Rev. 7/29/02

MEMORANDUM OF AGREEMENT
BETWEEN
THE OHIO DEPARTMENT OF AGRICULTURE
AND
THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Article I. INTRODUCTION AND PURPOSE

This Memorandum of Agreement (MOA) is entered into between the Ohio Department of Agriculture (ODA) and the Ohio Environmental Protection Agency (OEPA) for the purpose of structuring a cooperative and complementary approach to the regulation of animal feeding facilities and the regulation of and protection of water quality in the State of Ohio. This MOA is intended to support the state of Ohio's application to the United States Environmental Protection Agency (USEPA) for amended delegation, under section 304(i) of the Federal Water Pollution Control Act as amended by the Clean Water Act Amendments of 1977, 32 U.S.C. section 1251 et seq., and referred to in this MOA as the Clean Water Act or CWA or Act.

This MOA is initiated and intended to benefit only the state of Ohio. The obligations of the state of Ohio under this MOA are subject to section 126.07 of the Revised Code and all other applicable Ohio Revised Code (Revised Code) provisions. Nothing in this MOA is intended to amend or alter any provision in the various components of formal NPDES program authorization and delegation as between the OEPA and USEPA for matters outside the scope of Revised Code Chapter 903.

The parties recognize the need to optimize the use of state resources with more efficient government and to ensure a coordinated state effort to regulate and control "manure" as that term is defined in Division (N) of Section 903.01 of the Revised Code. 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, safety and the environment, have developed this MOA in order to establish a basic framework within which ODA and OEPA will operate. The parties will develop, implement, and mutually support one another in Ohio's regulatory program for concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs) as those terms are defined in Chapter 903 of the Revised Code. 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 OEPA that the respective enabling legislation and statutory authorities empower each party to act in accordance with such authorities on behalf of public health and the environment.

ODA has responsibility for protecting water quality from discharges from CAFFs; ensuring disease prevention; ensuring a safe and sanitary food supply; and promoting and protecting livestock in Ohio. This MOA is intended to facilitate ODA's mandate to protect the health and environment of the people of Ohio with respect to CAFFs, to pursue delegation of the NPDES program with respect to CAFOs from USEPA, and to administer and enforce the requirements of Chapter 903 of the Revised Code and rules adopted thereunder, including responsibilities for the regulation and control of manure from CAFFs and CAFOs as defined in Ohio law.

ODA has authority to enter into this MOA pursuant to Section 903.11 of the Revised Code.

This MOA is also intended to facilitate OEPA's mandate to restore, protect, and enhance public health and safety, water quality and the environment by administering the laws governing the prevention, control, and abatement of water pollution and other wastes. OEPA is charged with the duty of administering the laws of Ohio relating to air and water quality; hazardous wastes; infectious wastes; solid wastes; hazardous substances; construction and demolition debris; sewage; industrial wastes; and other wastes, and the protection of human health and the environment, under Chapters 3704, 3714, 3734, 3745, 3746, 3750, 3751, 3752, 6109, and 6111 of the Revised Code and rules promulgated thereunder.

OEPA has authority to enter into this MOA pursuant to Section 3745.01(C) of the Revised Code.

Article III. DEFINITIONS

Unless otherwise specified herein, the terms used in this MOA shall be interpreted in accordance with applicable definitions in Chapters 903, 3745, and 6111 of the Revised Code and the rules promulgated thereunder.

Article IV. RECITATION OF AUTHORITIES

OEPA and ODA agree to this MOA in order to provide an efficient transfer of legal authority from OEPA to ODA, to obtain USEPA approval for that portion of the NPDES program administered by ODA pursuant to Chapter 903 of the Revised Code, to optimize communications and decision-making by and between OEPA and ODA, to minimize disruption

of the regulatory programs affecting the public, and to implement the new regulatory program required under Ohio law in Chapter 903 of the Revised Code.

Pursuant to Section 903.04 of the Revised Code, on and after the date on which the Director of Agriculture has finalized the program required under division (A)(1) of Section 903.02 of the Revised Code, the authority to enforce terms and conditions of installation permits for CAFFs that previously were issued under authority of the Director of OEPA pursuant to Chapter 6111 of the Revised Code, shall be transferred from the Director of OEPA to the Director of Agriculture. Upon transfer of the program, 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 Agriculture, or is otherwise subject to a Review Compliance Certificate (RCC) issued in accordance with Section 903.04 of the Revised Code.

