

Ohio Department of Agriculture

Administrative Rules Public Hearing Summary Report

Hearing Date: November 21, 2018
Today's Date: Friday, December 07, 2018
Division: Soil and Water Conservation
Rules: OAC 901:13-1-(11, 19, and 99)

☐ There were no comments at the hearing.

☒ There were comments before, during, or after the hearing.

List of Organizations or Individuals who provided comments:

1. Tony Seegers, Ohio Farm Bureau Federation
2. Andy Schwreterman, Mercer County Soil and Water Conservation District
3. Scott Metzger, Ohio Soybean Association
4. Jed Bower, Ohio Corn and Wheat Growers Association
5. Nick Renner, Concerned Farmers of the Grand Lake Watershed
6. Kevin Elder, Farmer
7. Nick Rentz, Lake Improvement Association
8. Richard Sherrick, Lake Improvement Association
9. Deb Simon Heinfeld, Lake Improvement Association
10. Jack Albers, Lake Improvement Association
11. Joe Meyer, Farmer
12. Keith Westrick, Lake Improvement Association
13. Lynn Edmonds, Lake Improvement Association
14. Jeff Vossler, Lake Improvement Association
15. Harold Neuenschwander, Ohio Federation of Soil and Water Conservation Districts
16. Bryan Humphreys, Ohio Pork Council on behalf of the Ohio Livestock Groups
17. Madeline Fleisher, Environmental Law and Policy Center
18. Pete Bucher, Ohio Environmental Council
19. Gail Hesse, National Wildlife Federation

Consolidated review of comments received:

Mr. Tony Seegers of the Ohio Farm Bureau Federation stated that “ODA lacks the statutory authority to regulate commercial fertilizer” under these rules. Mr. Seegers outlined that there were two prior attempts to amend the definition of “agricultural pollution” in Chapter 939 of the

Revised Code which were unsuccessful. It is Mr. Seeger's opinion that these failed attempts to redefine this term demonstrate that the term "substances attached thereto" cannot include commercial fertilizer and therefore, ODA does not have the authority to regulate those substances under these rules. Mr. Seeger also voiced concerns over the implementation of these rules including whether the necessary resources were available.

Mr. Andy Schwreterman of the Mercer County Soil and Water Conservation District provided testimony focusing on four factors. First, Mr. Schwreterman requested that ODA maintain the current winter manure application prohibition in Grand Lake St. Marys. Second, remove the winter application exemptions found in Senate Bill 1. Third, Mr. Schwreterman requested that the legislature give ODA the authority to regulate commercial fertilizer. Finally, Mr. Schwreterman requested that current requirement to review nutrient management plans every three years be pushed back to every five years.

Mr. Scott Metzger, of the Ohio Soybean Association, and Mr. Jed Bower, of the Ohio Corn and Wheat Growers Association, provided similar testimony. Both indicated that protecting Lake Erie and Ohio's water quality is a priority for Ohio's farmers. They agreed that conservation practices are good for the environment and for their respective businesses. Mr. Metzger stated that he believes "these rules are not the right path forward, because the cost to farmers wasn't fully considered in the initial draft and still haven't been fully considered." Further, Mr. Bower stated that he did not believe that the current rule package is within the legislative intent of the General Assembly.

Mr. Nick Renner representing concerned farmers of the Grand Lake St. Marys watershed expressed opposition to removing the winter manure application ban dates. Mr. Renner indicated that exemptions could be made to this prohibition should weather conditions be favorable for application. Further, Mr. Renner believed that definitions need to be provided for certain terms in the proposed rules.

Mr. Kevin Elder stated that there are too many different sets of rules which farmers must abide by. He recommended that a limited set be established for consistency purposes. Further, Mr. Elder recommended that while the Grand Lake St. Marys rules work for the particular watershed, the rules are "probably not workable for the entire state of Ohio." Mr. Elder recommended a consistent set of rules across the state.

Mr. Nick Rentz representing the Lake Improvement Association at Grand Lake St. Marys stated that the current rules have been a success in the area. Mr. Rentz stated that a statewide standard would be inappropriate. He requested that the current rules be maintained for Grand Lake St. Marys.

