



**Department of
Agriculture**

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

Livestock Environmental Permitting Program
8995 East Main Street, Reynoldsburg, OH 43068
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September 22, 2008

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

Dear Ms. Buhl:

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

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

Sincerely,

Kevin Elder
Executive Director

Enclosures

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



903.16 Requiring corrective actions and assessing civil penalties.

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

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

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for

each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

(C) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, ~~or 903.04~~, or division (A) of section 903.07 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 ~~or division (A) of section 903.07~~ of the Revised Code; rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code; or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(D) (1) In lieu of seeking civil penalties under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, ~~or 903.04~~, or division (A) of section 903.07 of the Revised Code, rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code, or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

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901:10-1-08 Permit transfer.

- (A) Transfers of permits for concentrated animal feeding facilities and concentrated animal feeding operations are permissible.
- (B) In this rule, transferor means the current holder of a permit to install and/or permit to operate and/or NPDES permit. Transferee means the person making application to acquire the existing permit.
 - (1) The director shall be notified in writing by the transferor at least thirty days prior to any proposed transfer of a permit. The transferee shall inform the director that it will assume the responsibilities of the transferor.
 - (2) The notice shall include a written agreement between the transferor and transferee containing a specific date for transfer of permit responsibility, coverage and liability between the parties..
- (C) In order to satisfy the requirements of paragraph (B) of this rule, the following information shall be submitted by the transferee:
 - (1) The name and address of the transferor and the transferee. The transferee shall identify all partners if the transferee is a partnership or all officers and directors if the transferee is a corporation, and of any other person who has a right to control or in fact controls management of the transferee or the selection of officers, directors, or managers of the transferee. If the transferee is an owner or operator, ~~as these terms are defined in paragraph (MMM) of rule 901:10-1-01 of the Administrative Code~~ the transferee must satisfy the requirements of this rule.
 - (2) In the case of an application for a transfer of a permit for a major concentrated animal feeding facility, written proof that includes copies of certificates or authenticating documentation that they will employ a certified livestock manager.
- (D) Each application to transfer a permit that is submitted by a new owner or operator who has not operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application for transfer shall be accompanied by all of the following:
 - (1) A listing of all ~~concentrated~~ animal feeding facilities that the transferee has operated or is operating in this state;
 - (2) A listing of the ~~concentrated~~ animal feeding facilities that the transferee has operated or is operating elsewhere in the United States and that are regulated

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

- (3) A listing of all administrative enforcement orders issued in connection with the transferee; all civil actions in which the transferee was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief; all criminal actions in which the transferee pleaded guilty or was convicted during the five years immediately preceding the submission of the application for transfer in connection with any violation of the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any ~~concentrated~~ animal feeding facility that the transferee has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the transferee has operated or is operating outside the United States. The lists of concentrated animal feeding facilities operated by the transferee within or outside this state or outside the United States shall include, respectively, all such facilities operated by the transferee during the five-year period immediately preceding the submission of the application.
- (E) Denial of transfer of permits to install, permits to operate, or NPDES permits. The director may deny the application for transfer if the director finds from the application, the information submitted and pertinent information obtained by the director at the director's discretion that the transferee and persons associated with the transferee in the operation of ~~concentrated~~ animal feeding facilities have a history of substantial noncompliance with the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or the environmental laws of another country that indicates that the transferee lacks sufficient reliability, expertise and competence to operate the ~~proposed new or modified~~ concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it. In evaluating a history of substantial noncompliance the director shall consider the information required to be submitted pursuant to rule 901:10-1-03 of the Administrative Code. A denial by the director may be appealed by the owner or operator in accordance with Chapter 119. of the Revised Code.
- (F) If the director does not notify the transferor or the transferee of an intention to object to the transfer, then the permit will be transferred. The director may also notify both the transferor and the transferee of the director's decision.
- (G) The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the act.

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

- (A) No person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under section 903.02 of the Revised Code.
- (B) Except for a concentrated animal feeding facility that is operating under an installation permit issued by the director of environmental protection or a review compliance certificate issued by the director, on and after the date on which the program has been finalized under section 903.01 of the Revised Code, no person shall operate a concentrated animal feeding facility without a permit issued by the director under section 903.03 of the Revised Code.
- (C) No person to whom a NPDES permit has been issued shall discharge or cause to be discharged, in any waters of the state any manure, pollutants, or stormwater resulting from an animal feeding facility in excess of the permissive discharges specified under an existing permit.
- (D) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, no person shall discharge pollutants from a point source into waters of the state unless authorized by a valid and unexpired NPDES permit issued by the director or unless an application for renewal of such NPDES permit has been submitted by the person and is pending.
- (E) Any person who discharges or proposes to discharge pollutants shall apply for a NPDES permit. ~~All concentrated animal feeding operations have a duty to seek coverage under a NPDES permit. In the alternative, a concentrated animal feeding operation may seek a "no potential to discharge" determination from the director in accordance with rules 901:10-3-01 and 901:10-6-01 to 901:10-6-06 of the Administrative Code.~~
- (F) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director, no person shall discharge stormwater resulting from an animal feeding facility unless authorized by a NPDES permit when such a permit is required by the Act and subsequently issued by the director of agriculture pursuant to section 903.08 of the Revised Code.
- (G) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.
- (H) No person shall violate any effluent limits established by rule.
- (I) No person shall violate any other provision of a NPDES permit issued by the director.



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September 22, 2008

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

Dear Ms. Buhl:

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

Sincerely,

Kevin Elder
Executive Director

Enclosure

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



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

(A) The director of agriculture may determine that an animal feeding facility that is not a medium concentrated animal feeding operation or small concentrated animal feeding operation as defined in section 903.01 of the Revised Code nevertheless shall be required to be permitted as a medium or small concentrated animal feeding facility operation when all of the following apply:

(1) The director has received from the chief of the division of soil and water conservation in the department of natural resources a copy of an order issued under section 1511.02 of the Revised Code that specifies that the animal feeding facility has caused agricultural pollution by failure to comply with standards established under that section and that the animal feeding facility therefore should be required to be permitted as a medium or small concentrated animal feeding facility operation.

(2) The director or the director's authorized representative has inspected the animal feeding facility.

(3) The director or the director's authorized representative finds that the facility is not being operated in a manner that protects the waters of the state.

(B) If an animal feeding facility is required to be permitted in accordance with this section, the owner or operator of the facility shall apply to the director for a permit to operate as a concentrated animal feeding facility operation. In a situation in which best management practices cannot be implemented without modifying the existing animal feeding facility, the owner or operator of the facility also shall apply for a permit to install for the facility.

(C) In the case of an animal feeding facility for which a permit to operate is required under this section, a permit to operate shall not be required after the end of the five-year term of the permit if the problems that caused the facility to be required to obtain the permit have been corrected to the director's satisfaction.



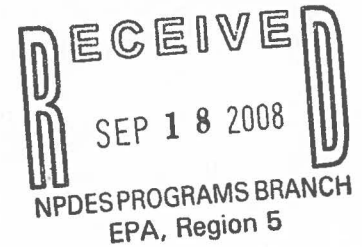
**Department of
Agriculture**

Governor Ted Strickland • Lt. Governor Lee Fisher
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September 4, 2008

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



Dear Ms. Buhl:

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

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

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

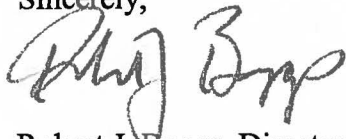
The Department is further aware that there are currently pending, in federal rulemaking procedures, revisions to the CAFO regulations in response to the *Waterkeeper* decision. The Department is committed to enacting any revisions to the State's NPDES authority that may



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

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

Sincerely,



Robert J. Boggs, Director
Ohio Department of Agriculture

Enclosures

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



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

Section I. Purpose and Responsibilities

I.A. Purpose.

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

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

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

I.B. Responsibilities.

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

I.C. Scope of Authorization.

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

I.D. Additional Agreements.

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

I.E. Withdrawal.

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

Section II. Program Responsibilities

II. Ohio Responsibilities.

In accordance with Ohio law, both the OEPA and ODA are authorized to participate in the NPDES program in accordance with the Federal Water Pollution Control Act. Except for responsibilities transferred to ODA by statute, OEPA is responsible for and has the

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

The Ohio Environmental Protection Agency

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

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

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

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

OEPA is responsible for the water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the antidegradation policy adopted under section 6111.12 of the Revised Code, which ODA shall adhere to in establishing terms and conditions of NPDES permits in accordance with section 903.08 of the Revised Code and rules promulgated thereunder.

The Ohio Department of Agriculture

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

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

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

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

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

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

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

- Permit applications
- Draft permits
- Proposed permits
- Issued permits

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

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

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

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

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

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

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

Section III. Permit Review and Issuance

III. A. ODA Responsibilities.

For those permits within its jurisdiction, ODA is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, revoking and reissuing, denying and terminating permits in accordance with Section V. Reporting and

Transmittal of Information below, applicable provisions of 40 CFR Parts 122-125 and any other applicable regulations.

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

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

III.A.1.b. Consultation with Agencies with Fish, Shellfish, and Wildlife Jurisdiction. ODA shall provide notice to and consult with the appropriate agency having jurisdiction over fish, shellfish, and wildlife, and the U.S. Fish and Wildlife Service.

III.A.1.c Consultation with Agencies with Jurisdiction over Historic Preservation. ODA shall provide notice and permit application information to, and consult with, the State Historical Office.

III.A.1.d Cooperation.

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

III. B. Application Review and Permit Development.

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

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

III.B.2. Permit Development.

For those permits within its jurisdiction, ODA will prepare a draft permit in accordance with applicable federal and state laws and regulations and this MOA. ODA will develop effluent limitations in accordance with state and federal standards and limitations including effluent guidelines, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and Ohio's Water Quality Management Plan under sections 301, 302, 303, 304, 306, 307, 308, and 402 of the CWA.

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

III.B.2.a. General Information.

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

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

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

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

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

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

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

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

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

III.B.2.e. General NPDES permits.

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

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

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

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

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

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

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

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

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

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

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

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

III.C.2. Individual Permits.

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

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

III.C.2.b. USEPA review.

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

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

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

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

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

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

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

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

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

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

III. C.3. General Permits.

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

III. D. Comments in Response to Public Notices.

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

III.D.2. ODA may issue the permit without further review by USEPA if (a) the permit to be finalized does not differ from the draft permit submitted to USEPA in accordance with **Section III. C.2.a.** of this MOA; (b) USEPA has not objected to the draft permit; and (c) significant public comments have not been made (40 CFR 123.43(c)(2)).

III.D.3. Proposed Permits.

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

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

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

III. E. USEPA Public Hearings.

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

III. F. USEPA Assumes Permit Authority.

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

III. G. Request for Permit Action by USEPA.

III.G.1. With respect to modifications or revocations and reissuances of permits by ODA, USEPA waives the right to review any permit that qualifies as a minor modification as defined in 40 CFR §122.63 or that qualifies as an operational change as listed in the appendix to rule 901:10-1-09 of the Ohio Administrative Code (OAC), except that USEPA does not waive its right to review when operational changes result in changes in permit conditions derived from 40 CFR 122; provided, that if the change proposed by any permittee is not a modification and is not listed in rule 901:10-1-09 of the OAC, ODA will send to USEPA a copy of the Director's decision as to whether the change proposed is a modification or an operational change.

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

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

III. H. Public Participation.

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

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

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

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

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

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

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

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

III. K. Administrative or Court Action.

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

III. L. Variances.

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

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

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

III. M. Evidentiary Hearings.

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

III. N. Public Hearings.

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

Section IV. Enforcement.

IV. A. General.

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

IV. B. Compliance Monitoring.

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

IV.B.1. Compliance Review.

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

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

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

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

IV.B.2. Compliance Inspection.

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

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

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

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

IV. B.3. Information Requests.

Whenever any party to this MOA requests additional information not listed under Section V., Reporting and Transmittal of Information, of this MOA concerning a specific discharger under ODA jurisdiction and the requested information is available from ODA files, ODA will provide that information to the requesting party in a timely manner.

IV. C. Action Against Violators.

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

IV. C.1. Public Information.

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

IV. C.2. Notice of Substantial Endangerment.

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

Section V. Reporting and Transmittal of Information

V.A. ODA Reporting and Transmittals.

The ODA will submit the following to USEPA:

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

V.A.5.- -For all NPDES permits issued in a quarter, a letter of transmittal listing NPDES permit number, permittee's name, facility location, date signed, effective date, and expiration date - Quarterly by the 10th working day of the month following the end of the quarter		
-V.A.6.- -A copy of settlements and decisions in NPDES permit appeals. - -As issued		
-V.A.7.- -A list of large CAFOs scheduled for compliance inspections. - -With submission of the annual 106 State Program Plan by June 30 of each year		
-V.A.8.- -Proposed revisions to the scheduled compliance inspections. - -As needed		
-V.A.9.- -A list of compliance inspections performed during the previous quarter. - - Quarterly		
-V.A.10.- -For large CAFOs, copies of all compliance inspections, report forms, data, and transmittal letters. - -Within 30 days of inspection completion		
-V.A.11.- -For small and medium CAFOs, copies of all compliance inspection reports and transmittal letters. - -As requested		
-V.A.12.- -For large CAFOs, a quarterly narrative and noncompliance report as specified in 40 CFR §123.45 (a). - -Quarterly, as specified in 40 CFR §123.45(d)		
-V.A.13.- -For small and medium CAFOs, an annual noncompliance report as specified in 40 CFR §123.45(c). - -Within 60 days of the end of the calendar year, as specified in 40 CFR §123.45(d) (2)		
-V.A.14.- -Copies of all enforcement actions against large CAFOs (including letters, notices of violation, administrative orders, initial determinations, referrals to the Attorney General for judicial action, and petitions for civil judicial action). - -As issued		
-V.A.15.- -Copies of Evidentiary Hearing Requests for facilities where USEPA retains enforcement authority. - -Within 15 days of receipt of the request		
-V.A.16.- -For major dischargers, a semi-annual statistical summary report as required in 40 CFR §123.45 (b)- -Semi-annually, as specified in 40 CFR §123.45 (b)		
VI. B. USEPA Reporting and Transmittals.		
USEPA shall transmit the following information to the ODA		
ITEM	DESCRIPTION	FREQUENCY
V.B.1.	A list of compliance inspection USEPA intends to conduct jointly with ODA as part of its State Overview Plan.	-- Annually
V.B.2.	Proposed revisions to the schedule of compliance inspections.	-- As needed

Section VI. Program Review.

VI. A.

Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulation, or directive, which has been approved by USEPA; and prior to the adoption of any new statute, regulation, or directive ODA shall notify the USEPA Regional Administrator and shall transmit the text of any such change or new

form to the USEPA Regional Administrator (see 40 CFR §123.62 which provides that the change may trigger a program revision, which will not become effective until approved by USEPA).

VI. B.

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

VI. C.

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

VI. D.

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

VI. E.

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

Section VII. Independent USEPA Powers.

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

Section VIII. Computations of Time.

VIII. A.

In computing any period of time prescribed by this MOA, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday, or a legal

holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded from the computation.

VIII. B.

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

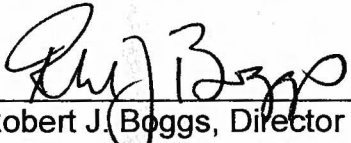
Section IX. Modification

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

Section X. MOA Effective Date

This Memorandum of Agreement shall become effective when signed by the USEPA Regional Administrator pursuant to 40 CFR §123.24(a) and the Director of the Ohio Department of Agriculture and the Director of the Ohio Environmental Protection Agency.

In witness whereof, the parties execute this agreement:



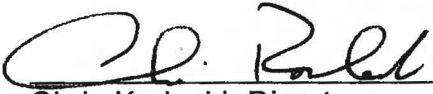
Robert J. Boggs, Director
Ohio Department of Agriculture

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

9-15-08

Date

Date



Chris Korleski, Director
Ohio Environmental Protection Agency

9/10/08

Date

§ 903.01. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

July 15, 2008 Statute Amendment

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

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

under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

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

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

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

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

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

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general permit than by an individual permit.
- (3) Each category of point sources satisfies the criteria established in rules.

