

OHIO DEPARTMENT OF AGRICULTURE
DIVISION OF SOIL AND WATER CONSERVATION

Agricultural Pollution Abatement

Relevant Sections of Ohio Revised Code and Ohio
Administrative Code

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Ohio Revised Code - Chapter 939: Soil and Water Conservation

939.01 Definitions.

As used in this chapter:

(A) "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 the waters of the state by residual farm products, manure, or soil sediment, including attached substances.

(B) "Animal feeding operation" means the production area, as defined in section 903.01 of the Revised Code, of an agricultural operation where agricultural animals are kept and raised in confined areas. "Animal feeding operation" does not include a facility that possesses a permit issued under Chapter 903. or division (J) of section 6111.03 of the Revised Code.

(C) "Best management practices" means practices or a combination of practices that are determined to be the most effective and practicable means of preventing or reducing agricultural pollution sources to a level compatible with the attainment of applicable water quality standards. "Best management practices" includes structural and nonstructural practices, conservation practices, and operation and maintenance procedures.

(D) "Composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

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

(F) "Manure" means animal excreta.

(G) "Ohio soil and water conservation commission" means the Ohio soil and water conservation commission established in section 940.02 of the Revised Code.

(H) "Operation and management plan" means a written record, developed or approved by the director of agriculture, the director's designee, or the board of supervisors of a soil and water conservation district, for the owner or operator of agricultural land or an animal feeding operation that contains both of the following:

(1) Implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate the degradation of the waters of the state by residual farm products, manure, and soil sediment, including attached pollutants;

(2) Best management practices that are to be used by the owner or operator.

(I) "Pollution abatement practice" means any erosion control, residual farm products, or manure pollution abatement facility, structure, or procedure and the operation and management associated with it as contained in an operation and management plan.

(J) "Residual farm products" means bedding, wash waters, waste feed, and silage drainage. "Residual farm products" also includes the compost products resulting from the composting of dead animals in operations subject to section 939.04 of the Revised Code when either of the following applies:

(1) The composting is conducted by the person who raises the animals and the compost product is used in agricultural operations owned or operated by that person regardless of whether the person owns the animals.

(2) The composting is conducted by the person who owns the animals, but does not raise them and the compost product is used in agricultural operations either by a person who raises the animals or by a person who raises grain that is used to feed them and that is supplied by the owner of the animals.

(K) "Soil and water conservation district" has the same meaning as in section 940.01 of the Revised Code.

(L) "Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and 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, that are situated wholly or partly within, or border on, this state or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.02 Powers and duties of director of agriculture.

The director of agriculture shall do all of the following:

(A) Provide administrative leadership to soil and water conservation districts in planning, budgeting, staffing, and administering district programs and the training of district supervisors and personnel in their duties, responsibilities, and authorities as prescribed in this chapter and Chapter 940. of the Revised Code;

(B) Administer this chapter and Chapter 940. of the Revised Code pertaining to state responsibilities and provide staff assistance to the Ohio soil and water conservation commission in exercising its statutory responsibilities;

(C) Assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement;

(D) Coordinate the development and implementation of cooperative programs and working agreements between soil and water conservation districts and the department of agriculture or other agencies of local, state, and federal government;

(E) Subject to the approval of the Ohio soil and water conservation commission, adopt rules in accordance with Chapter 119. of the Revised Code that do or comply with all of the following:

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

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

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

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

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

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

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

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

(7) Establish the amount of civil penalties assessed by the director under division (B) 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.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.03 Operation and management plan; nuisances; complaint.

(A) A person who owns or operates agricultural land or an animal feeding operation may develop and operate under an operation and management plan approved by the director of agriculture or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code.

(B) A person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the director or to the director's designee. After receiving an oral complaint, the director or the director's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the director or the director's designee shall cause such an investigation to be conducted.

(C) In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an animal feeding operation is operating under and in substantial compliance with an approved operation and management plan developed under division (A) of this section, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required under division (A)(2) of section 939.02 of the Revised Code. Nothing in this section is in derogation of the authority granted to the director in division (E) of section 939.02 and in section 939.07 of the Revised Code.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.04 Composting of dead animals.

(A) A person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the agricultural operation shall do both of the following:

(1) Participate in an educational course concerning composting conducted by OSU extension and obtain a certificate of completion for the course;

(2) Use the appropriate method, technique, or practice of composting established in rules adopted under division (E) (5) of section 939.02 of the Revised Code.

(B) A person who fails to comply with division (A) of this section shall prepare and operate under a composting plan required by the director of agriculture under division (A)(2) of section 939.02 of the Revised Code. If the person's proposed composting plan is disapproved by the supervisors of the appropriate soil and water conservation district under division (R)(3) of section 940.06 of the Revised Code, the person may appeal the plan disapproval to the director, who shall afford the person a hearing. Following the hearing, the director shall uphold the plan disapproval or reverse it. If the director reverses the disapproval, the plan shall be deemed approved.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.05 Cooperative agreements with supervisors of soil and water conservation district.

The director of agriculture, subject to approval of the terms of the agreement by the Ohio soil and water conservation commission, shall enter into cooperative agreements with the supervisors of a soil and water conservation district desiring to enter into those agreements pursuant to section 940.06 of the Revised Code. The agreements shall be entered into to obtain compliance with rules of the director pertaining to agricultural pollution abatement .

The director or the director's designee may enter at reasonable times on private property, with the consent of the property owner, or on public property to inspect and investigate conditions to determine whether or not there is compliance with the rules adopted under division (E)(1) of section 939.02 of the Revised Code. Upon reason to believe there is a violation, the director or the director's designee may apply for and a judge of the court of common pleas for the county where the land is located may issue an appropriate search warrant as necessary to achieve the purposes of this chapter.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.06 Director may enter into contracts or agreements.

The director of agriculture may do any of the following:

(A) Enter into contracts or agreements with any agency of the United States government, or any other public or private agency, or organization, for the performance of the prescribed duties of the department of agriculture under this chapter and Chapter 940. of the Revised Code or for accomplishing cooperative projects within the scope of those duties;

(B) Enter into agreements with local government agencies for the purpose of soil surveys, land use inventories, and other soil-related duties;

(C) Accept donations, grants, and contributions in money, service, or equipment to enhance or expedite the prescribed work of the department.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.07 Assessment of corrective actions and penalties.

