

The Ohio Department of Agriculture and the National Pollutant Discharge Elimination System Program – Program Description 40 CFR 123.22

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## **The Ohio Department of Agriculture and the National Pollutant Discharge Elimination System Program – Program Description 40 CFR 123.22**

### **I. LEGAL AUTHORITY AND PERMITS**

- A. Department Overview
- B. Legal Authority for the Permitting Program – A General Overview
- C. Legal Representation

#### **A. Department Overview**

The Ohio Department of Agriculture (ODA), the second oldest State agency, evolved from "An Act for the Encouragement of Agriculture" passed by the General Assembly on February 27, 1846, to establish agricultural fairs and promote farming.

ODA is responsible for enforcing State and federal laws and regulations, primarily in the areas of food safety, food production and food processing. ODA is Ohio's lead agency for enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) through the United States Environmental Protection Agency's (EPA) Office of Pesticide Programs. ODA also oversees county and independent fairs, helps assure amusement rides are safe, is the custodian of the primary weights and measures standards in Ohio, and helps Ohio farmers and food processors market their products.

State law makes the ODA responsible for environmental protection in the State and the lead agency for administration of the National Pollutant Discharge Elimination System (NPDES) Water Discharge Permit Program with respect to Concentrated Animal Feeding Operations (CAFOs) and storm water pollution attributable to Animal Feeding Operations (AFOs). ODA has responsibility for protecting water quality, ensuring disease prevention, ensuring a safe and sanitary food supply, conducting inspections, protecting livestock in Ohio, and enforcing regulatory requirements through administrative or court proceedings.

#### **B. Legal Authority for the Permitting Program – A General Overview**

NPDES permits are documents which provide authorization for potentially contaminated wastewater discharges. These permits establish effluent limitations and monitoring and reporting requirements on all pollutant discharges into the waters of the State. Permits are developed and issued by the ODA Livestock Environmental Permitting Program (LEPP) following permitting procedures established pursuant to "Concentrated Animal Feeding Facilities," Ohio Revised Code (ORC) Chapter 903 and regulations adopted under it. The permitting process allows the State to monitor and control the quantity, quality, and types of discharges to its waters.

State law provides authority to issue permits for the discharge of pollutants from existing and new facilities or activities to waters of the United States to the same extent as required under the permit program administered by the EPA pursuant to Section 402 of

the Clean Water Act, as amended, 33 U.S.C. §1251 et seq. (hereinafter "the CWA" or "the Act").

The NPDES program to be administered by ODA applies to NPDES individual permits, general permits, and construction and industrial stormwater permits for CAFOs. ODA is also responsible for the administration of the NPDES program for both construction and industrial stormwater permits for animal feeding operations (AFOs). Ohio EPA retains jurisdiction for those construction and industrial stormwater permits for agricultural activities that are not located on AFOs (i.e., grain and cropping agricultural activities) and for CAFOs that discharge to a Publicly Owned Treatment Works (POTW), cooling water and filter backwash discharges at AFOs/CAFOs, as well as grain mills located at these types of facilities.

Substitute Senate Bill 141 was effective on March 15, 2001<sup>1</sup>. This legislation transferred from the Director of Environmental Protection to the Director of Agriculture the authority to issue NPDES permits for the discharge of manure from point sources into waters of the State and for the discharge of storm water resulting from CAFOs and AFOs. The new law requires the Director of Agriculture (hereinafter "the Director") to submit to the EPA a program for the issuance of those permits, and provides that the authority of the Director to issue NPDES permits is dependent upon approval from the EPA.

ORC Chapter 903 authorizes the Director to adopt, amend, or repeal all rules, regulations, and standards necessary for the protection of the environment from pollution attributable to concentrated animal feeding operations and to stormwater from animal feeding operations. Under Section 903.08 of the ORC the Director is given specific authority to issue, deny, modify, suspend, and revoke permits. Enforcement of NPDES permits is authorized by Section 903.17 of the ORC and rules promulgated pursuant to Section 903.10 of the ORC.

Section 903.10 grants the Director the following specific authority to establish all of the following concerning NPDES permits:

- (1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. This designation shall include those point sources for which the issuance of NPDES permits is required under the Act.
- (2) Effluent limitations governing discharges into waters of the State that are authorized by permits;
- (3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Act;
- (4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of

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<sup>1</sup> H.B. 152, effective November 3, 2003, amended ORC Chapter 903 to conform to changes in EPA's NPDES rules for CAFOs, adopted April 14, 2003. Subsequent revisions have been made to ORC 903.08 in S.B. 393 to conform to the outcome of Waterkeeper Alliance et al. v. EPA, 399 F. 3d 486 (2d Cir. 2005).

compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the State; and authorized duration and frequency of any discharges into waters of the State;

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

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

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

(8) Procedures for notifying the EPA of the submission of permit applications, the Director's action on those applications, and any other reasonable and relevant information;

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

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

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

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

Section 903.10(F) also provides that rules relating to NPDES permits shall be consistent with the requirements of the Act.

Section 903.08(A) of the ORC provides the specific statutory authority to establish ODA as the lead agency for NPDES delegation with respect to CAFOs and stormwater from AFOs. It provides the Director of ODA with the power and authority as follows:

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

(2) On and after the date on which the United States environmental protection agency approves the state program submitted under division (A)(1) of this section, the authority to enforce terms and conditions of NPDES permits previously issued under division (J) of section 6111.03 or under section 6111.035 [6111.03.5] of the ORC for the discharging, transporting, or handling of storm water from an animal feeding facility or of manure is transferred from the director of environmental protection to the Director of Agriculture. Thereafter, the director of environmental protection shall have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority under division (A)(2) of this section, the NPDES permits concerning which authority has been transferred shall be considered to have been issued under this section.

Copies of the Ohio laws and rules applicable to the ODA program, including a recent amendment to ORC Chapters 903 and 6111 (Substitute Senate Bill 393) that was enacted into law effective December 27, 2006, are included in Volume 1 of this application for NPDES program revision. The Ohio Attorney General's Statement in support of the program revision is also included in Volume 1. Background information about the ODA LEPP, including annual budget, table of organization, and position descriptions, is included in Volume 2.

### **C. Legal Representation**

The ODA uses both in-house counsel (Office of Legal Counsel) and the Office of the Ohio Attorney General (Attorney General) for legal representation. The Office of Legal Counsel exists within ODA, and is composed of the Chief Counsel, three attorneys, a paralegal plus administrative office staff. ODA's Enforcement Division provides investigative support – conducting both criminal and administrative investigations – for all of ODA's regulatory divisions.

The Office of Legal Counsel provides legal consultation to and representation for the various offices and divisions in ODA, including the Livestock Environmental Permitting Program (LEPP), in regard to permitting, enforcement, grants, contracts, personnel, legislation, intergovernmental agreements, and other such matters. Legal functions include the following:

1. Legal review of draft permit and enforcement actions;
2. Legal analysis and other training, support and direction during the legislation and regulation promulgation processes;
3. Preparation of the administrative record of proceedings and related documents, along with case support, in adjudication hearings and in appeals to the Environmental Review Appeals Commission; and
4. Coordination and direction of enforcement and criminal investigation and referrals.

Two attorneys are committed to implementation, administration, and enforcement of Chapter 903 of the ORC and LEPP. Legal counsel assist LEPP in all administrative actions, including permitting, administrative, and civil actions, and in development of all regulations promulgated by LEPP pursuant to Chapter 903 of the ORC.

In certain instances ODA is required by law to request the Attorney General to provide legal representation. The Attorney General acts as counsel to ODA in all civil suits as provided in Sections 903.16, 903.17, 903.18, and 903.99 of the ORC. This includes civil suits in courts of common pleas brought for injunctive relief under Sections 903.16 and 903.17 of the ORC as well as in enforcement matters such as penalties and compliance orders. The Attorney General's concurrence is also required by Section 109.02 of the ORC to settle or resolve any suits, disputes, or claims for penalties. Finally, criminal offenses may be prosecuted pursuant to ORC 903.99 by ODA through the Office of the Ohio Attorney General.

The prosecuting attorneys of each county have the discretion to prosecute any criminal violation of environmental law within the jurisdiction of the county. The ODA cooperates fully with county prosecuting attorneys through the Office of the Ohio Attorney General.

## II. PERMITS PROGRAM – OVERVIEW<sup>2</sup>

- A. General Permitting Procedures
- B. Small and Medium CAFOs
- C. Inspections

At ODA, the NPDES is managed by LEPP. Its primary responsibility is to regulate any activity which results or may result in the discharge of any pollutant into waters of the State which is within the scope of coverage of the NPDES Permit Program in accordance with ORC Chapter 903, "Concentrated Animal Feeding Facilities."

Permit applications fall generally into one of these categories:

- 1) Individual Permits to Install issued under State authority;
- 2) Individual permits for MCAFFs<sup>3</sup> and individual permits for CAFFs, with State operating requirements<sup>4</sup> and with NPDES requirements for operations and industrial storm water (where CAFF means a Concentrated Animal Feeding Facility<sup>5</sup>);
- 3) General permits to operate that will include State operating requirements, NPDES requirements for operations, and NPDES requirements for industrial storm water;
- 4) Individual permits for medium and small CAFOs with NPDES coverage for operations and for industrial storm water; and
- 5) NPDES construction storm water permits, both general construction permits for AFOs and CAFOS and, where appropriate, individual construction permits.

For those permits for which EPA has not waived review, copies of the draft permit or proposed action<sup>6</sup>, the public notice, the fact sheet (or statement of basis), and the application will be forwarded to EPA for review. If the state and EPA agree upon the draft permit, the state will issue a public notice of the draft permit. If the state and EPA cannot agree upon the draft permit, the authority to issue the permit will transfer to EPA.

LEPP issues public notices in accordance with ORC 903.09 and OAC Chapter 901:10-6. Following publication of the notices, there is a 30-day comment period.

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<sup>2</sup> See Parts III and IV below for details on permitting, public participation, inspections, and enforcement.

<sup>3</sup> Major CAFF means a CAFF with ten times number of animals of a "large CAFO"

<sup>4</sup> This type of operating permit is also referred to as "Permit to Operate" or "PTO."

<sup>5</sup> Under Ohio law, ORC Chapter 903, a CAFF is a CAFO that meets the definition of a "large CAFO" and is subject not only to all federal NPDES requirements but also to State laws and regulations of operations, such as required Permits to Install.

<sup>6</sup> Proposed actions under Ohio law include actions to suspend, revoke, or deny a permit or modifications of the permit that are initiated by the Director.

Once the proof(s) of publication is received, and if no significant public interest is demonstrated during the comment period, a final permit may be issued. If there is significant public interest, a public hearing is held and comments (including those presented during a public hearing and during the comment period) are collected and reviewed. A response to comments is prepared as a "Responsiveness Summary" for the Director. For those permits for which EPA has not waived review, the "Responsiveness Summary" will be forwarded to EPA for review. If there are any substantive changes to the draft permit, a permit incorporating those substantive changes is forwarded to EPA for review. Upon EPA's concurrence with the changed permit, a final permit is issued. If the state and EPA cannot agree upon the changed permit, the authority to issue the permit will transfer to EPA.

General permits will be issued by LEPP for CAFOs and AFOs with similar activities. A fact sheet, draft permit and public notice are prepared and sent to EPA for review. Upon concurrence by EPA, the draft permit is public noticed in accordance with ORC 903.09 and OAC Chapter 901:10-6. In the case of a Statewide general permit, the public notice is published in major newspapers throughout the State.

To date, LEPP has issued approximately 43 installation permits and 158 operating permits<sup>7</sup> under the existing State permit program. Eighteen of the 158 State operating permits have been issued to MCAFF operations. Under ORC 903.07, ODA also has a State program that certifies livestock managers who are responsible for the management and handling of manure at an MCAFF or who annually transport and land apply quantities of manure larger than those set forth in OAC 901:10-2-06. The types and numbers of permits issued by ODA are given in Table 1. Copies of permit application forms and examples of permit orders are included in Volume 2 of this program revision application. All permits of all types are developed and tracked by LEPP Engineering staff.

**TABLE 1  
PERMITS ISSUED AS OF 11/30/06**

<b>TYPE</b>	<b>NUMBER</b>
Permit to Install	43
Permit to Operate (individual)	73
Review Compliance Certificates (individual)	85
General Permits to Operate	0
MCAFF operations	18

<sup>7</sup> The number of operating permits includes 85 Review Compliance Certificates or "RCCs" which are a type of permit used to transfer an effective permit issued previously by the Director of Ohio EPA to the Director of ODA for administration and enforcement. As provided in ORC 903.04, each Ohio EPA permit was examined and, in some cases, adjusted in order that the permitted entity would operate for the subsequent 5-year duration of the RCC in compliance with ORC Chapter 903.

Most of the individual operating permits issued above will be due for renewal in 2008-2009, since they have a term of 5 years. ODA estimates that a majority of the holders of individual State operating permits will seek coverage under a general permit with State operating requirements and NPDES requirements. ODA anticipates that 5-10% of the existing large CAFOs will not apply for a NPDES permit, but will still be required to obtain a State operating permit.

### **A. General Permitting Procedures**

ODA plans to issue general permits that will require submittal of a notice of intent (NOI) by the permittee. Eligibility for permit coverage under an NPDES general permit will depend on circumstances such as the type of discharge, the number of facilities to be covered, the potential of the discharge to harm the environment, etc., which are set forth in OAC 901:10-4-01. This Section provides a description of procedures that ODA will use to issue general permits.

ODA will issue general permits that require facilities to submit a NOI form, created by LEPP and referred to in the general permit, in order to be considered for coverage. This NOI will require specific information pertaining to the facility that is seeking coverage and payment of a fee. The NOI will be reviewed by LEPP to ascertain that the facility does qualify for coverage under the general permit. When review of the application is complete and LEPP has determined that the facility may be covered under the general permit, written acceptance of coverage will be sent to the facility.

When coverage under a general permit issued using the procedure explained above expires, the permittee must send in a notification of intent to renew. Upon receipt of this notification, the entire issuance process is repeated. When an individual permit expires, the permittee must also submit a renewal application, and, at that time, LEPP will discuss whether the permittee should receive a renewed individual permit or be covered under a general permit.

Once covered under a general permit, the permittee may request to be covered under an individual permit. The Director may require any discharger authorized by a general permit to apply for and obtain an individual permit. OAC 901:10-4-04.

