



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Application Restrictions Statutes & Regulations**

**Ohio**

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## Application Restrictions

### STATE OF OHIO

- 1) ORC Ann. §§ 905.326, 327; OAC Ann. 901:5-4-07; ORC Ann. §§ 939.08, 09; OAC Ann. 901:13-1-11
- 2) ORC Ann. § 939.02; OAC Ann. 901:13-1-01, 11, 20, 99

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Ohio Legislative Services Commission.*

- 1) ORC Ann. §§ 905.326, 327; OAC Ann. 901:5-4-07; ORC Ann. §§ 939.08, 09; OAC Ann. 901:13-1-11

#### Western Basin of Lake Erie

#### Fertilizer

#### § 905. 326 Restrictions against surface applying fertilizer in the western basin.

(A)

(1) Except as provided in division (B) of this section, no person in the western basin shall surface apply fertilizer under either of the following circumstances:

- (a) On snow-covered or frozen soil;
- (b) When the top two inches of soil are saturated from precipitation.

(2) Except as provided in division (B) of this section, no person in the western basin shall surface apply fertilizer in a granular form when the local weather forecast for the application area contains greater than a fifty per cent chance of precipitation exceeding one inch in a twelve-hour period.

(B) Division (A) of this section does not apply if a person in the western basin applies fertilizer under any of the following circumstances:

- (1) The fertilizer is injected into the ground.
- (2) The fertilizer is incorporated within twenty-four hours of surface application.
- (3) The fertilizer is applied onto a growing crop.

(C)

(1) Upon receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may investigate or make inquiries into any alleged failure to comply with this section.

(2) After receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged failure to comply with this section.

(3) If an individual denies access to the director or the director's designee, the director may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises for the purposes of this section.

(4) The court shall issue the search warrant for the purposes requested if there is probable cause to believe that the person is not in compliance with this section. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.

(D) This section does not affect any restrictions established in Chapter 903. of the Revised Code or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that chapter.

(E) As used in this section, "western basin" means land in the state that is located in the following watersheds identified by the specified United States geological survey hydrologic unit code:

(1) St. Marys watershed, hydrologic unit code 04100004;

(2) Auglaize watershed, hydrologic unit code 04100007;

(3) Blanchard watershed, hydrologic unit code 04100008;

(4) Sandusky watershed, hydrologic unit code 04100011;

(5) Cedar-Portage watershed, hydrologic unit code 04100010;

(6) Lower Maumee watershed, hydrologic unit code 04100009;

(7) Upper Maumee watershed, hydrologic unit code 04100005;

- (8) Tiffin watershed, hydrologic unit code 04100006;
- (9) St. Joseph watershed, hydrologic unit code 04100003;
- (10) Ottawa watershed, hydrologic unit code 04100001;
- (11) River Raisin watershed, hydrologic unit code 04100002.

(F) Notwithstanding section 905.31 of the Revised Code, as used in this section, “fertilizer” means nitrogen or phosphorous.

**§ 905.327 Civil penalties.**

(A) The director of agriculture may assess a civil penalty against a person that violates section 905.326 of the Revised Code. The director may impose a civil penalty only if the director affords the person an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director’s determination that the person violated section 905.326 of the Revised Code. The person may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance with section 905.326 of the Revised Code and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(C) A person that has violated section 905.326 of the Revised Code shall pay a civil penalty in an amount established in rules. Each day during which fertilizer is applied in violation of section 905.326 of the Revised Code constitutes a separate violation.

(D) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish the amount of the civil penalty assessed under this section. The civil penalty shall not be more than ten thousand dollars for each violation.

(E) For purposes of this section, “rule” means a rule adopted under division (D) of this section.

**901:5-4-07. Civil penalties.**

(A) Minor violations are events of noncompliance with section 905.326 of the Revised Code that occur only when all of the following parameters are met:

- (1) The nutrient value of the fertilizer application is less than ten thousand pounds of nitrogen or six thousand pounds of phosphorous;

(2) The fertilizer application does not pose a significant risk of harm to public health or the environment; and

(3) The fertilizer application has not resulted in any discharge of fertilizer that enters the water of the state.

