



Common Sense Initiative

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

Joseph Baker, *Director*

MEMORANDUM

TO: Renee Schmauch, Ohio Department of Agriculture

FROM: Caleb White, Business Advocate

DATE: April 22, 2024

RE: CSI Review – Livestock Environmental Permitting – Five Year Review (OAC 901:10-1-01, 901:10-1-04, 901:10-1-06, 901:10-1-11, 901:10-2-03, 901:10-2-07, 901:10-2-15 through 901:10-2-18, 901:10-3-02, 901:10-3-03, 901:10-3-05, 901:10-3-06, 901:10-3-10, 901:10-3-11, 901:10-4-01, 901:10-4-03, 901:10-4-04, 901:10-5-01 through 901:10-5-04, 901:10-6-05, and 901:10-6-06)

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This rule package consists of twenty-two amended rules, one no-change rule and two rescinded rules proposed by the Ohio Department of Agriculture (Department) as part of the statutory five-year review process.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 January 30, 2024, and the public comment period was held open through February 21, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 30, 2024.

The rules in this package contain regulations for the Department's Division of Livestock Environmental Permitting's oversight and permitting of livestock and poultry farms and regulate how these farms handle pests, manure, and wastewater. These rules address topics such as permitting fees, various permitting requirements processes and exclusions, the criteria for issuing permits, the application process, requirements, and training for certified livestock managers, the standards and

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procedures for geological subsurface explorations, requirements related to the disposal of dead livestock and manure management, record keeping requirements, emergency response plan requirements, closure plan requirements, effluent limitations from the discharge of various livestock animals, notification requirements, fact sheets, public information as well as complaint, investigation, enforcement procedures, and penalties for concentrated animal feeding facilities and certified livestock managers. The amendments to these rules are largely focused on updating the processes, topics, requirements, clarity, formatting, and language contained in the rules. These amendments contain, among other things, various updates to definitions, terms, dates, rule titles, and references, additional geological exploration criteria and requirements, additional record keeping requirements, additions to the list of permittees required to submit closure plans, and changes to allow complaints to be filed against certified livestock managers. In addition to these amendments, the rules are also amended to include increase the fees for a permit to install from \$2,250 to \$3,000, a permit to operate and general permit to operate from \$1,000 to \$1,500, and a modification permit from \$1,000 to \$1,500, as well as to eliminate a fee for a stormwater construction permit application. This package also contains two rules which are to be rescinded which address stormwater permits and the criteria for issuing National Pollutant Discharge Elimination System (NPDES) general permits to operate.

During early stakeholder outreach, the Department included the Concentrated Animal Feeding Facility Advisory Committee in the development of the rules which included representatives from the Ohio Pork Producers Council, Ohio Dairy Producers Association, Ohio Cattlemen's Association, Ohio Poultry Association, Ohio Sheep Improvement Association, Ohio Veterinary Medical Association, County Commissioners Association of Ohio, Ohio Water Environment Association, Ohio Environmental Council, Water Management Association of Ohio, Ohio Environmental Health Association, Statewide Environmental Advocacy, Ohio State University, several state agencies, and public representatives. The Department amended these rules to reflect the various suggestions made by the Concentrated Animal Feeding Facility Advisory Committee over the course of several meetings.

During the CSI public comment period the Department received a joint comment from the Alliance for the Great Lakes, Ohio Environmental Council, and Environmental Law & Policy Center. This comment asked for "agricultural stormwater discharge" and "point source to be defined by the Ohio Environmental Protection Agency (OEPA)", "anaerobic digester to be defined, for the elimination of permanent certification for certified livestock managers, for the rules to allow the Department to assess penalties against livestock managers operating without certification, for the rules to specify who should prepare the report of subsurface geological explorations, for the rules to require applicants for a permit to operate include a catastrophic loss plan as part of the mortality management plan, require digital reporting and recordkeeping, clarify operating record requirements, and require sampling and testing. The comment also requested the Department eliminate references to liquid and solid manure, increase operating record requirements, clearly outline an owner or operator's

responsibility to report emergency manure spills or discharges, not allow for the waiving of the requirement to file a report regarding emergency manure spills, not eliminate the ability to submit complaints regarding smaller animal feeding operations and uncertified livestock managers, not provide twenty four hour notice before an inspection or allow for alternate inspection dates, and eliminate the statement of applicability for enforcement procedures, as well as for the rules not to consider the economic impact when assessing a civil penalty. The Department did not make any substantial changes in response to these comments as they were deemed unnecessary, were outside the scope of the Department's authority, did not appropriately capture the intent of the rule, were a standard operating procedure, or resulted from a misunderstanding of the intent of the proposed rule. The Department, however, did provide clarification on many provisions of the rules, did make a formatting change, and did commit to considering requiring digital reporting and record keeping. Following the CSI public comment period, the Department also further amended a rule in this package, OAC 901:10-1-04, to eliminate a several provisions establishing NPDES permitting fees.

The business community impacted by the rules includes all livestock and poultry farms considered to be concentrated animal feeding facilities or concentrated animal feeding operations. The adverse impacts created by the rules include soil and water testing requirements, the requirement to develop and adhere to various plans, records retention requirements, the requirement to prevent the discharge of manure into state waters, the requirement to obtain various permits (the costs of which range from \$500 to \$3,000), late fees for certificates that have been expired for more than ten days, certain construction requirements for manure storage structures, and potential fines and other enforcement actions for violations. Costs associated with facility plans vary significantly based on the location of the facility, the size of the facility, and if an independent contractor is used to complete the plans and the Department notes that the changes to the rules are not anticipated to result in any new significant adverse impacts to business. The Department states that the adverse impacts to business are justified to ensure public safety and the environmental protection of Ohio's waterways and groundwater.

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.