

**MEMORANDUM**

**TO:** David Miran, Ohio Department of Agriculture

**FROM:** Emily Kaylor, Lt. Governor's Office

**DATE:** April 27, 2017

**RE:** **CSI Review – Civil Penalty Rule (OAC 901:13-1-99)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of one amended<sup>1</sup> rule submitted by the Ohio Department of Agriculture (ODA) for its statutorily-required five-year review. The rule package was submitted to the CSI Office on March 6, 2017 and the public comment period was held open through March 24. No comments were received during this time.

Senate Bill 1 of the 131st General Assembly prohibited any individual from making surface applications of manure in Ohio's Western Basin under certain conditions and stated that ODA shall adopt rules to establish the amounts for these civil penalties. House Bill 64 of the 131st General Assembly expanded this rulemaking authority so that ODA shall adopt rules to levy civil penalties for all potential violations of ORC Chapter 939. The rule lists violations that are minor, moderate, and major. The fines for minor violations range from \$250 to \$5,000 depending on if it is a first, second, or third violation. Major violations run from \$2,000 to \$10,000, also depending on if it is a first, second, or third violation. Additionally, the rule stipulates that all money paid for

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<sup>1</sup> OAC 901:13-1-99 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

finances be deposited into the agricultural pollution abatement fund.

In addition to review by the Ohio Soil and Water Conservation Commission, ODA emailed the proposed rule to industry stakeholders listed in the BIA. Some comments were clarification issues that the Department addressed, but four substantive comments were received. The Department addressed each comment in the BIA and explained why it chose to not make changes to the tiered structure of violations.

The rule impacts individuals who violate provisions of ORC Chapter 939 and are subject to civil penalties as outlined in the rule. Individuals who remain in compliance will not be impacted, but as stated above, those who are found in violation will pay fines ranging from \$250 to \$10,000 depending on the code violated, severity of the violation, and whether it is their first offense or not. ODA states that this rule and its impacts are necessary to ensure the quality of Ohio's natural resources and prevent pollution and erosion.

After reviewing the proposed rule and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **Recommendation**

For the reasons explained above, this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Agriculture should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.