Other members of the Lake Improvement Association gave testimony similar to Mr. Rentz. Mr. Richard Sherrick, Ms. Deb Simon Heinfeld, and Mr. Jack Albers praised the work that farmers in Grand Lake St. Marys have been doing to keep the lake clean. Mr. Westrich requested that the

rules remain the same for Grand Lake St. Marys. Ms. Edmonds and Mr. Vossler echoed Mr. Westrich's statements.

Mr. Joe Meyer, a farmer from Mercer County, asked that winter prohibition be lifted in order to open up livestock opportunities to better take care of their livestock.

Mr. Matt Fisher of the Lake Erie Foundation insisted that "aggressive practices" needed to be taken to handle nutrient runoff. Mr. Fisher indicated that the rules are "very good" however he challenged whether they were strong enough.

Mr. Harold Neuenschwander of the Ohio Federation of Soil and Water Conservation Districts provided written testimony via email. Mr. Neuenschwander expressed concern regarding the unknown impact of these rules. Mr. Neuenschwander indicated that there are changes on the Federal level which are not finalized. Further, Mr. Neuenschwander stated concerns regarding the appropriate amount of funding available in order to comply with these rules.

Mr. Bryan Humphreys on behalf of the Ohio Livestock Groups presented written testimony via email. The testimony expressed concern regarding the cost and burden imposed by these rules on the regulated community. Further, the testimony raised questions on the Department's ability to perform the required number of audits based on the Department's current resources.

Ms. Madeline Fleisher of the Environmental Law and Policy Center provided written testimony via email. Ms. Fleisher stated that the rules must include commercial fertilizer and not just manure. However, Ms. Fleisher believes that the winter ban on manure application needs to remain. Further, Ms. Fleisher states that the attestation requirement, rather than submission of nutrient management plans, weakens the rule unnecessarily.

Mr. Pete Bucher of the Ohio Environmental Council submitted written testimony via email. Mr. Bucher stated that "financial resources should be committed to ODA that will allow for staffing to provide such enforcement and oversight going forward." Further, Mr. Bucher stated that the rules need to be amended to prevent future nutrient loading by decreasing the amount of precipitation needed to prevent application and lengthening the applicable window. Mr. Bucher also states that the Department should require the submission and review of plans rather than the mere attestation of a plan.

Ms. Gail Hesse of the National Wildlife Federation provided written testimony via email. Ms. Hesse reiterated NWF's support to align the manure and fertilizer application restrictions within the parameters of Senate Bill 1. Ms. Hesse stated that while there are costs associated with this rule package there are costs associated by not pursuing this rule package.

Incorporated comments into the rule:

The Department will not be incorporating any of the comments into rule.

Statutory Authority:

As the Department has stated previously, the authority to establish these rules can be found in Ohio Revised Code (ORC) 939.02. As stated in the statute, the Department with the approval of the Soil and Water Conservation Commission shall adopt rules which:

“Establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by residual farm products, manure, or soil sediment, including attached substances, and establish criteria for determination of the acceptability of such management and conservation practices [...].”

The Department believes that the rules as presented are within this statutory framework. Further, ORC 939.02 gives the Department rule-making authority to enforce agricultural pollution abatement, as well as, additional rulemaking powers.

Cost of Rules:

As stated in the Department’s business impact analysis, the Department does not dispute that there are costs involved in these regulations. Operations which apply manure and are required to obtain a CNMP could expect to occur costs of \$55/hour for the development of this plan. Based on data provided to the Department by USDA NRCS, the cost of a CNMP could range from \$2,400 to \$12,100. The cost of the CNMP varies greatly and depends on the operation including size and complexity. Operations which do not apply manure would only be required to obtain a “simple” nutrient management plan. Costs for these plans on average range between \$2,500 to \$3,000 per plan, per producer. In an effort to assist the regulated community, USDA NRCS may have funds available to lower the cost of these plans.

Winter Application Standards:

Consistent application standards across the state of Ohio was a common theme in the early stakeholder outreach period. The standards proposed mirror those found in Ohio Revised Code 939.08 and 905.326. If the Department were to adopt a different standard, the rules would be in conflict with these statutes should any new watershed in the Western Lake Erie basin be designated as distressed. With regards to Mr. Schwreterman’s request to remove the exemptions provided in Senate Bill 1, the Department does not have the power to alter legislation passed by the General Assembly. Therefore, this accommodation cannot be legally made.