



Jill Rowland

Final Analysis
Legislative Service Commission

Sub. S.B. 141
123rd General Assembly
(As Passed by the General Assembly)

Sens. Mumper, Drake, White, Kearns

Reps. Vesper, Buchy, Aslanides, Collier, Widener, Netzley, Krupinski, Hood, Stapleton, Evans, Flannery, Barnes

Effective date: *

ACT SUMMARY

NPDES permits

- Transfers from the Director of Environmental Protection to the Director of Agriculture the authority to issue national pollutant discharge elimination system (NPDES) permits for the discharge of manure from point sources into waters of the state and for the discharge of storm water resulting from an animal feeding facility (AFF), requires the Director of Agriculture to submit to the United States Environmental Protection Agency (USEPA) a program for the issuance of those permits, and provides that the authority of the Director of Agriculture to issue NPDES permits is dependent upon approval from the USEPA.
- Establishes requirements and procedures for the issuance of NPDES permits, including general NPDES permits, and requires the Director of Agriculture to establish terms and conditions of NPDES permits in accordance with rules adopted under the act.
- Provides for enforcement of the NPDES provisions through orders, adjudication hearings, injunctive relief, and civil and criminal penalties.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Permits to install, permits to operate, and review compliance certificates

- Transfers from the Director of Environmental Protection to the Director of Agriculture the authority to issue permits to construct or modify concentrated animal feeding facilities (CAFFs), and requires the adoption of rules concerning these permits to install.
- Establishes requirements and procedures for the issuance or denial of permits to install, and provides for the enforcement of permits to install through orders, adjudication hearings, injunctive relief, and civil and criminal penalties.
- Requires a person applying to the Director of Agriculture for an initial permit to construct a CAFF to submit specified information, provides that information to be included in an application for a permit to modify a CAFF must be established in rules, and establishes causes and procedures for denial of permits.
- Requires a permit to operate from the Director of Agriculture for the operation of a CAFF, establishes requirements and procedures for the issuance or denial of permits to operate, including general permits to operate, requires the adoption of rules concerning the permits, and provides for enforcement of permits to operate through orders, adjudication hearings, injunctive relief, and civil and criminal penalties.
- Establishes requirements and procedures for the issuance of review compliance certificates for existing CAFFs, and requires the adoption of rules concerning the certificates.
- Requires the adoption of rules that establish best management practices that govern certain activities conducted at a CAFF, that minimize water pollution, odors, insects, and rodents, and that govern the land application of manure that originated at a CAFF.
- Authorizes the issuance, denial, suspension, or revocation of any permit by the Director of Agriculture under the act to be appealed to the Environmental Review Appeals Commission after an administrative hearing.
- Requires a person applying for a permit who has not operated a CAFF in Ohio for at least two of the past five years and a person to whom a permitted CAFF is being transferred to submit specified background



information, and authorizes the Director to deny a permit if he finds that the person has a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, any other applicable state environmental laws, or the environmental laws of another country.

Permit issuance procedures

- Requires the issuance of a draft permit before the final issuance of a permit to install, permit to operate, or NPDES permit; establishes public notice and public meeting requirements and procedures; and requires the adoption of rules concerning public notice and participation requirements.
- Establishes procedures for the modification, suspension, or revocation of a permit to install, permit to operate, or NPDES permit.

Insect and rodent control plans; livestock manager certifications

- Requires an owner or operator of a CAFF to prepare and submit to the Director an insect and rodent control plan, and requires the Director to enforce the plan.
- Requires persons responsible for manure management at a major CAFF and persons who transport, buy, or sell a certain quantity of manure annually to obtain a livestock manager certification issued by the Director of Agriculture.

Additional enforcement

- Authorizes the Director of Agriculture, if he determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, to issue an order, without prior notice or hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency.
- Provides that any person that is responsible for an unauthorized spill, release, or discharge of agricultural pollutants that requires emergency action to protect public health or safety or the environment is liable to the Director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge.

Notification to counties and townships

- Requires any person proposing to establish a new major CAFF, to expand by at least 10% an existing major CAFF, or to expand a CAFF by at least 10% and to a design capacity of more than 10,000 animal units to provide written notification to the board of county commissioners of the county and the board of trustees of the township where the facility is or will be located to inform them of the facility's potential impact on local infrastructure prior to applying for a permit to install from the Director of Agriculture, establishes procedures for the determination of recommendations of needed improvements and their cost, requires the person to construct, modify, and maintain the improvements as provided in the recommendations, and authorizes the boards to initiate mediation to seek compliance with the recommendations.

Administration of programs

- Authorizes the Director of Agriculture or his authorized representative to enter on property in order to conduct activities that are necessary for the administration and enforcement of the act, and authorizes the Director or his authorized representative to examine and copy any records pertaining to discharges that are subject to the act or any records required to be maintained by the terms and conditions of a permit or review compliance certificate issued under the act.
- Authorizes the Director to enter into contracts or agreements to carry out certain functions under the act, and authorizes the Director of Agriculture to administer grants and loans using moneys from the federal government and other sources for carrying out its functions.
- Creates the Livestock Management Fund for the deposit of money collected from application fees for permits, from civil penalties, and from civil actions to recover costs from manure spills under the act, and requires money in the Fund to be used solely to administer the act.

Nuisances

- Establishes complaint procedures for nuisances related to a CAFF, and requires the Director of Agriculture to proceed to issue orders and assess a civil penalty if the CAFF is not in compliance with a permit or review compliance certificate.



- Establishes an affirmative defense in a private civil action related to nuisances arising from agricultural activities at a CAFF if the owner or operator is in compliance with best management practices and the activities do not violate federal, state, and local laws governing nuisances.
- Requires the parties to a dispute concerning an alleged nuisance related to agricultural activities conducted at a CAFF to submit the dispute to nonbinding arbitration prior to filing a private civil action.

Other provisions

- Requires the Director of Agriculture to adopt rules that establish procedures for the protection of trade secrets from public disclosure.
- Creates the Concentrated Animal Feeding Facility Advisory Committee consisting of the Directors of Agriculture, Development, Environmental Protection, and Natural Resources, the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, and 16 appointed members, requires the committee to advise the Director of Agriculture in carrying out the act and to conduct other duties, and makes an appropriation for the Committee's operation.
- Makes certain changes in the Soil and Water Conservation Law.
- Makes an appropriation for purposes of the Department of Agriculture's livestock regulation program and the Livestock Management Fund established by the act.

TABLE OF CONTENTS

Overview of continuing law governing water pollution control permits and the act..... 7

NPDES permits for the discharge of manure and of storm water resulting from animal feeding facilities..... 8

 Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture..... 8

 Issuance of NPDES permits by the Director of Agriculture..... 11

 General NPDES permits..... 13

 Application requirements and procedures..... 13

 Other permit requirements..... 14

 Rules governing NPDES permits..... 15

 Enforcement actions and civil penalties involving NPDES permits..... 16



Permits to construct or modify concentrated animal feeding facilities	17
Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture	17
Issuance of permits to install by the Director of Agriculture.....	19
Permits to operate concentrated animal feeding facilities.....	22
Application requirements and procedures.....	22
Issuance of permits to operate	23
Rules governing permits to install and permits to operate	24
Review compliance certificates for existing CAFFs	26
Rules governing review compliance certificates.....	28
Enforcement of permits to install and operate, review compliance certificates, livestock manager certifications, and insect and rodent control plans	29
Civil penalties assessed by the Director.....	29
Action for injunction brought by the Attorney General	30
Civil penalties assessed by the Attorney General.....	30
Compliance with Administrative Procedure Act.....	31
Background information requirements for certain persons	31
Draft permits, public notice requirements, and other provisions concerning permits	32
Notice of issuance of draft permit	32
Public meeting	33
Effect of failure to provide notice or public meeting.....	33
Notice of issuance of final permit	33
Deadline for issuance or denial of permit	33
Denial, modification, suspension, or revocation of permit	34
Rulemaking regarding permit procedures	34
Transferability of permit.....	34
Insect and rodent control plans	35
Rules governing insect and rodent control plans.....	35
Livestock manager certifications.....	36
Rules governing livestock manager certifications	36
Emergency enforcement authority and recovery of costs for clean-up of manure spills.....	37
Discussions with boards of county commissioners and boards of township trustees	38
Management of NPDES and CAFF programs by Department of Agriculture.....	40
Authority to enter on property	40
Contracts; grants and loans	40
Livestock Management Fund.....	41
Nuisances.....	41
Complaint procedures	41



Affirmative defense for CAFF owners and operators meeting specified requirements.....	42
Nonbinding arbitration.....	42
Rules governing protection of trade secrets.....	42
Concentrated Animal Feeding Facility Advisory Committee	43
Soil and water conservation.....	45
Appropriations.....	45

CONTENT AND OPERATION

Overview of continuing law governing water pollution control permits and the act

Law largely retained by the act authorizes the Director of Environmental Protection to issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state under the national pollutant discharge elimination system (NPDES) program established under the Federal Water Pollution Control Act and regulations adopted under it. Such a permit, called a NPDES permit, is issued for each point source of discharge. (Sec. 6111.03(J).) However, the Director also is authorized to issue general permits, rather than individual permits, for the discharge of storm water and the installation or modification of certain disposal systems consistent with federal requirements. A general permit applies to a class or category of discharges or disposal systems or to persons conducting similar activities, within any area of the state, including the entire state. (Sec. 6111.035.) The Director may attach terms and conditions to any NPDES permit. Continuing law also authorizes the Director to issue, revoke, modify, or deny permits for the installation or modification of disposal systems or any parts of those systems in compliance with all federal requirements. Again, the Director may set terms and conditions of those permits, which are called installation permits. (Sec. 6111.03(J).)

