MEMORANDUM OF AGREEMENT

BETWEEN

THE OHIO DEPARTMENT OF AGRICULTURE

AND

THE OHIO DEPARTMENT OF NATURAL RESOURCES

ARTICLE I: INTRODUCTION AND PURPOSE

This Memorandum of Agreement (MOA) is entered into between the Ohio Department of Agriculture (ODA) and the Ohio Department of Natural Resources – Division of Soil and Water Conservation (ODNR-DSWC) for the purpose of structuring a cooperative approach to the regulation of facilities that are concentrated animal feeding facilities (CAFFs) as that term is defined in Division (E) of Section 903.01 of the Ohio Revised Code (R.C.) including: facilities that are large concentrated animal feeding operations (CAFOs) as that term is defined in Division (M) of Section 903.01 of the R.C.; facilities that are medium CAFOs as that term is defined in Division (Q) of Section 903.01 of the Ohio Revised Code (R.C.); or small CAFOs as that term is defined in Division (EE) of Section 903.01 of the R.C. For purposes of Section 903.082 of the R.C. (*discussed below*), emergency response, and/or any assistance on designation, the following definition is included: animal feeding facilities (AFFs) as that term is defined in Division (B) of Section 903.01 of the R.C. The MOA is intended to provide technical assistance, inspection, administration, compliance assistance and enforcement coordination of AFFs, AFOs, CAFFs, and CAFOs. This MOA is initiated and intended to benefit only the state of Ohio.

The parties recognize the need to optimize the use of state resources through efficient government and to ensure a coordinated state effort to regulate and control "manure" as that term is defined in Division (O) of Section 903.01 of the R.C. As such, the parties desire to establish procedures for cooperation and communication between the

parties, optimizing the use of state resources, and minimizing conflicts and duplication of effort in activities involving the regulation and control of manure.

The parties in recognition of a mutual commitment to the effective and efficient protection of public health and safety and the environment, have developed this MOA in order to establish a basic framework within which ODA and ODNR-DSWC will develop, implement, and mutually support one another in Ohio's regulatory program for AFFs, AFOs, CAFFs, and CAFOs as those terms are defined in Chapter 903 of the R.C. The parties will endeavor to resolve issues of concern to both parties that relate to the regulation of manure in the environment.

ARTICLE II: PARTIES

It is recognized by ODA and ODNR-DSWC that the respective enabling legislation and statutory authorities empowers each party to act in accordance with such authorities on behalf of public health and the environment.

ODA has responsibility for protecting the water quality from CAFFs, ensuring disease prevention, ensuring a safe and sanitary food supply, conducting inspections, promoting and protecting livestock in Ohio, assisting in enforcement, and protecting water quality from activities attributable to CAFFs, and including stormwater protection at AFFs.

ODNR-DSWC has responsibility to conduct surveys; conduct investigations dealing with agricultural pollution; conduct necessary enforcement and execute chiefs orders; develop plans for the conservation of soil resources; offer technical assistance with the agricultural pollution abatement program; develop management plans for AFFs; educate, establish methods, techniques, or practices for composting dead animals; inspect composting at any facility, and assist in enforcement in the context of the following: information on compliance, information regarding designation (i.e., legal designation as an AFF, AFO, CAFF or CAFO), information regarding Section 903.082 of the R.C., or emergency response.

ODA has authority to enter into this MOA pursuant to Section 903.11 of the R.C. This MOA is intended to facilitate ODA's mandate to protect the health and environment of the people of Ohio, to administer and enforce the requirements of Chapter 903 of the

R.C. and rules adopted thereunder, including responsibilities for the regulation and control of manure and CAFFs as defined in Ohio law.

ODNR-DSWC has the authority to enter into this MOA pursuant to Sections 1511.03 and 1511.06 of the R.C. This MOA is also intended to facilitate ODNR-DSWC's mandate to restore, protect and enhance soil, water and land resources. ODNR-DSWC is charged with the duty of administering the laws of Ohio relating to these issues under Chapter 1511 and 1515 of the R.C. and the rules promulgated thereunder.

ARTICLE III: DEFINITIONS

Unless otherwise specified herein, the terms used in this MOA shall be interpreted in accordance with applicable definitions in Chapters 903, 1511 and 1515 of the R.C. and the rules promulgated for these chapters.

