

As Introduced

**128th General Assembly
Regular Session
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S. B. No. 203

Senator Gibbs

Cosponsors: Senators Grendell, Niehaus, Schaffer, Seitz

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A B I L L

To amend sections 903.01, 903.02, 903.03, 903.04, 1
903.05, 903.06, 903.07, 903.08, 903.081, 903.082, 2
903.09, 903.10, 903.15, 903.16, 903.17, and 3
6111.03 of the Revised Code to revise the 4
Concentrated Animal Feeding Facilities Law, to 5
specify that certain provisions amended by this 6
act do not become operative until the 7
Administrator of the United States Environmental 8
Protection Agency approves the National Pollutant 9
Discharge Elimination System program submitted by 10
the Director of Agriculture, and to declare an 11
emergency. 12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 903.01, 903.02, 903.03, 903.04, 13
903.05, 903.06, 903.07, 903.08, 903.081, 903.082, 903.09, 903.10, 14
903.15, 903.16, 903.17, and 6111.03 of the Revised Code be amended 15
to read as follows: 16

Sec. 903.01. As used in this chapter: 17

(A) "Agricultural animal" means any animal generally used for 18
food or in the production of food, including cattle, sheep, goats, 19

rabbits, poultry, and swine; horses; alpacas; llamas; and any 20
other animal included by the director of agriculture by rule. 21
"Agricultural animal" does not include fish or other aquatic 22
animals regardless of whether they are raised at fish hatcheries, 23
fish farms, or other facilities that raise aquatic animals. 24

(B) "Animal feeding facility" means a lot, building, or 25
structure where both of the following conditions are met: 26

(1) Agricultural animals have been, are, or will be stabled 27
or confined and fed or maintained there for a total of forty-five 28
days or more in any twelve-month period. 29

(2) Crops, vegetative forage growth, or post-harvest residues 30
are not sustained in the normal growing season over any portion of 31
the lot, building, or structure. 32

"Animal feeding facility" also includes land that is owned or 33
leased by or otherwise is under the control of the owner or 34
operator of the lot, building, or structure and on which manure 35
originating from agricultural animals in the lot, building, or 36
structure or a production area is or may be applied. 37

Two or more animal feeding facilities under common ownership 38
shall be considered to be a single animal feeding facility for the 39
purposes of this chapter if they adjoin each other or if they use 40
a common area or system for the disposal of manure. 41

(C) ~~"Best management practices" means best management~~ 42
~~practices established in rules. Animal feeding operation" has the~~ 43
~~same meaning as "animal feeding facility."~~ 44

(D) "Cattle" includes, but is not limited to, heifers, 45
steers, bulls, and cow and calf pairs. 46

(E) "Concentrated animal feeding facility" means an animal 47
feeding facility with a total design capacity equal to or more 48
than the number of animals specified in any of the categories in 49

division (M) of this section.	50
(F) "Concentrated animal feeding operation" means an animal feeding facility that complies with one of the following:	51 52
(1) Has a total design capacity equal to or more than the number of animals specified in any of the categories in division (M) of this section;	53 54 55
(2) Satisfies the criteria in division (M), (Q), or (EE) (FF) of this section;	56 57
(3) Is designated by the director of agriculture as a medium or small concentrated animal feeding operation pursuant to rules.	58 59
(G) "Discharge" means to add from a point source to waters of the state.	60 61
(H) "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C. 1251 et. seq., as amended, and regulations adopted under it.	62 63 64 65
(I) "Finalized," with respect to the programs required under division (A)(1) of section 903.02 and division (A)(1) of section 903.03 of the Revised Code, means that all rules that are necessary for the administration of this chapter have been adopted and all employees of the department of agriculture that are necessary for the administration of this chapter have been employed.	66 67 68 69 70 71 72
(J) "General permit" has the meaning that is established in rules.	73 74
(K) "Individual permit" has the meaning that is established in rules.	75 76
(L) "Installation permit" means 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 under	77 78 79

division (J)(1) of section 6111.03 of the Revised Code.	80
(M) "Large concentrated animal feeding operation" means an	81
animal feeding facility that stables or confines at least the	82
number of animals specified in any of the following categories:	83
(1) Seven hundred mature dairy cattle whether milked or dry;	84
(2) One thousand veal calves;	85
(3) One thousand cattle other than mature dairy cattle or	86
veal calves;	87
(4) Two thousand five hundred swine that each weigh	88
fifty-five pounds or more;	89
(5) Ten thousand swine that each weigh less than fifty-five	90
pounds;	91
(6) Five hundred horses;	92
(7) Ten thousand sheep or lambs;	93
(8) Fifty-five thousand turkeys;	94
(9) Thirty thousand laying hens or broilers if the animal	95
feeding facility uses a liquid manure handling system;	96
(10) One hundred twenty-five thousand chickens, other than	97
laying hens, if the animal feeding facility uses a manure handling	98
system that is not a liquid manure handling system;	99
(11) Eighty-two thousand laying hens if the animal feeding	100
facility uses a manure handling system that is not a liquid manure	101
handling system;	102
(12) Thirty thousand ducks if the animal feeding facility	103
uses a manure handling system that is not a liquid manure handling	104
system;	105
(13) Five thousand ducks if the animal feeding facility uses	106
a liquid manure handling system.	107

(N) "Major concentrated animal feeding facility" means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the categories in division (M) of this section.

(O) "Manure" means 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.

(P) "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.

(Q) "Medium concentrated animal feeding operation" means an animal feeding facility that satisfies both of the following:

(1) The facility stables or confines the number of animals specified in any of the following categories:

(a) Two hundred to six hundred ninety-nine mature dairy cattle whether milked or dry;

(b) Three hundred to nine hundred ninety-nine veal calves;

(c) Three hundred to nine hundred ninety-nine cattle other than mature dairy cattle or veal calves;

(d) Seven hundred fifty to two thousand four hundred ninety-nine swine that each weigh fifty-five pounds or more;

(e) Three thousand to nine thousand nine hundred ninety-nine swine that each weigh less than fifty-five pounds;

(f) One hundred fifty to four hundred ninety-nine horses;

(g) Three thousand to nine thousand nine hundred ninety-nine

sheep or lambs;	138
(h) Sixteen thousand five hundred to fifty-four thousand nine hundred ninety-nine turkeys;	139 140
(i) Nine thousand to twenty-nine thousand nine hundred ninety-nine laying hens or broilers if the animal feeding facility uses a liquid manure handling system;	141 142 143
(j) Thirty-seven thousand five hundred to one hundred twenty-four thousand nine hundred ninety-nine chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;	144 145 146 147
(k) Twenty-five thousand to eighty-one thousand nine hundred ninety-nine laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;	148 149 150 151
(l) Ten thousand to twenty-nine thousand nine hundred ninety-nine ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system;	152 153 154
(m) One thousand five hundred to four thousand nine hundred ninety-nine ducks if the animal feeding facility uses a liquid manure handling system.	155 156 157
(2) The facility does one of the following:	158
(a) Discharges pollutants into waters of the United States through a ditch constructed by humans, a flushing system constructed by humans, or another similar device constructed by humans;	159 160 161 162
(b) Discharges pollutants directly into waters of the United States that originate outside of and that pass over, across, or through the facility or otherwise come into direct contact with the animals at the facility.	163 164 165 166
"Medium concentrated animal feeding operation" includes an	167

animal feeding facility that is designated by the director as a 168
medium concentrated animal feeding operation pursuant to rules. 169

(R) "Mortality composting" means the controlled decomposition 170
of organic solid material consisting of dead animals that 171
stabilizes the organic fraction of the material. 172

(S) "NPDES permit" means a permit issued under the national 173
pollutant discharge elimination system established in section 402 174
of the Federal Water Pollution Control Act and includes the 175
renewal of such a permit. "NPDES permit" includes the federally 176
enforceable provisions of a permit to operate into which NPDES 177
permit provisions have been incorporated. 178

(T) "Permit" includes an initial, renewed, or modified permit 179
to install, permit to operate, NPDES permit, and installation 180
permit unless expressly stated otherwise. 181

(U) "Permit to install" means a permit issued under section 182
903.02 of the Revised Code. 183

(V) "Permit to operate" means a permit issued or renewed 184
under section 903.03 of the Revised Code and includes incorporated 185
NPDES permit provisions, if applicable. 186

(W) "Person" means any legal entity defined as a person under 187
section 1.59 of the Revised Code, the state, any political 188
subdivision of the state, any interstate body created by compact, 189
the United States, or any department, agency, or instrumentality 190
of any of those entities. 191

(X) "Point source" has the same meaning as in the Federal 192
Water Pollution Control Act. 193

(Y) "Pollutant" means dredged spoil, solid waste, incinerator 194
residue, filter backwash, sewage, garbage, sewage sludge, 195
munitions, chemical wastes, biological materials, radioactive 196
materials except those regulated under the "Atomic Energy Act of 197

<u>1954," 68 Stat. 919, 42 U.S.C. 2011, as amended, heat, wrecked or</u>	198
<u>discarded equipment, rock, sand, cellar dirt, and industrial,</u>	199
<u>municipal, and agricultural waste, including manure, discharged</u>	200
<u>into water. "Pollutant" does not include either of the following:</u>	201
<u>(1) Sewage from vessels;</u>	202
<u>(2) Water, gas, or other material that is injected into a</u>	203
<u>well to facilitate production of oil or gas, or water derived in</u>	204
<u>association with oil and gas production and disposed of in a well,</u>	205
<u>if the well that is used either to facilitate production or for</u>	206
<u>disposal purposes is approved by the state and if the state</u>	207
<u>determines that the injection or disposal will not result in the</u>	208
<u>degradation of ground or surface water resources.</u>	209
<u>(Z) "Process generated waste water" means water that is</u>	210
directly or indirectly used in the operation of an animal feeding	211
facility for any of the following:	212
(1) Spillage or overflow from animal watering systems;	213
(2) Washing, cleaning, or flushing pens, barns, manure pits,	214
or other areas of an animal feeding facility;	215
(3) Direct contact swimming, washing, or spray cooling of	216
animals;	217
(4) Dust control.	218
(Z) <u>(AA)</u> "Process waste water" means any process generated	219
waste water and any precipitation, including rain or snow, that	220
comes into contact with manure, litter, bedding, or any other raw	221
material or intermediate or final material or product used in or	222
resulting from the production of animals or direct products such	223
as milk or eggs.	224
(AA) <u>(BB)</u> "Production area" means any of the following	225
components of an animal feeding facility:	226
(1) Animal confinement areas, including, but not limited to,	227

open lots, housed lots, feedlots, confinement houses, stall barns,	228
free stall barns, milkrooms, milking centers, cowyards, barnyards,	229
medication pens, animal walkways, and stables;	230
(2) Manure storage areas, including, but not limited to,	231
manure storage or treatment facilities;	232
(3) Raw material storage areas, including, but not limited	233
to, feed silos, silage bunkers, commodity buildings, and bedding	234
materials;	235
(4) Waste containment areas, including, but not limited to,	236
any of the following:	237
(a) An egg washing or egg processing facility;	238
(b) An area used in the storage, handling, treatment, or	239
disposal of mortalities;	240
(c) Settling basins, runoff ponds, liquid impoundments, and	241
areas within berms and diversions that are designed and maintained	242
to separate uncontaminated storm water runoff from contaminated	243
water and to contain and treat contaminated storm water runoff.	244
(BB) <u>(CC)</u> "Public meeting" means a nonadversarial public	245
hearing at which a person may present written or oral statements	246
for the director of agriculture's consideration and includes	247
public hearings held under section 6111.12 of the Revised Code.	248
(CC) <u>(DD)</u> "Review compliance certificate" means a certificate	249
issued under section 903.04 of the Revised Code.	250
(DD) <u>(EE)</u> "Rule" means a rule adopted under section 903.10 of	251
the Revised Code.	252
(EE) <u>(FF)</u> "Small concentrated animal feeding operation" means	253
an animal feeding facility that is not a large or medium	254
concentrated animal feeding operation and that is designated by	255
the director as a small concentrated animal feeding operation	256
pursuant to rules.	257

