



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Ohio**

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## Nutrient Management Plans

### STATE OF OHIO

- 1) ORC Ann. § 939.02; OAC Ann. 901:13-1-01, 19
- 2) ORC Ann. §§ 903.1, .03, .05, .08, .10, .40, 1511.02(E)(6); OAC Ann. 901:10-2-07, 09, 11, 13, 14, 1501:15-5-05, 3745-33-02—04

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

#### 1) ORC Ann. § 939.02; OAC Ann. 901:13-1-01, 19

##### § 939.02 Director of agriculture—powers and duties.

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 define 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.

**901:13-1-19. Nutrient management planning requirements for watersheds in distress.**

(A) Each owner, operator, or person responsible for producing, applying, or receiving in excess of three hundred fifty tons and/or one hundred thousand gallons of manure on an annual basis in watersheds in distress shall develop and operate in conformance with a nutrient management plan that addresses the methods, amount, form, placement, cropping system and timing of all nutrient applications. Nutrient management plans shall be submitted to and approved by the director or the director's designee. The director or the director's designee shall review and approve or disapprove nutrient management plans. This paragraph does not apply to operations subject to Chapter 903. of the Revised Code, Chapter 6111. of the Revised Code, or section 901:10 of the Administrative Code.

(B) In watersheds designated by the director as distressed, the director will establish a deadline for all nutrient management plans to be submitted for review and approval. The deadline will be no earlier than six months and no longer than two years once a watershed has been designated distressed.

(C) Nutrient management plans shall be in the form of the Ohio nutrient management workbook, USDA natural resources conservation service comprehensive nutrient management plan (CNMP), or an equivalent document approved by the director or the director's designee and shall contain the following information:

- (1) Land application area's soil tests conducted in accordance with the "Field Office Technical Guide" and that are no older than three years;
- (2) Annual manure analysis that is representative of the manure being applied;
- (3) Spreading agreements for all land used for manure application not under control of the party responsible for the nutrient management plan;
- (4) The number, weight, and kind of all animals;

- (5) Total annual volume of manure produced;
- (6) Method and seasonal time of utilization and application that recognizes a prohibition on manure application from December fifteenth to March first;
- (7) Planned manure application rates;
- (8) Other nutrients applied, including but not limited to manufactured fertilizer, sewage sludge, and bio-digester residue;
- (9) Field information including, but not limited to: location, spreadable acreage, crops grown, and actual and projected yields;
- (10) Type of manure storage and capacity;
- (11) Emergency contact information in case of a spill.

(D) Each land application area receiving manure shall be assessed with the Ohio nitrogen leaching risk assessment procedure and the phosphorus index and the soil test risk assessment procedure for phosphorus as necessary and provided for in the field office technical guide. Manure application rates and setback distances shall be based on the most limiting factor of these risk assessment procedures, other criteria outlined in the "Field Office Technical Guide," or by other methods approved by the director.

(E) Operating records including manure nutrient application, weather forecasts, manure and soil analysis, and manure storage volumes shall be kept a minimum of five years by the owner, operator, or person responsible and shall be made available for review by the director or the director's designee with a minimum of twenty-four hours notice. The director or the director's designee shall visit the animal feeding operation and review records a minimum of once every three years and provide a report of the findings to the soil and water conservation district board of supervisors and the department.

(F) After plan approval, nutrient management plans shall be updated as conditions change and shall be submitted a minimum of once every three years to the soil and water conservation district board of supervisors or the director for approval. Changes which would require the plan to be updated include, but are not limited to, when the number of animals increase by more than ten per cent or when there is a change in ownership. This plan shall be updated prior to any expansion in the number of agricultural animals by more than ten per cent.

(G) For new animal feeding operations located in watersheds in distress, plans must be submitted and approved prior to any initiation of construction of a new facility.

(H) Upon disapproval of a nutrient management plan, any person may request an adjudication hearing pursuant to Chapter 119. of the Revised Code.

(I) Appeals. Any person denied approval of a nutrient management plan by the director may appeal to the court of common pleas of Franklin county.

**2) ORC Ann. §§ 903.1, .03, .05, .08, .10, .40, 1511.02(E)(6); OAC Ann. 901:10-2-07, 09, 11, 13, 14, 1501:15-5-05, 3745-33-02—04**

**§ 903.01 Definitions.**

As used in this chapter:

(A) “Agricultural animal” means any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, and swine; horses; alpacas; llamas; and any other animal included by the director 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.

(B) “Animal feeding facility” means a lot, building, or structure where both of the following conditions are met:

(1) Agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of forty-five days or more in any twelve-month period.

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

“Animal feeding facility” also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied.

Two or more animal feeding facilities under common ownership shall be considered to be a single animal feeding facility for the purposes of this chapter if they adjoin each other or if they use a common area or system for the disposal of manure.

(C) “Animal feeding operation” has the same meaning as “animal feeding facility.”

(D) “Cattle” includes, but is not limited to, heifers, steers, bulls, and cow and calf pairs.

(E) “Concentrated animal feeding facility” means an animal feeding facility with a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section.

(F) “Concentrated animal feeding operation” means an animal feeding facility that complies with one of the following:

- (1) Has a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section;
- (2) Satisfies the criteria in division (M), (Q), or (EE) of this section;
- (3) Is designated by the director of agriculture as a medium or small concentrated animal feeding operation pursuant to rules.

(G) “Discharge” means to add from a point source to waters of the state.

(H) “Federal Water Pollution Control Act” means the “Federal Water Pollution Control Act Amendments of 1972,” 86 Stat. 816, 33 U.S.C. 1251 et. seq., as amended, and regulations adopted under it.

(I) “Finalized,” with respect to the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code, means that all rules that are necessary for the administration of this chapter have been adopted and all employees of the department of agriculture that are necessary for the administration of this chapter have been employed.

(J) “General permit” has the meaning that is established in rules.

(K) “Individual permit” has the meaning that is established in rules.

(L) “Installation permit” means a permit for the installation or modification of a disposal system or any part of a disposal system issued by the director of environmental protection under division (J)(1) of section 6111.03 of the Revised Code.

(M) “Large concentrated animal feeding operation” means an animal feeding facility that stables or confines at least the number of animals specified in any of the following categories:

- (1) Seven hundred mature dairy cattle whether milked or dry;
- (2) One thousand veal calves;

- (3) One thousand cattle other than mature dairy cattle or veal calves;
- (4) Two thousand five hundred swine that each weigh fifty-five pounds or more;
- (5) Ten thousand swine that each weigh less than fifty-five pounds;
- (6) Five hundred horses;
- (7) Ten thousand sheep or lambs;
- (8) Fifty-five thousand turkeys;
- (9) Thirty thousand laying hens or broilers if the animal feeding facility uses a liquid manure handling system;
- (10) One hundred twenty-five thousand chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (11) Eighty-two thousand laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (12) Thirty thousand ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;
- (13) Five thousand ducks if the animal feeding facility uses a liquid manure handling system.

(N) “Major concentrated animal feeding facility” means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the categories in division (M) of this section.

(O) “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, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta.

(P) “Manure storage or treatment facility” means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure.