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

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

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under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

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

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

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

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

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

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general permit than by an individual permit.
- (3) Each category of point sources satisfies the criteria established in rules.

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

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

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

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

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

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

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

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

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

- (1) Seven hundred mature dairy cattle whether milked or dry;
- (2) One thousand veal calves;
- (3) One thousand cattle other than mature dairy cattle or veal calves;
- (4) Two thousand five hundred swine that each weigh fifty-five pounds or more;
- (5) Ten thousand swine that each weigh less than fifty-five pounds;
- (6) Five hundred horses;
- (7) Ten thousand sheep or lambs;
- (8) Fifty-five thousand turkeys;
- (9) Thirty thousand laying hens or broilers if the animal feeding facility uses a liquid manure handling system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The facility does one of the following:

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

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

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

(S) "NPDES permit" means a permit issued under the national pollutant discharge elimination system established in section 402 of the Federal Water Pollution Control Act and includes the renewal of such a permit. "NPDES permit" includes the federally

enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

(T) "Permit" includes an initial, renewed, or modified permit to install, permit to operate, NPDES permit, and installation permit unless expressly stated otherwise.

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

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

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

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

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

- (1) Spillage or overflow from animal watering systems;
- (2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;
- (3) Direct contact swimming, washing, or spray cooling of animals;
- (4) Dust control.

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

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

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

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

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

(a) An egg washing or egg processing facility;

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

(c) Settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions that are designed and maintained to separate uncontaminated storm water runoff from contaminated water and to contain and treat contaminated storm water runoff.

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

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

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

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

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

§ 903.07 Livestock manager certification.

(A) On and after the date that is established in rules by the director of agriculture, both of the following apply:

(1) The management and handling of manure at a major concentrated animal feeding facility, including the land application of manure or the removal of manure from a manure storage or treatment facility, shall be conducted only by or under the supervision of a person holding a livestock manager certification issued under this section. A person managing or handling manure who is acting under the instructions and control of a person holding a livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling.

(2) No person shall transport and land apply annually or buy, sell, or land apply annually the volume of manure established in rules adopted by the director under division (E)(5) of section 903.10 of the Revised Code unless the person holds a livestock manager certification issued under this section.

(B) The director shall issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination. The director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked livestock manager certification in accordance with rules.

(C) Information required to be included in an application for a livestock manager certification, the amount of the application fee, ~~and requirements regarding training and the examination shall be established in rules, and requirements for manure management, handling, land application, and record keeping shall be established in rules.~~

903.08 Participating in national pollutant discharge elimination system.

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

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

(B)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge ~~manure~~ pollutants from a ~~point-source~~ concentrated animal feeding operation into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of ~~manure~~ pollutants from a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

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

(C)(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture

under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

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

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

(1) The application contains misleading or false information.

(2) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Federal Water Pollution Control Act.

(3) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act.

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

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

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

(2) The discharges are more appropriately authorized by a general permit than by an individual permit.

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

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

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

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

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

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

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

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

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

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

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

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

July 15, 2008 Statute Amendment

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

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903.081 Permits not to be granted.

(A) For purposes of section 903.08 of the Revised Code, no person shall issue approve all or portions of a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, no person ~~who may serve on a board or commission, pursuant to an appeal of an action regarding a NPDES permit, which approves all or portions of a NPDES permit, require, or to order the director of agriculture to vacate or modify a NPDES permit, including taking such action pursuant to an appeal of a NPDES permit, require or order the director to vacate or modify a NPDES permit~~ if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.¹

(B) As used in this section:

(1) "Significant portion of income" means ten per cent or more of gross personal income in a calendar year or fifty per cent or more of gross personal income in a calendar year if the recipient of the income is more than sixty years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement.

(2) "Income" includes retirement benefits, consultant fees, and stock dividends. "Income" does not include mutual fund payments or other diversified investments for which the recipient does not know the identity of the primary sources of the income.

(3) "Permittee" and "applicant for a NPDES permit" does not include any department or agency of the state.

903.09 Draft NPDES permit; public meetings; application of antidegradation policy; proceedings on application for permit.

(A) Prior to issuing or modifying a permit to install, permit to operate, or NPDES permit, the director of agriculture shall issue a draft permit. The director or the director's representative shall mail notice of the issuance of a draft permit to the applicant and shall publish the notice once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility or discharger is located or proposed to be located. The director or the director's representative also shall provide notice of the issuance of a draft NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act. Notice of the issuance of a draft permit to install, permit to operate, or NPDES permit shall include the address where written comments concerning the draft permit may be submitted and the period of time during which comments will be accepted as established by rule.

If the director receives written comments in an amount that demonstrates significant public interest, as defined by rule, in the draft permit, the director shall schedule one public meeting to provide information to the public and to hear comments pertinent to the draft permit. The notice of the public meeting shall be provided in the same manner as the notice of the issuance of the draft permit.

(B) If a person is required to obtain both a permit to install and a permit to operate, including any permit to operate with NPDES provisions, and public meetings are required for both permits, the public meetings for the permits shall be combined.

(C) The director shall apply the antidegradation policy adopted under section 6111.12 of the Revised Code to permits issued under this chapter to the same degree and under the same circumstances as it applies to permits issued under Chapter 6111. of the Revised Code. The director shall hold one public meeting to consider antidegradation issues when such a meeting is required by the antidegradation policy. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

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

~~(E) Failure of the director to provide notice or a public meeting shall invalidate a permit only if the failure is raised by, and was relied upon to the detriment of, a person that is entitled to appeal the permit.~~ Notice or a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.

(F) The denial, modification, suspension, or revocation of a permit to install, permit to operate, or NPDES permit without the consent of the applicant or permittee shall be preceded by a proposed action stating the director's intention to issue an order with respect to the permit and the reasons for it.

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

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

(G)(1) The director shall issue an order issuing or denying an application for a permit to operate that contains NPDES provisions or for a NPDES permit, as well as any application for a permit to install that is submitted simultaneously, not later than one hundred eighty days after receiving the application.

(2) In the case of an application for a permit to install or permit to operate that is not connected with an application for a NPDES permit, the director shall issue or propose to deny the permit not later than ninety days after receiving the application. If the director has proposed to deny the permit to install or permit to operate under division (G)(2) of this section, the director shall issue an order denying the permit or, if the director decides against the proposed denial, issuing the permit not later than one hundred eighty days after receiving the application. If the director denies the permit, the director shall notify the applicant in writing of the reason for the denial.

(H) All rulemaking and the issuance of civil penalties under this chapter shall comply with Chapter 119. of the Revised Code.

(I) Upon the transfer of ownership of an animal feeding facility for which a permit to install, an installation permit, a review compliance certificate, or a permit to operate that contains no NPDES provisions has been issued, the permit or certificate shall be transferred to the new owner of the animal feeding facility except as provided in division (C) of section 903.05 of the Revised Code. In the case of the transfer of ownership of a point source for which a NPDES permit or a permit to operate that contains NPDES provisions has been issued, the permit shall be transferred in accordance with rules.

(J) Applications for installation permits for animal feeding facilities pending before the director of environmental protection on the date on which the director of agriculture has finalized the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code shall be transferred to the director of agriculture. In the case of an applicant who is required to obtain a permit to install and a permit to operate under sections 903.02 and 903.03, respectively, of the Revised Code, the director of agriculture shall process the pending application for an installation permit as an application for a permit to install and a permit to operate.

(K) Applications for NPDES permits for either of the following that are pending before the director of environmental protection on the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code shall be transferred to the director of agriculture:

(1) The discharge of manure pollutants from a concentrated animal feeding operation;

(2) The discharge of storm water resulting from an animal feeding facility. In the case of an applicant who is required to obtain a NPDES permit under section 903.08 of the Revised Code, the director of agriculture shall process the pending application as an application for a NPDES permit under that section.

903.10. Rules.

The director of agriculture ~~shall~~ is authorized to adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(A) Establish all of the following concerning permits to install and permits to operate:

(1) A description of what constitutes a modification of a concentrated animal feeding facility;

(2) The amount of the fee that must be submitted with each permit application ~~and~~, each application for a permit modification, and each application for a major operational change.

(3) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;

(4) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;

(5) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;

(6) Any additional information that must be included with a permit application;

(7) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;

(8) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to the grounds established in division (D) of section 903.02 and division (D) of section 903.03 of the Revised Code;

(9) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously;

(10) A definition of "general permit to operate" that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for issuing a general permit to operate and the criteria for determining a person's eligibility to operate under a general permit to operate.

(B) Establish all of the following for the purposes of review compliance certificates issued under section 903.04 of the Revised Code:

(1) The form of a certificate;

(2) Criteria for what constitutes a significant capital expenditure under division (D) of that section;

(3) Deadlines and procedures for submitting information under division (E)(2) of that section.

(C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application.

(2) Disposal of dead livestock;

(3) Any other activity that the director considers appropriate.

Best management practices established in rules adopted under division (C) of this section shall not conflict with best management practices established in rules that have been adopted under any other section of the Revised Code ~~and that are in effect on March 15, 2001~~. The rules adopted under division (C) of this section shall establish guidelines that require owners or operators of concentrated animal feeding facilities to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure.

(D) Establish all of the following concerning insect and rodent control plans required under section 903.06 of the Revised Code:

(1) The information to be included in an insect and rodent control plan;

(2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;

(3) Criteria for determining compliance with or violation of an insect and rodent control plan;

(4) Procedures and standards for monitoring insect and rodent control plans;

(5) Procedures and standards for enforcing insect and rodent control plans at concentrated animal feeding facilities at which insects or rodents constitute a nuisance or adversely affect public health;

(6) The amount of civil penalties for violation of an insect and rodent control plan assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code, provided that the rules adopted under division (D)(6) of this section shall not establish a civil penalty of more than ten thousand dollars for a violation involving a concentrated animal feeding facility that is not a major concentrated animal feeding facility and shall not establish a civil penalty of more than twenty-five thousand dollars for a violation involving a major concentrated animal feeding facility;

(7) The time period within which the director must approve or deny an insect and rodent control plan after receiving it;

(8) Any other provisions necessary to administer and enforce section 903.12 of the Revised Code.

(E) Establish all of the following concerning livestock manager certification required under section 903.07 of the Revised Code:

(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant for a livestock manager certification. The training shall include and the examination shall test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;

(4) The length of time during which livestock manager certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;

~~(6) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code. Establish rules to require corrective actions and assess an administrative penalty, if any, against the holder of a livestock manager certification.~~

~~(7) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.~~

(F) Establish all of the following concerning NPDES permits:

(1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. ~~This designation shall include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.~~

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;

(6) The amount of the fee that must be submitted with an application for a permit;

(7) Procedures for processing permit applications, including public notice and participation requirements;

(8) Procedures for notifying the United States environmental protection agency of the submission of permit applications, the director's action on those applications, and any other reasonable and relevant information;

(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(10) Procedures for the transfer of permits to new owners or operators;

(11) Grounds and procedures for the issuance, denial, modification, suspension, or revocation of permits, including general permits;

(12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit.

The rules adopted under division (F) of this section shall be consistent with the requirements of the Federal Water Pollution Control Act.

(G) Establish public notice and participation requirements, in addition to the procedures established in rules adopted under division (F)(7) of this section, for the issuance, denial, modification, transfer, suspension, and revocation of permits to install, permits to operate, and NPDES permits consistent with section 903.09 of the Revised Code, including a definition of what constitutes significant public interest for the purposes of divisions (A) and (F) of section 903.09 of the Revised Code and procedures for public meetings. The rules shall require that information that is presented at such a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting.

(H) Establish the amount of civil penalties assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code for violation of the terms and conditions of a permit to install, permit to operate, or review compliance certificate, provided that the rules adopted under this division shall not establish a civil penalty of more than ten thousand dollars per day for each violation;

(I) Establish procedures for the protection of trade secrets from public disclosure. The procedures shall authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act. The rules shall require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. Rules adopted under this division do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under section 903.08 of the Revised Code or rules adopted under division (F) of this section.

~~(J) Establish any other provisions necessary to administer and enforce this chapter.~~
Establish procedures and administrative fees, if any, for additional inspections resulting from noncompliance by a concentrated animal feeding facility.

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

903.15 Submitting complaint to director.

(A) A person who is aggrieved or adversely affected by an alleged nuisance related to a concentrated animal feeding facility may submit a complaint to the director of agriculture alleging that the nuisance exists related to a concentrated animal feeding facility or to a discharge from an animal feeding operation, as defined in 40 C.F.R. 122.23. The complaint may be made orally or in writing. If the complaint is made in writing, it shall be signed by the person making it and dated.

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

(C)(1) If, upon completion of the investigation, the director determines that the owner or operator concentrated animal feeding facility or animal feeding operation is in compliance with a permit or review compliance certificate, applicable requirements, the director shall dismiss the complaint and notify the complainant and the owner or operator of the dismissal.

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

903.16 Requiring corrective actions and assessing civil penalties.

(A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code. However, the director may impose a civil penalty only if all of the following occur:

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

(2) After the time period specified in the notice has elapsed, the director or the director's duly authorized representative has inspected the concentrated animal feeding facility, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(3) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

Civil penalties shall be assessed under this division as follows:

(1) A person who has violated section 903.02, 903.03, or 903.04 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code shall pay a civil penalty in an amount established in rules unless the violation is of the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) A person who has violated the requirements established under division (C) of section 903.06 of the Revised Code shall pay a civil penalty in an amount established in rules for

each violation. Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements established under division (A) of section 903.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation. Each thirty-day period during which a violation continues constitutes a separate violation.

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

~~(C)(D)~~ The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.02, 903.03, or 903.04, or division (A) of section 903.07 of the Revised Code; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code; rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code; or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

~~(D)~~ (E)(1) In lieu of seeking civil penalties under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established under division (C) of section 903.06 or division (A) of section 903.07 of the Revised Code.

(2) The director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating section 903.02, 903.03, or 903.04, or division (A) of section 903.07 of the Revised Code, rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code, or an order issued under division (B) of this section or division (B) of section 903.07 of the Revised Code.

(3) A person who has committed a violation for which the attorney general may bring an action for a civil penalty under division (D)(1) or (2) of this section shall pay a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

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901:10-1-01 Definitions.

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

- (A) Act means the Federal Water Pollution Control Act set forth at 33 USC sections 1251 to 1387.
- (B) Administrator means the administrator of the United States environmental protection agency.
- (C) Agricultural drainage well means a class five underground injection control well that receives or has the potential to receive drainage from irrigation tail-waters, animal yards, feedlots or dairy runoff and any related agricultural field runoff. An injection well is any bored, drilled, or driven shaft or dug hole whose depth is greater than the largest surface dimension.
- (D) Agricultural stormwater discharge means runoff generated by precipitation that drains over terrain used for agriculture as defined in section 1.61 of the Revised Code that conveys manure to waters of the state, provided that the manure has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure in compliance with the best management practices set forth in Chapter 901:10-2 of the Administrative Code.
- (E) Agronomic rate means a rate of application of nutrients from any source to the land or an amount of nutrients removed by crop based on:
 - (1) Nutrient content of the manure to be applied;
 - (2) Nutrient needs of the current or planned crops; and
 - (3) Nutrient holding capacity of the soil.
- (F) Ammonia (as N) means ammonia reported as nitrogen and is listed with approved methods of analysis in table 1B at 40 CFR 136.
- (G) Applicant means a person applying for a permit, certificate, or submitting a claim of trade secrecy to the director.
- (H) Appropriate design plan means a construction plan for a manure storage or treatment facility that has been accepted by the department as meeting best management practices and recognized industry standards for construction. This includes pre-engineered design plans for the design and construction of manure storage or

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

- (I) Appropriate examination means an examination that has been approved by the department.
- (J) Appropriate training program means a training program that has been approved by the department.
- (K) Aquifer means an underground consolidated or unconsolidated geologic formation or series of formations that are hydraulically connected and that have the capability to receive, store, and yield useable quantities of water to wells. Aquifer does not include perched groundwater.
- (L) Application means the form and supporting documents used by an applicant to apply for an Ohio permit under this chapter.
- (M) Average precipitation means the precipitation over the length of a storage period.
- (N) Beneficial organisms mean predators, parasites, or pathogens that, during their life cycle, are used to suppress pest organisms or are otherwise beneficial.
- (O) Best management practice (BMP) means a practice or combination of practices that is determined to be the most effective and practicable including technological, economic, and institutional controls as a means of complying with the applicable standards of Chapter 903. of the Revised Code. BMPs may include structural and nonstructural practices, conservation practices, prohibition of practices, schedules of activities, operation and maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage, or leaks, sludge or waste disposal or drainage from raw material storage.

