

or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the director. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff from a 25-year, 24-hour rainfall event. The technical analysis of the discharge of pollutants must include:

- (a) All daily inputs to the storage system, including manure, litter, all process waste waters, direct precipitation, and runoff.
 - (b) All daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of waste water for use on cropland at the CAFO or transport off site.
 - (c) A calculation determining the predicted median annual overflow volume based on a 25-year period of actual rainfall data applicable to the site.
 - (d) Site-specific pollutant data, including N, P, BOD5, TSS, for the CAFO from representative sampling and analysis of all sources of input to the storage system, or other appropriate 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) through (A)(1)(b)(i)(d) of this paragraph.
- (ii) The director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the CAFO.
- (c) The CAFO shall attain the limitations and requirements of this paragraph as of the date of permit coverage.

(2) For the land application areas.

- (a) The operation shall attain the same limitations and requirements listed for the manure management plan in paragraph (A)(1) of rule 901:10-2-07 of the Administrative Code and record keeping requirements in rule 901:10-2-16 of the Administrative Code.

- (b) The operation shall attain the limitations and requirements of this paragraph 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 operation production areas: the operation shall attain the same limitations and requirements in paragraph (A)(1) of this rule.
- (b) For the land application areas: the operation shall attain the same limitations and requirements in paragraph (A)(2) of this rule.
- (C) Effluent limitations attainable by the application of the best available technology economically achievable (BAT).
- 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:
- (1) For production areas: the concentrated animal feeding operation shall attain the same limitations and requirements in paragraph (A)(1) of this rule.
- (2) For land application areas: the concentrated animal feeding operation shall attain the same limitations and requirements listed in paragraph (A)(2) of this rule.
- (D) New source performance standards (NSPS).
- Any new source subject to this rule must achieve the following effluent limitations representing the application of NSPS.
- (1) For production areas: there must be no discharge of manure into waters of the state from the production area, subject to paragraphs (D)(1)(a) to (D)(1)(b) of this rule.
- (a) Manure storage and treatment facilities designed, constructed, operated, and maintained to contain all manure including the runoff and the direct

precipitation from a one-hundred year, twenty-four hour rainfall event and operated in accordance with the manure management plan and records required by rules 901:10-2-08 and 901:10-2-16 of the Administrative Code, will fulfill the requirements of paragraph (D) of this rule.

- (b) Provisions for upset/bypass, as provided in paragraphs (T) and (U) of rule 901:10-3-10 of the Administrative Code, apply to a new source subject to paragraph (D) of this rule.
- (2) For land application areas: the operation shall comply with the requirements listed for the manure management plan required by paragraph (A)(1) of rule 901:10-2-07 of the Administrative Code and the recordkeeping requirements of rule 901:10-2-16 of the Administrative Code.
- (3) The operation shall attain the limitations and requirements of paragraph (D) of this rule as of the date of permit coverage.
- (4) Voluntary superior environmental performance standards. Any new source concentrated animal feeding operation subject to this rule may request the director to establish alternative NPDES permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards as provided by paragraph (D)(1)(a) of this rule. The quantity of pollutants discharged from the production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (e.g., air emissions from housing and storage) and/or land application areas for all manure at on-site and off-site locations. The comparison of quantity of pollutants must be made on a mass basis where appropriate. The director has the discretion to request supporting information to supplement such a request.
- (5) 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 40 CFR 412.15, 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.

901:10-3-06

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Replaces: 901:10-3-06

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best management practices cannot be met without modifying the existing facility,
the owner or operator shall apply for a permit to install.

901:10-3-07

3

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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 Actaet;
 - (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 Actaet;
 - (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 Actaet. 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 301 of the Actaet ~~applies~~ apply only to the owner or operator requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect or require corresponding changes to the water quality

standard for the waterbody as a whole.

- (a) Eligibility. The owner or operator is not eligible for a variance under this paragraph if the following apply:
- (i) The owner or operator is a new discharger or the owner or operator of a facility that commenced a discharge after March 23, 1997.
 - (ii) If the variance would likely jeopardize the continued existence of an endangered or threatened species listed under section four of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.
 - (iii) If standards will be attained by implementing effluent limits required under sections 301 (b) and 306 of the act and by the owner or operator implementing cost-effective and reasonable best management practices for nonpoint source control.
- (b) Timeframe for variances. A water quality based variance issued under paragraph (B)(6) of this rule shall not exceed five years ~~or~~ the term of the NPDES permit whichever is less. A water quality based variance shall be reviewed and modified if necessary as part of each water quality standards review pursuant to section 303(c) of the Act.
- (c) Conditions to grant a variance. A variance may be granted if:
- (i) The owner or operator demonstrates to the director that attaining the water quality standard is not feasible because:
 - (a) Naturally occurring pollutant concentrations prevent the attainment of the water quality standard;
 - (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the water quality standard, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable the water quality standard to be met without violating water conservation requirements;
 - (c) Human-caused conditions or sources of pollution prevent the attainment of the water quality standard and cannot be remedied, or would cause more environmental damage to

correct than to leave in place;

- (d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the water quality standard, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the water quality standard;
 - (e) Physical condition related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of the water quality standard; or
 - (f) Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact.
- (ii) In addition to the requirements of paragraph (B)(6)(c)(i) of this rule the owner or operator shall also:
- (a) Show that the variance requested conforms to the requirements of the antidegradation policy as set forth in section 6111.12 of the Revised Code; and
 - (b) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the water quality standard absent the variance, such that the director is able to conclude that any such ~~increased~~ increase risk is consistent with the protection of the public health, safety and welfare.
- (d) Submittal of the variance application. The owner or operator shall submit an application for a variance to the director. The application shall include:
- (i) All relevant information demonstrating that attaining the water quality standard is not feasible based on one or more of the conditions in paragraphs (B)(6)(c)(i) and (B)(6)(c)(ii) of this rule.
 - (e) Public notice of preliminary decision. Upon receipt of a complete application for a variance and upon making a preliminary decision

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

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

- (a) Compliance with an initial effluent limitation which, at the time the variance is granted, represents the level currently achievable by the owner or operator and which is no less stringent than that achieved under the previous permit;
- (b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;
- (c) When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and
- (d) A provision that allows the director to reopen and modify the permits based on any triennial water quality standards revisions to the variance.

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

- (8) Incorporating into the permit. The director shall establish and incorporate into the NPDES permit all conditions needed to implement the variance as determined in paragraph (B)(7) of this rule.
- (9) Renewal of the variance. A variance may be renewed subject to the requirements of paragraph (B)(8) of this rule. As part of any renewal application, the owner or operator shall again demonstrate that attaining a water quality standard is not feasible based on the requirements of paragraph

(B)(6)(c) of this rule. The application shall also contain information concerning compliance with the conditions incorporated into its permit as part of the original variance pursuant to paragraphs (B)(7) and (B)(8) of this rule. Renewal of a variance may be denied if the owner or operator did not comply with the conditions of the original variance.

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

- (a) Relevant applications as set forth in paragraph (B)(6)(d) of this rule;
- (b) Public comments and records of any public hearings pursuant to paragraph (B)(6)(e) of this rule;
- (c) The final decision of the director; and
- (d) The NPDES permit.
- (e) Information required by this paragraph shall be submitted by the director within thirty days of the date of the final variance decision. The information required by paragraph (B)(6)(d) of this rule shall be submitted in accordance with the terms of the memorandum of agreement with the regional administrator pursuant to 40 CFR 123.24.