The general permit procedures for issuance, enforcement, surveillance, tracking, and all other administrative tasks are performed in the same manner as those for individual permits. Therefore, the discussion on individual permit issuance procedures contained here applies to general permits unless otherwise provided. The issuance of a general permit follows the procedures in OAC Chapter 901:10-6 relative to fact sheets, draft permits, EPA review, public notices, response to comments, public hearings, appeals, etc. Facilities applying for coverage under a general permit follow the basic procedures in OAC Chapter 901:10-4 relative to the application review process.

To develop an appropriate general permit, the permit writer must do extensive research into the permit conditions and effluent limitations contained in individual permits issued to that category of discharges. The permit writer must then establish appropriate applicability criteria, effluent limitations and other permit conditions for the category or type of discharge. The permit is then placed in the review process as a draft general permit and is subject to public notice requirements.

ODA will issue general permits in the future in accordance with OAC Chapter 901:10-4 with a review period of 90 days for EPA as outlined in the MOA. Once the general permit is issued, persons wishing to be covered under the general permit must apply for coverage by submitting an NOI and a Nutrient Management Plan (NMP) or Manure Management Plan (MMP)<sup>8</sup>.

All general permits are developed by LEPP Engineering. This group also prepares and issues individual permits for small, medium, and large CAFOs, individual and general construction stormwater permits for AFOs, and individual permits for MCAFFs. Storm Water Pollution Prevention Plans, Manure Management Plans and Annual Reports will be submitted and reviewed for verification of best management practices and regulatory compliance. Permits may be reopened and modified to address changes in State or federal regulations and statutes, changes in the State Water Quality Management Plan, changes in State Water Quality Standards, the addition of new co-permittees or operators, or other modifications, as defined in rule, that are deemed necessary to meet requirements of the Clean Water Act.

As of November 15, 2006, Ohio EPA had 33 large and 2 medium CAFOs under an individual NPDES permit. In addition, another 25 large CAFOs and 17 medium CAFOs had applied to Ohio EPA for coverage under the general NPDES permit developed by Ohio EPA, which is currently under appeal and has not issued to any operation. Depending on the outcome and future guidance and rules to be provided by USEPA based on the *Waterkeeper* decision, it is anticipated that a number of the facilities that have sought a NPDES permit from Ohio EPA will withdraw their application and not seek a permit from ODA. Below are ODA's estimates on the number of permits that could be expected based on existing regulatory conditions.

#### NPDES - General Permit (NOIs) Large CAFOs

ODA estimates that approximately 75 of the existing 158 Large CAFOs operating under an individual State operating permit will be eligible for a general NPDES permit/State operating permit. Assuming 20% of these would be renewed annually (5-year term of permit), approximately 15 permits would be issued per year. Expected technical workdays for each permit are 5 days, and therefore 130 technical workdays would be required per year for the general NPDES permits for Large CAFOs.

#### NPDES - Individual Permit for Large, Medium and Small CAFOs

ODA estimates that of the 158 Large CAFOs currently permitted under a state permit and the small/medium CAFOs that potentially could be permitted, approximately 20 individual

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<sup>8</sup> ODA uses the term Manure Management Plan in its program in place of Nutrient Management Plan.

NPDES permits/State operating permits will initially be issued. Assuming 20% of these would be renewed annually (5-year term of permit), approximately 4 would be issued per year. Expected technical workdays for each permit are 15 days, and therefore 60 technical workdays would be required per year for the individual NPDES permits.

NPDES – General Construction Stormwater Permit for Large, Medium and Small CAFOs  
ODA estimates that 20 new construction stormwater permits will be applied for and granted for small, medium and large operations. ODA receives, on an annual basis, approximately 15 new Permits to Install on large operations that would require a construction stormwater permit and it is anticipated that another 5 small or medium facilities will also require a construction stormwater permit annually. Therefore, ODA anticipates annually approximately 20 construction stormwater permits. Expected technical workdays for each permit are 2 days, and therefore 40 technical workdays would be required per year for issuing the General Construction Stormwater permits.

#### Other State Permitting

A majority of the technical review currently being completed by the LEPP engineering staff on permits involves the review of the Permit to Install (PTI) and Permit to Operate (PTO). ODA estimates that 15 new PTI/PTO applications will be received annually. Based on technical hours spent on past permits, approximately 176 technical hours are spent on the more complex applications. These hours include reviewing the application, meetings and site visits with the producer and/or consultant, participating in public meetings, assisting in responsiveness summaries, being witnesses and client representatives in appeals and participating in pre-construction meetings. The technical workdays for each PTI/PTO are approximately 22 days and therefore require approximately 330 technical workdays.

#### Summary of Technical Time for Permitting

Summing all the technical workdays above requires 805 days per year to perform the expected permitting at the ODA. Currently, four engineers are on staff that provide 900 workdays a year, assuming 225 days of work per engineer per year. The estimates provided above are very conservative since a lot of the time accounted for in the "Other State Permitting" includes time that also relates to the review of NPDES issues. For instance, a lot of the information currently included in the state PTO covers the same information as required in the NPDES permit.

### **B. Small and Medium CAFOs**

AFOs defined as Medium CAFOs shall apply for a permit (as required by OAC 901:10-2-01(A)(3)), and (2) ODA may elect to refrain from issuing a permit where the owner or operator has promptly eliminated the conditions that caused the AFO to be defined as a Medium CAFO.

Best Professional Judgment (BPJ) is utilized to determine permit limits. ODA anticipates approximately 3 small and medium CAFOs to be transferred from Ohio EPA to ODA for regulatory oversight.

Small and medium CAFOs will be allowed to exit the permit program after the end of the five-year permit term if they meet certain conditions. To exit the permit program, a small or medium facility would be expected to demonstrate that it has successfully addressed the conditions that caused it to be defined or designated as a CAFO and that it is fully implementing a Comprehensive Nutrient Management Plan or Manure Management Plan, as approved by ODA. The small or medium CAFO will be expected to offer evidence and certify that it is in full compliance with its permit at the end of the permit term. In the event that a small or medium CAFO that has exited the permit program has a subsequent discharge, ODA will make the facility subject to permitting.

### **C. Inspections**

There are four (4) LEPP Inspectors available to conduct permit inspections, spill and complaint inspections, and ambient monitoring and sampling activities throughout Ohio. Sufficient personnel hours will be set aside to accomplish inspections at two full inspections per year of all permitted facilities. Additional personnel hours are dedicated to the investigation of all written citizen complaints (see OAC Chapter 901:10-5-01 and Part V, below), all verbal complaints, and unregulated facilities, and to spill response investigations reported to LEPP.

## **III. PERMITTING: GENERAL ADMINISTRATIVE PROCEDURES**

- A. Publication of Rules
- B. Procedures for Public Hearings and Information
- C. Procedures for Conflict of Interest Questions
- D. Procedures for the Continuing Planning Process
  - 1. Statutory Requirements
  - 2. Rules in Support of the CPP and Water Quality Standards
  - 3. Agreements to Implement the CPP
- E. Procedures for Public Availability of Permit Information and Confidentiality of Information
- F. Water Quality Management Planning
- G. The Water Quality Management Plan
- H. Water Quality Management Plan Certification Procedures

### **A. Publication of Rules**

Rules are published in the official state journal, the Register of Ohio, which is the responsibility of the Ohio Legislative Service Commission (LSC). The Register of Ohio is on the Internet and its development and administration is for agencies statewide (see ORC 103.051) to file administrative rules electronically. The Register makes available to the public, in electronic format, notice of and documents related to, proposed and emergency rule making conducted under the Ohio Administrative Procedure Act (Ohio ORC Chapter 119).

A notice and summary of the text is published in advance of adoption, and there are special procedures for emergency rules. All requirements for rule publication are found in ORC Chapter 119, specifically Section 119.03 of the ORC. A notice of intent to adopt, amend, or rescind rules is published in the Register of Ohio. The rules must be made available to the public upon request and made the subject of a public hearing. The Department must provide notice and opportunity to receive public comments concerning the proposed rules, as provided in Section 119.03 of the ORC. Emergency rule-making procedures are also found in Section 119.03 of the ORC.

A complete copy of "The Rule-Making Process," ODA, September 15, 1999, is included in Volume 1 of this application for program revision. It describes the internal procedures to be followed in publication of a rule.

The Director, Deputy Director, or, as appropriate, Assistant Director, initiates the rulemaking process for an ODA division, which becomes the originating division. The Office of Legal Counsel serves as technical expert on all rules and provides legal review for all proposed rules.

In accordance with Sections 119.03, 119.037, 121.24, and 127.18 of the ORC, a public notice, followed by submission of the fiscal and economic impact of the proposed rule (rule summary and fiscal analysis) is required. Copies of the public notice, rule summary and fiscal analysis, and proposed rule are forwarded to the Register of Ohio for publication. Copies of the public notice, rule summary and fiscal analysis, and proposed rule are also sent to the Ohio Secretary of State and the Director of the Ohio Legislative Service Commission. On the same date, these same documents and any information packets containing these documents are also made available to the public.

The Office of Legal Counsel and originating division conduct a public hearing and receive public comments. The rule, comments and the originating division's response to comments are forwarded to a legislative oversight committee, the Joint Committee on Agency Rule Review (JCARR). If amendments or revisions are necessary, these are also forwarded. The Office of Legal Counsel and originating division issue a response to comments and a concise statement of the principal reasons for and against adoption of any amendments or revisions suggested by the comments.

Finally, the originating division appears before the JCARR if legislative hearings are held. Following the close of the comment period and the conclusion of public and legislative hearings, the originating division decides whether to finalize the proposed rule. The Office of Legal Counsel, once advised of the originating division's decision, proceeds with the appropriate administrative action, e.g., an order of rule adoption for the Director's signature. Rules cannot take effect until at least 10 days following final adoption by the Director.

If JCARR proposes to invalidate a proposed rule in whole or in part, the originating division decides whether the proposed rule:

1. Should be withdrawn,
2. Should have portions unacceptable to JCARR severed,
3. Should be repropoed with substantive changes, but only after the term of the General Assembly that invalidated the proposed rules has expired, unless the General Assembly will, by concurrent resolution of both House and Senate, authorize ODA to continue rule-making proceedings.

Notice of amendment or rescission of rules that are substantive changes to the proposed rules is published in the Register of Ohio and mailed to all interested parties. A public hearing is held regarding these changes. This public hearing is in addition to the public hearing already held on the proposed rules.

An emergency rule may be adopted using the procedures described in ORC 119.03(F). An emergency rule is adopted and becomes effective when signed by the Governor. ODA may then adopt immediately the emergency rule and it becomes effective on the tenth day the rule in final form is filed with the Legislative Service Commission, JCARR, and the Secretary of State, or later if so designated by the Department. The full text of the emergency rule is published in the Register of Ohio.

An emergency rule becomes invalid at the end of the ninetieth day it is in effect. Prior to that date ODA may adopt the emergency rule as a non-emergency rule by complying with the regular procedure prescribed for the adoption, amendment, and rescission of non-emergency rules. The Department shall not use emergency rule proceedings to readopt the emergency rule.

## **B. Procedures for Public Hearings and Information**

ORC 903.09 and OAC Chapter 901:10-6 provide for public notice of draft permits by sending notices to persons on a mailing list maintained by LEPP and by advertisement in the newspapers specified by rule. The notice states a public meeting<sup>9</sup> may be requested and that a public meeting will be conducted if there is significant public interest. The public comment period is required to be at least 30 days from the date of the notice and may be longer to accommodate the timeframe for a public meeting. The required information to be advertised is also provided in rule.

If a public meeting is scheduled by LEPP, a public notice is made by sending notice to persons on a mailing list maintained by LEPP and by advertisement in the newspapers in the area of the facility to be permitted. A 30-day public notice period is provided prior to the public meeting.

Public meetings are conducted by ODA and are held in the county where the proposed facility will be located or in a contiguous county. After the oral comments from the public meeting are transcribed and written comments are received, a response to comments or

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<sup>9</sup> ORC 903.09 and OAC Chapter 901:10-6 use the term "public meeting" instead of "public hearing," as used in EPA's NPDES rules.

"Responsiveness Summary," is prepared and becomes part of the public record on the permit application in question. Copies of the "Responsiveness Summary" are mailed to local officials, anyone who attended the public meeting, and anyone who presented oral comments or submitted written comments on the permit. The Responsiveness Summary and facility-specific fact sheets are also made available on the ODA website. The authority to hold a public hearing to receive public comments is found in OAC 901:10-6-04 and the requirements for notice of the public meeting are found in OAC 901:10-6-02. Examples of documents related to public participation are included in Volume 2 of this application for program revision.

### **C. Procedures for Conflict of Interest Questions**

ORC Chapter 102 prohibits any conflicts of interest involving a public servant. In particular ORC 102.03 provides that "no public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties."

ORC 903.081 was enacted to elaborate upon the ethical requirements for public officers in Ohio set forth in ORC Chapter 102:

For purposes of section 903.08 of the Revised Code, no person shall issue a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. In addition, no person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the director of agriculture to vacate or modify a NPDES permit shall require or order the director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.

### **D. Procedures for the Continuing Planning Process**

The Ohio EPA Division of Surface Water maintains a continuing planning process document to describe the processes utilized by Ohio EPA in the implementation of the water quality management program. Ohio EPA is responsible for periodically reviewing and revising the Continuing Planning Process (CPP) to ensure that it is up-to-date and consistent with the federal regulations which outline the required content of the CPP. The preparation of the CPP is mandated under Section 303(e)(3) of the Water Quality Act of 1987. The requirements for the continuing planning process are described and outlined in 40 CFR Part 130.5.

In Ohio, Ohio EPA's Division of Surface Water has all of the following:

- ◆ Process for updating and maintaining Water Quality Management Plans and schedules for revisions.
- ◆ Process for incorporating elements of any applicable areawide waste treatment plans under Section 208, and applicable basin plans under Section 209.
- ◆ Process for establishing and implementing water quality standards and schedules of compliance.
- ◆ Process for developing TMDLs and individual water quality-based effluent limitations under Section 303(d) of the CWA and 40 CFR 130.7.
- ◆ Process for developing effluent limitations and schedules of compliance. This must be as stringent as Sections 301(b)(1) and (2), 306, 307, and any applicable water quality standards under 303 of the CWA.
- ◆ Process for determining the priority of permit issuance.
- ◆ Process for assuring adequate controls on disposition of residual waste from water treatment processing.
- ◆ Process for assuring adequate authority for intergovernmental cooperation in implementation of the Water Quality Management Plan.

