

Concentrated Animal Feeding Facility Advisory Committee
Ohio Department of Agriculture
June 27, 2013

****As Approved by the CAFF Advisory Committee****

Member Attendance			Representing
P	Cathy	Alexander	Ohio Environmental Protection Agency
P	Kirk	Hines	Ohio Department of Natural Resources
P	Maurice	Eastridge	The Ohio State University
P	Kevin	Elder	ODA-DLEP
P	Tim	Sword	Ohio Department of Development
P	Tony	Anderson	County Commissioners Assoc. of Ohio
A	Karen	Chapman	Environmental Defense Fund
A	Mike	Mull, DVM	Ohio Veterinary Medical Association
P	Glen	Feichtner	Ohio Cattlemen's Association
P	Carl	Link	Ohio Pork Producers Council
A	Roger	High	Ohio Sheep Improvement Association
P	Joe	Logan	Ohio Environmental Council
P	Dick	Lorenz	Water Management Association of Ohio
P	Eric	Dresbach	Ohio Water Environment Association
P	Andy	Miedema	Ohio Dairy Producers
P	Tim	Weaver	Ohio Poultry Association
A	Jason	Menchhofer	Ohio Environmental Health Association
P	Chuck	Divelbiss	Public Representative
A	Russell	Ludwig	Public Representative
A	None	Assigned	Public Representative
A	None	Assigned	Public Representative
Alternate Attendance			
A	None	Assigned	Ohio Environmental Protection Agency
A	Rob	Hamilton	Ohio Department of Natural Resources
A	None	Assigned	The Ohio State University
A	None	Assigned	Ohio Department of Development
P	Andy	Ety	ODA-DLEP
A	None	Assigned	County Commissioners Assoc. of Ohio
A	None	Assigned	Ohio Water Environment Association
A	None	Assigned	Environmental Defense Fund
A	Todd	Price, DVM	Ohio Veterinary Medical Association
A	Trent	Dougherty	Ohio Environmental Council
A	Elizabeth	Harsh	Ohio Cattlemen's Association
P	Rod	Dunn	Water Management Association of Ohio
A	Tom	Hertzfeld	Ohio Poultry Association
A	None	Assigned	Ohio Sheep Improvement Association
A	Carl	Ayers	Ohio Dairy Producers Association
A	Pat	Hord	Ohio Pork Producers Council
A	Anne	Kaup-Fett	Ohio Environmental Health Association
A	None	Assigned	Public Representative

Audience

Scott Higgins, Ohio Dairy Producers
Dave White, Ohio Livestock Coalition

DLEP staff

Gary Zwolinski, Engineer
Kelly McCloud, Assistant Attorney General

ODA staff

Kelly Boubary – Administrative Professional

Howard Henry – Legal Counsel

John Schlichter – Deputy Director

Carl Link called the meeting to order.

All members introduced themselves.

Carl Link sought additions or corrections to the agenda. There were no additions to the agenda. Carl then sought additions or corrections to the March 21, 2013, minutes. There were no changes or corrections to the meeting minutes. A motion to approve the minutes as written was made by Tim Weaver, and seconded by Eric Dresbach. All were in favor; motion carried.

A general question was asked if there was an introduction at the State House which would require or permit a license for applicators.

Kevin Elder stated there is ag. nutrient legislation being proposed which will include anyone that applies fertilizer will need to go through certification, but this is not permitting. It probably will be introduced before they leave session, then will be open for a lot more discussion and hearings. It does not affect what we are doing here. What the Certified Livestock Managers will do is establish some type of reciprocal training so the certification requirements are met for fertilizer. Most of the Ag. Nutrient Bill will go through the local Soil and Water Conservation Districts for the actual plans. All the certification ODA will do is train like it does for the certified pesticide license but it will be for ag. nutrients. It is being proposed that it will be another category for the pesticide license to apply fertilizer. It's tricky because the U.S. EPA won't count the fertilizer training towards any of the categories for pesticides but it will be another category even though it is not a federal category. The Certified Livestock Managers want to make sure that the training qualifies people that take it for having a nutrient fertilizer applicator certification too. We need to make clear in the legislation that it will be reciprocal. We also need to look at what is going on in Indiana and Pennsylvania for their nutrient certification for some reciprocity agreements.

The question was asked how many other states have legislation which requires a farmer to have a license to apply fertilizer. Kevin stated Indiana does but it is just on commercial applicators, not farmers. They are for manure.

RULE REVIEW

901:10-1-01 DEFINITIONS

Kevin Elder stated there are no proposed changes.

Tony Anderson asked if they are consistent with water quality to try to keep everything consistent. If they are continued to be called the same thing then we should be OK.

Cathy Anderson asked if the definition of manure is in the statute? Andy Ety said yes.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Tim Weaver. All were in favor; motion carried.

901:10-1-02 GENERAL ADMINISTRATIVE REQUIREMENTS FOR PERMITS

Kevin stated there are no proposed changes.