Pursuant to Section 903.08(A)(1) of the Revised Code, the Director of Agriculture is authorized to participate in the National Pollutant Discharge Elimination System (NPDES) in accordance with the Act. On or after the day on which the USEPA approves the program submitted by the state of Ohio, the authority to enforce 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 903.08, is transferred from the Director of OEPA to the Director of ODA. Upon USEPA approval, ODA will be responsible for administration of the NPDES program requirements for permitting, for compliance evaluations, and for enforcement authority with respect to NPDES permits for CAFOs, including animal feeding operations (AFOs), and for NPDES permits for the discharge, transport, or handling of stormwater from animal feeding facilities in Ohio. ODA will be responsible for the enforcement program for unauthorized discharges regulated under Revised Code 903.08 from AFOs in Ohio

by taking timely and appropriate actions in accordance with the CWA and applicable state law (Chapter 903. of the Revised Code).

OEPA is responsible for and has the legal authority to administer NPDES requirements for permitting, for compliance evaluations, and for enforcement authority with respect to all other NPDES permits in Ohio, including the pretreatment program and the sewage sludge program.

OEPA is responsible for processing new, modified, and renewed NPDES permits for non-domestic wastewater discharges, including industrial, commercial, and silviculture. OEPA is responsible for processing new, modified, and renewed NPDES permits for domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works.

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

OEPA will remain responsible for stormwater discharges regulated under the NPDES program, including municipal separate storm sewer systems and stormwater associated with industrial activity, except discharge, transport, or handling of stormwater from CAFFs or CAFOs as regulated by ODA. OEPA will remain responsible for an enforcement program for unauthorized discharges from all but animal feeding facilities in its regulatory program. OEPA shall take timely and appropriate actions in accordance with the CWA and applicable state laws (Chapters 3745 and 6111 of the Revised Code) and the NPDES enforcement management system developed by OEPA for OEPA's use.

OEPA will continue to regulate wetlands in accordance with state laws and rules and sections 401 and 404 of the federal Clean Water Act.

OEPA will continue to regulate underground injection control (UIC) wells in accordance with Sections 6111.043 through 6111.047 of the Revised Code and rules set forth in Chapter 3745-34 of the Administrative Code, specifically including wells in classes I and IV and wells in class V that include agricultural wells.

Article V. GENERAL WORK SCHEDULES AND COMMITMENTS

In organizing the work to be coordinated and the mutual commitments made, the parties have established two phases for performance of the work identified and organized under this MOA. Meetings will be the primary method for discussing the modification of NPDES delegation for the State of Ohio and work, commitments, and decisions made in this MOA. The phases of work are as follows:

A. Phase One: Beginning on the Effective Date of the ODA Rules for Non-NPDES Facilities. Generally, this is a period beginning in August 2002 and lasting an anticipated two years until the date which the USEPA approves the NPDES program modification for CAFOs submitted by the state of Ohio. During this period of time, ODA will administer a "finalized" livestock environmental program as that term is defined in Division (I) of Section 903.01 of the Revised Code. ODA will be responsible for the issuance and enforcement of Permits to Install (PTI), Permits to Operate (PTO), and Review Compliance Certificates (RCC) as described in Chapter 903 of the Revised Code for CAFFs in Ohio. ODA will be responsible for inspections, compliance, enforcement, and public participation under that Chapter.

During Phase One, OEPA will be responsible for the issuance of NPDES permits for CAFOs and AFOs with a discharge. Also, OEPA will be responsible for inspections and enforcement of NPDES permits and unpermitted discharges under Chapter 6111 of the Revised Code, including NPDES permits and unpermitted discharges associated with CAFOs and AFOs.

The parties recognize and agree that OEPA maintains responsibility to USEPA for commitments made in the fiscal grant of monies made to OEPA pursuant to Section 106 of the Act until U.S.EPA approves the delegation modification transferring authority to ODA. Among these commitments are:

- Report Screening and Report Review of all reports required to be filed with OEPA by NPDES permittees, and issuance of "Notice of Violation" letters for animal feeding operations that are not in compliance.
- Complaint responses.
- Compliance inspections, reconnaissance, sampling and assistance.

B. **Phase Two**: USEPA Approval of the NPDES Program to be administered by ODA.

Generally, the date of this phase of work begins with approval of the ODA portion of NPDES program for CAFOs by USEPA. Under Phase Two of this MOA, the parties anticipate that OEPA will provide ODA with technical support and technical information; support, as needed, in administrative proceedings and legal cases; and coordination and communications with respect to the following:

- OEPA will identify the need for water-quality based NPDES permits for permits to be issued pursuant to Chapter 903 of the Revised Code.
- OEPA will provide exclusion/waiver analyses for the purposes of the antidegradation policy.