NPDES permits issued by ODA are required to conform to the elements of the CPP by statute, by rule, and through procedures for coordination and communication described in the Memorandum of Agreement (MOA) between the EPA and the State of Ohio, as well as in a Memorandum of Agreement between ODA and Ohio EPA, August 12, 2002. Copies of these MOAs are included in Volume 1 of this application for program revision.

#### 1. Statutory Requirements

By statute, ODA is required to adhere to the Act in the Department's portion of the administration of the NPDES program in Ohio. More specifically, Section 903.08 of the ORC sets forth these requirements. Of special note is ODA's charge in division (G) of Section 903.08 of the ORC to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under Section 6111.041 of the ORC, the most current antidegradation policy adopted under Section 6111.12 of the ORC, and other requirements of the Act. That is, water quality standards in Ohio are the legal responsibility of Ohio EPA as part of that Agency's duty to carry out the CPP in Ohio. Water quality standards in Ohio are duly promulgated in accordance with Section 6111.041 of the ORC:

In furtherance of sections 6111.01 to 6111.08 of the Revised Code, the director of environmental protection shall adopt standards of water quality to be applicable to the waters of the state. Such standards shall be adopted pursuant to a schedule established, and from time to time amended, by the director, to apply to the various waters of the state, in accordance with Chapter 119. of the Revised Code. Such standards shall be adopted in accordance with section 303 of the "Federal Water Pollution Control Act" and shall be designed to improve and maintain the quality of such waters for the purpose of protecting the public health and welfare, and to enable the present and planned use of such waters for public water supplies,

industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes. Such standards may be amended from time to time as determined by the director. Prior to establishing, amending, or repealing standards of water quality the director shall, after due notice, conduct public hearings thereon. Notice of hearings shall specify the waters to which the standards relate, and the time, date, and place of hearing.

Standards of quality for the waters of the state, or any amendment or repeal thereof, become effective upon adoption by the director. The director shall implement the standards so established in the issuance, revocation, modification, or denial of permits.

In addition, ORC 903.08 provides, in pertinent part, as follows:

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

(G) The director of agriculture shall establish terms and conditions of NPDES permits in accordance with rules. Terms and conditions shall be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the most current antidegradation policy adopted under section 6111.12 of the Revised Code, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the director, to the extent

consistent with that act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit.

\* \* \* \* \*

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

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

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

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

## 2. Rules In Support of the CPP and Water Quality Standards

OAC 901:10-1-03 sets forth the Director's criteria for decision-making with respect to issuing, denying, modifying, suspending, or revoking NPDES permits. In particular, OAC 901:10-1-03(C) provides that the Director shall deny, modify, suspend, or revoke an NPDES permit if the Director determines:

- (1) Discharge from the facility will prevent or interfere with attainment or maintenance of applicable water quality standards adopted under ORC 6111.041 and the most current antidegradation policy adopted under ORC 6111.12; or
- (2) Discharge from the facility will not achieve compliance with national effluent standards; or
- (3) The administrator of the United States Environmental Protection Agency objects in writing to the issuance of the NPDES permit in accordance with section 402(d) of the Act; or
- (4) The proposed discharge or source will conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Act; or
- (5) Forms, notices, or reports required pursuant to the terms and conditions of the NPDES permit are false or inaccurate;
- (6) The discharge is of any radiological, chemical, or biological warfare agent or high-level radioactive waste or medical waste; or
- (7) The United States Army Corps of Engineers for the district in which the discharge is located objects in writing to the issuance of the NPDES permit as substantially impairing navigation or anchorage; or
- (8) Discharge from the facility will not achieve national standards of performance for new sources; or
- (9) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (10) The permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

- (11) The applicant or owner or operator is required to obtain a state or other appropriate certification under section 401 of the Act and 40 CFR section 124.53 and that certification has not been obtained or waived;
- (12) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or
- (13) Discharge from the facility will not achieve and maintain compliance with other requirements of the Act and the regulations promulgated thereunder.

In order to make these decisions, however, the Director must provide notice and opportunity to comment to affected parties. Rules for Public Participation, OAC Chapter 901:10-6. In addition to the general public and local officials, notice must be provided to the EPA Regional Administrator, appropriate state and governmental agencies potentially affected by the draft NPDES permit, any agency responsible for an areawide waste treatment management plan or "208" plan, and the affected district office of the Army Corps of Engineers.

### 3. Agreements to Implement the CPP

ODA has entered into three important inter-governmental agreements for the Department's administration of the NPDES program for individual permits, general permits, and construction stormwater and industrial stormwater permits for concentrated animal feeding operations as well as the administration of the NPDES program for both construction stormwater and industrial stormwater permits for animal feeding operations. Copies of these Memoranda of Agreement are included in Volume 1 of this proposed program revision.

First, in the Memorandum of Agreement required by 40 CFR 123.24, the State of Ohio, on behalf of both Ohio EPA and ODA, makes the following commitments to EPA in order to implement the CPP.

- a. Permit Development. Draft permits will be prepared in accordance with applicable federal and state laws and regulations and the MOA. The effluent limitations will be developed in accordance with state and federal standards and limitations including effluent guidelines, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and Ohio's Water Quality Management Plan under sections 301, 302, 303, 304, 306, 307, 308, and 402 of the CWA. ODA will coordinate with Ohio EPA to develop water quality based permits, any toxic effluent limited permits (or prohibitions) and any permits limited by Ohio's Water Quality Management Plan by first providing Ohio EPA with lists of pending and approved permit applications.
- b. Areawide 208 Plans. ODA will review any areawide 208 planning document and a copy of the Ohio EPA Continuing Planning Process as updated on the Ohio EPA website. ODA will consult with Ohio EPA on a permit-by-permit basis in order to maintain compliance with the Section 208 requirements. Ohio EPA will

decide if any proposed discharge would be in conflict with Ohio's areawide 208 plans and notify ODA of that decision.

- c. Antidegradation and Related Wasteload Allocations. At least 14 days before ODA publishes public notice of receipt of an NPDES permit for which an antidegradation review is applicable, ODA will transmit copies to Ohio EPA of the NPDES Part D permit antidegradation application and ODA's preliminary determination as to whether the permit meets an exclusion or waiver under the antidegradation policy in OAC 3745-1-05(D) and whether the wasteload allocation will suffice to meet water quality based effluent limits for NPDES permits as provided in ORC 903.09(C).
- d. Adjudication Cases and Enforcement Proceedings. Ohio EPA will provide technical assistance as needed and on a case-to case basis in any legal matters concerning toxic effluent limitations or water quality based effluent limits (including a wasteload analysis in support of antidegradation review) for NPDES permits on appeal before the Environmental Review Appeals Commission, or NPDES permits subject to enforcement proceedings by ODA.
- e. General NPDES Permits. As required by OAC 901:10-4-01 general NPDES permits to operate will not be issued for new discharges associated with CAFOs requiring an NPDES permit if the receiving waters are designated as outstanding national resource waters, outstanding high quality waters, superior high quality waters, or state resource waters, or to receiving waters that discharge to a waterbody with one of these designations within two stream miles of the discharge.
- f. Total Maximum Daily Loads and Watershed Plans. ODA and Ohio EPA will coordinate fieldwork for any TMDL work occurring where waterbodies are potentially impacted by animal feeding operations, including sampling and monitoring in those watersheds where CAFOs are located or to be located.

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

Ohio EPA and ODA will 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 Ohio EPA basin schedule of permit work.

The second agreement is between Ohio EPA and ODA and it is a more detailed version of actual implementation of the work described in the Memorandum of Agreement between EPA and the State of Ohio. In addition to coordinating work of the Ohio EPA CPP, this two-party agreement aids both departments in managing the transition of the NPDES

program for CAFOs from Ohio EPA to ODA. Like the third and final agreement described below, it complements the planning efforts of the CPP with coordination in implementation through inspections, complaint investigations, emergency response, and enforcement.

Finally, Ohio EPA, ODA, and the Ohio Department of Natural Resources, Division of Soil and Water Conservation (ODNR-DSWC) have agreed to coordinate with each other in the implementation and administration of this program. ODNR-DSWC is responsible for the rules enacted pursuant to ORC 1511.05 and establishing criteria and policies for agricultural pollution abatement, and cost share programs for assisting owners and operators with installing and operating best management practices in agriculture. By coordinating its efforts with Ohio EPA and ODA, ODNR-DSWC and the local Soil and Water Conservation Districts (SWCDs) can assist in achieving Ohio water quality standards through inspections, complaint investigations, emergency response, cost sharing, and enforcement.

The State of Ohio has local 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 ORC 1511.05 and 1515.08. 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 complaints; develop operation and management plans; develop plans for the control and prevention of soil erosion; and assist and educate regarding composting.

Under ORC 903.082, if an AFO has caused agricultural pollution by failure to comply with standards under Section 1511.02 of the ORC the Chief of DSWC may issue to the Director of ODA a copy of an order issued by the Chief that specifies that the AFO has caused agricultural pollution, has failed to comply with applicable standards, and that the facility shall obtain permits from ODA.

#### **E. Procedures for Public Availability of Permit Information and Confidentiality of Information**

LEPP maintains a file system that is open to the public during normal work hours on regular workdays. The files are located at the Worthington Building, 8995 East Main Street, Reynoldsburg, Ohio on the first floor. The building, and in particular the file viewing area, is wheelchair accessible.

All written information pertaining to a facility is required to be filed in the main office file system. Documents arrive in the Office via mail, personal delivery, electronic mail or facsimile and are routed to the appropriate staff for disposition. For example, annual reports are routed to the LEPP Inspectors. After review and processing, the Annual Reports are filed in the main file. Applications are routed to Administration where fees are paid. Applications are logged in by time-stamp, copied, assigned to Engineering, and a

main office file is made for the facility if one does not already exist. The original application is filed in the main office file and the copies are sent to the reviewing engineer. An NPDES number is assigned if one is required based on facility name, county, and permit type.

When documents are received, they are reviewed to determine in which main office file they belong. If a computer or main office file does not exist for the facility, Administration will create a file. This file will be created in hard copy and electronically in the Dayhuff data management system. Both types of records can be upgraded by Administration as the need arises. For example, if a main office file entry for the facility exists for a facility's Permit to Install and Permit to Operate, and subsequently an NPDES permit application is received, an NPDES number is assigned to the operation and the file would be upgraded to the NPDES number. If it is determined during the application review period that the facility can be covered under a general permit, the permit number will again be upgraded. All this information is available to the public on request. An individual who pulls main office files for internal use or for public review must sign the outcard sheets associated with the file in order to track use and location of the file.

The public is notified of the availability of documents through several methods. LEPP maintains a website that notifies the public of draft permits issued and final permits issued. Facility-specific fact sheets are available on the website. Links to applicable laws and regulations are maintained.

The public is also notified of the availability of documents through the public notices that are required by Section 903.09 of the ORC. When draft permits are issued by LEPP, a public notice is published in newspapers.

Requests for information under the Federal Freedom of Information Act or, in Ohio, ORC Chapter 149, "Documents, Reports, and Records," are sent to the Public Information Office. The office is within LEPP. The PIO retrieves the document(s) and determines the need for clarification of the request, i.e., if the material is very extensive, the request might be specified more narrowly. The PIO then contacts the party requesting the material, acknowledges the request, and determines the extent of the request and the cost of reproducing the material. The requestor is invited to come to ODA and view the material in person in lieu of copying it. If speed is necessary, and if the requesting party asks that the material be copied and sent to them, the copies are made, an invoice is faxed, payment can be made by overnight carrier, and the material is shipped by return overnight carrier. If the need is less urgent, other arrangements are made with the requesting party. Increasingly, LEPP uses electronic mail to receive and respond to information requests.

Individuals who wish to review information in the main office file system are escorted to the file review area. An up-to-date computer printout is available to help determine the correct name and main office file number of the facility. The computer may be used to search for a particular facility if the entry cannot be easily found on the printout. The main office file is pulled by the employee and given to the individual for review. Copies of

documents in the main office file are available at a reasonable rate. Copy fees can be waived under certain circumstances.

Confidentiality provisions may be found at Sections 149.43 and 903.10(I) of the ORC, and OAC 901:10-1-05. These statutes and rule state that records kept by the Department of Agriculture in the performance of its functions shall be available to the public unless nondisclosure is requested in writing at the time of submission, and ODA determines that the information may be kept confidential.

ODA legal counsel may classify information as confidential if the Director makes a written determination that confidentiality is necessary to protect trade secrets. Ohio's public records law, specifically Section 149.43 of the ORC, also provides for nondisclosure of trial preparation records, confidential law enforcement investigatory records, or other records whose release is prohibited by State or federal law.

Division (I) of Section 903.10 of the ORC requires ODA to adopt regulations for the protection of trade secrets from public disclosure. ODA has adopted OAC 901:10-1-05 to address the protection of trade secrets. Under OAC 901:10-1-05, confidential information may be disclosed without a permittee's consent to authorized federal or state officers or employees when necessary for an enforcement action or when otherwise required by the Act. OAC 901:10-1-05(C) also provides that the following categories of information are deemed public records for which claims of trade secrecy will be denied:

- (1) The name and address of any permit applicant or permittee;
- (2) Permit forms, permit applications, permits and sampling and effluent data;
- (3) Information required by NPDES application forms provided by ODA including information submitted on the forms themselves and any attachments used to supply information required by the forms; and
- (4) Any public comments, testimony or other documentation from the public concerning a permit application.

OAC 901:10-1-05 provides that information submitted to the LEPP by a facility pursuant to the statutes or regulations may be claimed as confidential. Any claim of confidentiality must be asserted in writing in the manner described in the rule at the time of submission of the information. If no claim is asserted at the time the information is submitted, the information will be made available to the public without further notice.

A facility must submit a written request for nondisclosure specifying the basis for requesting nondisclosure. All materials submitted with this written request and marked with the words "trade secret," shall accorded confidentiality pending a determination on whether to grant the request. This determination shall be made within 45 days from the date of the request. If the Director determines that the material should not be afforded confidentiality, he will issue a written denial of the request for nondisclosure to the requestor. No written denial of the request is necessary when the material submitted as confidential falls within any of the four categories of information listed in OAC 901:10-1-05(C) for which claims of trade secrecy are denied by rule.

If the request for confidentiality is granted, the material remains confidential and is not made available to the public. Such material is maintained separately. The information determined to be confidential is segregated from the public records maintained on the same facility. It will be placed in a locked file labeled "confidential", with access appropriately controlled. ODA removes deemed confidential information from its files and returns it to the submitter when such information is no longer necessary or required for purposes of the Act or for the State regulatory program.