(A)

(1) The director of agriculture may propose to require corrective actions and assess a civil penalty against the owner or operator of agricultural land or an animal feeding operation if the director or the director's designee determines that the owner or operator is doing one of the following:

(a) Not complying with a standard established in rules adopted under division (E)(1) of section 939.02 of the Revised Code;

(b) Not operating in accordance with an approved operation and management plan that is developed under division (A) of section 939.03 of the Revised Code, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required by the director under division (A)(2) of this section;

(c) Not complying with a standard established in rules adopted under division (E)(5)(a) of section 939.02 of the Revised Code;

(d) Not operating in accordance with a composting plan that is approved in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code or required by the director under division (A)(2) of this section.

(2) The director may include in the corrective actions a requirement that an owner or operator do one of the following:

(a) Operate under an operation and management plan approved by the director or the director's designee under section 939.02 of the Revised Code;

(b) If the owner or operator has failed to operate in accordance with an existing operation and management plan, operate in accordance with that plan;

(c) Prepare a composting plan in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code and operate in accordance with that plan;

(d) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.

(3) The director may impose a civil penalty only if all of the following occur:

(a) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.

(b) After the time period specified in the notice has elapsed, the director or the director's designee has inspected the agricultural land or animal feeding operation, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.

(c) The director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

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

(5) A person who has violated rules adopted under division (E) of section 939.02 of the Revised Code shall pay a civil penalty in an amount established in rules adopted under that section.

(B) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against a person violating or threatening to violate rules adopted under division (E) of section 939.02 of the Revised Code or an order issued under division (A)(4) of this section.

(C)

(1) In lieu of imposing a civil penalty under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against a person that has violated or is violating a rule adopted under division (E) of section 939.02 of the Revised Code.

(2) The civil penalty for which an action may be brought under division (C)(1) of this section shall not exceed ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.

(D) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against the owner or operator of agricultural land or an animal feeding operation if the director or the director's designee determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (E) of section 939.02 of the Revised Code. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee under this division, the director's imposition of an administrative penalty under this division, or both. The determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

(E) Notwithstanding any other provision in this section, if the director determines that an emergency exists requiring immediate action to protect public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to address the emergency. The order shall take effect immediately. A person to whom the order is issued shall comply immediately, but on application to the director shall be afforded an adjudication hearing in

accordance with Chapter 119. of the Revised Code as soon as possible, but not later than thirty days after the director's receipt of the application. Following the hearing, the director shall continue the order in effect, revoke it, or modify it. The order may be appealed in accordance with section 119.12 of the Revised Code. An emergency order shall not remain in effect for more than one hundred twenty days after its issuance.

If a person to whom an order is issued does not comply with the order within a reasonable period of time as determined by the director, the director or the director's designee may enter on private or public lands to investigate and take action to mitigate, minimize, remove, or abate the conditions that are the subject of the order.

(F) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs.

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

(H) As used in this section, "noncompliance" means doing one of the actions specified in division (A)(1) of this section.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.08 Application of manure in the western basin.

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

- (1) On snow-covered or frozen soil;
- (2) When the top two inches of soil are saturated from precipitation;
- (3) When the local weather forecast for the application area contains greater than a fifty per cent chance of precipitation exceeding one-half inch in a twenty-four-hour period.

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

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

(C)

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

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

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

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

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

(A) Except as provided in division (D) of this section, the director of agriculture may assess a civil penalty against a person that violates section 939.08 of the Revised Code. The director may impose a civil penalty only if the director affords the person an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the person violated section 939.08 of the Revised Code. The person may waive the right to an adjudication hearing.

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

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

(D)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) As used in this section:

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

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

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

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

939.10 Agricultural pollution abatement fund.

There is hereby created in the state treasury the agricultural pollution abatement fund, which shall be administered by the director of agriculture. The fund may be used to pay costs incurred by the department of agriculture under division (E) of section 939.07 of the Revised Code in investigating, mitigating, minimizing, removing, or abating any pollution of the waters of the state caused by agricultural pollution or an unauthorized release, spill, or discharge of manure into or upon the environment that requires emergency action to protect the public health.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

903.082 Determination of size of concentrated animal feeding facility by director.

(A) The director of agriculture may determine that an animal feeding facility that is not a concentrated animal feeding facility nevertheless shall be required to apply for and receive a permit to operate when all of the following apply:

- (1) The director has specified a corrective action to be taken under section 939.07 of the Revised Code .
- (2) The director or the director's authorized representative has inspected the animal feeding facility.
- (3) The director or the director's authorized representative finds that the facility is not being operated in a manner that protects the waters of the state.

(B) In a situation in which best management practices cannot be implemented without modifying the existing animal feeding facility, the owner or operator of the facility shall apply for a permit to install for the facility.

(C) In the case of an animal feeding facility for which a permit to operate is required under this section, a permit to operate shall not be required after the end of the five-year term of the permit if the problems that caused the facility to be required to obtain the permit have been corrected to the director's satisfaction.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 128th General Assembly File No.12, HB 363, §1, eff. 12/22/2009.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 11-05-2003

Ohio Administrative Code

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. These rules further define Ohio's pollution abatement grant program for landowners or operators to voluntarily install conservation practices.

The criteria in these rules 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 these rules. 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 Chapter 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 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.

901:13-1-02 Overflow and discharge from animal manure collection, storage or treatment facilities.

Each owner, operator or person responsible for an animal feeding operation shall operate and maintain animal manure collection, storage, or treatment facilities so that overflow or discharge into waters of the state is prevented. Animal feeding operations found by the director or the director's designee to have failed to implement best management practices (BMPs) for animal manure collection, storage, or treatment facilities and have caused pollution to waters of the state shall develop, obtain approval, and implement modifications to facilities and operations according to the "Field Office Technical Guide" or other methods approved by the director or the director's designee. To prevent overflow and discharge from animal manure collection, storage, or treatment facilities the following should be taken into consideration:

- (A) The number, weight, and kind of animals;
- (B) The average seasonal weather patterns;
- (C) Type of system and the required management;
- (D) Method and seasonal time of utilization and application;
- (E) Soil types;
- (F) Cropping system (including tillage methods); and
- (G) A reasonable storage safety factor to accommodate unexpected conditions. However, overflow or discharge occurring due to some infrequent storm event or other condition beyond the control of such person shall not indicate non-compliance with this provision if the planned or prescribed management system is followed.