ARTICLE IV: RECITATION OF AUTHORITIES

Pursuant to Section 903.04 of the R.C., the Director of ODA on August 19, 2002 finalized the program required in division (A)(1) of Section 903.02 of the R.C., and assumed the authority to enforce terms and conditions of installation permits or permits to install (PTIs) that previously were issued under authority of the Director of the Ohio Environmental Protection Agency (Ohio EPA) pursuant to Chapter 6111 of the R.C. The PTIs were transferred from the Director of Ohio EPA to the Director of ODA. No person shall construct, install, modify, or operate a CAFF in the state of Ohio unless that person holds a valid permit issued by the Director of ODA or is otherwise subject to a Review Compliance Certificate (RCC) issued in accordance with Section 903.04 of the R.C.

Under Chapter 903 of the R.C., ODA regulates the installation, construction, and modification of CAFFs, or large facilities. ODA is responsible for issuing, denying, revoking, or enforcing RCCs, PTIs and permits to operate (PTOs). ODA is responsible for educating producers, members of the public, and appropriate agencies of the rules enacted pursuant to Chapter 903 of the R.C. ODA also assists producers in the creation of insect and rodent control plans, manure management plans, mortality management plans, and emergency response plans. ODA inspects each CAFF, or large facility, twice per year. In addition, ODA investigates complaints, both verbal and written.

ODNR-DSWC is responsible for informing soil and water conservation districts, their assisting agencies, and other appropriate agencies of the rules enacted pursuant to Section 1511.05 of the R.C., criteria, and division policies for agricultural pollution abatement, and cost share programs for assisting owners and operators with installing and operating best management practices in agriculture.

The State of Ohio has local Soil and Water Conservation Districts (SWCDs) in each of Ohio's 88 counties. The Chief of the Division of Soil and Water Conservation enters into cooperative agreements with the board of supervisors of any SWCD desiring to enter into such agreements pursuant to sections 1511.05 and 1515.08 of the R.C. Such agreements are entered into to obtain compliance with rules and orders of the Chief pertaining to agricultural pollution abatement and cost share programs. The local SWCDs offer technical assistance regarding the implementation, inspection and funding of the agricultural pollution abatement program; aid farmers in creating and implementing Comprehensive Nutrient Management Plans; investigate and seek to resolve complaints; develop operation and management plans; develop plans for the control and prevention of soil erosion; and assist and educate regarding composting.

Beyond their regulatory authorities, ODNR and ODA may provide technical assistance to the owners and/or operators of AFFs, AFOs, CAFFs, and CAFOs. These capabilities also need to be coordinated to efficiently prevent and minimize pollution from livestock operations.

ODNR-DSWC and ODA agree to this MOA in order to optimize communications and decision-making by and between ODNR-DSWC and ODA to effectively coordinate the regulatory and non-regulatory programs affecting the public, and to implement the new regulatory program required under Ohio law in Chapter 903 of the R.C.

Under Section 903.082 of the R.C., if an AFF has caused agricultural pollution by failure to comply with standards under Section 1511.02 of the R.C., the Chief of DSWC may issue to the Director of ODA a copy of an order issued by the Chief that specifies that the AFF has caused agricultural pollution, has failed to comply with applicable standards, and that the facility shall obtain a permit to operate. However, if best management practices are unable to be implemented without modifying the AFF, the owner or operator shall apply to ODA for a PTI for the facility.

ARTICLE V: GENERAL WORK SCHEDULES AND COMMITMENTS

In organizing the work to be coordinated and the mutual commitments made, the parties have categorized the work identified and organized under this MOA. The work is as follows: Inspections, Complaint Investigations, Emergencies, Information Sharing, and Enforcement.

1. Inspections. The parties agree to share information from inspections and to discuss and assess compliance or noncompliance at existing facilities.

As a general rule, the facilities will be administered as follows: Inspections identifying a facility that has reduced in size, and has never been permitted by the Ohio EPA because they are an AFF, and do not meet the criteria of Section 903.01(E) of the R.C. are therefore within the jurisdiction of ODNR-DSWC and the appropriate local soil and water conservation district. If the facility is a large CAFO as that term is defined in Section 903.01(E) of the R.C. then it is within the jurisdiction of ODA.

The parties agree that inspections may disclose that in addition to being under the jurisdiction of ODNR-DSWC, a facility is within the jurisdiction of Ohio EPA if inspections by any of the parties identify a "discharge" to waters of the state. Accordingly, the facility may be a medium CAFO as defined in Section 903.01(Q) of the R.C. or a small CAFO as defined in Section 903.01 (EE) of the R.C. or a large CAFO as defined in Section 903.01(M) of the R.C. and be regulated by the Ohio EPA until the United States Environmental Protection Agency approves the State NPDES program for ODA at which time ODA will have jurisdiction of all CAFO's irrespective of size, i.e., small, medium and large.