- OEPA will develop waste load allocations to be used by ODA in NPDES permits where water quality based effluent limits are needed.
- OEPA will develop water-quality based effluent limits for NPDES permits issued by ODA pursuant to Chapter 903 of the Revised Code.
- OEPA and ODA will notify one another with respect to emergency reports of manure spills and discharges or complaints of manure spills and discharges.
- OEPA will notify ODA of any limitations in the extent of coverage of general NPDES permits to operate based upon stream designation or water quality as set forth in rule 901:10-4-01 of the Administrative Code.
- ODA will be notified in order to participate in the development and implementation of Total Daily Maximum Load Plans and/or comprehensive watershed planning (sponsored by OEPA and ODNR) for watersheds in Ohio, as scheduled by OEPA and ODNR, for waterbodies potentially impacted by animal feeding operations.
- OEPA will provide technical support in legal or administrative proceedings where ODA is a party if issues pertain to water quality standards or wasteload allocations established by OEPA.

Phase Two of the work is described in Article VII of this MOA.

Article VI. PHASE ONE RESPONSIBILITIES AND WORK COMMITMENTS

Phase One of the work is organized as follows:

A. Review Compliance Certificates

B. Inspections

C. Complaint Investigations

D. Permits

E. Enforcement

F. **Emergencies**

G. Public Participation

H. Geographic Information Systems and Related Information Sharing

Phase One work shall be implemented as follows:

A. Review Compliance Certificates

During Phase One the parties will manage the transition of the permitting program from OEPA to ODA through coordination, cooperation, and mutual support in addressing "existing facilities" as defined in Section 903.04 of the Revised Code.

An existing facility means a CAFF that was in existence prior to the date on which the Director of ODA has finalized the PTI program, and that has received a PTI issued by OEPA. In accordance with Revised Code 903.04, a person to whom a PTI has been issued by the Director of OEPA prior to the date on which the Director of ODA has finalized the program may continue to operate under that PTI until:

1) A Review Compliance Certificate (RCC) is issued by ODA;
2) A RCC is denied by ODA, thus also terminating the PTI previously issued by OEPA.
3) The PTI is revoked by the Director of ODA.

The RCC, if issued, shall automatically merge and become a part of the PTI previously issued by OEPA and shall be effective as the RCC for the existing facility for a period of five

years. If any of the terms and conditions of the PTI and the RCC are in conflict, the terms and conditions of the RCC are controlling.

In order to satisfy the requirements of Section 903.04 of the Revised Code, and the work in this MOA, any PTIs previously issued by OEPA and subject to legal action, either before the Director or before the Environmental Review Appeals Commission, or otherwise subject to enforcement proceedings shall be managed as described in Article VIII of this MOA.

Section 903.04 of the Revised Code lists the criteria to be satisfied by the owner or operator of an existing facility in order to be eligible for a RCC. (See also, rule 901:10-1-07 of the Administrative Code.)

B. Inspections

1) The parties agree to complete grant commitments made pursuant to the Section 106 fiscal agreement between OEPA and USEPA.
2) The parties agree to share information from the inspections described in Item 1, above, and to discuss and assess compliance or noncompliance at "existing facilities" where such facilities hold a PTI previously issued by OEPA and may be eligible for a RCC to be issued or denied by ODA.
3) In order to issue or deny RCCs for facilities holding a PTI issued by OEPA, and to meet OEPA's Section 106 of the CWA grant commitments, the parties agree to an inspection workload projected at roughly 50-60 CAFFs per year in years 2002 and 2003.
4) The parties agree to use the inspection form attached as Appendix (1). The form is designed and intended to ascertain compliance with the requirements of Chapters 6111 and 903 for, respectively, CAFOs and CAFFs. The parties will use the inspection form to the extent allowed by each party's legal jurisdiction.