(B) Major violations are events of noncompliance with section 905.326 of the Revised Code that occur only when any of the following parameters are met:

(1) The nutrient value of the fertilizer application is equal to or more than ten thousand pounds of nitrogen or six thousand pounds of phosphorous;

(2) The fertilizer application poses a significant risk of harm to public health or the environment;

(3) The fertilizer application has resulted in a discharge of fertilizer that enters the water of the state.

(C) Failure to take corrective action as specified by the director or the director's designated representative for any minor violation may be considered a major violation of this rule.

(D) The director may assess a civil penalty for a minor violation of up to two thousand dollars for each day of noncompliance with section 905.326 of the Revised Code.

(E) The director may assess a civil penalty for a major violation of up to ten thousand dollars for each day of noncompliance with section 905.326 of the Revised Code.

(F) All money paid under paragraphs (D) and (E) of this rule shall be deposited into the agricultural pollution abatement fund.

## **Manure**

### **§ 939.08 Application of manure in the western basin.**

(A) Except as provided in division (B) of this section, no person in the western basin shall surface apply manure under any of the following circumstances:

(1) On snow-covered or frozen soil;

(2) When the top two inches of soil are saturated from precipitation;

(3) When the local weather forecast for the application area contains greater than a fifty per cent chance of precipitation exceeding one-half inch in a twenty-four-hour period.

(B) Division (A) of this section does not apply if a person in the western basin applies manure under any of the following circumstances:

- (1) The manure is injected into the ground.
- (2) The manure is incorporated within twenty-four hours of surface application.
- (3) The manure is applied onto a growing crop.
- (4) In the event of an emergency, the director of agriculture or the director's designee provides written consent and the manure application is made in accordance with procedures established in the United States department of agriculture natural resources conservation service practice standard code 590 prepared for this state.

(C)

- (1) Upon receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may investigate or make inquiries into any alleged failure to comply with this section.
- (2) After receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged failure to comply with this section.
- (3) If an individual denies access to the individual's property, the director may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises for the purposes of this section.
- (4) The court shall issue the search warrant for the purposes requested if there is probable cause to believe that the person is not in compliance with this section. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.

(D) This section does not affect any restrictions established in Chapter 903. of the Revised Code or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that chapter.

(E) As used in this section, "western basin" has the same meaning as in section 905.326 of the Revised Code.

**§ 939.09 Penalty for unlawful application of manure in the western basin.**

(A) Except as provided in division (D) of this section, the director of agriculture may assess a civil penalty against a person that violates section 939.08 of the Revised Code. The director may impose a civil penalty only if the director affords the person an

opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the person violated section 939.08 of the Revised Code. The person may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance with section 939.08 of the Revised Code and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(C) A person that has violated section 939.08 of the Revised Code shall pay a civil penalty in an amount established in rules. Each day during which manure is applied in violation of section 939.08 of the Revised Code constitutes a separate violation.

(D)

(1) The owner or operator of a small agricultural operation or a medium agricultural operation may apply to the director for an exemption from the prohibition established in division (A) of section 939.08 of the Revised Code. If the director or the director's designee determines that it is appropriate, the director or the director's designee may issue such an exemption as follows:

(a) For a medium agricultural operation, for a period ending not later than one year after July 3, 2015;

(b) For a small agricultural operation, for a period ending not later than two years after July 3, 2015.

(2) The director shall establish the form of the application for an exemption in rules adopted under division (E) of this section.

(3) The director or the director's designee shall approve or deny an application for an exemption submitted under division (D)(1) of this section not later than thirty days after an application has been submitted.

(4) The director or the director's designee may deny an application for an exemption or revoke an exemption approved under division (D)(3) of this section if the director or the director's designee determines that the owner or operator is not in substantial compliance with this chapter and rules adopted under it other than violating division (A) of section 939.08 of the Revised Code.

(5) An owner or operator that has been issued an exemption under this section is not subject to civil penalties assessed for a violation of division (A) of section 939.08 of the Revised Code during the exemption period.

(6) An owner or operator that has an initial application for an exemption that is pending the director's review is not subject to civil penalties assessed for a violation of division (A) of section 939.08 of the Revised Code.

(E) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish both of the following:

(1) The amount of the civil penalty assessed under this section. The civil penalty shall be not more than ten thousand dollars for each violation.

