determine compliance with the permit. The owner or operator shall also furnish to the department, upon request, copies of records required by this permit to be kept.

(J) Monitoring and records.

(1) ~~Records of samples~~ Samples and measurements taken including, but not limited to, samples and measurements of manure, soils, process wastewater and process generated water for the purpose of monitoring shall be representative of the monitored activity.

(2) The owner or operator shall retain records of all monitoring information, including all calibration and maintenance records and, if applicable, original strip chart recordings or continuous monitoring instrumentation. Copies of reports required by this permit and records of data used to complete the application for this permit shall be retained for a period of at least five years from the date of this permit, the sample, measurement, report or application. This period may be extended by request of the department at any time.

(3) Records of monitoring information shall include:

(a) The date, exact place and time of sampling or measurements;

(b) The individual(s) who performed the sampling or measurements;

(c) The date(s) analyses were performed;

(d) The analytical techniques or methods used; and

(e) The results of such analyses.

(K) Monitoring must be conducted according to rules ~~901:10-2-04~~ 901:10-2-10 and 901:10-2-13 of the Administrative Code and according to test procedures approved under 40 C.F.R. part 136, unless other test procedures have been specified in the ~~this~~ permit and approved by the regional administrator. Monitoring must be conducted in accordance with any water quality analytical procedures approved by the department. The owner or operator shall maintain equipment or lease the equipment or otherwise obtain access to equipment to ensure accurate measurements.

(L) Additional requirements for recording and reporting ~~of~~ monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year. All permits shall specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(2) Required monitoring including type, intervals and frequency sufficient to yield data which are representative of the monitoring activity including, when appropriate, continuous monitoring.~~; and~~

(3) Applicable reporting requirements based upon the impact of the regulated activity; and

~~(4) Requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than one year.~~

(M) Signatures. All permit applications and reports required by the permit and other information submitted to the director shall be signed and certified as follows:

(1) All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive

measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or

(b) For a partnership or sole proprietorship: by a general partner for a partnership or the proprietor, respectively.

~~(c) The written authorization is submitted to the director.~~

(2) All reports required by permits and other information requested by the director shall be signed by the person described above or a duly authorized representative of that person. A person is a duly authorized representative of the person described above only if:

(a) The authorization is made in writing by the person described above;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility such as the position of manager, or a position of equivalent responsibility; (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(c) The written authorization is submitted to the director.

(d) Changes to authorization. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying this rule must be submitted prior to or together with any reports, information, or applications to be signed by an authorized representative..

(3) Certification. Any person signing a document under this rule shall make the following certification: "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 the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

(N) Need to halt or reduce activity is not a defense. It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or

reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(O) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities (and related appurtenances) which are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(P) Emergency notification. In an emergency, the owner or operator shall follow the facility's emergency response plan, which shall include, at a minimum, the following:

(1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;

(2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points; and

(3) Procedures to be followed in the event of a spill, including actual or imminent discharge to waters of the state. These procedures shall include:

(a) The owner or operator shall report a spill or discharge by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence and shall provide the following information:

(i) The time at which the discharge or spillage occurred, if known, was discovered;

(ii) The approximate amount and the characteristics of the discharge or spillage;

(iii) The waters of the state affected by the discharge or spillage;

(iv) The circumstances which created the discharge or spillage;

(v) The names and telephone numbers of persons who have knowledge of these circumstances;

(vi) Those steps being taken to clean up the discharge or spillage;

(vii) The names and telephone numbers of the persons responsible for the cleanup.

(b) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall use the Ohio department of agriculture's emergency telephone number.

(c) If applicable, the owner or operator shall notify appropriate local authorities.

(d) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence, unless waived, in writing, by the department. On a case-by-case basis, the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident. This report shall outline the actions taken, proposed to be taken to correct the problem and to ensure that the problem does not recur.

(Q) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. A written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. On a case-by-case basis the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident.

The following shall be included as information which must be reported within twenty-four hours:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and

(3) Violations of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four hours. The director may waive the written report on a case-by-case basis for reports if the oral report has been received within twenty-four hours.

(R) Compliance schedules. ~~Reports of compliance or noncompliance with, or any progress reports on, any compliance schedule of this permit shall be submitted fourteen days after each schedule date~~.

(1) The director shall establish conditions, as required and appropriate on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Act and regulations. These shall include conditions under 40 CFR

sections 122.44, 122.46, 122.47, 122.48 and 40 CFR Part 132. In particular, when appropriate, the director may include in a permit a schedule of compliance leading to compliance with the CWA and its implementing regulations consistent with the requirements and conditions in 40 C.F.R. 122.47 which establish compliance schedules and authority to set interim compliance dates.

(2) Reports of compliance or noncompliance with, or any progress reports on, any compliance schedule of the permit shall be submitted fourteen days after each schedule date.

(S) Anticipated noncompliance. The owner or operator shall give advance notice to the director of any planned changes at the facility that may result in noncompliance with permit requirements.

(T) Bypass means the intentional diversion of manure from any portion of the treatment facility~~production area~~.

(1) Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded but only if it also is for essential maintenance to assure efficient operation.

(2) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

(3) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (Q) of this rule.