The act retains the authority of the Director of Environmental Protection to participate in the NPDES program and to issue NPDES permits for most dischargers. However, it transfers to the Director of Agriculture the authority to participate in that program and to issue NPDES permits for certain agricultural dischargers.



NPDES permits for the discharge of manure and of storm water resulting from animal feeding facilities

Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture

The act transfers from the Environmental Protection Agency (OEPA) to the Department of Agriculture (ODA) the authority to issue NPDES permits for the discharge of manure from a point source into waters of the state and for the discharge of storm water resulting from an animal feeding facility. The act defines "NPDES permit" as a permit issued under the national pollutant discharge elimination system established in the Federal Water Pollution Control Act and includes the renewal of such a permit. The act also specifies that "NPDES permit" includes the federally enforceable provisions of a permit to operate into which NPDES provisions have been incorporated (see "Permits to operate," below). (Sec. 903.01(Q).) The act defines "discharge" as adding from a point source to waters of the state (sec. 903.01(G)). Under the act, "point source" has the same meaning as in the Federal Water Pollution Control Act (sec. 903.01(V)). The act defines "waters of the state" as all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border on, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters (sec. 903.01(BB)).

"Manure" is defined as any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta (sec. 903.01(N)). The act defines "process generated waste water" as water that is directly or indirectly used in the operation of an animal feeding facility for any of the following: (1) spillage or overflow from animal watering systems, (2) washing, cleaning, or flushing pens, barns, manure pits, or other areas of an animal feeding facility, (3) direct contact swimming, washing, or spray cooling of animals, or (4) dust control. Under the act, "process waste water" means any process generated waste water and any precipitation, including rain or snow, that comes into contact with manure, litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or direct products such as milk or eggs (sec. 903.01(X)). The act defines "agricultural animal" as any animal generally used for food or in the production of food, including cattle, sheep, goats, rabbits, poultry, and swine; horses; and any other animal included by the Director of Agriculture by rule (sec.



903.01(A)). “Mortality composting” means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material (sec. 903.01(P)).

The act defines "animal feeding facility" (AFF) as a lot, building, or structure where both of the following conditions are met: (1) animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, and (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure. "Animal feeding facility" also includes land that is owned or leased by the owner or operator of the lot, building, or structure and on which manure originating from the lot, building, or structure is applied. "Animal feeding facility" does not include a hatchery, fish farm, or other facility that raises aquatic animals. Two or more AFFs under common ownership are considered to be a single AFF for the purposes of the act if they adjoin each other or if they use a common area or system for the disposal of wastes. (Sec. 903.01(B).)

In order to effect the transfer from OEPA to ODA, the act authorizes the Director of Agriculture to participate in the national pollutant discharge elimination system in accordance with the Federal Water Pollution Control Act. Not later than 180 days after the act's effective date, the Director must prepare a state program in accordance with federal regulations for point sources that are subject to the act's NPDES requirements and must submit the program to the United States Environmental Protection Agency (USEPA) for approval. (Sec. 903.08(A)(1).) On and after the date on which the USEPA approves the state program submitted by the Director, the authority to enforce terms and conditions of NPDES permits previously issued by the Director of Environmental Protection for the discharging, transporting, or handling of storm water from an AFF or of manure is transferred from the Director of Environmental Protection to the Director of Agriculture. On and after that date, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those NPDES permits. After the transfer of authority occurs, the NPDES permits concerning which authority has been transferred will be considered to have been issued by the Director of Agriculture. (Sec. 903.08(A)(2).) The Director of Environmental Protection, on the date on which the USEPA approves the state program, must provide the Director of Agriculture with both of the following: (1) copies of all NPDES permits issued by the Director of Environmental Protection for the discharge of manure and the discharge of storm water from concentrated animal feeding operations (CAFOs) or AFFs that were issued on or before that date together with any related information that the Director of Agriculture requests, and (2) all permit applications and accompanying information that were submitted with all NPDES permits issued by the Director of Environmental Protection prior to that date for the activities identified in item (1). (Section 4(C).)



The act defines "concentrated animal feeding operation" as having the same meaning as in regulations adopted by the USEPA under the Federal Water Pollution Control Act (sec. 903.01(F)).

In addition, the act specifies that applications for NPDES permits for either of the following that are pending before the Director of Environmental Protection on the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture under the act must be transferred to the Director of Agriculture:

(1) The discharge of manure;

(2) The discharge of storm water resulting from an AFF. In the case of an applicant who is required to obtain a NPDES permit under the act, the Director of Agriculture must process the pending application as an application for a NPDES permit under the act. (Sec. 903.09(K).)

The act adds clarifying language to the state Water Pollution Control Law stating that any person who discharges, transports, or handles storm water from an AFF or manure is not required to obtain a NPDES permit from the Director of Environmental Protection under that law for the discharge of storm water or manure on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture under the act (sec. 6111.03(J)(1)). Similarly, it states that on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, the statute in that law providing for the issuance of general NPDES permits regarding storm water does not apply to storm water from an AFF or to manure (sec. 6111.035).

Continuing law states that the provisions in the state Water Pollution Control Law that authorize the Director of Environmental Protection to issue NPDES permits and permits for the installation or modification of disposal systems (see "Permits to construct or modify concentrated animal feeding facilities," below) do not apply to animal waste disposal systems and related management and conservation practices that are subject to certain rules adopted by the Chief of the Division of Soil and Water Conservation in the Department of Natural Resources and that involve less than 1,000 animal units, as "animal units" is defined in USEPA regulations. However, the act specifies that until the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture under the act, this exclusion does not apply to animal waste treatment works having a controlled direct discharge to the waters of the state. The act also specifies that on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture under the act, those provisions regarding permits issued by the Director of Environmental Protection under the state Water Pollution Control Law do not apply to storm water from an AFF or to manure. (Sec. 6111.03.)



Continuing law prohibits anyone from causing pollution or placing or causing to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is a public nuisance unless the Director of Environmental Protection has issued a permit under the state Water Pollution Control Law. The prohibition does not apply to animal excrement defecated on land or runoff from it into any waters of the state. Formerly, that exclusion did not authorize, without a permit, any discharge that was prohibited by, or for which a permit was required by, federal environmental regulations. The act removes all references to such discharges of animal wastes in the exceptions to the prohibition and instead provides that, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, the prohibition does not apply to storm water from an AFF or manure (sec. 6111.04). In addition, the act clarifies that the removal of the references to discharges of animal wastes in the exceptions to the prohibition is not operative until the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture and that, until that time, the Director of Environmental Protection must continue to administer those provisions as they existed immediately prior to the act's effective date (Section 6).

Finally, the act removes a reference to the authority of the Director of Environmental Protection under the state Water Pollution Control Law that was formerly in soil and water conservation law concerning nuisance actions involving agricultural pollution and concentrated animal feeding operations (sec. 1511.021).

Issuance of NPDES permits by the Director of Agriculture

The act prohibits a person, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, from discharging manure from a point source into waters of the state without first obtaining a NPDES permit issued by the Director of Agriculture. Violation of the prohibition is declared to be a public nuisance for purposes of state enforcement. (Sec. 903.08(B)(1).) Whoever violates the prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) (See also "**Enforcement actions and civil penalties involving NPDES permits**," below.) The act defines "person" as any legal entity defined as a person under continuing law together with the state, any political subdivision of the state, any interstate body created by compact, the United States, or any department, agency, or instrumentality of any of those entities (sec. 903.01(U)).

Persons who have been issued a NPDES permit by the Director of Environmental Protection for the discharge of manure prior to the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture may continue to operate under that permit until it expires or is modified or revoked. Such a permit must be enforced by the Director of



Agriculture upon the transfer of authority to enforce the terms and conditions of the permit. (Sec. 903.08(B)(2).)

The act also prohibits a person, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, from discharging storm water resulting from an AFF without first obtaining a NPDES permit issued by the Director of Agriculture in accordance with rules adopted under the act (see "Rules governing NPDES permits," below) when such a permit is required by the Federal Water Pollution Control Act. Violation of the prohibition is declared to be a public nuisance for purposes of state enforcement. (Sec. 903.08(C)(1).) Whoever violates the prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) Persons who have been issued a NPDES permit by the Director of Environmental Protection for the discharge of storm water from an AFF prior to the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture may continue to operate under that permit until it expires or is modified or revoked. Such a permit must be enforced by the Director of Agriculture upon the transfer of authority to enforce the terms and conditions of the permit. (Sec. 903.08(C)(2).)

Under the act, the Director of Agriculture must establish terms and conditions of NPDES permits in accordance with rules adopted under the act. The terms and conditions must be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current state water quality standards, the most current state antidegradation policy, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a NPDES permit, the Director, to the extent consistent with that federal act, must consider technical feasibility and economic costs and must allow a reasonable period of time for coming into compliance with the permit. (Sec. 903.08(G).)