(Q) “Medium concentrated animal feeding operation” means an animal feeding facility that satisfies both of the following:

(1) The facility stables or confines the number of animals specified in any of the following categories:

(a) Two hundred to six hundred ninety-nine mature dairy cattle whether milked or dry;

(b) Three hundred to nine hundred ninety-nine veal calves;

(c) Three hundred to nine hundred ninety-nine cattle other than mature dairy cattle or veal calves;

(d) Seven hundred fifty to two thousand four hundred ninety-nine swine that each weigh fifty-five pounds or more;

(e) Three thousand to nine thousand nine hundred ninety-nine swine that each weigh less than fifty-five pounds;

(f) One hundred fifty to four hundred ninety-nine horses;

(g) Three thousand to nine thousand nine hundred ninety-nine sheep or lambs;

(h) Sixteen thousand five hundred to fifty-four thousand nine hundred ninety-nine turkeys;

(i) Nine thousand to twenty-nine thousand nine hundred ninety-nine laying hens or broilers if the animal feeding facility uses a liquid manure handling system;

(j) Thirty-seven thousand five hundred to one hundred twenty-four thousand nine hundred ninety-nine chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(k) Twenty-five thousand to eighty-one thousand nine hundred ninety-nine laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(l) Ten thousand to twenty-nine thousand nine hundred ninety-nine ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;

(m) One thousand five hundred to four thousand nine hundred ninety-nine ducks if the animal feeding facility uses a liquid manure handling system.



(2) The facility does one of the following:

(a) Discharges pollutants into waters of the United States through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans;

(b) Discharges pollutants directly into waters of the United States that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility.

“Medium concentrated animal feeding operation” includes an animal feeding facility that is designated by the director as a medium concentrated animal feeding operation pursuant to rules.

(R) “Mortality composting” means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

(S) “NPDES permit” means a permit issued under the national pollutant discharge elimination system established in section 402 of the Federal Water Pollution Control Act and includes the renewal of such a permit. “NPDES permit” includes the federally enforceable provisions of a permit to operate into which NPDES permit provisions have been incorporated.

(T) “Permit” includes an initial, renewed, or modified permit to install, permit to operate, NPDES permit, and installation permit unless expressly stated otherwise.

(U) “Permit to install” means a permit issued under section 903.02 of the Revised Code.

(V) “Permit to operate” means a permit issued or renewed under section 903.03 of the Revised Code and includes incorporated NPDES permit provisions, if applicable.

(W) “Person” has the same meaning as in section 1.59 of the Revised Code and also includes the state, any political subdivision of the state, any interstate body created by compact, the United States, or any department, agency, or instrumentality of any of those entities.

(X) “Point source” has the same meaning as in the Federal Water Pollution Control Act.

(Y) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes,

biological materials, radioactive materials except those regulated under the “Atomic Energy Act of 1954,” 68 Stat. 919, 42 U.S.C. 2011, as amended, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, including manure, discharged into water. “Pollutant” does not include either of the following:

- (1) Sewage from vessels;
- (2) Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well that is used either to facilitate production or for disposal purposes is approved by the state and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(Z) “Process generated waste water” means water that is directly or indirectly used in the operation of an animal feeding facility for any of the following:

- (1) Spillage or overflow from animal watering systems;
- (2) Washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility;
- (3) Direct contact swimming, washing, or spray cooling of animals;
- (4) Dust control.

(AA) “Process waste water” means any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs.

(BB) “Production area” means any of the following components of an animal feeding facility:

- (1) Animal confinement areas, including, but not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, animal walkways, and stables;
- (2) Manure storage areas, including, but not limited to, manure storage or treatment facilities;
- (3) Raw material storage areas, including, but not limited to, feed silos, silage bunkers, commodity buildings, and bedding materials;

(4) Waste containment areas, including, but not limited to, any of the following:

(a) An egg washing or egg processing facility;

(b) An area used in the storage, handling, treatment, or disposal of mortalities;

(c) Settling basins, runoff ponds, liquid impoundments, and areas within berms and diversions that are designed and maintained to separate uncontaminated storm water runoff from contaminated water and to contain and treat contaminated storm water runoff.

(CC) “Public meeting” means a nonadversarial public hearing at which a person may present written or oral statements for the director of agriculture’s consideration and includes public hearings held under section 6111.12 of the Revised Code.

(DD) “Rule” means a rule adopted under section 903.10 of the Revised Code.

(EE) “Small concentrated animal feeding operation” means an animal feeding facility that is not a large or medium concentrated animal feeding operation and that is designated by the director as a small concentrated animal feeding operation pursuant to rules.

(FF) “Waters of the state” has the same meaning as in section 6111.01 of the Revised Code.

### **§ 903.03 Program for issuance of permits to operate.**

(A)

(1) Not later than one hundred eighty days after March 15, 2001, the director of agriculture shall prepare a program for the issuance of permits to operate under this section.

(2) Except for a concentrated animal feeding facility that is operating under an installation permit, on and after the date on which the director has finalized the program required under division (A)(1) of this section, no person shall own or operate a concentrated animal feeding facility without a permit to operate issued by the director under this section.

(B) The director or the director’s authorized representative may help an applicant for a permit to operate during the permitting process by providing guidance and technical assistance.

(C) An applicant for a permit to operate shall submit a fee in an amount established by rule together with, except as otherwise provided in division (E) of this section, an application to the director on a form that the director prescribes and provides. The applicant shall include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership, of all members if the applicant is a limited liability company, or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant. As used in division (C)(1) of this section, "control" has the same meaning as in division (C)(1) of section 903.02 of the Revised Code.

(2) Information concerning the applicant's past compliance with laws pertaining to environmental protection that is required to be provided under section 903.05 of the Revised Code, if applicable;

(3) A manure management plan for the concentrated animal feeding facility that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule;

(4) An insect and rodent control plan for the concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

(1) The permit application contains misleading or false information.

(2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

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

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, shall submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual permit to operate.

(F) A permit to operate shall be valid for a period of five years.

(G) A permit to operate may be renewed. An application for renewal of a permit to operate shall be submitted to the director at least one hundred eighty days prior to the expiration date of the permit to operate and shall comply with the requirements governing applications for permits to operate that are established under this section and by rules, including requirements pertaining to public notice and participation.

(H) The director may modify, suspend, or revoke a permit to operate in accordance with rules.

(I) The owner or operator of a concentrated animal feeding facility who proposes to make a major operational change at the facility shall submit an application for approval of the change to the director in accordance with rules.

**§ 903.05 Applicants who have not owned or operated an Ohio facility for two of five past years; persons seeking to acquire or operate facility that has been issued a permit; notice of proposed change in persons.**

(A) Each application for a permit to install or permit to operate a concentrated animal feeding facility that is submitted by an applicant who has not owned or operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code owns, has owned, has operated, or is operating in this state;

(2) A listing of the animal feeding facilities that the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code owns, has owned, has operated, or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the animal feeding facilities that the applicant or any

such person owns, has owned, has operated, or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code, all civil actions in which the applicant or any such person was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the applicant or any such person pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act, the “Safe Drinking Water Act,” as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating outside the United States.

The lists of animal feeding facilities owned or operated by the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code within or outside this state or outside the United States shall include, respectively, all such facilities owned or operated by the applicant or any such person during the five-year period immediately preceding the submission of the application.