(4) Bypasses are prohibited and the director may take enforcement action unless:

(a) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to be inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;~~.~~

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of manure, or maintenance during normal periods of equipment downtime. This condition will not be satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass; and~~.~~

(c) The owner or operator submitted notices as required by paragraph (P) of this rule; and~~.~~

~~(d)~~(5) The director may approve an anticipated bypass after considering its adverse effects if the director determines that the bypass will meet the conditions listed in this rule.

(U) Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

(1) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based effluent limitations if the requirement of paragraph (U)(2) of this rule is met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is a final administrative action subject to judicial review.

(2) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating records, or other relevant evidence that:

(a) An upset occurred and the permittee can identify the cause of the upset;

(b) The permitted operation was at the time being properly operated;

(c) The permittee submitted notice of the upset as required in paragraph (Q) of this rule; and

(d) The permittee complied with any compliance measures required under paragraph (B) of this rule.

(3) In any proceeding to enforce the NPDES permit the owner or operator seeking to establish the occurrence of an upset has the burden of proof.

(V) Planned changes. The owner or operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. section 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

(W) Other noncompliance. The owner or operator shall report all instances of noncompliance not reported under paragraphs (Q) and (R) of this rule at the time monitoring reports are submitted. These reports shall contain the information listed in paragraph (Q) of this rule.

(X) Other information. Where the owner or operator becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(Y) Reporting obligations.

(1) Annual reports and information required to be submitted by the permit or by the rules may be submitted in hard copy format in ~~the Ohio department of agriculture~~ a ~~[fill in no.]~~ report form pre-printed by the Ohio department of agriculture or an approved facsimile. The original report form must be signed and mailed to: "Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068."

(2) Alternatively, annual reports and information may be submitted electronically using the Ohio department of agriculture developed software, based on a memorandum in agreement signed by a responsible corporate officer, general partner, proprietor or a duly authorized representative of the owner or operator (see paragraph (M) of rule 901:10-3-10 of the Administrative Code) and submitted to the Ohio department of agriculture to receive an authorized personal identification number (pin) prior to sending data electronically. A hard copy of the Ohio department of agriculture form must be generated, signed and maintained on site for records retention purposes.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

(Z) Other obligations which may apply.

(1) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted operation unless the director determines that effluent limitations are infeasible and the best management practices shall be utilized.

(2) Continuous discharges. For any continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for any utilized publicly owned treatment works.

(3) Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors ~~factor,~~ as appropriate:

(a) Frequency (for example, a batch discharge shall not occur more than once every three weeks);

(b) Total mass (for example, not to exceed one hundred kilograms of zinc and two hundred kilograms of chromium per batch discharge);

(c) Maximum rate discharge of pollutants during the discharge (for example, not to exceed two kilograms of zinc per minute); and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/1 zinc or more than two hundred and fifty grams (1/4 kilogram) of zinc in any discharge).

*** DRAFT – NOT FOR FILING ***

901:10-4-02 **General permit to operate coverage.**

(A) A general permit to operate as described in rule 901:10-4-01 of the Administrative Code is issued by the director for a category of facilities located at multiple sites.

(B) Each person eligible for a general permit to operate shall follow the requirements in rule 901:10-4-03 of the Administrative Code.

(C) Upon issuance of a general permit to operate and issuance of an individual certificate of coverage, the individual permit to operate shall be terminated. All previous permits issued to a facility that can be covered by a general permit to operate are revoked upon request of the owner or operator, termination of the individual permit and issuance of the certification of coverage.

(D) Any person covered under a general permit to operate may choose to pursue an individual permit for any facility covered by this rule.

*** DRAFT – NOT FOR FILING ***

901:10-4-05 **General operating permit.**

A general permit to operate shall be effective from the date of issuance for a fixed term not to exceed five years. Holders of certificates of coverage under this permit shall comply with the following specified conditions and limitations.

(A) Applicability. "Concentrated animal feeding operation" or "CAFO" 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 into which NPDES requirements have been incorporated. "Concentrated animal feeding facilities" or "facilities" have the same meaning as division (E) of section 903.01 of the Revised Code and refer to those facilities that are subject to permits to operate. With respect to NPDES operations, the following requirements also apply to and are enforceable pursuant to the Act and to the extent authorized by federal law:

(1) The information required for NPDES permits in rule 901:10-1-02 of the Administrative Code;

(2) The information required in rule 901:10-3-01 of the Administrative Code except where general NPDES permits are specifically excluded;

(3) A manure management plan that complies with the requirements of rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and rule 901:10-2-18 of the Administrative Code;

(4) Inspections required in rule 901:10-2-08 of the Administrative Code;

(5) An operating record developed in accordance with rule 901:10-2-16 of the Administrative Code with the use of forms prescribed by the director and other forms selected by the owner or operator for the facility and approved by the director. The operating record shall be maintained at the site office at all times. Upon approval of the NPDES permit, the operating record shall be deemed part of the NPDES permit;

(6) An emergency response plan containing the information required in rule 901:10-2-17 of the Administrative Code; and

(7) An annual report required in rule 901:10-2-20 of the Administrative Code.

(B) Performance standards.

(1) Compliance is required with rules 901:10-2-08 to 901:10-2-19 of the Administrative Code.