A motion to accept the rule was made by Glen Feichtner, and seconded by Chuck Divelbiss. All were in favor; motion carried.

901:10-1-03 CRITERIA FOR DECISION-MAKING

Kevin stated that this rule lays out what the Director can do with a permit and there are no proposed changes. This rule has not been tinkered with in five years.

A motion to accept the rule was made by Glen Feichtner, and seconded by Tim Weaver. All were in favor; motion carried.

901:10-1-04 FEES

Rule was not up for 5 year review.

901:10-1-05 TRADE SECRETS REQUESTS FOR CONFIDENTIALITY

Kevin stated most comments are in Chapter 2. Trade secrets have basically been used a couple of times. This rule has not been changed in five years; there is no reason to change.

A motion to accept the rule was made by Tony Anderson, and seconded by Chuck Divelbiss. All were in favor; motion carried.

Joe Logan asked how often this has been used. Kevin said not much it is meant for proprietary business information.

901:10-1-06 CERTIFIED LIVESTOCK MANAGER

Kevin stated there are no proposed changes to this rule.

A motion to accept the rule was made by Tony Anderson, and seconded by Eric Dresbach. All were in favor; motion carried.

901:10-1-08 PERMIT TRANSFER

Kevin stated this rule has been used quite frequently and has not been changed. He said they do transfer permits on a fairly regular basis and there are no proposed changes to this rule.

Joe Logan asked if this transfer process stipulates that there will be no significant operational changes? Kevin stated this doesn't cover operational changes; just the transfer of owners or operators of the permit. Anybody that a permit is transferred to assumes everything that is in that permit. Joe Logan asked if that included any legal action? Kevin said it depends on what kind of legal action it would be. Some things can be transferred (including legally) but usually the legal issues are resolved before the transfer. DLEP tries to make sure whoever is buying the operation understands what their obligations are.

Tim Sword asked what springs you into action? A written notification? Kevin said for the transfer itself, it is basically the facility notifying DLEP it is going to be sold so the inspectors and legal department are aware of what's going on. DLEP has to have acknowledgement of the transfer by both the buyer and seller before it is transferred. We have had some cases where we had to do that in court. The court has to authorize that transfer because of a bankruptcy sale or foreclosure.

Tim Sword asked if DLEP is responsible for all disclosure or does the bank say we are disclosing this because that is all we have to? Kevin stated DLEP basically informs the bank that this permit is here and DLEP has these issues if it is in foreclosure. DLEP tries to disclose but does not always know who the perspective purchasers are so we notify the bank and if they don't notify them then it is between the bank and whoever is buying. Lenders have actually done some remediation on a facility where DLEP was concerned about pond levels being close to freeboard or something of that sort and the lenders actually hired someone to bring it

back into compliance. A lot of times the lenders do not understand that there is a permit that has requirements with it so DLEP makes sure they are aware of it if the operator is not present or able to.

Tim Sword asked if the transfer happens at the time of sale or after the sale? Kevin stated usually within 30 days of closing. DLEP asked that they provide a 30 day notice prior to sale to get the transfer reviewed. If there are major changes the buyer wants, then they will have to go through a permit to install or maybe change the permit to operate to what they want to do. Some of that can be done through operational changes and some can be done through permit modifications depending on how detailed it is.

Glen Feichtner asked if the only chance to stop the transfer of sale is through the Attorney General? Kevin stated the buyer has to submit the background report to make sure they are in compliance environmentally. DLEP has very limited means to stop a transfer. It does not have to go through public notice and public meetings. Just like an Ohio EPA permit, it can be transferred, bought, and sold from one facility to another or one owner to another.

Joe Logan asked if most purchases are conducted by an LLC business rather than individuals? Kevin said you have all kinds; individuals, partnerships, LLCs, and corporations.

Joe Logan stated that obviously it would be possible to have an LLC corporation with a pristine background that was actually owned by folks that didn't. So the question is: have you ever encountered such a scenario and how far back do you fall on that chain? Kevin said the law was changed about six or seven years ago that if it is an LLC they have to disclose all members of the LLC. Anybody that has the right to manage has to be disclosed. If it strictly is a financial interest, with no ownership or ability to make management decisions, then they don't have to.

A motion to accept the rule was made by Tim Weaver, and seconded by Chuck Divelbiss. All were in favor; motion carried.

901:10-1-09 PERMIT MODIFICATIONS

Kevin stated there are no proposed changes on it. Cathy Alexander asked if this has already been reviewed by U.S. EPA for all of the parts on the NPDES stuff? Kevin stated yes, that is why he does not want to tinker with them very much.

A motion to accept the rule was made by Tony Anderson, and seconded by Tim Sword. All were in favor; motion carried.

901:10-1-10 PROHIBITIONS

Chuck Divelbiss asked if there were any proposed changes to this rule and Kevin said no.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Tony Anderson; All were in favor; motion carried.