## **F. Water Quality Management Planning**

In the State of Ohio as set forth in Ohio law in ORC Chapter 6111, all of the following are the legal responsibility of Ohio EPA. In order to describe the complete NPDES program for the State of Ohio, these are summarized here.

- ◆ The Water Quality Management Plan
- ◆ Continuing Planning Process
- ◆ Water Quality Standards
- ◆ Basin Boundaries and Inventories
- ◆ Integrated Water Quality Monitoring and Assessment
- ◆ The Water Quality Data Summary:
- ◆ Nonpoint Source Assessment
- ◆ Nonpoint Source Management Plan
- ◆ Wasteload Allocations

The general purpose of the water quality management and planning process is to ensure that the waters of the State meet established water quality standards, and thereby maintain all designated uses for each waterbody. The goals of the planning process are to ensure that necessary programs are established to achieve water quality goals and standards and to provide procedures to implement those programs. The planning process also provides a method for setting priorities in the state's water pollution control program based upon water quality concerns and needs for water pollution control.

## **G. The Water Quality Management Plan**

The Water Quality Management Plan (WQMP or Plan) identifies water quality problems, details the State's objectives and strategies for their resolution, and outlines the institutional framework necessary for the effective implementation of the proposed strategies. To meet these objectives, the WQMP must contain the detail required for providing the necessary analyses and information for management decisions. The Plan is, therefore, a management tool containing a wide range of information that is integrated in an assessment of the sources and impacts of water pollution, as well as the possible management alternatives available for resolution of the problems.

The State's WQMP has been developed in a continuing planning process requiring the compilation of information and preparation of documents which are instrumental to the

effective execution of the State's water pollution control programs. The documents describe legislative authorizations and regulations, program procedures and descriptions, water quality standards, hydrologic boundary maps, water quality data, discharger inventories, problem assessments, treatment needs, assessments, and total maximum daily load and wasteload allocation reports.

Each individual component of the Plan presents information and/or data integral to the overall management and planning process. Those components are described below.

#### *Continuing Planning Process*

As discussed above, the CPP describes the processes and procedures employed by Ohio EPA, Division of Surface Water, in carrying out the requirements of the Act. Its purpose is to help identify needed improvements in organizational structure and procedure and to serve as guidance for more effective management of the State's water quality management programs.

#### *Water Quality Standards*

These standards are set forth in OAC Chapter 3745-1 and include descriptions of designated uses for which waters of the State are to be protected and numerical and narrative criteria, such as chemical concentration limits or biological criteria, that are designed to protect and measure attainment of the designated uses.

#### *Basin Boundaries and Inventories*

Water quality standards and the issuance of NPDES permits are implemented through water basin strategies and schedules that include waterbodies within each basin.

#### *Integrated Water Quality Monitoring and Assessment*

Ohio's Integrated Water Quality Monitoring and Assessment Report, which is submitted to EPA every two years, presents both a water quality inventory and assessments of impaired waters derived from the water quality inventory, in order to fulfill the reporting requirements of Sections 305(b), 303(d) and 314 of the Act. This report offers "raw" data as well as summaries and standard statistics. It presents water quality impacts and designated use impairment evaluations for each watershed or large river unit and represents a continuing review process for determining the current water quality conditions in the State. Ohio EPA utilizes this water quality information to determine magnitude, extent, and sources of water quality impairment as evidenced in the data gathered from the ambient water quality monitoring network and special studies. Water quality assessment information required by Sections 304(l) and 319 of the Act are also included in this inventory.

### *The Water Quality Data Summary*

The Water Quality Data Summary contains various types of water quality data obtained from the State's ambient water quality monitoring network. It provides data and summary statistics for temperature, pH, dissolved oxygen, chlorides, sulfates, phosphorus, turbidity, color, solids (suspended and dissolved), metals, and other parameters in the waters of the State.

### *Nonpoint Source Assessment*

This document presents an evaluation of the impacts of nonpoint sources of pollution upon the waters of the State, their magnitude, and origins. This assessment integrates land use factors and water quality factors into a nonpoint source impact statement for each waterbody. The Best Management Practices (BMPs) recommended for abatement of the various nonpoint problems are listed.

### *Nonpoint Source Management Plan*

This document describes the procedures to be used to implement the nonpoint source program. The primary goal of the program is to systematically select and treat nonpoint sources of pollution that impair water quality in the State of Ohio. Topics covered in this document are problem identification, project review, interagency coordination, identification of funding sources, evaluation of BMPs and timetables for implementation. The costs involved in the implementation of the BMPs are determined and included in the assessment.

### *Wasteload Allocations*

The procedures employed for the development of wasteload allocations involve assessment and interpretation of data, compilation of information, evaluation and review of results, and documentation. Information bases utilized in preparing NPDES permits are obtained from a variety of state agencies, federal agencies, and private sources.

## **H. Water Quality Management Plan Certification Procedures**

Like ODA, Ohio EPA announces draft documents and proposed rules as available for public review and comment in newspapers located throughout the State and on the Ohio EPA's website. The public comment period extends for 30-90 days, depending on the nature of the document. The documents will be available for public review at the District Offices of the Ohio EPA. If sufficient public interest is shown to warrant such action, a public hearing will be considered to receive further comment. If a public hearing is deemed appropriate, a notice will be published 45 days in advance.

Comments received by Ohio EPA concerning draft documents or draft rules are responded to in a Responsiveness Summary. The response may take one of three forms: (1) incorporation of the comment into a revision to the document, (2) rejection of the

comment, or (3) simple acknowledgment of the comment. A justification will be supplied for each comment response action. The public comments and the agency responses will be kept on record at Ohio EPA and will be supplied to EPA upon request. The Responsiveness Summary will be submitted with the final document to EPA.

Upon receipt and review of the certification letter, the final document(s), and the Responsiveness Summaries, EPA will take official action on the updates. For updates not fully approved, the EPA Regional Administrator will inform Ohio EPA, in writing, of those actions which must be taken to obtain full approval. Ohio EPA will then take the necessary steps, making the revisions and additions specified by EPA, to obtain full approval by the EPA Regional Administrator.

#### **IV. PROCEDURES FOR REQUIRING PERMIT APPLICATIONS AND RENEWAL, FOR NONCOMPLIANCE PROGRAM REPORTING, FOR PROGRAM REVIEW, AND ADMINISTRATIVE AND JUDICIAL REVIEW**

- A. Procedures for Requiring Applications and Renewal Notification
- B. Permit Issuance Procedures
- C. Procedures for Public Notice and Comment
- D. Procedures for Public Hearings
- E. Noncompliance and Program Reporting
- F. Procedures for Updating the State Program
- G. Plans for Periodic Self-Analysis of State Legal Authorities and Program Effectiveness
- H. Administrative and Judicial Review of Permitting Decisions

##### **A. Procedures for Requiring Applications and Renewal Notification**

Applications for new, revised or reissued permits must be filed in accordance with the requirements set forth in OAC 901:10-1-02. This rule outlines the content, format and timing of information submitted to LEPP as an application for a NPDES permit and identifies who may act as an approved signatory on permit applications and related documents.

Notification letters are sent to unpermitted facilities referred to Legal based on field inspections conducted. Facilities that fail to respond to these notification letters are notified by a second notification letter 30-60 days after the first notification letter. The unpermitted facilities that have not responded to the second notification letter within 45 days are referred for enforcement to Legal.

Renewal notifications are sent to the permittee 210 days prior to the expiration date of the permit. Facilities that fail to submit a complete renewal application 180 days prior to the expiration date, unless permission for a later date has been granted by the Director, are referred to Legal for appropriate action.

LEPP will use the federal NPDES Permit Application forms for the NPDES program along with Part D of the ODA Permit Application Form, which is designed to assist in compliance with Ohio water quality standards, notably antidegradation requirements. These Permit Application forms may be modified when necessary, subject to EPA approval. Copies of ODA's permit application forms, including Part D, are included in Volume 2 of this application for program revision.

The Permit Issuance Procedures Table below shows the overall permit review procedures for proposed facilities and existing facilities. Each step in the table is identified by a number and also designates which organizational unit within LEPP will be responsible for each procedural step. A checklist for permit or permit modification issuance is also included in Volume 2 of this application for program revision.

**B. Permit Issuance Procedures**

steps	Description	Unit or Individual Responsible
1	A permit application is received and logged into a State database, the Dayhuff data management system (Dayhuff). A computer file and main office file for the facility is created if one does not exist. Fees are paid. An engineer is assigned and a working file is created.	Administration, Engineering
2	The application is checked for administrative completeness and accuracy and all errors and omissions are noted. Applications for MCAFFs are also checked for all applicable local certifications.	Engineering
3	If the application is incomplete, a summary of the application deficiencies is listed in a letter and electronic communication to the applicant requesting additional information. The application review is suspended pending receipt of additional information.	Engineering
4	After an application has been checked for administrative completeness, a compliance history is requested for review by Legal.	Legal
5	A copy of the original application is retained on file, in the event of an appeal. Completed applications are forwarded as follows: (a) To Ohio EPA, Division of Surface Water; (b) To LEPP Public Information Office (PIO).	Engineering
6	The engineer may visit the site to become aware of any site-specific production and/or treatment that could influence permit limitations or conditions. The engineer corresponds with the applicant regarding the application and whether the application meets the requirements for permit issuance. Based on the comments by the engineer and responses received from the applicant, the permit application may be revised or withdrawn, and/or permit limitations and conditions are developed.	Engineering

7	The engineer may decide after consultation with Ohio EPA in 5(a) that an antidegradation review is required. If an antidegradation review is required, a public notice of the receipt of the permit application is published and other notices are sent to other State, federal, and local government agencies, in accordance with OAC Chapter 901:10-6.	Engineering, PIO
8	If the application is complete in accordance with OAC 901:10-1-02(A)(9), then a fact sheet or statement of basis is prepared for the draft permit in accordance with OAC 901:10-6-05 and information meetings/public meetings are held.	Engineering, PIO
9	Effluent limitations are calculated for the draft permit.	Engineering
10	Draft permit, with compliance history, is written and routed to Engineering and Legal for review and comments.	Engineering, Legal
11	Draft permit routed to Executive Director of LEPP for review and comments.	PIO, Executive Director
12	Draft permit routed to Director for review and comments.	Executive Director, Director
13	Public notice and fact sheet of draft permit are published; if ODA is already aware of significant public interest in the draft permit or if requested by the applicant or decided at the Director's discretion, a public meeting (public hearing) is scheduled as part of the public notice.	PIO
14	Those draft permits for which EPA has not waived review are mailed to EPA for review. Draft permits are sent to Ohio EPA Division of Surface Water and the U.S. Army Corps of Engineers. Draft permits are also sent to other government agencies, such as ODNR, the local areawide planning agency, or the U.S. Fish and Wildlife Service, in accordance with the provisions of OAC Chapter 901:10-6. For each application for an individual discharge permit for a new facility location (including expansions at existing sites) the draft permit is sent to the State Historic Preservation Officer for review and comment. The draft permit is sent to the applicant or owner or operator, the board of county commissioners, the board of township trustees, the local soil and water conservation district, and local board of health.	PIO
15	A public meeting is held if previously scheduled. If significant public interest is found to exist after issuance of the public notice of the draft permit and a public meeting was not scheduled in that public notice, a second public notice scheduling the public meeting is issued before the public meeting is held.	PIO
16	The draft permit is ready for issuance and becomes the final permit (a) in the absence of comment, concern, or objection from any applicable federal or State agency and (b) upon resolution of any comment, concern, or objection which would otherwise prohibit issuance under the Clean Water Act or Chapter 903 of	PIO

	the ORC, including regulations promulgated under their authority. If ODA cannot resolve such comments, concerns, or objections that would prevent issuance of the permit, ODA may withdraw the draft permit or, if ODA continues to disagree with any comment, concern, or objection from the federal or State agency involved, ODA notifies EPA in writing and transmits a copy of the appropriate permit file to EPA, at which time all permit authority transfers to EPA.	
17	ODA finalizes the draft permit and issues it as the final permit after the close of the 30-day public notice period if (a) no comments are received and no hearing is held or (b) no significant comments are received.	Administration, PIO
18	Final permit routed to Administration to be numbered, stamped, copied and mailed to applicant, local soil and water conservation district, local health department, boards of township trustees and county commissioners. Public notice of final permit is prepared.	Administration, PIO
19	Public notice of final permit	PIO
20	If significant comments are received, a summary of significant comments (including those presented during any public hearing) and a response to comments ("Responsiveness Summary") is prepared.	PIO
21	The summary of significant public comments, the response, and the proposed final permit are sent to EPA for those permits for which EPA has not waived review in accordance the MOA and for those permits for which EPA requests or has requested review.	PIO
22	If significant changes to the draft permit are made in response to comments, those changes are incorporated into a proposed final permit that is prepared and sent to EPA for review (along with the summary of significant comments and the Responsiveness Summary) and to the applicant.	Engineering, PIO
23	When a draft permit has been prepared and sent to EPA and the applicant, the draft permit may be issued as the final permit (a) in the absence of objection or (b) after resolution of any EPA objection.	PIO
24	EPA will notify the State and the applicant of any formal objection to the draft permit. If EPA objects to the draft permit and ODA agrees with the objection, ODA may issue an amended draft permit or withdraw the draft permit. If the objection cannot be resolved, the State transmits a copy of the appropriate permit file to EPA, at which time all permit authority transfers to EPA.	Engineering, PIO
25	Any issuance of a final permit is entered into Dayhuff.	Engineering
26	After the issuance of a State PTI with an NPDES construction storm water permit, an ODA engineer conducts site inspections, attends a pre-construction meeting, and enters the date of the	Engineering

	start of construction into Dayhuff. At the conclusion of construction, the ODA engineer performs a final PTI site review, issues a final approval letter (to approve stocking of the facility and commencement of operations in accordance with the PTO with NPDES permit), and enters the date of issuance of the final approval letter into Dayhuff.	
27	After the issuance of a State PTO with an NPDES operating and industrial storm water permit, an ODA engineer and ODA inspector conduct a site visit to review PTO and NPDES permit terms and conditions and the required Operating Records with permittee.	Engineering, Inspectors

A complete permit application may require the submittal of quantitative and qualitative data for pollutants contained in a facility's effluent. This will apply for those CAFOs that may plan for a discharge that is not covered by the effluent limitations for zero discharge as required in OAC Chapter 901:10-3. The effluent must be sampled and analyzed for pollutants listed in the application form. Each applicant may be required to submit, for every outfall, data on the following pollutants:

- ◆ oil and grease
- ◆ total suspended solids (TSS)
- ◆ pH
- ◆ biochemical oxygen demand (BOD)
- ◆ chemical oxygen demand (COD)
- ◆ total organic carbon (TOC)
- ◆ ammonia (as N)
- ◆ temperature (both winter and summer)
- ◆ fecal coliform (if believed present or if sanitary waste is or will be discharged)
- ◆ total residual chlorine (TRC) (if chlorine is used)

After the application is submitted to LEPP and is deemed administratively complete, it is subjected to a technical review by Engineering. During the review process, the assigned engineer may request verification of information submitted in the application from the applicant. If the assigned engineer has questions or concerns regarding the laboratory analyses of the facility's effluent, additional scientific or technical evaluations at the outfall may be necessary. Additional details on hydrological information such as drainage routes, flow amounts, flow measurement devices, etc., may also be necessary. In addition, a determination of where the State waters begin may be needed so that sampling can occur at the appropriate location along the outfall. Some technical problems could occur which would require verifying, for example, the presence of a pollutant in the effluent that is not listed in the permit application. The applicant must conduct any requested tests and submit any additional information on the composition of the outfall requested by the assigned engineer. Once all additional information is submitted for evaluation, the assigned engineer can complete the technical review and proceed with writing a permit for the facility.