(2) The facility permitted under a general permit shall be effectively maintained and operated to prevent the discharge of pollutants to waters of the state. Facilities which are in compliance with their manure management plan (MMP) and a general permit which unintentionally discharge as a result of the twenty-five year, twenty-four hour storm event or greater will not be considered to be in violation of this permit.

(3) For new and existing facilities, the operating level of manure treatment lagoons and manure storage ponds in rule 901:10-2-06 of the Administrative Code must have at a minimum containment capacity at the prospective operating level that can also contain adequate storage for a twenty-five year, twenty-four hour storm event, one foot of freeboard and any additional storage required in the MMP.

(4) For new and expanding facilities, the operating level of fabricated structures in rule 901:10-2-05 of the Administrative Code must have at a minimum storage volume at the prospective operating level that can also contain adequate storage for a twenty-five year, twenty-four hour storm event and six inches of freeboard and any additional storage required in the MMP.

(5) The manure management plan, the operating record and insect and rodent control plan are incorporated by reference into a general permit to operate. The permittee shall maintain compliance with an approved MMP, the operating record rules and insect and rodent control plan as required under state law.

(6) A facility may be expanded by not more than ten per cent in excess of the design capacity set forth in the current design capacity, provided that in no case during a five year period shall the facility's capacity be increased by more than ten per cent in the aggregate and further, that in no case shall the capacity be increased so as to exceed the number of animal units authorized in the category of the general permit.

(7) New or expanding facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking the animals.

(8) A copy of the certificate of coverage ("COC"), general permit, distribution and utilization records, the insect and rodent control plan, the operating record and the MMP shall be maintained at the site office where manure management activities are being conducted for the life of the general permit. These documents shall be kept in good condition and shall be maintained in an orderly fashion.

(C) Operation and maintenance requirements.

(1) The manure storage or treatment facilities and equipment shall be properly maintained at all times.

(2) The manure land application sites and setbacks as required in appendix A of rule 901:10-2-14 of the Administrative Code shall be properly maintained at all times.

(3) The phosphorus and nitrogen application rates shall be maintained as set forth in paragraphs (B) to (E) rule 901:10-2-14 of the Administrative Code. Available water capacity identified in the MMP shall be maintained in accordance with appendix B of rule 901:10-2-14 of the Administrative Code.

(4) Unless designed and permitted to do so, domestic and/or industrial wastewater from showers, toilets, sinks, etc. shall not be discharged into the manure storage or treatment facility.

(5) Disposal of dead animals shall be done in accordance with specified best management practices and rule 901:10-2-15 of the Administrative Code.

(6) All stormwater conveyances shall be inspected and maintained to keep runoff from the surrounding property and buildings and shall be diverted away from the manure treatment lagoons and/or manure storage ponds to prevent any unnecessary addition to the liquid volume in these structures unless the lagoons and/or ponds are designed for such runoff containment.

(7) A protective vegetative cover shall be maintained on all disturbed areas (manure treatment lagoon or manure storage pond embankments, berms, pipe runs, erosion control areas, etc.). Emerging vegetation such as trees, shrubs and other woody species shall not be allowed to grow on the dikes or side slopes of manure treatment lagoons or manure storage ponds. Manure treatment lagoon and manure storage pond areas are to be kept mowed and accessible unless these areas are grassed waterways or buffers that manage precipitation runoff and stormwater.

(8) Management of the manure residuals shall be in accordance with the MMP.

(9) When removal of manure residuals from the manure storage or treatment facilities is necessary, provisions must be taken to prevent damage.

(10) Solid materials including, but not limited to, bottles, light bulbs, gloves, syringes or any other solid waste from the facility shall be prevented from entering the manure storage or treatment facility.

(11) The owner or operator must have at all times: (a) adequate manure application and handling equipment on site; (b) an agreement to acquire or have use of the necessary equipment; (c) a third party applicator capable of providing adequate manure application equipment; or (d) a distribution and utilization plan. The equipment must be capable of land applying the manure on the sites specified in the MMP, including compliance with the agronomic rate, available water

capacity for the land application sites and incorporation of manure, where required. Records shall be maintained in the operating record as required in rule 901:10-2-16 of the Administrative Code

(D) Monitoring and reporting requirements.

(1) Manure treatment and storage facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, damage or discharge. A written chronological record of maintenance and repairs shall be maintained in the operating record and be made readily available during a scheduled inspection of the facility. These records shall also be made available at the request of the director. All repairs shall be completed promptly. The department shall inspect any major structural repairs.

(2) If not already installed at a facility, a liquid level board or staff gauge or other appropriate device, as approved by the director, shall be installed within sixty days of issuance of the COC under a general permit to monitor manure levels. This board or gauge or other appropriate device, as approved by the director, shall have readily visible permanent markings indicating the summation of the residual manure volume and minimum storage or treatment design volume and shall be designated as the "stop pumping" elevation. The liquid level board, staff gauge or other appropriate device, as approved by the director, shall also indicate the elevation corresponding to the summation of the maximum storage volume, residual solids minimum storage, volume, runoff and wash down volumes and manure volume and shall be designated as "start pumping" elevation. Where manure storage ponds are utilized, only a gauge with visible permanent markings indicating when the pump-out begins and freeboard elevations need be installed. Caution must be taken not to damage the integrity of the liner when installing the gauge. Levels shall be recorded in the operating record that must be maintained at the facility, in compliance with the MMP.

