

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

Agency Name

Soil and Water Conservation

Division

David E Miran

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901:13-1-99

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Civil penalties.**RULE SUMMARY**1. Is the rule being filed for five year review (FYR)? **No**2. Are you proposing this rule as a result of recent legislation? **Yes**Bill Number: **SB1**General Assembly: **131**Sponsor: **Gardner/Peterson**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: **939.09**5. Statute(s) the rule, as filed, amplifies or implements: **939.08; 939.09**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

This rule is being proposed in accordance with the enactment of Senate Bill 1, effective on July 3, 2015. Ohio Revised Code 1511.11 states, the chief [of the Division of Soil and Water Resources] shall adopt rules in accordance with Chapter 119. of the Revised Code that establish . . . the amount of the civil penalty assessed under this section. The civil penalty shall be not more than ten thousand dollars for each violation." The rule proposed meets these requirements.

House Bill 64 of the 131st General Assembly, executed the transfer of the Soil and Water Conservation program from the Ohio Department of Natural Resources to the Ohio Department of Natural Resources. This transfer is effective on January 1, 2016. At the time of filing, the authority to file these rules lies with the Department of Natural Resources. However, at the time of the final file the authority will have transferred to the Department of Agriculture. Please see 1511.11 of the Revised Code, and subsequently 939.09 of the Revised Code for the transfer of this power. Due to all of this, the Ohio Department of Agriculture is filing this rule rather than the Ohio Department of Natural Resources.

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 § 901:13-1-99 establishes the civil penalties that may be imposed for applying fertilizer in the western basin on frozen ground, saturated soil, and during certain weather conditions. Ohio's Western Basin is defined in ORC § 905.326(E) as any of the following watersheds: St. Marys watershed, Auglaize watershed, Blanchard watershed, Sandusky watershed, Cedar-Portage watershed, Lower Maumee watershed, Upper Maumee watershed, Tiffin watershed, St. Joseph watershed, Ottawa watershed, and the River Raisin watershed.

For a minor violation, the Director may assess a civil penalty of up to two thousand dollars for each day of noncompliance. For a major violation, the Director may assess a civil penalty of up to ten thousand dollars for each day of noncompliance. All money collected through the civil penalties will be deposited into the agricultural pollution abatement fund.

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:

Pursuant to sections 121.76 and or 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

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:

Not Applicable.

12. Five Year Review (FYR) Date:

(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 increase revenues.

Minimal

The rule could result in small increase revenue for the agency. If civil penalties are assessed and collected under the amount established by rule, the money will be deposited into the agricultural pollution abatement fund.

The possible increase in revenue is not guaranteed, as there may not be a violation of the law or assessment of a civil penalty. Also, the dollar amount of the possible civil penalties is very small relative to the budget of the division, and therefore would not have a significant net impact

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:

Individuals not in compliance with ORC § 939.08 may be assessed a civil penalty up to two thousand dollars for minor violations and up to ten thousand dollars for major violations.

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? **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**

Individuals not in compliance with ORC § 939.08 may be assessed a civil penalty up to two thousand dollars for minor violations and up to ten thousand dollars for major violations.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

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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.

Ohio Agribusiness Association # Chris Henney

Ohio Cattlemen's Association # Elizabeth Harsh

Ohio Corn and Wheat Growers Association #Tadd Nicholson

Ohio Dairy Producers Association # Scott Higgins

Ohio Farm Bureau Federation # Adam Sharp

Ohio Farmers Union # Joe Logan

Ohio Federation of Soil and Water Conservation Districts # Mindy Bankey

Ohio Pork Council # Bryan Humphreys

Ohio Poultry Association # Jim Chakeres

Ohio Soybean Association # Adam Ward

The Nature Conservancy # Josh Knights

Ohio Environmental Council- Adam Rissien

- (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.)

The Department, in working closely with stakeholders, considered their opinions in determining the threshold limits for minor and major violations.

- (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**