5) The parties agree that inspections may disclose that a facility has a "discharge", or that a facility is a "nuisance", or that a facility otherwise regulated by the Ohio Department of Natural Resources, Division of Soil and Water Conservation, is to be "designated" as a "CAFO" as that term is defined in Division (F) of Section 903.01 of the Revised Code The parties agree that inspections may also disclose that a facility is within the jurisdiction of ODA. The parties agree to decide on a case-by-case basis, based upon joint review of inspectors' reports, if the facility should be assigned to either ODA or OEPA. If the parties cannot agree, the parties will confer on-site at the facility to reach agreement. As a general rule, the facilities will be administered as follows:

   a) Facilities for which inspections identify a *"discharge"* are to be assigned to OEPA to be regulated as CAFOs.

   b) Facilities for which inspections identify a *"nuisance"* or other non-discharge incident of noncompliance with Chapter 903 of the Revised Code, are to be assigned to ODA to be regulated as CAFFs.

   c) Facilities for which inspections identify a candidate for *"designation"* as a CAFO, are to be assigned to OEPA, with appropriate written confirmation to the Ohio Department of Natural Resources, Division of Soil and Water Conservation and the appropriate local soil and water conservation district.

6) The parties will confer on a case-by-case basis regarding sampling and monitoring conducted for permit development, enforcement or emergencies.

7) The facilities to be inspected by the parties are listed in the worksheet attached as Appendix (2).

C. Complaints

1) OEPA and ODA acknowledge that during Phase One of this MOA both parties will receive complaints about animal feeding facilities. In responding to complaints, the parties must, among other things, determine which party has jurisdiction over the facility in order to appropriately take any necessary legal action as a result of the complaint(s). 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 to the other party. The key contact for OEPA in complaint response is Cathy Alexander, OEPA (Division of Surface Water) with participation and support from OEPA's Emergency Response Duty Room. The key contact for ODA in complaint response is Kevin Elder. The key contact for ODNR Division of Soil and Water Conservation is Martin Joyce.

b) Each party will maintain a log of complaints which includes the following information: facility name; facility location; location of spill, discharge, or other (if different from the business location of the facility); information about the nature of the complaint; time and date of spill, discharge, or other (if known); time and date of the complaint; name, address, and telephone number of the complainant (if known).

c) Upon receipt of the complaint, each party agrees to notify the local soil and water conservation district. OEPA and ODA agree that, as a general rule, the party receiving the complaint will assume the lead in responding to the complaint. Alternative arrangements for an initial response to the complaint can be made by the key contacts for each party, particularly for those complaints to be responded to by

ODNR, Division of Soil and Water Conservation and by the local Soil and Water Conservation District. The parties will then respond according to these alternative arrangements.

d) In all complaint responses, the parties agree to the following protocols for the responding agency:

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

ii) Determine, where necessary, the nature of the complaint and whether the complaint is of a "discharge" or a "nuisance" or both and recommend a follow-up response to the complaint (where necessary) by the OEPA or ODA or both or, where appropriate, ODNR Division of Soil and Water Conservation and the local soil and water conservation district.

iii) Report the results and findings of the initial complaint response by FAX, electronic communication, and/or telephone to all parties including OEPA, ODA, and the local soil and water conservation district.

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

v) Proceed as described in paragraph B.5.of this Article for any follow-up needed after the initial complaint response.

e) The parties will confer on a case-by-case basis regarding sampling and monitoring conducted on any follow-up needed after the initial complaint response, including assistance that may be provided to, or assistance from the local soil and water conservation district.

D. Permits

1) General Requirements

a) As provided in Articles VII and VIII of this MOA, the pending PTI and PTO workload of facilities at OEPA will be transmitted to ODA when the program is "finalized" as that term is defined in Section 903.01 of the Revised Code. ODA permit application forms will be designed to prompt the permit applicant to obtain any permits, licenses, certifications, and approval that may be required by OEPA. Conferences, workshops, seminars, fact sheets and program brochures may be used by either party to inform the regulated community of the respective areas of work of ODA and OEPA, and will be coordinated with the agencies involved in performing the work addressed.

b) On a weekly basis, ODA will transmit to OEPA a list of permit applicants received in the previous week by ODA so that OEPA can determine if other permits are required, such as subsequent NPDES permits (including NPDES construction stormwater permits). It is the intention of the parties to compile the weekly information, along with OEPA's list of NPDES permitted CAFOs, for the purpose of an annual report of accomplishments pursuant to this MOA.

c) The parties acknowledge that the following permits or certifications may be required by OEPA, and ODA will notify the permit applicant and OEPA, as appropriate:

- Septic system installation for employees or other non-residential use; or
- Class V agriculture wells; or
- Public drinking water systems serving 25 or more persons; or
- Composting, such as mortality composting or manure composting; or

- 401/404 permits and state isolated wetlands permits; or
- Stormwater permits for construction, whether individual or general permits, for facilities that require a NPDES permit from OEPA during Phase One of this agreement.

d) Division (G)(2) of Section 903.09 of the Revised Code requires ODA to issue or propose to deny a PTI no later than 90 days after receiving the permit application. The parties will endeavor to meet this statutory timeline through prompt coordination and communication as required here and described further in Article IX. of this MOA.