The act prohibits any person from rendering inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued by the Director of Agriculture (sec. 903.08(K)(2)). Whoever knowingly violates the prohibition must be fined not more than \$25,000, with each day of violation constituting a separate offense (sec. 903.99(C)). The act also prohibits a person from violating any effluent limitation established by rules adopted under the act or any other provision of a NPDES permit (sec. 903.08(M)(1) and (2)). Whoever violates the prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense (sec. 903.99(B)). The act specifies that compliance with a NPDES permit issued under the act constitutes compliance with the act's NPDES provisions (sec. 903.08(M)(3)).



General NPDES permits

The act requires the Director of Agriculture, to the extent consistent with the Federal Water Pollution Control Act, to issue general NPDES permits that will apply in lieu of individual NPDES permits for categories of point sources for which the Director determines that all of the following apply: (1) any discharges authorized by a general permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually, (2) the discharges are more appropriately authorized by a general permit than by an individual permit, and (3) each category of point sources satisfies the criteria established in rules (sec. 903.08(F)). The act specifies that "general permit" and "individual permit" have the meanings established in rules adopted under the act (sec. 903.01(J) and (K)).

A person who is required to obtain a NPDES permit must submit to the Director a notice of the person's intent to be covered under an existing general permit or, at the person's option, an application for an individual NPDES permit. Upon receipt of a notice of intent for coverage under an existing general permit, the Director must notify the applicant in writing that the person is covered by the general permit if the person satisfies the criteria established in rules adopted under the act for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the Director must require the submission of an application for an individual NPDES permit. (Sec. 903.08(F).)

Application requirements and procedures

In accordance with applicable rules, an applicant for a NPDES permit must submit to the Director of Agriculture a fee in an amount established by rule together with, except as otherwise provided for general NPDES permits, an application for the permit on a form prescribed by the Director. The application must include any information required by rule. The Director or his authorized representative may help an applicant for a NPDES permit during the application process by providing guidance and technical assistance. (Sec. 903.08(D).)

The Director is required to issue NPDES permits in accordance with the act's provisions (see "**Draft permits, public notice requirements, and other provisions concerning permits**," below) (sec. 903.08(E)). An animal feeding facility that is required to obtain both a NPDES permit and a permit to operate (see "**Permits to operate**," below) must be issued a single permit to operate incorporating the terms and conditions established by both permits. The permit to operate expressly must designate the terms and conditions required under the NPDES program as federally enforceable. All other provisions are enforceable under state law only and expressly must be designated accordingly. (Sec. 903.08(H).)



The Director must deny an application for a NPDES permit if any of the following applies: (1) the application contains misleading or false information, (2) the administrator of the USEPA objects in writing to the issuance of the NPDES permit in accordance with the Federal Water Pollution Control Act, or (3) the Director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with the Federal Water Pollution Control Act. Additional grounds for the denial of a NPDES permit are those established in the act and by rules. (Sec. 903.08(E).)

A NPDES permit cannot be issued for a period exceeding five years (sec. 903.08(I)). The act prohibits a person from making any false statement, representation, or certification in an application for a NPDES permit or permit renewal (see "*Other permit requirements*," below) or in any form, notice, or report required to be submitted to the Director pursuant to terms and conditions established in a NPDES permit (sec. 903.08(K)(1)). Whoever knowingly violates the prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(C).)

Other permit requirements

A NPDES permit issued under the act may be renewed. An application for renewal must be submitted to the Director of Agriculture at least 180 days prior to the expiration of the permit and must comply with the requirements governing applications for NPDES permits established under the act and by rule. An application for renewal must be issued or denied in accordance with the act's provisions governing the issuance or denial of initial NPDES permits. (Sec. 903.08(J).)

The act authorizes the Director to modify, suspend, or revoke a NPDES permit for cause as established by rule. It precludes a NPDES permit from being modified, suspended, or revoked without a written order stating the findings that led to the action. In addition, the permittee has a right to an administrative hearing in accordance with the Administrative Procedure Act, except that the statute in that law governing appeals does not apply. Instead, an order of the Director modifying, suspending, or revoking a NPDES permit may be appealed to the Environmental Review Appeals Commission. (Sec. 903.08(L).) The act specifies that, for purposes of continuing law governing the Commission, references to the Director of Environmental Protection are deemed to include the Director of Agriculture with respect to actions that are appealable under the act (sec. 3745.04).

Upon the transfer of ownership of a point source for which a NPDES permit or a permit to operate that contains NPDES provisions has been issued, the permit must be transferred in accordance with rules adopted under the act (sec. 903.09(I)).



The issuance of NPDES permits under the act and the state NPDES program that the Director of Agriculture must prepare under the act must be administered in a manner consistent with the Federal Water Pollution Control Act (sec. 903.08(N)).

Rules governing NPDES permits

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act establishing all of the following concerning NPDES permits issued under the act:

(1) The designation of CAFOs that are subject to NPDES permit requirements under the act. This designation can include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act;

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of manure that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits and notices of intent to be covered by general permits, including information that must be included in the applications and notices;

(6) The amount of the fee that must be submitted with an application for a permit;

(7) Procedures for processing permit applications, including public notice and participation requirements;

(8) Procedures for notifying the USEPA of the submission of permit applications, the Director's action on those applications, and any other reasonable and relevant information;



(9) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(10) Procedures for the transfer of permits to new owners or operators;

(11) Grounds and procedures for the denial, modification, suspension, or revocation of permits; and

(12) A definition of "general NPDES permit" that establishes categories of point sources to be covered under such a permit and a definition of "individual NPDES permit" together with the criteria for issuing a general NPDES permit and the criteria for determining a person's eligibility to discharge under a general NPDES permit. (Sec. 903.10(F).)

The act requires rules concerning NPDES permits to be consistent with the requirements of the Federal Water Pollution Control Act (sec. 903.10(F)).

Enforcement actions and civil penalties involving NPDES permits

Civil penalties assessed by the Director. Under the act, the Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a point source if the Director or his authorized representative determines that the owner or operator is not in compliance with the act's requirements concerning NPDES permits, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules governing NPDES permits. However, the Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance;

(2) After the time period specified in the notice has elapsed, the Director or his duly authorized representative has inspected the point source, determined that the owner or operator is still not in compliance, and issued a notice of violation to require corrective actions; and

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing. (Sec. 903.17(A).)



If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may issue an order and assess a civil penalty of not more than \$10,000 per violation against the violator. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. The order and the assessment of the civil penalty may be appealed in accordance with the appeal provisions established in the Administrative Procedure Act. (Sec. 903.17(B).)

The act requires the Director, to the extent consistent with the Federal Water Pollution Control Act, to consider technical feasibility and economic costs in issuing orders under the act's civil penalty provisions regarding NPDES permits (sec. 903.17(C)).

Action for injunction brought by the Attorney General. The act requires the Attorney General, upon the written request of the Director, to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate the act's provisions governing NPDES permits, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules concerning NPDES permits, or an order issued by the Director in response to a violation involving a NPDES permit (sec. 903.17(D)(1)).

Civil penalties assessed by the Attorney General. In lieu of assessing civil penalties himself, the Director may request the Attorney General, in writing, to bring an action for a civil penalty of not more than \$10,000 per violation in a court of competent jurisdiction against any person that has violated or is violating the act's requirements concerning NPDES permits, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules governing NPDES permits adopted under the act, or an order issued by the Director in response to a violation involving a NPDES permit. For purposes of determining the civil penalty to be assessed, each day that a violation continues constitutes a separate and distinct violation. (Sec. 903.17(D)(2).)

Permits to construct or modify concentrated animal feeding facilities

Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture

Under continuing law, the Director of Environmental Protection may issue permits for the installation or modification of disposal systems or any parts of those disposal systems in compliance with all requirements of the Federal Water Pollution Control Act. Under former law, the disposal systems for which the Director was authorized to issue such a permit included disposal systems for animal waste that involved 1,000 or more animal units. (Sec. 6111.03(J)(1).) Continuing law specifies that an installation permit is not required for animal



waste disposal systems and related management and conservation practices that involve less than 1,000 animal units and that are subject to rules governing pollution abatement practices that are adopted by the Chief of the Division of Soil and Water Conservation in the Department of Natural Resources. Continuing law defines "animal units" as having the same meaning as established in USEPA regulations. (Sec. 6111.03.)

The act transfers the authority to issue installation permits for animal waste disposal systems from the Director of Environmental Protection to the Director of Agriculture. It requires the Director of Agriculture, not later than 180 days after the act's effective date, to prepare a program for the issuance of permits to install (sec. 903.02(A)(1)). The act specifies that, on and after the date on which the Director of Agriculture has finalized the permit to install program, any person who discharges, transports, or handles storm water from an AFF or manure is not required to obtain a permit from the Director of Environmental Protection for the installation or modification of a disposal system involving manure or storm water or any parts of such a system (sec. 6111.03(J)(1)). The act defines "installation permit" as a permit for the installation or modification of a disposal system or any part of a disposal system issued by the Director of Environmental Protection (sec. 903.01(L)). "Permit to install" is defined as a permit issued by the Director of Agriculture under the act's permit to install program (sec. 903.01(S)). "Finalized," with respect to the act's permit to install and permit to operate programs administered by the Director of Agriculture, means that all rules that are necessary for the administration of the act have been adopted and all employees of the Department of Agriculture that are necessary for the administration of the act have been employed (sec. 903.01(I)).

