

901:10-3-04

**Dairy cows and cattle other than veal calves.**

This rule applies to operations defined as concentrated animal feeding operations under division (F) of section 903.01 of the Revised Code and includes the following animals: mature dairy cows, either milking or dry; cattle other than mature dairy cows or veal calves. Cattle other than mature dairy cows includes but is not limited to heifers, steers, and bulls. This rule does not apply to such concentrated animal feeding operations with less than the following capacities: seven hundred mature dairy cows whether milked or dry; one thousand cattle other than mature dairy cows or veal calves.

(A) Effluent limitations attainable by the application of the best practicable control technology currently available (BPT). Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BPT:

(1) For the concentrated animal feeding operation production areas. Except as provided in paragraphs (A)(1) to (A)(2) of this rule, there must be no discharge of manure into waters of the state from the production area.

(a) Whenever precipitation causes an overflow of manure, pollutants in the overflow may be discharged into waters of the state provided:

(i) The production area is designed, constructed, operated and maintained to contain all manure including the runoff and the direct precipitation from a twenty-five year, twenty-four hour rainfall event;

(ii) The production area is operated in accordance with the requirements set forth in the manure management plan in rule 901:10-2-08 of the Administrative Code and the records required by rule 901:10-2-16 of the Administrative Code.

(b) Voluntary alternative performance standards. Any concentrated animal feeding operation subject to this rule may request the director to establish NPDES permit effluent limitations based upon site-specific alternative technologies that achieve a quantity of pollutants that would be discharged under the baseline performance standards as provided by paragraph (A)(1)(a) of this rule.

(i) Supporting information. In requesting site-specific effluent limitations to be included in the NPDES permit, the concentrated animal feeding facility owner or operator must submit a supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time

frame provided by the director. The supporting technical analysis must include calculation of the quantity of pollutants discharged, on a mass basis where appropriate, based on a site-specific analysis of a system designed, constructed, operated and maintained to contain all manure including the runoff from a twenty-five year, twenty-four hour rainfall event. The technical analysis of the discharge of pollutants must include:

- (a) All daily inputs to the manure storage or treatment facility, including manure, direct precipitation, and runoff.
  - (b) All daily outputs from the manure storage or treatment facility, including losses due to evaporation, manure residuals removal, and the removal of process wastewater or process generated wastewater for use on cropland at the concentrated animal feeding operation or transport off site.
  - (c) A calculation determining the predicted median annual overflow volume based on a twenty-five year period of actual rainfall data applicable to the site.
  - (d) Site-specific pollutant data, including N, P, BOD5, and total suspended solids (TSS) for the concentrated animal feeding operation from representative sampling and analysis of all sources of input to the storage system or other pollutant data.
  - (e) Predicted annual average discharge of pollutants, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs (A)(1)(b)(i)(a) to (A)(1)(b)(i)(d) of this rule.
- (ii) The director has the discretion to request additional information to supplement the supporting technical analysis, including inspection of the concentrated animal feeding operation.
- (c) The concentrated animal feeding operation shall attain the limitations and requirements of this rule as of the date of permit coverage.
- (2) For concentrated animal feeding operation land application areas.

Discharges from land application areas are subject to the following requirements:

- (a) Develop and implement the best management practices set forth for the manure management plan in paragraph (A)(1) of rule 901:10-2-07 of the Administrative Code;
  - (b) Maintain the records specified in rule 901:10-2-16 of the Administrative Code; and
  - (c) The concentrated animal feeding operation shall attain the limitations and requirements of this rule by December 31, 2006.
- (B) Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT). Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BCT:
  - (1) For the concentrated animal feeding operation production areas: the operation shall attain the requirements in paragraph (A)(1) of this rule.
  - (2) For the land application areas: The operation shall attain the same limitations and requirements set forth for the manure management plan in paragraph (A)(2) of this rule.
- (C) Effluent limitations attainable by the application of the best available technology economically achievable (BAT). Except as provided in rule 901:10-3-08 of the Administrative Code, any existing point source subject to this rule must achieve the following effluent limitations representing the application of BAT:
  - (1) For concentrated animal feeding operation production areas: The operation shall attain the same limitations and requirements set forth in paragraph (A)(1) of this rule.
  - (2) For the operation land application areas: the facility shall attain the same limitations and requirements as those set forth for the manure management plan in paragraph (A)(2) of this rule.
- (D) New source performance standards (NSPS). Any new point source subject to this rule must achieve the following effluent limitations representing the application of NSPS:
  - (1) For the concentrated animal feeding operation production areas, the facility shall comply with the requirements of paragraph (A)(1) of this rule.
  - (2) For the land application areas, the operation shall attain the requirements as listed for the manure management plan in paragraph (A)(1) of rule 901:10-2-07 of

the Administrative Code and the records required in rule 901:10-2-16 of the Administrative Code.