(2) Requirements governing the application form for an exemption submitted under division (D) of this section. The rules shall require the form to include all of the following:

(a) A statement from the applicant affirming that the applicant understands the provisions of sections 939.08 and 939.09 of the Revised Code;

(b) A statement from the applicant affirming that the applicant understands that the applicant must be in compliance with procedures established in the United States department of agriculture natural resources conservation service practice standard code 590 prepared for this state except procedures that are in conflict with this section and section 939.08 of the Revised Code;

(c) A place for the applicant to explain the reasons for the necessity for the exemption;

(d) A place on the form that provides information on programs that may assist an applicant with methods to comply with division (A) of section 939.08 of the Revised Code;

(e) A place on the form that provides the applicant an opportunity to request technical assistance or information from the director or the applicable soil and water conservation district to assist the applicant to comply with division (A) of section 939.08 of the Revised Code.

(F) Money collected from civil penalties assessed under this section shall be paid into the state treasury to the credit of the agricultural pollution abatement fund created in section 939.10 of the Revised Code.

(G) As used in this section:

(1) "Small agricultural operation" means an agricultural operation in the western basin that stables or confines fewer than any of the numbers of animals specified in divisions (Q)(1)(a) to (m) of section 903.01 of the Revised Code.



(2) "Medium agricultural operation" means an agricultural operation in the western basin that stables or confines any of the numbers of animals specified in divisions (Q)(1)(a) to (m) of section 903.01 of the Revised Code.

(3) "Western basin" has the same meaning as in section 905.326 of the Revised Code.

**901:13-1-11. Land application of animal manure.**

(A) Each owner, operator, animal manure applicator, or person responsible for land application of manure from an animal feeding operation shall minimize pollution from occurring on land application areas by following the standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. In order to minimize the potential for pollution the following items shall be considered, including but not limited to: characteristics of the animal manure, available land, topography, cropping system, method of application, weather, time of the year, condition of the soil, other nutrients applied, and nutrient status of the soil.

(B) In watersheds in distress, each owner, operator, animal manure applicator, or person responsible for land application of manure, beginning two years after designation of a watershed in distress by the director:

(1) Shall not apply manure between December fifteenth and March first without prior approval for each application from director or the director's designee;

(2) Before December fifteenth and after March first shall not surface apply manure on frozen ground or ground covered in more than one inch of snow. Before December fifteenth and after March first it is permissible to apply manure on frozen or snow covered ground only when manure is injected or incorporated within twenty-four hours of surface application;

(3) May land apply snowpack manure when there is greater than four inches of snow or ice accumulation around animal feeding operations providing that manure accumulation on the animal feedlot does not exceed the volume accumulated with a three day scraping interval or one inch, whichever is less. Plans for any land application of snowpack manure must be incorporated into an approved nutrient management plan or each application shall be submitted for approval by the director or the director's designee;

(4) Shall keep records of manure storage volumes and ensure a minimum manure storage capacity of one hundred and twenty days on December first of each year;

(5) Shall not surface apply manure if the local weather forecast for the land application area contains a greater than fifty per cent chance of precipitation exceeding one-half inch for a period extending twenty-four hours after the

projected start of the land application of manure. Records of the local weather forecast shall be kept and made available upon request by the director or the director's designee. Local weather forecasts and hourly weather graph information is available at [www.noaa.gov](http://www.noaa.gov).

(C) Upon designation by the director of any watershed as distressed, each owner, operator, animal manure applicator, or person responsible for land application of manure shall minimize pollution from occurring from land application areas by following applicable standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. Failure to install or implement appropriate standards is a violation of this rule regardless of whether pollution to waters of the state has occurred.

## **2) ORC § 939.02; OAC 901:13-1-01, 11, 20, 99**

### **Watersheds in Distress**

#### **§ 939.02 Powers and duties of director of agriculture.**

The director of agriculture shall do all of the following:

- (A) Provide administrative leadership to soil and water conservation districts in planning, budgeting, staffing, and administering district programs and the training of district supervisors and personnel in their duties, responsibilities, and authorities as prescribed in this chapter and Chapter 940. of the Revised Code;
- (B) Administer this chapter and Chapter 940. of the Revised Code pertaining to state responsibilities and provide staff assistance to the Ohio soil and water conservation commission in exercising its statutory responsibilities;
- (C) Assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement;
- (D) Coordinate the development and implementation of cooperative programs and working agreements between soil and water conservation districts and the department of agriculture or other agencies of local, state, and federal government;
- (E) Subject to the approval of the Ohio soil and water conservation commission, adopt rules in accordance with Chapter 119. of the Revised Code that do or comply with all of the following:

(1) Establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by residual farm products, manure, or soil sediment, including attached substances, and establish criteria for determination of the acceptability of such management and conservation practices;

(2) Establish procedures for administration of rules for agricultural pollution abatement and for enforcement of those rules;

(3) Specify the pollution abatement practices eligible for state cost sharing and determine the conditions for eligibility, the construction standards and specifications, the useful life, the maintenance requirements, and the limits of cost sharing for those practices. Eligible practices shall be limited to practices that address agricultural operations and that require expenditures that are likely to exceed the economic returns to the owner or operator and that abate soil erosion or degradation of the waters of the state by residual farm products, manure, or soil sediment, including attached pollutants.

(4) Establish procedures for administering grants to owners or operators of agricultural land or animal feeding operations for the implementation of operation and management plans;

(5) Do both of the following with regard to composting conducted in conjunction with agricultural operations:

(a) Establish methods, techniques, or practices for composting dead animals, or particular types of dead animals, that are to be used at such operations, as the director considers to be necessary or appropriate;

(b) Establish requirements and procedures governing the review and approval or disapproval of composting plans by the supervisors of soil and water conservation districts under division (R) of section 940.06 of the Revised Code.

(6) Establish best management practices for inclusion in operation and management plans;

(7) Establish the amount of civil penalties assessed by the director under division (A) of section 939.07 of the Revised Code for violation of rules adopted under division (E) of this section;

(8) Not conflict with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. Compliance with rules

adopted under this section does not affect liability for noncompliance with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. The application of a level of management and conservation practices recommended under this section to control windblown soil from farming operations creates a presumption of compliance with section 3704.03 of the Revised Code as that section applies to windblown soil.

(F) Cost share with landowners on practices established pursuant to division (E)(3) of this section as moneys are appropriated and available for that purpose. Any practice for which cost share is provided shall be maintained for its useful life. Failure to maintain a cost share practice for its useful life shall subject the landowner to full repayment to the department.

(G) Employ field assistants and other employees that are necessary for the performance of the work prescribed by Chapter 940. of the Revised Code, for performance of work of the department under this chapter, and as agreed to under working agreements or contractual arrangements with soil and water conservation districts, prescribe their duties, and fix their compensation in accordance with schedules that are provided by law for the compensation of state employees. All such employees of the department, unless specifically exempted by law, shall be employed subject to the classified civil service laws in force at the time of employment.

(H) In connection with new or relocated projects involving highways, underground cables, pipelines, railroads, and other improvements affecting soil and water resources, including surface and subsurface drainage:

(1) Provide engineering service that is mutually agreeable to the Ohio soil and water conservation commission and the director to aid in the design and installation of soil and water conservation practices as a necessary component of such projects;

(2) Maintain close liaison between the owners of lands on which the projects are executed, soil and water conservation districts, and authorities responsible for such projects;

(3) Review plans for such projects to ensure their compliance with standards developed under division (E) of this section in cooperation with the department of transportation or with any other interested agency that is engaged in soil or water conservation projects in the state in order to minimize adverse impacts on soil and water resources adjacent to or otherwise affected by these projects;

(4) Recommend measures to retard erosion and protect soil and water resources through the installation of water impoundment or other soil and water conservation practices;

(5) Cooperate with other agencies and subdivisions of the state to protect the agricultural status of rural lands adjacent to such projects and control adverse impacts on soil and water resources.

(I) Collect, analyze, inventory, and interpret all available information pertaining to the origin, distribution, extent, use, and conservation of the soil resources of the state;

(J) Prepare and maintain up-to-date reports, maps, and other materials pertaining to the soil resources of the state and their use and make that information available to governmental agencies, public officials, conservation entities, and the public;

(K) Provide soil and water conservation districts with technical assistance including on-site soil investigations and soil interpretation reports on the suitability or limitations of soil to support a particular use or to plan soil conservation measures. The assistance shall be on terms that are mutually agreeable to the districts and the department of agriculture.