901:10-2-01 PERMIT TO INSTALL: PURPOSE AND APPLICABILITY

Tony Anderson asked if the guidelines have served us well and done what we want? Kevin said pretty much but there are a couple of things that we would like to discuss on this one. One is the completed and approved as-built plans. Andy Ety stated that in the last set of rule revisions, we required all liquid manure structures be designed and approved by a professional engineer licensed in the state. One of the things that we have been asking for is that the as-built plans be signed and stamped by a professional engineer licensed within the state. It would be nice to get this clarified in the rule.

Andy Ety said another item DLEP would like for the committee to consider minimal construction documentation requirements (i.e.: compaction, verification of subgrade, setback issues, etc.) to be outlined in the rule. Andy said NRCS is in the process of revising its 313 standard and DLEP will likely want to consider some of what they have for construction documentation. The DLEP engineering staff will draft language in the rule to review in more detail at the next meeting.

Kevin stated we need more time to make sure it matches what USDA and NRCS are coming out with in their new specification. The question was asked what their time frame is and Andy said he is not sure. Andy said DLEP engineering staff is hoping to meet with NRCS in the next couple of weeks because they would like our feedback as well. The question was asked if this is just a certified engineer? Kevin said we just want to make sure that anything that is constructed, or any changes made during construction from the originally approved plans, are shown on as-built plans that are approved by a licensed engineer.

Will this affect any structure in place? No, it is strictly for the permit to install it does not affect any structure already in place.

Tony Logan thinks it is a good idea for Kevin's staff to work together with ODNR and NRCS to bring in consistency with one another. Kevin stated that we will bring this rule back when the proposed wording is completed.

A question was asked if the appropriate fees were adequate according to work we need to do? Kevin stated the fees were increased two years ago. It is not up for five-year review. Right now the fees are adequate. There are some fees that the advisory committee looked at that was not accepted by the Administration and the Legislature. For instance, we were talking about an annual fee for the permit to operate based on size. The Administration and the Legislature did not like new fees. The fees that were changed were basically the ones in the original rules for the fee for a permit to install and a fee for an application for a permit to operate.

In (5) we have "approved" plans but it really should be "as-built" plans because that is what we are talking about after construction. Andy also discussed removing the anticipated beginning and ending dates of work performed. Andy does not know why it is needed in the rules. DLEP recommends taking it out so it is not required in the permit. All PTI's are valid for two years from the date approved so that is what DLEP uses as a termination date and does not hold them to the date they say they anticipate starting or being complete. Cathy Alexander stated the only reason they used to ask for that information was to get an idea for when they thought it was supposed to start to give them a warning where the permit process would put them and then to get a general idea on how long they thought the project would last. Committee agreed that a start/end date for construction is really not necessary.

Kevin stated that we will bring rule 901:10-2-01 back or send out wording to the committee members once the proposed changes are drafted.

This rule was tabled.

901:10-2-02 PERMIT TO INSTALL: SITING CRITERIA

Richard Lorenz wanted to know what exactly is a class five agricultural well? Andy stated that ODNR Division of Water has different classifications of wells and Cathy said Ohio EPA does too. Andy said all our wells have the same set back. If it is a well, it is a well to ODA. Kevin thinks it is in the law partly because if it is strictly an agricultural well it doesn't fall under Health Department regulations. Richard asked if there was a class four agricultural well? Cathy said there are different classifications and this one is for a classified drainage well. In ODA's definitions it talks about an agricultural drainage well. Tim Sword said the definition from the EPA website says, "Classified wells, commonly known as shallow injection wells, are among the greatest threats to ground water quality." (NOTE: The committee needs to look again at the language in 10-2-02A.) Richard then

said in A2 it says at least three hundred feet from a well. Kevin said that is for earthen structures. Richard said then two paragraphs below that we go down to public wells. He is still struggling with 1A. He did not understand where it said, "that is owned or operated by the owner or operator of the facility." He assumes "facility" refers to the agriculture facility. Kevin said basically the livestock facility. Kevin said we do have public water systems on some of our facilities. Anyone that has more than 25 employees is a public water system. So many of the large egg laying operations that do egg cleaning and packaging, have a public water supply. A question was asked if the second half is even needed of that sentence? Should it just have a period after serving a public water system? Cathy said there is a difference between a public water system that's not on the property and owned by the farm. That's what they were trying to give a little more latitude. If it is not on the farm and it's a regular public water supply system then you have additional criteria that apply. Kevin said some of these have more than one system on it. It gets a little complicated because the water use on some of these farms is pretty high so a lot of times they will have an ag. system strictly for the livestock and a public water system for processing and employees. Joe Logan stated he knows time of travel depends on soil types but is there an average? Kevin said there are some minimums in there depending on the volume of water used per day. If there is not a ground water protection plan that specifically delineates the source protection areas then there are some fallbacks on radius distances and that's what these were worded for. Kevin said if the committee wants, we can go back through that and have more explanation of it and take another look at it. Kevin said we ran the rules through the Division of Drinking and Ground Water and also these rules went through the Ohio Water Resource Council Report, 2008. Basically this is what started the policy used by the Departments of Health, EPA, DNR and ODA to evaluate all wells the same way, as well as any potential contamination sources.