(3) Soil testing shall be conducted as described in the MMP on each land application site receiving manure. The results of these tests shall be maintained in the operating record by the owner or operator for a minimum of five years and shall be made available to the director.

(4) An analysis of the manure from the manure storage or treatment facility shall be conducted initially after issuance of the COC and thereafter as described in the MMP. This analysis shall include the parameters listed in the MMP.

(5) Proper records, including maintenance, repairs and the operating record, shall be maintained on site and in chronological and legible form for a minimum of five years. These records shall be readily available for inspection in the operating record.

(E) Emergency response plan.

*** DRAFT – NOT FOR FILING ***

An emergency response plan must be developed that shall include the following:

(1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;

(2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points;

(3) Procedures to be followed in the event of a spill, including an actual or imminent discharge to waters of the state:

(a) Actions to contain or manage the spill or discharge;

(b) Identification of proper authorities to be contacted;

(c) Actions to mitigate any adverse effects of a spill or discharge; and

(d) Identification of equipment and cleanup materials to be used in the event of a spill or discharge.

(4) Procedures for reporting.

(a) The owner or operator shall report by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence of the following:

(i) The time at which the discharge or spillage occurred, if known, and or was discovered;

(ii) The approximate amount and characteristics of the discharge or spillage;

(iii) The receiving waters affected by the discharge or spillage;

(iv) The circumstances that created the discharge or spillage;

(v) The names and telephone numbers of the persons who have knowledge of these circumstances;

(vi) Those steps being taken to clean up the discharge or spillage; and

(vii) The names and telephone numbers of the persons responsible for the cleanup.

(5) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall contact the Ohio department of agriculture's emergency telephone number.

(6) If applicable, the owner or operator shall notify the appropriate local authorities.

(7) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence unless waived by the director permitting an extension of time. This report shall outline the actions taken or proposed to be taken to correct the problem and to ensure that the problem does not recur.

(F) Inspections.

Any duly authorized officer, employee or representative of the department may inspect the permitted site at any reasonable time upon presentation of credentials and in accordance with reasonable and appropriate biosecurity measures, for the purpose of determining compliance with this permit; may inspect or obtain a copy of any records that must be kept under the terms and conditions of this permit; and may obtain samples of the manure, soil, groundwater or surface water.

(G) General conditions.

(1) In addition to the general conditions set forth in this paragraph, the owner or operator of an NPDES operation shall comply with the standard terms and conditions set forth in rule 901:10-3-10 of the Administrative Code.

(2) Upon reasonable cause to believe that any activities pursuant to this permit may cause or contribute any manure, directly or indirectly, to be intermixed with the waters of the state, the department may require any monitoring (including but not limited to groundwater, surface water and soil) necessary to determine the source, quantity, quality and effect of such waste upon the waters of the state. Such monitoring, including its scope, frequency, duration and any sampling, testing and reporting systems, shall meet all applicable requirements, including records maintained in the operating record. The director has the ability to determine that an individual NPDES or general NPDES permit may be required.

(3) Failure to abide by the conditions and limitations contained in this permit and any COC issued under a general permit may subject the owner or operator to an enforcement action in accordance with Ohio law and may include the requirement to obtain an individual permit, the addition of manure storage or treatment facilities or the addition of land application sites.

(4) The issuance of a COC under a permit does not excuse the owner or operator from the obligation to comply with all applicable statutes, rules, regulations, or ordinances (local, state and federal).

(5) If animal production is to be suspended or terminated, the owner or operator is responsible for developing, implementing and completing a closure plan in accordance with rule 901:10-2-18 of the Administrative Code which will eliminate the possibility of an illegal discharge, pollution and the potential for environmental degradation to waters of the state and shall be in accordance with applicable closure standards in effect when the closure plan is developed and implemented.

*** DRAFT – NOT FOR FILING ***

901:10-5-01 **Complaints** ~~for nuisances.~~

(A) ~~If a~~ A person ~~is aggrieved or adversely affected by an alleged nuisance related to concentrated animal feeding facilities or major concentrated animal feeding facilities then a complaint may be submitted~~ may submit a complaint to the director of the Ohio department of agriculture 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~~alleging that a nuisance exists~~.

(B) The complaint may be made orally or in writing.

(1) Complaint in writing: If the complaint is made in writing, the person making the complaint must sign and date the complaint. In addition, the following shall be included:

(a) The address of the facility.

(b) A description of the nature of the complaint.

(2) Oral Complaint: If a complaint is made orally to the director or to one of the director's representatives the following shall be included:

(a) The address of the facility.

(b) A description of the nature of the complaint.

(c) The name and address of the person reporting the oral complaint is optional so that the person reporting the oral complaint may be notified of the dismissal of the complaint or notified if the director determines ~~that the owner or operator is not in compliance and~~ that the director is proceeding in accordance with section 903.16 or 903.17 of the Revised Code, or both sections as applicable.

(C) After receiving a written, signed and dated complaint, the director shall cause an investigation to be conducted to determine if a concentrated animal feeding facility is in compliance or to determine if a discharge is occurring or has occurred at an animal feeding operation. ~~the owner or operator of the facility or major concentrated animal feeding facility is complying with a permit or review compliance certificate~~.