Discharge permit limits are determined by compliance with the Ohio Water Quality Standards so as to assure compliance with such standards in a receiving waterbody. Technology-based limits are imposed per the promulgated State and/or federal guidelines, or in the absence of promulgated guidelines, the limits are based on best professional judgment.

Various mechanisms are used for developing monitoring requirements in discharge permits such as field inspections and reports, compliance history, public comments and complaints, a review of Annual Reports, and Compliance Orders. Best management practices to control or abate the discharge of pollutants shall be included in permits when: (1) authorized under section 304(e) of the Act for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) numeric effluent limitations are infeasible, or (3) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Act.

Fact sheets are prepared. The purpose of the fact sheet is to provide a brief and concise compilation of information pertaining to the facility and its operation and to establish the basis for any permit effluent limitations and other permit conditions. All fact sheets contain the information required in OAC 901:10-6-05.

### **C. Procedures for Public Notice and Comment**

ORC 903.08 and OAC Chapter 901:10-6 provide for public notice of the public comment period by advertisement in local newspapers as specified by rule and to persons on a mailing list maintained by LEPP. The notice states anyone may request a hearing. The public comment period extends for at least 30 days from the date of publication of the public notice.

If a hearing is scheduled by ODA, a public notice is made in accordance with OAC 901:10-6-02. The public comment period then extends at least through the date of any public hearing. The required information to be noticed is provided in OAC 901:10-6-02.

### **D. Procedures for Public Hearings**

Public hearings are conducted by ODA for the purpose of receiving oral and written comments. ODA holds public hearings if there is significant public interest, in accordance with OAC 901:10-6-04. ODA also may elect to hold a public hearing in other circumstances, at the Director's discretion (see OAC 901:10-6-01(D)).

At least thirty days prior to the hearing, notice of the hearing is made in accordance with the procedures contained in OAC 901:10-6-04. The notice states the time, place, and nature of the hearing.

A response to comments (Responsiveness Summary) is prepared and becomes part of the public record on the permit application in question. Hearings are held in the area

where the proposed facility will be located, and all proceedings at such hearings are recorded.

### **E. Noncompliance and Program Reporting**

ODA will submit all reports as required under 40 CFR 123.45. More specifically, ODA will comply with EPA's Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, and CAFOs, and Storm Water Point Sources in the Wet Weather SNC Policy. ODA's Dayhuff data management system will be developed to correlate to periodic reporting required by the Wet Weather SNC Policy.

### **F. Procedures for Updating the State Program**

ODA will revise any State regulation affected by a change in federal regulation necessary for the program in accordance with the procedures set forth in the MOA, August 12, 2002. Authority to propose any necessary changes to rule or regulation is found in ORC Chapters 903 and 119.

The MOA provides specific mechanisms for ODA to receive timely information which will alert it to the need for a change in the State program to meet a change in the federal program.

EPA's notice to ODA of changes in the federal program, and an independent review by ODA staff of the Federal Register and other publications in which changes in the federal program are published, should ensure that federal program changes are incorporated as soon as possible in the State program.

Under current State procedures, it takes approximately six months to promulgate a new rule or regulation under ORC 119.03, although emergency rule-making procedures do exist. A rule promulgated by regular procedures cannot take effect until at least 10 days following final adoption by the Director.

Changes in the State program which do not require regulatory or statutory changes can be addressed, perhaps after a meeting scheduled under the MOA, in less than six months, and probably within sixty to ninety days of the notice to ODA.

### **G. Plans for Periodic Self-Analysis of State Legal Authorities and Program Effectiveness**

The state will assign an individual to review all State regulations, which form part of the State program in a procedure similar to the triennial water quality standards review. The receipt of federal statutory and regulatory changes forwarded by EPA in accordance with the MOA will facilitate the early discovery of State legal authorities needing changes.

Program effectiveness will be assessed in accordance with the continuous improvement goal of total quality management, which has been implemented at ODA, and included in strategic planning and continuing planning process agendas.

Authority to implement the review procedures and to propose any necessary statutory or regulatory changes is also provided by ORC 119.032 and 121.24(D).

ODA's primary responsibility for the NPDES program includes the commitment to develop and maintain, to the maximum extent possible, the legal authority (including State regulations) and the resources required to carry out all aspects of the NPDES program to administer NPDES individual permits, general permits, and construction and industrial stormwater permits for concentrated animal feeding operations, and construction and industrial stormwater permits for animal feeding operations. In addition, ODA must maintain program effectiveness by conducting a comprehensive evaluation and assessment of compliance with schedules, effluent limitations and other conditions in permits.

Meetings between ODA and EPA are to be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the permit program. In addition, EPA will provide to the ODA technical and other assistance on permit matters as requested and on a continuing basis. This assistance could include review of proposed regulatory and statutory changes, whether drafted in reaction to State or federal legislative or judicial initiative. ODA will immediately notify the EPA Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the State.

Similarly, ODA will immediately notify the EPA Regional Administrator by telephone or otherwise of any significant administrative or judicial decision that could affect the legal authority of the program.

#### **H. Administrative and Judicial Review of Permitting Decisions**

ORC Chapter 903 NPDES permitting decisions by the Director are subject to the supervisory jurisdiction of an independent State administrative agency, the Environmental Review Appeals Commission (ERAC) and to further review by Ohio's Franklin County Court of Appeals. The Ohio Supreme Court may also review any decision by the Court of Appeals where the particular facts of the case fall within the scope of the Supreme Court's jurisdiction in Article IV, Section 2(B) of the Ohio Constitution.

A permit is effective upon signature by the Director and issuance by the Director. The Director's issuance of an NPDES permit is appealable to ERAC. ORC 903.09 provides as follows at division (D):

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

The jurisdiction of ERAC over legal challenges to permits issued by the Director is set forth in ORC 3745.04 which provides, in pertinent part, as follows:

As used in this section, "action" or "act" includes the adoption, modification, or repeal of a rule or standard, the issuance, modification, or revocation of any lawful order other than an emergency order, and the issuance, denial, modification, or revocation of a license, permit, lease, variance, or certificate, or the approval or disapproval of plans and specifications pursuant to law or rules adopted thereunder.

Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it.

\* \* \* \* \*

The appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.

The appeal shall be filed with the commission within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the commission.

The appeal shall be accompanied by a filing fee of seventy dollars, which the commission, in its discretion, may reduce if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.

Within seven days after receipt of the notice of appeal, the director or local board of health shall prepare and certify to the commission a record of the proceedings out of which the appeal arises, including all documents and correspondence, and a transcript of all testimony.

\* \* \* \* \*

The filing of an appeal does not automatically suspend or stay execution of the action appealed from. Upon application by the appellant, the commission may suspend or stay the execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include

the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

Conversely, if the Director proposes to modify, deny or revoke an NPDES permit, then the statute describes different procedures, allowing for an adjudication hearing before the ODA on the proposed adverse action prior to a final action being issued by the Director. The Director's final action issued after the adjudication hearing is then appealable to ERAC. As stated in ORC 903.09(F):

The director shall mail to the applicant or the permittee notice of the Director's proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit.

\* \* \* \* \*

The director shall not issue an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not apply. An order of the director that finalizes the proposed action or an order issuing a permit without a prior proposed action may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.<sup>10</sup>

More specifically, for NPDES permits, ORC 903.08 provides as follows at division (L):

The director may modify, suspend, or revoke a NPDES permit issued under this section for cause as established by rule. No NPDES permit issued under this section shall be modified, suspended, or revoked without a written order stating the findings that led to the modification, suspension, or revocation. In addition, the permittee has a right to an administrative hearing in accordance with Chapter 119. of the Revised Code, except that section 119.12 of the Revised Code does not

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<sup>10</sup> Just as the public is notified of the Director's action to issue a final effective permit, Section 903.09(F) of the ORC provides public notice of permit decisions that are adverse to the permittee or permit applicant:

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

apply. Further, an order of the director modifying, suspending, or revoking a NPDES permit may be appealed to the environmental review appeals commission under sections 3745.04 to 3745.06 of the Revised Code.

In accordance with Chapter 119 of the Revised Code, adjudication hearings are held before an administrative law judge or "hearing officer." ODA adjudication hearings are governed by the procedural rules and case law of Sections 119.09 and 119.10 of the ORC. The adjudication hearing process may take about 6 months from initial status conference to hearing, although the time period may be longer or shorter, depending on factors such as whether settlement negotiations lead to continuances or delays or the parties request less preparation time and the soonest available hearing date.

Thirty to 60 days after the hearing (following preparation of a transcript and consideration of post-hearing briefs), the hearing officer issues a written report and recommendation to the Director regarding the proposed action. Pursuant to ORC 119.10, the Director may approve, modify, or disapprove the recommendation when issuing a final action on the permit. The Director's decision is a "final decision or order of the Director" and reviewable at ERAC.

In addition to the appeal rights given to permittees, other affected persons are also afforded an opportunity to challenge the final order of the Director through an appeal to ERAC. OAC 901:10-5-03(F)(2) provides:

Any person adversely affected by an order of the director issuing, denying, modifying, suspending or revoking a permit that 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.

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.

ERAC conducts a *de novo* hearing, considering testimony and evidence from all parties, in appeals where no adjudication hearing was held before the Director. For cases where an adjudication hearing was conducted by the Director in accordance with Sections 119.09 and 119.10 of the ORC, ERAC conducts a hearing based on the record from the adjudication hearing. Section 3745.05 provides:

In hearing the appeal, if an adjudication hearing was conducted by the director of environmental protection<sup>11</sup> in accordance with sections 119.09 and 119.10 of the Revised Code, the environmental review appeals commission is confined to the

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<sup>11</sup> As previously noted in the quotation from ORC 3745.04 above, ORC 3745.04 states that the term "director of environmental protection" as used in ORC 3745.04 to 3745.06 includes the director of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.

record as certified to it by the director. The commission may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the director. If no adjudication hearing was conducted in accordance with sections 119.09 and 119.10 of the Revised Code, the commission shall conduct a hearing *de novo* on the appeal.

For the purpose of conducting a *de novo* hearing, or where the commission has granted a request for the admission of additional evidence, the commission may require the attendance of witnesses and the production of written or printed materials.

Any party to an ERAC appeal of an NPDES permit may appeal the ERAC's decision to the Franklin County Court of Appeals. As stated in ORC 3745.06:

Any party adversely affected by an order of the environmental review appeals commission may appeal to the court of appeals of Franklin county, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred.

Depending on the issues raised in the appeal, the Ohio Supreme Court may also review the Court of Appeals' decision. Pursuant to Article IV, Section 2(B) of the Ohio Constitution, the Ohio Supreme Court possesses jurisdiction to review decisions by the Court of Appeals, although in many instances this exercise of jurisdiction is discretionary. The Ohio Supreme Court is most likely to consider an appeal where the case is of public or great general interest or raises a substantial constitutional question under either the Ohio or United States Constitution. See Ohio Const. Art. IV, Sect. 2(B)(2)(a)(ii), 2(B)(2)(e).

## **V. COMPLIANCE AND ENFORCEMENT PROGRAM**

### **A. Inspections**

1. Annual Schedule of Inspections
2. Inspection Categories
3. Inspection Quarters
4. Inspection Procedures

### **B. Complaints**

1. Intake
2. Assignments
3. Report
4. Completion

### **C. Enforcement Referrals**

1. No Action
2. Violations
3. Formal Documentation

### **D. Enforcement Documents**

1. Warning Letter
  2. Notices of Deficiencies Resulting in Noncompliance
  3. Notices of Violation and Notices of Hearing
  4. Final Orders of the Director
  5. Attorney General Referral
  6. Permit Revocation
- E. Enforcement Tracking and Activities
1. Data Management
  2. Data Entry
  3. Other Activities
- F. Citizen Suits

This Part provides general information about enforcement procedures of the Livestock Environmental Permitting Program (LEPP) of the Ohio Department of Agriculture (ODA). The procedures described herein are guidelines only and exceptional cases may warrant actions other than those specified in this document. Enforcement documents issued by LEPP from August 19, 2002 through November 30, 2006 under the State permit enforcement program are included in Volume 3 of this NPDES program revision application.

#### **A. Inspections**

Inspectors, who may also be assisted by engineering staff, conduct compliance inspections. Inspections are conducted in accordance with the Routine Inspection Form, ODA LEPP, Revised November 2006 (included in Volume 2 of this application). Inspectors will conduct biannual (twice per year) inspections to monitor compliance with applicable federal and state requirements. When an owner or operator of a facility is found to be out of compliance with applicable State and federal requirements, inspectors will conduct follow-up inspections in addition to the biannual inspections.

