

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Agriculture

Regulation/Package Title: LEPP 5YR Amendments

Rule Number(s): 901:10-1-01,02,03,06,09; 901:10-2-01, 02, 04, 05, 06, 08, 11, 12, 16, 19, 20;
901:10-3-01, 04; 901:10-4-05; 901:10-6-01,02,04

Date: December 31, 2013

Rule Type:

☐ New

☐ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Rules 901:10-1-01 through 09 discuss the general requirements for compliance under the Division of Livestock Environmental Permitting (DLEP).

Rule 901:10-1-01 sets forth the definitions for Chapter 901:10 and is being amended in order to delete and incorporate comments into the rule and to add definitions.

Rule 901:10-1-02 sets forth the general administrative requirements for permits and is being amended to incorporate a comment into the rule.

Rule 901:10-1-03 sets forth the criteria for the Director to approve, deny or revoke a permit under DLEP and is being amended to correct inappropriate formatting and to correctly follow the incorporation by reference rules.

Rule 901:10-1-06 sets forth the standards and application procedures of a certified livestock manager and is being amended to correct inappropriate formatting. Additionally, the rule is being amended to change the month in which the certified livestock manager permit expires. This will allow the department more time to review and approve the applications in a timely manner and become consistent with other licensing deadlines.

Rule 901:10-1-09 sets forth the criteria for modifying a permit under this chapter and is being amended to correct inappropriate formatting.

Rules 901:10-2-01 through 20 discuss application for permits under DLEP and manure management plans.

Rule 901:10-2-01 sets forth general administrative requirements for a permit to install a new concentrated animal feeding operation, concentrated animal feeding facility, or a major concentrated animal feeding facility and is being amended to require as-built plans to be signed by a professional engineer. It also requires additional documents to be submitted with the permit to install.

Rule 901:10-2-02 sets forth the siting criteria for a permit to install and is being amended to update references within the rule and to change the rule's formatting to make it easier to read and interpret.

Rule 901:10-2-04 sets forth analysis and design considerations needed for a permit to install and is being amended to update references and to clarify existing portions of the rule.

Rule 901:10-2-05 sets forth the requirements for fabricated structures which hold manure and is being amended to require design plans for fabricated structures with wall heights eight feet or greater to be signed by a professional engineer. The amendment also clarifies the storage time required by liquid and solid manure.

Rule 901:10-2-06 sets forth the requirements for manure storage ponds and manure treatment lagoons and is being amended to update code references and to correctly follow the incorporation by reference rules. The amendment also clears up ambiguity as to how an individual accomplishes paragraph (A)(1) of the rule.

Rule 901:10-2-08 sets forth specific administrative requirements that are required in a manure management plan and is being amended to update internal code references and correct

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

inappropriate formatting. Additionally, the rule is being amended to require additional sampling and monitoring.

Rule 901:10-2-11 sets forth the information required in a manure management plan with regards to distribution and utilization of the manure and is being amended to change inappropriate rule formatting. The rule is also being amended to remove a paragraph and place it in 901:10-1-01.

Further, the amendment is clarifying that the amount of manure distributed to others shall be maintained in the operating record. These records are already being kept by the record keepers.

Rule 901:10-2-12 sets forth the information required in a manure management plan to minimize odors and is being amended to change inappropriate rule formatting.

Rule 901:10-2-16 sets forth the administrative requirements of the operating record and is being amended to require record keeping to demonstrate annual calibration of land application equipment is being performed as currently required by rule. Further, the amendment changes inappropriate rule formatting and clarifies existing language to make the rule easier to read and follow.

Rule 901:10-2-19 sets forth the requirements of an insect and rodent control plan and the standards for its acceptance and is being amended to remove and incorporate the comments listed within the rule.

Rule 901:10-2-20 sets forth the information required to be submitted in the owner or operator's annual report to the director of agriculture and is being amended to require the annual reports to include the volume of manure transferred to others be based off actual operating records. This document is already required to be recorded, but was not required to be previously submitted with the report.

