



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Dorothy Pelanda, Director
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

Re: Ohio's Request to Transfer the CAFO Portion of the NPDES Program to ODA

Dear Ms. Pelanda:

Thank you for the phone conversation on July 1, 2022, where we discussed former Ohio Governor John Kasich's July 8, 2015 request to transfer (Transfer Request) certain regulatory responsibilities from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA), namely the portions of the National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFOs) and discharges of stormwater at animal feeding operations (AFOs). The Transfer Request is a request for a state program revision under 40 C.F.R. § 123.62. As discussed below, the U.S. Environmental Protection Agency is declining the Transfer Request and disapproving it.

EPA Region 5, in consultation with EPA Headquarters, has reviewed the Transfer Request. Under our state program regulations, a revision of a state program requires the State to submit certain information to EPA, including, but not limited to, "documents EPA determines to be necessary under the circumstances," to enable EPA to review a request, and, where EPA determines the revision is substantial, to provide for public comment on the request. 40 C.F.R. § 123.62(b). As part of our review of the State's request, EPA sent you a letter on August 9, 2019, providing eleven (11) comments identifying statutory provisions in Chapters 903 and 6111 of the Ohio Revised Code for further clarification or revision, and a letter on July 1, 2020, providing seventy (70) comments identifying provisions of Chapter 901:10 of the Ohio Administrative Code where clarification or revision may be necessary to ensure ODA has adequate authority to implement the requested portions of the NPDES program. In both letters (enclosed), EPA stated its commitment to working with the State as it seeks to transfer portions of its NPDES authority. EPA also provided grant funding to ODA in Fiscal Year 2020 to help ODA address any statutory and regulatory changes and other key aspects of the CAFO NPDES permit program in an effort to meet Clean Water Act requirements.


EPA has not received formal written responses to its 2019 or 2020 letters and Ohio has not amended the involved statutes and code. Additionally, it is EPA's understanding that ODA did not expend any funding to complete the work covered under the grant. The grant ended on December 31, 2021.

Because the request remains incomplete under 40 C.F.R. § 123.62(b)(1), and there is no reasonable expectation that the State will cure the deficiencies in the request in the near future, EPA, by this letter, is declining the Transfer Request and disapproving it. This does not in any way preclude the submission and active consideration of a revised request in the future that incorporates statutory and regulatory changes that meet Clean Water Act requirements. EPA is taking this action to provide clarity to producers and the public regarding the separate roles and responsibilities of Ohio EPA and ODA pertaining to livestock and poultry and allow EPA to focus on working with Ohio EPA in the implementation of its approved NPDES permit program for CAFOs.

If you have questions regarding this letter, please do not hesitate to contact me, or your staff may contact Scott Ireland, Acting Water Division Director, at ireland.scott@epa.gov or (312) 886-8121.

Sincerely,

DEBRA
SHORE

 Digitally signed by
DEBRA SHORE
Date: 2022.11.16
12:16:27 -05'00'

Debra Shore
Regional Administrator
& Great Lakes National Program Manager
US EPA Region 5

Enclosures

cc: Laurie A. Stevenson, Director, OEPA