2) Permits to Install

a) ODA will issue Permits to Install when the program is "finalized."

b) Until such time as the NPDES program revision for Ohio is approved by USEPA, the parties agree to administer permits to install as follows:

i) Regulatory decisions on PTIs may require regulatory decisions by both ODA and OEPA on PTOs when the PTOs are connected with applications for NPDES permits. The parties agree to jointly review applications for PTIs and PTOs where the PTOs are connected to NPDES permits and offer comments to one another. The purpose of this joint review is to ensure consistency in terms and requirements in permits issued by each party. To the extent practical and in the interest of timely review and decisions, the parties agree to jointly conduct permit reviews on engineering plans, designs, and installation.

ii) Upon receipt of comments from OEPA, ODA will communicate to the applicant for a PTI. Upon receipt of comments from ODA, OEPA will communicate to the

applicant for an NPDES permit. As a general rule, ODA will assume the "lead" in terms of communications and regulatory decisions for PTIs whereas OEPA will assume the "lead" in terms of communications and regulatory decisions for the NPDES permits.

iii) The parties will confer, on a case-by-case basis, regarding communication with the public, with local soil and water conservation districts, with the ODNR Division of Soil and Water Conservation, and with USEPA regarding the facilities requiring regulatory oversight by both OEPA and ODA.

3) Permits to Install and Consistency with 208 Plans

a) OEPA agrees to provide the following to ODA:

i) A set of all current areawide 208 plans in Ohio that have been certified by the Governor of Ohio; and

ii) Informal notice and opportunity for ODA comment on any draft or proposed areawide 208 plans. Notice may be by electronic communication.

b) The parties agree that OEPA will continue to make determinations of consistency or inconsistency with areawide 208 plans prior to issuing NPDES permits.

4) Permits to Operate (PTO) and NPDES Permits

a) If any individual PTO is connected with an application for an NPDES permit then the NPDES permit remains within OEPA's jurisdiction to issue or propose to deny until the date on which the USEPA approves the NPDES program revision submitted by the state of Ohio.

b) The parties acknowledge that either OEPA or ODA may first receive an application for a PTO that is connected with a NPDES permit. Both agencies will advise the

applicant of the other agency's authority over PTO/NPDES permits and, if necessary, return the application for re-submittal (i.e., the goal is to have ODA receive the PTO application with the proper fees, and OEPA receive the NPDES application with the proper fees). On a weekly basis, OEPA and ODA will transmit to one another a list of permit applications received the previous week for CAFOs and AFOs.

5) General Permits to Operate for Concentrated Animal Feeding Facilities.

ODA will issue General Permits to Operate when the program is "finalized." If a facility has a discharge or is discovered to have a discharge for which a NPDES permit is required, ODA will notify OEPA and the permit applicant or permittee. The permit applicant or permittee will be required to obtain an individual NPDES permit from OEPA. OEPA does not have plans to develop a general NPDES permit to operate during Phase One of this MOA.

6) Stormwater Permits

The Stormwater NPDES Permits Program for both individual and general permits will continue to be maintained and administered by OEPA.

7) Individual NPDES Permits

a) OEPA will issue and enforce NPDES permits for CAFOs during Phase One of this MOA. OEPA will continue to use its Permit Application Forms 1, 2B and 2F (where appropriate) to obtain the required information from the permit applicant to satisfy the NPDES requirements under Chapter 6111 of the Revised Code and rules promulgated thereunder.

b) OEPA agrees to refer to rule 901:10-2-04 and to rules 901:10-2-08 to 901:10-2-18 of the Ohio Administrative Code for guidance in developing the appropriate terms and conditions of operation in any NPDES permit for a CAFO.

8) Field Work Related to Permits

a) The parties agree to regular communications between OEPA and ODA to coordinate work scheduled in watersheds targeted by OEPA for monitoring, surveillance, related field work, and development of watershed restoration plans for those impaired waterbodies that are potentially impacted by animal feeding operations.

b) The purpose of this coordination shall be to assign work to ODA so that ODA can support OEPA in monitoring, surveillance, and related fieldwork in preparations for TMDL reports to be prepared and published by OEPA.

c) The parties intend that the assigned work will enable ODA to identify facilities that require permits under Chapter 903 of the Revised Code, to identify facilities that are not in compliance with Chapter 903 of the Revised Code or with Chapter 6111 of the Revised Code for NPDES permitted facilities, and to identify AFOs that require NPDES permits.