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

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

901:10-3-08

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ACTION: Final

DATE: 06/19/2002 9:00 AM

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

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

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06/19/2002 09:00 AM

Date

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

- (A) This rule describes the 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 Act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the terms and conditions of the permit. The owner or operator shall comply with all terms and conditions of the NPDES permit.
- (B) Duty to mitigate. The owner or operator shall take all reasonable steps to minimize or prevent any discharge or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. This permit may be modified, suspended or revoked for cause.
- (C) Permit actions. The NPDES permit may be modified, revoked and reissued, or terminated for cause. The filing by the owner or operator of a request for permit modification, suspension, revocation or a notification of planned changes or anticipated noncompliance does not stay or suspend any permit term or condition.
- (D) Duty to comply. The owner or operator shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the act and chapter 903 of the Revised Code and is grounds for an enforcement action; for permit revocation; suspension; modification; or denial of a permit renewal application.
- (E) General effluent limitations. The effluent shall, at all times, comply with Ohio water quality standards.
- (F) Duty to reapply. If any person who wishes to commence a discharge or to continue any activity regulated by the permit after the expiration date of this permit, an application for a permit or renewal of a permit shall be submitted to the director at least one hundred eighty days prior to discharge or the expiration date of the permit.
- (G) The permit does not convey any property rights of any sort or any exclusive privilege.
- (H) Inspection and entry. The owner or operator shall allow the director or an authorized representative upon the presentation of proper identification, at reasonable times and in compliance with biosecurity procedures:
- (1) To enter the facility or operation where any records are kept under the terms and conditions of the permit;

- (2) To have access for review and copying any records that must be kept under the terms and conditions of the permit;
 - (3) To inspect, at reasonable times:
 - (a) Equipment, (including any monitoring and control equipment) or method;
 - (b) Any manure storage or treatment facility;
 - (c) Practices required or regulated under the permit; and
 - (4) To sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
- (I) Duty to provide information. The owner or operator shall furnish to the department within a reasonable time any information that the department may request to determine whether cause exists for modifying, revoking, and reissuing or terminating the permit or to determine compliance with the permit. The owner or operator shall also furnish to the department, upon request, copies of records required by this permit to be kept.
- (J) Monitoring and records.
- (1) Records of samples and measurements taken including, but not limited to, samples and measurements of manure, soils, process wastewater and process generated water for the purpose of monitoring shall be representative of the monitored activity.
 - (2) The owner or operator shall retain records of all monitoring information, including all calibration and maintenance records and, if applicable, original strip chart recordings or continuous monitoring instrumentation. Copies of reports required by this permit and records of data used to complete the application for this permit shall be retained for a period of at least five years from the date of this permit, the sample, measurement, report or application. This period may be extended by request of the department at any time.
 - (3) Records of monitoring information shall include:
 - (a) The date, exact place and time of sampling or measurements;
 - (b) The individual(s) who performed the sampling or measurements;
 - (c) The date(s) analyses were performed;
 - (d) The analytical techniques or methods used; and

- (e) The results of such analyses.
- (K) Monitoring must be conducted according to rules 901:10-2-04 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 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. All permits shall specify:
- (1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
 - (2) Required monitoring including type, intervals and frequency sufficient to yield data which are representative of the monitoring activity including, when appropriate, continuous monitoring; and
 - (3) Applicable reporting requirements based upon the impact of the regulated activity; and
 - (4) Requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than one year.
- (M) Signatures. All permit applications and reports required by the permit and other information submitted to the director shall be signed and certified as follows:
- (1) All permit applications shall be signed as follows:
 - (a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (ii) The manager of one or more production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment

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

- (b) For a partnership or sole proprietorship: by a general partner for a partnership or the proprietor, respectively.
 - (c) The written authorization is submitted to the director.
- (2) All reports required by permits and other information requested by the director shall be signed by the person described above or a duly authorized representative of that person. A person is a duly authorized representative of the person described above only if:
- (a) The authorization is made in writing by the person described above;
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility such as the position of manager, or a position of equivalent responsibility; (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
 - (c) The written authorization is submitted to the director.
 - (d) Changes to authorization. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying this rule must be submitted prior to or together with any reports, information, or applications to be signed by an authorized representative..
- (3) Certification. Any person signing a document under this rule shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

- (N) Need to halt or reduce activity is not a defense. It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (O) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities (and related appurtenances) which are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
- (P) Emergency notification. In an emergency, the owner or operator shall follow the facility's emergency response plan, which shall include, at a minimum, the following:
- (1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;
 - (2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points; and
 - (3) Procedures to be followed in the event of a spill, including actual or imminent discharge to waters of the state. These procedures shall include:
 - (a) The owner or operator shall report a spill or discharge by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence and shall provide the following information:
 - (i) The time at which the discharge or spillage occurred, if known, was discovered;
 - (ii) The approximate amount and the characteristics of the discharge or spillage;
 - (iii) The waters of the state affected by the discharge or spillage;
 - (iv) The circumstances which created the discharge or spillage;
 - (v) The names and telephone numbers of persons who have knowledge of these circumstances;
 - (vi) Those steps being taken to clean up the discharge or spillage;

- (vii) The names and telephone numbers of the persons responsible for the cleanup.
 - (b) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall use the Ohio department of agriculture's emergency telephone number.
 - (c) If applicable, the owner or operator shall notify appropriate local authorities.
 - (d) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence, unless waived, in writing, by the department. On a case-by-case basis, the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident. This report shall outline the actions taken, proposed to be taken to correct the problem and to ensure that the problem does not recur.
- (Q) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. A written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. On a case-by-case basis the director may waive the written report if an oral report of a spill was received within twenty-four hours of the incident.

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

- (1) Any unanticipated bypass that exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; and
 - (3) Violations of a maximum daily discharge limitation for any of the pollutants listed by the director in the permit to be reported within twenty-four hours. The director may waive the written report on a case-by-case basis for reports if the oral report has been received within twenty-four hours.
- (R) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, any compliance schedule of this permit shall be submitted fourteen days after each schedule date.

- (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 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.
 - (c) The owner or operator submitted notices as required by paragraph (P) of this rule.
 - (d) The director may approve an anticipated bypass after considering its adverse effects if the director determines that the bypass will meet the conditions listed in this rule.
- (U) Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

- (1) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based effluent limitations if the requirement of paragraph (U)(2) of this rule is met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is a final administrative action subject to judicial review.
- (2) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating records, or other relevant evidence that:
 - (a) An upset occurred and the permittee can identify the cause of the upset;
 - (b) The permitted operation was at the time being properly operated;
 - (c) The permittee submitted notice of the upset as required in paragraph (Q) of this rule; and
 - (d) The permittee complied with any compliance measures required under paragraph (B) of this rule.
- (3) In any proceeding to enforce the NPDES permit the owner or operator seeking to establish the occurrence of an upset has the burden of proof.
- (V) Planned changes. The owner or operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. section 122.29(b); or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.
- (W) Other noncompliance. The owner or operator shall report all instances of noncompliance not reported under paragraphs (Q) and (R) of this section 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 [fill in #] 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 rule 901:10-3-10(M) 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.

(Z) Other obligations which may apply.

- (1) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted operation unless the director determines that effluent limitations are infeasible and the best management practices shall be utilized.
- (2) Continuous discharges. For any continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:
 - (a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
 - (b) Average weekly and average monthly discharge limitations for any utilized publicly owned treatment works.
- (3) Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following 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).

901:10-3-10

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901:10-3-11

Stormwater permits general and individual.**(A) Definitions.**

[Comment: the following definitions shall apply specifically to stormwater. All other definitions contained in this rule and not otherwise defined below shall retain the meaning in the rules contained in definitions rule 901:10-1-01 of the Administrative Code and in Chapter 903. of the Revised Code.]

- (1) Best management practices for stormwater means erosion control, sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions and other management practices published by the state or other agencies, such as "Rainwater and Land Development, Ohio's Standards for Storm Water Management, Land Development and Urban Stream Protection, Second Edition, 1996," ~~prepared~~ Prepared by the Ohio department of natural resources, division of soil and water conservation.
- (2) Construction activity means clearing, grading, excavation, grubbing and filling.
- (3) Erosion means the wearing away of soil by rainfall, surface water runoff, wind or ice movement.
- (4) Erosion control means methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover and construction phasing.
- (5) Exposed soil area means all areas of the construction site where the perennial vegetation (including trees, shrubs and brush) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site.
- (6) Final stabilization means that all soil disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of seventy percent of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures have been employed.
- (7) First order stream means all streams identified on a United States geological survey seven and five tenths minute topographical map by either a dashed or blue solid line.