(D) After receiving an oral complaint the director may cause an investigation to be conducted to determine if a concentrated animal feeding facility is in compliance or to determine if a discharge is occurring or has occurred at an animal feeding operation. ~~the owner or operator of the facility or major concentrated animal feeding facility is complying with a permit or review compliance certificate~~.

(E) 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 applicable requirements ~~a permit or review compliance certificate~~, the director shall dismiss the complaint and notify the complainant and the owner or operator of the dismissal.

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

(G) If the director determines that any person owning or operating a concentrated animal feeding facility is managing the facility in accordance with a permit or review compliance certificate currently approved by the director, the person shall be considered in compliance with the state rules. In a private civil action for nuisances involving activities conducted under this chapter, it is an affirmative defense if the person owning, operating or otherwise responsible for or in control of a concentrated animal feeding facility is operating under and in compliance with an approved permit or review compliance certificate.

Compliance with a NPDES permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 402, and 405(a)-(b) of the Federal Water Pollution Control Act. However, a NPDES permit may be modified and reissued, or terminated during its term for cause as set forth in rules 901:10-1-03, 901:10-1-09, and 901:10-5-03 of the Administrative Code. Issuance of a NPDES permit does not convey any property rights of any type , or any exclusive privilege.

*** DRAFT – NOT FOR FILING ***

901:10-5-02 **Right to enter property for investigations and inspections.**

(A) Investigations and inspections.

(1) The director at reasonable times has the authority to enter the premises of an applicant for permit or the permit premises to make investigations and inspections including, but not limited to, the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties that are necessary for the administration and enforcement of this chapter.

(2) The director at reasonable times may examine and copy any records pertaining to discharges that are subject to rule or any records that are required to be maintained by the terms and conditions of a permit or review compliance certificate issued under rule 901:10-1-07 of the Administrative Code.

(3) If refused entry, the director may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant.

(4) Any person to whom a permit or review compliance certificate has been issued is prohibited from refusing entry to the director or purposely hindering the director in the exercise of any authority granted as described in this rule.

(B) Biosecurity.

(1) Biosecurity refers to the policies and measures taken for protecting the food supply and agricultural resources from contamination.

(2) Upon entering the property of a facility, the inspector or investigator shall identify himself or herself with proper identification to prove that he or she is an agent of the Ohio department of agriculture.

(3) If an inspection is conducted prior to the application for a review compliance certificate or a permit under this chapter, the inspector or investigator shall notify the owner or operator in advance. The purpose of the notice is to inform the owner or operator of an inspection so that the inspector or investigator may be informed of the facility biosecurity procedures, if any. The director has the authority to authorize unannounced inspections or follow-up inspections of a facility as deemed necessary.

(4) If an owner or operator wants the Ohio department of agriculture to comply with its biosecurity plan, the owner or operator must submit its plan with the application for the permit to operate. If not, the department will act in accordance with its biosecurity policy.

*** DRAFT – NOT FOR FILING ***

901:10-5-05 **Emergency enforcement and cost recovery.**

(A) If the director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the director may issue an order without notice or adjudication hearing stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately. A danger to public health, safety or the environment may include, but is not necessarily limited to, the following situations:

(1) When discharge threatens public or private drinking water supplies;

(2) When discharge threatens waters of the state ~~a primary contact recreation resource water~~;

(3) When the discharge directly causes flooding of residential housing, commercial property or industrial property, where direct use of the property would be hazardous to public health; and/or

(4) Other situations as determined by the director upon consultation with state and/or local environmental protection or health agencies.

(B) Following receipt of the emergency order, the owner or operator shall comply with the order. The order shall take ~~affect~~ effect immediately, however, the owner or operator shall be afforded the opportunity for a hearing in accordance with paragraph (C) of this rule.

(C) On application to the director, the owner or operator shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. The director's order is appealable in accordance with section 119.12 of the Revised Code. The applicant shall provide the following information to the director in writing or by telephone:

(1) A statement requesting an adjudication hearing;

(2) The date when the order was issued; and

(3) The business or home address and phone number where the owner, operator or representative can be reached during business hours.

(D) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If the owner or operator does not request a hearing, the emergency order may remain in effect for one hundred twenty days after its issuance. An order issued following an adjudicatory hearing shall not be considered an emergency order. The appeal provisions described in paragraph (C) of this rule shall apply.

(E) A person responsible for causing or allowing an unauthorized release, spill or discharge of manure is liable to the director for any costs incurred in investigating, mitigating, minimizing, removing, abating the spill, release or discharge or other acts or events that resulted in the emergency and the emergency order. If no attempt is made to repay the director for costs incurred or damages assessed within that time, the director may request the attorney general to bring a civil suit against the person responsible to recover costs and any assessed damages. Reimbursed costs shall be deposited into the livestock management fund.

(F) Livestock management fund. Funds deposited in the livestock management fund created under section 903.19 of the Revised Code shall be used for paying the costs for emergency actions. In addition to paying the costs incurred by the director under section 903.18 of the Revised Code, the director may make disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing, abating the release, spill or discharge or other acts or events that resulted in the emergency or the emergency order.

*** DRAFT – NOT FOR FILING ***

901:10-6-01 **Notice.**

(A) Notice by publication.