901:13-1-03 Seepage from animal manure management facilities.

Each owner, operator or person responsible for an animal feeding operation shall design, construct, operate and maintain the operation to prevent seepage from animal manure management facilities from entering waters of the state.

Consideration should be given to soils, geology and ground water where animal manure management facilities are located. Geologic investigations shall be made prior to design and construction of all earthen holding ponds and lagoons to identify the potential for pollution of waters of the state. Information collected from these investigations should be used in the design and construction of animal manure management facilities. Animal feeding operations found by the director or the director's designee to have failed to implement best management practices (BMPs) and have caused pollution to waters of the state shall develop, obtain approval, and implement modifications to animal manure management facilities according to the "Field Office Technical Guide" or other methods approved by the director or the director's designee.

901:13-1-04 Manure contaminated runoff from feedlots and manure management facilities.

Each owner, operator or person responsible for an animal feeding operation shall prevent pollution from discharge of manure contaminated runoff from animal feedlots and animal manure management facilities.

Animal feeding operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent manure contaminated runoff from feedlots and animal manure management facilities and have caused pollution of waters of the state shall design, construct, operate, and maintain practices to prevent runoff (from feedlots and manure management facilities), according to the "Field Office Technical Guide" or other methods approved by the director or the director's designee. Pollution caused from a discharge of manure contaminated runoff from animal feedlots and animal manure management facilities may be prevented by best management practices including but not limited to:

- (A) Constructing, operating and maintaining settling, grass filtration or soil infiltration systems in accordance with the criteria in the "Field Office Technical Guide" and as applicable, the "Ohio Livestock Manure Management Guide"; or
- (B) Diverting land surface water and roof water away from the feedlot and animal manure management facilities; or
- (C) Constructing roof coverings over feedlots, manure storage areas and composting facilities; or
- (D) Providing appropriate manure storage such that land application of manure can be applied during periods of the year such that manure contaminated runoff does not pollute waters of the state; or
- (E) Maintaining vegetative cover and protecting stream channels and areas adjacent to such channels from animal feeding operations; or
- (F) Using any appropriate combination of paragraphs (A), (B), (C), (D), and (E) of this rule.

901:13-1-05 Other waste waters.

Each owner, operator, animal manure applicator or person responsible shall prevent pollution from waste waters including, but not limited to, milking facility waste waters and silage drainage. Animal feeding operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent waste water runoff and have caused pollution to waters of the state shall design, construct, operate, and maintain such facilities in accordance with the criteria in the "Field Office Technical Guide" or other methods approved by the director or the director's designee.

901:13-1-06 Flooding of animal feeding operations.

Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution caused from flooding of animal feeding operations. Animal feeding operations shall not be constructed such that animal manure will be inundated by the twenty-five-year frequency flood. If the twenty-five year frequency flood elevation is not readily known, it shall be based on the best information available or by determining the water elevation associated with the twenty-five year frequency, twenty-four hour duration rainfall event.

901:13-1-07 Sheet and rill erosion.

Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by sheet and rill erosion. Agricultural operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent sheet and rill erosion and have caused pollution to waters of the state shall apply and maintain conservation practices such that the predicted soil loss from sheet and rill erosion under current and planned cropping and management conditions, as predicted in the "Field Office Technical Guide," when combined with the predicted soil loss from wind erosion (if applicable) as determined under rule 901: 13-1-09 of the Administrative Code, is equal to or less than permissible soil loss values (soil loss tolerance "T" factors) related to the specific soil series as specified in the "Field Office Technical Guide."

901:13-1-08 Gully erosion.

Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by gully erosion. Agricultural operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent gully erosion and have caused pollution to waters of the state shall apply and maintain BMPs such that the velocity of flow does not exceed the permissible velocities listed in the "Field Office Technical Guide."

901:13-1-09 Wind erosion.

Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by wind erosion. Agricultural operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent wind erosion and have caused pollution to waters of the state shall apply and maintain BMPs such that the predicted soil loss from wind erosion, under a given set of cropping and management conditions is equal to or less than "T" as predicted by the "Field Office Technical Guide."

901:13-1-10 Exemption form.

(A) An application for an exemption from the requirements in division (A) of section 939.08 of the Revised Code shall be made on a form approved by the director. The application may contain any information approved by the director, but must include the following information:

- (1) The printed name, mailing address, city, county, township, telephone number and signature of the individual submitting the application.
- (2) The street address, city, county, and township of the applicant's farming operation in the western basin of lake Erie, if different from the mailing address provided in division (A)(1) of that section.
- (3) The number and type of livestock stabled or confined on the farming operation in the western basin of lake Erie.
- (4) An identification of whether the manure type produced on the farming operation is solid or liquid.
- (5) The farm's estimated number of days of manure storage capacity.
- (6) An acknowledgement of whether the operation has been found to be in violation of any pollution laws within the last two years.
- (7) An aerial photograph or map showing all fields where manure will be applied during the period of exemption.
- (8) A summary explaining the necessity for requesting an exemption from division (A) of section 939.08 of the Revised Code.
- (9) An affirmation that the applicant understands the provisions of sections 939.08 and 939.09 of the Revised Code.
- (10) An affirmation that the applicant understands they must be in compliance with procedures established in the United States department of agriculture natural resources conservation service standard code 590 prepared for this state except procedures that are in conflict with sections 939.08 and 939.09 of the Revised Code.
- (11) An acknowledgement by the local soil and water conservation district that the form has been reviewed by the district and is being submitted to the director.
- (12) Information on programs that may assist an applicant in complying with division (A) of section 939.08 of the Revised Code.
- (13) A place on the form that provides the applicant an opportunity to request technical assistance or information from the director or the applicable soil and water conservation district to assist the applicant to comply with division (A) of section 939.08 of the Revised Code.

(B) For an application to be deemed as having been submitted in accordance with division (D)(3) of section 939.09(D)(3) of the Revised Code, it must be received by the director.

(C) For an application to be deemed complete, the application must contain all information required by that section. Any application failing to meet the requirements of this rule may be denied by the director.