- (8) Impervious surface means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt or gravel roads.
- (9) "National Pollutant Discharge Elimination System" (NPDES) means the program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits under the Clean Water Act (Sections 301, 318, 402 and 405) and United States Code Title 33, sect. 1317, 1328, 1342, and 1345.
- (10) Permanent cover means final stabilization including, but not limited to, grass, gravel, asphalt and concrete.
- (11) Sediment means solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, gravity or ice and has come to rest on the earth's surface.
- (12) Sediment control means methods employed to prevent sediment from leaving the site. Sediment control practices include filter strips, silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.
- (13) Soil means the unconsolidated, erodible earth material consisting of minerals or organics.
- (14) Stabilized means the exposed ground surface has been covered by staked sod, rip rap, wood fiber blanket, or other material, which prevents erosion from occurring. Grass seed by itself is not stabilization.
- (15) Stormwater means the precipitation runoff, stormwater runoff, snowmelt runoff and any other surface runoff and drainage defined in 40 CFR section 122.26(b)(13). Stormwater does not include construction site dewatering or agricultural stormwater discharges.

Stormwater resulting from an animal feeding facility includes immediate access roads and rail lines used or traveled by carriers of raw materials, products, waste materials, or ~~by-products~~ ~~by-products~~ used or created by the facility, sites used for handling material other than manure, refuse sites, sites used for storage and maintenance of material handling equipment, shipping and receiving areas, and under the control of the owner or operator. All areas

that fall within the meaning of production area are excluded from this definition.

(16) Temporary protection means temporary methods employed to prevent erosion. Examples of temporary protection include: straw, wood fiber blanket, wood chips and erosion netting.

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

(18) Wet weather discharge refers collectively to point source discharges that result from precipitation events, such as rainfall and snowmelt. Wet weather discharges include stormwater runoff, combined sewer overflows and wet weather sanitary sewer overflows. Stormwater runoff accumulates pollutants such as oil and grease, chemicals, nutrients, metals and bacteria as it travels across land.

(B) Permit requirements.

(1) General stormwater requirements. No person shall discharge stormwater 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 act. The director may designate a stormwater discharge as a point source subject to a NPDES permit. In addition, any person may petition the director to require a NPDES permit for a discharge which is composed entirely of stormwater which contributes to a violation of water quality ~~standards~~ standard or is a significant contributor of pollutants to waters of the United States. Persons that have been issued a NPDES permit by the director of the Ohio environmental protection agency for the discharge of storm water from an animal feeding facility prior to the date on which the USEPA approved 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.

(2) Construction stormwater requirements. No person shall discharge stormwater resulting from an animal feeding facility that is undergoing construction activities that include clearing, grading, excavating, grubbing and/or filling

activities that result in the disturbance of one or more acres unless the person first obtains a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Act. Persons that have been issued a NPDES permit by the director of the Ohio environmental protection agency for the discharge of stormwater from an animal feeding facility prior to the date on which the USEPA approved 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.

(C) Individual permit or general permit.

- (1) The director may require an owner or operator to apply for and obtain either an individual NPDES permit or coverage under a NPDES general permit. Any interested person may petition the director to take action under circumstances listed below. An individual NPDES permit may be required under the following circumstances:
 - (a) A discharge exists and is a significant contributor of pollutants;
 - (b) Noncompliance with the conditions of a NPDES general permit;
 - (c) Noncompliance with the rules; or
 - (d) Receiving streams not meeting applicable water quality standards;-
 - (e) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;-
 - (f) Effluent limitation guidelines are promulgated for point sources covered by a general NPDES permit;-
 - (g) A water quality management plan containing requirements applicable to such point sources is approved; or-
 - (h) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(2) The director may require the owner or operator authorized to discharge by a general permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application and a statement setting a deadline for the owner or operator to file the application and a statement that on the effective date of the individual permit, coverage under this general permit shall automatically terminate. The director may grant additional time to submit the application upon request of the applicant. If an owner, operator or developer fails to submit in a timely manner an individual NPDES permit application required by the director under this paragraph, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

(3) Any owner or operator authorized by general permit may request to be excluded from the coverage of a general permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR section 122.26. The request shall be granted by issuance of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, or the owner, operator or developer is approved for coverage under an NPDES general permit, the applicability of a general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the general permit, whichever the case may be.

(D) Requirements for stormwater discharge associated with construction activity.

(1) Application. Individuals who intend to obtain coverage for a stormwater discharge associated with construction activity shall submit an application for a permit at least thirty days prior to the commencement of new construction activity. Application requirements for stormwater discharges associated with construction activity include a summary of the following:

(a) The location (including a scaled map) and the nature of the construction activity;

(b) The total area of the site and the area of the site that is expected to undergo excavation, grubbing and filling during the life of the permit;

- (i) The owner or operator's name, address, telephone number, and manager's name (if applicable);
 - (ii) The proposed start and end date of the project;
 - (iii) An estimate of the area to be disturbed;
 - (iv) Proposed measures, including best management practices to control pollutants in stormwater discharges during construction;
 - (v) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed;

[Comment: These measures should be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.]
 - (vi) An estimate of the runoff of the site and the increase in the impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
 - (vii) The name of the receiving water.
- (2) Fees. A one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code. The owner or operator will indicate on the application whether the stormwater permit is to be a general or individual permit.
- (3) Transfer. A stormwater permit is transferable if the owner or operator notifies the department of agriculture in writing sixty days prior to any proposed transfer. The transferee must inform the department of agriculture in writing that he or she will assume the responsibilities of the original transferor. 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.
- (4) Record keeping.
 - (a) For construction stormwater requirements, the facility's final plans and specifications, which incorporate the requirements of the erosion and sediment control plan must be:

- (i) Available at the construction site in either the field office, the inspector's vehicle, or contractor's vehicle; and
 - (ii) Available to federal, state and local officials for inspection for the duration of this permit.
- (b) The following plans and records must be made available to federal, state, and local officials within twenty-four hours of request for the duration of this permit:
- (i) The erosion and sediment control plan.
 - (ii) Records of all inspections. Records shall include:
 - (a) The dates and times of inspections;
 - (b) Findings of inspections;
 - (c) Corrective actions taken (including dates and times); and
 - (d) Documentation of changes to the erosion and sediment control plan made during construction.
 - (iii) Dates of all precipitation events exceeding one-half inch.
 - (iv) The owner or operator shall retain records for a period of five years after the completion of the construction activity.
- (c) The notice of the general stormwater permit coverage card or individual stormwater permit shall be posted at any of the following locations:
- (i) Construction site entrance and visible from the nearest public roadway;
 - (ii) Visible from nearest public roadway, if no construction site entrance exists;
 - (iii) Field office (if applicable); ~~or~~

- (iv) For linear utility and noncontiguous projects, at the office responsible for project administration.

(5) Sediment control

- (a) Stabilization and nonstructural practices. A description of control practices designed to preserve existing vegetation where attainable and revegetation of disturbed areas as soon as practicable after grading or construction shall be provided. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing and protection of trees. The owner or operator shall initiate appropriate vegetative practices on all disturbed areas within seven days if they are to remain dormant for more than forty-five days. For areas within fifty feet of any stream, first order or larger, soil stabilization practices shall be initiated within two days on all inactive, disturbed areas. Permanent or temporary soil stabilization shall be applied to disturbed areas within seven days after final grade is reached on any portion of the site. When seasonal conditions prohibit the application of temporary or permanent seeding, non-vegetative soil stabilization practices such as mulching and matting shall be used.
- (b) Structural practices. A description of structural practices that shall store runoff allowing sediments to settle ~~and/or~~ or divert flows from exposed soils or otherwise limit runoff from eroding exposed areas of the site shall be provided. Structural practices shall be used to control erosion and trap sediment from all sites remaining disturbed for more than fourteen days. Such practices may include, but are not limited to, sediment traps, sediment basins, silt fences, earth diversion dikes, check dams and storm drain inlet protection.
- (i) Timing. Sediment control structures shall be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers shall be implemented as the first step of grading and within seven days from the start of grubbing. They shall continue to function until the upslope development area is restabilized.
- (c) Settling ponds. Concentrated stormwater runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers shall pass through a sediment settling pond. The facility's storage capacity shall be a minimum of sixty-seven cubic yards per acre of drainage area.