(B) If the applicant for a permit to install or permit to operate or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code has been involved in any prior activity involving the operation of an animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director’s discretion that the applicant and any such person, in the operation of animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the “Safe Drinking Water Act,” as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant or any such person lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(C) A person who seeks to acquire or operate a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to

operate shall submit to the director the information specified in divisions (A)(1) to (3) of this section prior to the transfer of the permit. The permit shall not be transferred as otherwise provided in division (I) of section 903.09 of the Revised Code if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

(D) An owner or operator of a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to operate shall submit to the director notice of any proposed change in the persons identified to the director under division (C)(1) of section 903.02 or 903.03 of the Revised Code, as applicable. The director may deny approval of the proposed change if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the proposed person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

#### **§ 903.08 Participation in national pollutant discharge elimination system; permit.**

(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.

(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 of the Revised Code for the discharging, transporting, or handling of storm water from an animal feeding facility or of pollutants from concentrated animal feeding operations 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.

(B)

(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge pollutants from a concentrated animal feeding operation into waters of the state without first obtaining a NPDES permit issued by the director of agriculture under this section. Any person that is required by the Federal Water Pollution Control Act to obtain a permit for the discharge of pollutants from a concentrated animal feeding operation shall apply to the director for an individual NPDES permit or for coverage under a general NPDES permit. The director is authorized to issue, revoke, modify, or deny such an individual permit or issue, revoke, or deny coverage under a general permit in compliance with all requirements of the Federal Water Pollution Control Act. Violation of division (B)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a permit by the director of environmental protection under division (J) of section 6111.03 of the Revised Code for the discharge of pollutants from a concentrated animal feeding operation into the waters of the state prior to the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(C)

(1) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section, no person shall discharge storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture in accordance with rules when such a permit is required by the Federal Water Pollution Control Act. Violation of division (C)(1) of this section is hereby declared to be a public nuisance for purposes of state enforcement of this section.

(2) Persons that have been issued a NPDES permit by the director of environmental protection under Chapter 6111. of the Revised Code for the discharge of storm water from an animal feeding facility prior to the date on



which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under this section may continue to operate under that permit until it expires or is modified or revoked. Such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit under division (A)(2) of this section.

(D) In accordance with rules, an applicant for a NPDES permit issued under this section shall submit a fee in an amount established by rule together with, except as otherwise provided in division (F) of this section, an application for the permit to the director of agriculture on a form prescribed by the director. The application shall include any information required by rule. The director or the director's authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance.

(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.

(F) To the extent consistent with the Federal Water Pollution Control Act, the director of agriculture shall issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the director determines that all of the following apply:

- (1) Any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually.
- (2) The discharges are more appropriately authorized by a general permit than by an individual permit.
- (3) Each category of point sources satisfies the criteria established in rules.

A person who is required to obtain a NPDES permit shall submit to the director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the director shall notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the director shall require the submission of an application for an individual NPDES permit.

(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 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.

(H) An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate shall be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly shall designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly shall be designated accordingly.

(I) A NPDES permit may be issued under this section for a period not to exceed five years.

(J) A NPDES permit issued under this section may be renewed. An application for renewal of a NPDES permit shall be submitted to the director of agriculture at least one hundred eighty days prior to the expiration date of the permit and shall comply with the requirements governing applications for NPDES permits established under this section and by rule.

(K)

(1) No person shall make any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the director pursuant to terms and conditions established in a NPDES permit issued under this section.

(2) No person shall render inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued under this section.

(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 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.

(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.

### **§ 903.10 Rules.**

The director of agriculture may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(A) Establish all of the following concerning permits to install and permits to operate:

(1) A description of what constitutes a modification of a concentrated animal feeding facility;

(2) A description of what constitutes a major operational change at a concentrated animal feeding facility;

(3) The amount of the fee that must be submitted with each permit application and each application for a permit modification;

(4) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;

(5) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;

(6) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;

(7) Information that must be included in an application for approval of a major operational change at a concentrated animal feeding facility;

(8) Any additional information that must be included with a permit application;

(9) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;

(10) Procedures for the approval or denial of an application for approval of a major operational change at a concentrated animal feeding facility;

(11) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to the grounds established in division (D) of section 903.02 and division (D) of section 903.03 of the Revised Code;

(12) Grounds for the denial of an application for approval of a major operational change at a concentrated animal feeding facility;

(13) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously;

(14) A definition of “general permit to operate” that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of “individual permit to operate” together with the criteria for issuing a general permit to operate and the criteria for determining a person’s eligibility to operate under a general permit to operate.

(B) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:

(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (B)(1) of

this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application.

(2) Disposal of dead livestock;

(3) Production of biodiesel, biomass energy, electric or heat energy, and biologically derived methane gas as those terms are defined in section 5713.30 of the Revised Code;

(4) Any other activity that the director considers appropriate. Best management practices established in rules adopted under division (B) of this section shall not conflict with best management practices established in rules that have been adopted under any other section of the Revised Code. The rules adopted under division (B) of this section shall establish guidelines that require owners or operators of concentrated animal feeding facilities to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure.

(C) Establish all of the following concerning insect and rodent control plans required under section 903.06 of the Revised Code:

(1) The information to be included in an insect and rodent control plan;

(2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;

(3) Criteria for determining compliance with or violation of an insect and rodent control plan;

(4) Procedures and standards for monitoring insect and rodent control plans;

(5) Procedures and standards for enforcing insect and rodent control plans at concentrated animal feeding facilities at which insects or rodents constitute a nuisance or adversely affect public health;

(6) The amount of civil penalties for violation of an insect and rodent control plan assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code, provided that the rules adopted under division (C)(6) of this section shall not establish a civil penalty of more than ten thousand dollars for a violation involving a concentrated animal feeding facility that is not a major concentrated animal feeding

facility and shall not establish a civil penalty of more than twenty-five thousand dollars for a violation involving a major concentrated animal feeding facility;

(7) The time period within which the director must approve or deny an insect and rodent control plan after receiving it;

(8) Any other provisions necessary to administer and enforce section 903.12 of the Revised Code.

(D) Establish all of the following concerning livestock manager certifications required under section 903.07 of the Revised Code:

(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant for a livestock manager certification. The training shall include and the examination shall test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;

(4) The length of time during which livestock manager certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;

(6) Requirements governing the management and handling of manure, including the land application of manure;

(7) Requirements governing the keeping of records regarding the handling of manure, including the land application of manure;

(8) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.

(E) 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;

(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 Federal Water Pollution Control 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 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 United States environmental protection agency 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.

The rules adopted under division (E) of this section shall be consistent with the requirements of the Federal Water Pollution Control Act.

(F) Establish public notice and participation requirements, in addition to the procedures established in rules adopted under division (E)(7) of this section, for the issuance, denial, modification, transfer, suspension, and revocation of permits to install, permits to operate, and NPDES permits consistent with section 903.09 of the Revised Code, including a definition of what constitutes significant public interest for the purposes of divisions (A) and (F) of section 903.09 of the Revised Code and procedures for public meetings. The rules shall require that information that is presented at such a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting.

(G) Establish the amount of civil penalties assessed by the director of agriculture under division (B) of section 903.16 of the Revised Code for violation of the terms and conditions of a permit to install or permit to operate, provided that the rules adopted under this division shall not establish a civil penalty of more than ten thousand dollars per day for each violation;

(H) Establish procedures for the protection of trade secrets from public disclosure. The procedures shall authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under this chapter or when otherwise required by the Federal Water Pollution Control Act. The rules shall require at least ten days’ written notice to the person to whom a trade secret applies prior to the release of the trade secret. Rules adopted under this division do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under section 903.08 of the Revised Code or rules adopted under division (E) of this section.