~~(FF)~~(GG) "Waters of the state" has the same meaning as in 258
section 6111.01 of the Revised Code. 259

Sec. 903.02. (A)(1) Not later than one hundred eighty days 260
after March 15, 2001, the director of agriculture shall prepare a 261
program for the issuance of permits to install under this section. 262

(2) On and after the date on which the director has finalized 263
the program required under division (A)(1) of this section, no 264
person shall modify an existing or construct a new concentrated 265
animal feeding facility without first obtaining a permit to 266
install issued by the director under this section. 267

(B) The director or the director's authorized representative 268
may help an applicant for a permit to install during the 269
permitting process by providing guidance and technical assistance. 270

(C) An applicant for a permit to install shall submit an 271
application to the director on a form that the director prescribes 272
and provides together with a fee in an amount established by rule. 273
The applicant shall include with the application all of the 274
following information: 275

(1) The name and address of the applicant, of all partners if 276
the applicant is a partnership, of all members if the applicant is 277
a limited liability company, or of all officers and directors if 278
the applicant is a corporation, and of any other person who has a 279
right to control or in fact controls management of the applicant 280
or the selection of officers, directors, or managers of the 281
applicant~~;~~. As used in division (C)(1) of this section, "control" 282
means the power, directly or indirectly, to direct the management 283
and policies of the applicant through the ownership of voting 284
securities, by contract, through a right of approval or 285
disapproval, or otherwise unless the power is held by a chartered 286
lending institution as a result of debt liability. 287

(2) The type of livestock and the number of animals that the concentrated animal feeding facility would have the design capacity to raise or maintain;	288 289 290
(3) Designs and plans for the proposed construction of the concentrated animal feeding facility 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;	291 292 293 294 295 296
(4) In the case of an application for a concentrated animal feeding facility that meets the criteria established in sections 307.204 and 505.266 of the Revised Code, written statements from the board of county commissioners of the county and the board of township trustees of the township in which the concentrated animal feeding facility would be located certifying that, in accordance with those sections, 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 concentrated animal feeding facility and the costs of those improvements;	297 298 299 300 301 302 303 304 305 306 307 308
(5) A statement of the quantity of water that the concentrated animal feeding facility 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;	309 310 311 312 313
(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act <u>laws pertaining to environmental protection that is</u> required to be provided under section 903.05 of the Revised Code, if applicable;	314 315 316 317
(7) Any other information required by rule.	318

Information required to be included in an application for the 319
modification of a permit to install, together with the applicable 320
fee amount, shall be established in rules. 321

(D) The director shall issue permits to install in accordance 322
with section 903.09 of the Revised Code. The director shall deny a 323
permit to install if either of the following applies: 324

(1) The permit application contains misleading or false 325
information. 326

(2) The designs and plans fail to conform to best management 327
practices. 328

Additional grounds for the denial of a permit to install 329
shall be those established in this chapter and rules. 330

(E) A permit to install shall expire after a period specified 331
by the director unless the applicant has undertaken a continuing 332
program of construction or has entered into a binding contractual 333
obligation to undertake and complete a continuing program of 334
construction within a reasonable time. The director may extend the 335
expiration date of a permit to install upon request of the 336
applicant. 337

(F) The director may modify, suspend, or revoke a permit to 338
install in accordance with rules. 339

(G) Nothing in this chapter affects section 1521.16 of the 340
Revised Code. 341

(H) The owner or operator of a concentrated animal feeding 342
facility who proposes to make a major operational change at the 343
facility shall submit an application for approval of the change to 344
the director in accordance with rules. 345

Sec. 903.03. (A)(1) Not later than one hundred eighty days 346
after ~~the effective date of this section~~ March 15, 2001, the 347
director of agriculture shall prepare a program for the issuance 348

of permits to operate under this section. 349

(2) Except for a concentrated animal feeding facility that is 350
operating under an installation permit or a review compliance 351
certificate, on and after the date on which the director has 352
finalized the program required under division (A)(1) of this 353
section, no person shall own or operate a concentrated animal 354
feeding facility without a permit to operate issued by the 355
director under this section. 356

(B) The director or the director's authorized representative 357
may help an applicant for a permit to operate during the 358
permitting process by providing guidance and technical assistance. 359

(C) An applicant for a permit to operate shall submit a fee 360
in an amount established by rule together with, except as 361
otherwise provided in division (E) of this section, an application 362
to the director on a form that the director prescribes and 363
provides. The applicant shall include with the application all of 364
the following information: 365

(1) The name and address of the applicant, of all partners if 366
the applicant is a partnership, of all members if the applicant is 367
a limited liability company, or of all officers and directors if 368
the applicant is a corporation, and of any other person who has a 369
right to control or in fact controls management of the applicant 370
or the selection of officers, directors, or managers of the 371
applicant~~†~~. As used in division (C)(1) of this section, "control" 372
has the same meaning as in division (C)(1) of section 903.02 of 373
the Revised Code. 374

(2) Information concerning the applicant's past compliance 375
with ~~the Federal Water Pollution Control Act~~ laws pertaining to 376
environmental protection that is required to be provided under 377
section 903.05 of the Revised Code, if applicable; 378

(3) A manure management plan for the concentrated animal feeding facility 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 concentrated animal feeding facility that conforms to best management practices and is prepared in accordance with section 903.06 of the Revised Code;

(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 section 903.07 of the Revised Code or will obtain a livestock manager certification prior to applying any manure to land.

(D) The director shall issue permits to operate in accordance with section 903.09 of the Revised Code. The director shall deny a permit to operate if either of the following applies:

(1) The permit application contains misleading or false information;

(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 shall be those established in this chapter and in rules.

(E) The director shall issue general permits to operate for categories of concentrated animal feeding facilities 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 shall submit to the director a notice

of the person's intent to be covered under an existing general 410
permit or, at the person's option, shall submit an application for 411
an individual permit to operate. Upon receipt of a notice of 412
intent to be covered under an existing general permit, the 413
director shall notify the applicant in writing that the person is 414
covered by the general permit if the person satisfies the criteria 415
established in rules for eligibility for such coverage. If the 416
person is ineligible for coverage under the general permit, the 417
director shall require the submission of an application for an 418
individual permit to operate. 419

(F) A permit to operate shall be valid for a period of five 420
years. 421

(G) A permit to operate may be renewed. An application for 422
renewal of a permit to operate shall be submitted to the director 423
at least one hundred eighty days prior to the expiration date of 424
the permit to operate and shall comply with the requirements 425
governing applications for permits to operate that are established 426
under this section and by rules, including requirements pertaining 427
to public notice and participation. 428

(H) The director may modify, suspend, or revoke a permit to 429
operate in accordance with rules. 430

(I) The owner or operator of a concentrated animal feeding 431
facility who proposes to make a major operational change at the 432
facility shall submit an application for approval of the change to 433
the director in accordance with rules. 434

Sec. 903.04. (A) As used in this section, "existing 435
concentrated animal feeding facility" or "existing facility" means 436
a concentrated animal feeding facility that was in existence prior 437
to the date on which the director of agriculture has finalized the 438
program required under division (A)(1) of section 903.03 of the 439
Revised Code and that has received an installation permit prior to 440

that date. 441

(B) On and after the date on which the director of 442
agriculture has finalized the program required under division 443
(A)(1) of section 903.02 of the Revised Code, the authority to 444
enforce terms and conditions of installation permits that 445
previously were issued to animal feeding facilities shall be 446
transferred from the director of environmental protection to the 447
director of agriculture. Thereafter, the director of environmental 448
protection shall have no authority to enforce the terms and 449
conditions of those installation permits. On and after the date on 450
which the director of agriculture has finalized the program 451
required under division (A)(1) of section 903.02 of the Revised 452
Code, an installation permit concerning which enforcement 453
authority has been transferred shall be deemed to have been issued 454
under this section. 455

(C) A person to whom an installation permit has been issued 456
by the director of environmental protection prior to the date on 457
which the director of agriculture has finalized the program 458
required under division (A)(1) of section 903.03 of the Revised 459
Code may continue to operate under that permit until either of the 460
following occurs: 461

(1) The installation permit is terminated through the denial 462
of a review compliance certificate under division (F) of this 463
section. 464

(2) The person is required under division (H) of this section 465
to obtain a permit to operate. 466

(D) Except as otherwise provided in this division, on and 467
after the date that is two years after the date on which the 468
director has finalized the program required under division (A)(1) 469
of section 903.03 of the Revised Code, and until the issuance of a 470
permit to operate, no person shall own or operate an existing 471

concentrated animal feeding facility unless the person holds a review compliance certificate.

This division does not apply to a person who has made a timely submittal of the information required under division (E)(2) of this section 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 concentrated animal feeding facility until, if applicable, the director issues an order denying the review compliance certificate.

(E) Not later than two years after the date on which the director has finalized the program required under division (A)(1) of section 903.03 of the Revised Code, both of the following apply:

(1) The director shall review the installation permit that previously was issued to an existing concentrated animal feeding facility and shall inspect the facility to determine if it is in compliance with that permit.

(2) Except as otherwise provided in division (E)(2) of this section, the owner or operator of an existing concentrated animal feeding facility shall furnish all of the following to the director on a form prescribed by the director:

(a) The name and address of the owner, of all partners if the owner is a partnership, of all members if the owner is a limited liability company, or 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 facility or the selection of officers, directors, or managers of the facility. As used in division (E)(2)(a) of this section, "control" has the same meaning as in division (C)(1) of section 903.02 of the Revised Code.

(b) The type of livestock and number of animals that the

facility has the design capacity to raise or maintain; 503

(c) A manure management plan for the facility that conforms 504
to best management practices regarding the handling, storage, 505
transportation, and land application of manure generated at the 506
facility and that contains any other information required by rule. 507
However, if a manure management plan submitted under division 508
(E)(2)(c) of this section does not conform with best management 509
practices regarding the handling, storage, transportation, and 510
land application of manure generated at the facility, the director 511
nevertheless shall deem the plan to conform with best management 512
practices if the owner or operator does all of the following: 513

(i) Performs a phosphorous index risk assessment procedure or 514
a phosphorous soil test risk assessment procedure in accordance 515
with rules; 516

(ii) Demonstrates that the facility cannot comply with best 517
management practices before the date on which the review 518
compliance certificate is to be issued; 519

(iii) Includes in the manure management plan an 520
implementation plan under which the facility will comply with best 521
management practices on or before December 31, 2006. 522

(d) An insect and rodent control plan for the facility that 523
conforms to best management practices and is prepared in 524
accordance with section 903.06 of the Revised Code; 525

(e) In the case of a major concentrated animal feeding 526
facility, written proof that the person who would be responsible 527
for the supervision of the management and handling of manure at 528
the facility has been issued a livestock manager certification in 529
accordance with section 903.07 of the Revised Code. 530

The owner or operator need not furnish any information 531
otherwise required under division (E)(2) of this section if that 532
information is included in the installation permit that was issued 533

for the existing facility. 534

(F) After a review of the existing installation permit, an 535
inspection of the facility, and a review of the information 536
furnished under division (E)(2) of this section, and upon 537
determining that the existing facility is being operated in a 538
manner that protects the waters of the state and minimizes the 539
presence and negative effects of insects and rodents at the 540
facility and in surrounding areas, the director shall issue an 541
order issuing a review compliance certificate to the facility. In 542
issuing the certificate, the director shall consider technical 543
feasibility and economic costs. The director shall not require a 544
significant capital expenditure, as defined by rule, by the 545
facility before issuing a certificate. 546

The director may issue an order denying a review compliance 547
certificate if the facility's insect and rodent control plan or 548
manure management plan does not conform to best management 549
practices and the requirements established in section 903.06 of 550
the Revised Code and in rules. The denial of a review compliance 551
certificate terminates the existing installation permit that was 552
issued to the facility. 553

The issuance of a review compliance certificate shall not 554
require public notice or a public meeting. However, notice shall 555
be provided to persons who own property that is contiguous to the 556
production area of the concentrated animal feeding facility for 557
which the review compliance certificate is to be issued. Such 558
persons may submit written comments to the director within a time 559
established by the director. 560