Continuing law prohibits anyone from providing or installing sewerage or treatment works for sewage disposal or making a change in any sewerage or sewage treatment works until the plans have been submitted to and approved by the Director of Environmental Protection. The Director may stipulate modifications, conditions, and rules that the public health and prevention of pollution require. Exempt from obtaining plan approval are animal waste treatment and disposal works and related management and conservation practices that are subject to rules adopted under the Division of Soil and Water Conservation Law and that involve fewer than 1,000 animal units other than those having a controlled direct discharge to waters of the state. (Sec. 6111.44.)

The act adds that, on and after the date on which the Director of Agriculture has finalized the permit to install program required under the act, the plan approval requirements in continuing law also do not apply to sewerage systems, treatment works, or disposal systems for storm water from an AFF or manure. The act specifies that these exemptions in continuing law and the act do not apply to animal waste treatment or disposal works having a controlled direct discharge to



the waters of the state until the date on which the Director of Agriculture finalizes the permit to install program. In addition, the act specifies that these exemptions do not apply to the construction or installation of disposal systems that are located at an AFF and that store, treat, or discharge wastewaters that do not include storm water or manure or that discharge to a publicly owned treatment works. (Secs. 6111.44(B) and 6111.45; Section 6.)

To facilitate the transfer of authority regarding installation permits, the act requires the Director of Environmental Protection, on the date on which the Director of Agriculture finalizes the permit to install program, to provide the Director of Agriculture with both of the following:

(1) Copies of all permits issued by the Director of Environmental Protection for the installation of disposal systems for CAFOs, AFFs, or manure that were issued on or before that date together with any related information that the Director of Agriculture requests; and

(2) All installation permit applications and accompanying information that were submitted to the Director of Environmental Protection prior to that date for the installation of disposal systems for CAFOs, AFFs, or manure. (Section 4(B).)

In addition, the act specifies that applications for installation permits for AFFs pending before the Director of Environmental Protection on the date on which the Director of Agriculture has finalized the permit to install and permit to operate programs required under the act must be transferred to the Director of Agriculture. In the case of an applicant who is required to obtain a permit to install and a permit to operate, the Director of Agriculture must process the pending application for an installation permit as an application for a permit to install and a permit to operate. (Sec. 903.09(J).)

Issuance of permits to install by the Director of Agriculture

Permit to install requirement. On and after the date on which the Director has finalized the permit to install program, a person is prohibited from modifying an existing or constructing a new concentrated animal feeding facility without first obtaining a permit to install issued by the Director under the act (sec. 903.02(A)(2)). Whoever violates the prohibition is guilty of a misdemeanor of the third degree on a first offense, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense. (Sec. 903.99(A).) Whoever violates the terms and conditions of a permit to install must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) (See also **'Enforcement of permits to install and operate, review compliance certificates, livestock manager certifications, and insect and rodent control plans,'** below.)



The act defines "concentrated animal feeding facility" (CAFF) as an animal feeding facility with a total design capacity of more than 1,000 animal units (sec. 903.01(E)). The act defines "animal unit" as a unit of measurement calculated by adding the following numbers:

- (1) The number of slaughter and feeder cattle multiplied by one;
- (2) The number of mature dairy cattle whether milked or dry multiplied by 1.4;
- (3) The number of swine each weighing over 55 pounds multiplied by .4;
- (4) The number of horses multiplied by two;
- (5) The number of sheep or lambs multiplied by .1;
- (6) The number of turkeys multiplied by .02;
- (7) The number of laying hens or broilers multiplied by .01; and
- (8) The number of ducks multiplied by .2. (Sec. 903.01(C).)

Application requirements and procedures. An applicant for a permit to install must submit an application to the Director on a form that the Director prescribes and provides together with a fee in an amount established by rule. The applicant must include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The type of livestock and the number of animal units that the CAFF would have the design capacity to raise or maintain;

(3) Designs and plans for the proposed construction of the CAFF that include the proposed location of the construction, design and construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the Director requires by rule;

(4) In the case of an application for a CAFF or an expansion of such a facility that would involve more than 10,000 animal units, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the CAFF would be located certifying that, in accordance with the act's requirements, the applicant has provided the boards with the required written notification and that final recommendations were selected



regarding improvements, if any, to county or township infrastructure that are needed as a result of the new or expanded CAFF and the costs of those improvements (see "**Discussions with board of county commissioners and board of township trustees**," below);

(5) A statement of the quantity of water that the CAFF will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water;

(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act required to be provided under the act, if applicable (see "**Background information requirements for certain persons**," below); and

(7) Any other information required by rule.

Information that is required to be included in an application for the modification of a permit to install, together with the applicable fee amount, must be established in rules. (Sec. 903.02(C).)

The Director or the Director's authorized representative may help an applicant for a permit to install during the permitting process by providing guidance and technical assistance (sec. 903.02(B)).

Issuance of permits to install. The Director must issue permits to install in accordance with the act's provisions (see "**Draft permits, public notice requirements, and other provisions concerning permits**," below). The Director must deny a permit to install if either of the following applies:

- (1) The permit application contains misleading or false information; or
- (2) The designs and plans fail to conform to best management practices.

Additional grounds for the denial of a permit to install are those established in the act and in rules. (Sec. 903.02(D).) The Director may modify, suspend, or revoke a permit to install in accordance with rules (sec. 903.02(F)).

A permit to install expires after a period specified by the Director unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time. The Director may extend the expiration date of a permit to install upon request of the applicant. (Sec. 903.02(E).)

The act specifies that nothing in it affects continuing law that requires the registration of and reporting by facilities having the capacity to withdraw more than 100,000 gallons of water in the state (sec. 903.02(G)).

Permits to operate concentrated animal feeding facilities

The act specifies that, not later than 180 days after the act's effective date, the Director of Agriculture must prepare a program for the issuance of permits to operate (sec. 903.03(A)(1)). Except for a CAFF that is operating under an installation permit or a review compliance certificate (see **Review compliance certificates for existing CAFFs**," below), on and after the date on which the Director has finalized the permit to operate program, a person is prohibited from operating a CAFF without a permit to operate issued by the Director (sec. 903.03(A)(2)). Whoever violates the prohibition is guilty of a misdemeanor of the third degree on a first offense, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense. (Sec. 903.99(A).) Whoever violates the terms and conditions of a permit to operate must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) (See also "**Enforcement of permits to install and operate, review compliance certificates, livestock manager certifications, and insect and rodent control plans**," below.)

Application requirements and procedures

An applicant for a permit to operate must submit a fee in an amount established by rule together with, except as provided under "**General permits to operate**," below, an application to the Director on a form that the Director prescribes and provides. The applicant must include with the application all of the following information:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act that is required to be provided under the act, if applicable (see "**Background information requirements for certain persons**," below);

(3) A manure management plan for the CAFF that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the facility and that contains any other information required by rule;



(4) An insect and rodent control plan for the CAFF that conforms to best management practices and is prepared in accordance with the act (see "**Insect and rodent control plans**," below); and

(5) In the case of an application for a major concentrated animal feeding facility, written proof that the person who would be responsible for the supervision of the management and handling of manure at the facility has been issued a livestock manager certification in accordance with the act or will obtain a livestock manager certification prior to applying any manure to land (see "**Livestock manager certifications**," below). (Sec. 903.03(C).)

The act defines "major concentrated animal feeding facility" (major CAFF) as a concentrated animal feeding facility with a total design capacity of more than 10,000 animal units (sec. 903.01(M).)

The Director or the Director's authorized representative may help an applicant for a permit to operate during the permitting process by providing guidance and technical assistance (sec. 903.03(B)).

Issuance of permits to operate

The Director must issue permits to operate in accordance with the act's provisions (see "**Draft permits, public notice requirements, and other provisions concerning permits**," below). The Director must deny a permit to operate if either of the following applies:

- (1) The permit application contains misleading or false information; or
- (2) The manure management plan or insect and rodent control plan fails to conform to best management practices.

Additional grounds for the denial of a permit to operate are those established in the act and in rules. (Sec. 903.03(D).) The Director may modify, suspend, or revoke a permit to operate in accordance with rules (sec. 903.03(H)).

General permits to operate

Under the act, the Director must issue general permits to operate for categories of CAFFs that will apply in lieu of individual permits to operate, provided that each category of facilities meets all of the criteria established in rules for general permits to operate. A person who is required to obtain a permit to operate must submit to the Director a notice of the person's intent to be covered under an existing general permit or, at the person's option, must submit an application for an individual permit to operate. Upon receipt of a notice of intent to be covered under an existing general permit, the Director must notify the applicant in writing that the person is covered by the general permit if the person

satisfies the criteria established in rules for eligibility for such coverage. If the person is ineligible for coverage under the general permit, the Director must require the submission of an application for an individual permit to operate. (Sec. 903.03(E).)