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

- (A) Each owner, operator, animal manure applicator, or person responsible for land application of manure from an animal feeding operation shall minimize pollution from occurring on land application areas by following the standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. In order to minimize the potential for pollution the following items shall be considered, including but not limited to: characteristics of the animal manure, available land, topography, cropping system, method of application, weather, time of the year, condition of the soil, other nutrients applied, and nutrient status of the soil.
- (B) In watersheds in distress, each owner, operator, animal manure applicator, or person responsible for land application of manure, beginning two years after designation of a watershed in distress by the director:
- (1) Shall not apply manure between December fifteenth and March first without prior approval for each application from director or the director's designee;
 - (2) Before December fifteenth and after March first shall not surface apply manure on frozen ground or ground covered in more than one inch of snow. Before December fifteenth and after March first it is permissible to apply manure on frozen or snow covered ground only when manure is injected or incorporated within twenty-four hours of surface application;
 - (3) May land apply snowpack manure when there is greater than four inches of snow or ice accumulation around animal feeding operations providing that manure accumulation on the animal feedlot does not exceed the volume accumulated with a three day scraping interval or one inch, whichever is less. Plans for any land application of snowpack manure must be incorporated into an approved nutrient management plan or each application shall be submitted for approval by the director or the director's designee;
 - (4) Shall keep records of manure storage volumes and ensure a minimum manure storage capacity of one hundred and twenty days on December first of each year;
 - (5) Shall not surface apply manure if the local weather forecast for the land application area contains a greater than fifty per cent chance of precipitation exceeding one-half inch for a period extending twenty-four hours after the projected start of the land application of manure. Records of the local weather forecast shall be kept and made available upon request by the director or the director's designee. Local weather forecasts and hourly weather graph information is available at www.noaa.gov.
- (C) Upon designation by the director of any watershed as distressed, each owner, operator, animal manure applicator, or person responsible for land application of manure shall minimize pollution from occurring from land application areas by following applicable standards in the "Field Office Technical Guide," or other appropriate methods or management practices approved by the director or the director's designee. Failure to install or implement appropriate standards is a violation of this rule regardless of whether pollution to waters of the state has occurred.

901:13-1-12 Placing and sloughing.

Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by placing soil directly into or in such a position that it may readily erode or slough into waters of the state. Agricultural operations found by the director or the director's designee to have failed to implement best management practices (BMPs) to prevent sloughing of soil and have caused pollution to waters of the state shall apply and maintain BMPs to prevent soil sloughing from occurring. Agricultural operations shall not use earth disturbing practices, including tillage, immediately adjacent to waters of the state such that the disturbed soil is placed or may readily erode or slough into waters of the state, except for those practices constructed or implemented in accordance with generally accepted agricultural and engineering practices.

901:13-1-13 Composting of animal mortality.

Each owner, operator or person responsible for an animal feeding operation shall prevent pollution caused by composting of animal mortality. Animal feeding operations found by the director or the director's designee, which have failed to implement best management practices (BMPs) for composting animal mortality shall use the appropriate method, technique, or practice of composting as established in the "Field Office Technical Guide," or other such standard as approved by the director or the the director's designee.

The owner or operator of any existing or planned animal feeding operation, or owner of animals raised by an owner or operator of an animal feeding operation wishing to conduct composting of animal mortality resulting from the operation shall participate in an educational course concerning composting conducted by the Ohio state university extension service and obtain a certificate of course completion.

901:13-1-14 Agricultural pollution abatement cost sharing.

Cost share monies from the state may be available to assist landowners in installing needed best management practices which abate animal manure pollution, soil erosion or degradation of the waters of the state by soil sediment including pollutants attached thereto. Best management practices specified as eligible for cost sharing must require expenditures that are likely to exceed the economic returns to the owner or operator.

- (A) The department may offer to share the cost of establishing eligible best management practices up to thirty thousand dollars per person per year. If other public funds are involved in cost sharing to establish an eligible best management practice or practices, state funds can be used only to the extent that the combined public funds amount to no more than seventy-five per cent of the cost of establishing the best management practice or practices, or not more than thirty thousand dollars per person per year, whichever is smaller. The maximum of thirty thousand dollars of public funds per person per year limit may be waived by majority vote of the Ohio soil and water conservation commission.

(1) Eligible practices include but are not limited to:

- (a) Animal manure storage and treatment systems;
- (b) Settling basins and filter strips;
- (c) Critical area seeding and fencing;
- (d) Off stream watering and stream crossing stabilization;
- (e) Roofing and gutters;
- (f) Water diversions;
- (g) Grass waterways;
- (h) Water and sediment control basins;
- (i) Erosion control structures;
- (j) Wetland treatment facilities;
- (k) Composting facilities;
- (l) Access roads;
- (m) Heavy use protection pad;
- (n) Drainage water management structures; and
- (o) Other practices as approved by the Ohio soil and water conservation commission.

(2) Restrictions on use of cost share funds include:

- (a) Eligible practices which, through natural causes, have lost their effectiveness, shall qualify for further financial assistance. However, cost share monies will not be awarded to reestablish previously installed practices which have deteriorated due to operator negligence or mismanagement.
- (b) Surface mined lands and oil and gas well drilling areas must have been reclaimed and be in active agricultural production uses as determined by the director or the director's designee in order to be eligible for cost sharing on needed conservation practices.
- (c) The director or the director's designee may only use cost share funds for those practices necessary to control agricultural pollution. Eligibility consists of those pollution control practices needed to

directly control animal manure discharges and/or soil erosion exceeding "T" in order to meet standards in rules 901:13-1-02 to 901:13-1-13 of the Administrative Code.