(I) Establish any other provisions necessary to administer and enforce this chapter.

**§ 903.40 Certification of persons applying manure obtained from a concentrated animal feeding facility.**



(A) No person, for the purposes of agricultural production as defined in section 905.31 of the Revised Code, shall apply manure obtained from a concentrated animal feeding facility issued a permit under this chapter unless one of the following applies:

(1) The person has been issued a livestock manager certification under section 903.07 of the Revised Code.

(2) The person has been certified under this section to apply the manure by the director of agriculture.

(B) The director shall issue, renew, and deny certifications for the purposes of division (A)(2) of this section in the manner established in sections 905.321 and 905.322 of the Revised Code and rules adopted under the latter section for the certification of fertilizer applicators. Procedures, requirements, and other provisions that are established in those sections and rules apply to the certification of persons under division (A)(2) of this section. For purposes of that application, references in sections 905.321 and 905.322 of the Revised Code to “fertilizer” are deemed to be replaced with references to “manure.”

**1511.02 Chief of division of soil and water resources – powers and duties.**

[ . . . ]

(E) Subject to the approval of the Ohio soil and water conservation commission, adopt, amend, or rescind rules pursuant to Chapter 119. of the Revised Code. Rules adopted pursuant to this section:

[ . . . ]

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

[ . . . ]

**901:10-2-07 Contents of a permit to operate and NPDES applications.**

(A) The application for a permit to operate and for a NPDES permit shall contain the following information:

(1) A manure management plan that is developed and implemented to comply with the best management practices set forth in rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and 901:10-2-18 of the Administrative Code, and

(2) Plans or schedules for inspections required in rule 901:10-2-08 of the Administrative Code.

(B) Additional requirements for an application for a permit to operate include submittal of:

(1) An insect and rodent control plan that conforms to best management practices and is in accordance with rule 901:10-2-19 of the Administrative Code.

(2) A plan for odor minimization in accordance with rule 901:10-2-12 of the Administrative Code.

(3) An emergency response plan in accordance with rule 901:10-2-17 of the Administrative Code.

(C) Additional requirements for an application for a NPDES permit for a large concentrated animal feeding operation shall contain the information required in Chapter 901:10-3 of the Administrative Code.

(D) If a biosecurity plan is submitted, it shall be included with the permit to operate application.

(E) The owner or operator shall maintain a copy of the current permit to operate and NPDES permit issued by the department at the concentrated animal feeding facility's site office.

(F) Additional requirements for an application for a NPDES permit for a medium or small concentrated animal feeding operation may also include best management practices specified by the director.

**901:10-2-09 Contents of manure management plan: nutrient budget.**

(A) The manure management plan shall include the nutrient budget for the land application areas and quantity of nutrients to be managed by distribution and utilization for a twelve month period as derived from rules 901:10-2-10 and 901:10-2-11 of the Administrative Code.

(B) The total nutrient budget to be used for the land application areas under the control of the facility for the duration of the permit shall be based on the following:

(1) Targeted crop yields based on the actual crop yields;

(2) Soil productivity information;

(3) Historical yield data.

(4) Potential yield; or

(5) Combination of yield data.

(C) To the extent the manure is not managed through distribution and utilization, the manure management plan shall include the total summary of land application areas to be used for the duration of the permit and the land that is available for manure that is generated by the facility. The total summary shall be further characterized as follows:

(1) The total nutrient budget requirements on land application areas under the control of the owner or operator; and

(2) The quantity of commercial fertilizer nutrients or residual nutrients from all sources to be applied on land application areas under the control of the owner or operator for a twelve month period.

**901:10-2-11 Contents of manure management plan: distribution and utilization methods.**

(A) If the owner or operator elects to use distribution and utilization methods, for any quantity of manure that is not managed under the control of the owner or operator, the following is required:

(1) If the owner or operator decides to use livestock manure brokers or auctions or farm sales for distribution and utilization, the owner or operator shall submit distribution and utilization methods for the beneficial use of the manure as part of the manure management plan as required by rule 901:10-2-09 of the Administrative Code. The permitted facility operating record shall include copies of the acknowledgments between the owner and operator of the facility and livestock manure brokers made pursuant to auctions or farm sales. The facility operating acknowledgment shall include the following statement:

"I have been provided with a copy of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of rule 901:10-2-14 of the Administrative Code. The manure will be distributed and utilized according to the best management practices and according to any state laws regulating these uses."

(2) If the owner or operator decides to use distribution and utilization methods then the owner or operator shall provide a copy of appendices A and F to rule 901:10-2-14 of the Administrative Code, and a copy of the most recent analytical results that list the nutrient content of the manure based on an analysis consistent with the rules to the manure recipient. The permitted facility operating record shall include the name and address of the manure recipient, the date of distribution, and the approximate amount of manure in tons or gallons distributed on that date and an acknowledgment by the manure recipient as follows:

"I have been provided with a copy of the analytical results that list the nutrient content of the manure and total quantities of manure and copies of the applicable requirements of rule 901:10-2-14 of the Administrative code. The manure will be distributed and utilized according to the best management practices and according to any state laws regulating these uses."

(3) In addition to the information in paragraph (A)(2) of this rule, if the owner or operator decides to use distribution and utilization methods for liquid manure, then the owner or operator shall also provide a copy of appendix B, the available water capacity chart that illustrates how to comply with the requirements of rule 901:10-2-14 of the Administrative Code.

(B) All of the information in paragraphs (A)(1) to (A)(3) of this rule shall be recorded in the operating record as described in rule 901:10-2-16 of the Administrative Code.

(C) An estimated amount of total manure transferred to other persons by the owner or operator in the previous twelve months (tons/gallons) shall be reported in the annual report required by rule 901:10-2-20 of the Administrative Code, as well as the operating record.

(D) If the owner or operator is notified by the director, or otherwise becomes aware that the recipient is not in compliance with rule 901:10-1-06 of the Administrative Code or best management practices set forth in Chapter 1501:15-5 of the Administrative Code or with other applicable laws and rules, the owner or operator shall cease providing manure to the recipient until written authorization to continue is provided by the department.

### **901:10-2-13 Contents of manure management plan: soil characterization.**

The manure management plan shall contain information on the soil of the land application areas. Soil samples shall be analyzed to plan for nutrient utilization at recommended agronomic rates and to minimize nutrient runoff to waters of the state. Soil shall be sampled and analyzed by utilizing the following procedures:

(A) At a minimum, soil samples shall be taken to a uniform depth of eight inches and the fertility analysis shall include: pH, phosphorus, potassium, calcium, magnesium and cation exchange capacity.

(B) Soil fertility analysis shall be conducted in accordance with Publication 221, "Recommended Chemical Soil Test Procedures for the North Central Region; Published by the North Central Regional Committee on Soil Testing and Plant Analysis (NCR-13), North Dakota Agricultural Experiment Station." A copy of which may be downloaded at: <http://www.bephosphorusmart.msu.edu/>.

(C) Soil samples shall be representative of a land application site with one composite soil sample representing no more than twenty-five acres or one composite soil sample for each land application site, whichever is less.

