

Rule Summary and Fiscal Analysis (Part A)**Department of Agriculture**

Agency Name

Livestock Environmental Permitting

Division

David E Miran

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901:10-5-04

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Civil penalties.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **Yes**2. Are you proposing this rule as a result of recent legislation? **No**3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**4. Statute(s) authorizing agency to adopt the rule: **903.08, 903.10**5. Statute(s) the rule, as filed, amplifies or implements: **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. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The rules in this package are being filed in accordance with the five year rule review process.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; If the rule type is RESCISSION, NEW or NO CHANGE,

then summarize the content of the rule:

OAC 901:10-5-04 sets forth the civil penalty procedures and the penalty matrix for violations of this chapter. The rule is being amended to make formatting changes which allow for easier comprehension. Additionally, formatting changes have been made to the rule in order to comply with LSC's drafting manual. There have been no substantive changes made to this rule.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

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.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

The rule is being revised to correct a code reference placed in the rule.

12. Five Year Review (FYR) Date: **2/17/2017**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this

rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Not applicable.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Each CAFO/CAFF must obtain either a permit to install, or a permit to operate, and other permits depending on the location and size of the facility. The fees for these permits can be found in OAC 10-1-04 and vary from \$500 to \$2,250. All manure storage structures at the applicant's property must be built in compliance with the standards set forth in rule. The Department's engineers and inspectors review and inspect these facilities to ensure compliance. In addition, depending on the location of the facility the applicant may need to conduct water testing in order to determine the ground water quality characteristics. These tests are done to determine the soil and water characteristics of the site in order to provide the applicant the information necessary to most efficiently plan the facility's manure storage locations and operations. The cost of the plans required by these rules varies widely based on the location of the facility, the size of the facility, and if an independent contractor is selected to complete these plans.

16. Does this rule have a fiscal effect on school districts, counties, townships, or

municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

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

Each CAFO/CAFF must obtain either a permit to install, or a permit to operate, and other permits depending on the location and size of the facility.

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? **No**

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Rule Number: 901:10-5-04

Environmental Rule Adoption/Amendment Form

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.
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(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.

Carl Link # Ohio Pork Producers Council

Matt Andreas # Ohio Dairy Producers Association

Glen Feichtner # Ohio Cattlemen's Association

Tom Herzfeld, Jr. # Ohio Poultry Association

Roger High # Ohio Sheep Improvement Association

Michael Mull, DVM # Ohio Veterinary Medical Association

Tony Anderson # Ohio County Commissioners Association of Ohio

Eric Dresbach # Ohio Water Environment Association

Jason Menchhofer # Ohio Environmental Health Association

Dick Lorenz # Water Management Association of Ohio

Adam Rissien # Ohio Environmental Council

Karen Chapman # Environmental Defense Fund

Vince Messerly # Public Representative

Russell Ludwig # Public Representative

Jack Rohrbach # Public Representative

Jim Raab # Ohio Department of Natural Resources

Rick Wilson # Ohio EPA

Maurice Eastridge, PhD # The Ohio State University

Kevin Elder # 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.)

APHA (1992) Standard methods for examination of water and wastewater (18th edition). New York, NY.

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Andraski, T.W., L.G. Bundy and K.R. Brye. (2000) Crop management and corn nitrogen rate effects on nitrate leaching. Journal of Environmental Quarterly 29: 1095-1103.

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Cornell and Penn State Cooperative Extension, Pest Management Recommendations for Dairy Cattle, Donald A. Rutz and Christopher J. Geden, Department of Entomology, Cornell University, and Charles W. Pitts, Department of Entomology, Penn State.

Cornell University, Cornell Cooperative Extension, Department of Entomology, Integrated Management of Flies in and around Dairy and Livestock Barns, D. Wes Watson, J. Keith Waldron, and Donald A. Rutz, June 1994.

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Purdue University, Department of Entomology, Ralph E. Williams, Focus on Flies: The Integrated Pest Management Approach.

Purdue University Extension, Using the Presidedress Nitrate Soil Test (PSNT) to Predict N Needs for Corn, David Mengel, Extension Agronomist, AGRY 96-09
Purdue University, West Lafayette, IN.

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- (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 ?

Yes

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **Yes**

What is the rationale for not incorporating the federal counterpart?

The federal counterpart has been incorporated into the rule.v

- (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? **Yes**

Please explain why?

To comply with the federal regulations for NPDES delegation.