

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

Agency Name

Soil and Water Conservation

Division

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901:13-1-99

Rule Number

RESCISSION

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? **Yes**Bill Number: **HB64**General Assembly: **131**Sponsor: **Smith**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: **939.02, 939.09**5. Statute(s) the rule, as filed, amplifies or implements: **939.07, 9.39.08, 939.09**

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

On July 3, 2015, Substitute Senate Bill 1 of Ohio's 131st General Assembly passed into law Ohio Revised Code (hereinafter #ORC#) section 1511.10 which prohibited any individual from making surface applications of manure in Ohio's Western Basin under certain conditions. Further, Senate Bill 1 stated that the Director of Agriculture and the Chief of the Division of Soil and Water Resources shall adopt rules establishing the amount of the civil penalty for violations of ORC 1511.10.

Ohio Administrative Code (hereinafter #OAC#) 901:13-1-99 was created to fulfill this requirement and became effective on January 31, 2016.

Amended Substitute House Bill No. 64 of the 131st General Assembly transferred the Agricultural Soil and Water Conservation Program from the Ohio Department of Natural Resources to the Ohio Department of Agriculture effective January 1, 2016. With this bill, Chapter 939 of the Revised Code was created. Specifically, ORC 1511.10 was renumbered to 939.08. Additionally, ORC 939.02 was created giving the Director the authority to power to levy civil penalties for violations of any provision of the Chapter or the rules promulgated under it.

As stated above, the original 901:13-1-99 only referenced civil penalties for violations of 939.08 (formerly 1511.10). The proposed 901:13-1-99 meets the statutory obligation in 939.02 by establishing the amount of the civil penalties for each potential violation of Chapter 939 or OAC Chapter 901:13-1.

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:

The proposed 901:13-1-99 meets the statutory obligation in 939.02 by establishing the amount of the civil penalties for each potential violation of Chapter 939 or OAC Chapter 901:13-1. These penalties range from two-hundred and fifty dollars to ten thousand dollars based on the severity of the violation and any past non-compliance history with the violator.

In accordance with the Legislative Service Commissions administrative rule drafting manual, the original rule has been proposed to be rescinded as there are amendments to more than 50% of the existing 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:

Pursuant to section 121.76 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: **5/3/2017**

(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 increase revenues.

Unknown.

Due to the creation of new civil penalty authority, the rule has the potential to increase revenues for the Department. The amount of the increase is unknown, however, the Department does not expect it to be a large increase as the Department hopes to achieve compliance prior to the issuance of civil penalties.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure

necessitated by the proposed rule:

N/A.

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:

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 either of those chapters 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.

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**

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 either of those chapters 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.

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.

Tom Price Chairperson

Fred Cash Vice Chairperson

Bill Knapke Member

Etta Reed Member

Bill Tom Member

Larry Vance 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

Kris Swartz OFSWCD Officer

Kirk Hines Chief, Division of Soil and Water, ODA

On December 20, 2016, the proposed rule was emailed to industry stakeholders seeking their advice and input. ODA received a small number of phone calls regarding the proposed rule. The majority of the calls were to clear up confusion regarding the existing 901:13-1-99 and the proposed version. ODA received substantive comments from the Ohio Environmental Council, the Lake Erie Charter Boar Association, the Ohio Environmental Stewardship Alliance, and the Sierra Club Ohio Chapter. These substantive comments are addressed below in paragraph # 8.

The stakeholders emailed were as follows:

Capitol Consulting Belinda Jones

County Commissioners Association of Ohio Brian Mead

Environmental Defense Fund Katie Chapman

Environmental Law & Policy Center Madeline Fleisher

Ohio Agribusiness Assoc. Andrew Allman

Ohio Agribusiness Assoc. Chris Henney

Ohio Agribusiness Assoc. Margo Long

Ohio Beef Council/Ohio Cattlemen's Association Elizabeth Harsh

Ohio Corn & Wheat John Torres

Ohio Corn & Wheat Tadd Nicholson

Ohio Dairy Producers Scott Higgins

Ohio Environmental Council Adam Rissien

Ohio Environmental Council Jack Shaner

Ohio Farm Bureau Jack Irvin

Ohio Farm Bureau Larry Antosh

Ohio Farm Bureau Tony Seegers

Ohio Farm Bureau Yvonne Lesicko

Ohio Farmers Union Joe Logan

Ohio Farmers Union Linda Borton

Ohio Farmers Union Roger Wise

Ohio Federation of Soil and Water Conservation Districts Mindy Bankey

Ohio Forestry Association John Dorka

Ohio Forestry Association Michael Geary

Ohio Nursery Landscape Association Kevin Thompson

Ohio Pork Producers Council Bryan Humphreys

Ohio Poultry Association Jim Chakeres

Ohio Seed Improvement Association John Armstrong

Ohio Soil and Water Conservation Commission Tom Price

Ohio Soybean Council Kirk Merritt

Ohio Soybean Council Adam Ward

Ohio Turf Association Brian Laurent

Ohio Wine Producers Donniella Winchell

The Nature Conservancy Anthony Sasson

The Nature Conservancy Jessica D'Ambrosio

The Nature Conservancy John Stark

The Nature Conservancy Josh Knights

The Nature Conservancy Sara Madenwald

(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 ? **No**

Please indicate the reasons for not providing the information.

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**