(D) The manure management plan shall specify the soil sampling frequency in accordance with the following requirements:

(1) A site that receives manure shall be soil tested, at a minimum, once every three years and

(2) If any land application site is used by the owner or operator the land application site shall be sampled at least six months following application.

(E) Results of the soil sampling events in paragraphs (A) to (D) of this rule shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code and shall include the location of the soil sample collection site, the depth of the sample collected and the analysis.

(F) In developing appropriate manure application rates for land application methods in accordance with rule 901:10-2-14 of the Administrative Code, the owner or operator shall use the Bray P1 soil test level or equivalent appropriate phosphorus soil test, (Mehlich III, Olsen, phosphorus retention test), or other test methods approved by the director. The owner or operator shall choose a phosphorus soil test method and identify the selected method in the manure management plan.

**901:10-2-14. Contents of manure management plan: land application methods.**

This rule establishes best management practices that govern land application of manure on land application areas. The land application of manure at each land application area shall be conducted to utilize nutrients at agronomic rates, and to minimize nutrient runoff to waters of the state and shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code. The discharge of manure to waters of the state from a facility as a result of application of that manure by the facility to land application areas is a discharge from that facility subject to NPDES requirements except where it is an agricultural stormwater discharge. Where manure has been applied in accordance with this rule and an approved manure management plan, a precipitation-related discharge of manure from land application areas is agricultural stormwater discharge.

(A) The manure management plan shall contain procedures on how manure shall be transported to land application areas in a manner that minimizes loss or spillage, and how spills will be promptly cleaned up or removed.

(B) Manure application rate - testing criteria:

(1) The manure application rate shall be based on the land application area's soil tests conducted in accordance with rule 901:10-2-13 of the Administrative Code and that are no older than three years.

(2) The manure application rate shall be based on the most current manure test results conducted in accordance with rule 901:10-2-10 of the Administrative Code. The manure test results expressed as a nutrient percentage shall be converted into either pounds per ton of dry or wet manure or pounds per one thousand gallons of liquid manure.

(C) General criteria for manure application. The manure application rate shall be based on the most limiting factor of rates derived from paragraphs (B) to (G) of this rule, including factors derived from all appendices to this rule, whichever factor is determined to be the most restrictive factor for purposes of protecting waters of the state.

(1) For liquid manure:

(a) The crop nitrogen requirements or removal of nitrogen described in paragraph (D) of this rule, expressed in thousands of gallons of manure per acre;

(b) The phosphate application limits as described in paragraph (E) of this rule, expressed in thousands of gallons of manure per acre;

(c) The restrictions on the rate of liquid manure applied, taken from notes (1) and (5) in appendix A table 2 to this rule, with volume expressed as a measure of gallons per acre or inches per acre;

(d) The application rate shall not exceed the available water capacity of the soil as described in appendix B to this rule;

(e) The application rate shall be adjusted to preclude surface ponding and/or runoff from a land application area.

(2) For solid manure:

(a) The crop nitrogen requirements or removal of nitrogen as described in paragraph (D) of this rule expressed in pounds per ton of dry manure per acre;

(b) The phosphate application limits as described in paragraph (E) of this rule expressed in pounds per ton of dry manure per acre;

(c) The restrictions on the rate of solid manure applied, taken from notes (1) and (5) in appendix A table 2 to this rule with volume expressed as a measure of tons/acre.

(3) All land applications of manure shall comply with all restrictions contained in appendix A to this rule unless a compliance alternative is submitted and approved by the director. As a compliance alternative, the concentrated animal feeding operation or certified livestock manager may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot setback or a thirty five foot vegetated buffer. As a compliance alternative, the concentrated animal feeding facility or certified livestock manager may demonstrate that a soil listed in appendix A, table 1 of this rule is not prone to flooding in a particular county in which land applications of manure are planned, through reference to the current United States Department of Agriculture, Natural Resources Conservation Service, Web Soil Survey for the county.

Comment: The natural resources conservation service and the Ohio state university have conducted extensive research on manure injection and manure incorporation on all representative Ohio soil types. Refer to "United States Department of Agriculture -Natural Resource Conservation Service. Field Office Technical Guide -Conservation Practice Standard 633. Columbus, Ohio, June 2003. A copy is available for review at the Ohio department of agriculture website <http://agri.ohio.gov/>.

(4) For all land application of liquid manures, the owner or operator shall maintain or have access to methods or devices to capture or stop subsurface drain flow if liquid manure reaches the subsurface drain outlets. Use of drain outlet plugs or other devices shall be recorded in the operating record in accordance with rule 901:10-2-16 of the Administrative Code.

(5) Calculate the total amount of nitrogen and phosphate to be applied to each field, including sources other than manure such as commercial fertilizer or other organic by-products.

(6) Land application of manure by means of surface application shall not occur if the forecast contains a greater than fifty per cent chance of precipitation as determined in "Managing Manure Nutrients at Concentrated Animal Feeding Operations, Appendix M, United States Environmental Protection Agency, EPA-821-B-04-006, August 2004," exceeding an amount of one-quarter inch for hydrologic soil group D soils and one-half inch for hydrologic soil group A, B, and C soils, for a period extending twenty-four hours after the start of land application. Record weather conditions in the operating record for conditions at the time of application and for twenty-four hours prior to and following application. A copy is available for review at the Ohio department of agriculture website <http://agri.ohio.gov/>.

(D) The manure application rate for nitrogen shall be based on the following criteria:

(1) The application rate for nitrogen shall be based on utilization of crops at the recommended agronomic rates and based on minimum runoff and leaching that may impact waters of the state.

(2) In determining the agronomic rate for nitrogen, the owner or operator shall do the following:

(a) Determine the nitrogen requirements or removal rates for the realistic yield goal of planned crops using nutrient amounts from appendix C, tables 1, 2 or 3 to this rule.

(b) Subtract the nitrogen credit for crop residue, legumes, and other sources of nitrogen to be given to the next crop in accordance with values for previous crops given in appendix C, table 4 to this rule;

(c) When applying nitrogen to a grass or legume cover crop that is growing or being established immediately after manure application, manure can be applied at the recommended nitrogen rate for the next non-legume crop or the nitrogen removal rate for the next legume crop.

(3) In determining how to minimize nitrogen leaching that may impact waters of the state, the owner or operator shall do the following:

(a) Assess each land application site with the Ohio nitrogen leaching risk assessment procedure contained in appendix C, table 5 to this rule;

(b) If the nitrogen leaching risk assessment procedure completed in accordance with paragraph (D)(3)(a) of this rule demonstrates that the land application site has a high nitrogen leaching potential and no growing crop, then application of manure shall be limited to fifty pounds of nitrogen per acre calculated at the time of application prior to October first.

(4) In calculating the actual rate of application of nitrogen from manure, the figures in appendix C, table 6 to this rule shall be used along with the manure test results conducted according to rule 901:10-2-10 of the Administrative Code.

(5) The requirements of paragraph (D) of this rule may be changed only if the owner or operator can demonstrate to the director nutrient insufficiency in accordance with the prescribed nitrate soil test procedures of tables 7 and 8 in appendix C to this rule.