There are four (4) LEPP Inspectors available to conduct permit inspections, spill and complaint inspections, and ambient monitoring and sampling activities throughout Ohio. During calendar year 2005, the following activities were conducted:

1. Citizen Complaints - 1 workday x 90 complaints = 90 workdays.
2. Spills - 1 workday x 30 reported spills = 30 workdays
3. Activities at Unpermitted Facilities - 60 workdays
4. Permitted Facility Inspections - 1.5 workdays x 336 facility inspections = 504 workdays
5. Monitoring and Sampling Activities (not otherwise included in any complaints, spills or inspections listed above) - 60 workdays

6. Area Surveillance, Training and Continuing Education, Equipment Maintenance, Etc. - 150 workdays

**Total** = 894 workdays for inspectors

ODA currently has four livestock inspectors who complete a majority of the work listed above. These four inspectors provide a total of 900 workdays a year. In addition, the engineering staff is available in the case an emergency arises and no inspector is available. Two full, routine inspections per year are completed on all permitted facilities. Additional personnel hours are dedicated to the investigation of all written citizen complaints (see OAC 901:10-5-01), all verbal citizen complaints, unregulated facilities, and spill response investigations reported to LEPP. ORC 903.12 authorizes ODA inspectors to enter public or private property to make investigations and inspections as necessary for the administration and enforcement of the program. In conducting such inspections, inspectors follow the biosecurity procedures set forth in Volume 2 of this application for program revision. Some examples of inspection letters have also been included in Volume 2 under the tab labeled "Inspection Letters."

1. Annual Schedule of Inspections

Within sixty (60) days of the end of the calendar year, the inspectors provide the Executive Director of LEPP (Executive Director) with a draft schedule of inspections for the following year organized per each quarter of the year. Each inspector must plan two full "top-to-bottom inspections" per permitted facility per year using the Routine Inspection Form, ODA LEPP, Revised November 2006, which is included in Volume 2 of this application. Biannual inspections require the completion of the entire inspection form.

2. Inspection Categories

Each year the Executive Director evaluates the total number of inspections performed during the prior year. This evaluation includes the number of complaints filed and the number of complaint inspections performed. Based on this evaluation of the work conducted in the prior year, the following types or categories of inspection should be planned in the subsequent year's draft schedule of inspections:

a. Complaint inspections<sup>12</sup>. Refer to Section B below.

b. Construction inspections. It is the responsibility of the LEPP engineering staff to inspect facilities during construction to ensure compliance with the terms of State Permits to Install. The livestock inspectors may also do these inspections, under the guidance of the engineers, or join the engineers on construction inspections. Engineers are responsible for final construction inspections and will issue written authorization to stock

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<sup>12</sup> O.R.C. Sections 903.12 and 903.14 use the term "investigation" whereas O.R.C. Sections 903.16 and 903.17 use the term "inspection." For convenience, the term "inspection" is used here to refer to both types of activities under the named statutes.

animals prior to commencement of operations in the NPDES permit. Construction inspections are important to ensure that a facility is properly built to meet the limitations imposed in its NPDES permit and State operating permit once stocking occurs.

c. Enforcement case inspections. These are follow-up inspections used to verify information pertaining to facilities subject to enforcement.

d. Limited inspections. Unannounced inspections that are limited to only one or two issues of concern, e.g., a check on operating records and freeboard; assessing a facility's capacity to avoid winter application of manure; or examination of drinking water lines. If spill reports, complaints, or unusual events indicate problem areas, more frequent inspections will be made and may include sampling inspections, unannounced visits, focused inspections on discrete areas of the facility, e.g., inspections limited to examining the structural soundness of the production area or limited to an assessment of land application procedures, or inspections limited to examination of the Operating Record.

e. Biannual inspections. These are the two routine, complete inspections conducted for each permitted facility, as identified in section 1 above.

### 3. Inspection Quarters

The Executive Secretary (ES) or Administrative Assistant (AA) enter the date of every inspection, regardless of its type, into LEPP's Dayhuff data management system. At the end of each quarter, the ES or AA will print and provide copies of the list of completed routine inspections to the inspectors. The inspectors will meet with the Executive Director to revise the list of inspection targets for subsequent quarters of the year.

LEPP's data management system is referred to as "Dayhuff" because the Dayhuff Group, Columbus, Ohio, developed this system. Enforcement actions are tracked through Dayhuff in the functional specification called "Enforcement." Data entry helps to ensure compliance and serve as a tracking mechanism for all inspectors, engineers, the ES and AA, Legal, and the Executive Director to rely upon in preparing for subsequent inspections, enforcement actions, and all administrative hearings. [Both formal and informal methods of communications also exist between the various Divisions within the ODA (e.g., Animal Industry, Enforcement, and Dairy); as well as other State, federal, and county offices to ensure communication in case resolution.]

The scheduled inspection quarters and meeting dates for revising the list of inspection targets are as follows:

<u>Inspection Quarter</u>	<u>Target Meeting Date</u> <sup>13</sup>
January, February, March	April 15
April, May, June	July 15
July, August, September	October 15
October, November, December	January 15

#### 4. Inspection Procedures

Copies of past inspections, current permits, compliance schedules, enforcement actions, discharge reports, annual reports, and like documents are maintained at the main office of the ODA LEPP. Inspectors are able to access most, but not all of this information off site via computer from software files maintained by the Program. For routine inspections, inspectors have a calendar or schedule of anticipated inspections and are required to use a portion of one work day each week to review files in the central office location for those facilities targeted for upcoming inspections. This includes a review of the most recent inspection, looking for any violations cited that will require re-assessment for a "return to compliance." The inspectors check to see if there is a schedule of compliance for the operation imposed by any legal document such as a Warning Letter, Notice of Deficiencies, Notice of Violation, or administrative or judicial order. Assessing dates and compliance schedules is required to determine the number of days of violation and to compute any recommended penalty.

Before initiating a complete inspection, inspectors perform a review of the permitted facility by conducting a search of the facility's files, including previous inspection reports. If any document or report has been submitted by the permittee since the previous inspection, the document will be verified during the course of the inspection.

All inspections are reported on the following forms: Routine Inspection Form, ODA LEPP, Revised November 2006. Biannual inspections require that the entire form be completed. If a copier is made available at the facility for use by the inspector, each inspector may provide a copy of the completed inspection form at the end of the inspection to the owner or operator of the facility. It is understood that the inspection form completed at the end of the inspection is preliminary and may be handwritten. Inspectors will provide a clean, typed copy of the inspection report for the owner or operator and for LEPP files within 14 days of the inspection. The typed inspection report will be reviewed by Legal for compliance review and may be edited for form by the Public Information Officer (PIO). The Executive Director concludes the review and will return the routed document to the inspector within five business days, with comments, corrections, and/or approval. The final, approved report has a cover letter from the inspector with any explanations needed, recommended practices, violations observed and required actions. The date that the final version of the inspection report is sent to the facility is the date entered in Dayhuff by the

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<sup>13</sup> Noncompliance reporting, based on the findings of scheduled inspections, must be made available for review on May 31, August 31, November 30, and February 28. See Noncompliance and Program Reporting, Part IV.

ES or AA. The final inspection report including the cover letter is attached in Dayhuff and thus is readily available electronically.

## **B. Complaints**

Aggrieved persons may file complaints either orally or in writing. Pursuant to ORC 903.15, the Director shall investigate those written complaints that are signed and dated. The Director has discretion as to whether to investigate oral complaints. The complaint procedure used by LEPP is described in rule 901:10-5-01 of the OAC. The complaint procedure endeavors to elicit information from an oral complainant that will provide the facility address, a description of the nature of the complaint, and the name and address of the complainant so that the complainant may be notified of the outcome of the investigation.

The following table gives a summary of complaints received and responded to by LEPP since August 19, 2002:

Table of Complaints

Year	Total	Flies	Health Concern	Manure App.	Manure Discharge	Manure Other	Manure Spill	Odor	Other
2002 Starting 8/19/02	11	3	0	3	0	3	0	2	0
2003	41	19	0	9	0	5	0	6	2
2004	57	21	2	14	0	15	0	4	1
2005	92	52	0	21	0	11	0	5	3
2006 As of 11/30/06	80	46	0	10	1	9	0	6	8

### 1. Intake

LEPP Inspectors are responsible for the investigation of reported spill incidents and citizens' complaints. Inspectors are available for such activities within a twenty-four hour period after notice. As evidenced by the MOA with Ohio EPA and the MOA including ODNR-DSWC, Ohio EPA, and ODA, the Departments routinely share information by telephone and electronically to expedite response from the nearest available person in the event of emergencies. Complaints and non-emergency chemical spills can be phoned in to the ODA via the 24-hour "hotline", or to the main office number for LEPP. In addition to the ODA's 24-hour "hotline", the ODA also receives and responds to emergency releases, which are reported to the Ohio EPA Emergency Response Hotline. Permit and/or enforcement actions are requested as appropriate following these investigations.

Any LEPP staff person may receive a complaint (oral or written). Complaints must be forwarded to the ES or AA to complete a Complaint Intake Form. Any staff person completing the Complaint Intake Form must be sure to record the name of the person

making the complaint, his/her phone number, and the location of the problem in order to investigate and follow-up on the complaint. If the complainant wishes to remain anonymous, a tracking number is established for him/her using the date and time of the initial call. This information and/or number is confirmed with the caller and the number is used in the "name" section of the Complaint Intake Form.

The ES or AA enters information from each Complaint Intake Form into the Dayhuff system.

## 2. Assignments

The ES or AA forwards the Complaint Intake Form to the appropriate inspector's desk. The ES or AA also sends an e-mail or telephones the inspector to alert him/her and to brief him/her about the complaint.

If the inspector cannot respond to the complaint in a timely manner, he/she will contact the Executive Director immediately and ask that another staff member be sent. If the inspector needs to seek direction on the follow-up, the inspector will contact the Executive Director immediately for clarification on the complaint. If the Executive Director is not available, the inspector will contact the engineers and ask that one of the engineers take on the complaint, or work with the Executive Director to handle the complaint. The name of individual assigned to the complaint is recorded in Dayhuff.

The inspector investigates the complaint within 10 days of receipt of the assignment. Depending on the nature of the complaint, the inspector may contact the Executive Director, Legal (e.g., regarding right of entry) or the PIO from the field for guidance or to update them on pertinent facts. If additional actions are needed, these actions should be taken. Written notes of these actions and conversations are included in the Complaint Follow-Up Report.

## 3. Report

After completing the complaint investigation at the facility, the inspector drafts a Complaint Follow-Up Report that includes his/her observations; a description of problems/violations observed, if any; follow-up actions to be taken by the facility; whether this complaint is for a permitted or non-permitted farm; and the complete address and phone number of the complainant. The draft report is to be completed within 20 days. If additional information is acquired about the complaint before the report is sent out, that information is added to the report and routed as described below. If additional information on the same complaint comes in after the report is sent out, then an addendum to the initial complaint report is to be drafted and also routed as described below.

When the draft Complaint Follow-Up Report is complete, the inspector prints out a report or e-mails the report to the ES or AA to be printed and a Complaint Approval Form is dated, labeled with the name of facility and inspector, and then attached on the front of the report document. This is circulated for Legal review and editing by the PIO. The Executive Director concludes the review and returns the routed document to the inspector within five business days of the draft report's submission, with comments, corrections, and/or approval.

#### 4. Completion

- a. The inspector finalizes the Complaint Follow-Up Report based on the Executive Director's review.
- b. If the complaint is a written complaint, the LEPP Inspector drafts a letter for the Director's signature stating that an inspection was initiated and providing a report on the inspection's conclusion. The letter for the Director is included as part of the Complaint Follow-Up Report and is part of the Report reviewed by Legal and the PIO. The ES or AA attaches a copy of the Director's letter into Dayhuff. A copy of the letter, with the Complaint Follow-Up Report, is sent to the complainant. The inspector gives a final copy of the Complaint Follow-Up Report, along with his/her notes, a copy of the complaint intake form, and any other documentation relative to this follow-up, to the ES or AA for placement into the central office files.
- d. The ES or AA attaches the final copy of the Complaint Follow-Up Report, in Dayhuff and enters either "no action" if no enforcement is required or "see enforcement" if enforcement is required, and files all complaint documentation with the facility file. If enforcement is selected, the complaint is logged into Dayhuff for enforcement tracking under "Enforcement." Legal, in consultation with the inspector, will prepare documents for any selected enforcement response.

#### C. Enforcement

Enforcement is used to ensure compliance with permits and federal and State laws and regulations. Enforcement options include (1) a letter from the inspector noting the violation and directing that corrective action be taken by a set date; (2) a Warning Letter issued by the Executive Director; (3) Complaint Follow-Up Reports and correspondence for the Director's signature (for written complaints)<sup>14</sup>; (4) administrative enforcement under ORC 903.09 (permit revocation), 903.16 (violations under the State permit program) and 903.17 (for NPDES violations), including Notices of Deficiencies Resulting in Noncompliance, Notices of Violation, and administrative orders (sometimes called Notices of Hearing) issued with penalty or without penalty; (5) referral to the Office of the Attorney General for civil or criminal enforcement under ORC 903.16, 903.17, and ORC 903.99; and (6) Emergency Orders under ORC 903.18. Enforcement options are discussed in detail in Section D, Enforcement Documents, below. The particular enforcement option used will depend on the nature, frequency, and severity of the violation, and whether the owner or operator is unable or unwilling to return to compliance.

Enforcement actions are generated by inspections, complaint investigations, follow-up complaint inspections, reviews of construction sites and construction activities, reviews of

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<sup>14</sup> ORC 903.15(B) requires the Director to investigate a written, signed, and dated complaint. An oral complaint may be investigated. Upon completion of the investigation, the Director may either dismiss the complaint and notify the complainant or proceed in accordance with ORC 903.17. While the Director must respond in writing to written complaints, he has discretion to also respond in writing to oral complaints.

documents (e.g., failure to renew permits, or LEPP's review of annual reports), and reviews of self-monitoring data in a facility's Operating Record. LEPP inspectors complete Weekly Reports that identify suspected violations and include a brief discussion of violations discovered. These matters are included in the agenda of the next regularly scheduled staff meeting and set for discussion. In addition, the Executive Director and Legal review all inspection or complaint reports, and may identify violations and refer these as agenda items for discussion at the next staff meeting. Finally, the ES and AA bring to the staff meeting a list of anticipated deadlines that will be "due" in the forthcoming month. This list includes the names of facilities being tracked in enforcement for compliance in Dayhuff, with compliance deadlines, corrective action schedules, and penalty payments due.

After review and discussion at the weekly staff meeting, the Executive Director may decide that enforcement action is required. If the Executive Director determines enforcement action is required, the ES or AA enters the facility into Dayhuff for "Enforcement" and subsequent case management. In addition, the Executive Director may decide that additional information or investigation is needed before an enforcement determination is made and will assign this work to the appropriate LEPP employees. This may include additional fieldwork or technical work or legal analysis to determine if sufficient evidence exists to proceed with an enforcement action. If the Executive Director finds after review and discussion or further investigation that the facility is in compliance, the ES or AA are directed to change the facility's "Enforcement Status" to "NA," "No Action," in Dayhuff, with a brief written explanation for the change attached in Dayhuff.