- (d) Cost share funds will be available only to owners and operators with a current operation and management plan.
- (3) The director, subject to approval of the Ohio soil and water conservation commission, shall determine best management practices eligible for cost sharing, percentage rates of cost sharing for each best management practice and the maximum amount of cost sharing for each best management practice up to a maximum of thirty thousand dollars. Information about eligible practices will be maintained by the department and included in updates of its administrative procedures handbook available in district offices.
- (B) All practices must meet the standards and specifications listed in the "Field Office Technical Guide", or other methods approved by the director or the director's designee.
- (C) If approved by the director or the director's designee, a person may use a more elaborate or expensive practice; however, cost-share grants shall be based upon the estimated cost of the least expensive acceptable practice.
- (D) Operating procedures.
 - (1) Practice installation.
 - (a) Design, construction and operation and management plans shall be submitted to the director or the director's designee for approval prior to implementation.
 - (b) The director or the director's designee shall inspect practice installation.
 - (2) Cost-share payment. Once a project has an approved cost-share application and installation is approved by the director or the director's designee, cost-share payment shall be granted.
 - (3) Maintenance and management of cost-shared best management practices.
 - (a) Best management practices installed with cost-share monies are to be maintained in good operating condition to assure continued effective control of agricultural pollution. Applicants for cost sharing must agree to care for, manage, and maintain such practices for their useful life as noted in the cost-share agreement. Failure to care for, manage, and maintain the practices shall obligate the owner or operator to full repayment to the department.
 - (b) If the land on which best management practices have been established with cost-share monies is sold, the new owner shall be responsible for maintaining the practices in good operating condition for their remaining useful life. The director or the director's designee shall inform the new owner of the responsibility to maintain and operate cost-shared practices.
 - (c) If the land on which best management practices were established with cost-share monies is sold for or converted to other uses than an agricultural production operation, the state may recover the cost-share monies paid for such practices from the cost-share recipient on a prorated basis, considering the useful life of the practice.
 - (d) The director or the director's designee shall monitor the management and maintenance of best management practices established with cost-share monies. Any failure to manage or maintain such practices, or conversion of such land to other uses than an agricultural production operation, shall immediately be reported to the department thereby subjecting a person to recovery of cost-share monies in accordance with paragraphs (D)(3)(a), (D)(3)(b) and (D)(3)(c) of this rule.
 - (e) Upon discovery by the director or the director's designee, pursuant to paragraph (D)(3)(d) of this rule, the director, after any necessary investigation determines that recovery of state cost-share funds is warranted, shall proceed to recover the cost-share monies pursuant to section 131.02 of the Revised Code, or other appropriate means.

901:13-1-15 Administrative procedures.

The director will:

- (A) Inform districts, their assisting agencies and other appropriate agencies of the state standards, criteria, and department policies for agricultural pollution abatement and cost-share programs for assisting owners and operators to install best management practices.
- (B) Enter into cooperative agreements with the boards of supervisors of districts to implement the agricultural pollution abatement program. Such agreements shall spell out the responsibilities of both parties with respect to program implementation, administration and accounting, evaluation, recording accomplishments, quality control, and maintenance in obtaining compliance with rules and orders of the director pertaining to agricultural pollution abatement. The terms of such agreements shall be subject to approval by the Ohio soil and water conservation commission.
- (C) Utilize the staff assistance of the districts and their assisting agencies to implement the state and other cost-share programs for installing eligible best management practices.
- (D) Provide administrative guidance to districts in planning, budgeting, staffing, implementing, and administering the agricultural pollution abatement program and the training of district supervisors and personnel in their duties, responsibilities and authorities.
- (E) Coordinate the development and implementation of cooperative programs and working agreements between districts and other agencies of local, state, and federal government regarding the agricultural pollution abatement program.
- (F) Implement the agricultural pollution abatement program in a district in which the board of supervisors fails to negotiate an agreement with the department to carry out the program.
- (G) Reserve the right to implement the agricultural pollution abatement program to resolve complaints.

901:13-1-16 Operating procedures.

- (A) Operation and management plans. The district shall approve or disapprove operation and management plans at their regularly scheduled board meetings and shall maintain a record of their actions as part of their meeting minutes. Approved plans shall be signed by the chairman. Plans may also be submitted by the owner or operator to the director for approval. District boards of supervisors may establish such guidelines as may be needed for plan format and submission; however, all plans shall meet the standards for agricultural pollution abatement contained in rules 901:13-1-02 to 901:13-1-14 and 901:13-1-19 of the Administrative Code. Any portion of an operation and management plan specifying control of agricultural pollution shall allow the owner or operator to phase in installation of conservation practices under a schedule approved by the director or the director's designee until compliance with Chapter 901:13-1 of the Administrative Code is accomplished.
- (1) If the director or the director's designee determines that any person owning or responsible for an agricultural production operation is managing such operation in accordance with an operation and management plan currently approved by the director or the director's designee, the person shall be considered in compliance with the state rules for agricultural pollution abatement. In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural production operations is operating under and in substantial compliance with an approved operation and management plan.
 - (2) In the event that the district finds that an operation and management plan does not meet agricultural pollution abatement standards as contained in these rules, the district shall provide a written explanation, by certified mail listing all the deficiencies to be corrected, to the person who submitted the plan. Any person may appeal the district's decision to the director. Upon such appeal, the director shall review the plan for compliance with these standards, and uphold the district's action or reverse it. If the director reverses the district's action the plan shall be deemed approved. In either case, the director shall make such determination within thirty days of receiving the appeal and shall inform the owner or operator and the district of his decision in writing. Such notification shall include the reasons for the director's decision.
 - (3) In the event that any person operating or owning an agricultural production operation in accordance with an approved operation and management plan who, in good faith, is following that plan, causes agricultural pollution, the plan shall be revised in a manner necessary to mitigate the agricultural pollution, as determined and approved by the district board.
 - (4) In the event that the district board determines that it lacks staff or expertise to adequately review an operation and management plan, the district board of supervisors may submit such plan to the director for review and approval or disapproval.
- (B) Pollution complaints. Any person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written complaint to the director or the director's designee. By written agreement with the director, the district may receive complaints and investigate them to determine whether agricultural pollution has occurred or is imminent. The director reserves the right to assume responsibility to investigate and resolve any complaint. The district shall provide the director a copy of any complaint received. The district also shall inform the department of the disposition of the complaint and provide relevant information concerning the agricultural production operation. The district director or his or her designee shall gather information pertinent to the alleged violation. This information includes but is not limited to:
- (1) The location and description of property and/or waters of the state allegedly being damaged;
 - (2) The nature and extent of damage;
 - (3) The alleged sources of pollution;
 - (4) Any efforts made to obtain voluntary cooperation to eliminate the problem.
- (C) Action initiated by the department.