(L) Assist local government officials in utilizing land use planning and zoning, current agricultural use value assessment, development reviews, and land management activities;

(M) When necessary for the purposes of this chapter or Chapter 940. of the Revised Code, develop or approve operation and management plans. The director may designate an employee of the department to develop or approve operation and management plans in lieu of the director.

This section does not restrict the manure of domestic or farm animals defecated on land outside an animal feeding operation or runoff from that land into the waters of the state.

#### **901:13-1-01. General provisions.**

(A) Purpose.

Chapter 901:13-1 of the Administrative Code applies to the control of pollutants from areas within the state used for agricultural production, including land being used for the production or keeping of animals or for the production of agricultural crops.

Chapter 901:13-1 of the Administrative Code establishes state standards for a level of management and conservation practices in farming and animal feeding

operations on farms in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment including pollutants attached to the sediment and animal manure. This chapter further defines Ohio's pollution abatement grant program for landowners or operators to voluntarily install conservation practices.

The criteria in this chapter are intended for use in determining the acceptability of the level of management and conservation practices and for use by landowners and operators in planning, applying and maintaining appropriate management measures and conservation practices and to prevent the storage, handling, treatment, disposal, or land application of animal manure such that it is polluting or has a potential to pollute waters of the state contrary to these standards established by this chapter. Technical determinations by a district or the director shall be considered prima facie evidence of agricultural pollution.

(B) Definitions. As used in rules Chapter 901:13-1 of the Administrative Code:

(1) "Agricultural pollution" means failure to use management or conservation practices in farming operations to abate wind or water erosion of the soil or to abate the degradation of waters of the state by animal manure or soil sediment including substances attached thereto.

(2) "Agricultural production" means the commercial apiculture, animal husbandry or poultry husbandry, the commercial production of field crops, tobacco, fruits, vegetables, timber, nursery stock, sod or flowers or any combination of such husbandry or production and includes the processing, drying, storage, and marketing of food and fiber products and animals used for recreation, fur or wildlife purposes.

(3) "Agriculture animal" means any animal generally used for food or in agricultural production, including cattle, sheep, goats, rabbits, poultry, and swine; horses; alpacas; llamas; and any other animal included by the director of the Ohio department of agriculture by rule. "Agricultural animal" does not include fish or other aquatic animals regardless of whether they are raised at fish hatcheries, fish farms, or other facilities that raise aquatic animals.

(4) "Animal feeding operation" means an animal feedlot and animal manure management facilities and land application areas for managing and disposal of animal manure. "Animal feeding operation" does not include operations subject to Chapter 903. of the Revised Code, Chapter 6111. of the Revised Code, or section 901:10 of the Administrative Code.

(5) "Animal feedlot" means a paved animal feeding or holding area or other lot, pen, yard, or other feeding or holding area where grass or other suitable vegetative cover is not maintained.

(6) "Aquifer" means an underground consolidated or unconsolidated geologic formation, or series of formations that are hydraulically connected and that have the capability to receive, store, and yield usable quantities of water to wells. "Aquifer" does not include perched ground water.

(7) "Best management practice" or "BMP" means a practice or combination of practices that is determined to be the most effective practicable (including technological, economic, and institutional considerations) means of preventing or reducing agricultural pollution sources to a level compatible with water quality goals. BMPs may include structural and nonstructural practices, conservation practices and operation and maintenance procedures.

(8) "Conservation" means the wise use and management of natural resources.

(9) "Cost-share monies" means state of Ohio public funds used for the purpose of sharing the cost of establishing needed pollution abatement practices.

(10) "Department" means the Ohio department of agriculture.

(11) "Director" means director of the Ohio department of agriculture.

(12) "Director's designee" means any Ohio department of agriculture, soil and water conservation district employee, or soil and water conservation district supervisor who the director has given the responsibility to implement the agricultural pollution abatement program.

(13) "District" means a soil and water conservation district, organized under Chapter 940. of the Revised Code.

(14) "Ditch" means an excavation, either dug or natural, for the purpose of drainage or irrigation with intermittent flow.

(15) "Diversion" means a channel constructed across the slope for the purpose of intercepting surface runoff.

(16) "Drainageway" means an area of concentrated water flow other than river, stream, ditch, or grassed waterway.

(17) "Erosion" means:

(a) The wearing away of the land surface by running water, wind, ice or other geological agents, including such processes as gravitational creep.