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

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

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- (Q) BOD5 means five-day biochemical oxygen demand and is listed with approved methods of analysis in table 1B at 40 CFR 136.
- (R) Buffer strip means setback of an area of permanent dense vegetation, often planted along the edge or the contour of a land application site or a slope of the field usually for management practices, including practices to slow the flow of water runoff or enhance water filtration, and minimize the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. Types of buffers include filter strips, field borders, contour grass strips, vegetated cover and riparian buffers. Types of buffers include those described in "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" which includes the following:
- (1) "Filter Strips/Areas, No. 393," June 2002;
 - (2) "Riparian Forest Buffer, No. 391," March 1997;
 - (3) "Field Border, No. 386," June 2002; and
 - (4) "Contour Buffer Strips, No. 332," June 2002.
- (S) Certified livestock manager means a person that has been duly certified by the department and currently holds a valid livestock manager certification.
- (T) Cold water habitat means waters designated as coldwater aquatic life habitat by the Ohio environmental protection agency as set forth in Chapter 3745-1 of the Administrative Code.
- (U) Compliance plan means:
- (1) A written plan prepared and submitted by the owner or operator by registered or certified mail; and
 - (2) A statement prepared by the owner or operator that describes the actions the owner or operator will take to eliminate the deficiencies that resulted in noncompliance and includes a schedule stating the time by which each of the actions shall be accomplished to achieve compliance.
- (V) Construction, for the purposes of stormwater construction permits, means the initial disturbance of soils associated with clearing, grading or excavating activities.
- (W) Department means the Ohio department of agriculture, the director, or the director's authorized representative.
- (X) Design capacity means the ability to house or maintain the total number of animals confined or to be confined in open lots, housed lots, feedlots, confinement houses,

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

(Y) Dikes mean both dikes and embankments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The dismantling of existing equipment and control devices;
- (2) The ordering of equipment and control devices;
- (3) Off-site fabrication; and
- (4) Site preparation.

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

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

- (1) Sinkholes;
- (2) Sinking streams;
- (3) Caves.

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

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

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

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

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

- (1) Spraying or spreading onto the land surface;
- (2) Injection below the land surface in the crop root zone using equipment specifically designed for this purpose; or
- (3) Incorporation into the soil by means of the mixing of manure with the surface soil using standard agricultural practices, such as tillage.

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

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

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

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

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

(CCC) Manure storage or treatment facility means any excavated, diked or walled structure or combination of structures designed for the biological stabilization, holding or storage of manure. These facilities include manure storage ponds, manure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a final effective NPDES permit for discharges at that site.

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

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

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

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

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

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

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- (2) Directing the owner or operator to perform those actions necessary to comply with the permit including rules or any orders made pursuant to this chapter and to pay a penalty;
- (3) Specifying a reasonable period of time by which compliance is to be achieved or is to be implemented not to exceed thirty days after the date of notice, or if the violation requires more than thirty days to correct, a period of time contained in a compliance plan acceptable to the department;
- (4) Issued by the director or the director's designated representative; and
- (5) In writing and shall be served personally or by registered or certified mail.

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

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

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

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

- (a) The person holds at least twenty-five per cent of the equity of the facility which is a business concern that is a publicly traded corporation; or
- (b) The person is any other business concern not covered in paragraph ~~(PPP)~~(1)(a) of this rule and holds at least fifty per cent of the equity of the facility; or
- (c) The person has provided a loan to the facility with provisions for the right to control management of the facility or actual control of the facility or the selection of officers, directors, or managers of the facility.

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

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

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- (i) "Sole proprietorship" means a form of business concern, other than a partnership or corporation, in which one person owns all the assets and is solely liable for all the debts of the business. Sole proprietor includes any individual or entity in which an individual is an applicant or permittee or prospective owner.
- (ii) "Partner" means a business concern where any person holding a position as, or similar to, a general partner, as defined in division (E) of section 1782.01 of the Revised Code, or a limited partner, as defined in division (F) of section 1782.01 of the Revised Code, or persons who share profits and liability and have management powers of a partnership, as partnership is defined in section 1775.05 of the Revised Code.
- (iii) "Publicly traded corporation" means a business concern that is a corporation:
 - (a) Whose shares are listed on a national securities exchange; or
 - (b) Whose shares are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association; or
 - (c) With fifty or more shareholders.
- (b) "Equity" means any ownership interest in a business concern, including sole proprietorship, the shares of a partner, and stock in a corporation.
- (c) "Loans" means notes, mortgages, or financial loans of any kind, secured or unsecured, unless held by a chartered lending institution.
- (3) "Operator" means the person responsible for the direct control or overall operations of a facility, and whose duties or responsibilities involve, in whole or part, the management of the facility and the exercise of independent or discretionary judgment. An operator may include the person who has the right to control or in fact controls management of the facility and or the selection of officers, directors, or managers of the facility.
- ~~(QQQ)~~(PPP) Overflow means the discharge of manure resulting from the filling of manure storage or treatment facilities beyond the point at which no more manure or stormwater can be contained by the facilities.
- ~~(RRR)~~(QQQ) Past violations for purposes of rule 901:10-5-04 of the Administrative Code means violations of Chapter 903. of the Revised Code and rules promulgated thereunder that have occurred on more than one occasion in the past five years.

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

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

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

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

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

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

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

- (1) A ten year, twenty-four hour rainfall event with a probable recurrence interval of once in ten years, or
- (2) A twenty-five year, twenty-four hour rainfall event with a probable recurrence interval of once in twenty-five years; or
- (3) A one-hundred year, twenty-four hour rainfall event.
- (4) The terms ten year, twenty-four hour precipitation event, twenty-five year, twenty-four hour precipitation event, and one-hundred year, twenty-four hour

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

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

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

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

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

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

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

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

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

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

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

- ~~(1) Five dollars and sixty cents each for mature dairy cow, whether milked or dry;~~
- ~~(2) Four dollars each for cattle other than mature dairy cows or veal calves, including heifers, steers, bulls, and cow/calf pairs;~~
- ~~(3) One dollar and sixty cents each for swine weighing fifty-five pounds or more;~~
- ~~(4) Eight dollars each for horses;~~
- ~~(5) Seven cents each for turkeys;~~
- ~~(6) Four cents each for laying hens or broilers, if the animal feeding facility does or does not use a liquid manure handling system.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) It derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable through proper means by other persons who can obtain economic value from its disclosure or use.
- (2) The person claiming the secrets has taken reasonable efforts under the circumstances to maintain secrecy.

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

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

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

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

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

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

(2) A facility that is required to obtain both an NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES permit as federally enforceable. For purposes of Chapters 901:10-1 to 901:10-6 of the Administrative Code, the term NPDES permit, NPDES operation, and concentrated animal feeding operation is an animal feeding facility that is subject to the NPDES permit as established in section 402 of the Act and includes the renewal of such a permit. NPDES permit includes the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

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

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

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

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

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

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

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

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

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

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

(ii) A listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating outside the United States;

(iii) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted during the five years immediately preceding the submission of the application in connection with any violation of the federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating outside of the United States. The lists of

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concentrated animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five year period immediately preceding the submission of the application.

- (5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.
- (6) In the case of an application that meets the criteria established in sections 307.204 and 505.266 of the Revised Code, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the facility will be located, certifying that, in accordance with those sections, the applicant has provided the boards with the required written notification and that final recommendations, if any, regarding improvements and costs of improvements have been made by the boards.
- (7) An application for a permit to install a concentrated animal feeding facility shall contain documentation or correspondence that verifies that the owner or operator has ~~consulted with~~ notified local officials, including boards of county commissioners, county engineer, and ~~or~~ boards of township trustees to address infrastructure needs and financing of that infrastructure which includes but is not limited to:-
 - (a) The anticipated travel routes of motor vehicles to and from the facility;
 - (b) Notwithstanding any exemptions that may be applicable under section 5577.042 of the Revised Code, the owner or operator shall provide the anticipated number and weights of motor vehicles traveling to and from the facility with an estimated maximum overall gross weight of vehicles upon the road surface;
 - (c) Operational needs of the proposed facility for access to roads and location of such access; and
 - (d) Operational needs of the proposed facility for access to tiles, culverts, off-site drainage, rights-of-way for manure transport.
- (8) A certification statement as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. "Based on my inquiry of the

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

(9) A complete application is required.

- (a) Any person who requires a permit shall complete, sign, and submit to the director an application for each permit required.**
- (b) The director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit.**
- (c) Permit applications must comply with the signature and certification requirements of this rule.**
- (d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied in accordance with division (F) of section 903.09 of the Revised Code and appropriate enforcement actions may be taken under applicable provisions of the Chapter 903. of the Revised Code and rules promulgated there under.**

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

(C) Duration and renewal.

(1) Permit to install.

- (a) A permit to install shall expire after twenty-four months unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time.**
- (b) The director may extend the expiration of a permit to install upon request of the applicant. An extension, if approved, will be valid for twelve months.**
- (c) Any further extensions are at the discretion of the director.**

(2) Permit to operate.

- (a) A permit to operate shall be valid for a period of five years.**
- (b) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days**

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prior to the expiration date of the permit to operate and shall comply with the requirements governing application for permits to operate that are established by rules, including rules 901:10-2-07 to 901:10-2-20 of the Administrative Code.

(D) NPDES permit.

- (1) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by a general permit under Chapter 901:10-4 of the Administrative Code, must submit a complete application to the director in accordance with this rule and Chapter 901:10-2 of the Administrative Code. ~~All concentrated animal feeding operation owners or operators must seek coverage under an NPDES permit, unless the owner or operator has received from the director notification of a determination that the concentrated animal feeding operation has "no potential to discharge" manure.~~
- (2) Any person proposing a new discharge shall submit an application at least one hundred and eighty days before the date on which the discharge is to commence unless permission for a later date has been granted by the director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred and eighty days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity.
- (3) When a concentrated animal feeding operation is owned by one person but is operated by another person, the operator may obtain a permit.
- (4) Facilities undergoing construction activities that include clearing, grading, excavating, grubbing and/or filling activities that result in the disturbance of one or more acres shall submit applications at least ninety days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits.
- (5) Applicants for concentrated animal feeding operations must submit form 2B.
- (6) A NPDES permit shall be valid for a period not to exceed five years.
- (7) A NPDES permit may be renewed. An application for renewal of a NPDES permit shall be submitted to the director at least one hundred eighty days prior to the expiration date of the NPDES permit and shall comply with the requirements governing applications for permit to operate and NPDES permit applications that are established in Chapters 901:10-2 and 901:10-3 of the Administrative Code.

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

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

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

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

- (1) The permit application contains misleading or false information; or
- (2) The designs and plans fail to conform to best management practices and to the rules in this chapter or if the owner or operator fails to build the facility in accordance with design plans as approved in the permit to install or in accordance with amended and approved design plans; or
- (3) The plans for the manure management plan, the insect and rodent control plan and any other plans governing the operation fail to conform to best management practices and to rules of this chapter; or
- (4) The director determines that the designs and plans describe a proposed discharge or source for which a NPDES permit is required under this chapter and that will conflict with an areawide waste treatment plan adopted in accordance with section 208 of the Act; or
- (5) The facility is not designed or constructed as a non-discharge system or operated to prevent the discharge of pollutants to waters of the state or to otherwise protect water quality; or
- (6) The director determines that the applicant or owner or operator has not complied with rule 901:10-1-10 of the Administrative Code.

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

- (1) The applicant or owner or operator and persons associated with the applicant or owner or operator, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or environmental laws of another country that indicates that the applicant or owner or operator lacks sufficient reliability, expertise and competence to operate the ~~proposed new or modified~~ facility in substantial compliance with Chapter 903. of the Revised Code and this chapter.

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

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

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

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

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

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

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

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

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

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

(ii) Cessation or suspension of operations.

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

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

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(C) In addition to the criteria set forth in paragraphs (A) and (B) of this rule, the director shall deny, modify, suspend, or revoke an NPDES permit if the director determines::

- (1) Discharge from the facility will prevent or interfere with attainment or maintenance of applicable water quality standards adopted under section 6111.041 of the Revised Code and the most current antidegradation policy adopted under section 6111.12 of the Revised Code; or
- (2) Discharge from the facility will not achieve compliance with national effluent standards; or
- (3) The administrator of the United States environmental protection agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Act; or
- (4) The proposed discharge or source will conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Act; or
- (5) Forms, notices, or reports required pursuant to the terms and conditions of the NPDES permit are false or inaccurate;
- (6) The discharge is of any radiological, chemical, or biological warfare agent or high-level radioactive waste or medical waste; or
- (7) The United States army corps of engineers for the district in which the discharge is located objects in writing to the issuance of the NPDES permit as substantially impairing navigation or anchorage; or
- (8) Discharge from the facility will not achieve national standards of performance for new sources; or
- (9) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (10) The permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (11) The applicant or owner or operator is required to obtain a state or other appropriate certification under section 401 of the Act and 40 CFR section 124.53 and that certification has not been obtained or waived;
- (12) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

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(13) Discharge from the facility will not achieve and maintain compliance with other requirements of the act and the regulations promulgated thereunder.

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

- (A) Applicant means a person submitting a claim of trade secrecy to the director or to the director's authorized representative.
- (B) Records, reports or other information obtained under Chapter 903. of the Revised Code or rules thereunder may be entitled to protection as trade secrets. In order to be protected, the applicant shall demonstrate to the director's satisfaction that all or part of such records, reports or other information, (including attachments that are required to be submitted), or other part thereof (other than effluent data) to which the director has access under this rule, if made public would divulge methods or processes or other information entitled to protection as trade secrets. If the director determines that the claim for trade secret is satisfied, the director shall consider such records, reports, or other information or part thereof confidential and manage the records, reports or other information pursuant to this rule.
- (C) The following information is considered a public record for which claims of trade secrecy will be denied:
 - (1) The name and address of any permit applicant or permittee;
 - (2) Permit forms, permit applications, permits and sampling and effluent data;
 - (3) Information required by NPDES application forms provided by the department including information submitted on the forms themselves and any attachments used to supply information required by the forms; and
 - (4) Any public comments, testimony or other documentation from the public concerning a permit application.
- (D) A request for confidentiality shall be submitted to the director simultaneously with submission of the specific record, report or other information. The applicant shall clearly indicate the record, report or information as trade secret and shall label it "trade secret". Failure to make such request simultaneously shall constitute a waiver of the right to prevent public disclosure. A request for confidentiality shall be accompanied by documents that support the request which include:
 - (1) Describe the measures the applicant has taken to safeguard the confidentiality of the information.
 - (2) Indicate whether or not others are bound by a confidentiality agreement.
- (E) A decision as to the confidentiality request shall be made by the director within forty-five days of receipt of a request filed in accordance with this rule. Until such decision is made, the record, report or other information or part thereof, shall be

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

(F) Any record, report or other information determined to be confidential may be disclosed without the applicant's consent to officers, employees or authorized representatives of the state, another state or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act.

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

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

(A) Purpose and applicability.