(E) The manure application rate for phosphate shall be determined using the soil test analysis obtained pursuant to rule 901:10-2-13 of the Administrative Code and the following criteria:



(1) Prior to the land application of manure, land application areas shall be assessed with either the phosphorus index risk assessment procedure in appendix E, table 1 to this rule or the phosphorus soil test risk assessment procedure in appendix E, table 2 to this rule. The manure application rate for phosphate shall be limited in compliance with the applicable provision in the:

(a) Generalized interpretation of phosphorus index and management column in appendix E, table 1, to this rule, or

(b) The application criteria in appendix E, table 2, to this rule.

(2) The phosphate requirements for the realistic yield goals of planned crops, crop rotations, and or plant biomass shall be determined using amounts from appendix C, table 1 to this rule;

(3) Phosphate applications between two-hundred fifty pounds per acre and five hundred pounds per acre are not recommended but may be made if the values for liquid manure exceed sixty pounds phosphate per one thousand gallons and if the values for solid manure exceed eighty pounds phosphate per ton and application is subject to these additional requirements:

(a) No manure application shall occur on land with soil tests that exceed more than one hundred parts per million Bray P1;

(b) No manure application shall occur on frozen or snow-covered ground;

(c) The manure shall be incorporated within twenty-four hours;

(d) No additional phosphate application shall be made for a minimum of three years on fields with soil tests that measure less than forty parts per million Bray P1 or equivalent; and

(e) No additional phosphate application shall be made for a minimum of five years on fields with soil tests between forty and one-hundred parts per million Bray P1 or equivalent.

(4) Notwithstanding the procedures in paragraph (E) of this rule but subject to the restrictions in appendix B to this rule, for a single phosphate application in a year, the application rate shall not exceed five hundred pounds per acre of phosphate.

(F) Land application for crops or other uses not listed in appendix C to this rule will be considered on a case-by-case basis. The owner or operator shall submit existing published or documented data that is acceptable to the director.

(G) General criteria for frozen and snow-covered ground. In addition to complying with all of the criteria in paragraphs (A) to (F) of this rule, the following actions are required for surface application of manure to land with frozen or snow-covered ground.

If manure can be injected or incorporated then the land application site is not frozen or snow covered and therefore subject to paragraphs (A) to (F) of this rule.

The owner or operator shall comply with rule 901:10-2-08 of the Administrative Code and this rule and use best efforts to avoid surface application of manure to frozen or snow covered ground by ensuring enough manure storage capacity by November of each year for a minimum of one hundred twenty to one hundred eighty days.

Manure injection or manure incorporation performed within twenty-four hours at the land application site is the preferred alternative to surface application of manure. Solid manure with less than fifty per cent moisture shall be stockpiled at the land application site in lieu of manure application on frozen or snow covered ground.

Surface application of manure on frozen or snow-covered ground is prohibited unless performed in accordance with all of the following requirements in paragraph (G)(1) of this rule.

(1) Application.

(a) Prior approval for each surface application of manure shall be obtained from the director or his designated representative.

(b) Except as required by paragraph (G)(1)(g) of this rule, the application rate is limited to ten wet tons per acre for solid manure with more than fifty per cent moisture.

(c) Except as required by paragraph (G)(1)(g) of this rule, the application rate is limited to five thousand gallons per acre for liquid manure.

(d) Applications are to be made on land with at least ninety per cent surface residue cover at the time of application such as good quality hay or pasture field, all corn grain residue remaining after harvest, and all small grain residue cover remaining after harvest. Vegetation or residue shall not be completely covered by ice or snow at the time of application.

(e) Manure ponding shall be prevented.

(f) Manure shall not be applied on more than twenty contiguous acres. Contiguous areas for application are to be separated by a break of at least two hundred feet. Areas that are furthest from streams, ditches, waterways, and or surface waters are to be utilized in preference to areas with the potential for surface water runoff.

(g) Setbacks from surface waters and conduits to surface waters, (including grassed waterways and surface drains) shall be a minimum of two hundred feet. Setbacks shall have at least ninety per cent surface residue cover and vegetation or residue shall not be completely covered by ice or snow at the time of application.

(h) For application fields with slopes greater than six percent, manure shall be applied in alternating strips sixty to two hundred feet wide generally on the contour, or in the case that the field is managed in contour strips with alternative strips in grass or legume, manure shall only be applied on alternative strips. Manure application rates shall be determined for each separate application strip area and not the area of the entire application field.

(i) Any manure application with phosphorus exceeding two hundred and fifty pounds per acre is prohibited.

(2) Monitoring.

(a) Concentrated field surface drainage and tile outlets shall be visually monitored at the conclusion of manure application and periodically afterwards when weather, temperature increase, snowmelt and rainfall are likely to produce manure runoff. Periodic visual monitoring shall continue until manure is assimilated into the application field and is no longer likely to discharge into waters of the state.

(b) Upon discovering a discharge to waters of the state, the owner or operator shall notify the department within two hours of detection of the runoff event.

(c) In addition to the visual monitoring and reporting in this paragraph, the owner or operator shall collect representative grab samples from the 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 waters) and have the sample analyzed for ammonia nitrogen levels.

(d) The owner or operator shall:

(i) Collect the sample within thirty minutes of the first knowledge of the discharge; or

(ii) If the sampling in that period is inappropriate due to dangerous weather conditions, the owner or operator shall collect the sample

as soon as possible after suitable conditions occur and shall document the reason for delay.

(e) The owner or operator shall report the results of the discharge event to the department within fourteen 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 the precipitation leading up to the event, any measures taken to clean up and eliminate the discharge, and copies of land application records. Laboratory results not available at the time of the report submitted shall be submitted to the department within five days of receipt.

(f) If the ammonia nitrogen level in a water quality sample is determined to be twenty-six mg L or greater in the discharge at the point it enters waters of the state, then additional surface application of manure to frozen and or snow covered ground is prohibited on the field where the runoff event occurred.

(g) In the event that an owner or operator complies with all of the requirements of paragraph (G) of this rule and runoff enters waters of the state resulting in ammonia nitrogen level in a sample determined to be twenty-six mg L or greater in three application events authorized in accordance with paragraph (G)(1)(a) of this rule, then additional surface application of manure to frozen and/or snow covered ground shall be prohibited for the duration of the permit.

(h) In the event that the owner or operator fails to comply with the land application requirements for frozen or snow covered ground, including but not limited to prior notice, and approval for each application pursuant to paragraph (G)(1)(a) of this rule, notice of discharge, monitoring and record keeping, for more than two surface land application events, then land application on any frozen or snow-covered ground shall be prohibited for that owner or operator for the duration of the permit upon receipt of a third notice of deficiencies resulting in noncompliance pursuant to section 903.17 of the Revised Code.

**1501:15-5-05 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 chief or his or her 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 chief:

(1) Shall not apply manure between December fifteenth and March first without prior approval for each application from chief or his or her 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 chief or his or her 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 chief or the chief'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 chief 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 chief or the chief'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.

**3745-33-02 Ohio NPDES permit required.**

(A) No person may discharge any pollutant or cause, permit or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this chapter. Any person who holds a federal NPDES permit issued under Section 402 (a) of the act is not required to obtain an Ohio NPDES permit until the permit's expiration date. The director shall administer and enforce permits issued under Section 402 (a) of the act within this state, and may modify the terms and conditions thereof, in accordance with division (J) of section 6111.03 of the Revised Code. This includes discharging land application systems as defined in rule 3745-42-13 of the Administrative Code.