d) In anticipation of USEPA approval of the NPDES program submitted by ODA, ODA will coordinate with OEPA in monitoring, surveillance, fieldwork, and the development of watershed restoration plans. This will facilitate communications between parties about regulatory decisions by OEPA on NPDES permits with water-quality based effluent limits; restrictions recommended by OEPA on the use of general permits; limitations on stormwater permits issued by OEPA; and, generally, preparation of permits for facilities to be regulated pursuant to Chapter 903 of the Revised Code .

e) Enforcement

1) OEPA will continue enforcement of NPDES permits (including stormwater) and facilities with unauthorized discharges during Phase One of this MOA.

2) ODA will assume responsibility for enforcement of PTIs previously issued by OEPA. ODA will determine whether any existing facility is eligible for a RCC as provided in Section 903.04 of the Revised Code.

3) The parties agree to consult with one another, in advance, regarding any facility subject to a PTI or RCC issued by ODA that may be required by OEPA to obtain and comply with an NPDES permit. The parties agree to consult with one another, in advance, regarding any CAFF or CAFO subject to enforcement, permit suspension, permit revocation, or permit termination pursuant to either Chapter 6111 or Chapter 903 of the Revised Code.

E. Emergencies

1) When spills or other emergencies related to AFOs are received by the OEPA-DERR Duty Room, this information is relayed to OEPA-DSW by FAX, electronic communication, or telephone. OEPA-DSW will then notify ODA, the soil water conservation districts and ODNR-DSWC. Follow-up field support to OEPA may be provided by ODA or managed as described in this MOA at Article VI, Section C. Complaints.

2) The State Emergency Response Commission includes the designees of the Director of Agriculture and the Director of Environmental Protection. Nothing in this MOA is intended to alter or amend any provision as in the State of Ohio Memorandum of Understanding for Response to Hazardous Materials Incidents, as amended or revised, or the State Emergency Response Plan agreed to by the parties and the Ohio Emergency Management Agency.

F. Public Participation and Information Sharing

1) Public Meetings

a) The parties agree to joint participation at public meetings for PTI and NPDES permits to be issued to the same facility. The parties further agree to work together in preparation of public notices, draft permits, fact sheets, and news releases.

b) The parties agree to informally notify each other when issuing a news release or participating in an informational meeting that does not involve both agencies, but relates to a facility regulated by one or both agencies.

c) The parties agree to notify each in advance about press releases or correspondence regarding any enforcement or emergencies that involve both ODA and OEPA under this MOA.

d) The parties agree to notify each other about media interviews regarding facilities regulated by both agencies, or regarding program issues.

e) The parties shall cooperate with each other when responding to or communicating with other agencies or departments of the state, the federal government, other states, interstate agencies, and political subdivisions in matters relating to permits or enforcement when ODA has issued the PTI and OEPA has issued the NPDES permit.

f) The parties shall cooperate with each other in conducting workshops or seminars about the program administered under Revised Code Chapter 903, including those workshops and seminars that explain the program's relationship with laws and rules administered by OEPA.

g) The parties shall cooperate with each other in producing any annual reports or other reports of permit activities for USEPA, for the Concentrated Animal Feeding Facility Advisory Committee, or other stakeholders for either party.

2) Public Records Management and Confidentiality

a) Each party will notify the other regarding requests for information made by the public for inspection and copying and, where necessary, cooperate in providing the requested information.

b) The parties shall respect the confidentiality of files or materials designated CONFIDENTIAL by either ODA or OEPA in accordance with applicable state laws and 40 CFR 122.7.

3) Legislation and Rulemaking

The parties agree to notify each other regarding pending or prospective legislation and rule making that would affect or potentially impact the commitments and responsibilities carried out in accordance with this MOA. The parties agree to promptly share drafts of such pending or proposed legislation and rules, and to consult with each other, regarding the effects and impacts of such pending or proposed legislation and rules on the authorities and responsibilities referenced in this MOA. This notice can be accomplished by electronic communication with direction to an appropriate web site or electronic publication by one or both of the parties or by telephone.

4) Geographical Information Systems

The parties agree to use their best efforts to use computerized links, or to periodically exchange computer files, with respect to geographically based information. This information includes, but is not limited to, the following types of data:

a) Identification of impaired watersheds and related TMDL-related work.;

b) Delineated areas for source water protection by source water assessment and protection plans, including both surface and groundwater sources;

c) Location of source water intake structures for public water supplies;

d) Locations of CAFOs and/or CAFFs; and

e) Location of any Class V agricultural wells.