- (1) The management and handling of manure at a major concentrated animal feeding facility, ~~including the land application of manure or the removal of manure from a manure storage or treatment facility,~~ shall be conducted only by or under the supervision of a person ~~holding a~~ that has a current livestock manager certification ~~and that is reasonably available to the facility.~~
- (2) No person who is a livestock manure broker shall buy, sell, or land apply annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.
- (3) No person who is a livestock manure applicator shall land apply and transport annually more than four thousand five hundred dry tons of manure or more than twenty-five million gallons of liquid manure unless the person is a certified livestock manager.
- (4) Any person subject to this rule who is either a livestock manure broker or a livestock manure applicator shall maintain an operating record on forms provided by the department and other forms selected by the livestock manure broker or livestock manure applicator and approved by the director. The operating record shall be retained for a minimum period of five years, shall be made available to the director upon request, and shall record and document the following information for land application:
 - (a) Paragraphs ~~(A)(1)(c)(ii) to (A)(1)(c)(iv)~~ (B) of rule 901:10-2-16 of the Administrative Code; and
 - (b) ~~Paragraphs (A)(1)(c)(xiv) to (A)(1)(c)(xvii) of rule 901:10-2-16 of the Administrative Code.~~
- (5) In order for a person to manage or handle manure at a major concentrated animal feeding facility or for a person to either transport and land apply manure or to, buy, sell or land apply annually more than four thousand five hundred dry tons of solid manure or more than twenty-five million gallons of liquid manure in this state, they shall obtain a livestock manager certification from the department. In the alternative, the person may present a certified copy of an equivalent and valid manure manager certification from another state, which has been verified by the director or his designated representative, together with the appropriate fee as listed in the fee rule.

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- (6) This rule does not apply to a person who is an owner or operator of a concentrated animal feeding facility permitted by the director in accordance with section 903.02 of the Revised Code or section 903.03 of the Revised Code, unless that person applies other manure from another animal feeding facility, concentrated animal feeding facility, or major concentrated animal feeding facility in excess of four thousand five hundred tons per year of solid manure or more than twenty-five million gallons of liquid manure per year.
- (7) A person is considered to be under supervision of a certified livestock manager if the holder of the certification is reasonably available, but not necessarily physically present, during the management and handling of manure. The certified livestock manager cannot claim the lack of presence as a defense under Chapter 903. of the Revised Code.

(B) Application and certification procedures.

- (1) In order to be a certified livestock manager, the applicant must meet the requirements in paragraphs (D)(1) to (D)(5) of this rule.
- (2) The applicant for a livestock manager certification shall file an application on a form provided by the director. The application shall include but not be limited to: address and telephone number of the applicant; the results of the applicant's test results for any examination completed by the applicant as described in paragraphs (D)(1) to (D)(5) of this rule; and if applicable, the quantity of manure managed or handled by the applicant.
- (3) All certifications issued shall expire on December thirty-first of the third year after the year in which the certificate was issued and each December thirty-first triennially thereafter, unless renewed in accordance with this rule. Any certification issued shall be valid for three years and thereafter be subject to renewal. A renewal shall be valid for three years.
- (4) The department shall charge an appropriate fee as listed in the fee rule 901:10-1-04 of the Administrative Code for the issuance and renewal of a livestock manager certification.
- (5) In order for a certification to be renewed, the holder must accumulate ten hours of continuing education credit over a three year period immediately preceding the date of application..

(C) Enforcement.

- (1) The director may suspend, revoke or deny a livestock manager certification if the certified livestock manager:
 - (a) Engages in fraud or deceit in obtaining a certification; or

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- (b) Fails to exercise reasonable care, judgment or use of the manager's knowledge and ability in the performance of the duties of a certified livestock manager; or
- (c) Is incompetent or otherwise unable to properly perform the duties of a certified livestock manager; or
- (d) Has violated or caused to be violated any provision of ~~or~~ rules of Chapter 903. of the Revised Code.

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

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

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

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

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

(D) Training and examination procedures.

(1) The department may offer a training program and an examination for a livestock manager certification. The applicant shall have knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility and following best management practices for disposal of dead animals and manure management, including practices that control odor and protect the environment. The applicant shall be expected to have knowledge of how to devise and implement a manure management plan and an insect and rodent control plan. In addition, the applicant shall understand the laws and rules related to animal feeding facilities.

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- (2) An applicant for a livestock manager certification shall pay a fee as required by rule 901:10-1-04 of the Administrative Code.
- (3) The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.
- (4) The director has determined that the following training and certification programs satisfy this rule:
 - (a) If an applicant for a livestock manager certification demonstrates that he or she has the knowledge of information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training provided in accordance with the "certified crop advisor" program conducted by the "American Society of Agronomy" and demonstrates that he or she has successfully passed the examination, then the applicant will be eligible for a certificate issued in accordance with this rule; or
 - (b) If the applicant for a livestock manager certificate demonstrates that he or she has the knowledge of the information of the topics set forth in paragraph (D)(1) of this rule and that he or she has completed the training and certification of the United States department of agriculture natural resource conservation service relating to being a certified planner to prepare comprehensive nutrient management plans, then the applicant will be eligible for a certificate issued in accordance with this rule.
- (5) The department may cooperate with or enter into cooperative agreements with any official agency of the federal government, of this state or its subdivisions, or other academic or private institutions for the purpose of administration of the training and examination portions of Chapter 903. of the Revised Code.
- (6) In accordance with section 903.20 of the Revised Code, the director may call upon the concentrated animal feeding facility advisory committee to assist in establishing the standards of training and examination.
- (7) Training and examination opportunities will be provided at such times and places as determined by the department in consideration of the number and location of requests.

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

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

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

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

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

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

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

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

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

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

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

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

- (3) A listing of all administrative enforcement orders issued in connection with the transferee; all civil actions in which the transferee was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief; all criminal actions in which the transferee pleaded guilty or was convicted during the five years immediately preceding the submission of the application for transfer in connection with any violation of the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any ~~concentrated~~ animal feeding facility that the transferee has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the transferee has operated or is operating outside the United States. The lists of concentrated animal feeding facilities operated by the transferee within or outside this state or outside the United States shall include, respectively, all such facilities operated by the transferee during the five-year period immediately preceding the submission of the application.
- (E) Denial of transfer of permits to install, permits to operate, or NPDES permits. The director may deny the application for transfer if the director finds from the application, the information submitted and pertinent information obtained by the director at the director's discretion that the transferee and persons associated with the transferee in the operation of ~~concentrated~~ animal feeding facilities have a history of substantial noncompliance with the "Federal Water Pollution Control Act," the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or the environmental laws of another country that indicates that the transferee lacks sufficient reliability, expertise and competence to operate the ~~proposed new or modified~~ concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it. In evaluating a history of substantial noncompliance the director shall consider the information required to be submitted pursuant to rule 901:10-1-03 of the Administrative Code. A denial by the director may be appealed by the owner or operator in accordance with Chapter 119. of the Revised Code.
- (F) If the director does not notify the transferor or the transferee of an intention to object to the transfer, then the permit will be transferred. The director may also notify both the transferor and the transferee of the director's decision.
- (G) The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the act.

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901:10-1-09 Permit modifications.

- (A) No facility or ~~activities~~ activity regulated by a permit to install or a permit to operate or a NPDES permit under this chapter shall be modified ~~as that term is defined in rule 901:10-1-01 of the Administrative Code~~ unless the permit modification is - ~~modified~~ in compliance with this rule. When a permit is modified, only the conditions subject to modification are reopened. A draft permit ~~modification~~ incorporating the proposed changes must be prepared and is subject to public notice and public participation procedures as set forth in rules 901:10-6-01 to 901:10-6-06 of the Administrative Code.
- (B) The director may propose to modify a permit ~~for the following reasons which include, but are not limited to:~~ and may seek the consent of the owner or operator modifying the permit. The director may modify a permit for the following reasons which include, but are not limited to:
- (1) ~~If the director receives information~~ Information submitted by the owner or operator requesting to modify the permit; ~~or~~
 - (2) ~~If the director receives information~~ Information obtained through inspections; ~~or~~
 - (3) ~~If the director reviews a~~ A permit is reviewed by the director, or-
 - (4) Other causes as provided in 40 CFR section 122.62(a).
- ~~The director may seek the consent of the owner or operator before the director modifies the permit. The director shall issue a notice of the proposed permit modification with an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.~~
- (C) If the director seeks to modify the permit with the consent of the owner or operator and the owner or operator does not consent to the director's modification, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.
- (D) If the director seeks to modify the permit without seeking the consent of the owner or operator, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.
- (E) Either the director or any interested person including the permittee may propose - request to modify a NPDES permit or revoke and reissue a NPDES permit or both for the following reasons:

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- (1) Alterations. There are material and substantial alterations, additions or expansions to the operation which occurred after a permit was issued ~~issuance~~ which justify the application of permit conditions that are different or absent in the existing permit.
- (2) Information. The director has received new information. NPDES permits may be modified during their term for this cause only if the information was not available at the time of permit issuance (other than revised rules or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For a new source of an NPDES discharge this cause shall include any significant information derived from effluent testing required after issuance of the permit.
- (3) New regulations. The standards or rules on which the NPDES permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued. NPDES permits may be modified during their terms for this cause only as follows:
 - (a) For promulgation of amended standards or rules, when:
 - (i) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or on promulgated water quality standards or water quality standards approved by the United States environmental protection agency; and
 - (ii) ~~U.S.EPA~~ The United States environmental protection agency has revised, withdrawn or modified that portion of the rule or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and
 - (iii) An owner or operator requests modification within ninety days after Federal Register notice of the action on which the request is based.
 - (b) For judicial decisions, when: a court of competent jurisdiction has remanded and stayed rules; if the remand and stay concern that portion of the rules or guidelines on which the permit condition was based; and a request for a permit modification is filed by the owner or operator within ninety days of judicial remand.
- (4) Compliance schedules. The director determines good cause exists for modification of a compliance schedule of a NPDES permit, such as acts of nature or acts of third parties, strike, flood, materials shortage or other events over which the owner or operator has little or no control and for which there is

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

- (5) When the owner or operator has filed a request for a variance under rule 901:10-3-08 of the Administrative Code or for a "fundamentally different factors" variance within the time specified in 40 CFR section 122.21. or 40 CFR section 125.27(a) for an NPDES permit.
- (6) To correct technical mistakes (other than the operational changes defined in ~~paragraph (F) of this rule~~ and listed in the appendix to this rule), such as errors in calculation or mistaken interpretations of law made in determining permit conditions.
- (7) When the owner or operator is required by the director to incorporate an applicable toxic effluent standard or prohibition pursuant to Section 307(a) of the Act.
- (8) When the owner or operator is required by the director to reopen conditions in a permit which are established in the permits for toxic effluent limitations and standards.
- (9) Upon request of the owner or operator who qualifies for effluent limitations on a net basis under 40 C.F.R. section 122.45(g), or when a discharger is no longer eligible for net limitations, as provided in 40 C.F.R. 122.45(g)(1)(ii).
- (10) Upon failure of the director to notify as required by rule 901:10-6-03(C) of the Administrative Code, another state whose waters may be affected by a discharge from the facility.
- (11) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the facility under 40 C.F.R. section 125.3(c).
- (12) To establish a notification level for toxic pollutants as provided in 40 C.F.R. section 122.44(f).
- (~~D~~)(F) The owner or operator may submit a written application for modification request to the director for approval by the director if the following apply:
 - (1) The owner or operator ~~desires to accomplish~~ is requesting material or substantial alterations or expansions or additions to the facility or other changes defined as a modification; or
 - (2) New information or data obtained by the owner or operator justify permit conditions in addition to or different from those in the existing permit.

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

- (1) The name of the owner or operator and the name and address and telephone number of the facility or operation;
- (2) A description of the exact nature of the changes to be made;
- (3) An explanation of why the modification ~~or major operational change~~ is needed or requested ~~desired~~; and
- (4) Applicable technical information in support of the request for modification ~~or major operational change~~, including but not limited to, data, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.
- (5) If the director decides that the request for modification is not justified, the requester and the owner or operator shall be notified in writing and provided the reasons for the director's determination.

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

- (1) Exercise discretion to determine if the type of change proposed by the owner or operator is a modification, an operational change, or a major operational change;
- (2) Notify the owner or operator in writing of the director's determination that the submitted change is a modification, an operational change, or a major operational change; the approval or denial of the submitted change and the reasons for such determination to approve or deny.
- (3) The owner or operator shall not commence any change until the director has acted in accordance with the requirements in paragraph (H)(2) of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Prohibitions.

- (A) No person shall modify an existing or construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director under section 903.02 of the Revised Code.
- (B) Except for a concentrated animal feeding facility that is operating under an installation permit issued by the director of environmental protection or a review compliance certificate issued by the director, on and after the date on which the program has been finalized under section 903.01 of the Revised Code, no person shall operate a concentrated animal feeding facility without a permit issued by the director under section 903.03 of the Revised Code.
- (C) No person to whom a NPDES permit has been issued shall discharge or cause to be discharged, in any waters of the state any manure, pollutants, or stormwater resulting from an animal feeding facility in excess of the permissive discharges specified under an existing permit. No person to whom an NPDES permit has been issued shall discharge or cause to be discharged, in any waters of the state any manure, pollutants or stormwater resulting from land application areas.
- (D) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, no person shall discharge pollutants from a point source into waters of the state unless authorized by a valid and unexpired NPDES permit issued by the director or unless an application for renewal of such NPDES permit has been submitted by the person and is pending.
- (E) Any person who discharges or proposes to discharge pollutants shall apply for a NPDES permit ~~All concentrated animal feeding operations have a duty to seek coverage under a NPDES permit. In the alternative, a concentrated animal feeding operation may seek a "no potential to discharge" determination from the director in accordance with rules 901:10-3-01 and 901:10-6-01 to 901:10-6-06 of the Administrative Code.~~
- (F) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director, no person shall discharge stormwater resulting from an animal feeding facility unless authorized by a NPDES permit when such a permit is required by the Act and subsequently issued by the director of agriculture pursuant to section 903.08 of the Revised Code.
- (G) No person shall violate the terms and conditions of a permit to install, permit to operate, review compliance certificate, or NPDES permit.
- (H) No person shall violate any effluent limits established by rule.

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

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

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

- (1) No person shall construct a new concentrated animal feeding facility without first obtaining a permit to install issued by the director.
- (2) Any person who plans to construct a large concentrated animal feeding operation or a concentrated animal feeding facility or major concentrated animal feeding facility shall comply with applicable rules 901:10-2-01 to 901:10-2-06 of the Administrative Code.
- (3) Any animal feeding facility that is a small or medium concentrated animal feeding operation may be required by the director to comply with applicable rules 901:10-2-01 and 901:10-2-03 to 901:10-2-06 of the Administrative Code.
 - (a) If the director has made a determination that the medium or small animal feeding facility shall be required to be permitted as a medium or small concentrated animal feeding operation; and
 - (b) If the director determines that the existing animal feeding facility requires modifications in order to comply with best management practices.
- (4) A person that is required to obtain both a permit to install pursuant to section 903.02 of the Revised Code and a permit to operate pursuant to section 903.03 of the Revised Code shall submit both applications for those permits simultaneously.

(B) Administrative procedures for a permit to install.