(b) Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(c) Erosion includes:

(i) "Gully erosion": the erosion process whereby water accumulates in narrow channels during and immediately after rainfall or snow or ice melt and actively removes the soil from this narrow area to considerable depths such that the channel would not be obliterated by normal smoothing or tillage operations.

(ii) "Rill erosion": an erosion process in which numerous small channels only several inches deep are formed; occurs mainly on recently disturbed soils. The small channels formed by rill erosion would be obliterated by normal smoothing or tillage operations.

(iii) "Sheet erosion": the removal of a fairly uniform layer of soil from the land surface by wind or runoff water.

(18) "Field Office Technical Guide" means the localized document used by the soil and water conservation district and developed (current edition) by the natural resources conservation service, United States department of agriculture, which is available to all Ohio county soil and water conservation districts, available at [http://www.oh.nrcs.usda.gov/technical/ohio\\_eFOTG.html](http://www.oh.nrcs.usda.gov/technical/ohio_eFOTG.html) and which provides:

(a) Soil descriptions;

(b) Sound land use alternatives;

(c) Adequate conservation treatment alternatives;

(d) Standards and specifications of conservation practices;

(e) Conservation cost-return information;

(f) Practice maintenance requirements;

(g) Erosion prediction procedures.

(19) "Grassed waterway" means a natural course or constructed channel that is shaped or graded to required dimensions and established with suitable vegetation to filter and convey runoff from fields, terraces, diversions or other concentrated runoff without causing erosion or flooding.

(20) "Ground water" means any water below the surface of the earth in a zone of saturation, but does not include a perched water table.

(21) "Manure" means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or



eggs: animal excreta, discarded products, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting, on farm biodigester operation residue that includes at least seventy-five per cent manure, or the composting of animal excreta.

(22) "Manure storage or treatment facility" means any area or facilities used for the collection, storage, handling or treatment of manure.

(23) "Mortality composting" means the controlled decomposition of organic solid material consisting of animal mortality that stabilizes the organic fraction of the material.

(24) "Ohio soil and water conservation commission" means the seven member board that directs and recommends conservation policies and programs as authorized under section 940.02 of the Revised Code.

(25) "Ohio Livestock Manure Management Guide" means the 2006 edition of the "Ohio Livestock Manure Management Guide," bulletin 604, the Ohio state university extension, which is available at all county offices of Ohio state university extension, local soil and water conservation district offices, and at <http://ohioline.osu.edu/b604>.

(26) "Operation and management plan" means a written record, developed or approved by the district board of supervisors or the director, for the owner or operator of agricultural land or animal feeding operations that contains implementation schedules and operational procedures for a level of management and best management practices which will abate the degradation of the waters of the state by animal manure and by soil sediment including attached pollutants.

(27) "Permeability" means the quality of a soil horizon that enables water or air to move through it. Terms used to describe it are as follows: very slow, slow, moderately slow, moderate, moderately rapid, rapid, and very rapid, measured in inches per hour or inches per day.

(28) "Person" means any individual, corporation, partnership, joint venture, agency, unincorporated association, or any combination thereof.

(29) "Pollution" means failure to use management or conservation practices in farming operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by animal manure or soil sediment including pollutants attached thereto.

(30) "Prima facie evidence" means law evidence adequate to establish a fact or raise a presumption of fact unless refuted.

(31) "Primary contact recreation resource water" means waters that, during the recreation season of May first to October fifteenth, are suitable for full-body contact recreation such as, but not limited to, swimming, canoeing and scuba diving with minimal threat to public health as a result of water quality.

(32) "RUSLE" means the "Revised Universal Soil Loss Equation" which is a method used to estimate soil loss by sheet and rill erosion and wind erosion. This will be estimated using the current soil loss prediction technologies found in the "Field Office Technical Guide."

(33) "Saturated soil" means soil in which all voids between soil particles are filled with liquid.

(34) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice, and has come to rest on the earth's surface.

(35) "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.

(36) "Snow pack manure" means the accumulation of snow and ice when combined with manure from animal feedlot.

(37) "Soil" means unconsolidated, erodible earth material consisting of minerals and organics.

(38) "Soil horizon" means a layer of soil, approximately parallel to the soil surface, with characteristics produced by soil-forming processes.