(d) Sediment barriers. Sheet flow runoff from denuded areas shall be intercepted by sediment barriers. Sediment barriers, such as silt fences or diversions directing runoff to settling facilities, shall protect adjacent properties and water resources from sediment transported by sheet flow.

(e) Stream protection. Structural practices shall be designed and implemented on site to protect all adjacent streams, first order and larger, from the impacts of sediment runoff.

Other erosion and sediment control practices shall prevent sediment laden water from entering storm drain systems, unless the storm drain system drains to a settling pond. These practices shall divert runoff from disturbed areas and steep slopes where practicable and stabilize channels and outfalls from erosive flows.

(6) Post construction stormwater pollution prevention. A description of measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed shall be provided. Such practices may include among others: infiltration of runoff, flow reduction by use of open vegetated swales and natural depressions and stormwater retention and detention ponds.

[Comment: These measures should be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.]

(a) Where such controls are needed to prevent or minimize erosion, velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive flow velocity from the structure to a watercourse. Justification shall be provided by the owner or operator for rejecting each practice based on site conditions.

(7) Surface water protection. If the project site contains any streams, rivers, lakes, wetlands or other surface waters, certain construction activities at the site may be regulated under the Act. Sections 404 and 401 of the Act regulate the discharge of dredged or fill material into surface waters and the impacts of such activities on water quality, respectively. Construction activities in surface waters which may be subject to regulation include, but are not limited to: sewer line crossings, grading, backfilling or culverting streams, filling wetlands, road and utility line construction, bridge installation and installation of flow control structures.

(8) Other controls.

- (a) Waste disposal. No solid (other than sediment) or liquid waste, including building materials, shall be discharged in stormwater runoff.
- (b) Off-site vehicle tracking of sediments shall be minimized.
- (c) The plan shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

(9) Maintenance

- (a) All temporary and permanent control practices shall be maintained and repaired as needed to assure continued performance of their intended function.
- (b) The pollution prevention plan shall be designed to minimize maintenance requirements. The owner or operator shall provide a description of maintenance procedures needed to assure the continued performance of control practices.

(10) Inspections

- (a) Procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven calendar days and within twenty-four hours after any precipitation event greater than one-half inch of precipitation in a twenty-four hour period. In addition, qualified inspection personnel provided by the owner or operator shall conduct a weekly inspection of the construction site to identify areas contributing to stormwater discharges associated with construction activity and evaluate whether measures associated with erosion and control of pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Discharge locations shall be inspected to determine whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

(11) Notice of termination.

(a) Once the construction activity is completed, the permittee shall submit notice to the department of agriculture within thirty days after final site stabilization has been achieved. Final site stabilization is considered achieved once all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment has been permanently stabilized to prevent further erosion.

(b) The stormwater pollution prevention plan shall contain the following:

(i) Erosion and sediment control practices;

(ii) Permanent stormwater management practices to be used to control pollutants in stormwater after construction operations have been completed.

[Comment: These measures should be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.]

(c) The owner or operator shall amend the plan whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the state and shall record such changes in the operating record required by rule 901:10-2-16 of the Administrative Code. If the stormwater pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity, the owner or operator may change the plan, provided such changes are recorded in the operating record.

(d) The owner or operator shall inform all contractors and subcontractors who will be involved in the implementation of the stormwater pollution prevention plan of the terms and conditions of the permit that authorizes the discharges.

(E) Requirements for general and individual stormwater permits.

(1) A stormwater pollution prevention plan shall be developed for the production area of each facility required to have a stormwater permit.

(a) The stormwater pollution plan shall comply with and be submitted as part of paragraph (F) of rule 901:10-2-04 of the Administrative Code and the application for a permit to install. The stormwater pollution plan shall contain spill prevention and good housekeeping techniques, along

with plans to divert clean water. Spill prevention and good housekeeping techniques, along with diversion of clean water, shall be used to ensure that uncontained storm water from the production area is not contaminated by manure and to ensure that storm water discharges from the following areas maintain Ohio water quality standards in the receiving waters of the state: immediate access roads and rail lines used or traveled by carriers of raw materials, products, waste material, or by-products used or created by the CAFO; refuse sites; sites used for the storage and maintenance of material handling equipment; and shipping and receiving areas. Storm water that is contaminated by manure or raw materials (such as silage) is process wastewater, which is included in the definition of manure and may only be discharged in accordance with a NPDES permit.

- (b) The stormwater pollution plan shall be included with the conditions of a NPDES permit which shall require compliance with the stormwater pollution plan as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.
- (2) Fees. A one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code. The owner or operator will indicate on the application whether the stormwater permit is to be a general or individual permit.
- (3) Transfer. A stormwater permit is transferable as part of a NPDES permit. The owner or operator shall notify the department of agriculture in writing sixty days prior to any proposed transfer. The transferee must inform the department of agriculture in writing that he or she will assume the responsibilities of the original transferor.
- (4) Inspections and record keeping. The facility shall implement the best management practices, including inspections, in rule 901:10-2-08 of the Administrative Code and shall maintain records specified in rule 901:10-2-16 of the Administrative Code.

901:10-3-11

13

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901:10-4-01 **General permit to operate requirements.**

(A) General permit to operate or general permit means a type of permit developed by the director for one or more categories of facilities as facility is defined in rule 901:10-1-01 of the Administrative Code.

(1) The director shall develop general permits to operate that relate to the following areas:

(a) The facilities involve the same or substantially similar operations including, but not limited to, the same types of animals;

(b) The facilities manage the same types of manure storage or treatment facilities or operate with substantially similar manure management plans;
or

(c) The facilities are regulated by a NPDES permit and have similar discharge characteristics and require the same operating conditions to meet either effluent limitations or water quality standards.

(2) The general permit to operate may be written to cover facilities within a geographic area, including but not limited to the following:

(a) Existing geographic or political boundaries;

(b) Any other appropriate combination of boundaries.

(B) The following are eligible for general permits to operate. Any owner or operator may apply for a general permit to operate if the owner or operator falls under one of the following categories:

(1) Construction stormwater sources;

(2) Any concentrated animal feeding facility that requires NPDES permit coverage as a concentrated animal feeding operation and is not a major concentrated animal feeding facility; or

(3) Any concentrated animal feeding facility that is not a major concentrated animal feeding facility; or

- (4) Other facilities or operations that meet the criteria in paragraph (A) of this rule.
- (C) If the director decides to issue a general permit to operate the director shall follow the notice procedures in Chapter 901:10-6 of the Administrative Code.
- (D) No provision in any general permit to operate issued under this rule shall be interpreted as allowing the owner or operator to violate state water quality standards or other applicable environmental standards.
- (E) General permits to operate will be effective for a term not to exceed five years at the end of which time the director may renew them. Public notice requirements as found in Chapter 901:10-6 of the Administrative Code shall be satisfied prior to renewal of general permits. If the director chooses not to renew a general permit to operate, all facilities or operations covered under that general permit to operate, shall be notified to submit applications for individual permits. If the director chooses to deny, modify, revoke or suspend a general permit to operate the director will afford the affected parties the opportunity to request a hearing under Chapter 119. of the Revised Code.
- (1) The director may deny, modify, suspend, or revoke eligibility for or coverage under a general permit to operate in situations that include, but are not limited to the following:
- (a) Noncompliance with the general permit to operate; or
 - (b) Noncompliance with rules of Chapter 903. of the Revised Code.
- (2) The director may modify, suspend, or revoke eligibility for or coverage under a NPDES general permit to operate for the criteria set forth in paragraphs (E)(1) of this rule or in the following situations:
- (a) The discharging facility is not in compliance with the conditions of the general NPDES permit;
 - (b) New discharges which are not discharges currently covered by a NPDES general or individual permit. A general NPDES permit to operate will not be issued for new discharges associated with concentrated animal feeding facilities requiring a 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 with one of these designations within two stream miles of the discharge point;
 - (c) A discharge exists and is a significant contributor of pollutants. The director may consider the following factors:
 - (i) Location of discharge with respect to waters of the State;