Term and renewability of permits to operate

A permit to operate is valid for a period of five years (sec. 903.03(F)). A permit to operate may be renewed. An application for renewal of a permit to operate must be submitted to the Director at least 180 days prior to the expiration date of the permit to operate and must comply with the requirements governing applications for permits to operate that are established under the act and by rules. (Sec. 903.03(G).)

Rules governing permits to install and permits to operate

The act requires the Director of Agriculture to adopt rules on specified topics in accordance with the Administrative Procedure Act. First, the rules must establish all of the following concerning permits to install and permits to operate issued under the act:

- (1) A description of what constitutes a modification of a CAFF;
- (2) The amount of the fee that must be submitted with each permit application and each application for a permit modification;
- (3) Information that must be included in the designs and plans required to be submitted with an application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;
- (4) Information that must be included in a manure management plan required to be submitted with an application for a permit to operate;
- (5) Information that must be included in an application for the modification of an installation permit, a permit to install, or a permit to operate;
- (6) Any additional information that must be included with a permit application;
- (7) Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and permits to operate, including general permits;
- (8) Grounds for the denial, modification, suspension, or revocation of permits to install and permits to operate in addition to other grounds established in the act;

(9) A requirement that a person that is required to obtain both a permit to install and a permit to operate submit applications for those permits simultaneously; and

(10) A definition of "general permit to operate" that establishes categories of CAFFs to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for determining a person's eligibility to operate under a general permit to operate. (Sec. 903.10(A).)

The rules also must establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a CAFF, and that govern all of the following activities that occur at a CAFF:

(1) Manure management, including the storage, handling, transportation, and land application of manure. The rules must include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent the contamination of water in drainage tiles that may be caused by that application;

(2) Disposal of dead livestock; and

(3) Any other activity that the Director considers appropriate. (Sec. 903.10(C).)

Best management practices established in the rules must not conflict with best management practices established in rules that have been adopted under any other provision of Ohio law and that are in effect on the effective date of the act. In addition, the rules must establish guidelines that require owners or operators of CAFFs to consult with and work with local officials, including boards of county commissioners and boards of township trustees, in addressing issues related to local government infrastructure needs and the financing of that infrastructure. (Sec. 903.10(C).)

The act requires the rules to establish the amount of civil penalties assessed by the Director of Agriculture for violation of the terms and conditions of a permit to install, permit to operate, or review compliance certificate, but the rules cannot establish a civil penalty of more than \$10,000 per day for each violation (see "**Enforcement of permits to install and operate, review compliance certificates, livestock management certification, and insect and rodent control plans**," below) (sec. 903.10(H)). Finally, the act requires the rules to establish any other provision necessary to administer and enforce the act (sec. 903.10(J)).



Review compliance certificates for existing CAFFs

The act provides that on and after the date on which the Director of Agriculture has finalized the program for the issuance of permits for the construction and modification of a CAFF, the authority to enforce terms and conditions of installation permits that previously were issued to CAFFs must be transferred from the Director of Environmental Protection to the Director of Agriculture. Thereafter, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those installation permits. On and after the date on which the Director of Agriculture has finalized that program, an installation permit concerning which enforcement authority has been transferred is deemed to have been issued in accordance with the act's provisions. (Sec. 903.04(B).)

A person to whom an installation permit has been issued by the Director of Environmental Protection prior to the date on which the Director of Agriculture has finalized the program must continue to operate under that permit until either of the following occurs:

(1) The installation permit is terminated through the denial of a review compliance certificate (see below); or

(2) The person is required to obtain a permit to operate (see below). (Sec. 903.04(C).)

The act requires that on and after the date that is two years after the date on which the Director has finalized the program for the issuance of permits for the construction and modification of CAFFs, and until the issuance of a permit to operate, no person may operate an existing CAFF unless the person holds a review compliance certificate. However, this requirement does not apply to a person who has made a timely submittal of the information required for the issuance of a review compliance certificate (see below) and who is waiting for the Director to issue or deny a review compliance certificate. Such a person may continue the operation of the existing CAFF until, if applicable, the Director issues an order denying the review compliance certificate. (Sec. 903.04(D).) The act defines "existing CAFF" to mean a CAFF that was in existence prior to the date on which the Director of Agriculture has finalized the program (sec. 903.04(A)).

Not later than two years after the date on which the Director has finalized the program, the Director must review the installation permit that previously was issued to an existing CAFF and must inspect the CAFF to determine if it is in compliance with that permit. Additionally, the owner or operator of an existing CAFF must furnish all of the following to the Director on a form prescribed by the Director:



(1) The name and address of the owner, of all partners if the owner is a partnership, of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the CAFF or the selection of officers, directors, or managers of the CAFF;

(2) The type of livestock and number of animal units that the CAFF has the design capacity to raise or maintain;

(3) A manure management plan for the CAFF that conforms to best management practices regarding the handling, storage, transportation, and land application of manure generated at the CAFF and that contains any other information required by rule;

(4) An insect and rodent control plan for the CAFF that conforms to best management practices and is prepared in accordance with the act (see "*Insect and rodent control plans*," below); and

(5) In the case of a major CAFF, written proof that the person who would be responsible for the supervision of the management and handling of manure at the major CAFF has been issued a livestock manager certification in accordance with the act (see "*Livestock manager certifications*," below).

The owner or operator need not furnish any of the above information if that information is included in the installation permit that was issued for the existing CAFF. (Sec. 903.04(E).)

After a review of the existing installation permit, an inspection of the CAFF, and a review of the information required to be furnished, and upon determining that the existing CAFF is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the CAFF and in surrounding areas, the Director must issue an order issuing a review compliance certificate to the facility. In issuing the certificate, the Director must consider technical feasibility and economic costs. The Director must not require a significant capital expenditure, as defined by rule, by the CAFF before issuing a certificate. (Sec. 903.04(F).)

The Director may issue an order denying a review compliance certificate if the CAFF's insect and rodent control plan or manure management plan does not conform to best management practices and the requirements in the act and rules pertaining to certified livestock managers and insect and rodent control plans. The denial of a review compliance certificate terminates the existing installation permit that was issued to the CAFF. (Sec. 903.04(F).)

The issuance of a review compliance certificate does not require public notice or a public meeting. However, notice must be provided to persons who



own property that is contiguous to the CAFF for which the review compliance certificate is to be issued. Such persons may submit written comments to the Director within a time established by the Director. (Sec. 903.04(F).)

The issuance of a review compliance certificate is not subject to appeal under the Administrative Procedure Act or provisions of continuing law providing for appeal to the Environmental Review Appeals Commission (ERAC). The denial or revocation of a review compliance certificate or the amendment of an installation permit resulting from a certificate may be challenged by the applicant in an administrative hearing in accordance with the Administrative Procedure Act, except that certain provisions in that Act governing the appeal of an administrative order do not apply. Instead, an order of the Director that denies or revokes a certificate or amends an installation permit as a result of a certificate may be appealed to the ERAC. (Sec. 903.04(F).)

The act provides that upon the issuance of a review compliance certificate, the certificate automatically merges and becomes a part of the previously issued installation permit. If any of the terms and conditions of the installation permit and the review compliance certificate are in conflict, the terms and conditions of the review compliance certificate are controlling. (Sec. 903.04(G).)

A review compliance certificate is valid for a period of five years. Not later than 180 days prior to the expiration date of the review compliance certificate, the owner or operator must apply for a permit to operate. (Sec. 903.04(H)(1).)

The Director may revoke a review compliance certificate issued to an existing CAFF after the Director has issued an order as a result of a hearing held under the Administrative Procedure Act in which the CAFF has been found to be in violation of the terms and conditions of the review compliance certificate. An existing CAFF whose review compliance certificate is revoked must obtain a permit to operate and, if applicable, a NPDES permit in order to resume operating. (Sec. 903.04(H)(2).)

An existing CAFF that is issued a review compliance certificate must comply with the previously issued installation permit, as amended by the certificate (sec. 903.04(I)).

Rules governing review compliance certificates

The act requires the Director to adopt rules in accordance with the Administrative Procedure Act for the purpose of issuing review compliance certificates. The rules must establish the form of a certificate, criteria for what constitutes a significant capital expenditure that cannot be required by the Director, and deadlines and procedures for submitting information required for review compliance certificates. (Sec. 903.10(B).)



Enforcement of permits to install and operate, review compliance certificates, livestock manager certifications, and insect and rodent control plans

Civil penalties assessed by the Director

The act authorizes the Director of Agriculture to propose to require corrective actions and assess a civil penalty against an owner or operator of a CAFF if the Director or his authorized representative determines that the owner or operator is not in compliance with the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the CAFF, including the requirements established in the act pertaining to livestock manager certification and to insect and rodent control plans. The act provides, however, that the Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance;

(2) After the time period specified in the notice has elapsed, the Director or his duly authorized representative has inspected the CAFF, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing; and

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing. (Sec. 903.16(A).)

The act provides that if the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with provisions in the Administrative Procedure Act governing the appeal of an administrative order. (Sec. 903.16(B).)

Civil penalties must be assessed as follows:

(1) A person who has violated the terms and conditions of a permit to install, permit to operate, or review compliance certificate must pay a civil penalty in an amount established in rules (see '**Rules governing permits to install and permits to operate**,' above) unless the violation is of the requirements governing the manure management plan or the insect and rodent control plan.



