

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:10-3-11

Rule Type: Rescission

Rule Title/Tagline: Stormwater permits general and individual.

Agency Name: Department of Agriculture

Division: Livestock Environmental Permitting

Address: 8995 E. Main St. Reynoldsburg OH 43068

Contact: Renee Schmauch **Phone:** 614-728-6295

Email: renee.schmauch@agri.ohio.gov

I. Rule Summary

1. **Is this a five year rule review? Yes**
 - A. **What is the rule's five year review date? 4/23/2024**
2. **Is this rule the result of recent legislation? No**
3. **What statute is this rule being promulgated under? 119.03**
4. **What statute(s) grant rule writing authority? 903.08, 903.10**
5. **What statute(s) does the rule implement or amplify? 903.01, 903.02, 903.08, 903.082, 903.09, 903.10**
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No**
 - A. **If so, what is the citation to the federal law or rule? Not Applicable**
7. **What are the reasons for proposing the rule?**

The rules in this package are being filed in accordance with the five year rule review process.
8. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

OAC 901:10-3-11 Stormwater permits general and individual outlines the process for obtaining a stormwater permit. This rule will be rescinded.

9. **Does the rule incorporate material by reference? Yes**
10. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates Ohio Revised Code and/or Federal Code sections in the rule which are exempted from the incorporation by reference standards in section 121.75 of the Revised Code.

11. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

12. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not Applicable

13. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not Applicable

14. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

15. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**

16. **If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

- 17. Was this rule filed with the Common Sense Initiative Office? Yes
- 18. Does this rule have an adverse impact on business? No
 - A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No
 - B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No
 - C. Does this rule require specific expenditures or the report of information as a condition of compliance? No
 - D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

- 19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes
 - A. How many new regulatory restrictions do you propose adding to this rule? 0
 - B. How many existing regulatory restrictions do you propose removing from this rule? 59

OAC 901:10-3-11 paragraph A removes the requirement that the following definitions shall apply specifically to stormwater.

OAC 901:10-3-11 paragraph A removes the requirement that all other definitions contained in this rule and not otherwise defined in this rule shall retain the meaning in the rules contained in definitions rule 901:10-1-01 of the Administrative Code and in Chapter 903. of the Revised Code.

OAC 901:10-3-11 paragraph B, section 1 removes the requirement that no person shall discharge stormwater resulting from an animal feeding facility without first obtaining a NPDES permit issued by the director of agriculture...

OAC 901:10-3-11 paragraph B, section 1 removes the requirement that in addition, any person may petition the director to require a NPDES permit for a discharge which is composed entirely of stormwater which contributes to a violation of water quality standards or is a significant contributor of pollutants to waters of the United States.

OAC 901:10-3-11 paragraph B, section 1 removes the requirement that such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit.

OAC 901:10-3-11 paragraph B, section 2 removes the requirement that no person shall discharge stormwater resulting from an animal feeding facility that is undergoing construction activities that include clearing, grading, excavating, grubbing and/or filling

OAC 901:10-3-11 paragraph B, section 2 removes the requirement that such a permit shall be enforced by the director of agriculture upon the transfer of authority to enforce the terms and conditions of the permit.

OAC 901:10-3-11 paragraph C, section 2 removes the requirement that this notice shall include a brief statement of the reasons for this decision, an application and a statement setting a deadline for the owner or operator to file the application and a statement that on the effective date of the individual permit, coverage under this general permit...

OAC 901:10-3-11 paragraph C, section 2 removes the requirement that...shall automatically terminate.

OAC 901:10-3-11 paragraph C, section 3 removes the requirement that the owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR section 122.26 (November 16, 1990).

OAC 901:10-3-11 paragraph C, section 3 removes the requirement that the request shall be granted by issuance of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

OAC 901:10-3-11 paragraph D, section 1 removes the requirement that individuals who intend to obtain coverage for a stormwater discharge associated with construction activity shall submit an application for a permit at least thirty days prior to the commencement of new construction activity.

OAC 901:10-3-11 paragraph D, section 1bv removes the requirement that these measures must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.

OAC 901:10-3-11 paragraph D, section 2 removes the requirement that a one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code.

OAC 901:10-3-11 paragraph D, section 3 removes the requirement that the transferee must inform the department of agriculture in writing that he or she will assume the responsibilities of the original transferor.