- (1) When the department finds an apparent problem of agricultural pollution through its own observation, through notification by another agency, or through a complaint from a person, the department may investigate the complaint and shall inform the appropriate district of:
 - (a) The location and nature of the problem;
 - (b) The location and description of the agricultural production operation alleged to be causing the pollution problem;
 - (c) The nature and extent of damage;
 - (d) Any assistance needed from the district.
- (2) When the department investigates a complaint involving an agricultural operation that is allegedly not in compliance with state rules for agricultural pollution abatement, a representative of the department will contact the owner or operator and inform them of the complaint and explain the agricultural pollution abatement rules and standards. The department may perform an investigation to determine whether or not there is compliance with this chapter.
- (3) In order to determine if there is a violation of the rules for agricultural pollution, such investigation by the department shall include but need not be limited to the following:
 - (a) Identification of property boundaries, streams, water courses, wetlands, ponds, lakes, water wells, the general topography, and the general storm water runoff pattern if applicable, including roof water;
 - (b) For animal manure pollution: identification of the number and kind of animals in the feeding operation, the size and slope of the feedlot, the method of handling animal manure, and the overall manure management system including disposal system; for sediment pollution: estimation of average annual rates of soil erosion based on soil type, present land use, and cropping and management practices;
 - (c) Determination of soil types and need for additional geologic study if applicable to determine potential ground water pollution;
 - (d) Observation and documentation of the nature and extent of existing or potential pollution damage; documentation may include photographs, video recording, physical measurements, onsite chemical analysis and water, sediment or manure samples for lab analysis consistent with appropriate sampling procedures and nutrient status of the soil;
 - (e) Determination of suitability and availability of land for application of animal manure, crops grown on the land, tillage practices used, and average crop yields;
 - (f) Contacts with the operator, complainant, cooperating agencies contacted, dates and times of investigations shall be recorded and kept on file along with a copy of the complaint. Copies of all information shall be made available to the district.
- (4) Investigation indicating no pollution problem. If the investigative report indicates that the operation is in compliance with the rules for agricultural pollution abatement, the department may offer to assist the owner or operator in preparing an operation and management plan for the operation as it exists and have the district board or director approve it to provide assurance that the operation is considered in compliance with the applicable rules.
- (5) Owner, operator, or person responsible interested in voluntary, cooperative solution. If the investigative report indicates that a violation of the rules for agricultural pollution abatement exists and the landowner or operator is interested and willing to seek a corrective solution, the department shall:
 - (a) Offer information and technical assistance for developing and evaluating alternative solutions;
 - (b) Provide information on financial assistance available;

- (c) Offer to develop an operation and management plan which complies with the rules for agricultural pollution abatement; and
 - (d) Secure district or director approval of the operation and management plan to provide assurance that the operation is considered in compliance with the rules for agricultural pollution abatement.
- (6) Owner, operator, or person responsible failure to cooperate in a voluntary solution.
- (a) The department representative shall inform the district board of supervisors and the director of the facts established by the investigative report, the succeeding action followed to seek compliance with the rules, and the action or inaction taken by the owner or operator. If the director decides that a violation does exist and corrective action is needed, the director will develop a compliance schedule and inform the person in violation by certified mail that he has a period of time to proceed voluntarily to correct the violation.
 - (b) If the owner or operator has failed to implement the corrective actions in the time specified, the director shall then decide if an order shall be issued.

(D) Action by a district.

- (1) When a district, which has entered into an agreement with the director for the purpose of implementing the agricultural pollution abatement program, finds through a complaint that an agricultural production operation is allegedly not in compliance with state rules for agricultural pollution abatement, a representative of the district will contact the owner or operator of the operation and explain the district role in the agricultural pollution abatement program. Upon receipt of the complaint the district shall give priority to conducting an investigation. If the district determines it is unable to initiate an investigation within three business days, the department shall be notified immediately. The director or the director's designee shall initiate an investigation of the complaint within three business days of notification by the district.
- (2) In order to determine if there is a violation of the rules for agricultural pollution, such investigation shall include but need not be limited to the following:
 - (a) Identification of property boundaries, streams, water courses, wetlands, ponds, lakes, water wells, the general topography, and the general storm water runoff pattern if applicable, including roof water;
 - (b) For animal manure pollution: identification of the number and kind of animals in the feeding operation, the size and slope of the feedlot, the method of handling animal manure, and the overall manure management scheme including disposal system; for sediment pollution: estimation of average annual rates of soil erosion based on soil type, present land use, and cropping and management practices;
 - (c) Determination of soil types and need for additional geologic study if applicable to determine potential ground water pollution of aquifer;
 - (d) Observations and documentation of the nature and extent of existing or potential pollution damage; documentation may include photographs, video recordings, physical measurements, onsite chemical analysis and water, sediment or manure samples for lab analysis consistent with appropriate sampling procedures and nutrient status of the soil;
 - (e) Determination of suitability and availability of land for application of animal manure, crops grown on the land, tillage practices used, and average crop yields;
 - (f) Contacts with the owner, operator, person responsible, complainant, cooperating agencies contacted, dates and times of investigations shall be recorded and placed in a cooperator file or other appropriate district file. A copy of the complaint and other relevant information shall be placed in the same file.
- (3) Investigation indicating no pollution problem. If the investigative report indicates that the operation is

in compliance with the rules for agricultural pollution abatement, the district representative may offer to assist the owner or operator in preparing an operation and management plan for the operation as it exists and have the district board approve it to provide assurance that the operation is considered in compliance with the applicable rules.

- (4) Owner, operator, or person responsible interested in voluntary, cooperative solution. If the investigative report indicates that a violation of the rules for agricultural pollution abatement exists and the landowner or operator is interested and willing to seek a corrective solution, the district representative shall:
 - (a) Offer information and technical assistance for developing and evaluating alternative solutions;
 - (b) Provide information on financial assistance available;
 - (c) Offer to develop an operation and management plan which complies with the rules for agricultural pollution abatement;
 - (d) Secure district approval of the operation and management plan to provide assurance that the operation is considered in compliance with the rules for agricultural pollution abatement; and
 - (e) Inform the owner, operator, or person responsible that if a corrective solution is not implemented within six months of the investigation, the district and the department will review the complaint and determine if adequate progress has been made towards a solution. If adequate progress is not made then the department will request that the district refer the complaint to the department for resolution or possible further enforcement action.

- (5) Owner, operator, or person responsible failure to cooperate in a voluntary solution. If the investigative report indicates that a violation of the rules for agricultural pollution exists, but the owner, operator, or person responsible is unwilling to cooperate in correcting the problem:
 - (a) The district representative shall inform the district board of supervisors and the department of the facts established by the investigative report, the succeeding action followed to seek compliance with the rules, and the action or inaction taken by the owner or operator. If the district board decides that a violation does exist and corrective action is needed, the board will inform the person in violation by certified mail of the period of time available, as determined and specified by the district, for the person to proceed voluntarily to correct the violation.