(2) A person who has violated the requirements in the act pertaining to insect and rodent control plans must pay a different civil penalty established in rules (see **'Rules governing insect and rodent control plans,'** below). Each seven-day period during which a violation continues constitutes a separate violation.

(3) A person who has violated the requirements pertaining to livestock manager certification must pay a civil penalty of not more than \$10,000 for each violation. Each 30-day period during which a violation continues constitutes a separate violation. (Sec. 903.16(B).)

Action for injunction brought by the Attorney General

The Attorney General, upon the written request of the Director, must bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate provisions of the act pertaining to permits to install, permits to operate, or review compliance certificates; the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established in the act pertaining to insect and rodent control plans and to livestock manager certification; rules pertaining to permits to install and permits to operate; or an order issued by the Director (sec. 903.16(C)).

Civil penalties assessed by the Attorney General

In lieu of seeking civil penalties himself, the Director may request the Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating the terms and conditions of a permit to install, permit to operate, or review compliance certificate, including the requirements established in the act pertaining to livestock manager certification and to insect and rodent control plans (sec. 903.16(D)(1)). In addition, the Director may request the Attorney General, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against any person that has violated or is violating provisions of the act pertaining to permits to install, permits to operate, or review compliance certificates, rules pertaining to permits to install and permits to operate, or an order issued by the Director (sec. 903.16(D)(2)). A person who has committed a violation for which the Attorney General may bring an action for a civil penalty must pay a civil penalty of not more than \$10,000 per violation. Each day that a violation continues constitutes a separate violation. (Sec. 903.16(D)(3).)

Compliance with Administrative Procedure Act

The act specifies that all rulemaking and the issuance of civil penalties under the act must comply with the Administrative Procedure Act (sec. 903.09(H)).

Background information requirements for certain persons

The act requires each application for a permit to install or permit to operate that is submitted by an applicant who has not operated a CAFF in this state for at least two of the five years immediately preceding the submission of the application to be accompanied by all of the following:

(1) A listing of all CAFFs that the owner or operator of the proposed new or modified CAFF has operated or is operating in this state;

(2) A listing of the CAFFs that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the CAFFs that the owner or operator has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act, the Safe Drinking Water Act, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any CAFF that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any CAFF that the owner or operator has operated or is operating outside the United States.

The lists of CAFFs operated by the owner or operator within or outside Ohio or outside the United States must include, respectively, all such facilities operated by the owner or operator during the five-year period immediately preceding the submission of the application. (Sec. 903.05(A).)

If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of a CAFF, the Director of Agriculture may deny the application if he finds from the application, the past compliance information described above, pertinent information submitted to the Director, and other pertinent information obtained by the Director at his discretion that the applicant and persons associated with the applicant, in the operation of

CAFFs, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified CAFF in substantial compliance with the act and rules adopted under it. (Sec. 903.05(B).)

A person who seeks to acquire a CAFF that has been issued an installation permit that has been transferred from the Director of Environmental Protection to the Director of Agriculture, a permit to install, or a permit to operate must submit to the Director the past compliance information described above prior to the transfer of the permit. The permit cannot be transferred as otherwise is permissible under the act if the Director finds from the past compliance information, pertinent information submitted to the Director, and other pertinent information obtained by the Director at his discretion that the person, in the operation of CAFFs, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the CAFF in substantial compliance with the act and rules adopted under it. (Sec. 903.05(C).)

Draft permits, public notice requirements, and other provisions concerning permits

Notice of issuance of draft permit

Prior to issuing or modifying a permit to install, permit to operate, or NPDES permit, the Director of Agriculture must issue a draft permit. (Note: It appears that issuance of a draft permit is not required before the Director notifies a person that he is covered under a general permit.) The Director or the Director's representative must mail notice of the issuance of a draft permit to the applicant and is required to publish the notice once in a newspaper of general circulation in the county in which the CAFF or discharger is located or proposed to be located. The Director or the Director's representative also must provide notice of the issuance of a draft NPDES permit to any other persons that are entitled to notice under the Federal Water Pollution Control Act. Notice of the issuance of a draft permit to install, permit to operate, or NPDES permit must include the address where written comments concerning the draft permit may be submitted and the period of time during which comments will be accepted as established by rule. (Sec. 903.09(A).)

Public meeting

If the Director receives written comments in an amount that demonstrates significant public interest, as defined by rule, in the draft permit, the Director must schedule one public meeting to provide information to the public and to hear comments pertinent to the draft permit. The act defines "public meeting" as a nonadversarial public hearing at which a person may present written or oral statements for the Director's consideration and includes public hearings under continuing law that establishes the state's antidegradation policy (sec. 903.01(Y)). The notice of the public meeting must be provided in the same manner as the notice of the issuance of the draft permit. (Sec. 903.09(A).) If a person is required to obtain both a permit to install and a permit to operate, including any permit to operate with NPDES provisions, and public meetings are required for both permits, the public meetings for the permits must be combined (sec. 903.09(B)).

Furthermore, the Director must apply the antidegradation policy adopted under the state Water Pollution Control Law to permits issued under the act to the same degree and under the same circumstances as it applies to permits issued under that Law. The Director must hold one public meeting to consider antidegradation issues when such a meeting is required by the antidegradation policy. When allowed by that antidegradation policy, the Director must hold the public meeting on antidegradation issues concurrently with any public meeting held for the draft permit. (Sec. 903.09(C).)

Effect of failure to provide notice or public meeting

Failure of the Director to provide notice or a public meeting invalidates a permit only if the failure is raised by, and was relied upon to the detriment of, a person that is entitled to appeal the permit. Notice or a public meeting is not required for the modification of a permit made with the consent of the permittee for the correction of typographical errors. (Sec. 903.09(E).)

Notice of issuance of final permit

The Director or the Director's representative must publish notice of the issuance of a final permit to install, permit to operate, or NPDES permit once in a newspaper of general circulation in the county in which the CAFF or discharger is located (sec. 903.09(D)).

Deadline for issuance or denial of permit

The Director must issue an order issuing or denying an application for a permit to operate that contains NPDES provisions or for a NPDES permit, as well as any application for a permit to install that is submitted simultaneously, not later than 180 days after receiving the application (sec. 903.09(G)(1)). In the case of an



application for a permit to install or permit to operate that is not connected with an application for a NPDES permit, the Director must issue or propose to deny the permit not later than 90 days after receiving the application. If the Director has proposed to deny the permit to install or permit to operate at issue, the Director must issue an order denying the permit. In the alternative, if the Director decides against the proposed denial, he must issue the permit not later than 180 days after receiving the application. If the Director denies the permit, he must notify the applicant in writing of the reason for the denial. (Sec. 903.09(G)(2).)

Denial, modification, suspension, or revocation of permit

The denial, modification, suspension, or revocation of a permit to install, permit to operate, or NPDES permit without the consent of the applicant or permittee must be preceded by a proposed action stating the Director's intention to issue an order with respect to the permit and the reasons for it. The Director is prohibited from issuing an order that makes the proposed action final until the applicant or permittee has had an opportunity for an adjudication hearing in accordance with the Administrative Procedure Act, except that provisions of that Act governing the appeal of an administrative order do not apply. Instead, an order of the Director that finalizes the proposed action or an order issuing a permit without a prior proposed action may be appealed to the Environmental Review Appeals Commission. (Sec. 903.09(F).)

Rulemaking regarding permit procedures

Public notice and participation requirements for the issuance, denial, modification, transfer, suspension, and revocation of all permits issued under the act are required to be established in rules adopted by the Director in accordance with the Administrative Procedure Act. The rules also must establish procedures for public meetings, including what constitutes "significant public interest." In addition, the rules must require that information that is presented at a public meeting be limited to the criteria that are applicable to the permit application that is the subject of the public meeting. (Sec. 903.10(G).)

Transferability of permit

Upon the transfer of ownership of a CAFF for which a permit to install, an installation permit, a review compliance certificate, or a permit to operate that contains no NPDES provisions has been issued, the permit or certificate must be transferred to the new owner of the CAFF unless past compliance information submitted by the new owner indicates that the new owner lacks sufficient reliability, expertise, and competence to operate the CAFF in substantial compliance with the act and rules adopted under it (see "**Background information requirements for certain persons**," above). In the case of the transfer of ownership of a point source for which a NPDES permit or a permit to operate that

contains NPDES provisions has been issued, the permit must be transferred in accordance with rules. (Sec. 903.09(I).)

Insect and rodent control plans

The act requires an owner or operator of a CAFF to prepare and submit to the Director of Agriculture in accordance with rules an insect and rodent control plan designed to minimize the presence and negative effects of insects and rodents at the CAFF and in surrounding areas, including land on which manure is stored or applied. In addition, the plan must conform to best management practices established in rules. The Director must approve or deny the plan within the time period established in rules and may require modification of the plan at that time or a later time in accordance with those rules. (Sec. 903.06(B).)