(1) Notices in general. All notices required or authorized by section 903.09 of the Revised Code shall be published once in a newspaper having general circulation in the county in which the facility is located or proposed to be located. Publication shall be done at least thirty days prior to a public meeting, provided that publication shall be done at least forty-five days prior to a public meeting for any draft permit to install or draft NPDES permit subject to an antidegradation review. Public notice is complete upon publication.

[Comment: Public notice will be given for any draft general permit to be issued by the director. Since general permits are written to cover categories of discharges within a geographic or political area, the director may give one or more notices in newspapers of general circulation for those geographic or political areas identified in the general permit.]

(2) Additional requirements for NPDES information. The department shall publish a public notice within thirty days regarding receipt of a NPDES permit application and permit to install for which an antidegradation review is applicable. ~~or an application for a no potential to discharge determination.~~

(a) The purpose of public notice for a draft permit to install and a draft NPDES permit for which an antidegradation review is applicable shall be: to inform other potentially affected persons; to allow for inspection and review of the applications; to indicate whether any of the exclusions or waivers within the antidegradation rules apply to the applications; to instruct interested persons to contact the director within thirty days if they want to be on the interested parties mailing list as described in rule 901:10-6-05 of the Administrative Code for that particular permit to install or NPDES permit application; and to advertise the date, time, and place of any public meeting required under division (C) of section 903.09 of the Revised Code.

~~(b) The purpose of public notice for a request for a no potential to discharge determination shall be to describe the facility or activity; to summarize the factual basis for granting the no potential to discharge; and to describe procedures for reaching a final decision to grant a no potential to discharge determination.~~

(3) The department shall give public notice of the issuance of a review compliance certificate issued pursuant to division (F) of section 903.04 of the Revised Code only to persons who own property that is contiguous to the facility for which the review compliance certificate is issued.

(4) The director shall publish notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the facility is located.

(5) The director shall give public notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit, or for any actions pursuant to section 903.17 of the Revised Code.

(B) Notice by mail.

(1) The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the applicant or owner or operator and to the board of county commissioners of the county, the board of township trustees of the township, the local board of health and the local soil and water conservation district in which the facility is located or proposed to be located. The director shall also notify owners or operators of public water systems as that term is defined in section 6109.01 of the Revised Code that have a surface water intake structure located within ten miles downstream of the facility or proposed facility described in the draft permit.

(2) In addition, if an antidegradation review of a NPDES permit application indicates the potential to lower water quality, the director shall provide notice by mail to the Ohio department of natural resources, the United States fish and wildlife service, any affected local areawide planning agencies and the Ohio department of development.

(3) The director shall mail notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to the applicant or owner or operator and a copy of the proposed action to the board of county commissioners of the county and the board of township trustees of the township in which the facility is located or proposed to be located. The director shall also provide notice of the proposed action to deny, suspend, or revoke a NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act.

(4) Notices shall be mailed by certified mail, return receipt requested, to the person subject thereto. Notices shall state the time and method by which the applicant or permit holder may request public meeting. A statement as to when a final permit will be issued may accompany draft permits.

(a) If a draft permit or proposed action is issued with an effective date and the permit is later signed by the director without being changed further, the department need not, at the time of entry, provide notice or a copy of the permit to the person subject thereto.

(b) If a draft permit or proposed action is issued without an effective date, and the department later assigns an effective date without changing the action

further, the department shall mail notice to the person subject thereto informing the person of the effective date.

(5) If the applicable law grants a right to appeal the final permit or order of the director to the environmental review appeals commission, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.

(C) ~~Failure of the director to provide notice of 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 of 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.

(D) The director may also hold a public meeting at the director's discretion, whenever, for example, such a public meeting might clarify one or more issues involved in the permit decision.

*** DRAFT – NOT FOR FILING ***

901:10-6-02 **Contents of public notices.**

(A) Applicability. This rule applies to public notices for the issuance of or proposed actions to deny, suspend, modify, or revoke permits to install, permits to operate, and NPDES permits. This rule applies to the issuance of final orders pursuant to section 903.17 of the Revised Code. In addition, this rule applies to public notices for the receipt of applications for NPDES permits including notification of the public of an applicable antidegradation review under section 6111.12 of the Revised Code~~ and to public notices for the receipt of an application for a request for a no potential to discharge determination to be made by the director~~. Public notices shall include the following information:

(1) The name, address and telephone number of the office of the Ohio department of agriculture where department files and records pertaining to the proposed action or issuance are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list provided for in rule 901:10-6-05 of the Administrative Code

(2) The name and address of the applicant.

(3) A brief description of the applicant's activities or operations.

(4) The location of the facility and a short description of any discharge indicating whether any discharge is a new or an existing discharge.

(5) A concise statement of the draft permit or the proposed action.

(6) A statement:

(a) That any interested person may submit a written comment on the draft permit and may request a public meeting ~~statement~~ within thirty days of appearance of public notice in a newspaper in the affected county. A request for a public meeting shall be in writing and shall state the nature of the issues proposed to be raised in the public meeting ~~and that any person has a right to provide a statement for the record at the public meeting if a meeting is scheduled~~; and

(b) That any person has a right to provide a written or oral statement for the record at the public meeting if a meeting is scheduled; and

~~(b)~~(c) That ~~if significant public interest is shown~~, one public meeting shall be held prior to issuance of any final permit decision when required by rule 901:10-6-04(C) and may be held where authorized by rule 901:10-6-01(D) of the Ohio Administrative Code.

