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MEMORANDUM OF AGREEMENT
BETWEEN THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
AND
REGION V, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Chief Administrative Officer of the Ohio Environmental Protection Agency, referred to herein as the Director and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c). 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

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Ohio Environmental Protection Agency

by

Ira L. Whitman,
Director

1-17-74

Date

United States
Environmental Protection Agency
Region V

by

Francis T. Mayo
Regional Administrator

1/24/74

Date

Approved:

United ~~States~~ Environmental Protection Agency

Russell E. Train
Administrator

3-11-74

Date

2-A

(123rd General Assembly)
(Substitute Senate Bill Number 141)

AN ACT

To amend sections 1511.02, 1511.021, 1511.022, 1511.07, 1511.071, 1515.08, 3745.04, 6111.03, 6111.035, 6111.04, 6111.44, and 6111.45 and to enact sections 307.204, 505.266, 903.01 to 903.20, and 903.99 of the Revised Code to transfer authority to issue permits for the construction of new or modification of existing concentrated animal feeding facilities from the Director of Environmental Protection to the Director of Agriculture, to provide for the regulation of concentrated animal feeding facilities and concentrated animal feeding operations, to transfer authority to issue national pollutant discharge elimination system permits for concentrated animal feeding operations and certain other entities from the Director of Environmental Protection to the Director of Agriculture, to require certain existing concentrated animal feeding facilities to obtain review compliance certificates, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1511.02, 1511.021, 1511.022, 1511.07, 1511.071, 1515.08, 3745.04, 6111.03, 6111.035, 6111.04, 6111.44, and 6111.45 be amended and sections 307.204, 505.266, 903.01, 903.02, 903.03, 903.04, 903.05, 903.06, 903.07, 903.08, 903.09, 903.10, 903.11, 903.12, 903.13, 903.14, 903.15, 903.16, 903.17, 903.18, 903.19, 903.20, and 903.99 of the Revised Code be enacted to read as follows:

plans for the disposal of the waste have been submitted to and approved by the director of environmental protection. As used in sections 6111.44 to 6111.46 of the Revised Code, "industrial waste" means sludge or sludge materials or a water-carried or liquid waste resulting from any process of industry, manufacture, trade, or business or development of any natural resource. BUT DOES NOT INCLUDE STORM WATER FROM ANY ANIMAL FEEDING FACILTY, AS DEFINED IN SECTION 903.01 OF THE REVISED CODE, OR MANURE, AS DEFINED IN THAT SECTION. In granting an approval, the agency may stipulate modifications, conditions, and rules that the public health and welfare may require. Any action taken by the director shall be a matter of public record and shall be entered in the director's journal. Each period of thirty days that a violation of this section continues, after a conviction of the violation, constitutes a separate offense.

SECTION 2. That existing sections 1511.02, 1511.021, 1511.022, 1511.07, 1511.071, 1515.08, 3745.04, 6111.03, 6111.035, 6111.04, 6111.44 and 6111.45 of the Revised Code are hereby repealed.

SECTION 3. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the General Revenue Fund and the State Special Revenue Fund Group. For all appropriations made in this act, those in the first column are for fiscal year 2000 and those in the second column are for fiscal year 2001. The appropriations made in this act are in addition to any other appropriations made for the 1999-2001 biennium.

AGR DEPARTMENT OF AGRICULTURE

General Revenue Fund			
GRF 700-414	Concentrated Animal Feeding Facility Advisory Committee	$ 0	$ 25,000
GRF 700-418	Livestock Regulation Program	$ 0	$ 1,700,000
TOTAL GRF General Revenue Fund		$ 0	$ 1,725,000
State Special Revenue Fund Group			
5L8 700-604	Livestock Management Fund	$ 0	$ 250,000
TOTAL SSR State Special Revenue Fund Group		$ 0	$ 250,000
TOTAL ALL BUDGET FUND GROUPS		$ 0	$ 1,975,000

Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in

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Sub. S. B. No. 141 9135

John Davidson

Speaker _____ *of the House of Representatives.*

Richard H. Finan

President _____ *of the Senate.*

Passed November 16, 2000

Approved December 14, 2000

Bob Taft

Governor.

3-A

O.R.C. 903.05 Application for a permit to install or permit to operate.

(A) Each application for a permit to install or permit to operate a concentrated animal feeding facility that is submitted by an applicant who has not owned or operated a concentrated animal feeding facility in this state for at least two of the five years immediately preceding the submission of the application shall be accompanied by all of the following:

(1) A listing of all animal feeding facilities that the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code owns, has owned, has operated, or is operating in this state;

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

(3) A listing of all administrative enforcement orders issued to the applicant or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code, all civil actions in which the applicant or any such person was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the applicant or any such person pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any animal feeding facility that the applicant or any such person owns, has owned, has operated, or is operating outside the United States.