OEPA and ODA acknowledge that some information exchange occurred prior to this MOA. This MOA is intended to promote a routine and predictable schedule of information exhange to benefit the regulatory programs of both parties.

Article VII. PHASE TWO RESPONSIBILITIES AND WORK COMMITMENTS

Upon approval of the ODA NPDES program by USEPA, OEPA will provide ODA with technical support, technical information, and support in administrative proceedings and in legal cases for the following work:

A. NPDES Permits and PTIs
B. General NPDES Permits
C. Total Maximum Daily Loads and Watershed Plans
D. Emergencies
E. Geographic Information Systems and Information Sharing

A. NPDES Permits and PTIs

1) ODA will provide OEPA an updated list of pending and approved permit applications on a quarterly basis unless another schedule is required in the MOA between U.S.EPA and ODA.

2) Consistency with Areawide 208 Plans.

a) OEPA will provide to ODA one copy of each areawide 208 planning document and a copy of the OEPA Continuing Planning Process as updated. OEPA will notify ODA of any changes and/or updates to any of the plans prepared in Ohio pursuant to Section 208 of the Act. Prior to approval of a NPDES permit application, OEPA will consult with ODA on a permit-by-permit basis in order to maintain compliance with the Act. OEPA will decide if any proposed discharge would be in conflict with Ohio's areawide 208 plans and notify ODA of that decision.

b) OEPA agrees to notify ODA regarding any draft or proposed areawide 208 plan in order to provide ODA an opportunity to comment or to otherwise participate in the planning process. Notice may be made by electronic communication.

3) Antidegradation and Related Wasteload Allocations.

a) On at least a weekly basis, ODA will transmit copies of NPDES permit applications received to OEPA.

b) OEPA shall provide assistance in determining if the application meets an exclusion or waiver under the antidegradation policy in rule 3745-1-05(D) of the OAC as needed.

c) OEPA shall provide a wasteload allocation and development of water quality based effluent limits for NPDES permits to be issued by ODA, as needed.

4) Adjudication Cases and Enforcement Proceedings

Any legal matters concerning NPDES permits before the OEPA Director, the Environmental Review Appeals Commission, or NPDES permits subject to enforcement proceedings by OEPA will be governed by Article VIII of this MOA.

A. General NPDES Permits

As required by rule 901:10-4-01 of the Administrative Code, general NPDES permits to operate will not be issued for new discharges associated with CAFFs requiring an NPDES permit if the receiving waters are designated as outstanding national resource water, 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.

OEPA will notify ODA of any proposed changes to designations in Ohio. ODA will notify OEPA of any proposed changes with the scope, extent, and applicability of the general NPDES permit to operate. "Notification" means early notice to each of the parties when preliminary work plans and schedules are in early stages of development. Each party shall allow the other meaningful time to examine and critique work proposed, as it would affect the respective programs.

B. Total Maximum Daily Loads and Watershed Plans

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

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

OEPA will notify ODA of the development of plans for TMDLs within any watershed where one or more CAFFs or CAFOs hold permits issued by ODA. ODA will coordinate with

OEPA in monitoring, sampling, and surveillance and in the preparation of any reports for related TMDLs.

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

As requested by ODA, OEPA shall assist ODA in the development of water-quality based permits or variances for water-quality based effluent limits in permits.

As a result of fieldwork and related studies of water quality or TMDLs, OEPA may periodically notify ODA of any plans to recommend the following:

a) Restricted use, scope or applicability of general NPDES permits for facilities regulated pursuant to Chapter 903 of the Revised Code.

b) Limitations on the use, scope or applicability of general stormwater permits.

D. Emergencies

1) OEPA-DERR Duty Room will provide emergency notice by FAX or electronic communication or telephone to ODA. The parties agree to mutually support one another and other involved departments or agencies until the emergency is over. In the event that ODA is notified of an emergency spill or manure discharge that causes injury to fish and wildlife and adversely impacts water quality, ODA will respond and provide emergency notification to OEPA and other affected departments or agencies by FAX or electronic communication or telephone.

2) The State Emergency Response Commission includes the designees of ODA and OEPA. Nothing in this MOA is intended to alter or amend any provision as in the

State of Ohio Memorandum of Understanding for Response to Hazardous Materials Incidents, as amended or revised, or the State Emergency Response Plan agreed to by the parties and the Ohio Emergency Management Agency.