- (3) The facility shall attain the limitations and requirements of this rule as of the date of permit coverage.
- (4) Any source subject to this rule that commenced discharging after April 14, 1993 and prior to April 14, 2003 which was a new source subject to the standards specified in paragraph (C) of rule 901:10-3-03 of the Administrative Code, revised as of July 1, 2002, must continue to achieve those standards for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in paragraphs (A)(1) and (A)(2) of this rule.

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CERTIFIED ELECTRONICALLY

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Certification

11/18/2020

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Date

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901:10-3-07

**Designated operations and determinations by the director.**

- (A) The director may designate any animal feeding facility as a concentrated animal feeding operation in accordance with division (F)(1) of section 903.10 of the Revised Code upon determining that it is a significant contributor of manure to waters of the state. In making a designation, the director shall consider the following factors:
- (1) The size of the animal feeding facility and the amount of manure reaching waters of the state;
  - (2) The location of the animal feeding facility relative to waters of the state;
  - (3) The means of conveyance of manure into waters of the state;
  - (4) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure into waters of the state; and
  - (5) Other relevant factors.
- (B) No animal feeding facility shall be designated under this rule unless the director has conducted an on-site inspection of the animal feeding facility and determined that the facility should and could be regulated under the permit program. In addition, no animal feeding facility with numbers of animals below those established in division (Q) of section 903.01 of the Revised Code may be designated as a concentrated animal feeding operation or concentrated animal feeding facility unless:
- (1) Manure is discharged into waters of the state through a constructed ditch, flushing system, or other similar constructed device; or
  - (2) Manure is discharged directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the facility.
- (C) The director may determine that an animal feeding facility that is not a medium concentrated animal feeding operation or a small concentrated animal feeding operation is a concentrated animal feeding facility in accordance with section 903.082 of the Revised Code.
- (D) If the director determines that an animal feeding facility shall be required to be permitted as a medium or small concentrated animal feeding operation, then the owner or operator shall apply to the director for an NPDES permit as a concentrated animal feeding operation. If the director determines that the existing facility cannot comply with best management practices in Chapter 901:10-2 or Chapter 1505:15-5 of the Administrative Code, without modifying the existing facility, the owner or operator shall apply for a permit to install.

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901:10-3-08

**Variiances.**

- (A) A variance may be requested in accordance with section 301 or section 302 of the Federal Water Pollution Control Act. A request for a variance will be decided upon by the director, but the director's decision shall not be incorporated into any term or condition of a NPDES permit until the United States environmental protection agency regional administrator grants or denies the request for a variance or, in the case of variances under paragraph (B)(4) or (B)(5) of this rule, the administrator grants or denies the request for a variance.
- (B) The regional administrator may deny, forward or submit to the United States environmental protection agency office director for water enforcement and permits a recommendation for approval for a request for a variance listed in paragraph (B) of this rule that has been forwarded by the director:
- (1) Extensions based on delay in completion of a publicly owned treatment works provided that the extension meets the requirements of section 301(i) of the act;
  - (2) Extensions based on the use of innovative technology where effluent reduction will be significantly reduced with significantly reduced cost. The variances may provide an extended two-year period to comply provided that the extension meets the requirements of section 301(k) of the act;
  - (3) A variance based on the economic capability of the applicant provided that the variance shall meet the requirements of section 301(c) of the act. The owner or operator must show progress in reductions with the maximum use of technology while utilizing economic capability;
  - (4) A variance based on the presence of "fundamentally different factors" or "FDF" that meets the requirements of section 301(n) of the act. A FDF variance is not timely unless filed when effluent limits are to be modified in a rulemaking procedure. A FDF variance shall be "no less stringent a limit than justified by fundamental differences" while also demonstrating that the existing limit will cause adverse affect; or
  - (5) A variance that meets the requirements of section 301(g) of the act for nonconventional pollutants that include ammonia, chlorine, color, iron, and total phenols.
  - (6) A variance based on water quality related effluent limitations under section 302(b) of the act applies only to the owner or operator requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect or require corresponding changes to the water quality standard for the waterbody as a whole.