Kevin stated that we are going to revise the reference to the Ag. Waste Field Handbook to the August, 2010 version.

Kevin stated that we will bring this rule 901:10-2-02 back specifically looking at (A) or send out wording to the committee members once a proposed rule is drafted.

This rule was tabled.

APPENDIX TO RULE 901:10-2-02 SITING CRITERIA: HOW TO DETERMINE A REDUCTION IN THE REQUIRED CRITERIA

Kevin Elder stated that there are no proposed changes to the Appendix but there were some things used to determine a reduction of some of the criteria. For instance, solid manure you could reduce some of the setbacks through aeration or odor control, composting, structures with cover that exclude any moisture. Same thing with manure storage ponds where a cover is used to exclude rain water. There are no changes to any of these but basically these are some of the considerations for reduction siting criteria.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Tim Weaver; All were in favor; motion carried.

901:10-2-04 MANURE STORAGE AND TREATMENT FACILITIES

Kevin Elder stated that there are no changes proposed to this rule. Andy Ety stated that a couple of dates on the references need revised. On the last page under (iii) (2) it says, "Construct coverings over any structures in the production area." Production area is pretty broad, so we recommend adding "where manure may be exposed to direct rainfall" because all areas of the production area may not be contaminated so it did not make sense how it was written. Kevin stated we are updating dates from the standard change from August, 2006 to December, 2012 for heavy use protection; the same thing for critical area plantings so these are NRCS standards basically being updated.

A motion to accept the rule as revised was made by Chuck Divelbiss, and seconded by Tim Weaver; All were in favor; motion carried.

APPENDIX TO RULE 901:10-2-04 AND 901:10-2-10: DAILY MANURE PRODUCTION AND CHARACTERISTICS, AS-EXCRETED (PER HEAD PER DAY)

Kevin stated this Appendix was supposed to have been approved in 2011 but it was not clear if it was so Kevin would like to get it approved again because the Appendix will go with the change of the rule. Joe Logan asked if these numbers were reflective of the values of 604? Kevin said these are values that were in the Midwest Plan Service as of 2005. These are used as a last resort; DLEP would rather have actual numbers from a facility. Once a facility is up and operating, that is what is used. These book values are basically variable so they are used just as a reference. Actual numbers can vary as well. There are errors of 30% or more on some of these. It depends on feed rations, enzymes, type of bedding, amount of bedding, rainfall amounts. They are OK but not preferred.

A motion to accept the rule was made by Glen Feichtner, and seconded by Joe Logan; All were in favor; motion carried.

901:10-2-05 FABRICATED STRUCTURES

Andy Ety stated that this rule is one the committee will need to come back to after DLEP engineers meet with NRCS because it will reflect the majority of what NRCS may include in their 313 standard. On (A)(1), it could lead someone to believe “under the supervision,” we want to clarify that it has to be “designed, signed and stamped by a professional engineer.” Basically, all of the liquid structures are being designed by an engineer but DLEP wants to clarify. On (3), the committee should consider that right now under fabricated structures, it says the minimum storage period for a fabricated structure is 120 days unless the department would require more. With liquid storage, no one is building something less than 180 days, most of the fabricated liquid storage structures are hog facilities and they are a year’s worth of storage. DLEP suggest to increase requirement for all liquid to 180 days. Also, under (4) clarification needs to be provided on how it is written under freeboard. Anything not exposed to precipitation or runoff that stores solid manure is not required to have a freeboard. Andy stated he is sure we would have some proposed changes in the Appendix because it includes the design criteria for fabricated structures and that will have to be changed to reflect the revised NRCS standards. Kevin Elder asked if dry manure under fabricated will be 120 or 180? Andy said that is up for discussion. Currently, dry manure under NRCS specifications is 120 days; liquid manure is 180 days on fabricated structures. The question was asked if the dry manure is off site, how is it treated? Is it stockpiled? Kevin said that is separate under land applications.

Kevin said DLEP will bring this rule back once the 313 standards are finalized. It has been a little confusing because the way it is currently worded, fabricated structure could be for dry or liquid. We would like to break out to be more specific.

This rule was tabled.

901:10-2-06 MANURE STORAGE POND AND MANURE TREATMENT LAGOON

Andy Ety said under (1) pretty much all of the engineers we work with have been requiring some type of exploratory trench around the perimeter of any proposed earthen storage or treatment structures to locate subsurface drainage lines. DLEP believes it would be a good idea to add to the rule for clarification.