 - (b) If the owner, operator or person responsible has failed to implement the corrective actions in the time specified, the board may choose to invite the owner, operator, or person responsible by certified mail to the next regularly scheduled board meeting or file a copy of their findings with the department and a copy to the alleged violator and to the complainant if appropriate, and request the director to issue an order. These findings include:
 - (i) The investigative report by the district representative;
 - (ii) Any pertinent testimony by the person in violation;
 - (iii) A copy of the district's decision as recorded;
 - (iv) Alternative methods for correcting the violation;
 - (v) Practices needed and cost-share eligibility;
 - (vi) A timely sequence for application of corrective measures; and
 - (vii) A time period (specified by the district) for completion of all corrective and control measures.

901:13-1-17 Director's orders.

- (A) Issuing orders. When the director or the director's designee investigates a complaint and the owner, operator, or person responsible fails to implement a corrective action in accordance with paragraph (C)(6) or (D)(5) of rule 901:13-1-16 of the Administrative Code, the director or the director's designee shall decide if an order will be issued. The director, or the director's designee, may, upon obtaining agreement with the owner, operator, or person responsible for any land, public or private, enter thereon to make inspections to determine whether or not there is compliance with these rules. If agreement is not obtained, and there is reason to believe a violation exists, the director or the director's designee may apply for and a judge of the court of common pleas for the county where the land is located may issue an appropriate inspection warrant as necessary to achieve the purposes of this chapter.
- (1) When the director decides that an order shall be issued, he shall issue an order and afford each person allegedly liable an adjudication hearing pursuant to Chapter 119. of the Revised Code. The director shall sustain the order if deemed appropriate after each person allegedly liable has had a hearing or has waived his right to a hearing. Each order shall be issued in writing and contain a finding by the director of the facts upon which the order is based and the rule that is being violated. The order shall also specify the time period for correcting the problem, indicate what, if any, technical and financial assistance is available, and indicate what action will follow if the violation is not corrected.
- (2) Penalties. Any person who fails to comply with an order of the director is guilty of a misdemeanor of the first degree. Each day of violation is a separate offense. In addition, the sentencing court may assess damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by a violation of the director's order.
- (3) Appeals. Any person claiming to be deprived of a right or protection afforded him by law by an order of the director, except an order which adopts a rule, may appeal to the court of common pleas of franklin county. The attorney general of the state of Ohio, upon the written request of the director, shall bring appropriate legal action in Franklin county against any person who fails to comply with an order of the director issued pursuant to paragraph (A)(1) of this rule.
- (B) Danger to public health.
- (1) In addition to the above action, the director may apply to the court of common pleas in the county where a violation of a standard occurs which is a danger to public health for an order to cease the violation and to remove the agricultural pollutant. The director may consult with the county or state health department, soil and water conservation district and engineer's office, the Ohio environmental protection agency or other appropriate agency. A danger to public health may include, but not necessarily be limited to the following situations:
- (a) When agricultural pollution threatens public or private drinking water supplies;
- (b) When agricultural pollution threatens a primary contact recreation resource water;
- (c) When the agricultural pollution directly causes flooding of residential housing, commercial or industrial property, such that direct use of the property would be hazardous to public health.
- (d) Other situations as determined by the director upon consultation with state and/or local environmental protection or health agencies.
- (2) When there is a danger to public health because of animal waste spill or discharge, the director may, without notice or hearing, issue an emergency order to correct the problem. The order shall be effective immediately.
- (a) Prior to issuing an emergency order, the director shall:
- (i) Determine the extent of danger to public health which may include consultation with local health departments;
- (ii) Determine that paragraphs (A) and (B) of this rule will not adequately protect public health and

natural resources;

(iii) Encourage the owner or operator causing the pollution to correct the problem voluntarily.

(b) Following receipt of the emergency order, the owner or operator shall comply with the order by stopping the pollution and removing the pollutants endangering public health.

(c) The owner or operator may apply to the director for a hearing. Such hearing shall be conducted as soon as possible, but not later than twenty days following application. The application shall be in writing and include the following information:

(i) The probable cause of the suspected public health threat;

(ii) The date when the suspected pollution started;

(iii) Business or home address and phone number where the owner, operator or representative can be reached during business hours to schedule a hearing;

(iv) Be signed by the owner or operator of the agricultural operation or business and dated.

(d) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If no hearing is requested and/or the order is not complied with as determined by the director, the director or his designee may enter upon private or public lands and take action to mitigate, minimize, remove, or abate the release, spill or discharge.

(e) Any owner, operator or person responsible for causing or allowing an unauthorized release, spill or discharge of animal waste is liable to the director for any costs incurred by the department in investigating, mitigating, minimizing, removing or abating the pollution problem. Reimbursed costs shall be deposited into the agricultural pollution abatement fund and used as specified in paragraph (C) of this rule. The director shall keep accurate records of all costs to abate the agricultural pollution including personnel, equipment, and disposal.

(f) No emergency order shall remain in effect for more than sixty days after its issuance.

(C) Agricultural pollution abatement fund. Funds deposited in the agricultural pollution abatement fund authorized under section 939.10 of the Revised Code shall be used for paying the costs for emergency agricultural pollution abatement actions. The director may make disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing or abating the release, spill or discharge. Money collected by the department for agricultural pollution investigations, hearings, damage, repair, cleanup, mitigation and inspection are to be deposited into the agricultural pollution abatement fund. Payments by persons so ordered by the director or court are to be made within thirty days of the order to the department. If no attempt is made to repay the department for costs incurred or damages assessed within thirty days, the director may request the attorney general to bring a civil suit against the person responsible to recover costs of the department and any assessed damages.

901:13-1-18 Grants.

Pursuant to the authority in sections 939.02 and 939.05 of the Revised Code, the director may enter into agreements with soil and water districts to make grants to owners and operators of agricultural land or animal feeding operations to implement operation and management plans approved by the district board of supervisors. Terms of the agreements shall be approved by the Ohio soil and water conservation commission.

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 Chapter 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.