In situations where immediate action is required to protect the public health or safety or the environment, emergency enforcement action can be taken to address the situation without waiting for the completion of this review process. Such action may include the issuance of an emergency order under ORC 903.18 or the seeking of a temporary restraining order in Ohio's common pleas courts through a referral to the Ohio Attorney General's Office under ORC 903.17. In an emergency, the Director can also use funds in the "Livestock Management Fund," created by ORC 903.19 to take corrective actions. Any such costs incurred by the Director may be recovered from responsible persons through Director's Final Orders or by the Office of the Attorney General, acting upon request of the Director, in a judicial enforcement action.

A workload analysis of the anticipated number of enforcement actions the ODA will prepare over the next two years is difficult to project. The number of enforcement actions issued is based on the number of referrals from LEPP inspectors, the Ohio Department of Natural Resources Division of Soil and Water Conservation, the 88 local county SWCD offices, Ohio EPA, and citizens' complaints, as well as those generated by file reviews.

Currently there are 4 LEPP Inspectors that prepare enforcement actions.

Enforcement Actions Taken Against Facilities  
August 19, 2002 to November 30, 2006

<u>Year</u>	<u>Warning Letter</u>	<u>Notice of Deficiency</u>	<u>Notice of Hearing</u>	<u>Emergency Order</u>	<u>Final Admin. Order</u>	<u>Final Court Order</u>	<u>Permit Revocation</u>	<u>Attorney General Referral</u>
2002 Starting 8/19/02	0	1	0	0	0	0	0	0
2003	1	4	0	0	0	0	23 <sup>15</sup>	1
2004	22	18	3	0	3	1	0	0
2005	35	31	2	1	1	0	0	0
2006 as of 11/30/06	12	24	3	0	0	0	16 <sup>16</sup>	1

Excluding Warning Letters and permit revocation orders, ODA estimates that approximately 70 enforcement actions will be issued against facilities over the next two years.

#### 1. No Action

The results of routine inspections or other inspections or complaint investigations that reveal no violations are entered into Dayhuff as "No Action" or "NA." Should relatively minor violations be discovered, and the permittee shows a willingness and ability to correct the problem, enforcement action is usually not requested. However, the owner or operator will be informed of violations in the final inspection report and in the report's cover letter. The owner or operator will also be informed in the cover letter of those actions the owner or operator must take to return to compliance before the next bi-annual inspection or before a more immediate follow-up inspection. The results of complaint investigations are provided to the complainant, provided that the complaint is not anonymous. In the case of complaints, the owner or operator and the complainant (if known) will be informed of violations in the final Complaint Follow-Up Report. The owner or operator and complainant will also be informed in the final Complaint Follow-Up Report of those actions the owner or operator must take to return to compliance. Finally, if the Complaint is a written complaint, a letter summarizing the results of the investigation will be issued to the complainant with the Director's signature. Any relatively minor violations that are not corrected through this process by the time of the next inspection become subject to escalated enforcement.

<sup>15</sup> In August 2002, ODA issued a proposed revocation of 12 permits and a proposed denial of 11 permits against the former Buckeye Egg Farm, pursuant to ORC 903.09. These permits had been issued by or applied for from Ohio EPA prior to the August 19, 2002 date when the ODA State permits program was transferred from Ohio EPA to ODA. In response to the proposed permit revocations and denials, Buckeye Egg Farm requested an adjudication hearing pursuant to ORC 903.09. After that hearing was held, the Director issued a final order revoking and denying these 23 permits in 2003.

<sup>16</sup> ODA proposed revocation of a total of 16 permits to Ohio Fresh Eggs, LLC in 2005. After an adjudication hearing, a final order revoking the permits was issued in 2006. That revocation is currently on appeal before the Environmental Review Appeals Commission, pursuant to ORC 3745.04.

## 2. Violations

*Inspections.* Routine inspections that reveal violations are noted in the final inspection report and in the cover letter. In addition, the inspection report and the cover letter describe the corrective actions necessary to return to compliance. Depending on the nature or degree of seriousness or gravity of the violation, a Warning Letter may be issued, administrative or judicial enforcement may be commenced, or an emergency order under ORC 903.18 may be issued. In the alternative, for minor violations, the inspector may direct the owner or operator of the facility to return to compliance before the next regularly scheduled biannual inspection or a more immediate follow-up inspection. If the subsequent inspection shows that the violation revealed in the previous inspection is still not resolved, the inspector proceeds to escalate enforcement as discussed in *Unresolved, repeated, or serious violations*, below. Enforcement options are discussed in detail in Section D, Enforcement Documents.

*Complaints.* Complaint investigations that reveal violations are noted in the Complaint Follow-Up Report. The Complaint Follow-Up Report also describes the corrective actions necessary to return to compliance before a complaint follow-up inspection is performed. Depending on the nature or degree of seriousness or gravity of the violation, a Warning Letter may also be issued or other enforcement commenced in accordance with ORC 903.17 and 903.18. If the subsequent follow-up inspection shows that the violation revealed in the previous investigation is still not resolved, the inspector proceeds to seek escalated enforcement as discussed in *Unresolved, repeated, or serious violations*, below. Finally, if the Complaint is a written complaint, a letter summarizing the results of the investigation will be issued to the complainant with the Director's signature.

*Unresolved, repeated, or serious violations.* If the violation is not resolved within the time frame mandated by LEPP in its initial enforcement response, if the violation is frequent or serious, or if the facility indicates an inability or unwillingness to return to compliance, the inspector describes the violations in the Inspector's Weekly Report and refers the matter for discussion at the next staff meeting. During the staff meeting, the inspector confers with the other inspectors, engineers, Legal, and the Executive Director about appropriate escalated enforcement action. [See detailed discussion of Enforcement Documents in section D below.]

*Enforcement Resulting from Surface Application of Manure on Frozen or Snow-Covered Ground: Discharges, Corrective Actions, and Prohibitions.* Enforcement procedures will vary for activities related to manure application on frozen or snow-covered ground because the facility is required to obtain prior approval from the Director or his/her authorized representative before any surface application of manure during this period. Additional restrictions and setbacks are also imposed for winter application on frozen or snow-covered ground, as stated in OAC 901:10-2-14(G) and OAC 901:10-2-14, Appendix A, Table 2. Whenever possible, ODA staff shall be present at the site during the application event. In addition, if the land-applied manure discharges to waters of the State, then the facility is required to notify ODA as soon as possible or within two hours of detection of the runoff event. In any event, a discharge must be reported within 24 hours

following first knowledge of the discharge. Actions must be taken to contain or manage the spill. Other requirements for emergency response are stated in OAC 901:10-2-17 and in any NPDES permit approved and issued by the Director.

A discharge of manure to waters of the State from land application on frozen or snow-covered ground that is not the result of a precipitation event is prohibited. As required by OAC 901:10-2-14(C)(6), weather conditions must be checked and recorded 24 hours before and after application as well as during application to avoid precipitation-related runoff.

In the event that a facility fails to comply with the land application requirements for frozen or snow-covered ground including, but not limited to, prior notice to ODA of intended surface application, notification of discharges, monitoring and record-keeping requirements, then ODA will not follow an administrative enforcement progression from Warning Letter to Notice of Deficiencies and Notice of Violation but will assume that the noncompliance must be referred to the Attorney General's Office for judicial enforcement pursuant to ORC 903.17(D). Refer to Enforcement Documents in section D.5 (Attorney General Referral) below.

An enforcement action taken by ODA through the Office of the Attorney General will require the facility to take "corrective actions." The nature of corrective actions required will depend on the time and circumstances of the noncompliance, including, but not limited to, cleaning and pumping manure for correct application or disposal; maintaining dams to block manure discharges; using or maintaining tile plugs; sampling; and additional reports to supplement emergency reporting, e.g., progress reports on cleanup. In addition, ODA will develop a penalty assessment and recommend this to the Attorney General with the case referral.

In the event that a facility fails to comply with the land application requirements for frozen or snow-covered ground for more than two surface application events, then land application on any frozen or snow-covered ground will be prohibited as part of the corrective actions imposed on that facility.

On and after April 1, 2007, a facility shall be required in any enforcement to conduct the following "corrective actions:"

- 1) Collect representative grab samples from discharges of land-applied manure into waters of the State at the point that the discharge enters waters of the State (i.e., concentrated field surface runoff or field tile outlet discharge prior to entrance to surface water) and have the sample analyzed for, at a minimum, the following parameter:

00610 – Nitrogen, Ammonia (NH<sub>3</sub>) – mg/l

- 2) The facility shall: (a) collect the sample within 30 minutes of the first knowledge of the discharge; or (b) if sampling in that period is inappropriate due to dangerous

weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay.

3) The facility shall report the results of the discharge sample(s) to ODA LEPP within 14 days of occurrence. The report shall, at a minimum, contain the sample results, describe the reason for the discharge, the location, estimate of quantity and duration of the discharge, and duration of any precipitation leading up to the event, as well as any measures taken to clean up and eliminate the discharge and required land application records stated above. Laboratory results not available at the time of the report submittal shall be submitted to ODA within five days of receipt.

If the ammonia nitrogen level in a water quality sample is determined to be 26 mg/L or greater in the discharge at the point it enters waters of the State, then any additional surface application of manure to frozen or snow-covered ground is prohibited on the field where the runoff event occurred. In the event that the facility follows the permit requirements and runoff from frozen or snow-covered fields discharges to waters of the State with an ammonia nitrogen content of 26 mg/L or greater in a total of three surface land application events, then surface application of manure on any frozen or snow covered ground is prohibited for that facility for the permit duration.

The facility is responsible for complying with land application activities conducted on each site where the facility, or anyone employed by the facility, owns, operates, or land applies manure generated by the facility or is otherwise responsible for determining the timing and amount of manure to be applied on fields not otherwise owned, rented, or leased by the facility.

The facility or the inspector may provide information based on the site-specific facts of noncompliance that may mitigate referral to the Attorney General's Office and allow issuance of an administrative Notice by the Director.<sup>17</sup>

### 3. Formal Documentation

To address violations, Legal prepares the appropriate Enforcement Document. The initial draft is submitted to the engineers and the inspector to check factual accuracy and for technical review. Drafts of Notices of Deficiency Resulting in Noncompliance, Notices of Violation, Notices of Hearing, Final Orders, and Emergency Orders are concurrently reviewed by the Assistant Attorney General to analyze sufficiency of the evidence and related case development prior to the enforcement action being issued.

Legal prepares a final version of the Enforcement Document for the approval of the Executive Director. The Executive Director signs Warning Letters, Complaint Follow-Up Reports (for written complaints), Notices of Deficiency Resulting in Noncompliance, Notices of Violation, Final Orders, Emergency Orders, and referrals to the Office of the

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<sup>17</sup> ORC 903.17(A)(1): "The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance."

Attorney General for judicial enforcement are signed by the Director. For Enforcement Documents signed by the Director, Legal works with the Director's executive secretary to have documents signed by the Director and entered into the Director's Journal.<sup>18</sup>

The Enforcement Document is given to the ES or AA for mailing to the complainant (where applicable), the facility, the local SWCD office, Ohio EPA, and ODNR. The ES or AA mails a courtesy copy of the Enforcement Document to any other individual or entity that the Executive Director believes should receive a copy. Enforcement Documents are sent by Certified Mail to the facility. The issuance of each Enforcement Document is entered into Dayhuff through data entry and a copy of the document is attached in Dayhuff. The ES or AA also places a copy of the Enforcement Document in the central office file.

#### **D. Enforcement Documents**

Enforcement actions are conducted principally in accordance with Sections 903.09, 903.15, 903.16, 903.17, 903.18 and 903.99 of the ORC. ORC 903.12 governs the right of entry to the facility and access to records. In addition, rules set forth in Chapter 901:10-5 of the OAC govern enforcement procedures, including penalty assessments and emergency enforcement.

There are several types of enforcement documents prepared by LEPP. The criteria for determining which type of enforcement document will be used is based on the degree of seriousness of the violation and the degree of environmental and/or health effect as analyzed in the context of OAC 901:10-5-04 and any other factors that advance the goals of ORC Chapter 903. The Significant Noncompliance (SNC) Policy for Clean Water Act Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources will also be used to evaluate enforcement decisions when that policy is finalized.

1. **Warning Letter:** A Warning Letter is issued at the discretion of the Executive Director, based on the results of an inspection, complaint investigation, or file review, together with analysis of supporting documentation including field reports and sampling results, and Legal analysis and discussion of enforcement at the weekly staff meeting.

A Warning Letter may be issued for a first-time violation, a minor violation of moderate to low seriousness, or a minor violation of medium to low effect. Warning Letters are issued by Certified Mail. A Warning Letter includes a brief statement of the nature of the violation; the statute and rules violated; the facts relied upon by the Executive Director in concluding that a violation has occurred; and the requirements that must be met in order for the facility to return to compliance, including a schedule for returning to compliance or a deadline for returning to compliance.

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<sup>18</sup> A Notice of Hearing is not entered into the Director's Journal because it is not a final action of the Director. The Notice of Hearing is sent to the Office of General Counsel, ODA, in order to prepare for hearing, in the event that a hearing is requested.

The date the Warning Letter is sent, the Warning Letter, and any date or deadlines for compliance (the compliance schedule) are attached and entered in Dayhuff. Depending on the type, circumstances, and severity of the violation, the Director may opt not to issue a Warning Letter and instead proceed directly to issuing a Notice of Deficiencies Resulting in Noncompliance (NOD) or referring the matter to the Ohio Attorney General's Office for judicial enforcement.

2. Notices of Deficiencies Resulting in Noncompliance: The NOD is a type of administrative enforcement action issued by the Director in accordance with ORC 903.16<sup>19</sup> for violations of state CAFO permitting requirements or ORC 903.17 for NPDES violations.

As with the Warning Letter, the Director's NOD includes a brief statement of the nature of the violation; the statute and rules violated; the facts relied upon by the Director in concluding the violation occurred; and the requirements that must be met in order for the facility to return to compliance, including a schedule of compliance or a deadline to return to compliance. The Notice of Deficiencies Resulting in Noncompliance is sent by Certified Mail. Thereafter, continued NPDES noncompliance will result in a Notice of Violation (NOV), which may be issued with a Notice of Hearing so as to obtain a civil penalty through ORC 903.17 administrative proceedings.