- (1) In order to obtain a permit to install, the owner or operator shall submit:
 - (a) A properly completed application in accordance with paragraph (C) of this rule; and
 - (b) An appropriate fee as stated in rule 901:10-1-04 of the Administrative Code.
- (2) The owner or operator may amend the application for a permit to install prior to the conduct of any public meeting that may be held for the draft permit to install and/or while the permit to install application is pending before the director. - ~~Upon completion of construction of the manure storage or treatment facility, the owner or operator shall submit a notarized statement certifying that the facility was constructed in accordance with the design plans to the department. A copy of the completed and approved as-built plans shall be submitted to demonstrate compliance with paragraph (A) of rule 901:10-2-05 or paragraph (A) of rule~~

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

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

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

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

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

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

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

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

Unless otherwise indicated, an application for a permit to install shall contain the information and criteria as required in rules 901:10-1-02 and 901:10-1-03 of the Administrative Code and shall attach and/or include all of the following information:

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

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- (2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain and the anticipated beginning and ending dates for work performed.
- (3) A statement of the quantity of water that the concentrated animal feeding facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of the water utilized and a statement identifying the source of the water.
- (4) Copies of recorded water well logs on file with the Ohio department of natural resources division of water and their locations within a one thousand foot radius of the manure storage or treatment facility, as located on a map that includes the well locations.
- (5) A scaled map adequate to show detail that includes, but is not limited to:
 - (a) Approximate overall dimensions of the manure storage or treatment facility;
 - (b) Boundaries of the concentrated animal feeding facility;
 - (c) Location and siting distances from the manure storage or treatment facility.
For purposes of identifying and illustrating the siting criteria, the owner or operator of a large concentrated animal feeding operation or a concentrated animal feeding facility or a major concentrated animal feeding facility is to submit a document that demonstrates compliance with the siting criteria in rule 901:10-2-02 of the Administrative Code; and
 - (d) Identify the approximate location of all known subsurface drains within one hundred feet of the proposed manure storage or treatment facility.
- (6) The report required by paragraph (C) of rule 901:10-2-03 of the Administrative Code, including the information on the soils, ground water sampling and analysis, hydrology, subsurface geology and topography of the land area used for the manure storage or treatment facility based on the subsurface geological exploration conducted in accordance with rule 901:10-2-03 of the Administrative Code. The report may also include site-specific information and conclusions derived from the site's subsurface geological exploration. If required as a result of the subsurface geological exploration conducted pursuant to rule 901:10-2-03 of the Administrative Code, additional groundwater monitoring shall be included.
- (7) Designs, plans and detailed engineering drawings for the proposed construction of the concentrated animal feeding facility that comply with rules 901:10-2-04, 901:10-2-05 and/or 901:10-2-06 of the Administrative Code and include the proposed location of the construction site, and design and construction plans and

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

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

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

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

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

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

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

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

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

(B) Source water protection for public water systems.

(1) Public water wells.

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

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

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

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

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(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~~

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

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

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

(F) Sole source aquifer.

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

(G) Floodplains and floodways.

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

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

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

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

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

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

(H) Karst areas.

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

(I) Bedrock.

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

(J) Mines.

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

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

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

(L) Neighboring residences.

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

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

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

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

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

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

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

(B) Source water protection for public water systems.

(1) Public water wells.

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

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

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

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

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(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~~

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

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

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

(F) Sole source aquifer.

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

(G) Floodplains and floodways.

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

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

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

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

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

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

(H) Karst areas.

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

(I) Bedrock.

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

(J) Mines.

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

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

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

(L) Neighboring residences.

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

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

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(3) When utilizing proven technology, the siting criteria may be reduced by the director by using the list of technologies appended to this rule. The technologies listed in this appendix are not inclusive of all available technologies. Selected technologies are required to be fully described in detail plans and specifications, engineering drawings, and maps that shall be reviewed and approved by the director in deciding whether or not to reduce any applicable siting criteria as a reasonable exercise of the director's discretion.

(M) The siting criteria requirements applicable to a manure storage or treatment facility shall not apply to the criteria set forth in paragraphs (K) and (L) of this rule if the applicant for a permit to install obtains a written agreement from all of the owners of neighboring residences or property owners located closer than the siting criteria. The agreement shall state such owners are aware of the proposed construction and have no objections to such construction. A copy of the written agreement shall be included with the permit to install application.

[Comment: The written agreement may be filed in the register of deeds office of the county in which the neighboring residence is located.]

(N) As used in this rule, additional design for engineered controls includes but is not limited to additional freeboard, secondary containment, additional treatment, increased liner thickness, synthetic liner materials, groundwater monitoring, or design and construction alternatives set forth in paragraph (A)(9)(c) of rule 901:10-2-06 of the Administrative Code.

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901:10-2-04 **Manure storage and treatment facilities.**

(A) An application for a permit to install shall include analysis of manure ~~Manure shall - be that is~~ sampled and analyzed in accordance with paragraphs (A) to (D) of rule 901:10-2-10 of the Administrative Code.

(B) For the purposes of a permit to install, manure shall be quantified and characterized to allow for proper sizing and design of the proposed manure storage or treatment facility. For an existing facility that submits a permit to install application for a similar type of manure storage or treatment facility with no change in treatment technology to what is currently utilized by the facility, the volume of manure and characterization of manure shall be based on manure production records and manure analysis from an actual sample from the facility. If actual manure production records or manure analysis are not available or are deemed not accurate by the department, or if the permit to install application is for a new facility or treatment technology not in use by the existing facility, then the owner or operator shall use the table appended to this rule or use manure production records and manure characterization records from a similar type facility with a similar type of manure storage or treatment facility or treatment technology. If manure data or analysis is used from a similar type facility to characterize manure, the owner or operator shall submit this alternative manure data along with the identification of the source of the data.

~~(B) As an alternative to presenting site-specific information as required by paragraphs (A)(1) and (A)(2) of rule 901:10-2-10 of the Administrative Code, the owner or operator may characterize manure by using manure data from a facility that is similar to that of the owner or operator or by relying upon existing published or documented data. The owner or operator shall submit this alternative manure data along with the identification of the source of the data.~~

~~(C) The owner or operator shall comply with paragraph (B) of rule 901:10-2-10 of the Administrative Code.~~

~~(D)~~(C) General design and construction criteria for a manure storage or treatment facility.

(1) An appropriate design plan shall be required for a new or expanding manure storage or treatment facility.

(2) A manure storage or treatment facility shall be designed and constructed to handle manure volume, precipitation and surface water runoff in a manner that prevents the discharge of manure to waters of the state, except as provided in applicable standards set forth in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code.

~~(E)~~(D) Calculating storage volume for manure storage or treatment facilities.

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(1) The total storage volume of a manure storage or treatment facility shall not be less than the volume calculated as the summation of the following, unless the owner or operator or the director determines that additional storage capacity is required to meet permit conditions.

(a) Manure generated during the storage period required by rule 901:10-2-05 or rule 901:10-2-06 of the Administrative Code;

(b) Average precipitation less evaporation on the surface area of the manure storage or treatment facility during the storage period;

(c) Normal runoff that drains from the concentrated animal feeding facility's drainage area into the manure storage or treatment facility during the storage period. Impermeable surfaces shall utilize a minimum factor of fifty per cent of the average precipitation;

(d) A precipitation event based on the surface of the manure storage or treatment facility and applicable standards in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code;

(e) The runoff from a precipitation event that drains from the concentrated animal feeding facility's drainage area into the manure storage or treatment facility based on applicable standards in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code; and

(f) Residual manure after liquids have been removed.

(2) In addition to the requirements in paragraph ~~(D)~~(E)(1) of this rule, the total storage volume of a manure treatment lagoon shall not be less than the volume calculated using one of the following methods set forth in the appendix to this rule.

~~(F)~~(E) Stormwater pollution prevention plans. Each owner or operator of a concentrated animal feeding operation shall prevent pollution of stormwater resulting from an animal feeding facility by submitting plans to satisfy this rule and rule 901:10-3-11 of the Administrative Code to do the following:

(1) Maintain separation of uncontaminated stormwater runoff from contaminated water with designs and installations that include, but are not limited to, settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions;

(a) Grade the area around the livestock buildings and the manure storage or treatment facility;

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- (b) Divert stormwater runoff and roof water away from the manure storage or treatment facility or other structures in the production area.
- (c) Use spill prevention and good housekeeping techniques to ensure that stormwater discharges from the following areas comply with Ohio water quality standards: immediate access roads and rail lines used or traveled by carriers; or raw materials, products, waste materials, or by-products used or created; refuse sites; sites used for storage and maintenance of material handling equipment; sites used for handling material other than manure and shipping and receiving areas.
- (d) Install systems that are designed to capture and treat contaminated runoff and prohibit discharge of contaminated discharge. The owner or operator may use the following criteria, provided that in no case shall grassed filter strips satisfy effluent limitations for large facilities in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code.
 - (i) The "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" which includes the following:
 - (a) "Pond, No 378," January 2003;
 - (b) "Constructed Wetland Conservation Practice Standard, No. 656," August 2000, but provided there shall be no discharge;
 - (c) "Livestock Use Area Protection Practice, No. 757," September 3, 2002;
 - (d) "Composting Operation, No. 317," May 1, 2000;
 - (e) "Critical Area Planting, No. 342," June 1, 2002;
 - (f) "Dike, No. 113," June 1, 2002;
 - (g) "Diversion, No. 362," June 1, 2002;
 - (h) "Grade Stabilization Structure, No. 410," May 1, 1988;
 - (i) "Pipeline, No. 516," June 1, 2002;
 - (j) "Roof Runoff Structure, No. 558," June 1, 2002;
 - (k) "Sediment Basin, No. 350," June 1, 2002;

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(ii) The "Ohio Livestock Manure And Wastewater Management Guide, Bulletin 604, The Ohio State University Extension, January 1992," and

(iii) USDA natural resource conservation service - NHCP.

(2) Construct coverings over any structures in the production area; or

(3) Install vegetative cover and protect stream channels and areas adjacent to such channels from a concentrated animal feeding operation.

(4) The owner or operator may submit plans that implement alternative practices to the director for approval provided that any alternative practices must be demonstrated to be equivalent to the practices listed in paragraph (F)(1) of this rule unless the owner or operator or the director determine that additional total storage capacity is required to meet permit conditions. All of the practices listed are subject to the design standards for precipitation events in paragraphs (C) and (D) and ~~(E)~~ of this rule.

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901:10-2-05 **Fabricated structures.**

(A) Fabricated structures shall be designed and maintained to prevent discharge to ground waters or surface waters.

(1) Fabricated structures for liquid manure shall be designed by or under the supervision of a professional engineer or shall be an appropriate design plan, ~~as defined in paragraph (G) of rule 901:10-1-01 of the Administrative Code.~~

(2) A fabricated structure shall be designed and constructed to meet the requirements in paragraph (A) of rule 901:10-2-03, ~~paragraphs (A)(10) and (A)(11) of rule 901:10-2-06 of the Administrative Code and the appendix to this rule.~~

(3) Storage period. The minimum storage period for a fabricated structure shall be one hundred twenty days, unless otherwise approved by the department. Additional storage may be required by the department in order to ensure protection of groundwater, surface water or the structural integrity of the fabricated structure.

(4) Freeboard. A fabricated structure shall be designed and maintained to have an operating level that does not exceed the level that provides adequate storage to contain a precipitation event plus an additional six inches of freeboard, except for fabricated structures that contain solid manure and are not subject to precipitation or runoff.

(5) Fabricated structures for liquid manure shall have a liquid level board, staff gauge, depth marker, or other appropriate device approved by the director, installed within the interior to monitor manure levels. The approved device shall indicate levels every one foot in vertical elevation and shall indicate levels as described in rule 901:10-2-08 (A)(4)(b) of the Administrative Code.

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901:10-2-06

Manure storage pond and manure treatment lagoon.

(A) A manure storage pond or manure treatment lagoon subject to this rule shall be designed and the plans stamped by a professional engineer. The following design and construction criteria shall be followed:

- (1) ~~No known subsurface drainage line shall be allowed to remain within fifty feet of the outside toe of any manure storage pond or manure treatment lagoon unless necessary to comply with paragraph (A)(9)(a) of this rule.~~ Subsurface drainage lines in the immediate area of the manure storage pond or manure treatment lagoon shall be removed or relocated to provide for a minimum separation distance of not less than fifty feet between the top inner perimeter of the manure storage pond or manure treatment lagoon and the subsurface drainage line unless the subsurface drainage line is necessary to comply with paragraph (A)(9)(a) of this rule.
- (2) If not already installed at the facility, a liquid level board, staff gauge, depth marker, or other appropriate device, approved by the director, shall be installed within the interior of the liquid manure storage pond or manure treatment lagoon to monitor manure levels. ~~The liquid level board, staff gauge, depth marker, or other appropriate device in a manure treatment lagoon shall include the elevation at the liquid level corresponding to 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 or staff gauge or depth marker in a manure treatment lagoon 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 start pumping elevation. This device shall indicate levels every one foot in vertical elevation and shall indicate levels as described in rule 901:10-2-08 (A)(4)(a) of the Administrative Code.~~
- (3) Agitation and pump-out points shall be shown on plans for a manure storage pond and a manure treatment lagoon with scour protection required.
- (4) An emergency spillway may be included at the one foot freeboard level and shall be directed to a specifically designed filter strip or infiltration areas if the facility is constructed with an earthen embankment.
- (5) Embankments.
 - (a) The minimum embankment top width shall be eight feet for embankments less than fifteen feet, ten feet for embankments ranging in height from fifteen to less than twenty feet, and twelve feet for embankments ranging from twenty to twenty-five feet high, as measured from the low point on the downstream toe to the top of the dam.

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- (b) If the embankment is to be traversed by farm equipment, the minimum top width shall be twelve feet. The height of the embankment shall be no greater than twenty-five feet, as measured from the low point on the downstream toe to the top of the dam.
 - (c) Embankments shall have side slopes not steeper than two horizontal to one vertical.
 - (d) The combined side slopes of settled embankments shall not be less than five horizontal to one vertical.
 - (e) Vegetative cover shall be established on any exposed embankment and mowed or otherwise maintained to control erosion or other embankment deterioration. In the alternative, the director may approve other means or materials to control erosion.
- (6) Inlets and outlets.
- (a) Inlets shall be designed to resist corrosion, plugging and freezing.
 - (b) The embankment may contain no outlet piping that extends through the embankment unless the piping discharges to another facility or is a component of a re-circulating flush system.
 - (c) All pipes for manure transfer or manure flush systems shall have watertight joints in accordance with the following ASTM standards:
 - (i) ASTM D3212-standard specification for joints for drain and sewer plastic pipes using flexible elastomeric seals; or
 - (ii) ASTM C443-standard specification for joints for concrete pipe and manholes, using rubber gaskets; or
 - (iii) Other standards recommended by the professional engineer and approved by the department.
- (7) Storage period.
- The minimum storage period of manure for a manure storage pond and manure treatment lagoon shall be one hundred eighty days of manure production unless alternative use and design is otherwise approved by the department. This section is not intended to address the surface water runoff where the runoff does not enter into the pond or lagoon.
- (8) Freeboard.

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Freeboard shall be provided for a manure storage pond and manure treatment lagoon in addition to the total storage volume such that the elevation of the emergency spillway or top of the settled embankment, if there is no designed emergency spillway, shall be less than the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional one foot of freeboard.

(9) Liners.

The owner or operator shall include the use of a liner as part of the manure storage pond or manure treatment lagoon that achieves a hydraulic conductivity of at least one times ten to the minus seven centimeters per second (1×10^{-7} cm/sec) to insure the integrity of the manure storage pond or manure treatment lagoon. A minimum of three feet of in situ soils with a hydraulic conductivity of one times ten to the minus seven centimeters per second will satisfy this requirement. The following design and construction criteria shall be followed:

- (a) Ground water seepage shall be prevented from entering the bottom of the manure storage pond or manure treatment lagoon after construction by installing and/or maintaining a liner with a minimum liner thickness of three feet of in situ soil between the top of the seasonal high ground water surface and the bottom of the manure storage pond or manure treatment lagoon. In order to meet this requirement the ground water surface may be lowered by use of subsurface drainage lines that are properly designed by the engineering geologist or professional engineer and approved by the director.
- (b) Soil liners shall be designed and constructed using procedures in section 651.1080 of the "United States Department of Agriculture, Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Chapter Ten, Geotechnical Design and Construction, November 1997," and "United States Department of Agriculture, Ohio Natural Resources Conservation Service, Section IV, Field Office Technical Guide Conservation Practice Standard 521-F, Pond Sealing and Lining, Compacted Earth Liner. December 2001." A soil liner thickness shall be a minimum of three feet.
- (c) Design and construction alternatives for ground water protection.
 - (i) As a result of the subsurface geological exploration conducted pursuant to rule 901:10-2-03 of the Administrative Code and the findings of the report submitted in accordance with that rule, an engineering geologist, professional engineer or the director may determine that installation of an additional liner is required to insure the integrity of the manure storage pond or manure treatment lagoon and to protect groundwater.

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(ii) If an additional or alternative liner protection is required as set forth in paragraph (A)(9)(c)(i) of this rule, then one or more of the following may be required by the director:

- (a) Concrete liners that have a minimum thickness of five inches and shall include non-metallic water stops for all joints;
- (b) Flexible plastic membranes that are installed under the supervision of the manufacturer or the manufacturer's representative and include written certification that the liner was installed in accordance with the manufacturers recommendations.
- (c) Geosynthetic clay liners that are installed under the supervision of the manufacturer or the manufacturer's representative and include written certification that the liner was installed in accordance with the manufacturer's recommendations; or
- (d) Other liner designs or materials will be considered at the discretion of the director if the minimum criteria of this paragraph of this rule are met.