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

- (A) The director may designate a watershed to be in distress, and thereby set requirements for the storage, handling and land application of manure; and/or the control of the erosion of sediment and substances attached thereto; and associated nutrient management plans for land and operations within the designated watershed boundaries. In evaluating a potential designation, the director may consider whether:
- (1) The watershed is listed as impaired by nutrients and/or sediments from agricultural sources as determined by the director of environmental protection and published in the "Ohio Integrated Water Quality Monitoring and Assessment Report" pursuant to Section 303(d) of the Federal Water Pollution Control Act or waters are identified as such in an approved "Total Maximum Daily Load Report" pursuant to rule 3745-2-12 of the Administrative Code as required by Section 303(d) of the Federal Water Pollution Control Act;
 - (2) The watershed or a portion of the watershed exhibits conditions that are a threat to public health based on information provided by the Ohio department of health or local health district;
 - (3) Streams, lakes, or other waterbodies within the watershed exhibit periodic evidence of algal and/or cyanobacterial blooms capable of producing toxins that are harmful to humans, domestic animals or wildlife;
 - (4) There is a threat to, or presence of contaminants in public or private water supplies;
 - (5) There is a threat to, or presence of contaminants in a primary contact recreational water or a bathing water as designated in Chapter 3745-1 of the Administrative Code;
 - (6) Other unacceptable nuisance conditions exist including the depletion of dissolved oxygen in water that results in impacts to aquatic life;
 - (7) Other situations as determined by the director upon consultation with other federal, state and local agencies.
- (B) Prior to proposing to designate a watershed in distress, the director shall prepare and issue a report documenting the factors in the watershed relating to the items in paragraph (A) of this rule.
- (C) No designation of a watershed in distress shall be issued until the Ohio soil and water conservation commission consents by a majority vote to a proposed designation.
- (D) The director may remove the watershed in distress designation upon reasonable confirmation of a sustained recovery, restoration and mitigation of the factors leading to the original designation.

901:13-1-99 Civil penalties.

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

- (1) Violations of rule 901:13-1-07 of the Administrative Code;
- (2) Violations of rule 901:13-1-08 of the Administrative Code;
- (3) Violations of rule 901:13-1-09 of the Administrative Code;
- (4) Violations of paragraph (B)(4) of rule 901:13-1-11 of the Administrative Code;
- (5) Violations of rule 901:13-1-12 of the Administrative Code; and
- (6) Violations of paragraph (E) of rule 901:13-1-19 of the Administrative Code.

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

- (1) Violations of rule 901:13-1-02 of the Administrative Code;
- (2) Violations of rule 901:13-1-03 of the Administrative Code;
- (3) Violations of rule 901:13-1-04 of the Administrative Code;
- (4) Violations of rule 901:13-1-05 of the Administrative Code;
- (5) Violations of rule 901:13-1-06 of the Administrative Code;
- (6) Violations of paragraph (A) of rule 901:13-1-11 of the Administrative Code;
- (7) Violations of paragraph (C) of rule 901:13-1-11 of the Administrative Code;
- (8) Violations of rule 901:13-1-13 of the Administrative Code;
- (9) Violations of paragraph (A) of rule 901:13-1-19 of the Administrative Code;
- (10) Violations of paragraph (F) of rule 901:13-1-19 of the Administrative Code; and
- (11) Violations of paragraph (G) of rule 901:13-1-19 of the Administrative Code.

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

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

- (D) Events of noncompliance with section 939.08 of the Revised Code and paragraphs (B)(1), (B)(2), (B)(3), and (B)(5) of rule 901:13-1-11 of Administrative Code that meet any of the following parameters shall be considered major violations:
- (1) The total volume of the manure application is equal to or more than three hundred fifty tons of solid manure, or one hundred thousand gallons of liquid manure.
 - (2) The manure application poses a significant risk of harm to public health or the environment.
 - (3) The manure application has resulted in a discharge of manure that enters the waters of the state.
- (E) Pursuant to sections 939.02 and 939.09 of the Revised Code, a schedule of fines for violations identified in paragraphs (A), (B), (C) and (D) of this rule is hereby established:
- (1) The department may assess the following civil penalties for any minor violation:
 - (a) Not more than two hundred fifty dollars for a first violation;
 - (b) Not more than one thousand dollars for a second violation; and
 - (c) Not more than five thousand dollars for a third violation.
 - (2) The department may assess the following civil penalties for any moderate violation:
 - (a) Not more than two thousand dollars for a first violation;
 - (b) Not more than five thousand dollars for a second violation; and
 - (c) Not more than ten thousand dollars for a third violation.
 - (3) The department may assess a civil penalty of not more than ten thousand dollars for any major violation.
- (F) Failure to take corrective action as specified by the director or the director's designated representative for any minor violation may be considered a moderate violation.
- (G) Failure to take corrective action as specified by the director or the director's designated representative for any moderate violation may be considered a major violation.
- (H) All money paid under paragraph (E) of this rule shall be deposited into the agricultural pollution abatement fund.

Comparison of ODA Rule Numbers to Previous ODNR Rule Numbers

Present OAC Rule	Description	Previous OAC Rule
901:13-1-01	General provisions.	1501:15-5-01
901:13-1-02	Overflow and discharge from animal manure collection, storage or treatment facilities.	1501:15-5-02
901:13-1-03	Seepage from animal manure management facilities.	1501:15-5-03
901:13-1-04	Manure contaminated runoff from feedlots and manure management facilities.	1501:15-5-04
901:13-1-05	Other waste waters.	1501:15-5-06
901:13-1-06	Flooding of animal feeding operations.	1501:15-5-07
901:13-1-07	Sheet and rill erosion.	1501:15-5-08
901:13-1-08	Gully erosion	1501:15-5-09
901:13-1-09	Wind erosion	1501:15-5-10
901:13-1-10	Exemption form	N/A
901:13-1-11	Land application of animal manure	1501:15-5-05
901:13-1-12	Placing and sloughing	1501:15-5-11
901:13-1-13	Composting of animal mortality	1501:15-5-18
901:13-1-14	Agricultural pollution abatement cost sharing	1501:15-5-13
901:13-1-15	Administrative procedures	1501:15-5-14
901:13-1-16	Operating procedures	1501:15-5-15
901:13-1-17	Director's orders	1501:15-5-16
901:13-1-18	Grants	1501:15-5-17
901:13-1-19	Nutrient management planning requirements for watersheds in distress	1501:15-5-19
901:13-1-20	Designating watersheds in distress	1501:15-5-20
901:13-1-99	Civil penalties	N/A
1501:3-12-02 (ODNR Forestry)	Erosion from Silvicultural Operations	1501:15-5-12