On and after a date that is established in rules by the Director, the act prohibits a person from owning or operating a CAFF unless an insect and rodent control plan for the CAFF has been approved by the Director. The owner or operator of a CAFF may not violate the operation's insect and rodent control plan. (Sec. 903.06(C).) The act requires the Director to enforce an insect and rodent control plan in accordance with rules and assess a civil penalty established in rules against an owner or operator of a CAFF who operates it without a plan approved by the Director or who violates the CAFF's plan (see above) (sec. 903.06(D)).

Rules governing insect and rodent control plans

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning insect and rodent control plans:

- (1) The information to be included in an insect and rodent control plan;
- (2) Criteria for approving, disapproving, or requiring modification of an insect and rodent control plan;
- (3) Criteria for determining compliance with or violation of a plan;
- (4) Procedures and standards for monitoring plans;
- (5) Procedures and standards for enforcing insect and rodent control plans at CAFFs at which insects or rodents constitute a nuisance or adversely affect public health;
- (6) The amount of civil penalties for violation of a plan assessed under the act's provisions, provided that the rules cannot establish a civil penalty of more than \$10,000 for a violation involving a CAFF with a total design capacity of

10,000 or fewer animal units and a civil penalty of more than \$25,000 for a violation involving a major CAFF;

(7) The time period within which the Director must approve or deny a plan after receiving it; and

(8) Any other provisions necessary to administer and enforce the act's provisions pertaining to insect and rodent control plans. (Sec. 903.10(D).)

Livestock manager certifications

On and after the date that is established in rules by the Director of Agriculture, the act requires certain persons to obtain livestock manager certifications. Under the act, the management and handling of manure at a major CAFF, including the land application of manure or the removal of manure from a manure storage or treatment facility, must be conducted only by or under the supervision of a person holding a livestock manager certification (sec. 903.07(A)(1)). "Manure storage or treatment facility" means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure (sec. 903.01(O)). A person managing or handling manure who is acting under the instructions and control of a person holding a livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling (sec. 903.07(A)(1)). In addition, a person is prohibited from transporting, buying, or selling annually the volume of manure established in rules adopted by the Director unless the person holds a livestock manager certification (sec. 903.07(A)(2)).

The act requires the Director to issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the Director, together with the appropriate application fee, and who has completed successfully the required training and has passed the required examination. The Director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked livestock manager certification in accordance with rules. (Sec. 903.07(B).) Information required to be included in an application for a livestock manager certification, the amount of the application fee, and requirements regarding training and the examination must be established in rules (sec. 903.07(C)).

Rules governing livestock manager certifications

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning livestock manager certification:



(1) The information to be included in an application for a livestock manager certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant for a certification. The training must include and the examination must test the applicant's knowledge of information on topics that include calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment. The Director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement;

(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a certification;

(4) The length of time during which certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported, bought, or sold annually by a person in order for the person to be required to obtain a livestock manager certification; and

(6) Any other provisions necessary to administer the act's provisions concerning livestock manager certifications. (Sec. 903.10(E).)

Emergency enforcement authority and recovery of costs for clean-up of manure spills

Notwithstanding the enforcement procedures discussed above, if the Director of Agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the Director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order takes effect immediately. A person to whom the order is directed must comply immediately, but on application to the Director must be afforded an adjudication hearing in accordance with the Administrative Procedure Act as soon as possible and not later than 30 days after application. On the basis of the hearing, the Director must continue the order in effect, revoke it, or modify it. The Director's order is appealable pursuant to appeal procedures established in the Administrative Procedure Act. No emergency order can remain in effect for more than 120 days after its issuance. (Sec. 903.18(A).)

A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure that requires emergency action to protect public health or safety or the environment is liable to the Director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the Director, the Attorney General must bring a civil action against the responsible person or persons to recover those costs. Moneys recovered must be paid into the state treasury to the credit of the Livestock Management Fund created by the act (see **'Management of NPDES and CAFF programs by the Department of Agriculture; Livestock Management Fund,'** below). (Sec. 903.18(B).)

Discussions with boards of county commissioners and boards of township trustees

The act requires that any person who proposes to establish a new major CAFF or to expand certain existing CAFFs provide written notification to the board of county commissioners of the county and the board of trustees of the township in which a proposed new or expanded facility is or is to be located. This requirement applies to any person who proposes to do any of the following:

(1) Establish a new major CAFF;

(2) Increase the number of animal units of design capacity of an existing major CAFF by 10% or more in excess of the design capacity set forth in the current permit for construction or modification of the facility issued by the Director of Agriculture under the act or the current permit for the installation or modification of the disposal system for manure at the facility issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable; or

(3) Increase the number of animal units of design capacity of an existing CAFF to more than 10,000 animal units and by 10% or more in excess of the design capacity set forth in the current permit for the construction or modification of the facility issued by the Director of Agriculture under the act or the current permit for the installation or modification of the disposal system for manure at the facility issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable. (Secs. 307.203(B) and 505.266(B).)

The act establishes identical requirements governing written notification that must be provided to county commissioners and township trustees. Under those requirements, the person must notify the board in writing by certified mail of the proposed construction or expansion of the facility. The notification must include the anticipated travel routes of motor vehicles to and from the facility and the anticipated number and weights of motor vehicles traveling to and from the facility. (Secs. 307.203(C) and 505.266(C).)



At the board's request, the county engineer may review the written notification and advise the board on both of the following:

(1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on county or township infrastructure that is anticipated as a result of the facility, including increased travel or the types of vehicles on county or township roads; and

(2) The projected costs of the improvements and maintenance. (Secs. 307.203(D) and 505.266(D).)

"Improvement" is defined to mean the construction, modification, or both of county or township infrastructure, as applicable (secs. 307.203(A) and 505.266(A)).

Not later than ten days after receiving written notification, the board may request the person to provide additional reasonable and relevant information regarding the impact of the facility on county or township infrastructure. The person must provide the information not later than ten days after the request is made. (Secs. 307.203(D) and 505.266(D).)

Not later than 30 days after the initial notification is received by the board, the board must submit to the person its recommendations, if any, concerning the improvements that will be needed as a result of the facility and the cost of those improvements (secs. 307.203(E)(1) and 505.266(E)(1)). Not later than 15 days after receipt of the board's recommendations, the person must notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they must be considered to be the board's final recommendations (secs. 307.203(E)(2) and 505.266(E)(2)). If the board receives alternative recommendations or modifications, the board must select final recommendations and submit them to the person not later than 30 days after receiving the alternative recommendations or modifications (secs. 307.203(E)(3) and 505.266(E)(3)).

The act requires the board to prepare a written, dated statement certifying that the written notification was submitted and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board must provide the person with the original of the statement so that the person can include it with the application for a permit to install for the facility as required under the act (see **'Issuance of permits to install by the Director of Agriculture,'** above). The board must retain a copy of the statement for its records. (Secs. 307.203(F) and 505.266(F).)



The act requires the person to construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board must notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations. If the person remains out of compliance, the board may initiate mediation with the person in order to resolve the differences between them. If mediation fails to resolve the differences, the board and the person first must attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas. (Secs. 307.203(G) and 505.266(G).)

If the person subsequently submits an application under the act for a permit to modify the facility (see "*Permits to construct or modify concentrated animal feeding facilities*," above), or if the routes of travel to or from the facility change for any reason other than road construction conducted by the county or township, as applicable, the board or the person may request that additional information be provided in writing and must proceed as provided under the act for the notification and recommendation proceedings (secs. 307.203(H) and 505.266(H)).

Management of NPDES and CAFF programs by Department of Agriculture

Authority to enter on property

The act authorizes the Director of Agriculture or his authorized representative at reasonable times to enter on any public or private property, real or personal, to make investigations and inspections, including the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties necessary for the administration and enforcement of the act. The Director or his authorized representative at reasonable times may examine and copy any records pertaining to discharges that are subject to the act or any records that are required to be maintained by the terms and conditions of a permit or review compliance certificate issued under the act. If refused entry, the Director or his authorized representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant. (Sec. 903.12(A).) The act prohibits any person to whom a permit or review compliance certificate has been issued from refusing entry to the Director or his authorized representative or purposely hindering or thwarting the Director or his authorized representative in the exercise of any authority granted as described above (sec. 903.12(B)).

Contracts; grants and loans

The act authorizes the Director to enter into contracts or agreements to carry out the act's purposes with any public or private person, including The Ohio State University Extension Service, the Natural Resources Conservation Service in



the United States Department of Agriculture, the Environmental Protection Agency, the Division of Soil and Water Conservation in the Department of Natural Resources, and soil and water conservation districts established under continuing law. However, the act prohibits the Director from entering into such a contract or agreement with a private person for the review of applications for permits to install, permits to operate, NPDES permits, or review compliance certificates that are issued under the act or for the inspection of a facility regulated under the act. In addition, the act provides that the Director may not enter into a contract or agreement with any person for the issuance of any of those permits or certificates or for the enforcement of the act and rules adopted under it. (Sec. 903.11(A).) The act also allows the Director to administer grants and loans using moneys from the federal government and other sources, public or private, for carrying out any of the Director's functions. Nothing in the act is to be construed to limit the eligibility of owners or operators of AFFs or other agricultural enterprises to receive moneys from the Water Pollution Control Loan Fund and the Nonpoint Source Pollution Management Fund established under continuing law. The Director of Agriculture must provide the Director of Environmental Protection with written recommendations for providing financial assistance from those funds to agricultural enterprises. The Director of Environmental Protection must consider the recommendations in developing priorities for providing financial assistance from the funds. (Sec. 903.11(B) and secs. 6111.036 and 6111.037, not in the act.)