- (a) Eligibility. The owner or operator is not eligible for a variance under this paragraph if the following apply:
- (i) The owner or operator is a new discharger or the owner or operator of a facility that commenced a discharge after March 23, 1997.
  - (ii) If the variance would likely jeopardize the continued existence of an endangered or threatened species listed under section four of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.
  - (iii) If standards will be attained by implementing effluent limits required under sections 301 (b) and 306 of the act and by the owner or operator implementing cost-effective and reasonable best management practices for nonpoint source control.
- (b) Timeframe for variances. A water quality based variance issued under paragraph (B)(6) of this rule shall not exceed five years or the term of the NPDES permit whichever is less. A water quality based variance shall be reviewed and modified if necessary as part of each water quality standards review pursuant to section 303(c) of the act.
- (c) Conditions to grant a variance. A variance may be granted if:
- (i) The owner or operator demonstrates to the director that attaining the water quality standard is not feasible because:
    - (a) Naturally occurring pollutant concentrations prevent the attainment of the water quality standard;
    - (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the water quality standard, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable the water quality standard to be met without violating water conservation requirements;
    - (c) Human-caused conditions or sources of pollution prevent the attainment of the water quality standard and cannot be remedied, or would cause more environmental damage to correct than to leave in place;
    - (d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the water quality standard, and it is

not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the water quality standard;

- (e) Physical condition related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of the water quality standard; or
  - (f) Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact.
- (ii) In addition to the requirements of paragraph (B)(6)(c)(i) of this rule the owner or operator shall also:
- (a) Show that the variance requested conforms to the requirements of the antidegradation policy as set forth in section 6111.12 of the Revised Code; and
  - (b) Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with the water quality standard absent the variance, such that the director is able to conclude that any such increased risk is consistent with the protection of the public health, safety and welfare.
- (d) Submittal of the variance application. The owner or operator shall submit an application for a variance to the director. The application shall include:
- (i) All relevant information demonstrating that attaining the water quality standard is not feasible based on one or more of the conditions in paragraphs (B)(6)(c)(i) and (B)(6)(c)(ii) of this rule.
- (e) Public notice of preliminary decision. Upon receipt of a complete application for a variance and upon making a preliminary decision regarding the variance the director shall provide public notice of the request and preliminary decision for a public comment pursuant to the procedures set forth in Chapter 901:10-6 of the Administrative Code. The director shall notify the other Great Lakes States and Tribes of the preliminary decision for discharges in the Lake Erie basin. This public notice requirement may be satisfied by including the supporting

information for the variance and the preliminary decision in the public notice of the draft NPDES permit.

(7) The director shall issue a final decision on the variance request within ninety days of the expiration of the public comment period required in paragraph (B)(6)(e) of this rule. If the director decides to grant or deny a variance then the director shall do so in accordance with Chapter 119. of the Revised Code. If all or part of the variance is approved by the director, the decision shall include all permit conditions needed to implement those parts of the variance so approved. Such permit conditions shall, at a minimum, require:

- (a) Compliance with an initial effluent limitation which, at the time the variance is granted, represents the level currently achievable by the owner or operator and which is no less stringent than that achieved under the previous permit;
- (b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions;
- (c) When the duration of a variance is shorter than the duration of a permit, compliance with an effluent limitation sufficient to meet the underlying water quality standard, upon the expiration of said variance; and
- (d) A provision that allows the director to reopen and modify the permits based on any triennial water quality standards revisions to the variance.

The director shall deny a variance request if the permittee fails to make the demonstrations required under paragraph (B)(6)(c) of this rule.

(8) Incorporating into the permit. The director shall establish and incorporate into the NPDES permit all conditions needed to implement the variance as determined in paragraph (B)(7) of this rule.

(9) Renewal of the variance. A variance may be renewed subject to the requirements of paragraph (B)(8) of this rule. As part of any renewal application, the owner or operator shall again demonstrate that attaining a water quality standard is not feasible based on the requirements of paragraph (B)(6)(c) of this rule. The application shall also contain information concerning compliance with the conditions incorporated into its permit as part of the original variance pursuant to paragraphs (B)(7) and (B)(8) of this rule. Renewal of a variance may be denied if the owner or operator did not comply with the conditions of the original variance.