(39) "Soil loss" means soil moved from a given site by the forces of erosion and redeposited at another site, on land or in a body of water.

(40) "Stream" means a body of water running or flowing on the earth's surface or channel in which such flow occurs. Flow may be seasonally intermittent.

(41) "Substantial", when referring to compliance with the provisions of an approved operation and management plan, means following the approved schedule of conservation practice implementation.

(42) "T" means the soil loss tolerance expressed in tons per acre per year. This represents the tons of soil (related to the specific soil series) which can be lost through erosion annually without causing significant degradation of the soil or potential for crop production.

(43) "Useful life" means the expected service life of a best management practice as defined by the "Field Office Technical Guide" or by the director.

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

(45) "Watershed in Distress" means a watershed, and boundaries thereof as established by the United States geological survey, which has aquatic life and health that is impaired by nutrients or sediment from agricultural land uses and where there is a threat to public health, drinking water supplies, recreation, or public safety and welfare.

**901:13-1-11. Land application of animal manure.**

(A) Each owner, operator, animal manure applicator, or person responsible for land application of manure from an animal feeding operation shall minimize pollution from occurring on land application areas by following the standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. In order to minimize the potential for pollution the following items shall be considered, including but not limited to: characteristics of the animal manure, available land, topography, cropping system, method of application, weather, time of the year, condition of the soil, other nutrients applied, and nutrient status of the soil.

(B) In watersheds in distress, each owner, operator, animal manure applicator, or person responsible for land application of manure, beginning two years after designation of a watershed in distress by the director:

(1) Shall not apply manure between December fifteenth and March first without prior approval for each application from director or the director's designee;

(2) Before December fifteenth and after March first shall not surface apply manure on frozen ground or ground covered in more than one inch of snow. Before December fifteenth and after March first it is permissible to apply manure on frozen or snow covered ground only when manure is injected or incorporated within twenty-four hours of surface application;

(3) May land apply snowpack manure when there is greater than four inches of snow or ice accumulation around animal feeding operations providing that manure accumulation on the animal feedlot does not exceed the volume accumulated with a three day scraping interval or one inch, whichever is less.

Plans for any land application of snowpack manure must be incorporated into an approved nutrient management plan or each application shall be submitted for approval by the director or the director's designee;

(4) Shall keep records of manure storage volumes and ensure a minimum manure storage capacity of one hundred and twenty days on December first of each year;

(5) Shall not surface apply manure if the local weather forecast for the land application area contains a greater than fifty per cent chance of precipitation exceeding one-half inch for a period extending twenty-four hours after the projected start of the land application of manure. Records of the local weather forecast shall be kept and made available upon request by the director or the director's designee. Local weather forecasts and hourly weather graph information is available at [www.noaa.gov](http://www.noaa.gov).

(C) Upon designation by the director of any watershed as distressed, each owner, operator, animal manure applicator, or person responsible for land application of manure shall minimize pollution from occurring from land application areas by following applicable standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. Failure to install or implement appropriate standards is a violation of this rule regardless of whether pollution to waters of the state has occurred.

#### **901:13-1-20. Designating watersheds in distress.**

(A) The director may designate a watershed to be in distress, and thereby set requirements for the storage, handling and land application of manure; and/or the control of the erosion of sediment and substances attached thereto; and associated nutrient management plans for land and operations within the designated watershed boundaries. In evaluating a potential designation, the director may consider whether:

(1) The watershed is listed as impaired by nutrients and/or sediments from agricultural sources as determined by the director of environmental protection and published in the "Ohio Integrated Water Quality Monitoring and Assessment Report" pursuant to Section 303(d) of the Federal Water Pollution Control Act or waters are identified as such in an approved "Total Maximum Daily Load Report" pursuant to rule 3745-2-12 of the Administrative Code as required by Section 303(d) of the Federal Water Pollution Control Act;

(2) The watershed or a portion of the watershed exhibits conditions that are a threat to public health based on information provided by the Ohio department of health or local health district;

(3) Streams, lakes, or other waterbodies within the watershed exhibit periodic evidence of algal and/or cyanobacterial blooms capable of producing toxins that are harmful to humans, domestic animals or wildlife;

(4) There is a threat to, or presence of contaminants in public or private water supplies;

(5) There is a threat to, or presence of contaminants in a primary contact recreational water or a bathing water as designated in Chapter 3745-1 of the Administrative Code;

(6) Other unacceptable nuisance conditions exist including the depletion of dissolved oxygen in water that results in impacts to aquatic life;

(7) Other situations as determined by the director upon consultation with other federal, state and local agencies.