Andy Ety stated he is not sure under (4) what it was even meant to do. Kevin Elder said it was meant to address the issue of Ocean View Farms of North Carolina getting hit with a heavy rain storm above the design capacity and the structure overtopped the high point of the dam and cut top to bottom. It is in there to be a

stable emergency outlet if something went wrong. If it was designed, it would still have to have freeboard and 25 or 100 year storm below the level of the emergency. That is why it is in there because several of the lagoons in North Carolina breached and overtopped, mostly because they were not managed properly and you do not want them overtopping on a 3 to 1 back slope.

The question was asked how many cases a year does DLEP write or have concerns with freeboard? Kevin said it depends on the year. It seems like every year, one or two facilities get to the maximum operating levels, which is where freeboard starts. This year, DLEP had two, maybe three, that were getting in the freeboard stage. Enforcement actions were taken as deemed necessary.

The other change is we have updated some dates going from November, 1997 to August, 2009 and then the Appendix.

Dick Lorenz asked if there was any consideration in storage period in (7) of adding the word design to that? Andy said we would have to look at that because we have design capacity defined right now. Design capacity generally refers to the number of animals; it really doesn't refer to manure storage.

A motion to accept the rule with the change to add the part to (A)(1) and leave Section (4) in was made by Eric Dresbach, and seconded by Joe Logan; All were in favor; motion carried.

APPENDIX TO 901:10-2-06 MANURE STORAGE POND AND MANURE TREATMENT LAGOON

The Appendix goes in to how lagoons are designed. There have been no changes to that. It comes straight from NRCS and is pretty cut and dry. Andy Ety will check with NRCS to make sure they did not make any new changes.

A motion to accept the rule was made by Tim Weaver, and seconded by Tony Anderson; All were in favor; motion carried.

901:10-2-08 CONTENTS OF THE MANURE MANAGEMENT PLAN: INSPECTIONS, MAINTENANCE AND MONITORING

Kevin said there are no proposed changes. Andy Ety commented on the deep-pitted hog facilities. He said originally DLEP started out with requiring a perimeter drain around the footers, then that triggered a need for a water tight structure. What DLEP is thinking about doing is what they do in Indiana. They visually monitor the perimeter drains for any type of manure that would be leaking into the drainage system. Andy said we need to consider some type of monitoring of the perimeter drains. Andy will talk to Indiana about their standards.

The question was asked if the Federal government is looking at the 100 year standards. Kevin Elder stated that they are updating rainfall frequency amounts on 10, 25 and 100 year storms. In Ohio, the facilities that are outdoors are usually designed with a 25 or 100 year frequency containment plus freeboard. The reason a lot of facilities go to 100 years is it gets them out of the no discharge assessment. If they do a 25-year containment they have to go through an evaluation. If it discharges, what does that discharge do to water quality downstream? The difference between the two designs in an earthen structure might be a couple of tenths of a foot.

DLEP will bring 901:10-2-08 back after the fabricated structural rule is drafted.

This rule was tabled.

901:10-2-09 CONTENTS OF MANURE MANAGEMENT PLAN: NUTRIENT BUDGET

Kevin stated there are no comments or changes to this rule. DLEP is still using the same thing to get a nutrient budget together based on yields, rotations, productivity, potential yields and combinations of yield data.

A motion to accept the rule was made by Tim Weaver, and seconded by Glen Feichtner; All were in favor; motion carried.

901:10-2-10 CONTENTS OF MANURE MANAGEMENT PLAN: MANURE CHARACTERIZATION

Kevin stated there were no proposed changes to this rule.

A motion to accept the rule was made by Chuck Divilbiss, and seconded by Tim Sword; All were in favor; motion carried.

901:10-2-11 CONTENTS OF MANURE MANAGEMENT PLAN: DISTRIBUTION AND UTILIZATION METHODS

Kevin stated that this is for manure that is sold and moved beyond the control of the livestock farm. One addition suggested is to put the operating record in that as well as in the annual report because we do it already. They have to record in the operating record how much manure is distributed. Joe Logan asked in the case where manure is being distributed to a third party that is not a CLM but a farmer, does the recipient have to have a nutrient management plan? Kevin stated that DLEP can't require the recipient to have a nutrient management plan but does require that they are notified of what the land application requirements are. All DLEP can require a permitted facility to do is record who it goes to, when it goes to them, how much they get, the fact that they received manure tests, the fact that they received the land application restrictions and sign an acknowledgment that they received those. If it is a CLM, then DLEP inspects the broker which is above and beyond what the Federal EPA requires. If a farmer takes it and it's a problem then it goes to ODNR. Kirk Hines said there are not a lot of issues. Joe Logan stated that dealing with a permitted farm situation, there is a pretty rigorous set of rules and regulation for the management of manure under control of a facility, there is a pretty decent set of rules for distribution when it goes to the CLMs, but it seems like there is a wild west potential for all other applications. It seems like it might be a reasonable option to include a requirement for a manure management plan for a recipient. Kevin stated there is no statutory authority to do this because they are not a permitted facility or a CLM. Eric said it is a resource and it has expense involved. Kevin said that is why there is a split between here and jurisdiction on all of the other farms (large, small, livestock or crop farms) they go to Ag. Water Pollution rules.

