

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 901:13-1-17

Rule Type: Amendment

Rule Title/Tagline: Director's orders.

Agency Name: Department of Agriculture

Division: Soil and Water Conservation

Address: 8995 E. Main St. Reynoldsburg OH 43068

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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?** 4/19/2024
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?** 939.02
5. **What statute(s) does the rule implement or amplify?** 939.02
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 901:13-1-17 outlines the operating procedures of the Department and the local soil and water districts in administering ORC Chapter 939 and OAC Chapter 901:13-1. The proposed amendments remove regulatory restrictive language 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.**

Pursuant to section 121.75 of the Revised Code, the code sections incorporated into this rule are exempt from compliance with sections 121.71 to 121.74 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?**

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 amendments proposed alter the structure of the rule which should allow for easier reading comprehension. The amendments do not impact the substance of the rule.

- 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? 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? 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? 13

OAC 901:13-1-17 paragraph A, section 1 removes the requirement that when the director decides that an order shall be issued...

OAC 901:13-1-17 paragraph A, section 1 removes the requirement that he shall issue an order and afford each person allegedly liable an adjudication hearing pursuant to Chapter 119.

OAC 901:13-1-17 paragraph A, section 1 removes the requirement that the director shall sustain the order if deemed appropriate after each person allegedly liable has had a hearing or has waived his right to a hearing.

OAC 901:13-1-17 paragraph A, section 1 removes the requirement that each order shall be issued in writing and contain a finding by the director of the facts upon which the order is based and the rule that is being violated.

OAC 901:13-1-17 paragraph A, section 1 removes the requirement that the order shall also specify the time period for correcting the problem, indicate what, if any, technical and financial assistance is available, and indicate what action will follow if the violation is not corrected.

OAC 901:13-1-17 paragraph A, section 2 removes the requirement that the order shall be effective immediately

OAC 901:13-1-17 paragraph A, section 2a removes the requirement that prior to issuing an emergency order, the director shall...

OAC 901:13-1-17 paragraph B, section 2 removes the requirement that the order shall be effective immediately

OAC 901:13-1-17 paragraph B, section 2a removes the requirement that prior to issuing an emergency order, the director shall...

OAC 901:13-1-17 paragraph B, section 2c removes the requirement that such hearing shall be conducted as soon as possible, but not later than twenty days following application.

OAC 901:13-1-17 paragraph B, section 2d removes the requirement that on the basis of the hearing, the director or his designee shall continue, revoke or modify the order.

OAC 901:13-1-17 paragraph B, section 2f removes the requirement that no emergency order shall remain in effect for more than sixty days after its issuance.

OAC 901:13-1-17 paragraph C removes the requirement that agricultural pollution abatement fund. Funds deposited in the agricultural pollution abatement fund authorized under section 939.10 of the Revised Code shall be used for paying the costs for emergency agricultural pollution abatement actions.

- 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.

Jennifer Bowman Represents Rural Interests
Kate Bartter Arnold Knowledge or Interest
Etta Reed Knowledge or Interest, Chair
Fran Buchholzer Knowledge or Interest
David Hanselmann Represents Urban Interests
Jerry McBride Designated by OFSWCD, Vice Chair
Anthony Debevc Knowledge of Interest in Ag Production
Director Ann Vogel Ex Officio, Director of Environmental Protection
Director Mary Mertz Ex Officio, Director of Natural Resources
Cathann Kress Ex Officio, Vice President of Agricultural Administration of OSU
Jeff Duling Ex Officio, Officer of the Ohio Federation of SWCD
Kirk Hines Designated Executive Secretary
Crystal Davis Alliance for the Great Lakes
Rob Krain Black Swamp
Kurt Leib Capital Advocates
Rob Eshenbaugh Capitol Advocates

Cheryl Subler CCAO
Russ Terry Ducks Unlimited
Keith Westrick Grand St Marys Restoration Commission
Matt Fisher Lake Erie Foundation
Gail Hesse National Wildlife Federation
Chris Henney Ohio Agribusiness Assoc.
Elizabeth Harsh Ohio Beef Council/Ohio Cattlemen's Association
Tadd Nicholson Ohio Corn & Wheat
Scott Higgins Ohio Dairy Producers
Amalie Lipstreu Ohio Ecological Food and Farm Association
Trent Dougherty Ohio Environmental Council
Vickie Askins Ohio Environmental Stewardship Alliance
Adam Sharp Ohio Farm Bureau
Jack Irvin Ohio Farm Bureau
Larry Antosh Ohio Farm Bureau
Leah Curtis Ohio Farm Bureau
Roger High Ohio Farm Bureau
Tony Seegers Ohio Farm Bureau
Joe Logan Ohio Farmers Union
Janelle Mead Ohio Federation of Soil and Water Conservation Districts
Kent Scarlett Ohio Municipal League
Cheryl Day Ohio Pork Producers Council
Jim Chakeres Ohio Poultry Association
John Armstrong Ohio Seed Improvement Assoc
Fran Buchholzer Ohio Soil and Water Conservation Commission
Etta Reed Ohio Soil and Water Conservation Commission
Jerry McBride Ohio Soil and Water Conservation Commission
Kate Bartter Arnold Ohio Soil and Water Conservation Commission
Jen Bowman Ohio Soil and Water Conservation Commission
Tony Debevec Ohio Soil and Water Conservation Commission
Brandon Kern Ohio Soybean Association
Kirk Merritt Ohio Soybean Council
Adam Ward Ohio State University
Heidi Fought Ohio Township Association
Brian Laurent Ohio Turf Association
Larry Fletcher Ohio's Lake Erie Shores and Islands
Kris Patterson Partners for Clean Streams
Jim Inglis Pheasants Forever
Adam Rissien Sierra Club, Ohio Chapter
Jessica D'Ambrosio The Nature Conservancy
Peggy Hall The Ohio State University
Sandy Spang Toledo Metropolitan Area Council of Governments

Kari Gerwin Toledo Metropolitan Area Council of Governments
Bill Stanley The Nature Conservancy
Jessica D'Ambrosio The Nature Conservancy

- (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 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**