- (10) All variances and supporting information shall be submitted by the director to the regional administrator and shall include:
- (a) Relevant applications as set forth in paragraph (B)(6)(d) of this rule;
  - (b) Public comments and records of any public hearings pursuant to paragraph (B)(6)(e) of this rule;
  - (c) The final decision of the director; and
  - (d) The NPDES permit.
  - (e) Information required by this paragraph shall be submitted by the director within thirty days of the date of the final variance decision. The information required by paragraph (B)(6)(d) of this rule shall be submitted in accordance with the terms of the memorandum of agreement with the regional administrator pursuant to 40 CFR 123.24.
- (11) All variances shall be transmitted to the Ohio environmental protection agency and appended to the water quality standard rules adopted in accordance with section 6111.041 of the Revised Code.
- (C) The United States environmental protection agency regional administrator or the United States environmental protection agency office of the director for water enforcement and permits may approve or deny any variance request submitted under paragraph (B) of this rule. If the regional administrator or office director approves the variance, the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance has been approved or denied shall identify the applicable procedures for appealing that decision. An owner or operator shall be afforded an appeal of the decision in accordance with 40 C.F.R. section 124.64 and Chapter 119. of the Revised Code.

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**Appeals of variances.**

When the director issues a permit on which the United States environmental protection agency has made a variance decision, separate appeals of the state permit and of the United States environmental protection agency variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the regional administrator will decide, in consultation with state officials, which case will be heard first.

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901:10-4-02                    **General permit to operate coverage.**

- (A) A general permit to operate as described in rule 901:10-4-01 of the Administrative Code is issued by the director for a category of facilities located at multiple sites.
- (B) Each person eligible for a general permit to operate shall follow the requirements in rule 901:10-4-03 of the Administrative Code.
- (C) Upon issuance of a general permit to operate and issuance of an individual certificate of coverage, the individual permit to operate shall be terminated. All previous permits issued to a facility that can be covered by a general permit to operate are revoked upon request of the owner or operator, termination of the individual permit and issuance of the certification of coverage.
- (D) Any person covered under a general permit to operate may choose to pursue an individual permit for any facility covered by this rule.



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901:10-4-05            **General operating permit.**

A general permit to operate shall be effective from the date of issuance for a fixed term not to exceed five years. Holders of certificates of coverage under this permit shall comply with the following specified conditions and limitations.

(A) Applicability. "Concentrated animal feeding operation" or "CAFO" has the same meaning as division (F) of section 903.01 of the Revised Code and refers to those operations that are subject to the federally enforceable provisions of a permit into which NPDES requirements have been incorporated. "Concentrated animal feeding facilities" or "facilities" have the same meaning as division (E) of section 903.01 of the Revised Code and refer to those facilities that are subject to permits to operate. With respect to NPDES operations, the following requirements also apply to and are enforceable pursuant to the Act and to the extent authorized by federal law:

- (1) The information required for NPDES permits in rule 901:10-1-02 of the Administrative Code;
- (2) The information required in rule 901:10-3-01 of the Administrative Code except where general NPDES permits are specifically excluded;
- (3) A manure management plan that complies with the requirements of rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and rule 901:10-2-18 of the Administrative Code;
- (4) Inspections required in rule 901:10-2-08 of the Administrative Code;
- (5) An operating record developed in accordance with rule 901:10-2-16 of the Administrative Code with the use of forms prescribed by the director and other forms selected by the owner or operator for the facility and approved by the director. The operating record shall be maintained at the site office at all times. Upon approval of the NPDES permit, the operating record shall be deemed part of the NPDES permit;
- (6) An emergency response plan containing the information required in rule 901:10-2-17 of the Administrative Code; and
- (7) An annual report required in rule 901:10-2-20 of the Administrative Code.

(B) Performance standards.

- (1) Compliance is required with rules 901:10-2-08 to 901:10-2-19 of the Administrative Code.