The issuance of a review compliance certificate shall not be 561
subject to appeal under Chapter 119. or sections 3745.04 to 562
3745.06 of the Revised Code. The denial or revocation of a review 563
compliance certificate or the amendment of an installation permit 564
resulting from a certificate may be challenged by the applicant in 565

an administrative hearing in accordance with Chapter 119. of the 566
Revised Code, except that section 119.12 of the Revised Code does 567
not apply. An order of the director that denies or revokes a 568
certificate or amends an installation permit as a result of a 569
certificate may be appealed to the environmental review appeals 570
commission under sections 3745.04 to 3745.06 of the Revised Code. 571

(G) Upon the issuance of a review compliance certificate, the 572
certificate automatically shall merge and become a part of the 573
previously issued installation permit. If any of the terms and 574
conditions of the installation permit and the review compliance 575
certificate are in conflict, the terms and conditions of the 576
review compliance certificate are controlling. 577

(H)(1) A review compliance certificate is valid for a period 578
of five years. Not later than one hundred eighty days prior to the 579
expiration date of the review compliance certificate, the owner or 580
operator shall apply for a permit to operate. 581

(2) The director may revoke a review compliance certificate 582
issued to an existing facility after the director has issued an 583
order as a result of a hearing held under Chapter 119. of the 584
Revised Code in which the facility has been found to be in 585
violation of the terms and conditions of the review compliance 586
certificate. An existing facility whose review compliance 587
certificate is revoked shall obtain a permit to operate and, if 588
applicable, a NPDES permit in order to resume operating. 589

(I) An existing facility that is issued a review compliance 590
certificate shall comply with the previously issued installation 591
permit, as amended by the certificate. 592

Sec. 903.05. (A) Each application for a permit to install or 593
permit to operate a concentrated animal feeding facility that is 594
submitted by an applicant who has not owned or operated a 595
concentrated animal feeding facility in this state for at least 596

two of the five years immediately preceding the submission of the 597
application shall be accompanied by all of the following: 598

(1) A listing of all animal feeding facilities that the ~~owner~~ 599
~~or operator of the proposed new or modified concentrated animal~~ 600
~~feeding facility~~ applicant or any person identified by the 601
applicant under division (C)(1) of section 903.02 or 903.03 of the 602
Revised Code owns, has owned, has operated, or is operating in 603
this state; 604

(2) A listing of the animal feeding facilities that the ~~owner~~ 605
~~or operator~~ applicant or any person identified by the applicant 606
under division (C)(1) of section 903.02 or 903.03 of the Revised 607
Code owns, has owned, has operated, or is operating elsewhere in 608
the United States and that are regulated under the Federal Water 609
Pollution Control Act together with a listing of the animal 610
feeding facilities that the ~~owner or operator~~ applicant or any 611
such person owns, has owned, has operated, or is operating outside 612
the United States; 613

(3) A listing of all administrative enforcement orders issued 614
to the ~~owner or operator~~ applicant or any person identified by the 615
applicant under division (C)(1) of section 903.02 or 903.03 of the 616
Revised Code, all civil actions in which the ~~owner or operator~~ 617
applicant or any such person was determined by the trier of fact 618
to be liable in damages or was the subject of injunctive relief or 619
another type of civil relief, and all criminal actions in which 620
the ~~owner or operator~~ applicant or any such person pleaded guilty 621
or was convicted, during the five years immediately preceding the 622
submission of the application, in connection with any violation of 623
the ~~federal~~ Federal Water Pollution Control Act, the "Safe 624
Drinking Water Act," as defined in section 6109.01 of the Revised 625
Code, or any other applicable state laws pertaining to 626
environmental protection that was alleged to have occurred or to 627

be occurring at any animal feeding facility that the ~~owner or~~ 628
~~operator~~ applicant or any such person owns, has owned, has 629
operated, or is operating in the United States or with any 630
violation of the environmental laws of another country that was 631
alleged to have occurred or to be occurring at any animal feeding 632
facility that the ~~owner or operator~~ applicant or any such person 633
owns, has owned, has operated, or is operating outside the United 634
States. 635

The lists of animal feeding facilities owned or operated by 636
the ~~owner or operator~~ applicant or any person identified by the 637
applicant under division (C)(1) of section 903.02 or 903.03 of the 638
Revised Code within or outside this state or outside the United 639
States shall include, respectively, all such facilities owned or 640
operated by the ~~owner or operator~~ applicant or any such person 641
during the five-year period immediately preceding the submission 642
of the application. 643

(B) If the applicant for a permit to install or permit to 644
operate or any person identified by the applicant under division 645
(C)(1) of section 903.02 or 903.03 of the Revised Code has been 646
involved in any prior activity involving the operation of an 647
animal feeding facility, the director of agriculture may deny the 648
application if the director finds from the application, the 649
information submitted under divisions (A)(1) to (3) of this 650
section, pertinent information submitted to the director, and 651
other pertinent information obtained by the director at the 652
director's discretion that the applicant and ~~persons associated~~ 653
~~with the applicant~~ any such person, in the operation of animal 654
feeding facilities, have a history of substantial noncompliance 655
with the Federal Water Pollution Control Act, the "Safe Drinking 656
Water Act," as defined in section 6109.01 of the Revised Code, any 657
other applicable state laws pertaining to environmental 658
protection, or the environmental laws of another country that 659

indicates that the applicant or any such person lacks sufficient 660
reliability, expertise, and competence to operate the proposed new 661
or modified concentrated animal feeding facility in substantial 662
compliance with this chapter and rules adopted under it. 663

(C) A person who seeks to acquire or operate a concentrated 664
animal feeding facility that has been issued an installation 665
permit that has been transferred from the director of 666
environmental protection to the director of agriculture, a permit 667
to install, or a permit to operate shall submit to the director 668
the information specified in divisions (A)(1) to (3) of this 669
section prior to the transfer of the permit. The permit shall not 670
be transferred as otherwise provided in division (I) of section 671
903.09 of the Revised Code if the director finds from the 672
information submitted under divisions (A)(1) to (3) of this 673
section, pertinent information submitted to the director, and 674
other pertinent information obtained by the director at the 675
director's discretion that the person, in the operation of animal 676
feeding facilities, has a history of substantial noncompliance 677
with the Federal Water Pollution Control Act, the "Safe Drinking 678
Water Act," as defined in section 6109.01 of the Revised Code, any 679
other applicable state laws pertaining to environmental 680
protection, or the environmental laws of another country that 681
indicates that the person lacks sufficient reliability, expertise, 682
and competence to operate the concentrated animal feeding facility 683
in substantial compliance with this chapter and rules adopted 684
under it. 685

(D) An owner or operator of a concentrated animal feeding 686
facility that has been issued an installation permit that has been 687
transferred from the director of environmental protection to the 688
director of agriculture, a permit to install, or a permit to 689
operate shall submit to the director notice of any proposed change 690
in the persons identified to the director under division (C)(1) of 691

section 903.02 or 903.03 of the Revised Code, as applicable. The 692
director may deny approval of the proposed change if the director 693
finds from the information submitted under divisions (A)(1) to (3) 694
of this section, pertinent information submitted to the director, 695
and other pertinent information obtained by the director at the 696
director's discretion that the proposed person, in the operation 697
of animal feeding facilities, has a history of substantial 698
noncompliance with the Federal Water Pollution Control Act, the 699
"Safe Drinking Water Act," as defined in section 6109.01 of the 700
Revised Code, any other applicable state laws pertaining to 701
environmental protection, or the environmental laws of another 702
country that indicates that the person lacks sufficient 703
reliability, expertise, and competence to operate the concentrated 704
animal feeding facility in substantial compliance with this 705
chapter and rules adopted under it. 706

Sec. 903.06. (A) As used in this section, "plan" means an 707
insect and rodent control plan prepared under this section. 708

(B) An owner or operator of a concentrated animal feeding 709
facility shall prepare and submit to the director of agriculture 710
in accordance with rules an insect and rodent control plan 711
designed to minimize the presence and negative effects of insects 712
and rodents at the concentrated animal feeding facility and in 713
surrounding areas, including land on which manure is stored or 714
applied. The plan shall conform to best management practices 715
established in rules. The director shall approve or deny the plan 716
within the time period established in rules by the director and 717
may require modification of the plan at that time or a later time 718
in accordance with rules. 719

(C) On and after the date that is established in rules by the 720
director, no person shall own or operate a concentrated animal 721
feeding facility unless an insect and rodent control plan for the 722

facility has been approved by the director. The owner or operator 723
of a concentrated animal feeding facility shall not violate the 724
facility's insect and rodent control plan. 725

(D) The director shall enforce an insect and rodent control 726
plan in accordance with rules and shall assess a civil penalty in 727
accordance with rules and section 903.16 of the Revised Code 728
against an owner or operator of a concentrated animal feeding 729
facility who owns or operates it without a plan approved by the 730
director or who violates the facility's plan. 731

Sec. 903.07. (A) On and after the date that is established in 732
rules by the director of agriculture, both of the following apply: 733
734

(1) The management and handling of manure at a major 735
concentrated animal feeding facility, including the land 736
application of manure or the removal of manure from a manure 737
storage or treatment facility, shall be conducted only by or under 738
the supervision of a person holding a livestock manager 739
certification issued under this section. A person managing or 740
handling manure who is acting under the instructions and control 741
of a person holding a livestock manager certification is 742
considered to be under the supervision of the certificate holder 743
if the certificate holder is responsible for the actions of the 744
person and is available when needed even though the certificate 745
holder is not physically present at the time of the manure 746
management or handling. 747

(2) No person shall transport and land apply annually or buy, 748
sell, or land apply annually the volume of manure established in 749
rules adopted by the director under division (E)(5) of section 750
903.10 of the Revised Code unless the person holds a livestock 751
manager certification issued under this section. 752

(B) The director shall issue a livestock manager 753

certification to a person who has submitted a complete application 754
for certification on a form prescribed and provided by the 755
director, together with the appropriate application fee, and who 756
has completed successfully the required training and has passed 757
the required examination. The director may suspend or revoke a 758
livestock manager certification and may reinstate a suspended or 759
revoked livestock manager certification in accordance with rules. 760

(C) Information required to be included in an application for 761
a livestock manager certification, the amount of the application 762
fee, ~~and~~ requirements regarding training and the examination, 763
requirements governing the management and handling of manure, 764
including the land application of manure, and requirements 765
governing the keeping of records regarding the handling of manure, 766
including the land application of manure, shall be established in 767
rules. 768

Sec. 903.08. (A)(1) The director of agriculture is authorized 769
to participate in the national pollutant discharge elimination 770
system in accordance with the Federal Water Pollution Control Act. 771
Not later than one hundred eighty days after March 15, 2001, the 772
director shall prepare a state program in accordance with 40 773
C.F.R. 123.21 for point sources that are subject to this section 774
and shall submit the program to the United States environmental 775
protection agency for approval. 776

(2) On and after the date on which the United States 777
environmental protection agency approves the state program 778
submitted under division (A)(1) of this section, the authority to 779
enforce terms and conditions of NPDES permits previously issued 780
under division (J) of section 6111.03 or under section 6111.035 of 781
the Revised Code for the discharging, transporting, or handling of 782
storm water from an animal feeding facility or of ~~manure~~ 783
pollutants from concentrated animal feeding operations is 784

transferred from the director of environmental protection to the 785
director of agriculture. Thereafter, the director of environmental 786
protection shall have no authority to enforce the terms and 787
conditions of those NPDES permits. After the transfer of authority 788
under division (A)(2) of this section, the NPDES permits 789
concerning which authority has been transferred shall be 790
considered to have been issued under this section. 791