When the parties work together to inspect a facility they will confer on a case-by-case basis regarding sampling and monitoring conducted for permit development, enforcement, or emergencies.

2. Complaint Protocol.

ODNR-DSWC, ODA and Ohio EPA acknowledge that all parties will receive complaints about small, medium, and large CAFOs, AFFs, and CAFFs. Complaints must be responded to by one or more parties to, among other things, determine the

jurisdiction of ODNR-DSWC, ODA or the Ohio EPA and to take any necessary legal and assistance actions as a result of any complaint.

The parties agree to the following protocol to manage complaints:

A. Upon receipt of a complaint, either oral or written, the party receiving the complaint will use FAX, electronic communication, and/or telephone to communicate with the other parties. The key contact for ODNR-DSWC is the Administrator for the Agricultural Pollution Abatement Program. The key contact for ODA in complaint response is the Executive Director of the Livestock Environmental Permitting Program. The key contact for Ohio EPA Division of Surface Water in complaint response is the Supervisor of PTI, Compliance Assistance and CAFO Unit.

B. Each party, to the extent practicable, will maintain records detailing facility location of alleged violator, spill location, estimated discharge, time and date of spill, complainant address and contact information, and other pertinent information needed to adequately document complaints and corresponding response to rectify the complaint.

C. Upon receipt of the complaint, each party agrees to notify the local SWCD. ODNR-DSWC, ODA and Ohio EPA agree that, as a general rule, the party receiving the complaint will assume the lead in coordinating a response to the complaint. In the event the receiving party does not have jurisdiction over the subject matter of the complaint, a timely referral shall be made to the key contact for the appropriate division for handling the initial response to the complaint. In all cases, alternative arrangements for an initial response to the complaint can be made by the key contacts for each party.

D. In all complaint responses, the parties agree to the following protocols for the responding agency:

1. Respond appropriately to the complaint including, as necessary, any actions to protect the public and the environment.

2. Determine the size of the facility and where necessary, the nature of the complaint and whether the complaint is resulting from a "discharge" or a "nuisance" (e.g., odor, insects) or both.

3. Report the results and findings of the initial complaint response by FAX, electronic communication, and/or telephone to all parties including, ODNR-DSWC, ODA, Ohio EPA, and the local SWCD.

4. Record results and findings on the complaint log maintained by each party to this MOA.

E. The parties will confer on a case-by-case basis regarding sampling and monitoring conducted for any follow-up needed after the initial complaint response, including assistance that may be provided to, or assistance received from the local SWCD.

F. National Pollutant Discharge Elimination System (NPDES) Jurisdiction
The parties acknowledge that there is a change anticipated surrounding NPDES delegation authority for large CAFO operations. Pursuant to Section 903.08(A)(1) of the Revised Code, the Director of Agriculture is authorized to participate in the NPDES in accordance with the Clean Water Act. On the day that the U.S. EPA approves the delegation program submitted by ODA, the authority to enforce the terms and conditions of NPDES permits previously issued under Section 6111.03(J) of the Revised Code or Section 6111.035 of the Revised Code, for discharges regulated under Revised Code Section 903.08, is transferred from the Director of the Ohio EPA to the Director of ODA. ODA will then be responsible for the enforcement program for unauthorized discharges regulated under Revised Code Section 903.08 from AFOs in accordance with the Clean Water Act and applicable state law. Any complaints received surrounding discharges regulated under Section 903.08 of the Revised Code shall be referred to ODA for handling after delegation to ODA is approved by the U.S. EPA. Until the NPDES delegation is transferred, Ohio EPA shall be notified of any complaints alleging discharges to waters of the state.

3. <u>Emergencies</u>

For purposes of this section "spill" shall be defined as a releasing, escaping, leaching, migrating, dumping, or disposing of any hazardous substance into the

environment[1] and "emergency" shall be defined as a serious occurrence or situation requiring prompt action.

When spills or other emergencies related to AFFs, CAFFs, or CAFOs are received by the Ohio EPA -DERR Duty Room, this information is relayed to Ohio EPA -DSW by FAX, electronic communication, or telephone. Ohio EPA -DSW will then notify ODA, ODNR-DSWC, ODNR Division of Wildlife, and the appropriate SWCD.

When spills or other emergencies related to AFFs, AFOs, CAFFs, or CAFOs are received by ODA by method of FAX, electronic communication, or telephone, ODA will then notify ODNR-DSWC, ODNR Division of Wildlife, Ohio EPA and the appropriate SWCD.

When spills or other emergencies related to AFFs, AFOs, CAFFs, or CAFOs are received by ODNR-DSWC or the ODNR Division of Wildlife by method of FAX, electronic communication or telephone, ODNR-DSWC or the Division of Wildlife will then notify ODA and Ohio EPA.