(B) Each point source shall be authorized by an Ohio NPDES permit. This chapter shall be administered in a manner no less stringent than the act and regulations adopted or subsequently amended by the administrator including 40 C.F.R. 122 to 125, 129 to 133, 136, 400 to 471, 501 and 503. The director may issue a single permit covering more than one point source, but authorized discharge levels, monitoring requirements and other appropriate requirements shall be specified for each point source.

(C) No Ohio NPDES permit shall be required for any discharge exempted from the NPDES permit system by the act or mandatory regulations adopted thereunder, unless required by section 6111.03 of the Revised Code.

(D) Ohio NPDES permits are required for sludge disposal facilities subject to Chapter 3745-40 of the Administrative Code.

### **3745-33-03 Applications.**

(A) Applications for Ohio NPDES permits shall be filed only on forms approved by Ohio EPA and shall contain such information as Ohio EPA deems necessary. These forms may be electronic. As a minimum, these applications shall contain any NPDES application information required by regulations adopted by the administrator, including 40 C.F.R. 122 to 125, 129 to 133, 136, 400 to 471, 501 and 503.

(B) Any person proposing to commence the discharge of pollutants shall submit an application, including all data required by the application form, at least one hundred eighty days prior to commencement of the discharge. If a permit renewal application is submitted at least one hundred eighty days prior to the expiration date of the existing permit, and the director does not issue a new permit before the expiration date, the conditions of the expired permit shall continue in force until the director acts on the permit application.

(C) Application requirements for materials added to wastewater.

(1) The applicant shall attach to the application a list of treatment additives proposed to be discharged including, but not limited to, maintenance chemicals and chemicals used to aid in the treatment of the wastewater.

(2) If these treatment additives proposed have not been approved in a permit to install issued under Chapter 3745-42 of the Administrative Code, director's final findings and orders, or NPDES permit issuance, the applicant shall also submit an application to discharge the treatment additives in accordance with paragraph (G) of this rule.

(D) Any application that fails to provide Ohio EPA with requested information needed for ascertaining compliance with the applicable provisions of this chapter, may be considered incomplete. Ohio EPA may either request additional information or return the application to the applicant without further processing. An indication of why the application was considered incomplete shall accompany the application returned.

(1) Except as specified in paragraph (D)(1)(b) of this rule, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O.

(a) For the purposes of this requirement, a method approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O is "sufficiently sensitive" when any of the following conditions are met:

(i) The method quantification level (QL) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter.

(ii) The method QL is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge.

(iii) The method has the lowest QL of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

(b) When there is no analytical method that has been approved under 40 C.F.R. Part 136, required under 40 C.F.R. chapter I, subchapter N or O, and a specific analytical method is not otherwise required by the director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy or resolution may be considered when assessing the performance of the method.

[Comment: Common deficiencies include not submitting the application fee, the listed operator on form 1.VIII should be the responsible party as opposed to the person who does the day-to-day operations and maintenance, the signatory not

meeting the requirements in paragraph (F) of this rule, form 2C not including analytical data of pollutants believed present, form 2S not completed for small sanitary applicants using form 2E and the submitted sample analysis not having a sufficiently sensitive analytical method to determine compliance with applicable water quality standards.]

(E) An applicant may request that information submitted with applications be treated as confidential business information.

(1) A request for confidential treatment shall be submitted to Ohio EPA simultaneously with an application with documentation sufficient to support that the information is confidential. Failure to make such a timely request shall constitute a waiver of the right to prevent public disclosure. A request at a later time will be entertained by Ohio EPA, but Ohio EPA will not be liable for any information released prior to receiving the request.

(2) A decision as to whether to treat the information as confidential shall be made by the director within forty-five days of receipt of the request and accompanying documentation. Until such decision is made, the information or part thereof, shall be treated as confidential. The applicant requesting confidentiality shall be notified in writing of the director's decision.

(3) Any information determined to be confidential may be disclosed, as follows:

(a) To officers, employees or authorized representatives of the state or a federal agency, without the consent of the affected person, when necessary to sustain an action brought pursuant to Chapter 6111. of the Revised Code or during an adjudication hearing or when otherwise necessary to fulfill any requirement of the act or Chapter 6111. of the Revised Code.

(b) In any judicial proceeding in accordance with paragraph (E)(3)(d) of this rule.

(c) In any administrative hearing in accordance with paragraph (E)(3)(d) of this rule.

(d) Information determined to be confidential may be disclosed in any judicial proceeding or in any administrative hearing after notification to the affected person and the presiding officer sufficient to allow submission of comments by the affected person prior to disclosure of the information. Upon consideration of such comments, the presiding officer may condition disclosure of the information on the making of such protective arrangements and commitments found to be necessary and appropriate.

(e) Disclosure of information determined to be confidential in accordance with paragraph (E)(3) of this rule shall not, of itself, affect the eligibility



of information for confidential treatment under the other provisions of this rule.

(4) Information required by NPDES application forms provided by the director under this rule may not be claimed confidential. This includes information on the forms themselves and any attachments used to supply information required by the forms. Claims for confidentiality will be denied for the following information:

(a) The name and address of any permit applicant or permittee.

(b) Permit applications, permits, and effluent data.

(F) An application submitted to the director pursuant to this chapter shall be signed as follows:

(1) In the case of a corporation, by a responsible corporate officer. For these purposes, a responsible corporate officer means either of the following:

(a) A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation.

(b) The manager of one or more manufacturing, production or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, state or other public facility, by either the principal executive officer, the ranking elected official or other duly authorized employee.

(G) Requesting approval to use and discharge treatment additives.

(1) Permittees, except for POTWs, shall obtain prior approval for the use of new treatment additives and for the discharge of treatment additives.

(2) Requests for approvals under this paragraph shall be filed only on forms approved by Ohio EPA and contain such information as Ohio EPA deems necessary. The forms may be submitted electronically.

(3) All of the following substances are exempt from the requirement to request approval prior to use:

(a) Acids and bases used only to alter the pH of the discharge when the applicable outfall already includes an effluent limit for pH, including all of the following:

(i) Caustic soda (sodium hydroxide).

(ii) Magnesium hydroxide.

(iii) Ferric chloride.

(iv) Aluminum sulfate (alum).

(v) Lime.

(vi) Sulfuric acid.

(b) Sodium carbonate.

(c) Polyaluminum chloride.

(d) The following chlorination chemicals when the applicable outfall already includes an effluent limit for chlorine:

(i) Chlorine.

(ii) Sodium hypochlorite.

(iii) Calcium hypochlorite.

(e) The following dechlorination chemicals:

(i) Sodium thiosulfate.

(ii) Sodium sulfite.

(iii) Sodium meta bisulfite.

(iv) Sodium bisulfite.

(v) Sulfur dioxide.

**3745-33-04 Permit actions.**

(A) Criteria for issuing Ohio NPDES permits.

(1) The director shall issue an Ohio NPDES permit for the discharge if, on the basis of all information available to Ohio EPA, the director determines all of the following:

- (a) The authorized discharge levels specified in paragraphs (A), (B), (C), and (D) of rule 3745-33-05 of the Administrative Code will not be exceeded by the applicant.
- (b) An application form completed in accordance with rule 3745-33-03 of the Administrative Code and any supplemental information requested by the director have been submitted.
- (c) Adequate provisions for monitoring to obtain required pollutant discharge information have been made.
- (d) If required by Ohio EPA, performance tests, conducted at the applicant's expense after the application was filed and in accordance with methods prescribed by Ohio EPA, demonstrate that the discharge is in compliance with the authorized discharge levels.