- (2) The facility permitted under a general permit shall be effectively maintained and operated to prevent the discharge of pollutants to waters of the state. Facilities which are in compliance with their manure management plan (MMP) and a general permit which unintentionally discharge as a result of the twenty-five year, twenty-four hour storm event or greater will not be considered to be in violation of this permit.
  - (3) For new and existing facilities, the operating level of manure treatment lagoons and manure storage ponds in rule 901:10-2-06 of the Administrative Code must have at a minimum containment capacity at the prospective operating level that can also contain adequate storage for a twenty-five year, twenty-four hour storm event, one foot of freeboard and any additional storage required in the MMP.
  - (4) For new and expanding facilities, the operating level of fabricated structures in rule 901:10-2-05 of the Administrative Code must have at a minimum storage volume at the prospective operating level that can also contain adequate storage for a twenty-five year, twenty-four hour storm event and six inches of freeboard and any additional storage required in the MMP.
  - (5) The manure management plan, the operating record and insect and rodent control plan are incorporated by reference into a general permit to operate. The permittee shall maintain compliance with an approved MMP, the operating record rules and insect and rodent control plan as required under state law.
  - (6) A facility may be expanded by not more than ten per cent in excess of the design capacity set forth in the current design capacity, provided that in no case during a five year period shall the facility's capacity be increased by more than ten per cent in the aggregate and further, that in no case shall the capacity be increased so as to exceed the number of animal units authorized in the category of the general permit.
  - (7) New or expanding facilities are required to be inspected by the director or an authorized representative in a timely manner prior to stocking the animals.
  - (8) A copy of the certificate of coverage ("COC"), general permit, distribution and utilization records, the insect and rodent control plan, the operating record and the MMP shall be maintained at the site office where manure management activities are being conducted for the life of the general permit. These documents shall be kept in good condition and shall be maintained in an orderly fashion.
- (C) Operation and maintenance requirements.

- (1) The manure storage or treatment facilities and equipment shall be properly maintained at all times.
- (2) The manure land application sites and setbacks as required in appendix A of rule 901:10-2-14 of the Administrative Code shall be properly maintained at all times.
- (3) The phosphorus and nitrogen application rates shall be maintained as set forth in paragraphs (B) to (E) rule 901:10-2-14 of the Administrative Code. Available water capacity identified in the MMP shall be maintained in accordance with appendix B of rule 901:10-2-14 of the Administrative Code.
- (4) Unless designed and permitted to do so, domestic and/or industrial wastewater from showers, toilets, sinks, etc. shall not be discharged into the manure storage or treatment facility.
- (5) Disposal of dead animals shall be done in accordance with specified best management practices and rule 901:10-2-15 of the Administrative Code.
- (6) All stormwater conveyances shall be inspected and maintained to keep runoff from the surrounding property and buildings and shall be diverted away from the manure treatment lagoons and/or manure storage ponds to prevent any unnecessary addition to the liquid volume in these structures unless the lagoons and/or ponds are designed for such runoff containment.
- (7) A protective vegetative cover shall be maintained on all disturbed areas (manure treatment lagoon or manure storage pond embankments, berms, pipe runs, erosion control areas, etc.). Emerging vegetation such as trees, shrubs and other woody species shall not be allowed to grow on the dikes or side slopes of manure treatment lagoons or manure storage ponds. Manure treatment lagoon and manure storage pond areas are to be kept mowed and accessible unless these areas are grassed waterways or buffers that manage precipitation runoff and stormwater.
- (8) Management of the manure residuals shall be in accordance with the MMP.
- (9) When removal of manure residuals from the manure storage or treatment facilities is necessary, provisions must be taken to prevent damage.
- (10) Solid materials including, but not limited to, bottles, light bulbs, gloves, syringes or any other solid waste from the facility shall be prevented from entering the manure storage or treatment facility.

- (11) The owner or operator must have at all times: adequate manure application and handling equipment on site; an agreement to acquire or have use of the necessary equipment; a third party applicator capable of providing adequate manure application equipment; or a distribution and utilization plan.

The equipment must be capable of land applying the manure on the sites specified in the MMP, including compliance with the agronomic rate, available water capacity for the land application sites and incorporation of manure, where required. Records shall be maintained in the operating record as required in rule 901:10-2-16 of the Administrative Code.

(D) Monitoring and reporting requirements.