4. Information Sharing.

ODNR-DSWC and ODA agree to share information regarding facilities. ODA agrees to share with ODNR-DSWC and the local SWCDs information concerning facilities that ODA finds have depopulated their livestock and therefore may meet the definition of a small CAFF and/or small CAFO or medium CAFO and issue copies of closure letters to the appropriate local SWCD and Ohio EPA[2]. ODNR-DSWC agrees to share with ODA information on facilities that it finds, or becomes aware of, that may fall under ODA's jurisdiction as a CAFF and/or CAFO.

ODNR-DSWC will provide information and be available to assist the Director of ODA to obtain information from the local SWCDs regarding compliance history (Section 903.05 R.C. and 901-10-1-02 of the Ohio Administrative Code) on owners or operators who have submitted an application for a PTI or PTO to ODA. In

[1] An example of a "spill" is a manure spill as that term is defined in Ohio Administrative Code 901:10-1-01. "Manure spill" is defined as any unexpected, unintended, abnormal or unapproved dumping, leakage, drainage, seepage, discharge, release or other loss of manure. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

[2] Until such time as the U.S. EPA approves the State NPDES program for ODA at which time ODA will have jurisdiction over all CAFOs.

addition, ODNR-DSWC will assist in obtaining from SWCDs, upon ODA's request, Comprehensive Nutrient Management Plans (CNMPs) prepared for any PTI and/or PTO.

5. Communications

ODA will copy the appropriate local SWCD on the following: complaints, inspections, closures, notices of draft and final permits, and any other information pertinent to the local SWCD.

6. Enforcement

ODA will assume responsibility for enforcement of PTIs, PTOs, Review Compliance Certificates, and PTIs previously issued by Ohio EPA. ODNR-DSWC will assume responsibility for enforcement of small and medium sized facilities. In the case of a discharge, ODNR-DSWC will notify ODA and Ohio EPA.

ODNR-DSWC, in consultation with the local SWCD office will provide technical assistance in such areas as, but not limited to, composting education, best management practices and CNMPs to AFFs, AFOs, CAFFs, and CAFOs that have had manure discharges to waters of the state. If after working with the facility the problem is not corrected, then the local SWCD may refer the facility to ODNR-DSWC, where a Chief's Order may be considered and issued. Prior to the issuance of the Chief's Order, ODNR-DSWC will notify ODA that it is issuing the Chief's Order under Section 1511.02 of the R.C. and provide a copy to ODA pursuant to Section 903.082(A). In some cases, the Chief of DSWC may supplement the Chief's Order with a written request that a) a permit to operate should be considered for the facility, and b) that the local SWCD accompany the ODA Director's representative during the facility inspection required by Section 903.082 of the R.C. However if best management practices are unable to be implemented without modifying the AFF, AFO, CAFF or CAFO, the owner or operator shall also be notified by ODA to apply for a PTI for the facility. ODA will send copies of any correspondence to the local SWCD regarding the facility.

Upon receipt of approval from the U.S. EPA of the State NPDES program for ODA, the Director of ODA may also designate any animal feeding facility as a CAFO according to Section 903.082 of the R.C. and rule 901:10-3-07 of the OAC.

Prior to designation of a facility by ODA, the Director of Agriculture will notify the Chief of ODNR-DSWC. Until such time as the U.S. EPA approves the State NPDES program for ODA, Ohio EPA may designate AFFs as small or medium CAFOs.

ARTICLE VI: COMMUNICATION AND DISPUTE RESOLUTION

The parties recognize the accountability of each party to the citizens of Ohio and to local, state and federal government agencies. Following the occurrence of circumstances giving rise to a dispute, the staff of the parties shall make reasonable efforts to resolve the dispute through telephone calls, including conference calls, electronic mail, and meetings.

Article VII: MODIFICATION

This MOA may be modified only by written agreement signed by the Director of ODA and the Director of ODNR. The parties agree to meet to discuss and consider appropriate changes to the MOA.

ARTICLE VIII: TERMINATION

This MOA may be terminated by either party for any reason upon written notice, signed by the director of the agency initiating such termination, effective thirty (30) days thereafter. Such termination shall not affect the parties' responsibility under the law for, or validity of, any ODA or ODNR-DSWC activity, decision or responsibility referenced in this MOA.

Fred L. Dailey

Fred L. Dailey, Director
Ohio Department of Agriculture

8-29-05

Date

Samuel W. Speck, Director
Ohio Department of Natural Resources.

8/23/05

Date