(7) In addition, if the public notice is for an NPDES permit application or a draft permit on an NPDES permit the public notice shall contain the following information:

(a) For a NPDES permit and permit to install application subject to an antidegradation review:

(i) A statement summarizing the receipt of an application for an NPDES permit where an antidegradation review is required;

(ii) The date of issuance of the draft permit; ~~and~~

(iii) A statement on the applicability of an antidegradation review in section 6111.12 of the Revised Code to indicate whether waivers or exclusions of the policy apply or to indicate an evaluation of issues related to lower water quality;~~.~~

(iv) A statement that the draft permit shall become final on an effective date or event specified therein, unless:

(a) A public meeting is requested;

(b) The director amends or withdraws the draft permit; or

(c) The draft NPDES permit has been disapproved by the United States environmental protection agency in accordance with rule 901:10-3-06 of the Administrative Code; and~~.~~

(v) A statement on the applicability of any of the requirements determined by the director in accordance with paragraph (D)(2) of rule 901:10-3-01 of the Administrative Code.

~~(b) For a request for a no potential to discharge determination a fact sheet which includes:~~

~~(i) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination;~~

~~(ii) A brief summary of the factual basis upon which the request is based for granting the no potential to discharge determination; and~~

~~(iii) A description of the procedures for reaching a final decision of the no potential to discharge determination.~~

(B) Notice of NPDES permit applications to government agencies. The notice required by paragraph (A) of rule 901:10-6-01 of the Administrative Code to be given to state and governmental agencies shall include:

(1) The information required in this rule and may include a copy of such public notices.

(2) A statement that:

(a) An affected state or agency, unless covered by paragraph (B)(2)(b) of this rule, may submit written recommendations to the director and to the regional administrator of the United States environmental protection agency which the director may incorporate into the NPDES permit if issued, and that if the recommendation of the state or agency is not incorporated in the final permit, a written explanation of the director's reasons for not accepting the recommendation will be provided for that state or agency and the regional administrator of the United States environmental protection agency; and

(b) If an army corps of engineers district engineer submits written recommendations to the director advising that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of the NPDES permit, the director shall propose to deny the NPDES permit in accordance with division (F) of section 903.09 of the Revised Code, and the applicant shall be so notified. If the army corps of engineers district engineer advised the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director shall include the specified conditions in the permit.

(3) A copy of the fact sheet and a statement that a copy of the application for an NPDES permit or of the draft NPDES permit, including all ancillary papers, will be provided upon request.

(C) The notice required by paragraph (B) of this rule shall also be given, when applicable, to:

(1) Any agency responsible for an areawide waste treatment management plan pursuant to division (B) of section 208 of the Federal Water Pollution Control Act.

(2) Any agency responsible for the preparation of a plan pursuant to an approved continuing planning process under division (E) of section 303 of the Federal Water Pollution Control Act.

*** DRAFT – NOT FOR FILING ***

901:10-6-03 **Coordination of federal water pollution control act permit program with agencies of the United States.**

(A) Upon the director's issuance of a draft permit for an application to issue or modify a permit, the department shall transmit by certified mail a copy of the permit application and the draft NPDES permit to the regional administrator of the United States environmental protection agency, unless by written agreement the regional administrator has waived the right to receive, review, object, or comment upon a draft permit. If the regional administrator makes timely objection in writing to the issuance of the NPDES permit as being outside the requirements of the Federal Water Pollution Control Act, the permit shall not become final. The director may issue an amended draft permit after consideration of written comments or recommendations of the regional administrator, or may withdraw a draft permit.

(1) The director shall also transmit to the regional administrator of the United States environmental protection agency a copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any public meeting on any permit if:

(a) The regional administrator requests this information;

(b) The proposed permit contains requirements significantly different from those contained in the draft permit; or

(c) Significant comments objecting to the draft permit have been presented at the public meeting or in writing pursuant to the public notice. This does not apply to permits which by written agreement the regional administrator has waived the right to review and for which the United States environmental protection agency has not otherwise requested a receipt.

(2) Immediately following final issuance or modification or renewal of a permit under division (D) of section 903.09 of the Revised Code, the department shall transmit by first class mail a copy to the regional administrator.

(B) At the time of issuance of public notice of an application for issuance or modification of a permit pursuant to division (A) of section 903.09 of the Revised Code, for a discharge for which a fact sheet is prepared pursuant to rule 901:10-6-05 of the Administrative Code, the department shall transmit a copy of the fact sheet to the district engineer of the United States army corps of engineers for the district in which the discharge is located, unless by written agreement the district engineer has waived his right to receive a fact sheet for the discharge.

(C) The department shall, on or before the date of newspaper publication of a NPDES permit, provide the information specified in rule 901:10-6-02 of the Administrative Code to any affected state, interstate, federal, or local government agency having

jurisdiction over fish, shellfish, and wildlife resources or over coastal zone management plans, the relevant state historic preservations office, and any affected Indian tribe ~~waters that may be affected by the discharge to waters of the state~~.