~~(10) As required by rule 901:10-2-02 of the Administrative Code, installation of a manure storage pond or manure treatment lagoon in a one hundred year flood plain is prohibited unless accompanied by design or engineered controls that are designed and constructed as approved by the director and in accordance with the following:~~

- ~~(a) The manure storage pond or manure treatment lagoon embankments shall be designed and constructed to withstand the hydrostatic pressures from a one hundred year flood that may be exerted on the embankments during a flood event;~~
- ~~(b) The elevation of the lowest point on the embankment shall be at the summation of the elevation of the one hundred year flood plus a minimum freeboard height of two feet;~~
- ~~(c) For a manure storage pond or manure treatment lagoon with unequal length and width dimensions, the facility shall be oriented with the longest dimension parallel to the expected direction of floodwater flow;~~
- ~~(d) Any monitoring wells installed pursuant to this rule shall be physically protected from the floodwaters.~~

~~(11)~~(10) Design and construction criteria for a manure storage pond or manure treatment lagoon located in a karst area.

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- (a) Manure storage ponds or manure treatment lagoons may be constructed within a karst area provided that the facility is designed to prevent seepage of manure to groundwater.
- (b) Any portion of a manure storage pond or manure treatment lagoon located below the pre-construction soil surface level and constructed in a karst area shall be designed and constructed utilizing a rigid material such as concrete or steel or a properly designed clay or synthetic liner, when appropriate, upon findings in the geologic exploration.

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901:10-2-08

**Contents of the manure management plan: inspections,
maintenance and monitoring.**

(A) A manure management plan is a plan developed to minimize water pollution and protect waters of the state. The manure management plan shall include best management practices for reuse and recycling nutrients, prevent direct contact of confined animals with waters of the state, and ensure proper mortality management.

- (1) The manure management plan shall specify the frequency of inspections to be conducted by the owner or operator at the manure storage or treatment facility; and
- (2) The owner or operator shall maintain a list of equipment used, including land application equipment and a written chronological record of the dates of inspections, maintenance, calibration monitoring and repairs that shall be maintained in the operating record required by rule 901:10-2-16 of the Administrative Code and be made readily available during an 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; and
- (3) The owner or operator must periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.
- (4) At a minimum, the following must be inspected, performed, monitored or maintained at the manure storage or treatment facility and documented in the operating record:
 - (a) The operating level of manure treatment lagoons and manure storage ponds. The operating level must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional one foot of freeboard.
 - (b) The operating level of fabricated structures must not exceed the level that provides adequate storage to contain a precipitation event as required in rules 901:10-3-02 to 901:10-3-06 of the Administrative Code, plus an additional six inches of freeboard, unless the fabricated structure is designed and maintained for solid manure and is not subject to precipitation.
 - (c) For paragraphs (A)(4)(a) and (A)(4)(b) of this rule, the maximum operating level shall not exceed that specified in the manure management plan.
 - (d) Inspect in order to confirm that domestic and industrial wastewater from showers, toilets, sinks, medical wastes, chemicals and other contaminants

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etc., handled on-site are not discharged into the manure storage or treatment facility unless designed and permitted to do so.

- (e) Manure storage or treatment facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, animal damage, cracking, excessive vegetation, or discharge.
- (f) Inspect liquid manure volume weekly and note in the operating record the level of liquid manure in manure storage or treatment facilities by the depth marker required in paragraph (A)(4)(o) of this rule.
- (g) Document in the operating record procedures to ensure proper operation and maintenance of liquid manure in storage or treatment facilities, when manure and manure residuals are removed from the manure storage pond or manure treatment lagoon. The owner or operator shall take care to prevent damage to lagoon or pond dikes and liners when manure residuals are removed.
- (h) Inspect to determine that all stormwater conveyances are maintained to keep runoff from the surrounding property and buildings and stormwater shall be diverted away from the manure treatment lagoons and manure storage ponds to prevent any unnecessary addition to the liquid volume in these structures, unless they are designed for such runoff containment. Identify appropriate buffer strips or equivalent practices, to control runoff of manure to waters of the state, and divert clean water, as appropriate, out of the production area.
- (i) Conduct weekly inspections of stormwater or diversion devices, runoff diversion structures, devices channeling contaminated stormwater to the manure storage pond or manure treatment lagoon and note proper operation and maintenance in the operating record.
- (j) Inspect the protective vegetative cover and any other approved means or materials for erosion control to determine that cover is maintained on all disturbed areas (lagoon or pond embankments, berms, pipe runs, erosion control areas, etc.).
- (k) Ensure that any emerging vegetation such as trees, shrubs and other woody species shall not be allowed to grow on the pond or lagoon dikes or side slopes. Pond or lagoon areas are to be kept mowed and accessible unless these areas are grassed waterways or buffers that manage precipitation and runoff.
- (l) Surface water and groundwater protection.

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- (i) Conduct annual sampling and analysis of ground water for nitrates and total coliform from a well as described by paragraph (A)(2)(e) or (B)(2)(d) of rule 901:10-2-03 of the Administrative Code. In the event that a well does not already exist at the facility and the operation is not an operation as described in paragraph (A)(1) of rule 901:10-2-03 of the Administrative Code or is not served by a public water system as defined by paragraph (UUU) of rule 901:10-1-01 of the Administrative Code, then the owner or operator shall install a well at the facility that is properly located, protected and operated. The well shall be easily accessible for sampling and have an adequate water quantity for sampling.
- (ii) The director may require additional sampling, including but not limited to, ground water samples from any additional ground water monitoring wells installed as required in paragraph (C)(2) of rule 901:10-2-03 of the Administrative Code.
- (iii) The director may require samples of manure discharges from the production area that may occur; and
- (iv) Results of sampling and analysis shall be documented in the operating record and, for manure discharges from the production area, results shall also be recorded in the annual report submitted to the director in accordance with rule 901:10-2-20 of the Administrative Code.
- (m) Ensure proper management of dead livestock as required by rule 901:10-2-15 of the Administrative Code to ensure that there shall be no discharge of mortality to waters of the state and no disposal in a manure storage or treatment facility that is not specifically designed to treat animal mortalities.
- (n) Inspect drinking water lines daily, including drinking water or cooling water lines that are located above ground, readily visible or accessible for daily inspections, and record in the operating record.
- (o) All liquid manure in manure storage ponds or treatment facilities must have a depth marker or other appropriate device as approved by the director in accordance with rule 901:10-2-05 or 901:10-2-06 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 (A)(4) 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.
- (p) The director may determine that the monitoring required in paragraphs (A)(4)(f), (A)(4)(n) and (A)(4)(o) of this rule may use alternative

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monitoring devices. Alternative monitoring devices include, but are not limited to, sensors, remote sensors, electronic alarms, wireless receivers, other real time warning systems, or other flow control structure, or other steady state overflow structures.

- (i) The owner or operator shall identify the alternative monitoring devices in the manure management plan submitted to the director. In approving the manure management plan, the director may approve the alternative monitoring devices.
- (ii) The director may notify the owner or operator in writing to cease use of alternative monitoring devices if at any time that the director or the director's representative find that the operating record and documents maintained as required by this rule contain false or misleading information.
- (q) Actions to be taken means actions to correct any deficiencies found as a result of the inspections conducted under this rule. Deficiencies are to be corrected as soon as possible and listed in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

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901:10-2-09 **Contents of manure management plan: nutrient budget.**

(A) ~~To the extent that manure is not managed through distribution and utilization methods in accordance with rule 901:10-2-11 of the Administrative Code, then the owner or operator shall prepare a manure management plan with a total nutrient budget for the facility based on the following:~~ The manure management plan shall include the nutrient budget for the land application areas and quantity of nutrients to be managed by distribution and utilization for a twelve month period as derived from rules 901:10-2-10 and 901:10-2-11 of the Administrative Code.

~~(1) Targeted crop yields based on actual crop yields;~~

~~(2) Soil productivity information;~~

~~(3) Historical yield data;~~

~~(4) Potential yield; or~~

~~(5) Combinations of yield data.~~

(B) The total nutrient budget to be used for the land application areas shall be under the control of the facility for the duration of the permit based on the following:

(1) Targeted crop yields based on the actual crop yields;

(2) Soil productivity information;

(3) Historical yield data;

(4) Potential yield; or

(5) Combination of yield data.

(B) ~~The manure management plan shall include the quantity of manure and manure nutrients for a twelve month period as derived from rule 901:10-2-10 of the Administrative Code.~~

(C) To the extent the manure is not managed through distribution and utilization ~~The the -~~ manure management plan shall include the total summary of acres of land - application areas to be used for land application sites. This summary includes the land that is available for the duration of the permit and the land that is available for manure that is generated by the facility. The total summary shall be further characterized as follows:

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- (1) The total nutrient budget requirements on land application ~~sites~~ areas under the control of the owner or operator; and
- (2) The quantity of commercial fertilizer nutrients or residual nutrients from all sources to be applied on land application ~~sites~~ areas under the control of the owner or operator for a twelve month period; and
- (3) ~~The quantity of nutrients to be managed by the owner or operator through distribution and utilization methods utilized for a twelve month period, in accordance with rule 901:10-2-11 of the Administrative Code.~~

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901:10-2-10 **Contents of manure management plan: manure characterization.**

The manure management plan shall contain information on manure to allow the owner or operator to plan for nutrient utilization at recommended agronomic rates and to minimize nutrient runoff that may impact waters of the state.

(A) ~~Unless submitted as a permit to install application subject to paragraph (C) of rule 901:10-2-01 of the Administrative Code or for an operational change to be made to the manure management plan in accordance with rule 901:10-1-09 of the Administrative Code, manure shall be characterized by the owner or operator by analysis of manure from the manure storage and treatment facility, utilizing an actual sample from the facility.~~ Manure characterization shall describe the manure by the per cent of liquid content, the per cent of solids content and/or manure density and shall follow the sampling procedures for manure sampling and analysis in "Recommended Methods of Manure Analysis" (a 3769), university of Wisconsin extension, 2003. For an existing facility that will continue to have similar manure storage or treatment facilities with no change in treatment technology, the manure shall be characterized utilizing an actual sample from the facility. If the owner or operator is proposing a new facility, new manure storage, or treatment facility, or a change in treatment technology, then the manure shall be characterized by using the table appended to this rule or by utilizing a representative analysis from a similar type facility with a similar type of manure storage or treatment facility to characterize manure, the owner or operator shall submit this alternative manure data along with the identification of the source of the data ~~For a permit to install application as required by paragraph (C) of rule 901:10-2-01 of the Administrative Code or for an operational change or major operational change to be made to the manure management plan in accordance with rule 901:10-1-09 of the Administrative Code, the owner or operator must utilize the table appended to this rule.~~ Manure characterization shall include the following:

(1) Total manure production quantified:

- (a) Pounds per day; or
- (b) Tons per year; or
- (c) Cubic yards per day; or
- (d) Gallons per day.

(2) Nutrient content quantified:

- (a) Pounds per day; and/or
- (b) Pounds per ton; or

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(c) Pounds per one thousand gallons.

- (B) The manure management plan shall contain an estimate, supported by calculations of the quantity and total nutrient content of manure produced, stored and treated during a twelve month period along with a schedule for manure removal or manure transfer for purposes of land application. Manure may be removed based on results of inspections conducted pursuant to paragraph ~~(A)(4)(f)(A)(3)(f)~~ of rule 901:10-2-08 of the Administrative Code or in accordance with distribution and utilization methods.
- (C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and per cent total solids.
- (D) In addition to the minimum requirements for annual manure analysis in paragraphs (A) to (C) of this rule, any manure with wastes that are process waste water, shall be characterized annually by the owner or operator by utilizing an actual sample from the facility, provided, however that for a permit to install application as required by paragraph (C) of rule 901:10-2-01 of the Administrative Code or for an operational change to be made to the manure management plan in accordance with rule 901:10-1-09 of the Administrative Code, the owner or operator may utilize a sample from a similar facility or by relying upon on existing published or documented data.
- (E) Results of analyses and estimates conducted in paragraphs (A) to (D) of this rule shall be recorded in the operating record and shall be submitted as part of the annual report to the director required by rule 901:10-2-20 of the Administrative Code. Results of the manure analysis conducted in paragraph (C) of this rule shall be recorded in the operating record.
- (F) After conducting manure analysis required in paragraph (C) of this rule, the owner or operator may request approval from the director for a major operational change to reduce the number of samples needed to be representative of each manure storage and treatment facility and to utilize composite sampling and analysis. The director may approve a request provided all of the following apply:
- (1) The owner or operator submits a written request to the director along with copies of manure analyses from manure storage or treatment facilities from the same permitted facility;
 - (2) Manure analyses for three consecutive years demonstrate that analytical results are the same or similar for a twelve month period for each manure storage or treatment facility at the permitted facility; and
 - (3) The owner or operator acknowledges that the director may notify the owner or operator in writing that the owner or operator shall comply with paragraph (C) if

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at any time the director or the director's representative find that composite sampling is no longer representative for reasons that include, but are not limited to:

- (a) Changes in feed and feed rations;
- (b) Age, size, or type of animals;
- (c) Changes in clean out times;
- (d) Changes in building design, such as changes in ventilation;
- (e) Changes due to diseases and actions taken to eliminate disease.

(G) The manure management plan shall contain information on manure to allow the owner or operator or the person accepting manure under rule 901:10-2-11 of the Administrative Code to plan for nutrient utilization.

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901:10-2-11 Contents of manure management plan: distribution and utilization methods.

(A) If the owner or operator elects to use distribution and utilization methods, for any quantity of manure that is not managed under the control of the owner or operator, - the following is required:

(1) If the owner or operator decides to use livestock manure brokers or auctions or farm sales for distribution and utilization, The owner or operator may shall - submit distribution and utilization methods for the beneficial use of the manure as part of the manure management plan as required by rule 901:10-2-09 of the Administrative Code. The permitted facility operating record shall include copies of the acknowledgements between the owner and operator of the facility and livestock manure brokers made pursuant to auctions or farm sales. The facility operating acknowledgement shall include the following statement:

(a) "I have been provided with a copy of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of rule 901:10-2-14 of the Administrative Code. The manure will be distributed and utilized according to the best management practices and according to any state laws regulating these uses."

(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F of rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility owner or operator shall record in the operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date and an acknowledgement by the manure recipient as follows: -

(a) "I have been provided with a copy of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of rule 901:10-2-14 of the Administrative code. The manure will be distributed and utilized according to the best management practices and according to any state laws regulating these uses."

(3) In addition to the information in paragraph (A)(2) of this rule, if the owner or operator decides to use distribution and utilization methods for liquid manure, then the owner or operator shall also provide a copy of appendix B, the available water capacity chart that illustrates how to comply with the requirements of rule 901:10-2-14 of the Administrative Code.

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- (B) All of the information in paragraphs (A)(1) to (A)(3) of this rule shall be recorded in the operating record as described in rule 901:10-2-16 of the Administrative Code.
- (C) An estimated amount of total manure transferred to other persons by the owner or operator in the previous twelve months (tons/gallons) shall be reported in the annual report required by rule 901:10-2-20 of the Administrative Code.
- (D) If the owner or operator is notified by the director, or otherwise becomes aware that the recipient is not in compliance with rule 901:10-1-06 of the Administrative Code or best management practices set forth in Chapter 1501:15-5 of the Administrative Code or with other applicable laws and rules, the owner or operator shall cease providing manure to the recipient until written authorization to continue is provided by the department.

[Comment: Distribution and utilization may include land application, composting, vermiculture and alternative fuel source uses.]