Rules 901:10-3-01 through 11 discuss the specific requirements to obtain a permit by the National Pollutant Discharge Elimination System (NPDES).

Rule 901:10-3-01 sets forth additional requirements for the NPDES permit application and is being amended to update internal code references and to change inappropriate rule formatting.

Rule 901:10-3-04 sets forth specific requirements for concentrated animal feeding operations that house dairy cows and cattle other than veal calves and is being amended to change inappropriate rule formatting.

Rules 901:10-4-01 through 05 discuss the general requirements of a permit to operate a type of concentrated animal feeding facility.

Rule 901:10-4-05 sets forth the requirements holders of general operating permits must comply with and is being amended to change inappropriate rule formatting.

Rules 901:10-6-01 through 06 discuss the public notice and information requirements when a permit may be issued, penalized, or amended in some way.

Rule 901:10-6-01 sets forth the notice requirements as required when the director of agriculture issues a draft permit and is being amended to eliminate and incorporate the comments listed in the rule.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Rule 901:10-6-02 sets forth the required contents of the public notices in 901:10-6-01 and is being amended to eliminate and incorporate the comments listed in the rule.

Rule 901:10-6-04 sets forth the administrative process of a public meeting requested as a result of a draft permit, draft permit modification, or proposed action to deny, suspend, or revoke a permit, and is being amended to eliminate and incorporate the comments listed in the rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 903.08; 903.10

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Generally the regulations do not implement a federal requirement; however Section 901:10-3 of the Administrative Code implements the federal regulations for a national pollutant discharge elimination system (NPDES) permit under 40 C.F.R. 122.23 for those facilities which experience a discharge of pollutants.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Under Chapter 903 of the Revised Code, the Department is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs) and must establish a permitting system for such regulation. Additionally, these regulations implement permitting guidelines for the issuance of NPDES permits under the Federal Water Pollution Control Act. These regulations ensure the state's largest operations follow science-based guidelines that protect the environment and the public while allowing the facility to be productive.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

All CAFOs and CAFFs covered by these rules are inspected and any complaints regarding unsafe operations and/or discharges are investigated. The rules are judged as being successful when inspections and investigations find few violations or structural failures, and when there is no increase in the number of discharge reports filed with the Department.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

These rules were reviewed and amended by a broad group of stakeholders including the Concentrated Animal Feeding Facility Advisory Committee, interested members of the public, and various other professionals. The Committee met multiple times to discuss the content of the rules up for review and the suggested revisions. The current composition of the committee is:

Carl Link – Ohio Pork Producers Council
Andy Miedema – Ohio Dairy Producers Association
Glen Feichtner – Ohio Cattlemen’s Association
Tim Weaver – Ohio Poultry Association
Roger High – Ohio Sheep Improvement Association
Michael Mull – DVM, Ohio Veterinary Medical Association
Tony Anderson – Ohio County Commissioners Association of Ohio
Eric Dresbach – Ohio Water Environment Association
Jason Menchhofer – Ohio Environmental Health Association
Dick Lorenz – Water Management Association of Ohio
Joe Logan – Ohio Environmental Council
Karen Chapman – Environmental Defense Fund
Chuck Divelbiss – Public Representative
Russell Ludwig – Public Representative
Kirk Hines – Ohio Department of Natural Resources
Cathy Alexander – Ohio EPA
Maurice Eastridge, PhD – The Ohio State University
Tim Sword – Ohio Department of Development
Kevin Elder – Ohio Department of Agriculture

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The CAFF advisory committee as matter of course reviews rules suggested for amendment by the Department and also requests changes to rules. A number of rules in this package were recommended for changes by the committee. These amendments were discussed during several meetings by the advisory committee and were later approved by the committee as a whole.