- (ii) Size of discharge;
 - (iii) Quantity and nature of pollutants discharged; or other relevant factors.
- (d) Conditions at the permitted NPDES operation change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
 - (e) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general NPDES permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - (f) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of effluent or effluent limitations are promulgated for the facility covered by the general permit;
 - (g) A determination has been made that the waters are not meeting applicable water quality standards; or and approved water quality management plan, or
 - (h) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit.
- (3) The director may require any discharging facility authorized by a NPDES general permit to operate to apply for and obtain an individual NPDES permit to operate. Any interested person may petition the director to take action under this paragraph. Cases where an individual NPDES permit to operate may be required shall be as set forth in the criteria of paragraph (E)(2) of this rule.
- (F) Each general NPDES permit to operate for NPDES operations must be approved by the United States environmental protection agency before the permit becomes effective.
 - (G) Only the director may modify general permits to operate. When a permit is modified, only the conditions subject to modification are reopened. The owner or operator shall be afforded the opportunity to request a hearing in accordance with Chapter 119. of the Revised Code.

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

- (A) A general permit to operate as described in rule 901:10-4-01 of the Administrative Code is issued by the director for a category of facilities located at multiple sites.
- (B) Each person eligible for a general permit to operate shall follow the requirements in rule 901:10-4-03 of the Administrative Code.
- (C) Upon issuance of a general permit to operate and issuance of an individual certificate of coverage, the individual permit to operate shall be terminated. All previous permits issued to a facility that can be covered by a general permit to operate are revoked upon request of the owner or operator, termination of the individual permit and issuance of the certification of coverage.
- (D) Any person covered under a general permit to operate may choose to pursue an individual permit for any facility covered by this rule.

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901:10-4-03 **Notification of coverage.**

- (A) Certificate of coverage (COC) means a certificate issued by the director based on receipt of a notice of intent to be covered by rule 901:10-4-03 of the Administrative Code. The certificate of coverage is to be kept in the site office.
- (B) An owner or operator requesting to be covered by a general permit to operate shall submit a notice of intent.
- (C) Notices of intent shall be made on forms approved by the director and, where applicable to a NPDES operation, shall be considered and processed as an application for coverage under a NPDES permit.
- (D) Notices of intent shall contain:
 - (1) The general permit to operate category under which the applicant requests to be covered;
 - (2) Name, address, telephone number, contact person and title of owner or operator;
 - (3) Location, including the latitude and longitude of the production area (entrance to production area);
 - (4) Topographic map of the geographic area in which the facility is located showing the specific location of the production area;
 - (5) Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, 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);
 - (6) The type of manure storage or treatment facility (anaerobic lagoon, fabricated structure, manure storage ponds, underfloor pits, above ground storage tanks, below ground tanks, concrete pad, impervious soil pad, other) and total capacity for manure (tons/gallons);
 - (7) The total number of acres under control of the applicant available for land application of manure;
 - (8) Estimated amounts of manure generated per year (tons/gallons);

- (9) Estimated amounts of manure transferred to other persons per year (tons/gallons);
 - (10) Identification of the permit to install number;
 - (11) For facilities that must seek coverage under a permit after December 31, 2006, certification that a manure management plan has been completed and will be implemented upon the date of permit coverage;
 - (12) The name of the receiving water(s); and
 - (13) Any other information deemed necessary by the director found in the general permit to operate form.
- (E) Each person eligible for a general permit to operate may provide notice that the person wishes to receive an individual permit instead.
- (F) The director shall notify each affected owner or operator in writing that his or her facility or operation is authorized pursuant to the general permit by issuing a certificate of coverage. The director shall maintain a list of each facility or operation authorized under each general permit to operate.
- (G) Persons that receive a certificate of coverage for a category from the director will be deemed covered under that general permit to operate. Owners or operators covered under general permits to operate shall be subject to the same limits, management practices, enforcement authorities and rights and privileges specified in the general permit to operate.

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901:10-4-04 **Criteria for issuing and renewing NPDES general permit to operate.**

(A) Criteria for issuing and renewing a general NPDES permit to operate:

(1) If, on the basis of all information available, the director determines that:

- (a) Discharges, if any, authorized by a general NPDES permit to operate will have only minimal adverse effects on the environment;
- (b) The activities authorized by an individual NPDES permit are more appropriately authorized by a NPDES general permit to operate than an individual permit; and
- (c) Adequate monitoring to obtain required information is provided; then
- (d) The director shall issue a NPDES general permit to operate.

(2) The director shall not issue a NPDES general permit to operate or renewal thereof if the United States environmental protection agency regional administrator objects in writing to the issuance or renewal of a NPDES general permit to operate in accordance with section 402 of the Act.

- (B) Permit duration. A general NPDES permit to operate shall be effective for a fixed term not to exceed five years.
- (C) Fact sheets. The director shall prepare for each general NPDES permit to operate a fact sheet that sets forth the principal facts and significant factual, legal, methodological and policy questions considered in preparing the general permit.
- (D) The general NPDES permit to operate shall comply with paragraphs (D)(2)(a) through (D)(2)(f) of rule 901:10-3-01 of the Administrative Code.

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General operating permit.

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

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

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

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

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

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

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

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

(B) Performance Standards.

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

~~(2) With respect to NPDES operations, the requirements of rules 901:10-2-08 to~~

~~rules 901:10-2-14 and rule 901:10-2-16 of the Administrative Code are also enforceable pursuant to the Act and to the extent authorized by federal law.~~

- (3)(2) The facility permitted under a general ~~this~~ 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 ~~this~~ 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.
- (4)(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 ~~the~~ 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.
- (5)(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.
- (6)(5) The manure management plan, the operating record and insect and rodent control plan are ~~hereby~~ incorporated by reference into a general ~~this~~ 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.
- (7)(6) ~~A~~ This 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.
- (8)(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.
- (9)(8) A copy of the certificate of coverage ("COC")~~"COC"~~, general permit, lessee and landowner agreements, ~~any agreements for distribution and utilization records, methods,~~ 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 ~~this~~ permit. These documents shall be kept in good condition and shall be maintained in an orderly fashion.

(C) Operation and maintenance requirements.

- (1) The manure storage or treatment facilities and equipment shall be properly maintained at all times.
- (2) The manure land application sites and setbacks as required in appendix A of rule 901:10-2-14 of the Administrative Code shall be properly maintained at all times.
- (3) The phosphorus and nitrogen application rates shall be maintained as set forth in paragraphs (B) to (E) rule 901:10-2-14 of the Administrative Code. Available water capacity identified in the MMP shall be maintained in accordance with appendix B of rule 901:10-2-14 of the Administrative Code.
- (4) Unless designed and permitted to do so, domestic and/or industrial wastewater from showers, toilets, sinks, etc. shall not be discharged into the manure storage or treatment facility.
- (5) Disposal of dead animals shall be done in accordance with specified best management practices and rule 901:10-2-15 of the Administrative Code.
- (6) All stormwater conveyances shall be inspected and maintained to keep runoff from the surrounding property and buildings and shall be diverted away from the manure treatment lagoons and/or manure storage ponds to prevent any unnecessary addition to the liquid volume in these structures unless the lagoons and/or ponds are designed for such runoff containment.
- (7) A protective vegetative cover shall be maintained on all disturbed areas (manure treatment lagoon or manure storage pond embankments, berms, pipe runs, erosion control areas, etc.). Emerging vegetation such as trees, shrubs and other woody species shall not be allowed to grow on the dikes or side slopes of manure treatment lagoons or manure storage ponds. Manure treatment lagoon and manure storage pond areas are to be kept mowed and accessible unless these areas are grassed waterways or buffers that manage precipitation runoff and stormwater.-
- (8) Management of the manure residuals shall be in accordance with the MMP.