Article VIII. PENDING PERMIT APPLICATIONS, PERMITS, AND MATTERS IN ADJUDICATION OR LITIGATION

A. Finalization of the ODA Program for PTIs and PTOs in Phase One.

As provided in Section 4 of Senate Bill 141 the programs required under Sections 903.02(A)(1) and 903.03(A)(1) of the Revised Code are "finalized" when the criteria set forth in Section 903.01(F) of the Revised Code are met. At that time, OEPA shall cease issuance of any PTIs for those activities regulated by ODA pursuant to Chapter 903 of the Revised Code.

If, upon "finalization" of the ODA program, any permit to install appeal, permit to install modification request, permit to install revocation or permit to install administrative enforcement action is not finally resolved with a final action by the OEPA Director, then OEPA shall cease those activities and transmit copies of any files pertaining to the legal action to ODA along with any related information that the ODA may request. The parties shall cooperate with each other in order to manage an effective transition of any matters pending before OEPA as of the date that the Director of ODA "finalizes" the program. Upon request, OEPA will provide technical staff in support of those legal and/or administrative proceedings originated by OEPA and continued by ODA is order to sustain legal actions with respect to affected permits and/or facilities. The parties agree to cooperate in legal proceedings involving matters pertaining to permits to install, permits to operate, and NPDES permits.

B. U.S.EPA Authorization of the ODA Portion of the NPDES Program in Phase Two.

Upon approval of the ODA NPDES program by USEPA, OEPA shall cease the issuance of NPDES permits for those activities regulated by ODA pursuant to Chapter 903 of the Revised Code. After USEPA approval, ODA shall assume jurisdiction over the administration of the NPDES permit program, including but not limited to any NPDES permit applications and accompanying information that was submitted under Division (J)(1) of Section 6111.03 of the Revised Code, permit appeals pending before the Environmental Review Appeals Commission, proposed actions pending before the OEPA Director, modification requests, variance requests, or administrative enforcement cases involving NPDES permits for CAFOs. The parties shall cooperate with each other in order to manage an effective transition of any matters pending before OEPA as of the date that U.S.EPA publishes a revision of the State of Ohio NPDES Program in the Federal Register, or upon signature by the Regional Administrator of the formal delegation of the portion of the NPDES program described in Revised Code Chapter 903 to the ODA, whichever is later. Upon request, OEPA will provide technical staff in support of those legal and/or administrative proceedings originated by OEPA and continued by ODA in order to sustain legal actions with respect to affected NPDES permits and animal feeding operations.

Article IX. COMMUNICATION AND DISPUTES RESOLUTION

The parties recognize the accountability of each party to the citizens of Ohio, to local, state and federal government agencies, and to USEPA with respect to administration of Chapter 903 of the Revised Code, and with respect to changes in delegation of the NPDES program applicable to CAFFs and CAFOs from OEPA to ODA. In the event of a dispute, the parties shall make reasonable efforts to unofficially resolve the dispute through telephone calls, including

conference calls; electronic mail; and meetings. If resolution cannot be achieved unofficially within ten (10) days, either party may elevate the dispute for resolution by senior management of ODA and OEPA.

In the interest of time, particularly given the statutory timeframes for the issuance or denial of applications for PTIs and PTOs that are not connected with an application of an NPDES permit, the parties agree to clearly and quickly communicate about a dispute. The parties will endeavor to describe the dispute concisely for senior management of the respective parties by describing the following elements of the dispute:

1. The nature of the dispute;
2. The activity, decision or responsibility affected by the dispute;
3. The disputing party's position with respect to the dispute; and
4. The information the disputing party is relying on to support its position.

The activity, decision or responsibility affected by the circumstances that gave rise to the dispute may be suspended until the dispute is resolved. This dispute resolution process may be used to resolve disputes on a case-by-case basis, provided this dispute resolution process does not conflict with a dispute resolution process specified in an administrative order, judicial consent decree or other legally binding document governing activities at a CAFF.

Article X. MODIFICATION AND TERMINATION

A. Modification

This MOA may be modified only by written agreement signed by the Director of Agriculture and the Director of the Ohio Environmental Protection Agency. The parties agree to

meet to discuss and consider appropriate changes to the MOA and the implementation thereof by these parties at the conclusion of Phase One and in timely preparation for Phase Two.

B. 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 OEPA activity, decision or responsibility referenced in this MOA.

Fred L. Dailey, Director
Ohio Department of Agriculture

8-1-02
Date

Christopher Jones, Director
Ohio Environmental Protection Agency

8-12-02
Date

Appendices: (1) Inspection Form

(2) List of Facilities