An example of a revision suggested by the committee is in 901:10-2-01 to require as-built plans to be signed by a professional engineer and submitted as part of the construction approval for a permit to install if the design plans required signature by a professional engineer. Additionally, based on such input additional documents were called for in the application for permit to install to ensure that the facilities are in compliance with the building standards, including photographs, soil studies, construction log, and other evidence called for by the engineering plans.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The rules are based on scientific manuals for best management practices where applicable, including but not limited to "Ohio Natural Resource Conservation Service, Conservation Practice Standards Section IV, Field Office Technical Guide" and "Agricultural Waste Management Field Handbook," June 1999.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

As noted in question 8, the rules were changed as input was received from the various stakeholder groups and committees. Alternatives proposed at the meetings were analyzed, discussed, and often accepted. These alternatives were considered and parts adopted through interaction with the stakeholder community on what was appropriate and needed, and why some of these alternatives were not necessary and were too expensive to implement. The current rules were proposed as a result of consideration of these alternatives, and will ensure public safety and environmental protection. For Chapter 901:10-3, these regulations implement federal regulations, and as the state regulations must be the same or equal to the federal regulations, no alternative regulations were considered.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

As these regulations set minimum safety standards to protect the environment and the public, performance-based regulations are not appropriate.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Department is given the sole regulatory authority over this matter in R.C. 903.08 and 903.10.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules are already implemented without the above mentioned amendments and are communicated to the affected communities. Additional education and outreach will be performed with the affected communities of the changes by the DLEP, as well as with the committee that meets up to four times a year. Permit holders and applicants will have educational materials made available to them, and Department staff will assist with identifying infrastructure and operational needs of permit holders. The staff members of the DLEP ensure that all permit holders in Ohio are treated in a similar manner.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Any livestock and poultry farms that are considered CAFOs and/or CAFFs as they are defined under the statute are required to comply with these rules.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

As currently implemented, the rules require each facility to be permitted and require time and cost to comply with the regulations, including the engineering and sanitary regulations affecting each facility. These rule amendments are not expected to have any new adverse impact except for some additional record keeping. This will require a minimal amount of additional time being spent on compliance annually.

Rules 901:10-2-01 and 901:10-2-05 are being amended to require design plans for fabricated structures with wall heights eight feet or greater to be signed by a professional engineer. The rule currently requires design plans for liquid structures to be signed by a professional engineer. Additionally, a significant majority of the CAFO's and CAFF's being constructed currently have their as-built plans completed and signed by a professional engineer to provide assurance that their multi-million dollar facilities are constructed in accordance to all current standards. Therefore, these facilities will not face an adverse impact with regard to these amendments. The small percentage of

CAFO's and CAFF's who are not currently following this practice will see an increase to the cost of the design and construction.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The additional record keeping will result in negligible adverse impact in the form of additional time for record keeping. Many of the additional records now required are already being kept by the industry.

Rules 901:10-2-01 and 901:10-2-05 are being amended to require plans be designed and signed by a professional engineer. This may raise the cost of a permit to install for facilities not already utilizing an engineer for this purpose. After speaking with constituents familiar with this process it is believed that engineering services within this field are typically no more than 5-10% of the total cost of the facility.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The regulatory intent of the rules is to ensure public safety and environmental protection of Ohio's waterways and groundwater by regulating how Ohio's largest livestock and poultry farms handle and store manure. These rules achieve this protection by requiring standards that permit Ohio's farms affected by this regulation to still operate cost-effectively. The new professional engineer requirement ensures that the facilities are being constructed and designed properly with minimal risk for future contamination due to construction. Therefore, the adverse impact is considered to be justified.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The regulations have different requirements depending on the size of the animal feeding facility. Major concentrated feeding facilities are required to be at greater distances from water sources than large, concentrated animal feeding facilities. The difference in requirements reflects additional safety requirements due to the amount of liquid or solid manure stored at the facility and the possible risk of contamination. Small and Medium facilities, if they have no discharges, are not regulated by these rules.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The Department is primarily concerned with protecting public safety and the environment through compliance with these rules. Whenever possible, the Department will treat administrative violations that do not involve environmental damage as opportunities for improvement through warning notices and solicitation of corrective actions. Harsher enforcement options will be reserved for offenders who do not cooperate or those that have repeated violations.

18. What resources are available to assist small businesses with compliance of the regulation?

The Department has online resources and has field staff available through a 24 hour helpline to provide assistance. Training and seminars are also available.