

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:10-5-04
Rule Type: Amendment
Rule Title/Tagline: Civil penalties.
Agency Name: Department of Agriculture
Division: Livestock Environmental Permitting
Address: 8995 E. Main St. Reynoldsburg OH 43068
Contact: Renee Schmauch **Phone:** 614-728-6295
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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, 903.03, 903.04, 903.07, 903.08, 903.082, 903.09, 903.10, 903.12, 903.15, 903.16, 903.17
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 901:10-5-04 Civil penalties sets forth the civil penalty procedures and the penalty matrix for violations of this chapter. The rule is being amended to: clarify who the rules apply to; adds "concentrated animal feeding facility or certified livestock manager" to further describe the who the rule applies to; reformats the rule for ease of readability; changes "director's designated representatives" to "director"; removes the term "review compliance certificate"; removes regulatory restrictive words as required by Senate Bill 9; and adds a reference to section 903.07 and 903.16 of the Revised Code.

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. OAC 901:10-5-04 Civil penalties sets forth the civil penalty procedures and the penalty matrix for violations of this chapter.

- 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?** 2

OAC 901:10-5-04 paragraph F, section 3 adds the requirement that civil penalty matrix for first violation of Chapter 903. of the Revised Code shall be assessed per day per violation.

OAC 901:10-5-04 paragraph G, section 3 adds the requirement that civil penalty matrix in the event of past violations of Chapter 903. of the Revised Code shall be assessed per day per violation.

- B. **How many existing regulatory restrictions do you propose removing from this rule?** 4

OAC 901:10-5-04 paragraph E, section 3 removes the requirement that the gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to the public health or the environment caused by a violation or violations. Gravity of effect shall will be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

OAC 901:10-5-04 paragraph F removes the requirement that....shall be assessed per day per violation.

OAC 901:10-5-04 paragraph F removes the requirement that shall be assessed per day per violation.

OAC 901:10-5-04 paragraph H removes the requirement that shall exercise reasonable discretion in accordance with paragraph (D) of this rule.

- 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).**
The rules in this package are being filed in accordance with the five year rule review process. The restriction has been added to clarify the rule.

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**