- (1) Manure treatment and storage facilities under the control of the owner or operator shall be inspected for evidence of erosion, leakage, damage or discharge. A written chronological record of maintenance and repairs shall be maintained in the operating record and be made readily available during a scheduled inspection of the facility. These records shall also be made available at the request of the director. All repairs shall be completed promptly. The department shall inspect any major structural repairs.
- (2) If not already installed at a facility, a liquid level board or staff gauge or other appropriate device, as approved by the director, shall be installed within sixty days of issuance of the COC under a general permit to monitor manure levels. This board or gauge or other appropriate device, as approved by the director, shall have readily visible permanent markings indicating the summation of the residual manure volume and minimum storage or treatment design volume and shall be designated as the "stop pumping" elevation. The liquid level board, staff gauge or other appropriate device, as approved by the director, shall also indicate the elevation corresponding to the summation of the maximum storage volume, residual solids minimum storage, volume, runoff and wash down volumes and manure volume and shall be designated as "start pumping" elevation. Where manure storage ponds are utilized, only a gauge with visible permanent markings indicating when the pump-out begins and freeboard elevations need be installed. Caution must be taken not to damage the integrity of the liner when installing the gauge. Levels shall be recorded in the operating record that must be maintained at the facility, in compliance with the MMP.
- (3) Soil testing shall be conducted as described in the MMP on each land application site receiving manure. The results of these tests shall be maintained in the operating record by the owner or operator for a minimum of five years and shall be made available to the director.

- (4) An analysis of the manure from the manure storage or treatment facility shall be conducted initially after issuance of the COC and thereafter as described in the MMP. This analysis shall include the parameters listed in the MMP.
- (5) Proper records, including maintenance, repairs and the operating record, shall be maintained on site and in chronological and legible form for a minimum of five years. These records shall be readily available for inspection in the operating record.

(E) Emergency response plan.

An emergency response plan must be developed that shall include the following:

- (1) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the plan;
- (2) Areas of the facility where potential spills can occur and their accompanying surface and subsurface drainage points;
- (3) Procedures to be followed in the event of a spill, including an actual or imminent discharge to waters of the state:
  - (a) Actions to contain or manage the spill or discharge;
  - (b) Identification of proper authorities to be contacted;
  - (c) Actions to mitigate any adverse effects of a spill or discharge; and
  - (d) Identification of equipment and cleanup materials to be used in the event of a spill or discharge.
- (4) Procedures for reporting. The owner or operator shall report by telephone to the department as soon as possible, but in no case more than twenty-four hours following first knowledge of the occurrence of the following:
  - (a) The time at which the discharge or spillage occurred, if known, and or was discovered;
  - (b) The approximate amount and characteristics of the discharge or spillage;
  - (c) The receiving waters affected by the discharge or spillage;
  - (d) The circumstances that created the discharge or spillage;

- (e) The names and telephone numbers of the persons who have knowledge of these circumstances;
  - (f) Those steps being taken to clean up the discharge or spillage; and
  - (g) The names and telephone numbers of the persons responsible for the cleanup.
- (5) For any emergency that requires immediate reporting after normal business hours, the owner or operator shall contact the Ohio department of agriculture's emergency telephone number.
- (6) If applicable, the owner or operator shall notify the appropriate local authorities.
- (7) The owner or operator shall also file a written report of the occurrence in letter form within five days following first knowledge of the occurrence unless waived by the director permitting an extension of time. This report shall outline the actions taken or proposed to be taken to correct the problem and to ensure that the problem does not recur.

(F) Inspections.

Any duly authorized officer, employee or representative of the department may inspect the permitted site at any reasonable time upon presentation of credentials and in accordance with reasonable and appropriate biosecurity measures, for the purpose of determining compliance with this permit; may inspect or obtain a copy of any records that must be kept under the terms and conditions of this permit; and may obtain samples of the manure, soil, groundwater or surface water.

(G) General conditions.

- (1) In addition to the general conditions set forth in this paragraph, the owner or operator of an NPDES operation shall comply with the standard terms and conditions set forth in rule 901:10-3-10 of the Administrative Code.
- (2) Upon reasonable cause to believe that any activities pursuant to this permit may cause or contribute any manure, directly or indirectly, to be intermixed with the waters of the state, the department may require any monitoring (including but not limited to groundwater, surface water and soil) necessary to determine the source, quantity, quality and effect of such waste upon the waters of the state. Such monitoring, including its scope, frequency, duration and any sampling, testing and reporting systems, shall meet all applicable requirements, including records maintained in the operating record. The director has the

ability to determine that an individual NPDES or general NPDES permit may be required.