(B)(1) On and after the date on which the United States 792
environmental protection agency approves the NPDES program 793
submitted by the director of agriculture under this section, no 794
person shall discharge ~~manure~~ pollutants from a ~~point source~~ 795
concentrated animal feeding operation into waters of the state 796
without first obtaining a NPDES permit issued by the director of 797
agriculture under this section. Any person that is required by the 798
Federal Water Pollution Control Act to obtain a permit for the 799
discharge of ~~manure~~ pollutants from a concentrated animal feeding 800
operation shall apply to the director for an individual NPDES 801
permit or for coverage under a general NPDES permit. The director 802
is authorized to issue, revoke, modify, or deny such an individual 803
permit or issue, revoke, or deny coverage under a general permit 804
in compliance with all requirements of the Federal Water Pollution 805
Control Act. Violation of division (B)(1) of this section is 806
hereby declared to be a public nuisance for purposes of state 807
enforcement of this section. 808

(2) Persons that have been issued a permit by the director of 809
environmental protection under division (J) of section 6111.03 of 810
the Revised Code for the discharge of ~~manure~~ pollutants from a 811
concentrated animal feeding operation into the waters of the state 812
prior to the date on which the United States environmental 813
protection agency approves the NPDES program submitted by the 814
director of agriculture under this section may continue to operate 815
under that permit until it expires or is modified or revoked. Such 816

a permit shall be enforced by the director of agriculture upon the 817
transfer of authority to enforce the terms and conditions of the 818
permit under division (A)(2) of this section. 819

(C)(1) On and after the date on which the United States 820
environmental protection agency approves the NPDES program 821
submitted by the director of agriculture under this section, no 822
person shall discharge storm water resulting from an animal 823
feeding facility without first obtaining a NPDES permit issued by 824
the director of agriculture in accordance with rules when such a 825
permit is required by the Federal Water Pollution Control Act. 826
Violation of division (C)(1) of this section is hereby declared to 827
be a public nuisance for purposes of state enforcement of this 828
section. 829

(2) Persons that have been issued a NPDES permit by the 830
director of environmental protection under Chapter 6111. of the 831
Revised Code for the discharge of storm water from an animal 832
feeding facility prior to the date on which the United States 833
environmental protection agency approves the NPDES program 834
submitted by the director of agriculture under this section may 835
continue to operate under that permit until it expires or is 836
modified or revoked. Such a permit shall be enforced by the 837
director of agriculture upon the transfer of authority to enforce 838
the terms and conditions of the permit under division (A)(2) of 839
this section. 840

(D) In accordance with rules, an applicant for a NPDES permit 841
issued under this section shall submit a fee in an amount 842
established by rule together with, except as otherwise provided in 843
division (F) of this section, an application for the permit to the 844
director of agriculture on a form prescribed by the director. The 845
application shall include any information required by rule. The 846
director or the director's authorized representative may help an 847
applicant for a NPDES permit during the application process by 848

providing guidance and technical assistance. 849

(E) The director of agriculture shall issue NPDES permits in 850
accordance with this section and section 903.09 of the Revised 851
Code. The director shall deny an application for a NPDES permit if 852
any of the following applies: 853

(1) The application contains misleading or false information. 854

(2) The administrator of the United States environmental 855
protection agency objects in writing to the issuance of the NPDES 856
permit in accordance with section 402(d) of the Federal Water 857
Pollution Control Act. 858

(3) The director determines that the proposed discharge or 859
source would conflict with an areawide waste treatment management 860
plan adopted in accordance with section 208 of the Federal Water 861
Pollution Control Act. 862

Additional grounds for the denial of a NPDES permit shall be 863
those established in this chapter and rules. 864

(F) To the extent consistent with the Federal Water Pollution 865
Control Act, the director of agriculture shall issue general NPDES 866
permits that will apply in lieu of individual NPDES permits for 867
categories of point sources for which the director determines that 868
all of the following apply: 869

(1) Any discharges authorized by a general permit will have 870
only minimal cumulative adverse effects on the environment when 871
the discharges are considered collectively and individually. 872

(2) The discharges are more appropriately authorized by a 873
general permit than by an individual permit. 874

(3) Each category of point sources satisfies the criteria 875
established in rules. 876

A person who is required to obtain a NPDES permit shall 877
submit to the director a notice of the person's intent to be 878

covered under an existing general permit or, at the person's 879
option, an application for an individual NPDES permit. Upon 880
receipt of a notice of intent for coverage under an existing 881
general permit, the director shall notify the applicant in writing 882
that the person is covered by the general permit if the person 883
satisfies the criteria established in rules for eligibility for 884
such coverage. If the person is ineligible for coverage under the 885
general permit, the director shall require the submission of an 886
application for an individual NPDES permit. 887

(G) The director of agriculture shall establish terms and 888
conditions of NPDES permits in accordance with rules. Terms and 889
conditions shall be designed to achieve and maintain full 890
compliance with national effluent limitations, national standards 891
of performance for new sources, the most current water quality 892
standards adopted under section 6111.041 of the Revised Code, the 893
most current antidegradation policy adopted under section 6111.12 894
of the Revised Code, and other requirements of the Federal Water 895
Pollution Control Act. In establishing the terms and conditions of 896
a NPDES permit, the director, to the extent consistent with that 897
act, shall consider technical feasibility and economic costs and 898
shall allow a reasonable period of time for coming into compliance 899
with the permit. 900

(H) An animal feeding facility that is required to obtain 901
both a NPDES permit and a permit to operate shall be issued a 902
single permit to operate incorporating the terms and conditions 903
established by both permits. The permit to operate expressly shall 904
designate the terms and conditions required under the NPDES 905
program as federally enforceable. All other provisions are 906
enforceable under state law only and expressly shall be designated 907
accordingly. 908

(I) A NPDES permit may be issued under this section for a 909
period not to exceed five years. 910

(J) A NPDES permit issued under this section may be renewed. 911
An application for renewal of a NPDES permit shall be submitted to 912
the director of agriculture at least one hundred eighty days prior 913
to the expiration date of the permit and shall comply with the 914
requirements governing applications for NPDES permits established 915
under this section and by rule. 916

(K)(1) No person shall make any false statement, 917
representation, or certification in an application for a NPDES 918
permit or in any form, notice, or report required to be submitted 919
to the director pursuant to terms and conditions established in a 920
NPDES permit issued under this section. 921

(2) No person shall render inaccurate any monitoring method 922
or device that is required under the terms and conditions of a 923
NPDES permit issued under this section. 924

(L) The director may modify, suspend, or revoke a NPDES 925
permit issued under this section for cause as established by rule. 926
No NPDES permit issued under this section shall be modified, 927
suspended, or revoked without a written order stating the findings 928
that led to the modification, suspension, or revocation. In 929
addition, the permittee has a right to an administrative hearing 930
in accordance with Chapter 119. of the Revised Code, except that 931
section 119.12 of the Revised Code does not apply. Further, an 932
order of the director modifying, suspending, or revoking a NPDES 933
permit may be appealed to the environmental review appeals 934
commission under sections 3745.04 to 3745.06 of the Revised Code. 935

(M)(1) No person shall violate any effluent limitation 936
established by rule. 937

(2) No person shall violate any other provision of a NPDES 938
permit issued under this section. 939

(3) Compliance with a NPDES permit issued under this section 940
constitutes compliance with this section. 941

(N) This section, including the state program authorized in 942
division (A)(1) of this section, shall be administered in a manner 943
consistent with the Federal Water Pollution Control Act. 944

Sec. 903.081. (A) For purposes of section 903.08 of the 945
Revised Code, no person shall ~~issue~~ approve all or portions of a 946
NPDES permit if the person receives or has received during the two 947
years prior to the receipt of an application for a NPDES permit a 948
significant portion of income from any NPDES permittee or any 949
applicant for a NPDES permit. In addition, no person ~~who, may~~ 950
serve on a board or commission that approves all or portions of a 951
NPDES permit, including taking such action pursuant to an appeal 952
of ~~an action regarding~~ a NPDES permit, ~~has the authority to~~ 953
~~require or to order the director of agriculture to vacate or~~ 954
~~modify a NPDES permit shall require or order the director to~~ 955
~~vacate or modify a NPDES permit~~ if the person receives or has 956
received during the two years prior to serving on the board or 957
commission or to the filing of the appeal a significant portion of 958
income from any NPDES permittee or any applicant for a NPDES 959
permit. 960

(B) As used in this section: 961

(1) "Significant portion of income" means ten per cent or 962
more of gross personal income in a calendar year or fifty per cent 963
or more of gross personal income in a calendar year if the 964
recipient of the income is more than sixty years of age and is 965
receiving that portion of income under retirement benefits, 966
including a pension or similar arrangement. 967

(2) "Income" includes retirement benefits, consultant fees, 968
and stock dividends. "Income" does not include mutual fund 969
payments or other diversified investments for which the recipient 970
does not know the identity of the primary sources of the income. 971

(3) "Permittee" and "applicant for a NPDES permit" does not 972

include any department or agency of the state. 973

Sec. 903.082. (A) The director of agriculture may determine 974
that an animal feeding facility that is not a ~~medium~~ concentrated 975
animal feeding ~~operation or small concentrated animal feeding~~ 976
~~operation as defined in section 903.01 of the Revised Code~~ 977
facility nevertheless shall be required to ~~be permitted as a~~ 978
~~medium or small concentrated animal feeding operation~~ apply for 979
and receive a permit to operate when all of the following apply: 980

(1) The director has received from the chief of the division 981
of soil and water resources in the department of natural resources 982
a copy of an order issued under section 1511.02 of the Revised 983
Code that specifies that the animal feeding facility has caused 984
agricultural pollution by failure to comply with standards 985
established under that section and that the animal feeding 986
facility therefore should be required to be permitted as a ~~medium~~ 987
~~or small concentrated animal feeding operation~~ facility. 988

(2) The director or the director's authorized representative 989
has inspected the animal feeding facility. 990

(3) The director or the director's authorized representative 991
finds that the facility is not being operated in a manner that 992
protects the waters of the state. 993

(B) ~~If an animal feeding facility is required to be permitted~~ 994
~~in accordance with this section, the owner or operator of the~~ 995
~~facility shall apply to the director for a permit to operate as a~~ 996
~~concentrated animal feeding operation.~~ In a situation in which 997
best management practices cannot be implemented without modifying 998
the existing animal feeding facility, the owner or operator of the 999
facility ~~also~~ shall apply for a permit to install for the 1000
facility. 1001

(C) In the case of an animal feeding facility for which a 1002

permit to operate is required under this section, a permit to 1003
operate shall not be required after the end of the five-year term 1004
of the permit if the problems that caused the facility to be 1005
required to obtain the permit have been corrected to the 1006
director's satisfaction. 1007

Sec. 903.09. (A) Prior to issuing or modifying a permit to 1008
install, permit to operate, or NPDES permit, the director of 1009
agriculture shall issue a draft permit. The director or the 1010
director's representative shall mail notice of the issuance of a 1011
draft permit to the applicant and shall publish the notice once in 1012
a newspaper of general circulation in the county in which the 1013
concentrated animal feeding facility or discharger is located or 1014
proposed to be located. The director shall mail notice of the 1015
issuance of a draft permit and a copy of the draft permit to the 1016
board of county commissioners of the county and the board of 1017
township trustees of the township in which the concentrated animal 1018
feeding facility or discharger is located or proposed to be 1019
located. The director or the director's representative also shall 1020
provide notice of the issuance of a draft NPDES permit to any 1021
other persons that are entitled to notice under the Federal Water 1022
Pollution Control Act. Notice of the issuance of a draft permit to 1023
install, permit to operate, or NPDES permit shall include the 1024
address where written comments concerning the draft permit may be 1025
submitted and the period of time during which comments will be 1026
accepted as established by rule. 1027

If the director receives written comments in an amount that 1028
demonstrates significant public interest, as defined by rule, in 1029
the draft permit, the director shall schedule one public meeting 1030
to provide information to the public and to hear comments 1031
pertinent to the draft permit. The notice of the public meeting 1032
shall be provided in the same manner as the notice of the issuance 1033
of the draft permit. 1034

(B) If a person is required to obtain both a permit to 1035
install and a permit to operate, including any permit to operate 1036
with NPDES provisions, and public meetings are required for both 1037
permits, the public meetings for the permits shall be combined. 1038

