

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 901:13-1-02

**Rule Type:** Rescission

**Rule Title/Tagline:** Overflow and discharge from animal manure collection, storage or treatment facilities.

**Agency Name:** Department of Agriculture

**Division:** Soil and Water Conservation

**Address:** 8995 East Main Street Reynoldsburg OH 43068

**Contact:** David E Miran

**Email:** david.miran@agri.ohio.gov      **Phone:** 614-728-6390

#### I. Rule Summary

1. **Is this a five year rule review?** Yes
  - A. **What is the rule's five year review date?** 3/5/2018
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?** 939.02
5. **What statute(s) does the rule implement or amplify?** 939.02

6. **What are the reasons for proposing the rule?**

The rule is up for five year rule review.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

OAC 901:13-1-02 states that owners, operators, or persons responsible for an animal feeding operation (hereinafter "operator") shall prevent pollution by operating and maintaining their facilities so that overflow or discharge of manure into waters of the state is prevented. The existing rule is proposed to be rescinded and replaced by a

new version. The rescission is due to the Legislative Service Commission's guide on administrative rule drafting which states that if more than 50% of an existing rule has been amended it shall be rescinded and replaced with a new version.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

10. **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**

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

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

Operations must invest time and resources in implementing the best management practices outlined by the rules of this chapter. Individuals who violate a provision of ORC Chapter 939 and OAC Chapter 901:13-1 may be subject to civil penalties or be required to take corrective actions as outlined in these rule. There is no quantifiable impact for those individuals who remain in compliance with the standards in ORC Chapter 939 and OAC Chapter 901:13-1. However, individuals who do commit a violation of these rules may be subject to civil fines in amounts from \$250 to \$10,000. The amount of the violation depends on the particular rule violated, the severity of the violation, and any past history of non-compliance. Further, the quantified impact of corrective actions will depend entirely on the violation and the means to correct that

violation. Implementation of these best management practices could result in overall cost savings through more efficient nutrient use and higher yields in their agricultural practices.

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

### **III. Common Sense Initiative (CSI) Questions**

15. **Was this rule filed with the Common Sense Initiative Office?** Yes
16. **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?** 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?** Yes

Operations must invest time and resources in implementing the best management practices outlined by the rules of this chapter. Individuals who violate a provision of ORC Chapter 939 and OAC Chapter 901:13-1 may be subject to civil penalties or be required to take corrective actions as outlined in these rule. There is no quantifiable impact for those individuals who remain in compliance with the standards in ORC Chapter 939 and OAC Chapter 901:13-1. However, individuals who do commit a violation of these rules may be subject to civil fines in amounts from \$250 to \$10,000. The amount of the violation depends on the particular rule violated, the severity of the violation, and any past history of non-compliance. Further, the quantified impact of corrective actions will depend entirely on the violation and the means to correct that violation. Implementation of these best management practices could result in overall cost savings through more efficient nutrient use and higher yields in their agricultural practices.

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

Animal feeding operations who are found to be in violation of this rule must develop, obtain approval, and implement modifications to their operation by the Department.

## 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.

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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.**

Ohio Environmental Council Adam Rissien  
Ohio State University Adam Ward  
Ohio Ecological Food and Farm Association Amalie Lipstreu  
Ohio Agribusiness Assoc. Andrew Allman  
The Nature Conservancy Anthony Sasson  
Capitol Consulting Belinda Jones  
Ohio Turf Association Brian Laurent  
County Commissioners Association of Ohio Brian Mead  
Ohio Pork Producers Council Bryan Humphreys  
Ohio Agribusiness Assoc. Chris Henney  
Ohio Wine Producers Donniella Winchell  
Ohio Beef Council/Ohio Cattlemen's Association Elizabeth Harsh  
Ohio Farm Bureau Jack Irvin  
Sierra Club, Ohio Chapter Jennifer Miller  
The Nature Conservancy Jessica D'Ambrosio  
Ohio Poultry Association Jim Chakeres

Ohio Farmers Union Joe Logan  
Ohio Seed Improvement Assoc John Armstrong  
Ohio Forestry Association John Dorka  
The Nature Conservancy John Stark  
Ohio Corn & Wheat John Torres  
The Nature Conservancy Josh Knights  
Environmental Defense Fund Katie Champan  
Ohio Nursery Landscape Association Kevin Thompson  
Ohio Soybean Council Kirk Merritt  
Ohio Farm Bureau Larry Antosch  
Ohio Farmers Union Linda Borton  
Environmental Law & Policy Center Madeline Fleisher  
Ohio Agribusiness Assoc. Margo Long  
Lake Erie Foundation Matt Fisher  
Ohio Forestry Association Michael Geary  
Ohio Federation of Soil and Water Conservation Districts Mindy Bankey  
Lake Erie Charter Boat Association Paul Pacholski  
The Nature Conservancy Sara Madenwald  
Ohio Dairy Producers Scott Higgins  
Ohio Corn & Wheat Tadd Nicholson  
Tom Price Chairperson, Ohio Soil and Water Conservation Commission  
Fred Cash Vice Chairperson, Ohio Soil and Water Conservation Commission  
Bill Knapke Member, Ohio Soil and Water Conservation Commission  
Etta Reed Member, Ohio Soil and Water Conservation Commission  
Bill Tom Member, Ohio Soil and Water Conservation Commission  
Dennis Corcoran Member, Ohio Soil and Water Conservation Commission  
Clark Sheets OFSWCD Appointee  
James Zehringer (Represented by Jim Raab) Director, ODNR  
Bruce A. McPherson (Represented by Scott Shearer), Vice President, OSU CFAES  
David Daniels (Represented by Kevin Elder) Director, ODA  
Craig W. Butler, (Represented by Russ Gibson), Director, Ohio EPA  
Harold Neuenschwander OFSWCD Officer  
Kirk Hines Chief, Division of Soil and Water, ODA

- (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.)**

Natural Resources Conservation Service (NRCS) Conservation Practice Standard, Nutrient Management, Code 590. A copy of which may be found here: [https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1192371.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1192371.pdf)

NRCS, Field Office Technical Guide (FOTG). A copy of which may be found here: <https://efotg.sc.egov.usda.gov/>

- (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**