- (3) Failure to abide by the conditions and limitations contained in this permit and any COC issued under a general permit may subject the owner or operator to an enforcement action in accordance with Ohio law and may include the requirement to obtain an individual permit, the addition of manure storage or treatment facilities or the addition of land application sites.
- (4) The issuance of a COC under a permit does not excuse the owner or operator from the obligation to comply with all applicable statutes, rules, regulations, or ordinances (local, state and federal).
- (5) If animal production is to be suspended or terminated, the owner or operator is responsible for developing, implementing and completing a closure plan in accordance with rule 901:10-2-18 of the Administrative Code which will eliminate the possibility of an illegal discharge, pollution and the potential for environmental degradation to waters of the state and shall be in accordance with applicable closure standards in effect when the closure plan is developed and implemented.



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901:10-5-05

**Emergency enforcement and cost recovery.**

- (A) If the director determines that an emergency exists requiring immediate action to protect the 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 meet the emergency. The order shall take effect immediately. A person to whom the order is directed shall comply immediately. A danger to public health, safety or the environment may include, but is not necessarily limited to, the following situations:
- (1) When discharge threatens public or private drinking water supplies;
  - (2) When discharge threatens waters of the state;
  - (3) When the discharge directly causes flooding of residential housing, commercial property or industrial property, where direct use of the property would be hazardous to public health; and/or
  - (4) Other situations as determined by the director upon consultation with state and/or local environmental protection or health agencies.
- (B) Following receipt of the emergency order, the owner or operator shall comply with the order. The order shall take effect immediately, however, the owner or operator shall be afforded the opportunity for a hearing in accordance with paragraph (C) of this rule.
- (C) On application to the director, the owner or operator shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible and not later than thirty days after application. The director's order is appealable in accordance with section 119.12 of the Revised Code. The applicant shall provide the following information to the director in writing or by telephone:
- (1) A statement requesting an adjudication hearing;
  - (2) The date when the order was issued; and
  - (3) The business or home address and phone number where the owner, operator or representative can be reached during business hours.
- (D) On the basis of the hearing, the director or his designee shall continue, revoke or modify the order. If the owner or operator does not request a hearing, the emergency order may remain in effect for one hundred twenty days after its issuance. An order issued following an adjudicatory hearing shall not be considered an emergency order. The appeal provisions described in paragraph (C) of this rule shall apply.

- (E) A person responsible for causing or allowing an unauthorized release, spill or discharge of manure is liable to the director for any costs incurred in investigating, mitigating, minimizing, removing, abating the spill, release or discharge or other acts or events that resulted in the emergency and the emergency order. If no attempt is made to repay the director for costs incurred or damages assessed within that time, the director may request the attorney general to bring a civil suit against the person responsible to recover costs and any assessed damages. Reimbursed costs shall be deposited into the livestock management fund.
- (F) Livestock management fund. Funds deposited in the livestock management fund created under section 903.19 of the Revised Code shall be used for paying the costs for emergency actions. In addition to paying the costs incurred by the director under section 903.18 of the Revised Code, the director may make disbursements from the fund for any costs incurred by the department in investigating, mitigating, minimizing, removing, abating the release, spill or discharge or other acts or events that resulted in the emergency or the emergency order.

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901:10-6-01            **Notice.**

## (A) Notice by publication.

- (1) Notices in general. All notices required or authorized by section 903.09 of the Revised Code shall be published once in a newspaper having general circulation in the county in which the facility is located or proposed to be located. Publication shall be done at least thirty days prior to a public meeting, provided that publication shall be done at least forty-five days prior to a public meeting for any draft permit to install or draft NPDES permit subject to an antidegradation review. Public notice is complete upon publication.

Public notice will be given for any draft general permit to be issued by the director. Since general permits are written to cover categories of discharges within a geographic or political area, the director may give one or more notices in newspapers of general circulation for those geographic or political areas identified in the general permit.

- (2) Additional requirements for NPDES information. The department shall publish a public notice within thirty days regarding receipt of a NPDES permit application and permit to install for which an antidegradation review is applicable. The purpose of public notice for a draft permit to install and a draft NPDES permit for which an antidegradation review is applicable shall be: to inform other potentially affected persons; to allow for inspection and review of the applications; to indicate whether any of the exclusions or waivers within the antidegradation rules apply to the applications; to instruct interested persons to contact the director within thirty days if they want to be on the interested parties mailing list as described in rule 901:10-6-05 of the Administrative Code for that particular permit to install or NPDES permit application; and to advertise the date, time, and place of any public meeting required under division (C) of section 903.09 of the Revised Code.
- (3) The department shall give public notice of the issuance of a review compliance certificate issued pursuant to division (F) of section 903.04 of the Revised Code only to persons who own property that is contiguous to the facility for which the review compliance certificate is issued.
- (4) The director shall publish notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the facility is located.
- (5) The director shall give public notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit, or for any actions pursuant to section 903.17 of the Revised Code.