Eric Dresbach stated if CLM numbers (gallons or tons) was a smaller number, there would be more CLMs applying manure and you would have better record keeping. Kevin stated current legislation for CLMs is required for major facilities but not every facility. The CLM limits were basically set at the gallons and tons that were equal to what a major facility produced. That's why numbers were set where they were. We can prohibit someone from a permitting farm from distributing but can't regulate them on distributing manure to a person with water quality problems. The question was asked percentage wise, how much farm waste is used on the farm compared to sending to a dealer? Kevin said it is variable but he can give information from Grand Lake St. Mary's Watershed. There are 14 permitted facilities (13 poultry and one swine with a lagoon); of the 14, they are exporting 96% of the manure by CLMs out of the watershed, which is being sold to crop farmers (some to Indiana, some around Ohio). It amounted to 1.4 to 1.7 million pounds of phosphorous that used to go in the watershed is applied outside.

Kevin said the operating record and annual report will be included because that is what we've been doing.

A motion to accept the rule was made by Tim Weaver, and seconded by Eric Dresbach; All were in favor; motion carried.

901:10-2-12 CONTENTS OF MANURE MANAGEMENT PLAN: METHODS TO MINIMIZE ODORS

Kevin stated there are no proposed changes.

A motion to accept the rule was made by Tim Weaver, and seconded by Tony Anderson; All were in favor; motion carried.

901:10-2-13 CONTENTS OF MANURE MANAGEMENT PLAN: SOIL CHARACTERIZATION

Kevin said there are no proposed changes.

Kirk Hines asked about the definition for frozen and snow covered ground and surface applications? Cathy Alexander said you can't surface apply. Kevin Elder said that solid manure you can't apply, it must be stockpiled if the ground is frozen/snow covered. Liquid has to be incorporated. Andy Ety said to look in 901:10-2-14 (Paragraph G).

A motion to accept the rule was made by Tim Weaver, and seconded by Chuck Divilbiss; All were in favor; motion carried.

901:10-2-15 MANURE MANAGEMENT PLAN AND THE PLAN FOR THE DISPOSAL OF DEAD LIVESTOCK

Kevin stated there are no changes. It has to be one of the methods set forth in the Division of Animal Health's rules.

A motion to accept the rule was made by Eric Dresbach, and seconded by Joe Logan; All were in favor; motion carried.

901:10-2-16 PERMIT TO OPERATE AND OPERATING RECORD REQUIREMENTS

Andy Ety gave a couple of suggestions: This is the same one we talked about earlier on 10-2-08. On (b) on the second page it is repetitive on manure characterization records and needs to be removed. In (c) the land application area records (we keep record of calibration, record monitoring, inspection following application) there is nothing that requires this. We have the water capacity chart. Nothing in the rule addresses monitoring of surface drainage in concentrated flow paths following application. Same thing on the back towards the end where paragraph (b) is for certified livestock managers and what records they have to keep.

Eric Dresbach asked how are we going to document the calibration?. Andy believes recording of the date the calibration and what method/protocol was completed. Eric Dresbach stated that they have an application sheet where you list how many minutes it takes to unload "X" number of gallons, time, date and spread how far? Kevin thinks as long as you balance out area versus volume and it matches.

Kevin would like comment on inspecting concentrating flow areas. You have the requirement for rainfall predictions, water holding capacities, etc. and do we need surface flow area monitoring? Kevin suggests we incorporate #1. Under #2 add "at the conclusion of manure application and periodically afterwards." Under #3 it just says during and after application but does not say how long. Joe Logan thinks concentrated flow areas should be included.

Cathy suggested the Department look at and bring back some language for the committee to look at.

Eric Dresbach thinks #2 should be folded back in with drainage tile. Another suggestion was to stick #1 in C.

The concensus was to bring back at the next meeting.

This rule was tabled.

901:10-2-19 PERMIT TO OPERATE: INSECT AND RODENT CONTROL PLAN

Kevin stated there were no changes.

A motion to accept the rule was made by Glen Feichtner, and seconded by Chuck Divelbiss; All were in favor; motion carried.

A general question was asked if Kevin was aware of any insect and rodent control being applied to any other industries. Kevin said no, but usually it goes to health departments and public nuisance.

901:10-2-20 ANNUAL REPORT

Kevin stated there is one slight revision in C. Cathy said there are a few minor discrepancies between what they require in their annual report and what ODA requires in its report. Cathy thinks maybe it should be consistent. Cathy said they added information to be consistent with the federal requirements. One example is Ohio EPA requires total amount removed per year and ODA requires total amount generated. Cathy will check with U.S. EPA and get back to the committee.

Andy Ety stated the last item was clarification, instead of “estimated amount” change to “total transferred.”

This rule was tabled.

901:10-3-01 ADDITIONAL REQUIREMENTS FOR A NPDES PERMIT APPLICATION

Kevin stated there were no proposed changes.