(C) The director shall apply the antidegradation policy 1039
adopted under section 6111.12 of the Revised Code to permits 1040
issued under this chapter to the same degree and under the same 1041
circumstances as it applies to permits issued under Chapter 6111. 1042
of the Revised Code. The director shall hold one public meeting to 1043
consider antidegradation issues when such a meeting is required by 1044
the antidegradation policy. When allowed by the antidegradation 1045
policy, the director shall hold the public meeting on 1046
antidegradation issues concurrently with any public meeting held 1047
for the draft permit. 1048

(D) The director or the director's representative shall 1049
publish notice of the issuance of a final permit to install, 1050
permit to operate, or NPDES permit once in a newspaper of general 1051
circulation in the county in which the concentrated animal feeding 1052
facility or discharger is located. 1053

~~(E) Failure of the director to provide notice or a public 1054
meeting shall invalidate a permit only if the failure is raised 1055
by, and was relied upon to the detriment of, a person that is 1056
entitled to appeal the permit. Notice or a public meeting is not 1057
required for the modification of a permit made with the consent of 1058
the permittee for the correction of typographical errors. 1059~~

(F) The denial, modification, suspension, or revocation of a 1060
permit to install, permit to operate, or NPDES permit without the 1061
consent of the applicant or permittee shall be preceded by a 1062
proposed action stating the director's intention to issue an order 1063
with respect to the permit and the reasons for it. 1064

The director shall mail to the applicant or the permittee 1065

notice of the director's proposed action to deny, modify, suspend, 1066
or revoke a permit to install, permit to operate, or NPDES permit. 1067
The director shall publish the notice once in a newspaper of 1068
general circulation in the county in which the concentrated animal 1069
feeding facility or concentrated animal feeding operation is 1070
located or proposed to be located. The director shall mail a copy 1071
of the notice of the proposed action to the board of county 1072
commissioners of the county and to the board of township trustees 1073
of the township in which the concentrated animal feeding facility 1074
or concentrated animal feeding operation is located or proposed to 1075
be located. The director also shall provide notice of the 1076
director's proposed action to deny, modify, suspend, or revoke a 1077
permit to install, permit to operate, or NPDES permit to any other 1078
person that is entitled to notice under the Federal Water 1079
Pollution Control Act. The notice of the director's proposed 1080
action to deny, modify, suspend, or revoke a permit to install, 1081
permit to operate, or NPDES permit shall include the address where 1082
written comments concerning the director's proposed action may be 1083
submitted and the period of time during which comments will be 1084
accepted as established by rule. If the director receives written 1085
comments in an amount that demonstrates significant public 1086
interest, as defined by rule, the director shall schedule one 1087
public meeting to provide information to the public and to hear 1088
comments pertinent to the proposed action. The notice of the 1089
public meeting shall be provided in the same manner as the notice 1090
of the director's proposed action. 1091

The director shall not issue an order that makes the proposed 1092
action final until the applicant or permittee has had an 1093
opportunity for an adjudication hearing in accordance with Chapter 1094
119. of the Revised Code, except that section 119.12 of the 1095
Revised Code does not apply. An order of the director that 1096
finalizes the proposed action or an order issuing a permit without 1097
a prior proposed action may be appealed to the environmental 1098

review appeals commission under sections 3745.04 to 3745.06 of the Revised Code. 1099
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(G)(1) The director shall 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 one hundred eighty days after receiving the application. 1101
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(2) 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 shall issue or propose to deny the permit not later than ninety days after receiving the application. If the director has proposed to deny the permit to install or permit to operate under division (G)(2) of this section, the director shall issue an order denying the permit or, if the director decides against the proposed denial, issuing the permit not later than one hundred eighty days after receiving the application. If the director denies the permit, the director shall notify the applicant in writing of the reason for the denial. 1106
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(H) All rulemaking and the issuance of civil penalties under this chapter shall comply with Chapter 119. of the Revised Code. 1117
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(I) Upon the transfer of ownership of an animal feeding facility 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 shall be transferred to the new owner of the animal feeding facility except as provided in division (C) of section 903.05 of the Revised Code. 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 shall be transferred in accordance with rules. 1119
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(J) Applications for installation permits for animal feeding 1129

facilities pending before the director of environmental protection 1130
on the date on which the director of agriculture has finalized the 1131
programs required under division (A)(1) of section 903.02 and 1132
division (A)(1) of section 903.03 of the Revised Code shall be 1133
transferred to the director of agriculture. In the case of an 1134
applicant who is required to obtain a permit to install and a 1135
permit to operate under sections 903.02 and 903.03, respectively, 1136
of the Revised Code, the director of agriculture shall process the 1137
pending application for an installation permit as an application 1138
for a permit to install and a permit to operate. 1139

(K) Applications for NPDES permits for either of the 1140
following that are pending before the director of environmental 1141
protection on the date on which the United States environmental 1142
protection agency approves the NPDES program submitted by the 1143
director of agriculture under section 903.08 of the Revised Code 1144
shall be transferred to the director of agriculture: 1145

(1) The discharge of ~~manure~~ pollutants from a concentrated 1146
animal feeding operation; 1147

(2) The discharge of storm water resulting from an animal 1148
feeding facility. ~~In~~ 1149

In the case of an applicant who is required to obtain a NPDES 1150
permit under section 903.08 of the Revised Code, the director of 1151
agriculture shall process the pending application as an 1152
application for a NPDES permit under that section. 1153

Sec. 903.10. The director of agriculture ~~shall~~ may adopt 1154
rules in accordance with Chapter 119. of the Revised Code that do 1155
all of the following: 1156

(A) Establish all of the following concerning permits to 1157
install and permits to operate: 1158

(1) A description of what constitutes a modification of a 1159

concentrated animal feeding facility;	1160
(2) <u>A description of what constitutes a major operational</u>	1161
<u>change at a concentrated animal feeding facility;</u>	1162
(3) The amount of the fee that must be submitted with each	1163
permit application and each application for a permit modification;	1164
(3) (4) Information that must be included in the designs and	1165
plans required to be submitted with an application for a permit to	1166
install and criteria for approving, disapproving, or requiring	1167
modification of the designs and plans;	1168
(4) (5) Information that must be included in a manure	1169
management plan required to be submitted with an application for a	1170
permit to operate;	1171
(5) (6) Information that must be included in an application	1172
for the modification of an installation permit, a permit to	1173
install, or a permit to operate;	1174
(6) (7) <u>Information that must be included in an application</u>	1175
<u>for approval of a major operational change at a concentrated</u>	1176
<u>animal feeding facility;</u>	1177
(8) Any additional information that must be included with a	1178
permit application;	1179
(7) (9) Procedures for the issuance, denial, modification,	1180
transfer, suspension, and revocation of permits to install and	1181
permits to operate, including general permits;	1182
(8) (10) <u>Procedures for the approval or denial of an</u>	1183
<u>application for approval of a major operational change at a</u>	1184
<u>concentrated animal feeding facility;</u>	1185
(11) Grounds for the denial, modification, suspension, or	1186
revocation of permits to install and permits to operate in	1187
addition to the grounds established in division (D) of section	1188
903.02 and division (D) of section 903.03 of the Revised Code;	1189

(9) (12) <u>Grounds for the denial of an application for approval of a major operational change at a concentrated animal feeding facility;</u>	1190
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(13) 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;	1193
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(10) (14) A definition of "general permit to operate" that establishes categories of concentrated animal feeding facilities to be covered under such a permit and a definition of "individual permit to operate" together with the criteria for issuing a general permit to operate and the criteria for determining a person's eligibility to operate under a general permit to operate.	1196
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(B) Establish all of the following for the purposes of review compliance certificates issued under section 903.04 of the Revised Code:	1202
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(1) The form of a certificate;	1205
(2) Criteria for what constitutes a significant capital expenditure under division (D) of that section;	1206
	1207
(3) Deadlines and procedures for submitting information under division (E)(2) of that section.	1208
	1209
(C) Establish best management practices that minimize water pollution, odors, insects, and rodents, that govern the land application of manure that originated at a concentrated animal feeding facility, and that govern all of the following activities that occur at a concentrated animal feeding facility:	1210
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(1) Manure management, including the storage, handling, transportation, and land application of manure. Rules adopted under division (C)(1) of this section shall include practices that prevent surface and ground water contamination caused by the storage of manure or the land application of manure and prevent	1215
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the contamination of water in drainage tiles that may be caused by	1220
that application.	1221
(2) Disposal of dead livestock;	1222
(3) Any other activity that the director considers	1223
appropriate.	1224
Best management practices established in rules adopted under	1225
division (C) of this section shall not conflict with best	1226
management practices established in rules that have been adopted	1227
under any other section of the Revised Code and that are in effect	1228
on March 15, 2001. The rules adopted under division (C) of this	1229
section shall establish guidelines that require owners or	1230
operators of concentrated animal feeding facilities to consult	1231
with and work with local officials, including boards of county	1232
commissioners and boards of township trustees, in addressing	1233
issues related to local government infrastructure needs and the	1234
financing of that infrastructure.	1235
(D) Establish all of the following concerning insect and	1236
rodent control plans required under section 903.06 of the Revised	1237
Code:	1238
(1) The information to be included in an insect and rodent	1239
control plan;	1240
(2) Criteria for approving, disapproving, or requiring	1241
modification of an insect and rodent control plan;	1242
(3) Criteria for determining compliance with or violation of	1243
an insect and rodent control plan;	1244
(4) Procedures and standards for monitoring insect and rodent	1245
control plans;	1246
(5) Procedures and standards for enforcing insect and rodent	1247
control plans at concentrated animal feeding facilities at which	1248
insects or rodents constitute a nuisance or adversely affect	1249

public health;	1250
(6) The amount of civil penalties for violation of an insect	1251
and rodent control plan assessed by the director of agriculture	1252
under division (B) of section 903.16 of the Revised Code, provided	1253
that the rules adopted under division (D)(6) of this section shall	1254
not establish a civil penalty of more than ten thousand dollars	1255
for a violation involving a concentrated animal feeding facility	1256
that is not a major concentrated animal feeding facility and shall	1257
not establish a civil penalty of more than twenty-five thousand	1258
dollars for a violation involving a major concentrated animal	1259
feeding facility;	1260
(7) The time period within which the director must approve or	1261
deny an insect and rodent control plan after receiving it;	1262
(8) Any other provisions necessary to administer and enforce	1263
section 903.12 of the Revised Code.	1264
(E) Establish all of the following concerning livestock	1265
manager certification <u>certifications</u> required under section 903.07	1266
of the Revised Code:	1267
(1) The information to be included in an application for a	1268
livestock manager certification and the amount of the application	1269
fee;	1270
(2) The content of the training required to be completed and	1271
of the examination required to be passed by an applicant for a	1272
livestock manager certification. The training shall include and	1273
the examination shall test the applicant's knowledge of	1274
information on topics that include calculating nutrient values in	1275
manure, devising and implementing a plan for the land application	1276
of manure, removing manure held in a manure storage or treatment	1277
facility, and following best management practices established in	1278
rules for disposal of dead animals and manure management,	1279
including practices that control odor and protect the environment.	1280

The director may specify other types of recognized training programs that, if completed, are considered to satisfy the training and examination requirement.	1281 1282 1283
(3) Criteria and procedures for the issuance, denial, suspension, revocation, or reinstatement of a livestock manager certification;	1284 1285 1286
(4) The length of time during which livestock manager certifications will be valid and procedures for their renewal;	1287 1288
(5) The volume of manure that must be transported and land applied annually or the volume of manure that must be bought, sold, or land applied annually by a person in order for the person to be required to obtain a livestock manager certification under division (A)(2) of section 903.07 of the Revised Code;	1289 1290 1291 1292 1293
(6) <u>Requirements governing the management and handling of manure, including the land application of manure;</u>	1294 1295
(7) <u>Requirements governing the keeping of records regarding the handling of manure, including the land application of manure;</u>	1296 1297
(8) Any other provisions necessary to administer and enforce section 903.07 of the Revised Code.	1298 1299
(F) Establish all of the following concerning NPDES permits:	1300
(1) The designation of concentrated animal feeding operations that are subject to NPDES permit requirements under section 903.08 of the Revised Code. This designation shall include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.;	1301 1302 1303 1304 1305
(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;	1306 1307
(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;	1308 1309 1310