*** DRAFT – NOT FOR FILING ***

901:10-6-04 **Public meetings; close of the public comment period.**

(A) Not later than thirty days after public notice of a draft permit, draft permit modification, or a proposed action to deny, suspend, or revoke a permit, ~~or any request for a no potential to discharge determination,~~ any person may file a request for a public meeting. This paragraph does not apply to amended draft actions or to a NPDES permit application where an antidegradation review is required.

(B) Public meetings and antidegradation review and NPDES permits.

(1) Within ninety days of receipt of the application for any permit to install with a NPDES permit, the director shall hold a public meeting where an antidegradation review is required for any category three wetland, a designated outstanding national resource water, outstanding high quality water, state resource water or superior high quality water. The public meeting shall be for the purpose of evaluating issues related to lower water quality.

(2) Within ninety days of receipt of the application, the director shall hold a public meeting for any permit to install application and any NPDES permit application where the application indicates that an antidegradation review is required for general high quality waters other than category three wetlands and for limited quality waters, and the director also determines that there is significant public interest. This meeting is held concurrently with the meeting for the draft permit.

(C) If the director determines that there is significant public interest as described in paragraph (D) of this rule in a draft permit to install, permit to operate, NPDES permit, or modification of any permit, in the antidegradation review described in paragraph (B)(2) of this rule, ~~in the request for a no potential to discharge determination,~~ or in any proposed action to deny, suspend, or revoke a permit, or where required to do so by statute or rule, the director shall hold one public meeting in the county where the facility is located or in a contiguous county. In consideration of an application for issuance of a permit, the director may hold one public meeting prior to issuance of a permit. 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.

[Comment: The director may take other, reasonable steps to inform the public about draft permits, including fact sheets, brochures or other informal sessions with the public and the permittee.]

[Comment: The director may include representatives from other government departments, offices and agencies to participate in public meetings and otherwise invite these persons to provide pertinent information to the public.]

(D) Significant public interest means statements made in writing by twenty or more persons expressing interest in the draft permit before the director or in the antidegradation review and requesting a public meeting. Significant public interest may also include expressed interest by one or more public officials.

(E) Public notice of the public meeting shall be published at least thirty days prior to the public meeting in a newspaper of general circulation and shall include:

(1) The address and telephone number of the office at the Ohio department of agriculture where department files and records pertaining to the proposed action or issuance are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list.

(2) The name and address of the applicant.

(3) The location of the facility and a short description of each existing or proposed discharge point and the name(s) of the receiving water(s).

(4) The date of issuance of the notice of the draft permit.

(5) The time, date, and location of the public meeting if applicable.

(6) A concise statement of the issues raised by those requesting a public meeting.

(7) A statement:

(a) That any interested person may appear and present written and/or oral statements, in person or by a representative.

(b) That the purpose of the meeting is to obtain additional information that will be limited to the criteria that are applicable to the permit application that is the subject of the public meeting and will be considered by the director prior to the director's taking final action on the draft permit under consideration.

(c) That a transcript, recording or other complete record will be made of the public meeting.

(F) In any public meeting, the director may appoint a presiding officer to conduct the meeting. The officer shall state at the beginning of the meeting the manner in which the meeting will be conducted, time limits for testifying, and any other procedures for conducting the meeting. Procedures and time limits may vary according to the number of people wishing to testify, the time the meeting starts, weather conditions and other situations affecting the length of the meeting. On the date and at the time

and place specified in the notice, the public meeting shall be held at which any person:

(1) May appear and be heard in person or by a representative, or both;

(2) May present statements orally or in writing, or both. All comments whether written or oral shall be considered equally in making a final decision, provided that comments are submitted with the name and address of the person presenting the statements for the record.

(G) Any person requesting time to make an oral comment at the meeting must register their name and address prior to the beginning of the meeting. Persons shall be called to provide a statement for the record in the order of registration, unless the presiding officer determines otherwise.

(H) Information presented by any person shall be limited to the criteria and information that are applicable to the permit application that is the subject of the public meeting. The officer may rule out of order any person who does not address comments to the matter that is the subject of the public meeting.

(I) Persons attending the public meeting are authorized to tape or videotape the proceedings provided the following requirements are met:

(1) The hearing officer is notified at least twenty-four hours prior to the start of the public meeting unless prior notice is waived by the hearing officer; and

(2) The public meeting is not interrupted or disturbed.

(J) Close of public comment period.

(1) Persons, including applicants, who believe any condition of a draft permit is inappropriate or that the director's tentative decision to deny, issue, or terminate a permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public meeting). Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the record in the same action, or consist of state or federal statutes and regulations, or other generally available reference materials. Commenters shall make supporting materials not already included in the record available to the director.

(2) At the time that any final permit action is issued the director shall issue a response to comments or "responsiveness summary".

~~(J)~~(3) ~~A transcript, recording or other complete record shall be made of the public meeting. Statements presented at a public meeting held pursuant to this rule~~

~~shall be considered by the director, who may issue a final permit, as permitted by law.~~ No final action ~~permit~~ shall be issued until after the director has considered the responsiveness summary ~~report of the presiding officer~~. The responsiveness summary ~~report~~ shall briefly describe and respond to all significant comments raised during the public comment period or during the public meeting on the draft permit action or, in the case of a NPDES permit with antidegradation applicability, the permit application~~, raised during the public comment period, including the public meeting~~. The responsiveness summary ~~report~~ shall specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change.