Livestock Management Fund

The act creates the Livestock Management Fund in the state treasury into which all money collected by the Director from application fees paid and from civil penalties assessed under the act and all money collected from civil actions brought to recover the costs of clean-ups of spills of manure (see **Emergency enforcement authority and recovery of costs for clean-up of manure spills,**" above) must be deposited. Money credited to the Fund must be used solely for administering the act. (Sec. 903.19.)

Nuisances

Complaint procedures

The act authorizes a person who is aggrieved or adversely affected by an alleged nuisance related to a CAFF to submit a complaint to the Director of Agriculture alleging that the nuisance exists. The complaint may be made orally or in writing. If the complaint is made in writing, it must be signed by the person making it and dated. (Sec. 903.15(A).) After receiving a written, signed, and dated complaint, the Director must, or after receiving an oral complaint the Director may, cause an investigation to be conducted to determine if the owner or



operator of the CAFF is complying with a permit or with a review compliance certificate. (Sec. 903.15(B).)

If, upon completion of the investigation, the Director determines that the owner or operator is in compliance with a permit or with a review compliance certificate, he must dismiss the complaint and notify the complainant and the owner or operator of the dismissal. However, if the Director determines that the owner or operator is not in compliance with such a permit or a review compliance certificate, he must proceed in accordance with the enforcement procedures outlined in the act. (Sec. 903.15(C).)

Affirmative defense for CAFF owners and operators meeting specified requirements

The act stipulates that in a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFF, it is an affirmative defense if the person owning, operating, or otherwise responsible for the CAFF is in compliance with best management practices established in the installation permit, permit to operate, or review compliance certificate issued for the CAFF and the agricultural activities do not violate federal, state, and local laws governing nuisances (sec. 903.13).

Nonbinding arbitration

The act requires that prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFF, the parties to the dispute must submit the dispute to an arbitrator for nonbinding arbitration. The parties must pay the arbitrator a reasonable compensation based on the extent and duration of actual service rendered. The act requires that the cost of the arbitrator's services be divided proportionately among the parties. If the decision reached by the arbitrator is not accepted by all parties to the dispute, the complaining parties may file a civil action, and the claim will proceed as if it had not been submitted to nonbinding arbitration. The act further provides that no oral or written statement prepared for or made in the nonbinding arbitration by the arbitrator or any of the parties, including any mental impression, recommendation, or decision by the arbitrator, is subject to discovery or admissible into evidence in any litigation or proceeding for any purpose, including impeachment. The arbitrator must be disqualified as a witness, consultant, or expert on any subject that is related to the arbitration. (Sec. 903.14.)

Rules governing protection of trade secrets

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish procedures for the protection of trade secrets from public disclosure. The procedures must authorize the release



of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under the act or when otherwise required by the Federal Water Pollution Control Act. The rules must require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. The rules do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under the act's provisions governing the issuance of NPDES permits or under rules concerning NPDES permits that must be adopted under the act. (Sec. 903.10(I).)

Concentrated Animal Feeding Facility Advisory Committee

The act creates the Concentrated Animal Feeding Facility Advisory Committee consisting of the Directors of Agriculture, Development, Environmental Protection, and Natural Resources and the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, or their designees, as members ex officio, and 16 members to be appointed by the Director of Agriculture. Of the appointed members, the designated number of persons must represent the following interests: one, a local government official whose jurisdiction has a CAFF located in it at the time that the official is appointed to the Committee; one, a person licensed to practice veterinary medicine under state law; one, the interests of poultry producers; one, the interests of swine producers; one, the interests of dairy farmers; one, the interests of beef cattle producers; one, the interests of sheep producers; one, the interests of drinking water utilities; one, the interests of waste water utilities; one, a representative of the Ohio Environmental Health Association; two, the interests of statewide environmental advocacy organizations; and four, the interests of the public. Prior to making the appointment of the member who is an elected local government official, the Director must solicit a list of suggested candidates from the appropriate statewide associations that represent the interests of local governments. The act requires the Director, prior to making an appointment of a member who represents the interests of poultry, swine, beef cattle, or sheep producers or dairy cattle, to solicit a list of suggested candidates from the appropriate statewide trade association to represent the interests of the species category on the committee. It also specifies that the members representing the public cannot be owners or operators of CAFFs or associated with CAFFs by contract. The Director must make initial appointments to the committee within 30 days after the act becomes effective. Initial terms of office are staggered for one-, two-, and three-year terms, with terms of office following initial appointments lasting three years. (Sec. 903.20(A).)

The act enacts standard language regarding the appointment of members, the filling of vacancies, and a member's duty to continue in office until the expiration of his term. Members may be reappointed. Serving as an appointed



member of the committee does not constitute holding a public office or a position of employment and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The Director of Agriculture, after notice and a public hearing, may remove any appointed member for misfeasance, nonfeasance, or malfeasance in office. Appointed members must serve without compensation for attending meetings, and all members are to be reimbursed for actual and necessary expenses incurred in the performance of their official duties. (Sec. 903.20(A).)

The committee is required to meet as the chairperson or a majority of the committee considers appropriate, provided that at least seven days' written notice of a committee meeting is provided to all members when a meeting is held on the call of the chairperson. The Director of Agriculture must designate a chairperson and vice-chairperson for the committee annually. A majority vote of the members is necessary for the committee to take action, but a vacancy on the committee does not impair the right of remaining members to exercise all committee powers. (Sec. 903.20(A).)

The committee may adopt rules or procedures governing the conduct of its internal affairs and request from the Director of Agriculture, and the Director must provide, meeting space, staff support, services, and data to enable it to carry out its functions (sec. 903.20(B)). The act requires the committee to do all the following:

(1) Advise the Director of Agriculture in the administration of the act;

(2) Keep abreast of advances in manure management practices and annually advise the Directors of Agriculture, Environmental Protection, and Natural Resources of those advances and the need for amending what constitutes best management practices;

(3) In consultation with the Director of Agriculture, prepare, and, upon request, distribute written materials designed to assist persons who propose to establish a new or modify an existing CAFF in applying for a permit to install or permit to operate issued by the Director under the act. The materials also must include information stating that, in addition to obtaining a permit to operate, it may be necessary to obtain a NPDES permit under the act for the discharge of manure or storm water. The written materials also must include information indicating what constitutes a "complete application" for all of those permits, information about the public meeting process conducted in connection with the issuance of permits under the act, and a summary of the antidegradation policy established in continuing rules adopted by the Director of Environmental Protection under the Water Pollution Control Law and an indication of the possibility that the new or modified disposal system for manure or discharges also may be subject to that policy; and



(4) Not later than 12 months after the act's effective date, conduct an examination of the scientific appropriateness of the definition of "animal unit" established in the act and prepare and submit findings and recommendations to the General Assembly, the Governor, and the Directors of Agriculture, Environmental Protection, and Natural Resources concerning any legislative changes in the definition that are necessary or appropriate to reflect on a more scientific basis manure generation rates among livestock species and types of CAFFs. (Sec. 903.20(C).)

The act specifies that continuing law requiring certain boards, commissions, committees, or councils to expire four years after their creation or renewal does not apply to the Committee (sec. 903.20(D)). Finally, the act appropriates \$25,000 from the General Revenue Fund in fiscal year 2001 for the Committee's operation (Section 3).

Soil and water conservation

The act repeals a requirement in former law that specified that the Chief of the Division of Soil and Water Conservation in the Department of Natural Resources had to refrain from issuing any order requiring a pollution abatement practice that was eligible for state cost sharing unless public funds were available for the cost sharing on those practices at not less than 75% of the cost, but not more than \$15,000 per person per year for practices for abating agricultural pollution (sec. 1511.02(H)). In addition, the act eliminates a requirement that there had to be a threat to public health prior to the Chief's issuing an order requiring emergency actions for abatement of pollution from spills or discharges of animal waste (sec. 1511.07). Finally, the act specifies that any person that is responsible for releasing, spilling, or discharging animal waste is liable to soil and water conservation districts and to the Chief of the Division of Soil and Water Conservation for their related costs. Under former law, only the Chief could recover costs under such circumstances. (Sec. 1511.071.)

Appropriations

In addition to the appropriation for the Concentrated Animal Feeding Facility Advisory Committee, the act appropriates \$1.7 million to the Department of Agriculture from the General Revenue Fund in fiscal year 2001 for purposes of the livestock regulation program established in the act. The act also appropriates \$250,000 from the State Special Revenue Fund Group in fiscal year 2001 for purposes of the Livestock Management Fund. (Section 3.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
---------------	-------------	----------------------



Introduced	05-12-99	p.	423
Reported, S. Agriculture	05-24-00	pp.	1816-1817
Passed Senate (27-6)	05-24-00	pp.	1826-1832
Reported, H. Agriculture & Natural Resources	11-09-00	p.	2327
Passed House (82-11)	11-15-00	pp.	2352-2357
Senate concurred in House amendments (26-7)	11-16-00	pp.	2257-2258

00-sb141.123/kl