(4) Terms and conditions to be included in a permit,	1311
including, as applicable, best management practices; installation	1312
of discharge or water quality monitoring methods or equipment;	1313
creation and retention of records; submission of periodic reports;	1314
schedules of compliance; net volume, net weight, and, where	1315
necessary, concentration and mass loading limits of manure that	1316
may be discharged into waters of the state; and authorized	1317
duration and frequency of any discharges into waters of the state;	1318
(5) Procedures for the submission of applications for permits	1319
and notices of intent to be covered by general permits, including	1320
information that must be included in the applications and notices;	1321
(6) The amount of the fee that must be submitted with an	1322
application for a permit;	1323
(7) Procedures for processing permit applications, including	1324
public notice and participation requirements;	1325
(8) Procedures for notifying the United States environmental	1326
protection agency of the submission of permit applications, the	1327
director's action on those applications, and any other reasonable	1328
and relevant information;	1329
(9) Procedures for notifying and receiving and responding to	1330
recommendations from other states whose waters may be affected by	1331
the issuance of a permit;	1332
(10) Procedures for the transfer of permits to new owners or	1333
operators;	1334
(11) Grounds and procedures for the issuance, denial,	1335
modification, suspension, or revocation of permits, including	1336
general permits;	1337
(12) A definition of "general NPDES permit" that establishes	1338
categories of point sources to be covered under such a permit and	1339
a definition of "individual NPDES permit" together with the	1340

criteria for issuing a general NPDES permit and the criteria for 1341
determining a person's eligibility to discharge under a general 1342
NPDES permit. 1343

The rules adopted under division (F) of this section shall be 1344
consistent with the requirements of the Federal Water Pollution 1345
Control Act. 1346

(G) Establish public notice and participation requirements, 1347
in addition to the procedures established in rules adopted under 1348
division (F)(7) of this section, for the issuance, denial, 1349
modification, transfer, suspension, and revocation of permits to 1350
install, permits to operate, and NPDES permits consistent with 1351
section 903.09 of the Revised Code, including a definition of what 1352
constitutes significant public interest for the purposes of 1353
divisions (A) and (F) of section 903.09 of the Revised Code and 1354
procedures for public meetings. The rules shall require that 1355
information that is presented at such a public meeting be limited 1356
to the criteria that are applicable to the permit application that 1357
is the subject of the public meeting. 1358

(H) Establish the amount of civil penalties assessed by the 1359
director of agriculture under division (B) of section 903.16 of 1360
the Revised Code for violation of the terms and conditions of a 1361
permit to install, permit to operate, or review compliance 1362
certificate, provided that the rules adopted under this division 1363
shall not establish a civil penalty of more than ten thousand 1364
dollars per day for each violation; 1365

(I) Establish procedures for the protection of trade secrets 1366
from public disclosure. The procedures shall authorize the release 1367
of trade secrets to officers, employees, or authorized 1368
representatives of the state, another state, or the United States 1369
when necessary for an enforcement action brought under this 1370
chapter or when otherwise required by the Federal Water Pollution 1371
Control Act. The rules shall require at least ten days' written 1372

notice to the person to whom a trade secret applies prior to the 1373
release of the trade secret. Rules adopted under this division do 1374
not apply to any information that is contained in applications, 1375
including attachments, for NPDES permits and that is required to 1376
be submitted under section 903.08 of the Revised Code or rules 1377
adopted under division (F) of this section. 1378

(J) Establish any other provisions necessary to administer 1379
and enforce this chapter. 1380

Sec. 903.15. (A) A person ~~who is aggrieved or adversely~~ 1381
~~affected by an alleged nuisance related to a concentrated animal~~ 1382
~~feeding facility~~ may submit a complaint to the director of 1383
agriculture ~~alleging that the nuisance exists~~ regarding a 1384
concentrated animal feeding facility or the discharge of a 1385
pollutant from an animal feeding operation. The complaint may be 1386
made orally or in writing. If the complaint is made in writing, it 1387
shall be signed by the person making it and dated. 1388

(B) After receiving a written, signed, and dated complaint, 1389
the director shall, or after receiving an oral complaint the 1390
director may, cause an investigation to be conducted to determine 1391
if the owner or operator of the concentrated animal feeding 1392
facility is complying with ~~a~~ this chapter, rules adopted under it, 1393
or any terms and conditions of any permit or review compliance 1394
certificate issued under it or to determine if a discharge of a 1395
pollutant is occurring or has occurred at the animal feeding 1396
operation. 1397

(C)(1) If, upon completion of the investigation, the director 1398
determines that the owner or operator is in compliance with ~~a~~ this 1399
chapter, rules adopted under it, or any terms and conditions of 1400
any permit or review compliance certificate issued under it or 1401
determines that a discharge of a pollutant is not occurring or has 1402
not occurred at the animal feeding operation, the director shall 1403

dismiss the complaint and notify the complainant and the owner or operator of the concentrated animal feeding facility or animal feeding operation, whichever is applicable, of the dismissal.

(2) If the director determines that the owner or operator is not in compliance with ~~a permit or review compliance certificate this chapter, rules adopted under it, or any terms and conditions of any permit issued under it or determines that a discharge of a pollutant is occurring or has occurred at the animal feeding operation,~~ the director shall proceed in accordance with section 903.16 or 903.17 of the Revised Code, or both, as applicable.

Sec. 903.16. (A) The director of agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a concentrated animal feeding facility if the director or the director's authorized representative determines that the owner or operator is not in compliance with section 903.02, 903.03, or 903.04 or division (A) of section 903.07 of the Revised Code, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the concentrated animal feeding facility, including the requirements established under division (C) of section 903.06 ~~or division (A) of section 903.07~~ of the Revised Code, or rules adopted under division (A), (B), (C), (D), (E), or (J) of section 903.10 of the Revised Code. 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 the director's duly authorized

representative has inspected the concentrated animal feeding 1435
facility, determined that the owner or operator is still not in 1436
compliance, and issued a notice of an adjudication hearing. 1437

(3) The director affords the owner or operator an opportunity 1438
for an adjudication hearing under Chapter 119. of the Revised Code 1439
to challenge the director's determination that the owner or 1440
operator is not in compliance or the imposition of the civil 1441
penalty, or both. However, the owner or operator may waive the 1442
right to an adjudication hearing. 1443

(B) If the opportunity for an adjudication hearing is waived 1444
or if, after an adjudication hearing, the director determines that 1445
a violation has occurred or is occurring, the director may issue 1446
an order requiring compliance and assess the civil penalty. The 1447
order and the assessment of the civil penalty may be appealed in 1448
accordance with section 119.12 of the Revised Code. 1449

Civil penalties shall be assessed under this division as 1450
follows: 1451

(1) A person who has violated section 903.02, 903.03, or 1452
903.04 of the Revised Code, the terms and conditions of a permit 1453
to install, permit to operate, or review compliance certificate, 1454
or rules adopted under division (A), (B), (C), (D), (E), or (J) of 1455
section 903.10 of the Revised Code shall pay a civil penalty in an 1456
amount established in rules unless the violation is of the 1457
requirements established under division (C) of section 903.06 or 1458
division (A) of section 903.07 of the Revised Code. 1459

(2) A person who has violated the requirements established 1460
under division (C) of section 903.06 of the Revised Code shall pay 1461
a civil penalty in an amount established in rules for each 1462
violation. Each seven-day period during which a violation 1463
continues constitutes a separate violation. 1464

(3) A person who has violated the requirements established 1465

under division (A) of section 903.07 of the Revised Code shall pay 1466
a civil penalty of not more than ten thousand dollars for each 1467
violation. Each thirty-day period during which a violation 1468
continues constitutes a separate violation. 1469

(C) The attorney general, upon the written request of the 1470
director, shall bring an action for an injunction in any court of 1471
competent jurisdiction against any person violating or threatening 1472
to violate section 903.02, 903.03, or 903.04 or division (A) of 1473
section 903.07 of the Revised Code; the terms and conditions of a 1474
permit to install, permit to operate, or review compliance 1475
certificate, including the requirements established under division 1476
(C) of section 903.06 ~~or division (A) of section 903.07~~ of the 1477
Revised Code; rules adopted under division (A), (B), (C), (D), 1478
(E), or (J) of section 903.10 of the Revised Code; or an order 1479
issued under division (B) of this section or division (B) of 1480
section 903.07 of the Revised Code. 1481

(D)(1) In lieu of seeking civil penalties under division (A) 1482
of this section, the director may request the attorney general, in 1483
writing, to bring an action for a civil penalty in a court of 1484
competent jurisdiction against any person that has violated or is 1485
violating division (A) of section 903.07 of the Revised Code or 1486
the terms and conditions of a permit to install, permit to 1487
operate, or review compliance certificate, including the 1488
requirements established under division (C) of section 903.06 ~~or~~ 1489
~~division (A) of section 903.07~~ of the Revised Code. 1490

(2) The director may request the attorney general, in 1491
writing, to bring an action for a civil penalty in a court of 1492
competent jurisdiction against any person that has violated or is 1493
violating section 903.02, 903.03, or 903.04 of the Revised Code, 1494
rules adopted under division (A), (B), (C), (D), (E), or (J) of 1495
section 903.10 of the Revised Code, or an order issued under 1496
division (B) of this section or division (B) of section 903.07 of 1497

the Revised Code. 1498

(3) A person who has committed a violation for which the 1499
attorney general may bring an action for a civil penalty under 1500
division (D)(1) or (2) of this section shall pay a civil penalty 1501
of not more than ten thousand dollars per violation. Each day that 1502
a violation continues constitutes a separate violation. 1503

(E) In addition to any other penalties imposed under this 1504
section, the director may impose an administrative penalty against 1505
an owner or operator of a concentrated animal feeding facility if 1506
the director or the director's authorized representative 1507
determines that the owner or operator is not in compliance with 1508
best management practices that are established in rules adopted 1509
under division (C) or (D) of section 903.10 of the Revised Code or 1510
in the permit to install, permit to operate, or review compliance 1511
certificate issued for the facility. The administrative penalty 1512
shall not exceed five thousand dollars. 1513

The director shall afford the owner or operator an 1514
opportunity for an adjudication hearing under Chapter 119. of the 1515
Revised Code to challenge the director's determination under this 1516
division, the director's imposition of an administrative penalty 1517
under this division, or both. The director's determination and the 1518
imposition of the administrative penalty may be appealed in 1519
accordance with section 119.12 of the Revised Code. 1520

Sec. 903.17. (A) The director of agriculture may propose to 1521
require corrective actions and assess a civil penalty against an 1522
owner or operator of ~~a point source~~ an animal feeding operation if 1523
the director or the director's authorized representative 1524
determines that the owner or operator is not in compliance with 1525
section 903.08 of the Revised Code, the terms and conditions of a 1526
NPDES permit, the NPDES provisions of a permit to operate, or 1527
rules adopted under division (F) of section 903.10 of the Revised 1528

Code. However, the director may impose a civil penalty only if all 1529
of the following occur: 1530

(1) The owner or operator is notified in writing of the 1531
deficiencies resulting in noncompliance, the actions that the 1532
owner or operator must take to correct the deficiencies, and the 1533
time period within which the owner or operator must correct the 1534
deficiencies and attain compliance. 1535

(2) After the time period specified in the notice has 1536
elapsed, the director or the director's duly authorized 1537
representative has inspected the ~~point source~~ animal feeding 1538
operation, determined that the owner or operator is still not in 1539
compliance, and issued a notice of violation to require corrective 1540
actions. 1541

(3) The director affords the owner or operator an opportunity 1542
for an adjudication hearing under Chapter 119. of the Revised Code 1543
to challenge the director's determination that the owner or 1544
operator is not in compliance or the imposition of the civil 1545
penalty, or both. However, the owner or operator may waive the 1546
right to an adjudication hearing. 1547

(B) If the opportunity for an adjudication hearing is waived 1548
or if, after an adjudication hearing, the director determines that 1549
a violation has occurred or is occurring, the director may issue 1550
an order and assess a civil penalty of not more than ten thousand 1551
dollars per violation against the violator. For purposes of 1552
determining the civil penalty, each day that a violation continues 1553
constitutes a separate and distinct violation. The order and the 1554
assessment of the civil penalty may be appealed in accordance with 1555
section 119.12 of the Revised Code. 1556

(C) To the extent consistent with the Federal Water Pollution 1557
Control Act, the director shall consider technical feasibility and 1558
economic costs in issuing orders under this section. 1559

(D)(1) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section.