(B) Notice by mail.

- (1) The director shall mail notice of the issuance of a draft permit and a copy of the draft permit to the applicant or owner or operator and to the board of county commissioners of the county, the board of township trustees of the township, the local board of health and the local soil and water conservation district in which the facility is located or proposed to be located. The director shall also notify owners or operators of public water systems as that term is defined in section 6109.01 of the Revised Code that have a surface water intake structure located within ten miles downstream of the facility or proposed facility described in the draft permit.
- (2) In addition, if an antidegradation review of a NPDES permit application indicates the potential to lower water quality, the director shall provide notice by mail to the Ohio department of natural resources, the United States fish and wildlife service, any affected local areawide planning agencies and the Ohio department of development.
- (3) The director shall mail notice of the proposed action to deny, suspend, or revoke a permit to install, permit to operate, or NPDES permit to the applicant or owner or operator and a copy of the proposed action to the board of county commissioners of the county and the board of township trustees of the township in which the facility is located or proposed to be located. The director shall also provide notice of the proposed action to deny, suspend, or revoke a NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act.
- (4) Notices shall be mailed by certified mail, return receipt requested, to the person subject thereto. Notices shall state the time and method by which the applicant or permit holder may request public meeting. A statement as to when a final permit will be issued may accompany draft permits.
  - (a) If a draft permit or proposed action is issued with an effective date and the permit is later signed by the director without being changed further, the department need not, at the time of entry, provide notice or a copy of the permit to the person subject thereto.
  - (b) If a draft permit or proposed action is issued without an effective date, and the department later assigns an effective date without changing the action further, the department shall mail notice to the person subject thereto informing the person of the effective date.

- (5) If the applicable law grants a right to appeal the final permit or order of the director to the environmental review appeals commission, mailings required by this paragraph shall be accompanied by a notice stating the time and method by which the appeal must be filed.
  
- (C) Notice of a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors.
  
- (D) The director may also hold a public meeting at the director's discretion, whenever, for example, such a public meeting might clarify one or more issues involved in the permit decision.

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901:10-6-03

**Coordination of federal water pollution control act permit program with agencies of the United States.**

- (A) Upon the director's issuance of a draft permit for an application to issue or modify a permit, the department shall transmit by certified mail a copy of the permit application and the draft NPDES permit to the regional administrator of the United States environmental protection agency, unless by written agreement the regional administrator has waived the right to receive, review, object, or comment upon a draft permit. If the regional administrator makes timely objection in writing to the issuance of the NPDES permit as being outside the requirements of the Federal Water Pollution Control Act, the permit shall not become final. The director may issue an amended draft permit after consideration of written comments or recommendations of the regional administrator, or may withdraw a draft permit.
- (1) The director shall also transmit to the regional administrator of the United States environmental protection agency a copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any public meeting on any permit if:
- (a) The regional administrator requests this information;
  - (b) The proposed permit contains requirements significantly different from those contained in the draft permit; or
  - (c) Significant comments objecting to the draft permit have been presented at the public meeting or in writing pursuant to the public notice. This does not apply to permits which by written agreement the regional administrator has waived the right to review and for which the United States environmental protection agency has not otherwise requested a receipt.
- (2) Immediately following final issuance or modification or renewal of a permit under division (D) of section 903.09 of the Revised Code, the department shall transmit by first class mail a copy to the regional administrator.
- (B) At the time of issuance of public notice of an application for issuance or modification of a permit pursuant to division (A) of section 903.09 of the Revised Code, for a discharge for which a fact sheet is prepared pursuant to rule 901:10-6-05 of the Administrative Code, the department shall transmit a copy of the fact sheet to the district engineer of the United States army corps of engineers for the district in which the discharge is located, unless by written agreement the district engineer has waived his right to receive a fact sheet for the discharge.

- (C) The department shall, on or before the date of newspaper publication of a NPDES permit, provide the information specified in rule 901:10-6-02 of the Administrative Code to any affected state, interstate, federal, or local government agency having jurisdiction over fish, shellfish, and wildlife resources or over coastal zone management plans, the relevant state historic preservations office, and any affected Indian tribe.

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