



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Renee Schmauch, Ohio Department of Agriculture

FROM: Jacob Ritzenthaler, Business Advocate

DATE: April 12, 2024

RE: **CSI Review – Soil and Water Conservation: Prevention (OAC 901:13-1-01 through 901:13-1-20 and 901:13-1-99)**

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of sixteen amended rules, four no-change rules, and one rescinded rule proposed by the Ohio Department of Agriculture (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on February 27, 2024, and the public comment period was held open through March 19, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on February 27, 2024.

Ohio Administrative Code (OAC) Chapter 901:13-1 establishes requirements for the control of pollutants from areas within the state used for agricultural production. OAC 901:13-1-01 sets forth general provisions, including the purpose of the rules and relevant definitions. The rule is amended to remove definitions that are no longer in use and revise current definitions to streamline and update language. OAC 901:13-1-02 requires owners and operators of animal feeding operations to operate and maintain animal manure collection, storage, and treatment facilities to prevent overflow or discharge into water sources. The rule is amended to alter the organization of the current rule language. OAC 901:13-1-03 and 901:13-1-04 require that animal feeding operations prevent seepage from manure management facilities or manure contaminated runoff from feedlots. These rules

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include amendments that reorganize the rule content and refer to the “Field Office Technical Guide” (FOTG) for methods to correct failures to implement best practices.

OAC 901:13-1-05 concerns residual farm products and milking facility waste waters and is amended to update terms and the rule structure. OAC 901:13-1-06 requires animal feed operations to prevent pollution due to flooding and is amended to update the rule structure. OAC 901:13-1-07, 901:13-1-08, and 901:13-1-09 establishes requirements for operations to prevent water pollution caused by sheet and rill erosion, gully erosion, and wind erosion. These rules are amended to update the structure of requirements. OAC 901:13-1-10 provides the ability to apply for exemption from the requirements of Division (A) of ORC 939.08 and is proposed for rescission as the rule served to aid compliance during the initial implementation of the statute. OAC 901:13-1-11 sets forth requirements for the land application of animal manure, including requirements to minimize pollution and requirements specific to land applications that occur in watersheds in distress. The rule is proposed without changes. OAC 901:13-1-12 requires that agricultural operations prevent pollution from placing soil in a way that it readily erodes or sloughs into state waters. The rule is amended to restructure the rule language. OAC 901:13-1-13 sets forth requirements concerning composting using animal mortality and is amended to restructure the rule language.

OAC 901:13-1-14 establishes the Department’s agricultural pollution abatement cost sharing program. The rule is amended to increase the maximum amount that the Department may offer to share from \$30,000 to \$50,000 per year, as well as to remove settling basins and filter strips as eligible practices for cost sharing. OAC 901:13-1-15 sets forth administrative procedures and was initially proposed for rescission. Based on feedback received during the CSI public comment period, the Department determined to retain this rule with no changes. OAC 901:13-1-16 and 901:13-1-17 set forth requirements concerning the procedures for operation and orders issued by the Department. These rules are amended to remove unnecessary regulatory restrictions. OAC 901:13-1-18 concerns the use of grants for owners and operators of farms or animal feeding operations to implement plans approved by district boards of supervisors and is proposed without changes. OAC 901:13-1-19 establishes requirements for nutrient management planning in watersheds in distress, which address the methods, amount, form, placement, cropping system, and timing of all nutrient applications. The rule is amended to increase the timeline for updating nutrient management plans to the Department from three years to five years. OAC 901:13-1-20 sets forth the process for designating a watershed in distress, including the factors used during an evaluation, documentation of the contributing factors, voting by Ohio Soil and Water Conservation Commission, and removal of a distress designation. The rule is amended to update the structure of the rule. OAC 901:13-1-99 lists the civil penalties for violations and is proposed without changes.

During early stakeholder outreach, the Department sent the proposed rules to industry stakeholders for feedback, including members of the Ohio Soil & Water Conservation Commission, livestock and

agribusiness associations, environmental organizations, and other interested parties. The Department also hosted several meetings for stakeholders to submit feedback. During that time, the Department received comments that asked for OAC 901:13-1-16 and 901:13-1-17, which were proposed for rescission at this time, to be reintroduced back into the chapter. The Department retained the rules as part of the chapter and made further amendments. Stakeholders also submitted comments that expressed concern about removing settling basins and filter strips from the list of eligible cost sharing practices. The Department did not reintroduce the practices, as it notes that they are projects that present an increased risk of run-off when performed incorrectly. The Department also did not make changes in response to comments that were concerned about increasing the time between nutrient management plan updates from three to five years, stating that it is in close contact with producers to ensure that plans are followed. During the CSI public comment period, the Department received comments from the Ohio Environmental Council and the Alliance for the Great Lakes. In response to comments, the Department revised the rules to no longer rescind OAC 901:13-1-15 and propose it instead as a no-change rule. The Department also made amendments to the rules that restore requirements for nutrient management plans must be submitted to and approved by the Department Director.

The business community impacted by the rules includes all animal feeding operations that are not subject to the licensing requirements of the Department's Livestock Environmental Permitting Program or subject to a National Pollutant Discharge Elimination System permit through the United States Environmental Protection Agency. The adverse impacts created by the rules include the time and cost to institute prevention measures that guard against pollution into state waters. These measures include compliance with best practices for the prevention of flooding, erosion, seepage, or discharge. The rules also require the maintenance of records and review of nutrient management plans. Animal feeding operations may be subject to penalties for violations of the rule requirements, which can include fines that range from \$250 to \$10,000, depending on the type and severity of the violation or an operator's history of non-compliance. The Department states that the adverse impacts created by the rules are necessary to protect Ohio's natural resources and prevent pollution by establishing best management practices and technical guidance.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.