- (9) When removal of manure residuals from the manure storage or treatment facilities is necessary, provisions must be taken to prevent damage.
- (10) Solid materials including, but not limited to, bottles, light bulbs, gloves, syringes or any other solid waste from the facility shall be prevented from entering the manure storage or treatment facility.
- (11) The owner or operator must have at all times: (a) adequate manure application and handling equipment on site; (b) ~~an a-lease-or contractual~~ agreement to acquire or have use of the necessary equipment; (c) ~~a contract with~~ a third party applicator capable of providing adequate manure application equipment; or (d) a distribution and utilization plan. The equipment must be capable of land applying the manure on the sites specified in the MMP, including compliance with the agronomic rate, available water capacity for the land application sites and incorporation of manure, where required. Records shall be maintained, ~~as required~~, 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 this~~ 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 this~~ 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.

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

- (1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;
- (2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points;
- (3) Procedures to be followed in the event of a spill, including an actual or imminent discharge to waters of the state:
 - (a) Actions to contain or manage the spill or discharge;
 - (b) Identification of proper authorities to be contacted;
 - (c) Actions to mitigate any adverse effects of a spill or discharge; and
 - (d) Identification of equipment and cleanup materials to be used in the event of a spill or discharge.
- (4) Procedures for reporting.

- (a) The owner or operator shall report by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence of the following:
 - (i) The time at which the discharge or spillage occurred, if known, and or was discovered;
 - (ii) The approximate amount and characteristics of the discharge or spillage;
 - (iii) The receiving waters affected by the discharge or spillage;
 - (iv) The circumstances that created the discharge or spillage;
 - (v) The names and telephone numbers of the persons who have knowledge of these circumstances;
 - (vi) Those steps being taken to clean up the discharge or spillage; and
 - (vii) The names and telephone numbers of the persons responsible for the cleanup.
- (5) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall contact the Ohio department of agriculture's emergency telephone number.
- (6) If applicable, the owner or operator shall notify the appropriate local authorities.
- (7) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence unless waived by the director permitting an extension of time. This report shall outline the actions taken or proposed to be taken to correct the problem and to ensure that the problem does not recur.

(F) Inspections.

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

may obtain samples of the manure, soil, groundwater or surface water.

(G) General conditions.

- (1) In addition to the general conditions set forth in this paragraph, the owner or operator of an NPDES operation shall comply with the standard terms and conditions set forth in rule 901:10-3-10 of the Administrative Code.
- (2) Upon reasonable cause to believe that any activities pursuant to this permit may cause or contribute any manure, directly or indirectly, to be intermixed with the waters of the state, the department may require any monitoring (including but not limited to groundwater, surface water and soil) necessary to determine the source, quantity, quality and effect of such waste upon the waters of the state. Such monitoring, including its scope, frequency, duration and any sampling, testing and reporting systems, shall meet all applicable requirements, including records maintained in the operating record. ~~The Upon receipt and or review of the general permit to operate,~~ 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 ~~this~~ 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 ~~this~~ permit does not excuse the owner or operator from the obligation to comply with all applicable statutes, rules, regulations, or ordinances (local, state and federal).
- (5) If animal production is to be suspended or terminated, the owner or operator is responsible for developing, implementing and completing a closure plan in accordance with rule ~~901:10-2-18~~ 901:10-2-17 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.
- ~~(6) Closure shall also include notifying the department.~~

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

- (A) If 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 to the director of the Ohio department of agriculture 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 sections 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 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 the owner or operator of the facility or major concentrated animal feeding facility is complying with a permit or review compliance certificate.

- (E) If, upon completion of the investigation, the director determines that the owner or operator is in compliance with 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 is not in compliance with 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 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 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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901:10-5-03 **Enforcement procedures.**

- (A) **Applicability.** This rule applies to facilities, major concentrated animal feeding facilities, and facilities operated pursuant to review compliance certificates. The term facility is used to denote all types of facilities.
- (B) An agent or employee of the department shall conduct inspections and determine if the owner or operator is not in compliance with sections 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 facility, including the requirements established under paragraph (C) of section 903.06 or paragraph (A) of section 903.07 of the Revised Code, paragraph (B) of section 903.08 of the Revised Code, rule 901:10-1-10 (D) of the Administrative Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted under paragraph (F) of section 903.10 of the Revised Code. Violations shall be described in an inspection report.
- (C) Upon observation by an agent or employee of the department during an inspection, through notification by another agency or through a written complaint from a person, the director will initiate an investigation in order to determine if there is a violation of Chapter 903. of the Revised Code and the rules adopted thereunder. Violations shall be described in an inspection report.
- (D) If the inspection report indicates a violation, the director shall do the following:
- (1) Evaluate the facts established by the inspection report.
 - (2) Issue a "notice of deficiencies resulting in noncompliance" in writing and via certified mail to the owner or operator that he or she has a period of time to complete actions to correct the violations. The period of time and the actions required shall be determined and specified by the director in the notice.
 - (3) After the time period specified in the notice has elapsed, the director shall re-inspect the facility. If the director determines that the owner or operator is still not in compliance, the director shall issue a notice of an opportunity for an adjudication hearing; or
 - (4) After the time period specified in the notice issued pursuant to section 903.17 of the Revised Code to an owner or operator of a point source has elapsed and the director's duly authorized representative has inspected the point source and determined that the owner or operator is still not in compliance, then the director shall issue a notice of violation to require corrective actions.

- (5) The director shall afford 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, that an order be issued or the permit suspended or revoked or the imposition of the civil penalty.
 - (6) The owner or operator may waive the right to an adjudication hearing.
- (E) Penalties. Penalties assessed by the director shall be commensurate with the nature and degree of the violation. Penalties shall be assessed in accordance with rule 901:10-5-04 of the Administrative Code.
- (F) Appeals from an order by the director.
- (1) Civil penalties. Any party adversely affected by an order of the director issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code may appeal the order in accordance with section 119.12 of the Revised Code.
 - (2) Permitting actions.
 - (a) A permit applicant or permit holder adversely affected by an order of the director whether or not issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code issuing, denying, suspending, modifying, or revoking a permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.
 - (b) Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit who filed comments or participated in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.
 - (c) Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit who failed to file comments or participate in a public meeting on a draft permit may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code to the extent the draft permit differs from the final permit.
 - (3) Review compliance certificate. Any party adversely affected by an order of the director issued pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code denying a review compliance certificate may appeal the order to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

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901.10-5-04 **Civil penalties.**

- (A) Civil penalty rules applicability. For purposes of this rule, facility means facilities as defined in rule 901:10-1-01 of the Administrative Code, or facilities operated pursuant to a review compliance certificate or major concentrated animal feeding facility as that term is defined in paragraph (N) in section 903.01 of the Revised Code.
- (B) Consolidation. Each and every day of violation of any rule or statute of Chapter 903. of the Revised Code is a separate and distinct offense, and in cases of continuing violations, each day's continuance is a separate and distinct violation unless otherwise determined by the department or unless the violations are of sections 903.06(C) or 903.07(A) of the Revised Code. Proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.
- (C) Hearing procedures. All adjudication hearings concerning violations cited in accordance with section 903.16 and section 903.17 of the Revised Code shall be conducted in accordance with Chapter 119. of the Revised Code. The director may consider the factors listed in paragraph (D)(1) of this rule in the adjudication hearing as presented by the parties.
- (D) Civil penalty assessment.

The amount of a civil penalty shall be determined by the reasonable exercise of the director's discretion in considering the following factors

- (1) The economic benefit (if any) resulting from the violation.
- (2) The economic impact on the violator.

Comment: In considering economic impact, the director may consider such factors as cost of repairs, construction, installation including, but not limited to, installation of equipment, monitoring devices and related operational costs.

- (3) Acts of nature or acts of third parties that resulted in or contributed to violations.
- (4) Any history of such violations, including recalcitrance resulting in costs incurred by the director to enforce any previously issued final orders of the director.
- (5) Any good-faith efforts to comply with applicable requirements.