OAC 901:10-3-11 paragraph D, section 4a removes the requirement that for construction stormwater requirements, the facility's final plans and specifications, which incorporate the requirements of the erosion and sediment control plan must be:

OAC 901:10-3-11 paragraph D, section 4b removes the requirement that the following plans and records must be made available to federal, state, and local officials within twenty-four hours of request for the duration of this permit:

OAC 901:10-3-11 paragraph D, section 4bii removes the requirement that records of all inspections. Records shall include:

OAC 901:10-3-11 paragraph D, section 4c removes the requirement that the notice of the general stormwater permit coverage card or individual stormwater permit shall be posted at any of the following locations:

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that description of control

practices designed to preserve existing vegetation where attainable and revegetation of disturbed areas as soon as practicable after grading or construction shall be provided.

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that the owner or operator shall initiate appropriate vegetative practices on all disturbed areas within seven days if they are to remain dormant for more than forty-five days.

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that for areas within fifty feet of any stream, first order or larger, soil stabilization practices shall be initiated within two days on all inactive, disturbed areas.

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that permanent or temporary soil stabilization shall be applied to disturbed areas within seven days after final grade is reached on any portion of the site.

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that when seasonal conditions prohibit the application of temporary or permanent seeding, non-vegetative soil stabilization practices such as mulching

OAC 901:10-3-11 paragraph D, section 5a removes the requirement that...and matting shall be used.

OAC 901:10-3-11 paragraph D, section 5b removes the requirement that a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows from exposed soils or otherwise limit runoff from eroding exposed areas of the site shall be provided.

OAC 901:10-3-11 paragraph D, section 5b removes the requirement that structural practices shall be used to control erosion and trap sediment from all sites remaining disturbed for more than fourteen days.

OAC 901:10-3-11 paragraph D, section 5b removes the requirement that sediment control structures shall be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers shall be implemented as the first step of grading and within seven days from the start of grubbing.

OAC 901:10-3-11 paragraph D, section 5b removes the requirement that they shall continue to function until the upslope development area is restabilized.

OAC 901:10-3-11 paragraph D, section 5c removes the requirement that concentrated stormwater runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers shall pass through a sediment settling pond.

OAC 901:10-3-11 paragraph D, section 5c removes the requirement that the facility's storage capacity shall be a minimum of sixty-seven cubic yards per acre of drainage area.

OAC 901:10-3-11 paragraph D, section 5d removes the requirement that sediment barriers. Sheet flow runoff from denuded areas shall be intercepted by sediment barriers

OAC 901:10-3-11 paragraph D, section 5d removes the requirement that sediment barriers, such as silt fences or diversions directing runoff to settling facilities, shall protect adjacent properties and water resources from sediment transported by sheet flow.

OAC 901:10-3-11 paragraph D, section 5e removes the requirement that structural practices shall be designed and implemented on site to protect all adjacent streams, first order and larger, from the impacts of sediment runoff.

OAC 901:10-3-11 paragraph D, section 5e removes the requirement that other erosion and sediment control practices shall prevent sediment laden water from entering storm drain systems, unless the storm drain system drains to a settling pond. These practices shall divert runoff from disturbed areas and steep slopes where practicable and stabilize channels and outfalls from erosive flows.

OAC 901:10-3-11 paragraph D, section 6 removes the requirement that description of measures that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed shall be provided. Such practices may include among others

OAC 901:10-3-11 paragraph D, section 6 removes the requirement that these measures must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.

OAC 901:10-3-11 paragraph D, section 6a removes the requirement that where such controls are needed to prevent or minimize erosion, velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive flow velocity from the structure to a watercourse. Justification shall be provided by the owner or operator for rejecting each practice based on site conditions.

OAC 901:10-3-11 paragraph D, section 8a removes the requirement that waste disposal. No solid, other than sediment, or liquid waste, including building materials, shall be discharged in stormwater runoff.

OAC 901:10-3-11 paragraph D, section 8b removes the requirement that off-site vehicle tracking of sediments shall be minimized

OAC 901:10-3-11 paragraph D, section 8c removes the requirement that The plan shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

OAC 901:10-3-11 paragraph D, section 9a removes the requirement that all temporary and permanent control practices shall be maintained and repaired as needed to assure continued performance of their intended function.

OAC 901:10-3-11 paragraph D, section 9b removes the requirement that the pollution prevention plan shall be designed to minimize maintenance requirements. The owner or operator shall provide a description of maintenance procedures needed to assure the continued performance of control practices.