The NOD letters and the dates they are sent are attached and entered in Dayhuff. Where ODA seeks to obtain a penalty in an administrative proceeding in response to violations, re-inspection of the facility is required under ORC 903.17(A) to determine whether the owner or operator has returned to compliance before an administrative civil penalty can be imposed. Therefore, at the time that the Director's NOD is issued, the schedule of compliance dates imposed in the NOD is also entered into Dayhuff, and an inspector is assigned to re-inspect the facility on those dates, or immediately thereafter. As noted above, every inspection date must be entered into Dayhuff.

3. Notices of Violation and Notices of Hearing: If, upon re-inspection the owner or operator is still not in compliance, the next administrative enforcement order issued is an NOV under ORC 903.17. At the time of issuing an NOV, the Director has the discretion to propose to assess an administrative civil penalty for the violations through a Notice of Hearing for an adjudication hearing to be conducted pursuant to ORC Chapter 119 and ORC 903.17(A) and (B).

If the Director proposes a civil penalty, the Director may include a brief statement regarding the seriousness and gravity of the violation, as well as the proposed penalty, as determined under the provisions of OAC 901:10-5-04.

Notices of Violation and Notices of Hearing are sent by Certified Mail to the owner or operator and are attached in Dayhuff. The date each Notice is sent is entered into

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<sup>19</sup> The State program includes regulatory authority over insect and rodent control as well as odor control at concentrated animal feeding facilities. Since these requirements are not part of the NPDES program they are not discussed here.

Dayhuff. The owner or operator has fifteen days from the date of a Notice of Hearing to request an adjudication hearing before the Director. If a hearing is requested, this request is entered in Dayhuff and the adjudication hearing is scheduled.

4. Final Orders of the Director:

a. Non-emergency final orders

Following the issuance of a Notice of Hearing, the Director issues a final order.

Pursuant to ORC 903.17(B), final orders may be issued without an adjudication hearing if the owner or operator waives the opportunity for adjudication hearing by not requesting a hearing in response to the Notice of Hearing. The Director may issue a final order with or without a penalty.

If the owner or operator requests an adjudication hearing pursuant to ORC 903.17, the Director may either issue a final order at the conclusion of a hearing, or he may issue a Final Order as a result of a Joint Stipulation and Settlement Agreement entered into by the parties prior to the adjudication hearing. All final orders are attached and entered in Dayhuff.

b. Emergency Orders

Emergency orders are final orders of the Director, issued pursuant to ORC 903.18, instead of ORC 903.17. These orders are issued without notice or an adjudication hearing. Emergency orders must state that an emergency exists and that the emergency requires immediate action to protect the public health or safety or the environment. Emergency orders take effect immediately and the person to whom the order is directed is required to comply with the emergency order immediately. The person to whom the emergency order is directed may apply for an adjudication hearing in accordance with ORC Chapter 119. The adjudication hearing shall be held as soon as possible but not later than 30 days after the application for the hearing. At the hearing, the Director decides either to continue the order, to revoke the order, or to modify the order. Pursuant to ORC 903.18, an emergency order shall remain in effect for no more than 120 days. All emergency orders are attached and entered in Dayhuff.

In an emergency, the Director can use funds in the "Livestock Management Fund," created by ORC 903.19, to take corrective actions. Any such costs incurred by the Director may be recovered from responsible persons through Director's final orders or by the Office of the Attorney General, acting upon request of the Director.

5. Attorney General Referral: This enforcement option may be appropriate in a number of circumstances, including cases in which:

- a. As an alternative to emergency orders, described above, the Director may seek immediate action through the Attorney General as necessary to prevent imminent and substantial endangerment to the public health and/or to the environment. The Office of the Attorney General can seek a Temporary

Restraining Order or Temporary Injunction through a court action in an Ohio court of common pleas.

- b. Violations of a Director's final order have occurred;
- c. Department resources and policy may dictate case referral to the Attorney General. Factors to be taken into consideration when deciding whether to refer a case to the Attorney General include the amount of civil penalties assessed, recovery of costs incurred by the Director in an emergency action, challenges to the legality or policy of the program, serious or egregious violations, continuing violations, criminal cases, and other such matters as justice requires.
- d. Civil penalties are sought for the violation and the circumstances of the case make it inappropriate or impractical to seek penalties through the NOD/NOV/NOH procedure set forth in ORC 903.17(A) and (B) that governs penalties obtained through administrative, as opposed to judicial, enforcement actions.

Legal will prepare a letter from the Director to the Attorney General naming the owner or operator or both and the operation being referred to the Attorney General for enforcement action and will identify the Director's legal authority to make the referral. The referral will be attached and entered into Dayhuff on the day the Director signs the referral letter.

Legal will prepare a confidential memorandum for the Office of the Attorney General describing the nature of the case, the reason for referral, and the relief requested. Legal will prepare and send relevant inspection reports, memos from staff, correspondence, photos, sampling results, penalty calculation worksheets, a chronology of the case, and any other materials required in support of the case.

6. Permit Revocation: Pursuant to ORC 903.09, the Director is authorized to revoke both State installation and operating permits and NPDES permits. Grounds for permit revocation are set forth in OAC 901:10-1-03. To revoke a permit, the Director first issues a proposed action stating the Director's intention to revoke the permit and the reasons for the permit action. Pursuant to ORC 903.09(F) and OAC Chapter 901:10-6, notice of the proposed revocation is sent to the permittee by Certified Mail and public noticed in a newspaper in the county where the facility is located or proposed to be located. As in other permitting actions, notice of a proposed revocation is also given to county commissioners, township trustees, and any other person entitled to receive notice under the Act, public comments may be received, and a public hearing may be held. A final order regarding the proposed revocation is not issued until the permittee has had an opportunity for an adjudication hearing in accordance with 903.09(F) and ORC Chapter 119. Appeal procedures for permit revocations are set forth in Section 4.H (Administrative and Judicial Review of Permitting Decisions) above. Like other permitting actions, proposed permit revocations and final revocations are attached and entered into Dayhuff.

## **E. Enforcement Tracking and Activities**

### **1. Data Management**

Inspections, complaints, and the various actions in support of "Enforcement Status," including preparing and tracking all of the Enforcement Documents described above, are listed and discussed here. Data from the Compliance and Enforcement Program will be provided to U.S. EPA on a quarterly basis as set forth in the Memorandum of Agreement between U.S. EPA and the State of Ohio, Ohio Department of Agriculture.

### **2. Data Entry**

The ES or AA enters all complaints into Dayhuff.

The ES and AA enter all routine inspection dates and complaint investigation dates into Dayhuff.

Routine Inspection Reports, Complaint Follow-Up Reports, including any letter from the Director for written complaints, and Warning Letters issued by the Executive Director on violations, are given to the ES or AA to be attached and entered into Dayhuff. The EA or AA will also mail all Complaint Follow-Up Reports, letters from the Director, or Warning Letters from the Executive Director to the complainant, the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director. The mailing dates are then entered into Dayhuff.

Inspections, cover letters, and complaint investigations that reveal no or minor violations are given to ES or AA and are attached and entered into Dayhuff as "No Action" or "NA." (This includes minor violations, violations in which the permittee is willing and able to correct the problem, and violations that cannot be proven.) The ES or AA mails the inspection reports, cover letters, or Complaint Follow-Up Reports to the complainant, the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director.

The AA or ES enters data relating to "Enforcement Status" for each facility whose enforcement status is discussed and decided upon at the weekly staff meeting. Any final signed and dated Enforcement Document is attached in Dayhuff by the ES or AA. This includes Warning Letters, Notices of Deficiencies Resulting in Noncompliance, Notices of Violation, Notices of Hearing, Final Orders, Emergency Orders, and a referral to the Office of the Attorney General for judicial enforcement signed by the Director.

### **3. Other Activities**

- a. Cases Referred to the Attorney General: Legal works with the Assistant Attorney General (AAG) in developing the case, particularly by assisting the drafting and review of the Complaint; drafting and responding to interrogatories; scheduling depositions; and drafting and reviewing any settlement agreements, penalty

demands, and preliminary and final orders. Legal serves as a liaison between the AAG and LEPP staff and ODA management.

- b. Preparation of Final Order Documents: In administrative cases under ORC 903.17 or ORC 903.09 where the owner or operator waives the right to an adjudication hearing or otherwise forgoes the right to challenge the Director's Notice of Hearing, Legal prepares a draft administrative order using the appropriate order "shell" or "form" for the final order. Legal prepares the cover letter to be sent to the owner or operator of the facility. Each order is tailored to the specific technical and regulatory requirements of the case and includes any penalty calculated by the inspector or engineer assigned to the case. The assigned engineer and inspector, where applicable, review the draft administrative order for technical and factual accuracy. The draft administrative order is also given to the AAG and Executive Director for review. Following the review, the draft administrative order is returned to Legal for corrections and/or modifications. After review of the draft order by LEPP staff is complete, the order is given to the Director for his or her review and signature. The final order that is approved and signed by the Director is given to the AA or ES to attach in Dayhuff and for mailing to the facility, the local SWCD office, Ohio EPA, ODNR, and others identified by the Executive Director. The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5).
- c. Final Order as a result of a Joint Stipulation and Settlement Agreement: The parties may engage in negotiation following the owner or operator's request for an adjudication hearing arising out of a Notice of Hearing issued under ORC 903.17 or a proposed revocation under ORC 903.09. If an agreement can be reached through the process of negotiation without a hearing, Legal will prepare a joint stipulation and settlement agreement and a draft Director's order using the appropriate order "shell" or "form." It is anticipated that the parties may negotiate the allegations, penalty, and corrective actions to be contained in the settlement agreement and draft order. During negotiations, Legal may recommend changes to the settlement agreement and draft order based on the owner or operator's case as follows:

Additional factual information that affects the assessment of the violation or the penalty calculation;

The owner or operator proposes a Supplemental Environmental Project as part of the penalty to be paid;

Corrective actions, compliance schedule, and penalty-payment schedule may be negotiable.

The AAG and Executive Director must sign off and agree on any changes before the negotiated settlement is approved. Joint stipulations and settlement agreements are drafted contingent on the Director's issuance of a final order that is identical in substance to the draft order contained in the joint stipulation and settlement agreement. The Director, as the final decisionmaker under ORC Chapter 119, is not involved in the negotiation of settlement agreements when an

adjudication hearing is pending and may choose whether to issue a final order consistent with the settlement agreement. If the Director issues a final order identical in substance with the draft order in the settlement agreement, the final order is sent to the owner or operator and the case is settled. If the Director does not issue an order consistent with the settlement agreement, the settlement is nullified and the Director's decision is appealable by the owner or operator in accordance with Section 4.H, above. The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5).

- d. Contested Administrative Enforcement Cases: If no agreement can be reached through the process of negotiation, the matter will be referred to a Hearing Examiner, employed by the Department. A hearing will be conducted in accordance with ORC Chapter 119. At the conclusion of the hearing, the Hearing Examiner will issue a Report and Recommendation pursuant to ORC Chapter 119 regarding whether the action sought in the Notice of Hearing or proposed revocation should be approved as a final order, disapproved, or modified. The Report and Recommendation is transmitted to the Office of the Director, ODA, for review and consideration. The Director, in consultation with the Chief Counsel, reaches a determination and issues a final order. The final order is sent by Certified Mail to the facility or its attorney, if any, from the adjudication hearing.

The signed final order is given to the AA or ES who will arrange with the PIO to have the final order published in accordance with OAC 901:10-6-01(A)(5), allowing for public notice and an opportunity to file a Notice of Appeal with the Environmental Review Appeals Commission. The final order is also attached into Dayhuff.

e. Penalty Payments:

- 1) Data entry: At the time that a signed final order is given to the AA or ES for publication, the AA or ES shall enter the anticipated date for penalty payment in Dayhuff. Tracking payments by Dayhuff enables enforcement actions to be commenced in the event of nonpayment.
- 2) For administrative enforcement: Final Orders of the Director require that the "proposed civil penalty in the amount of \$\_\_\_\_\_ be paid by check made payable to 'Treasurer, State of Ohio, for the Livestock Management Fund 5L8,' which shall be delivered by mail, or otherwise, to Peggy Jackson, Administrative Assistant, or her successor at the Ohio Department of Agriculture, Livestock Environmental Permitting Program, 8995 East Main Street, Reynoldsburg, Ohio 43068."
- 3) For judicial enforcement: Judicial settlements reached by the Office of the Attorney General provide: "Defendant is hereby ordered and enjoined to pay a civil penalty of \$\_\_\_\_\_ within sixty (60) days of the signing of this Consent Order by the Court. The civil penalty shall be paid by certified or

cashier's check for the appropriate amount, made payable to 'Treasurer, State of Ohio, for deposit to the Livestock Management Fund 5L8,' which check shall be delivered by mail, or otherwise, to the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400."

- 4) Inability to Pay: Owners or operators may present evidence in an effort to prove that they are unable to pay all or part of a proposed penalty. Alternatively, the owner or operator may present evidence in an attempt to prove that he/she requires additional time in order to pay the penalty, or needs to pay the penalty in installment payments. The owner or operator must present financial documents to substantiate a claim of inability to pay, such as copies of actual tax returns filed for the three-year period immediately prior to the case. Prompt submittal of the financial documentation is required and the final decision on the amount of penalty is made by the State.
  - 5) Failure to Pay: In the event that an owner or operator fails to pay the penalty at the conclusion of the enforcement proceedings, the matter is referred to the Office of the Attorney General for collection proceedings.
- f. Compliance with Final Orders: The inspectors will monitor the provisions of any enforcement order issued as a result of enforcement proceedings to determine whether corrective actions are fully complied with. The ES or AA will check to determine if the penalty payment requirements are met. Any subsequent noncompliance is reported in the weekly report and scheduled for discussion at the next staff meeting. Failure to achieve compliance with the provisions of any final order issued by the Director is considered a major violation according to OAC 901:10-5-04. In such a case, further enforcement action will be pursued through a referral to the Office of the Attorney General.

#### **F. Citizen Suits**

If the Director has taken no action against a violator, ODA like Ohio EPA recognizes that a person having an interest, which is or may be adversely affected by a violation of the Federal Water Pollution Control Act, may commence a civil action in his or her own behalf against the violator pursuant to Section 505 of the Act (33 USC 1365). Before commencing such an action, the plaintiff must send a 60-day notice of his or her intent to file suit to the EPA Administrator, ODA, and the alleged violator of the Act. If the Director commences a court case against the alleged violator in response to the 60-day notice, ODA recognizes that the aggrieved person may file a motion to intervene in that action.

#### **End of Program Description**