(2) The director shall deny an application for a permit or renewal thereof if any of the following occur:

- (a) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby.
- (b) The director determines that the proposed discharge or source would conflict with an area-wide waste treatment management plan approved in accordance with section 208 of the act.
- (c) The administrator objects in writing to the issuance or renewal of the permit in accordance with section 402 (d) of the act.
- (d) The imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states.
- (e) The application is for the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste into the waters of the state.

(3) Possession of an Ohio NPDES permit shall not relieve any person of the responsibility to comply with the authorized discharge levels specified in the permit or other provisions of applicable law.

(B) Time for issuance. The director shall issue or deny an application for a permit for a new discharge, for the installation or modification of a disposal system, or for renewal of a permit, within one hundred eighty days of the date on which the director receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director.

(C) Renewal of permits.

(1) The director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of the permittee's Ohio NPDES permit shall submit a permit application including all data required by the application form at least one hundred eighty days prior to the expiration of the permit. Ohio NPDES permits shall be renewed in accordance with the provisions for issuance of permits under this chapter.

(2) In renewing a permit, the director shall consider the compliance history of the permit holder and may deny the renewal if the director determines that the permit holder has not complied with the terms and conditions of the existing permit. If a permit renewal application is submitted at least one hundred eighty days prior to the expiration date of the existing permit, and the director proposes to deny the renewal of the permit in accordance with rule 3745-49-05 of the Administrative Code, the expired permit shall continue to be in effect in accordance with section 119.06 of the Revised Code until such time as the director issues a final action.

(3) For new sources or new dischargers as defined in 40 C.F.R. 122.2, see 40 C.F.R. 122.29(d) for applicability of more stringent new source performance standards or technology-based standards under section 301 (b)(2) of the act.

[Comment: Pursuant to 301 (b)(2) of the act, this provision is not applicable to publicly owned treatment works or water quality standards.]

(4) Any more stringent limitation on the thermal component of a discharge shall not be imposed as a condition of a permit or renewal thereof for a discharge during a ten year period in accordance with division (J)(3) of section 6111.03 of the Revised Code.

(D) Modification of permits. Permits may be modified at the request of the permittee, any interested person or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(1) Applications for modifications of permits shall be made only on forms approved by Ohio EPA and shall contain such information that Ohio EPA deems necessary. Such an application or request shall contain all of the following:

- (a) A specific description of the relevant provisions of the existing permit.
- (b) The precise changes requested. Approvable causes for permit modifications can be found in 40 C.F.R. 122.62.
- (c) The reasons for the changes requested.
- (d) An explanation demonstrating that the permit as modified will comply with applicable state and federal statutes and regulations.

(2) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision. A modification at the request of a permittee shall not be approved unless the director determines all of the following:

- (a) That the permit as modified will comply with all applicable state and federal statutes and regulations.
- (b) That any of the following occurred:
  - (i) The permit would have been issued with the provisions contained in the proposed modifications if all information presently available had been available at that time.
  - (ii) Valid cause for such revision exists over which the permittee had little or no control.
  - (iii) A good faith modification in the nature of the operation was made.
- (c) That the regional administrator does not object in writing to such modification within thirty days following receipt of notice from the director.

(3) Minor modifications. With the consent of the permittee, the director may modify a permit to make corrections or allow for changes in the permitted activity listed in this paragraph, without meeting the requirements of paragraphs (D)(1) and (D)(2) of this rule and without following the procedures of rule 3745-33-10 of the Administrative Code and 40 C.F.R. Part 124. Minor modifications may only consist of any of the following:

- (a) Correct typographical errors.

- (b) Require more frequent monitoring by the permittee.
- (c) Revise the months for which monitoring is required, if the monitoring frequency and number of samples per year remain the same.
- (d) Change a reporting code for a monitoring parameter, if the associated concentration units are not less sensitive.
- (e) Change the expiration of the permit to a date that is not later than five years after the effective date of the permit. The effective date is the date that the permit or most recent renewal became effective.
- (f) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty days after the date specified in the existing permit and does not interfere with the attainment of the final compliance date requirement.
- (g) Change the construction schedule for a discharger that is a new source. No change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.
- (h) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.
- (i) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code (or a modification thereto that has been approved in accordance with the procedures in rule 3745-3-03 of the Administrative Code) as enforceable conditions of the POTW's program.
- (j) Incorporate storm water pollution prevention requirements.
- (k) Incorporate monitoring requirements and effluent limits for the following pollutants in treatment additives when treatment additives are approved under director's final findings and orders:
  - (i) pH.
  - (ii) Total residual oxidants.
  - (iii) Total residual chlorine.
  - (iv) Phosphorus.

(l) Incorporate newly discovered storm water outfalls at a facility, provided that both of the following conditions are abided by:

(i) The discharge shall be controlled as necessary to meet applicable water quality standards.

(ii) For new discharges or new sources as defined in rule 3745-1-02 and rule 3745-1-05 of the Administrative Code, the discharge cannot be to outstanding state waters, outstanding national resource waters, or superior high quality waters, other than lake Erie, as defined by and identified in rule 3745-1-05 of the Administrative Code, or direct tributaries to these waters within one mile of these waters.

(4) Changes to nutrient management plans for concentrated animal feeding operations. Until the date that U.S. EPA approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, permits shall be modified in accordance with 40 C.F.R. 122.42(e) when a concentrated animal feeding operation proposes to change a nutrient management plan.

(E) Transfer of permits.

(1) An Ohio NPDES permit is transferable. The permittee shall notify the succeeding owner or successor of the existence of the Ohio NPDES permit by letter, a copy of which shall be forwarded to Ohio EPA. The copy of the letter shall be received by Ohio EPA at least sixty days prior to any proposed transfer of an Ohio NPDES permit and shall serve as the permittee's notice to the director of the proposed transfer.

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the permittee and successor, including acknowledgment that the existing permittee is liable for violations up to the transfer date and the successor is liable for violations from that date forth, shall be received by Ohio EPA at least sixty days prior to the proposed transfer.

(3) At any time during the period between notification of the proposed transfer and the effective date of the transfer, the director may deny the transfer if the director concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. The director shall notify both the original permittee transferor and the transferee in writing of the director's decision.

(F) Termination of permits. Each Ohio NPDES permit shall expire as of the date indicated on the permit. No permit shall be issued that will run for a period of more than five years, however the permit can be administratively continued under paragraph (C) of this rule. Permits may be terminated at the request of the permittee or any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests

shall be in writing and shall contain facts or reasons supporting the request. If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.

(G) Revocation of permits.

(1) Permits may be revoked at the request of the permittee or any interested person, or upon the director's initiative for causes listed in 40 C.F.R. 122.64. All requests shall be in writing and shall contain facts or reasons supporting the request. The director may revoke a permit at any time if the director determines that any applicable laws, rules, regulations or permit terms or conditions have been violated.

(2) The permittee shall be notified of the proposed revocation and reasons for such proposed revocation. The director shall afford a prompt hearing to any permittee whose permit the director proposes to revoke and who requests such a hearing, in accordance with the provisions of the rules of procedure, Chapters 3745-47 and 3745-49 of the Administrative Code.

(3) If the director decides the request is not justified, the director may send the requestor a brief written response giving a reason for the decision.