(2) In lieu of seeking civil penalties under division (A) of this section, the director may request, in writing, the attorney general to bring an action for a civil penalty of not more than ten thousand dollars per violation in a court of competent jurisdiction against any person that has violated or is violating section 903.08 of the Revised Code, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, rules adopted under division (F) of section 903.10 of the Revised Code, or an order issued under division (B) of this section. For purposes of determining the civil penalty to be assessed under division (B) of this section, each day that a violation continues constitutes a separate and distinct violation.

(E) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against an owner or operator of an animal feeding operation if the director or the director's authorized representative determines that the owner or operator has discharged pollutants into waters of the state in violation of section 903.08 of the Revised Code or the terms and conditions of a NPDES permit or the NPDES provisions of the permit to operate issued for the operation. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination under this

division, the director's imposition of an administrative penalty 1592
under this division, or both. The director's determination and the 1593
imposition of the administrative penalty may be appealed in 1594
accordance with section 119.12 of the Revised Code. 1595

Sec. 6111.03. The director of environmental protection may do 1596
any of the following: 1597

(A) Develop plans and programs for the prevention, control, 1598
and abatement of new or existing pollution of the waters of the 1599
state; 1600

(B) Advise, consult, and cooperate with other agencies of the 1601
state, the federal government, other states, and interstate 1602
agencies and with affected groups, political subdivisions, and 1603
industries in furtherance of the purposes of this chapter. Before 1604
adopting, amending, or rescinding a standard or rule pursuant to 1605
division (G) of this section or section 6111.041 or 6111.042 of 1606
the Revised Code, the director shall do all of the following: 1607

(1) Mail notice to each statewide organization that the 1608
director determines represents persons who would be affected by 1609
the proposed standard or rule, amendment thereto, or rescission 1610
thereof at least thirty-five days before any public hearing 1611
thereon; 1612

(2) Mail a copy of each proposed standard or rule, amendment 1613
thereto, or rescission thereof to any person who requests a copy, 1614
within five days after receipt of the request therefor; 1615

(3) Consult with appropriate state and local government 1616
agencies or their representatives, including statewide 1617
organizations of local government officials, industrial 1618
representatives, and other interested persons. 1619

Although the director is expected to discharge these duties 1620
diligently, failure to mail any such notice or copy or to so 1621

consult with any person shall not invalidate any proceeding or 1622
action of the director. 1623

(C) Administer grants from the federal government and from 1624
other sources, public or private, for carrying out any of its 1625
functions, all such moneys to be deposited in the state treasury 1626
and kept by the treasurer of state in a separate fund subject to 1627
the lawful orders of the director; 1628

(D) Administer state grants for the construction of sewage 1629
and waste collection and treatment works; 1630

(E) Encourage, participate in, or conduct studies, 1631
investigations, research, and demonstrations relating to water 1632
pollution, and the causes, prevention, control, and abatement 1633
thereof, that are advisable and necessary for the discharge of the 1634
director's duties under this chapter; 1635

(F) Collect and disseminate information relating to water 1636
pollution and prevention, control, and abatement thereof; 1637

(G) Adopt, amend, and rescind rules in accordance with 1638
Chapter 119. of the Revised Code governing the procedure for 1639
hearings, the filing of reports, the issuance of permits, the 1640
issuance of industrial water pollution control certificates, and 1641
all other matters relating to procedure; 1642

(H) Issue, modify, or revoke orders to prevent, control, or 1643
abate water pollution by such means as the following: 1644

(1) Prohibiting or abating discharges of sewage, industrial 1645
waste, or other wastes into the waters of the state; 1646

(2) Requiring the construction of new disposal systems or any 1647
parts thereof, or the modification, extension, or alteration of 1648
existing disposal systems or any parts thereof; 1649

(3) Prohibiting additional connections to or extensions of a 1650
sewerage system when the connections or extensions would result in 1651

an increase in the polluting properties of the effluent from the 1652
system when discharged into any waters of the state; 1653

(4) Requiring compliance with any standard or rule adopted 1654
under sections 6111.01 to 6111.05 of the Revised Code or term or 1655
condition of a permit. 1656

In the making of those orders, wherever compliance with a 1657
rule adopted under section 6111.042 of the Revised Code is not 1658
involved, consistent with the Federal Water Pollution Control Act, 1659
the director shall give consideration to, and base the 1660
determination on, evidence relating to the technical feasibility 1661
and economic reasonableness of complying with those orders and to 1662
evidence relating to conditions calculated to result from 1663
compliance with those orders, and their relation to benefits to 1664
the people of the state to be derived from such compliance in 1665
accomplishing the purposes of this chapter. 1666

(I) Review plans, specifications, or other data relative to 1667
disposal systems or any part thereof in connection with the 1668
issuance of orders, permits, and industrial water pollution 1669
control certificates under this chapter; 1670

(J)(1) Issue, revoke, modify, or deny sludge management 1671
permits and permits for the discharge of sewage, industrial waste, 1672
or other wastes into the waters of the state, and for the 1673
installation or modification of disposal systems or any parts 1674
thereof in compliance with all requirements of the Federal Water 1675
Pollution Control Act and mandatory regulations adopted 1676
thereunder, including regulations adopted under section 405 of the 1677
Federal Water Pollution Control Act, and set terms and conditions 1678
of permits, including schedules of compliance, where necessary. 1679
Any person who discharges, transports, or handles storm water from 1680
an animal feeding facility, as defined in section 903.01 of the 1681
Revised Code, or manure pollutants from a concentrated animal 1682
feeding operation, as both terms are defined in that section, is 1683

not required to obtain a permit under division (J)(1) of this 1684
section for the installation or modification of a disposal system 1685
involving ~~manure~~ pollutants or storm water or any parts of such a 1686
system on and after the date on which the director of agriculture 1687
has finalized the program required under division (A)(1) of 1688
section 903.02 of the Revised Code. In addition, any person who 1689
discharges, transports, or handles storm water from an animal 1690
feeding facility, as defined in section 903.01 of the ~~revised code~~ 1691
Revised Code, or ~~manure~~ pollutants from a concentrated animal 1692
feeding operation, as both terms are defined in that section, is 1693
not required to obtain a permit under division (J)(1) of this 1694
section for the discharge of storm water from an animal feeding 1695
facility or ~~manure~~ pollutants from a concentrated animal feeding 1696
operation on and after the date on which the United States 1697
environmental protection agency approves the NPDES program 1698
submitted by the director of agriculture under section 903.08 of 1699
the Revised Code. 1700

Any permit terms and conditions set by the director shall be 1701
designed to achieve and maintain full compliance with the national 1702
effluent limitations, national standards of performance for new 1703
sources, and national toxic and pretreatment effluent standards 1704
set under that act, and any other mandatory requirements of that 1705
act that are imposed by regulation of the administrator of the 1706
United States environmental protection agency. If an applicant for 1707
a sludge management permit also applies for a related permit for 1708
the discharge of sewage, industrial waste, or other wastes into 1709
the waters of the state, the director may combine the two permits 1710
and issue one permit to the applicant. 1711

A sludge management permit is not required for an entity that 1712
treats or transports sewage sludge or for a sanitary landfill when 1713
all of the following apply: 1714

(a) The entity or sanitary landfill does not generate the 1715

sewage sludge. 1716

(b) Prior to receipt at the sanitary landfill, the entity has 1717
ensured that the sewage sludge meets the requirements established 1718
in rules adopted by the director under section 3734.02 of the 1719
Revised Code concerning disposal of municipal solid waste in a 1720
sanitary landfill. 1721

(c) Disposal of the sewage sludge occurs at a sanitary 1722
landfill that complies with rules adopted by the director under 1723
section 3734.02 of the Revised Code. 1724

As used in division (J)(1) of this section, "sanitary 1725
landfill" means a sanitary landfill facility, as defined in rules 1726
adopted under section 3734.02 of the Revised Code, that is 1727
licensed as a solid waste facility under section 3734.05 of the 1728
Revised Code. 1729

(2) An application for a permit or renewal thereof shall be 1730
denied if any of the following applies: 1731

(a) The secretary of the army determines in writing that 1732
anchorage or navigation would be substantially impaired thereby; 1733

(b) The director determines that the proposed discharge or 1734
source would conflict with an areawide waste treatment management 1735
plan adopted in accordance with section 208 of the Federal Water 1736
Pollution Control Act; 1737

(c) The administrator of the United States environmental 1738
protection agency objects in writing to the issuance or renewal of 1739
the permit in accordance with section 402 (d) of the Federal Water 1740
Pollution Control Act; 1741

(d) The application is for the discharge of any radiological, 1742
chemical, or biological warfare agent or high-level radioactive 1743
waste into the waters of the United States. 1744

(3) To achieve and maintain applicable standards of quality 1745

for the waters of the state adopted pursuant to section 6111.041 1746
of the Revised Code, the director shall impose, where necessary 1747
and appropriate, as conditions of each permit, water quality 1748
related effluent limitations in accordance with sections 301, 302, 1749
306, 307, and 405 of the Federal Water Pollution Control Act and, 1750
to the extent consistent with that act, shall give consideration 1751
to, and base the determination on, evidence relating to the 1752
technical feasibility and economic reasonableness of removing the 1753
polluting properties from those wastes and to evidence relating to 1754
conditions calculated to result from that action and their 1755
relation to benefits to the people of the state and to 1756
accomplishment of the purposes of this chapter. 1757

(4) Where a discharge having a thermal component from a 1758
source that is constructed or modified on or after October 18, 1759
1972, meets national or state effluent limitations or more 1760
stringent permit conditions designed to achieve and maintain 1761
compliance with applicable standards of quality for the waters of 1762
the state, which limitations or conditions will ensure protection 1763
and propagation of a balanced, indigenous population of shellfish, 1764
fish, and wildlife in or on the body of water into which the 1765
discharge is made, taking into account the interaction of the 1766
thermal component with sewage, industrial waste, or other wastes, 1767
the director shall not impose any more stringent limitation on the 1768
thermal component of the discharge, as a condition of a permit or 1769
renewal thereof for the discharge, during a ten-year period 1770
beginning on the date of completion of the construction or 1771
modification of the source, or during the period of depreciation 1772
or amortization of the source for the purpose of section 167 or 1773
169 of the Internal Revenue Code of 1954, whichever period ends 1774
first. 1775

(5) The director shall specify in permits for the discharge 1776
of sewage, industrial waste, and other wastes, the net volume, net 1777

weight, duration, frequency, and, where necessary, concentration 1778
of the sewage, industrial waste, and other wastes that may be 1779
discharged into the waters of the state. The director shall 1780
specify in those permits and in sludge management permits that the 1781
permit is conditioned upon payment of applicable fees as required 1782
by section 3745.11 of the Revised Code and upon the right of the 1783
director's authorized representatives to enter upon the premises 1784
of the person to whom the permit has been issued for the purpose 1785
of determining compliance with this chapter, rules adopted 1786
thereunder, or the terms and conditions of a permit, order, or 1787
other determination. The director shall issue or deny an 1788
application for a sludge management permit or a permit for a new 1789
discharge, for the installation or modification of a disposal 1790
system, or for the renewal of a permit, within one hundred eighty 1791
days of the date on which a complete application with all plans, 1792
specifications, construction schedules, and other pertinent 1793
information required by the director is received. 1794