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901:10-2-12 **Contents of manure management plan: methods to minimize odors.**

(A) A manure management plan shall include best management practices to minimize odors. These best management practices shall be identified in the manure management plan and shall be compatible with the overall content of the manure management plan. These best management practices may include the following:

- (1) Remove, transfer and land apply manure at optimum temperatures;
- (2) Remove, transfer and land apply manure when wind direction is less likely to affect neighboring residences;
- (3) Promptly inject or incorporate manure to minimize odors; or
- (4) If manure is applied by spray irrigation, use appropriate pressure and nozzles.
- (5) Additional controls on odor are included in the appendix to ~~rule~~ rule 901:10-2-06 of the Administrative Code. The information appended to rule 901:10-2-06 of the Administrative Code includes waste manure storage or treatment facilities - systems that control and promote additional treatment reduction of odor.

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901:10-2-13 **Contents of manure management plan: soil characterization.**

The manure management plan shall contain information on the soil of land application areas. Soil samples shall be analyzed~~soils to allow the owner or operator~~ to plan for nutrient utilization at recommended agronomic rates and to minimize nutrient runoff to waters of the state. Soil shall be sampled and analyzed by utilizing the following procedures:

- (A) At a minimum, soil samples shall be taken to a uniform depth of eight inches and the fertility analysis shall include: pH, phosphorus, potassium, calcium, magnesium and cation exchange capacity.
- (B) Soil fertility analysis shall be conducted in accordance with Publication 221, "Recommended Chemical Soil Test Procedures for the North Central Region; Published by the North Central Regional Committee on Soil Testing and Plant Analysis (NCR-13), North Dakota Agricultural Experiment Station."
- (C) Soil samples shall be representative of a land application site with one composite soil sample representing no more than twenty-five acres or one composite soil sample for each land application site, whichever is less.
- (D) The manure management plan shall specify the soil sampling frequency in accordance with the following requirements:
 - (1) A site that receives manure shall be soil tested, at a minimum, once every three years; and
 - (2) If any land application site is used by the owner or operator the land application site shall be sampled at least six months following application.
- (E) Results of the soil sampling events in paragraphs (A) to (D) of this rule shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code and shall include the location of the soil sample collection site, the depth of the sample collected and the analysis.
- (F) In developing appropriate manure application rates for land application methods in accordance with rule 901:10-2-14 of the Administrative Code, the owner or operator shall use the Bray P1 soil test level or equivalent appropriate phosphorus soil test, (Mehlich III, Olsen, phosphorus retention test), or other test methods approved by the director. The owner or operator shall choose a phosphorus soil test method and identify the selected method in the manure management plan.

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901:10-2-14 **Contents of manure management plan: land application methods.**

This rule establishes best management practices that govern land application of manure on land application areas sites. The land application of manure at each land application area site shall be conducted to utilize nutrients at agronomic rates, and to minimize nutrient runoff to waters of the state and shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code. The discharge of manure to waters of the state from a facility as a result of application of that manure by the facility to land application areas ~~its control~~ is a discharge from that facility subject to NPDES requirements except where it is an agricultural stormwater discharge ~~as defined in rule 901:10-1-01 of the Administrative Code~~. Where manure has been applied in accordance with this rule and an approved manure management plan, a precipitation-related discharge of manure from land application areas ~~under the control of the facility~~ is agricultural stormwater discharge.

(A) The manure management plan shall contain procedures on how manure shall be transported to land application sites areas in a manner that minimizes loss or spillage, and how spills will be promptly cleaned up or removed.

(B) Manure application rate - testing criteria:

(1) The manure application rate shall be based on the land application ~~site's~~ area's - soil tests conducted in accordance with rule 901:10-2-13 of the Administrative Code and that are no older than three years.

(2) The manure application rate shall be based on the most current manure test results conducted in accordance with rule 901:10-2-10 of the Administrative Code. The manure test results expressed as a nutrient percentage shall be converted into either pounds per ton of dry or wet manure or pounds per one thousand gallons of liquid manure.

(C) ~~Manure General criteria application rate—general criteria:~~ The for manure application. The manure application rate shall be based on the most limiting factor of rates derived from paragraph (B) of this rule and of paragraphs (B) (C) to (G) (E) of this rule, including factors derived from all appendices of this rule, whichever factor is determined to be the most restrictive factor for purposes of protecting waters of the state.

(1) For liquid manure:

(a) The crop nitrogen requirements or removal as of nitrogen described in paragraph (D) of this rule, ~~and as expressed in thousands of gallons of manure per acre;~~

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- (b) The ~~crop phosphorus~~ phosphate application limits requirements or removal as described in paragraph (E) of this rule, ~~and as expressed in thousands of gallons of manure per acre;~~
- (c) The restrictions on the rate of liquid manure applied application, taken from notes (1) and (5) in appendix A, table 2 of this rule, with volume expressed as a measure of gallons per acre or inches per acre;
- (d) The application rate shall not exceed the available water capacity of the soil as described in appendix B of this rule; ~~and~~
- (e) The application rate shall be adjusted to ~~avoid~~ preclude surface ponding and/or runoff from a land application site.

(2) For solid manure:

- (a) The crop nitrogen requirements or removal of nitrogen as described in paragraph (D) of this rule expressed in pounds per ton of dry manure per acre; ~~or~~
 - (b) The ~~crop phosphorus~~ phosphate application limits requirements or removal as described in paragraph (E) of this rule expressed in pounds per ton of dry manure per acre; ~~or~~
 - (c) The restrictions on the rate ~~volume~~ of solid manure applied, taken from notes (1) and ~~(8)(5)~~ in appendix A, table 2 of this rule with volume expressed as a measure of tons/acre.
- (3) All land applications of manure shall comply with all restrictions contained in appendix A of this rule unless a compliance alternative is submitted ~~in the manure management plan~~ and approved by the director. As a compliance alternative, the concentrated animal feeding operation may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot setback or a thirty five foot vegetated buffer.

Comment: The natural resources conservation service and the Ohio state university have conducted extensive research on manure injection and manure incorporation on all representative Ohio soil types. Refer to "United States Department of Agriculture - Natural Resource Conservation Service. Field Office Technical Guide - Conservation Practice Standard 633. Columbus, Ohio, June 2003, revised August 2004."

- (4) For all land application of liquid manures, the owner or operator shall maintain or have access to methods or devices to capture or stop subsurface drain flow if

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liquid manure reaches the subsurface drain outlets. Use of drain outlet plugs or other devices shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

- (5) Calculate the total amount of nitrogen and ~~phosphorus~~ phosphate to be applied to each field, including sources other than manure such as commercial fertilizer or other organic by-products.

- (6) Land application of manure by means of surface application shall not occur if the forecast contains a greater than fifty per cent chance of precipitation as determined in "Managing Manure Nutrients at Concentrated Animal Feeding Operations, Appendix M, United States Environmental Protection Agency, EPA-821-B-04-006, August 2004," exceeding an amount of one-quarter half inch for hydrologic soil group D soils and one-half inch for hydrologic soil group A, B, and C soils, for a period extending twenty-four hours after the start of land application. Record weather conditions in the operating record for conditions at the time of application and for twenty-four hours prior to and following application.

(D) The manure application rate for nitrogen shall be based on the following criteria:

- (1) The application rate for nitrogen shall be based on utilization of crops at the recommended agronomic rates and based on minimum runoff and leaching that may impact waters of the state.

- (2) In determining the agronomic rate for nitrogen, the owner or operator shall do the following:

- (a) Determine the nitrogen requirements or removal rates for the realistic yield goal of planned crops using nutrient amounts from appendix C, tables 1, 2 or 3 of this rule.

- (b) Subtract the nitrogen credit for crop residue, legumes, and other sources of nitrogen to be given to the next ~~corn~~ crop in accordance with values for previous crops given in appendix C, table 4 of this rule;

- (c) When applying nitrogen to a grass or legume cover crop that is growing or being established immediately after manure application, manure can be applied at the recommended nitrogen rate for the next non-legume crop or the nitrogen removal rate for the next legume crop.

- (3) In determining how to minimize nitrogen leaching that may impact waters of the state, the owner or operator shall do the following:

- (a) Assess each land application site area with the Ohio nitrogen leaching risk assessment procedure contained in appendix C, table 5 of this rule;

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- (b) If the nitrogen leaching risk assessment procedure completed in accordance with paragraph (D)(3)(a) of this rule demonstrates that the land application site has a high nitrogen leaching potential and no growing crop, then application of manure shall be limited to fifty pounds of nitrogen per acre calculated at the time of application prior to October first.
- (4) In calculating the actual rate of application of nitrogen from manure, the figures in appendix C, table 6 of this rule shall be used along with the manure test results conducted according to rule 901:10-2-10 of the Administrative Code.
- (5) ~~The criteria applicable to manure application and the requirements of paragraph (D) of this rule may be changed only if the owner or operator can demonstrate to the director nutrient insufficiency in accordance with the presidedress nitrate soil test procedures of tables 7 and 8 in appendix C of this rule.~~
- (E) The manure application rate for phosphate shall be determined using the soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code and the following criteria:
 - (1) Prior to the land application of manure, land application areas shall be assessed with either the phosphorus index risk assessment procedure in appendix E, table 1 of this rule or the phosphorus soil test risk assessment procedure in appendix E, table 2 of this rule. The manure application rate for phosphate shall be limited in compliance with the applicable provision in the:
 - (a) Generalized interpretation of phosphorus index and management column in appendix E, table 1, of this rule, or
 - (b) The application criteria in appendix E, table 2, of this rule.
 - (2) The phosphate requirements for the realistic yield goals of planned crops, crop rotations, and/or plant biomass shall be determined using amounts from appendix C, table 1 of this rule;
 - (3) Phosphate applications between two-hundred and fifty pounds per acre and five hundred pounds per acre are not recommended but may be made if the values for liquid manure exceed sixty pounds phosphate per one thousand gallons and if the values for solid manure exceed eighty pounds phosphate per ton and application is subject to these additional requirements:
 - (a) No manure application shall occur on land with soil tests that exceed more than one hundred parts per million Bray P1;

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(b) No manure application shall occur on frozen or snow-covered ground;

(c) The manure shall be incorporated within twenty-four hours;

(d) No additional phosphate application shall be made for a minimum of three years on fields with soil tests that measure less than forty parts per million Bray P1 or equivalent; and

(e) No additional phosphate application shall be made for a minimum of five years on fields with soil tests between forty and one-hundred parts per million Bray P1 or equivalent.

(4) Notwithstanding the procedures in paragraph (E) of this rule but subject to the restrictions in appendix B of this rule, for a single phosphate application in a year, the application rate shall not exceed five hundred pounds per acre of phosphate.

(E) Manure application rate-phosphorus criteria:

(1) The application rate for phosphate applications shall be based on determined using the soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code and either of the following criteria the following:

(a) Estimated plant phosphorus uptake by crops and/or plant biomass at the recommended agronomic rates as described in section (E)(2) of this rule; or

(b) The phosphorus site risk assessment procedures as described in the appendix to this rule. Soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code;

(c) Subsequent phosphorus removal in plant biomass; and

(d) Minimum runoff that may impact waters of the state.

(2) Soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code.

(2)(3) In determining the agronomic The application rate for phosphate shall not exceed the argonomic rate derived in accordance with paragraph (E)(1) of this rule, unless application, the owner or operator shall do does one of the following to minimize phosphorus runoff that may impact waters of the state, and applicatioin rates do not exceed the value determined by appendix E of this rule:

(a) Determine the phosphorus requirements for the realistic yield goal of planned crops and/or crop rotations using amounts from appendix C, table 1 or appendix D, tables 1 to 5 of this rule.

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~~(b) The application rate for phosphorus shall not exceed the agronomic rate provided in appendix C, table 1 or appendix D, tables 1 to 5 of this rule, unless following the procedures in paragraph (E)(3) (4) of this rule.~~

~~(3)(4) In determining how to minimize phosphorus runoff that may impact waters of the state, the owner or operator shall do the following and apply no more than the value as determined by table 2 of appendix E of this rule:~~

~~(a) Prior to the land application of manure, a land application site areas shall be assessed with either the phosphorus index risk assessment procedure in appendix E, table 1 of this rule or the phosphorus soil test risk assessment procedure in appendix E, table 2 of this rule;~~

~~(b) Application of phosphorus shall not occur on land with soil tests over one hundred fifty parts per million Bray P1 or equivalent unless the owner or operator does one or both of the following: can demonstrate an alternative to the director through the use of the phosphorus index risk assessment procedure contained in appendix E, table 1 of this rule.~~

~~(i) Limits the rate of phosphorus application to an amount that does not exceed phosphorus requirements for the realistic yield goal of planned crops for one year; or~~

~~(ii) Demonstrates an alternative to the director through the use of the phosphorous index risk assessment procedure contained in appendix E, table 1 of this rule~~

~~(c) Phosphorus applications between two hundred and fifty pounds per acre and five hundred pounds per acre are not recommended but may be made if the values for liquid manure exceed sixty pounds phosphorus per one thousand gallons and if the values for solid manure exceed eighty pounds phosphorus per ton and application is subject to these additional requirements:~~

~~(i) No manure application shall occur on land with soil tests that exceed more than one hundred parts per million Bray P1;~~

~~(ii) No manure application shall occur on frozen or snow-covered ground;~~

~~(iii) The manure shall be incorporated within twenty-four hours;~~

~~(iv) No additional phosphorus application shall be made for a minimum of three years on fields with soils tests that measure less than forty parts per million Bray 1 or equivalent; and~~

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- ~~(v) No additional phosphorus application shall be made for a minimum of five years on fields with soils tests between forty and one hundred parts per million Bray P1 or equivalent.~~
- ~~(d) Notwithstanding the procedures in paragraph (E)(4)(3)(a) or (E)(3)(b) of this rule but subject to the restrictions in appendix B of this rule, for a single phosphorus application in a year, the application rate shall not exceed five hundred pounds per acre of phosphorus.~~

(F) Land application for crops or other uses not listed in appendices C and D of this rule will be considered on a case-by-case basis. The owner or operator shall submit existing published or documented data that is acceptable to the director.

(G) General criteria for frozen and snow-covered ground. In addition to complying with all of the criteria in paragraphs (A) to (F) of this rule, the following actions are required for surface application of manure to land with frozen or snow-covered ground.

If manure can be injected or incorporated then the land application site is not frozen or snow covered and therefore subject to paragraphs (A) to (F) of this rule.

The owner or operator shall comply with rule 901:10-2-08 of the Administrative Code and this rule and use best efforts to avoid surface application of manure to frozen or snow covered ground by ensuring enough manure storage capacity by November of each year for a minimum of one hundred twenty to one hundred eighty days.

Manure injection or manure incorporation performed within twenty-four hours at the land application site ~~or manure stockpiling at the land application site are~~ is the preferred alternative to surface application of manure. Solid manure with less than fifty per cent moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.

~~In the event that surface~~ Surface application of manure on frozen or snow-covered ground is prohibited unless unavoidable, ~~then application shall be performed in accordance with all of the following requirements in paragraph (G)(1) of this rule.~~

(1) Application.

(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative.

(b) Except as required by paragraph (G)(1)(g) of this rule, the application rate is limited to ten wet tons per acre for solid manure with more than fifty per cent moisture ~~and five wet tons per acre for manure with less than fifty per cent moisture.~~

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- (c) Except as required by paragraph (G)(1)(g) of this rule, liquid manure the application rate is limited to five thousands gallons per acre.
- (d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application.
- (e) Manure ponding shall be prevented. ~~Manure shall not be applied on more than twenty contiguous acres. Contiguous areas for application are to be separated by a break of at least two hundred feet. Areas that are furthest from streams, ditches, waterways, surface waters are to be utilized in preference to areas with the potential for surface water runoff.~~
- (f) Manure shall not be applied on more than twenty contiguous acres. Contiguous areas for application are to be separated by a break of at least two hundred feet. Areas that are furthest from streams, ditches, waterways, and/or surface waters are to be utilized in preference to areas with the potential for surface water runoff.
- ~~(f)~~(g) Setbacks from surface waters and conduits to surface waters, (including grassed waterways and surface drains) shall be a minimum of two hundred feet. Setbacks shall have at least ninety percent surface residue cover and vegetation or residue shall not be completely covered by ice or snow at the time of application.
- ~~(g)~~(h) For application fields with slopes greater than six percent, manure shall be applied in alternating strips sixty to two hundred feet wide generally on the contour, or in the case that the field is managed in contour strips with alternative strips in grass or legume, manure shall only be applied on alternative strips. Manure application rates shall be determined for each separate application strip area and not the area of the entire application field.
- ~~(h)~~(i) Any manure application with phosphorus exceeding two hundred and fifty pounds per acre is prohibited.

