

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:10-4-03

Rule Type: Amendment

Rule Title/Tagline: Notification of coverage.

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, 903.08, 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 901:10-4-03 Notification of coverage sets forth the notice requirements for those desiring to be covered by a general permit to operate. If all the information is present, the director will notify the public and provide a thirty-day window to submit public comments regarding the prospective permit. The rule has been amended to: revise the title to "General permit to operate, notification of coverage" to better reflect the rules in the chapter; the words "concentrated animal feeding facility" has been added to better describe who the rules apply to; adds the deadline is specified in the general permit to operate; removes facilities that are regulated by a NPDES permit; fixes grammatical errors; adds a reference of 901:10-2-11 of the Administrative Code; removes that the identification of the permit to install number should be included on the notice of intent; removes the reference to 901:10-3-02 to 901:10-3-11 of the Administrative Code; adds that the hydrologic unit code should be included on the notice of intent as established by the United States geological survey; changes "owner/applicant/person" to "owner or operator"; and removes regulatory restrictive words as required by Senate Bill 9.

- 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?

Each CAFF must obtain either a permit to install or a permit to operate. The fees for these permits can be found in OAC Rule 901:10-1-04 (Fees) and vary from \$500 to \$3,000 as proposed. All manure storage and treatment structures owned or otherwise controlled by a CAFF must be constructed in compliance with the standards set forth in rule. The Department's engineers will conduct quality assurance inspections during construction to ensure facilities are constructed in compliance. The Department's inspectors will conduct routine inspections of CAFFs to ensure facilities are operation in compliance. Facility characteristics (i.e., animal species, location, whether managing solid or liquid manure, whether utilizing earthen or fabricated structures, etc.) may dictate that additional operational requirements or control measures are needed to maintain compliance. Extensive geological exploration is required to determine if soil and ground water characteristics at the site are adequate for any manure storage or treatment structures proposed and provide the applicant with the information necessary to most efficiently plan where these structures can be installed. The cost of the permits required by these rules will vary widely based on the facility characteristics, the geological setting, and if an independent contractor(s) is hired to develop these permits.

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.

While this rule does not impose a regulation fee, the CAFF must obtain either a permit to install or a permit to operate. The fees are set forth in OAC 901:10-1-04 and in accordance with ORC 903.19, the funds are deposited in the livestock management fund and are used solely to administer the division.

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? Yes

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

Each CAFF must obtain either a permit to install, or a permit to operate.

- 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? Yes**

Failure to comply with the rules may subject permit holders to fines or other enforcement actions. Additionally, failure to obtain a permit may be subject to heavy civil penalties and possible criminal actions.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

OAC901:10-4-03 sets forth the notice requirements for those desiring to be covered by a general permit to operate. If all information is present, the director will notify the public and provide a thirty day window to submit public comments regarding the prospective permit.

- 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? 3**

OAC 901:10-4-03 paragraph B removes the requirement that notices of intent shall be filed on forms approved by the director and, where applicable to a NPDES operation, shall be considered and processed as an application for coverage under a general permit to operate.

OAC 901:10-4-03 paragraph E removes the requirement that the director shall review the notice of intent to ensure that the notice of intent includes

all information required by this rule. If the director makes a preliminary determination that the notice of intent meets the requirements of this rule, the director shall notify the public of the director's proposal to grant a certificate of coverage to the owner or operator of a concentrated animal feeding facility and make available for public review and comment the notice of intent submitted by the owner or operator, including the owner or operator's manure management plan and the draft terms of the manure management plan to be incorporated into the permit. A comment period of thirty days shall be provided for public review and comment, with notice of the comment period being provided

to the applicant and published on the Ohio department of agriculture, division of livestock environmental permitting's program web site. During the comment period any interested person may submit written comments on the notice and may request a public meeting. The grounds for a public meeting shall be the same as those provided in paragraph (D) of rules 901:10-6-01 and 901:10-6-04 of the Administrative Code. Any public meeting shall be conducted as described in rule 901:10-6-04 of the Administrative Code, except that notice regarding the scheduling of the public meeting shall be provided on the Ohio department of

agriculture, division of livestock environmental permitting program's web site, rather than through publication in the legal notice section of a newspaper. The provisions of paragraph (J) of rule 901:10-6-04 of the Administrative Code shall also apply to the public comment period. The director shall, if necessary, require the applicant to revise the manure management plan in order to be granted permit coverage.

OAC 901:10-4-03 paragraph F removes the requirement that The director shall notify each affected owner or operator of a concentrated animal feeding facility in writing that his or her facility or operation is authorized pursuant to the general permit to operate by issuing a certificate of coverage. When the director authorizes coverage for the owner or operator under the general permit to operate, the terms of the manure management plan become incorporated as terms and conditions of the permit for the owner and operator. The director shall maintain a list of each concentrated animal feeding facility or operation authorized under each general permit to operate. The director shall notify the applicant and inform the public that coverage has been authorized and of the terms of the manure management plan incorporated as terms and conditions of the general permit to operate applicable to the facility or operation.

- 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**