(B) Prior to proposing to designate a watershed in distress, the director shall prepare and issue a report documenting the factors in the watershed relating to the items in paragraph (A) of this rule.

(C) No designation of a watershed in distress shall be issued until the Ohio soil and water conservation commission consents by a majority vote to a proposed designation.

(D) The director may remove the watershed in distress designation upon reasonable confirmation of a sustained recovery, restoration and mitigation of the factors leading to the original designation.

**901:13-1-99. Civil penalties.**

(A) The following violations shall be considered minor violations:

(1) Violations of rule 901:13-1-07 of the Administrative Code;

(2) Violations of rule 901:13-1-08 of the Administrative Code;

(3) Violations of rule 901:13-1-09 of the Administrative Code;

(4) Violations of paragraph (B)(4) of rule 901:13-1-11 of the Administrative Code;

(5) Violations of rule 901:13-1-12 of the Administrative Code; and

(6) Violations of paragraph (E) of rule 901:13-1-19 of the Administrative Code.

(B) The following violations shall be considered moderate violations:

(1) Violations of rule 901:13-1-02 of the Administrative Code;

- (2) Violations of rule 901:13-1-03 of the Administrative Code;
- (3) Violations of rule 901:13-1-04 of the Administrative Code;
- (4) Violations of rule 901:13-1-05 of the Administrative Code;
- (5) Violations of rule 901:13-1-06 of the Administrative Code;
- (6) Violations of paragraph (A) of rule 901:13-1-11 of the Administrative Code;
- (7) Violations of paragraph (C) of rule 901:13-1-11 of the Administrative Code;
- (8) Violations of rule 901:13-1-13 of the Administrative Code;
- (9) Violations of paragraph (A) of rule 901:13-1-19 of the Administrative Code;
- (10) Violations of paragraph (F) of rule 901:13-1-19 of the Administrative Code;  
and
- (11) Violations of paragraph (G) of rule 901:13-1-19 of the Administrative Code.

(C) Events of noncompliance with section 939.08 of the Revised Code and paragraphs (B)(1), (B)(2), (B)(3), and (B)(5) of rule 901:13-1-11 of Administrative Code that meet all of the following parameters shall be considered moderate violations:

- (1) The total volume of the manure application is less than three hundred and fifty tons of solid manure or one hundred thousand gallons of liquid manure;
- (2) The manure application does not pose a significant risk of harm to public health or the environment; and
- (3) The manure application has not resulted in any discharge of manure that enters the waters of the state.

(D) Events of noncompliance with section 939.08 of the Revised Code and paragraphs (B)(1), (B)(2), (B)(3), and (B)(5) of rule 901:13-1-11 of Administrative Code that meet any of the following parameters shall be considered major violations:

- (1) The total volume of the manure application is equal to or more than three hundred fifty tons of solid manure, or one hundred thousand gallons of liquid manure.
- (2) The manure application poses a significant risk of harm to public health or the environment.

(3) The manure application has resulted in a discharge of manure that enters the waters of the state.

(E) Pursuant to sections 939.02 and 939.09 of the Revised Code, a schedule of fines for violations identified in paragraphs (A), (B), (C) and (D) of this rule is hereby established:

(1) The department may assess the following civil penalties for any minor violation:

- (a) Not more than two hundred fifty dollars for a first violation;
- (b) Not more than one thousand dollars for a second violation; and
- (c) Not more than five thousand dollars for a third violation.

(2) The department may assess the following civil penalties for any moderate violation:

- (a) Not more than two thousand dollars for a first violation;
- (b) Not more than five thousand dollars for a second violation; and
- (c) Not more than ten thousand dollars for a third violation.

(3) The department may assess a civil penalty of not more than ten thousand dollars for any major violation.

(F) Failure to take corrective action as specified by the director or the director's designated representative for any minor violation may be considered a moderate violation.

(G) Failure to take corrective action as specified by the director or the director's designated representative for any moderate violation may be considered a major violation.

(H) All money paid under paragraph (E) of this rule shall be deposited into the agricultural pollution abatement fund.