(2) Monitoring.

- (a) Concentrated field surface drainage and tile outlets shall be visually monitored at the conclusion of manure application and periodically afterwards when weather, temperature increase, snowmelt and rainfall are likely to produce manure runoff. Periodic visual monitoring shall continue

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until manure is assimilated into the application field and is no longer likely to discharge into waters of the state.

- (b) Upon discovering a discharge to waters of the state, the owner or operator shall notify the department within two hours of detection of the runoff event~~comply with rule 901:10-2-17 of the Administrative Code.~~
- (c) In addition to the visual monitoring and reporting in this paragraph, event that the owner or operator shall collect representative grab samples from the discharges ~~fails to comply with the of land applied manure into waters of the state at the point that the discharge enters waters of the state (i.e. concentrated field surface runoff or field tile outlet discharge prior to entrance to surface waters) and have the sample analyzed for ammonia nitrogen levels application requirements for frozen or snow covered ground, including but not limited to prior notice to the department, notice of discharges, monitoring and record keeping, for more than two surface land application events, then land application on any frozen or snow covered shall be prohibited for that owner or operator for the duration of the permit upon receipt of a notice of deficiencies resulting in noncompliance pursuant to section 903.17 of the Revised Code.~~
- (d) The owner or operator shall:
 - (i) Collect the sample within thirty minutes of the first knowledge of the discharge; or
 - (ii) If the sampling in that period is inappropriate due to dangerous weather conditions, the owner or operator shall collect the sample as soon as possible after suitable conditions occur and shall document the reason for delay.
- (e) The owner or operator shall report the results of the discharge event to the department within fourteen days of occurrence. The report shall, at a minimum, contain the sample results, describe the reason for the discharge, the location, estimate of quantity and duration of the discharge, and duration of the precipitation leading up to the event, any measures taken to clean up and eliminate the discharge, and copies of land application records. Laboratory results not available at the time of the report submitted shall be submitted to the department within five days of receipt.
- (f) If the ammonia nitrogen level in a water quality sample is determined to be twenty-six mg/L or greater in the discharge at the point it enters waters of the state, then additional surface application of manure to frozen and/or snow covered ground is prohibited on the field where the runoff event occurred.

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- (g) In the event that an owner or operator complies with all of the requirements of paragraph (G) of this rule and runoff enters waters of the state resulting in ammonia nitrogen level in a sample determined to be twenty-six mg/L or greater in three application events authorized in accordance with paragraph (G)(1)(a) of this rule, then additional surface application of manure to frozen and/or snow covered ground shall be prohibited for the duration of the permit.
- (h) In the event that the owner or operator fails to comply with the land application requirements for frozen or snow covered ground, including but not limited to prior notice, and approval for each application pursuant to paragraph (G)(1)(a) of this rule, notice of discharge, monitoring and record keeping, for more than two surface land application events, then land application on any frozen or snow-covered ground shall be prohibited for that owner or operator for the duration of the permit upon receipt of a third notice of deficiencies resulting in noncompliance pursuant to section 903.17 of the Revised Code.
- ~~(d) On and after April 1, 2007, in addition to the requirements for visual monitoring and reporting in paragraph (G)(2)(a) of this rule, the director may require the owner or operator to collect representative grab samples from discharges of manure from the land application site.~~

Appendix
901:10-2-14

Appendix A to rule 901:10-2-14: How to Use the Appendices to this Rule.

Refer to Appendix A, Tables 1 and 2 - Soils Prone to Flooding through Appendix F, Most Limiting Manure Application Rates of rule 901:10-2-14 of the OAC.)

1. Determine if the site has soils that are prone to flooding and when the expected flooding seasons are (Appendix A, Table 1). Note that applications can only be made to soils prone to flooding at times outside the predicted flooding season. All applications to soils prone to flooding must be incorporated within 24 hours and must follow the setbacks in Appendix A, Table 2.
2. Determine if manure will be staged at the land application site. Any manure that is staged at the land application site shall meet the setbacks described in column 1 of Appendix A, Table 2. For solid manure, manure that is staged for more than 15 days from initial delivery will be considered a stockpile, which shall also meet the setbacks described in Appendix A, Table 2. Stockpiles shall not discharge to surface waters of the State and may require additional management practices to prevent such a discharge.
3. For liquid manure applications, follow Appendix B, Available Water Capacity Chart, and Appendix F, Most Limiting Manure Application Rates Chart (Table 1 - tiled fields, Table 2 - non-tiled fields). For solid manures, follow Appendix F, Most Limiting Manure Application Rates Chart.
4. Determine the nutrient removal for the expected cropping sequence using Appendix C, Tables 1-3. Determine residual nitrogen credits for the expected cropping sequence using Appendix C, Table 4.
5. Determine the nitrogen leaching potential of the field based on Appendix C, Table 5, Nitrogen Leaching Assessment Procedure. Note that all tiled fields have a high nitrogen leaching potential. High nitrogen leaching potential fields must have application rates less than or equal to 50 lb/ac as applied nitrogen (calculated by adding $\text{NH}_4\text{-N}$ to $1/3$ Organic N) from June - October 1st unless the field has a cover crop planted.
6. Use the current manure analysis and the relevant sections of Appendix C Tables 6-7 through Appendix D, Tables 1-5 to determine the amount of manure nutrients available for crop production.
7. Use Appendix E, Table 1 (P-Index) if the Bray P1 or equivalent value of the soil test is over 150 ppm. P-Index may only be relied upon for a transitional period of time to allow the owner or operator an opportunity to find other fields or other methods to distribute nutrients from of the facility in order to achieve less than 150 ppm Bray P1 soil test method.
8. Use Appendix F, Most Limiting Manure Application Rates Chart, Nitrogen, P_2O_5 , K_2O , Rate (tons or gallons per acre), or Available Water Capacity to determine the application rate. The selected application rate must be the most restrictive of the five "Limiting Application Rate Criteria" for each Field Situation & Time of Year.

Other Notes:

9. When using Appendix F, although not recommended, Phosphate manure application rates can be made between 250-500lb/ac/yr in cases where liquid manure exceeds 60 lbs. P_2O_5 per 1000 gallons or solid manure that exceed 80 lbs. P_2O_5 per ton. The following criteria also apply: manure must be incorporated within 24 hours and no applications can be made on either frozen or snow covered ground or fields with soil tests over 100 ppm Bray P1; soil tests less than 40 ppm Bray P1 shall have no further P additions for 3 years; soil tests between 40 – 100 ppm Bray P1 shall have no further additions of P for 5 years; no other limiting criteria can be violated.
10. When using legumes as a nitrogen removal source, the maximum legume nitrogen removal must be

less than or equal to 150 lbs./ac.

11. When applying liquid manure to tiled fields, the following criteria must be followed (except for growing crops):

- 11a. Applications must be less than or equal to 0.5" or 13,576 gal/ac.
- 11b. Use a tool (AERWAY tool or similar tool) that can disrupt/close (using horizontal fracturing) the preferential flow paths in the soil, or till the surface of the soil 3-5" deep to a seedbed condition to soak up the liquid manure and keep it out of preferential flow channels.
- 11c. If injection is used, it should only be deep enough to cover the manure with soil. Till the soil at least 3" below the depth of injection prior to application. Tillage prior to application will be considered incorporation of the manure.
- 11d. The outlets must be monitored before, during, and after application AND provisions planned to plug the tile or capture the tile flow if liquid manure reaches the tile outlets. If No-till or pastures are used for applications, tiles must be plugged.

12. If manure is to be applied on frozen or snow covered ground, the field must have at least 90% surface residue cover (e.g. good quality hay or pasture field, all corn grain residue). For applications to frozen or snow covered ground, manure shall not be applied on more than 20 contiguous acres. Contiguous areas for application are to be separated by a break from streams, ditches, waterways, surface water, etc (areas that present the least runoff potential and are furthest from surface water.) The setbacks in column 3 should must be followed. Prior approval must be obtained from the ODA, Livestock Environmental Permitting Program before frozen or snow/ice covered ground surface manure applications. If manure can be incorporated within 24 hours on frozen ground, approval from ODA, Livestock Environmental Permitting Program is not required.

13. For surface manure applications, follow the setbacks in column 2. For incorporation within 24 hours or injection, follow the setbacks in column 4.

Appendix A Table 2 to rule 901:10-2-14: Land application restrictions and setbacks

Land Application Restrictions

	1	2	3	4
	Staging Areas and Stockpiles (10)	Surface Application	Winter Applications Frozen or Snow Covered Ground (1)	Surface Incorporation w/ 24 Hours OR Direct Injection
Class V wells, sinkholes	300'	300'	300'	100'
Surface Waters of the State (7)	300'	35' veg cover, 100' (2)	35' veg. cover, 200' (8)	35' veg. cover, 100'(2)
Wells	300'	300'	300'	100'
Bedrock	> 3' from bedrock	none	none	none
Public Surface Drinking Water Intake	1500'	300'	300'	300'
Springs	300'	300'	300'	300'
Neighboring residences:	500'	300'	300'	100'
Flooding/flood plains/floodways (3):	do not stockpile	do not apply	do not apply	permissible (3)
Slope (4):	0-6%	>15% see note 5	If > 6% see note 1	>15% see note 5
Field Surface Furrows(6)	300'	35' veg. cover, 100'(2) or 35' see note 8	200'	none
Maximum Application Rate:	Liquid Manure - Based on Appendix B (AWC Chart) & Appendix F (Most Limiting Nutrient Chart) Solid Manure - Based on Appendix F (Most Limiting Nutrient Chart)			

Note (1): All winter surface applications must have prior approval from the Ohio Department of Agriculture. Application on frozen and snow covered soil is not recommended. However, if manure application becomes necessary on frozen or snow covered soils, only limited quantities of manure shall be applied to address waste storage limitations until non frozen soils are available for manure application. If frozen or snow covered ground application becomes necessary, applications are to be applied only if ALL the following criteria are met:

- Application rate is limited to 10 wet tons/acre for solid manure more than 50% moisture and 5 wet tons for manure less than 50% moisture. For Liquid manure the application rate is limited to 5000 gallons/acre.
- Applications are to be made on land with at least 90% surface residue cover (e.g. good quality hay or pasture field, all corn grain residue remaining after harvest, all wheat residue cover remaining after harvest).
- Manure shall not be applied on more than 20 contiguous acres. Contiguous areas for application are to be separated by a break of at least 200 feet. Utilize those areas for manure application that are the furthest from streams, ditches, waterways, surface water, etc. (areas that present the least runoff potential and are furthest from surface water).
- Increase the application setback distance to 200 feet "minimum" from all grassed waterways, surface drainage ditches, streams, water bodies and field surface furrows. This distance may need to be further increased due to local conditions.
- The rate of application shall not exceed the rates specified in Table 4 - Determining The Most Limiting Manure Application Rates for winter application.
- Additional winter application criteria for fields with significant slopes more than 6% - Manure shall be applied in alternating strips 60 to 200 feet wide generally on the contour, or in the case of contour strips on the alternating strips.

Note (2): Either a 35' wide vegetative buffer strip must be present or a total setback of 100' must be maintained. As a compliance alternative, the concentrated animal feeding operation may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot setback or a thirty five foot vegetative buffer. Buffer strip is defined in OAC 901:10-1-01(R).

Note (3): No applications during expected flooding season as reported in Appendix A, Table 1

Note (4): Must have < 5 ton/ac yearly average soil loss to perform surface manure applications

Note (5): Manures are not to be applied to cropland over 15% slope or to pastures/hayland over 20% slope unless ONE of the following precautions are taken:

- Immediate incorporation or injection with operations done on the contour, UNLESS the field has 80% ground cover (residue or canopy).
- Applications are timed during periods of lower runoff and/or rainfall (May 20th - October 15th)
- Split applications are made (separated by rainfall events) with single applications not exceeding 10 wet tons/ac or 5000 gal/ac.
- The field is established and managed in contour strips with alternated strips in grass or legume.

Note (6): Applications can be through field surface furrows if criteria in Appendix A, How to Use Appendices are followed.

Note (7): Refer to OAC 901:10-1-01 for the definition of "Surface waters of the state."

Note (8): The first setback refers to a vegetative buffer strip that must be maintained while the second refers to the total setback distance. Buffer strip is defined in OAC 901:10-1-01.

Note (9): A 35' buffer without vegetation may be approved by the Director based on prior submittal of a compliance alternative for the specific land application area, in accordance with OAC 901:10-2-14(C)(3)

Note (10): Staging area(s) is a site used for placement of solid manure or transferring of liquid manure to facilitate land application. Any solid manure that is staged for more than 15 days will be considered a stockpile. Staging areas and stockpiles shall not discharge to waters of the State.

Source: USDA-NRCS (2003). Field Office Technical Guide-Conservation Practice Standard, 633, Columbus, Ohio.

Appendix C Table 1 of rule 901:10-2-14 Nutrients removed in harvested portions of crops.

Table 1	Nutrients Removed for Given Yield ^a			Nutrients Removed for Unit Yield ^b	
Crop/Yield	N	P ₂ O ₅	K ₂ O	P ₂ O ₅	K ₂ O
	lb/acre			lb/bu or ton	
Alfalfa (6 T)	340 ^c	80	360	13.3 lb/T	60 lb/T
Corn (150 Bu)					
Grain	135	55	40	0.37 lb/bu	0.27 lb/bu
Stover	100	25	160		
Corn-Silage (26T)	235	80	235	3.1 lb/T	9.0 lb/T
Grass-Cool Season (3.5T) Tall Grasses and/or Forage Legumes (established)	140	45	175	13.0 lb/T	60.0 lb/T
Oats (100 Bu)					
Grain	65	25	20	0.25 lb/bu	0.20 lb/bu
Straw	35	15	100	0.15 lb/bu	1.0 lb/bu
Sorghum-Grain (7,600 lb)					
Grain	105	30	30	0.39 lb/100 lb	0.39 lb/100 lb
Stover	80	50	230		
Soybean (50 Bu)	190 ^c 40		70	0.80 lb/bu	1.4 lb/bu
Sugar Beets-Roots (25 T)	100	50	250	2.0 lb/T	10.0 lb/T
Tobacco-Burley and Cigar Filler					
Leaf (3000 Lb)	105	25	185		
Stems and Suckers (2000 lb)	55	15	65		
Leaves and Stalks				1.3 lb/100 lb	8.3 lb/100 lb
Wheat (55 Bu)					
Grain	70	35	20	0.64 lb/bu	0.36 lb/bu
Straw	30	5	50	0.09 lb/bu	0.91 lb/bu
^a Source: National Plant Food Institute and others. ^b Source: Ohio Agronomy Guide, 12th Edition. ^c Inoculated legumes fix nitrogen from the air.					

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.

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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)(e)~~ (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..

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- (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

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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.

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- (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:

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- (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.

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.

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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)(e)~~ (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..

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- (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

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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.

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- (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:

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- (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.

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(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~~

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

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

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

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

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

(B) Source water protection for public water systems.

(1) Public water wells.

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

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

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

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

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- (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.

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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

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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

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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.]

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- (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

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(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

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- (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.

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(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.

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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.

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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;

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(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;

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(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~~

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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.

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(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.

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- (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

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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;

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- (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-

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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.

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(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;

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- (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

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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.

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- (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.

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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;

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(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.

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(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

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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

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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.

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- (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

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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;

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(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.

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(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

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(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/l zinc or more than two hundred and fifty grams (1/4 kilogram) of zinc in any discharge).

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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.

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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.

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- (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.

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- (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

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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.

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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.

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- (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).

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- (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.

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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.~~

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- (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.

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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.

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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 ~~effect~~ 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.

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- (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.

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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.

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- (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

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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.

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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.

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(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.~~

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(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.

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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

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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.

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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.]

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- (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

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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~~

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~~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.