- (6) Any supplemental environmental projects that may be undertaken by the owner or operator to off-set some of the amount of civil penalty payable to the livestock management fund if the director finds that any project may enhance the owner's or the operator's compliance by undertaking a project that is beyond any work or activities required by law or if the director agrees that any proposed supplemental environmental projects will enhance the environment.
 - (7) The seriousness or magnitude of the violation or violations.
 - (8) The gravity of effect of the violation or violations.
 - (9) Such other matters as justice requires.
- (E) Penalty matrix.
- (1) Applicability. The director may use the penalty matrix contained in this paragraph to modify a penalty amount derived from paragraph (D) of this rule by following this procedure:
 - (a) Determine the magnitude or seriousness of the violation as specified in paragraph (E) (2) (a) of this rule;
 - (b) Determine the gravity of effect pertinent to the violation as specified in paragraph (E) (2) (b) of this rule; and
 - (c) Determine whether the violation is the first violation or past violation, and modify the penalty amount by reference to the appropriate matrix contained in paragraphs (F) to (K) of this rule.
- (2) Penalty matrix.
- (a) Categories of magnitude or seriousness.
 - (i) Category I (major):
 - (a) A violation of a department order issued as part of or in connection with a formal enforcement action;
 - (b) Failure to provide access to premises or records when required by statute, rule or order;
 - (c) Any discharge of manure that enters the waters of the state, either without a permit or from a point source not authorized by a permit unless the discharge has been reported as an emergency in accordance with rule 901:10-2-17 of the Administrative Code or

unless discharge is an agricultural stormwater discharge as defined in rule 901:10-1-01 (C);

- (d) Submitting records, reports or application forms which are false, misleading, or fraudulent;
 - (e) Failure to provide notification of a known spill or upset condition that results in a non-permitted discharge into waters of the state;
 - (f) Failure to comply with division (A) of section 903.07 of the Revised Code;
 - (g) The presence of insects or rodents indicating a failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.
 - (h) Failure to apply for applicable permits or review compliance certificate;
 - (i) Installing or operating facilities regulated under Chapter 903 of the Revised Code prior to issuance of applicable permits;
 - (j) Failure to provide corrections specified by the director's designated representatives on any applicable permits or review compliance certificate; or
 - (k) Upon completing construction authorized by a permit to install, failure to comply with paragraph (B)(2) of rule 901:10-2-01 of the Administrative Code.
- (ii) Category II (moderate):
- (a) Failure to submit a plan or report if required by permit or rule;
 - (b) Placing manure such that manure is likely to enter the waters of the state by any means;
 - (c) Any violation of a department rule or order that is not classified elsewhere in these rules as major or minor or any failure to operate in accordance with approved best management practices;
 - (d) Failure to maintain the freeboard requirements of approved best management practices; or

(e) Failure to comply with the insect and rodent control plan approved by the director in accordance with rule 901:10-2-19 of the Administrative Code.

(iii) Category III (minor):

(a) Any violation of record keeping requirements in approved best management practices.

(b) Failure to maintain records in accordance with rule 901:10-2-16 of the Administrative Code.

(b) Gravity. The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to the public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(i) Gravity of effect high level:

(a) Significant risk of injury or actual injury to wildlife; or

(b) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment; or

(c) High risk of or actual zoonotic disease transmission as determined by the director upon consultation with federal, state or local health agencies.

(ii) Gravity of effect medium level:

(a) Surface or groundwater contamination that causes short-term impact but does not meet the criteria of high level gravity of effect yet exceeds the definition of low gravity of effect and does not pose a significant threat to human health or the environment; or

(b) Insect and rodent populations in exceedance of target levels posing potential off-site impacts or posing a lower risk of zoonotic disease transmission.

(iii) Gravity of effect low level:

(a) Surface water contamination not found or not found at a level in excess of applicable water quality standards.

(b) Insect and rodent populations not found off-site but not in compliance with the approved plan for the facility.

(F) Civil penalty matrix for first violation of Chapter 903. of the Revised Code except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B)(2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of section 903.16 of the Revised Code shall be assessed per day per violation.

Magnitude of Violation	Gravity of effect		
	High	Medium	Low
Category I (Major)	Up to and including \$10,000	Up to \$3,200	Up to \$1,600
Category II (Moderate)	Up to \$2,400	Up to \$1,600	Up to \$800
Category III (Minor)	Up to \$1,000	Up to \$500	Up to \$200

(G) Civil penalty matrix in the event of past violations of Chapter 903. of the Revised Code (except violations of requirements for insect and rodent control plans which shall be assessed in accordance with division (B)(2) of section 903.16 of the Revised Code or violations of requirements for certified livestock managers which shall be assessed in accordance with division (B)(3) of the Revised Code) shall be assessed per day per violation.

Magnitude of Violation	Gravity of effect		
	High	Medium	Low
Category I (Major)	Up to \$10,000	Up to \$6,000	Up to \$3,200
Category II (Moderate)	Up to \$6,000	Up to \$3,200	Up to \$1,600
Category III (Minor)	Up to \$3,000	Up to \$1,600	Up to \$400

(H) Civil penalty matrix for insect and rodent control plans. As set forth in division (D) of section 903.10 of the Revised Code, the director may use this penalty matrix to assess a preliminary penalty amount for enforcement of section 903.06 of the

Revised Code and shall exercise reasonable discretion in accordance with paragraph (D) of this rule.

Concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	Gravity of Effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$5,000	Up to \$2,500	Up to \$1,000
Category II (Moderate)	Up to \$2,500	Up to \$1,500	Up to \$500
Category III (Minor)	Up to \$1,000	Up to \$500	Up to \$200

(I) Concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$10,000	Up to \$5,000	Up to \$2,000
Category II (Moderate)	Up to \$5,000	Up to \$2,500	Up to \$1,000
Category III (Minor)	Up to \$2,000	Up to \$1,000	Up to \$500

(J) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control first violation per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$12,500	Up to \$7,500	Up to \$4,000
Category II (Moderate)	Up to \$7,500	Up to \$4,500	Up to \$2,500
Category III (Minor)	Up to \$4,000	Up to \$2,500	Up to \$1,500

(K) Major concentrated animal feeding facility - civil penalty matrix for insect and rodent control in the event of past violations per seven days.

	Gravity of effect		
Magnitude of Violation	High	Medium	Low
Category I (Major)	Up to \$25,000	Up to \$15,000	Up to \$7,500
Category II (Moderate)	Up to \$15,000	Up to \$9,000	Up to \$4,500
Category III (Minor)	Up to \$7,500	Up to \$4,500	Up to \$2,500

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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 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 immediately, however, the owner or operator shall be afforded the opportunity for a hearing in accordance with paragraph (C) of this rule.
- (C) On application to the director, the owner or operator shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. The director's order is appealable in accordance with section 119.12 of the Revised Code. The applicant shall provide the following information to the director in writing or by telephone:
- (1) A statement requesting an adjudication hearing;
 - (2) The date when the order was issued; and
 - (3) The business or home address and phone number where the owner, operator or representative can be reached during business hours.
- (D) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If the owner or operator does not request a hearing, the emergency order may remain in effect for one hundred twenty days after its issuance. An order

issued following an adjudicatory hearing shall not be considered an emergency order. The appeal provisions described in paragraph (C) of this rule shall apply.

- (E) A person responsible for causing or allowing an unauthorized release, spill or discharge of manure is liable to the director for any costs incurred in investigating, mitigating, minimizing, removing, abating the spill, release or discharge or other acts or events that resulted in the emergency and the emergency order. If no attempt is made to repay the director for costs incurred or damages assessed within that time, the director may request the attorney general to bring a civil suit against the person responsible to recover costs and any assessed damages. Reimbursed costs shall be deposited into the livestock management fund.
- (F) Livestock management fund. Funds deposited in the livestock management fund created under section 903.19 of the Revised Code shall be used for paying the costs for emergency actions. In addition to paying the costs incurred by the director under section 903.18 of the Revised Code, the director may make disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing, abating the release, spill or discharge or other acts or events that resulted in the emergency or the emergency order.