A motion to accept the rule was made by Tim Weaver, and seconded by Tony Anderson; All were in favor; motion carried.

901:10-3-02 EFFLUENT LIMITATIONS DEFINITIONS AND APPLICABILITY

Kevin stated this is a continuation of the NPDES language.

A motion to accept the rule was made by Tony Anderson, and seconded by Chuck Divelbiss; All were in favor; motion carried.

901:10-3-04 DAIRY COWS AND CATTLE OTHER THAN VEAL CALVES

Kevin stated there are no proposed changes. It has already been through U.S. EPA.

A motion to accept the rule was made by Tony Anderson, and seconded by Tim Weaver; All were in favor; motion carried.

901:10-3-07 DESIGNATED OPERATIONS AND DETERMINATIONS BY THE DIRECTOR

Kevin stated there are no proposed changes.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Glen Feichtner; All were in favor; motion carried.

Tony made a comment he would appreciate the Director or staff looking at under permitted sites as well. Kevin said to clarify if there is a discharge from a medium sized facility itself they can pretty easily be put in. If it is a land application discharge the only way we can get it is from ODNR. Tony just commented he wanted a little more oversight on some of this.

901:10-3-08 VARIANCES

Kevin stated this is another federal provision for variances. They are specific in the Clean Water Act. No proposed changes.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Eric Dresbach; All were in favor; motion carried.

901:10-3-09 APPEALS OF VARIANCES

Kevin stated there are no proposed changes.

A motion to accept the rule was made by Tony Anderson, and seconded by Tim Sword; All were in favor; motion carried.

Tony made a comment on how much the committee is depending on the staff to keep this on the straight and narrow.

901:10-3-10 STANDARD PERMIT TERMS AND CONDITIONS Kevin stated a lot of these are for the NPDES permit and their criteria is out of some of U.S. EPA requirements. Cathy said they are comparable to part 3 of their permit.

A motion to accept the rule was made by Tony Anderson, and seconded by Chuck Divelbiss; All were in favor; motion carried.

901:10-4-02 GENERAL PERMIT TO OPERATE COVERAGE

Kevin stated there are no changes in these. U. S. EPA has provisions to use general permits but require individual manure plans. Kevin stated we do not use general permits currently but would like to keep for possible future use.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Joe Logan; All were in favor; motion carried.

901:10-4-05 GENERAL OPERATING PERMIT

Kevin stated there are no changes.

Repeated like individual permits but still have to meet all criteria.

A motion to accept the rule was made by Tony Anderson, and seconded by Glen Feichtner; All were in favor; motion carried.

901:10-5-01 COMPLAINTS

Kevin stated no proposed changes. Kevin said DLEP is still making sure everything is addressed in writing. The number of complaints has decreased.

Tim Sword asked what can be credited for the decrease? Kevin said the facilities have made improvements, changes, not as many water quality problems, odor, insect or rodent. Chuck commented it also is because of the effectiveness of Kevin and staff at ODA.

A motion to accept the rule was made by Tony Anderson, and seconded by Glen Feichtner; All were in favor; motion carried.

901:10-5-02 RIGHT TO ENTER PROPERTY FOR INVESTIGATIONS AND INSPECTIONS

Kevin stated no proposed changes.

A motion to accept the rule was made by Joe Logan, and seconded by Tim Weaver; All were in favor; motion carried.

901:10-5-05 EMERGENCY ENFORCEMENT AND COST RECOVERY

Kevin stated there are no proposed changes. Cathy asked if DLEP as had to use this rule? Kevin said yes. It was used in 2004 on a fly complaint. It was threatened to be used recently because of a lagoon getting too full.

A motion to accept the rule was made by Chuck Divelbiss, and seconded by Joe Logan; All were in favor; motion carried.

901:10-6-01 NOTICE

Kevin stated there are no proposed changes. The question was asked about moving towards electronic notices. Kevin stated the Legislature did not allow and notices still have to be issued in the paper.

A motion to accept the rule was made by Tony Anderson, and seconded by Eric Dresbach; All were in favor; motion carried.

901:10-6-02 CONTENTS OF PUBLIC NOTICES

Kevin stated there are no proposed changes. These are considered legal notices. We send a fact sheet as well as a public legal notice.

Tony suggested putting in the paper as stuffers which is less expensive. Howard Henry to check on this.

A motion to accept the rule was made by Tony Anderson, and seconded by Tim Sword; All were in favor; motion carried.

901:10-6-03 COORDINATION OF FEDERAL WATER POLLUTION CONTROL ACT PERMIT PROGRAM WITH AGENCIES OF THE UNITED STATES

Kevin stated there are no proposed changes. This is a Federal NPDES which cannot be changed. DLEP has to submit information to the regional administrator when a NPDES permit is issued and give them time to respond.

A motion to accept the rule was made by Glen Feichtner, and seconded by Eric Dresbach; All were in favor; motion carried.