OAC 901:10-3-11 paragraph D, section 10a removes the requirement that procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven calendar days and within twenty-four hours after any precipitation event greater than one-half inch of precipitation in a twenty-four hour period

OAC 901:10-3-11 paragraph D, section 10a removes the requirement that In addition, qualified inspection personnel provided by the owner or operator shall conduct a weekly inspection of the construction site...

OAC 901:10-3-11 paragraph D, section 10a removes the requirement that disturbed

areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.

OAC 901:10-3-11 paragraph D, section 10a removes the requirement that erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Discharge locations shall be inspected to determine whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

OAC 901:10-3-11 paragraph D, section 11a removes the requirement that once the construction activity is completed, the permittee shall submit notice to the department of agriculture within thirty days after final site stabilization has been achieved.

OAC 901:10-3-11 paragraph D, section 11b removes the requirement that The stormwater pollution prevention plan shall contain the following:

OAC 901:10-3-11 paragraph D, section 11bii removes the requirement that These measures must be compatible with paragraph (F) of rule 901:10-2-04 of the Administrative Code.

OAC 901:10-3-11 paragraph D, section 11c removes the requirement that The owner or operator shall amend the plan whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the state and shall record such changes in the operating record required by rule 901:10-2-16 of the Administrative Code.

OAC 901:10-3-11 paragraph D, section 11d removes the requirement that The owner or operator shall inform all contractors and subcontractors who will be involved in the implementation of the stormwater pollution prevention plan of the terms and conditions of the permit that authorizes the discharges.

OAC 901:10-3-11 paragraph E, section 1 removes the requirement that stormwater pollution prevention plan shall be developed for the production area of each facility required to have a stormwater permit.

OAC 901:10-3-11 paragraph E, section 1a removes the requirement that The stormwater pollution plan shall comply with and be submitted as part of paragraph (F) of rule 901:10-2-04 of the Administrative Code and the application for a permit to install. The stormwater pollution plan shall contain spill prevention and good housekeeping techniques, along with plans to divert clean water.

OAC 901:10-3-11 paragraph E, section 1a removes the requirement that spill prevention and good housekeeping techniques, along with diversion of clean water, shall be used to ensure that uncontained storm water....

OAC 901:10-3-11 paragraph E, section 1b removes the requirement that The stormwater pollution plan shall be included with the conditions of a NPDES permit which shall require compliance with the stormwater pollution plan as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit

OAC 901:10-3-11 paragraph E, section 2 removes the requirement that A one-time fee must be submitted with the application in accordance with rule 901:10-1-04 of the Administrative Code.

OAC 901:10-3-11 paragraph E, section 3 removes the requirement that The owner or operator shall notify the department of agriculture in writing sixty days prior to any proposed transfer. The transferee must inform the department of agriculture in writing that

OAC 901:10-3-11 paragraph E, section 4 removes the requirement that the facility shall implement the best management practices, including inspections, in rule 901:10-2-08 of the Administrative Code and shall maintain records specified in rule 901:10-2-16 of the Administrative Code.

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable

Rule Summary and Fiscal Analysis

Part C - Environmental Rule Questions

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted? Yes

Please list each contact.

David Neef – Ohio Pork Producers Council
Chris Weaver – Ohio Dairy Producers Association
Franklin Phelps – Ohio Cattlemen's Association
Tom Hertzfeld, Jr. – Ohio Poultry Association
Roger High – Ohio Sheep Improvement Association
Todd Price, DVM – Ohio Veterinary Medical Association
Tony Anderson – Ohio County Commissioners Association of Ohio
Eric Dresbach – Ohio Water Environment Association
Pete Bucher – Ohio Environmental Council
Dick Lorenz – Water Management Association of Ohio
Jason Menchofer – Ohio Environmental Health Association
Jessica D'Ambrosio – Statewide Environmental Advocacy (TNC)
Mike Monnin – Public Representative
Lori Scott Martensen – Public Representative
Doug Billman – Public Representative
David Quallen – Public Representative

Brad Lodge – Ohio Department of Natural Resources
Rick Wilson – Ohio EPA
Maurice Eastridge, PhD – The Ohio State University
Sam Mullins – Ohio Department of Agriculture

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered? Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

Previous development of this rule contained such documents; however at this time the rule is being reviewed solely in accordance with the five-year review requirement.

- (C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program? No**

Is the proposed rule or rule amendment more stringent than its federal counterpart?
Not Applicable

- (D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? No**