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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.

- (4) The director shall publish notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the facility is located.
- (5) The director shall give public notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit, or for any actions pursuant to section 903.17 of the Revised Code.

(B) Notice by mail.

- (1) The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the applicant or owner or operator and to the board of county commissioners of the county, the board of township trustees of the township, the local board of health and the local soil and water conservation district in which the facility is located or proposed to be located. The director shall also notify owners or operators of public water systems as that term is defined in section 6109.01 of the Revised Code that have a surface water intake structure located within ten miles downstream of the facility or proposed facility described in the draft permit.
- (2) In addition, if an antidegradation review of a NPDES permit application indicates the potential to lower water quality, the director shall provide notice by mail to the Ohio department of natural resources, the United States fish and wildlife service, any affected local areawide planning agencies and the Ohio department of development.
- (3) The director shall mail notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to the applicant or owner or operator and a copy of the proposed action to the board of county commissioners of the county and the board of township trustees of the township in which the facility is located or proposed to be located. The director shall also provide notice of the proposed action to deny, suspend, or revoke a NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act.
- (4) Notices shall be mailed by certified mail, return receipt requested, to the person subject thereto. Notices shall state the time and method by which the applicant or permit holder may request public meeting. A statement as to when a final permit will be issued may accompany draft permits.
 - (a) If a draft permit or proposed action is issued with an effective date and the permit is later signed by the director without being changed further, the department need not, at the time of entry, provide notice or a copy of the permit to the person subject thereto.

- (b) If a draft permit or proposed action is issued without an effective date, and the department later assigns an effective date without changing the action further, the department shall mail notice to the person subject thereto informing the person of the effective date.
- (5) If the applicable law grants a right to appeal the final permit or order of the director to the environmental review appeals commission, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.
- (C) Failure of the director to provide notice of a public meeting shall invalidate a permit only if the failure is raised by and was relied upon to the detriment of a person that is entitled to appeal the permit. Notice of a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.
- (D) The director may also hold a public meeting at the director's discretion, whenever, for example, such a public meeting might clarify one or more issues involved in the permit decision.

901:10-6-01

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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 person may submit a written statement within thirty days of appearance of public notice in a newspaper in the affected county 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 if significant public interest is shown, one public meeting shall be held prior to issuance of any final permit.
 - (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.
- (b) For a request for a no potential to discharge determination a fact sheet which includes:
 - (i) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination;
 - (ii) A brief summary of the factual basis upon which the request is based for granting the no potential to discharge determination; and
 - (iii) A description of the procedures for reaching a final decision of the no potential to discharge determination.
- (B) Notice of NPDES permit applications to government agencies. The notice required by paragraph (A) of rule 901:10-6-01 of the Administrative Code to be given to state and governmental agencies shall include:
 - (1) The information required in this rule and may include a copy of such public notices.
 - (2) A statement that:

- (a) An affected state or agency, unless covered by (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 section 903.09(F) 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 state, interstate, federal, or local government agency having jurisdiction over waters that may be affected by the discharge to waters of the state.

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901:10-6-04 **Public meetings.**

- (A) Not later than thirty days after public notice of a draft permit, draft permit modification, 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 any proposed action to deny, suspend, or revoke a permit, or where required to do so by statute or rule, the director shall hold one public meeting in the county where the facility is located or in a contiguous county. In consideration of an application for issuance of a permit, the director may hold one public meeting prior to issuance of a permit. When allowed by the antidegradation policy, the director shall hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit.

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

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

- (D) Significant public interest means statements made in writing by twenty or more persons expressing interest in the draft permit before the director or in the antidegradation review and requesting a public meeting. Significant public interest may also include expressed interest by one or more public officials.
- (E) Public notice of the public meeting shall be published at least thirty days prior to the public meeting in a newspaper of general circulation and shall include:
- (1) The address and telephone number of the office at the Ohio department of agriculture where department files and records pertaining to the proposed action or issuance are located and may be inspected and copied and instructions for persons desiring to obtain additional information, including the NPDES mailing list.
 - (2) The name and address of the applicant.
 - (3) The location of the facility and a short description of each existing or proposed discharge point and the name(s) of the receiving water(s).
 - (4) The date of issuance of the notice of the draft permit.
 - (5) The time, date, and location of the public meeting if applicable.
 - (6) A concise statement of the issues raised by those requesting a public meeting.
 - (7) A statement:
 - (a) That any interested person may appear and present written and/or oral statements, in person or by a representative.
 - (b) That the purpose of the meeting is to obtain additional information that will be limited to the criteria that are applicable to the permit application that is the subject of the public meeting and will be considered by the director prior to the director's taking final action on the draft permit under consideration.
- (F) In any public meeting, the director may appoint a presiding officer to conduct the meeting. The officer shall state at the beginning of the meeting the manner in which the meeting will be conducted, time limits for testifying, and any other procedures for conducting the meeting. Procedures and time limits may vary according to the number of people wishing to testify, the time the meeting starts, weather conditions and other situations affecting the length of the meeting. On the date and at the time

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

- (1) May appear and be heard in person or by a representative, or both;
 - (2) May present statements orally or in writing, or both. All comments whether written or oral shall be considered equally in making a final decision, provided that comments are submitted with the name and address of the person presenting the statements for the record.
- (G) Any person requesting time to make an oral comment at the meeting must register their name and address prior to the beginning of the meeting. Persons shall be called to provide a statement for the record in the order of registration, unless the presiding officer determines otherwise.
- (H) Information presented by any person shall be limited to the criteria and information that are applicable to the permit application that is the subject of the public meeting. The officer may rule out of order any person who does not address comments to the matter that is the subject of the public meeting.
- (I) Persons attending the public meeting are authorized to tape or videotape the proceedings provided the following requirements are met:
- (1) The hearing officer is notified at least twenty-four hours prior to the start of the public meeting unless prior notice is waived by the hearing officer; and
 - (2) The public meeting is not interrupted or disturbed.
- (J) A transcript, recording or other complete record shall be made of the public meeting. Statements presented at a public meeting held pursuant to this rule shall be considered by the director, who may issue a final permit, as permitted by law. No final permit shall be issued until after the director has considered the report of the presiding officer. The report shall briefly describe and respond to all significant comments on the draft permit 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 report shall specify which provisions, if any, of the draft permit have been changed in the final permit and the reasons for the change.

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Certification

08/17/2005

Date

Promulgated Under: 119.03
Statutory Authority: 903.08, 903.10
Rule Amplifies: 903.01, 903.02, 903.04, 903.07, 903.08, 903.081,
903.082, 903.09, 903.10
Prior Effective Dates: 07/02/2002

ACTION: Final

DATE: 08/17/2005 12:12 PM

901:10-6-05 **NPDES fact sheets.**

- (A) A fact sheet shall be prepared prior to issuance of a draft NPDES permit and NPDES permit modifications. The fact sheet shall include such information as may be required by federal statute or rule and may also include such additional information as the department deems desirable.
- (B) The department shall maintain a mailing list of persons or groups requesting fact sheets and of persons or organizations who have expressed an interest in or may, by the nature of their purposes, their activities or their members, be affected by or have an interest in obtaining fact sheets for any of the following:
 - (1) Any specified NPDES permits under section 903.08 of the Revised Code;
 - (2) Any antidegradation reviews associated with NPDES permits; and
 - (3) Any specified proceedings relating to applications for the specified NPDES permits or any antidegradation reviews or additional copies of fact sheets prepared, or other information desired.
- (C) All notices required or authorized for actions on NPDES permits or NPDES permit modifications shall be mailed to all persons on the mailing list of subscribers maintained for the issuance of NPDES permits.

901:10-6-05

Replaces: 901:10-6-05
 Effective: 09/15/2005
 R.C. 119.032 review dates: 08/15/2010

CERTIFIED ELECTRONICALLY

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