(6) The director may condition permits upon the installation 1795
of discharge or water quality monitoring equipment or devices and 1796
the filing of periodic reports on the amounts and contents of 1797
discharges and the quality of receiving waters that the director 1798
prescribes. The director shall condition each permit for a 1799
government-owned disposal system or any other "treatment works" as 1800
defined in the Federal Water Pollution Control Act upon the 1801
reporting of new introductions of industrial waste or other wastes 1802
and substantial changes in volume or character thereof being 1803
introduced into those systems or works from "industrial users" as 1804
defined in section 502 of that act, as necessary to comply with 1805
section 402(b)(8) of that act; upon the identification of the 1806
character and volume of pollutants subject to pretreatment 1807
standards being introduced into the system or works; and upon the 1808
existence of a program to ensure compliance with pretreatment 1809
standards by "industrial users" of the system or works. In 1810

requiring monitoring devices and reports, the director, to the 1811
extent consistent with the Federal Water Pollution Control Act, 1812
shall give consideration to technical feasibility and economic 1813
reasonableness and shall allow reasonable time for compliance. 1814

(7) A permit may be issued for a period not to exceed five 1815
years and may be renewed upon application for renewal and upon a 1816
finding by the director that the permit holder is making 1817
satisfactory progress toward the achievement of all applicable 1818
standards and has complied with the terms and conditions of the 1819
existing permit. A permit may be modified, suspended, or revoked 1820
for cause, including, but not limited to, violation of any 1821
condition of the permit, obtaining a permit by misrepresentation 1822
or failure to disclose fully all relevant facts of the permitted 1823
discharge or of the sludge use, storage, treatment, or disposal 1824
practice, or changes in any condition that requires either a 1825
temporary or permanent reduction or elimination of the permitted 1826
activity. No application shall be denied or permit revoked or 1827
modified without a written order stating the findings upon which 1828
the denial, revocation, or modification is based. A copy of the 1829
order shall be sent to the applicant or permit holder by certified 1830
mail. 1831

(K) Institute or cause to be instituted in any court of 1832
competent jurisdiction proceedings to compel compliance with this 1833
chapter or with the orders of the director issued under this 1834
chapter, or to ensure compliance with sections 204(b), 307, 308, 1835
and 405 of the Federal Water Pollution Control Act; 1836

(L) Issue, deny, revoke, or modify industrial water pollution 1837
control certificates; 1838

(M) Certify to the government of the United States or any 1839
agency thereof that an industrial water pollution control facility 1840
is in conformity with the state program or requirements for the 1841
control of water pollution whenever the certification may be 1842

required for a taxpayer under the Internal Revenue Code of the 1843
United States, as amended; 1844

(N) Issue, modify, and revoke orders requiring any 1845
"industrial user" of any publicly owned "treatment works" as 1846
defined in sections 212(2) and 502(18) of the Federal Water 1847
Pollution Control Act to comply with pretreatment standards; 1848
establish and maintain records; make reports; install, use, and 1849
maintain monitoring equipment or methods, including, where 1850
appropriate, biological monitoring methods; sample discharges in 1851
accordance with methods, at locations, at intervals, and in a 1852
manner that the director determines; and provide other information 1853
that is necessary to ascertain whether or not there is compliance 1854
with toxic and pretreatment effluent standards. In issuing, 1855
modifying, and revoking those orders, the director, to the extent 1856
consistent with the Federal Water Pollution Control Act, shall 1857
give consideration to technical feasibility and economic 1858
reasonableness and shall allow reasonable time for compliance. 1859

(O) Exercise all incidental powers necessary to carry out the 1860
purposes of this chapter; 1861

(P) Certify or deny certification to any applicant for a 1862
federal license or permit to conduct any activity that may result 1863
in any discharge into the waters of the state that the discharge 1864
will comply with the Federal Water Pollution Control Act; 1865

(Q) Administer and enforce the publicly owned treatment works 1866
pretreatment program in accordance with the Federal Water 1867
Pollution Control Act. In the administration of that program, the 1868
director may do any of the following: 1869

(1) Apply and enforce pretreatment standards; 1870

(2) Approve and deny requests for approval of publicly owned 1871
treatment works pretreatment programs, oversee those programs, and 1872
implement, in whole or in part, those programs under any of the 1873

following conditions:	1874
(a) The director has denied a request for approval of the publicly owned treatment works pretreatment program;	1875 1876
(b) The director has revoked the publicly owned treatment works pretreatment program;	1877 1878
(c) There is no pretreatment program currently being implemented by the publicly owned treatment works;	1879 1880
(d) The publicly owned treatment works has requested the director to implement, in whole or in part, the pretreatment program.	1881 1882 1883
(3) Require that a publicly owned treatment works pretreatment program be incorporated in a permit issued to a publicly owned treatment works as required by the Federal Water Pollution Control Act, require compliance by publicly owned treatment works with those programs, and require compliance by industrial users with pretreatment standards;	1884 1885 1886 1887 1888 1889
(4) Approve and deny requests for authority to modify categorical pretreatment standards to reflect removal of pollutants achieved by publicly owned treatment works;	1890 1891 1892
(5) Deny and recommend approval of requests for fundamentally different factors variances submitted by industrial users;	1893 1894
(6) Make determinations on categorization of industrial users;	1895 1896
(7) Adopt, amend, or rescind rules and issue, modify, or revoke orders necessary for the administration and enforcement of the publicly owned treatment works pretreatment program.	1897 1898 1899
Any approval of a publicly owned treatment works pretreatment program may contain any terms and conditions, including schedules of compliance, that are necessary to achieve compliance with this chapter.	1900 1901 1902 1903

(R) Except as otherwise provided in this division, adopt 1904
rules in accordance with Chapter 119. of the Revised Code 1905
establishing procedures, methods, and equipment and other 1906
requirements for equipment to prevent and contain discharges of 1907
oil and hazardous substances into the waters of the state. The 1908
rules shall be consistent with and equivalent in scope, content, 1909
and coverage to section 311(j)(1)(c) of the Federal Water 1910
Pollution Control Act and regulations adopted under it. The 1911
director shall not adopt rules under this division relating to 1912
discharges of oil from oil production facilities and oil drilling 1913
and workover facilities as those terms are defined in that act and 1914
regulations adopted under it. 1915

(S)(1) Administer and enforce a program for the regulation of 1916
sludge management in this state. In administering the program, the 1917
director, in addition to exercising the authority provided in any 1918
other applicable sections of this chapter, may do any of the 1919
following: 1920

(a) Develop plans and programs for the disposal and 1921
utilization of sludge and sludge materials; 1922

(b) Encourage, participate in, or conduct studies, 1923
investigations, research, and demonstrations relating to the 1924
disposal and use of sludge and sludge materials and the impact of 1925
sludge and sludge materials on land located in the state and on 1926
the air and waters of the state; 1927

(c) Collect and disseminate information relating to the 1928
disposal and use of sludge and sludge materials and the impact of 1929
sludge and sludge materials on land located in the state and on 1930
the air and waters of the state; 1931

(d) Issue, modify, or revoke orders to prevent, control, or 1932
abate the use and disposal of sludge and sludge materials or the 1933
effects of the use of sludge and sludge materials on land located 1934

in the state and on the air and waters of the state; 1935

(e) Adopt and enforce, modify, or rescind rules necessary for 1936
the implementation of division (S) of this section. The rules 1937
reasonably shall protect public health and the environment, 1938
encourage the beneficial reuse of sludge and sludge materials, and 1939
minimize the creation of nuisance odors. 1940

The director may specify in sludge management permits the net 1941
volume, net weight, quality, and pollutant concentration of the 1942
sludge or sludge materials that may be used, stored, treated, or 1943
disposed of, and the manner and frequency of the use, storage, 1944
treatment, or disposal, to protect public health and the 1945
environment from adverse effects relating to those activities. The 1946
director shall impose other terms and conditions to protect public 1947
health and the environment, minimize the creation of nuisance 1948
odors, and achieve compliance with this chapter and rules adopted 1949
under it and, in doing so, shall consider whether the terms and 1950
conditions are consistent with the goal of encouraging the 1951
beneficial reuse of sludge and sludge materials. 1952

The director may condition permits on the implementation of 1953
treatment, storage, disposal, distribution, or application 1954
management methods and the filing of periodic reports on the 1955
amounts, composition, and quality of sludge and sludge materials 1956
that are disposed of, used, treated, or stored. 1957

An approval of a treatment works sludge disposal program may 1958
contain any terms and conditions, including schedules of 1959
compliance, necessary to achieve compliance with this chapter and 1960
rules adopted under it. 1961

(2) As a part of the program established under division 1962
(S)(1) of this section, the director has exclusive authority to 1963
regulate sewage sludge management in this state. For purposes of 1964
division (S)(2) of this section, that program shall be consistent 1965

with section 405 of the Federal Water Pollution Control Act and 1966
regulations adopted under it and with this section, except that 1967
the director may adopt rules under division (S) of this section 1968
that establish requirements that are more stringent than section 1969
405 of the Federal Water Pollution Control Act and regulations 1970
adopted under it with regard to monitoring sewage sludge and 1971
sewage sludge materials and establishing acceptable sewage sludge 1972
management practices and pollutant levels in sewage sludge and 1973
sewage sludge materials. 1974

This chapter authorizes the state to participate in any 1975
national sludge management program and the national pollutant 1976
discharge elimination system, to administer and enforce the 1977
publicly owned treatment works pretreatment program, and to issue 1978
permits for the discharge of dredged or fill materials, in 1979
accordance with the Federal Water Pollution Control Act. This 1980
chapter shall be administered, consistent with the laws of this 1981
state and federal law, in the same manner that the Federal Water 1982
Pollution Control Act is required to be administered. 1983

This section does not apply to animal waste disposal systems 1984
and related management and conservation practices subject to rules 1985
adopted pursuant to division (E)(4) of section 1511.02 of the 1986
Revised Code. However, until the date on which the United States 1987
environmental protection agency approves the NPDES program 1988
submitted by the director of agriculture under section 903.08 of 1989
the Revised Code, this exclusion does not apply to animal waste 1990
treatment works having a controlled direct discharge to the waters 1991
of the state or any concentrated animal feeding operation, as 1992
defined in 40 C.F.R. 122.23(b)(2). On and after the date on which 1993
the United States environmental protection agency approves the 1994
NPDES program submitted by the director of agriculture under 1995
section 903.08 of the Revised Code, this section does not apply to 1996
storm water from an animal feeding facility, as defined in section 1997

903.01 of the Revised Code, or to ~~manure~~ pollutants discharged 1998
from a concentrated animal feeding operation, as both terms are 1999
defined in that section. Neither of these exclusions applies to 2000
the discharge of animal waste into a publicly owned treatment 2001
works. 2002

Section 2. That existing sections 903.01, 903.02, 903.03, 2003
903.04, 903.05, 903.06, 903.07, 903.08, 903.081, 903.082, 903.09, 2004
903.10, 903.15, 903.16, 903.17, and 6111.03 of the Revised Code 2005
are hereby repealed. 2006

Section 3. The amendments by this act of divisions (C)(1) and 2007
(H) of section 903.02; divisions (A), (C)(1), and (I) of section 2008
903.03; divisions (D) and (E)(2)(a) of section 903.04; sections 2009
903.05, 903.06, and 903.07; divisions (A)(2) to (14) and (E) of 2010
section 903.10; section 903.16; and division (E) of section 903.17 2011
of the Revised Code become operative on the date on which the 2012
Administrator of the United States Environmental Protection Agency 2013
approves the National Pollutant Discharge Elimination System 2014
program submitted by the Director of Agriculture under section 2015
903.08 of the Revised Code as amended by this act. 2016

Section 4. This act is hereby declared to be an emergency 2017
measure necessary for the immediate preservation of the public 2018
peace, health, and safety. The reason for such necessity is to 2019
expedite the process of receiving approval from the Administrator 2020
of the United States Environmental Protection Agency for the 2021
Director of Agriculture to administer certain national pollutant 2022
discharge elimination system permits. Therefore, this act shall go 2023
into immediate effect. 2024