901:10-6-04 PUBLIC MEETINGS

Kevin stated there are no proposed changes. DLEP has not had as many requests for public meetings like earlier in the program. Most are public renewals.

A motion to accept the rule was made by Tony Anderson, and seconded by Tim Sword; All were in favor; motion carried.

OLD BUSINESS

NPDES UPDATE

U.S. EPA had required changes to the criminal penalties. There is legislation in the Budget Bill and there are amendments from that to take out state permits while still meeting the Federal requirements for Federal NPDES. The last heard was that it was in the Senate. DLEP is hoping to have a printed version but it is not out. This will be forward once received. DLEP did get a letter from U.S. EPA that responded to Representative Buchy's requests for why these changes were needed. If and when, U.S. EPA said the language as proposed in the original budget bill met all criteria. If passes, the next step is to go to the Attorney General's office. U.S. EPA will proceed with public noticing, the movement of the CAFO program from the Ohio EPA to ODA. That would be a Federal public notice. Still looking at time but they will proceed on with that authorization.

Joe Logan stated the revised language that the conference committee is considering now, focuses on the NPDES permits and is silent on the remainder of Kevin's permits. Does the existing language still apply to state permits (just not the negligence provision)? The negligence provision for the Feds is not the same negligence provision for the state.

Cathy asked Kevin what he thought the realistic time frame was?

Kelly McCloud stated right now he is just updating the law. Kevin said DLEP would probably like to finish submittals by September. The first of the year will probably be the fastest it can be done.

Cathy asked if U.S. EPA had mentioned the withdrawal petition at the same time? Kevin said he talked to Region V and they probably will try to close out the withdrawal petition. There was a petition filed to withdrawal the CAFO delegation program but it was a messed up petition.

DLEP BUDGET

The DLEP budget is the same as the last biennium; \$1.1 million is GRF and the remainder comes out of the rotary fund. We've been using \$60,000 to \$150,000 a year depending on what is needed. It is considerably lower than it was six years ago when we received \$1.4 million in GRF.

AGO CASES

Kelly McCloud recently received the last payment from Trillium which was \$45,000 dollars. He is working on state of legal authority.

Rising Sun is still outstanding.

DLEP PERMITS AND APPLICATIONS

A handout was distributed listing all of the permits and applications from March 2013 – June 2013. There are three brand new facilities listed, three facilities new to DLEP (but expanding), three facilities for public notice, and six under review.

There are 16 PTO renewals under review, five major operational changes issued, five official complaints and nine warning letters and notice of deficiencies.

Joe Logan asked what the three brand new facilities were. Kevin stated one was a hog facility and the other two were poultry facilities.

Hillendale Farms, a laying operation, is brand new from the ground. They are getting ready to start construction.

Also distributed was a flyer on the upcoming Manure Science Review which is scheduled for August 6 at Hord Livestock Farms in Bucyrus, Ohio. It has a good agenda and Kevin asked for everyone to please communicate out to anyone that might be interested. There will be information on a new nitrogen testing method, subsurface applicator for poultry litter, liquid manure injector and cover crops to name a few.

Joe Logan asked if Kevin had anything else to say about the new piece of legislation. Kevin said he has a copy of the revised draft and it has been changed significantly from the earlier versions. The ODA section hasn't changed much; they are proposing a certification for fertilizer similar to pesticides. They are also changing and improving the fertilizer reporting system. Those are the two main things. Kirk stated that ODNR tried to simplify some things like manure sediment now covers all nutrients. The other change is on the nutrient management plans.

The Phosphorous Task Force is almost complete on its final draft which is basically looking at what has happened since 2010. This task force is looking at new research and data and setting targets and goals for what needs to keep occurring. This has been a broad based task force including university, industry, agriculture groups, lawn care groups, point source to put a plan together for phosphorous.

Joe Logan wanted to clarify on this piece of legislation, the ODA certification program, the definition of nutrients is a relatively broad definition that would include manure and fertilizer. John Schlichter stated the latest draft for certification stuck with their definition (ODNR took their definition out). John said they are trying to get it worded better to know exactly where the nutrients are going. Manure may come back into it. We just want to get a certification program set up for farmers and custom applicators that will basically follow the 4Rs. We are looking at doing most of this through rule. We think we will have a 4R certification with the pesticide certification. Also have separate 4R trainings throughout the state that would fall under the hours to obtain certification; potentially using exemptions for CLMs and CCAs. Possibly try to do exemptions for best management practices. All subject to the General Assembly or rule making process. It has been introduced into the Senate, S.B. 150. Representative Buchy is also going to introduce the same bill in the House.

UPCOMING MEETINGS

The next meeting is scheduled for August 29 as a tour. The meeting after that is scheduled for November 21.

Glen asked about winter application of fertilizer. Are the fertilizer dealers working on compliance? The recommendation of the 4Rs is no fertilizer on frozen ground unless incorporated and then it doesn't count. .

The meeting adjourned at 1:25 p.m.