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

(B) If the applicant for a permit to install or permit to operate or any person identified by the applicant under division (C)(1) of section 903.02 or 903.03 of the Revised Code has been involved in any prior activity involving the operation of an animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and any such person, in the operation of animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant or any such person lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

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

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(D) An owner or operator of a concentrated animal feeding facility that has been issued an installation permit that has been transferred from the director of environmental protection to the director of agriculture, a permit to install, or a permit to operate shall submit to the director notice of any proposed change in the persons identified to the director under division (C)(1) of section 903.02 or 903.03 of the Revised Code, as applicable. The director may deny approval of the proposed change if the director finds from the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the proposed person, in the operation of animal feeding facilities, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the "Safe Drinking Water Act," as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it.

Amended by 128th General Assembly File No.12, HB 363, §1, eff. 12/22/2009 and operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture under section 903.08 of the Revised Code as amended by this act.

Effective Date: 03-15-2001; 09-29-2005

4-A

BOB TAFT
GOVERNOR
STATE OF OHIO

December 28, 2006

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5 (R-19J)
77 W. Jackson Blvd.
Chicago, IL 60604

Dear Ms. Gade:

The State of Ohio is pleased to submit the enclosed description of the Ohio National Pollutant Discharge Elimination System (NPDES) program and related documents for the transfer of regulatory responsibility from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). I request approval as provided under the Clean Water Act (CWA) Section 402(b) (33.U.S.C. §1343(b)) of the NPDES program.

Pursuant to 40 C.F.R. Part 123, the enclosures include:

- The NPDES Program Description that explains the processes the state will use to carry out the responsibilities in accordance with 40 CFR §123.22;

- A Memorandum of Agreement that defines how the NPDES program will be administered by the ODA and reviewed by the U.S. Environmental Protection Agency, Region 5 (EPA), in accordance with 40 C.F.R. §123.24.

- Copies of all applicable portions of the Ohio Statutes and Ohio Administrative Code (OAC), including new Chapter 903 of the Ohio Revised Code for administering permits under the NPDES program, as well as related amended rules in OAC Chapters 901:10-1 to 901:10-6 covering administrative procedures, enforcement and appeal procedures, effluent limitations; and other provisions necessary to administer and enforce NPDES permits for concentrated animal feeding operations that are subject to NPDES permits under the Clean Water Act.

- A statement from the Ohio Attorney General certifying that Ohio's laws and regulations will establish adequate authority to implement a NPDES program, in accordance with 40 C.F.R. §123.23, provided that Senate Bill 393 is duly enacted into law and provided further that the Director adopts as final those rules proposed on November 9, 2006 in accordance with ORC 119.03;

77 SOUTH HIGH STREET • 30TH FLOOR • COLUMBUS, OHIO 43215-6117 • 614.466.3555 • FAX: 614.466.9354

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In addition, the State of Ohio requests that the EPA approve a phased program approach allowed under CWA Section 402(n)(4)(A) and (B), as described in the enclosed Memorandum of Agreement for concentrated animal feeding operations.

The State of Ohio is confident that the enclosures provide sufficient documentation for the EPA to determine that the ODA possesses adequate authority to implement the proposed NPDES program, in accordance with the CWA section 402(b) and 40 C.F.R. §123. I look forward to receiving EPA's timely approval and working with you to administer this very important Clean Water Act program.

Sincerely,

Bob Taft

Bob Taft
Governor

Enclosures

cc: Jo Lynn Traub, Director, Water Division (W-15J), EPA Region 5
James A. Hanlon, Director, Office of Wastewater Management (4203M), EPA Headquarters

4-C

40 CFR 123.62 - Procedures for revision of State programs.

CFR (/cfr/text/40/123.62?qt-cfr_tabs=0#qt-cfr_tabs)

Updates (/cfr/text/40/123.62?qt-cfr_tabs=1#qt-cfr_tabs)

Authorities (U.S. Code) (/cfr/text/40/123.62?qt-cfr_tabs=2#qt-cfr_tabs)

prev (/cfr/text/40/123.61) | next (/cfr/text/40/123.63)

§ 123.62Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities. Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 (/cfr/text/40/123) extending to those lands.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the *Federal Register* and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator will approve or disapprove program revisions based on the requirements of this part (or, in the case of a sewage sludge management program, 40 CFR part 501 (/cfr/text/40/501)) and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the *Federal Register*. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs must notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) (/cfr/text/40/123.22#b) (or, in the case of a sewage sludge management program, § 501.12(b) (/cfr/text/40/501.12#b) of this chapter) must be revised and resubmitted.

5-A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 0 4 2007

REPLY TO THE ATTENTION OF:

WN-16J

Robert J. Boggs, Director
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

Dear Mr. Boggs:

I am writing in response to a December 28, 2006, letter from former Governor Taft in which the State of Ohio asked the United States Environmental Protection Agency (U.S. EPA), Region 5, to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program. As you know, this revision involves a transfer of the program element for concentrated animal feeding operations (CAFOs) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). It includes amendments to Ohio's statutory and regulatory framework for preventing water pollution from CAFO manure, litter, and process wastewater.

We are committed to working with ODA to process this request as expeditiously as possible, and to resolve any deficiencies. As part of our review, we have identified an initial list of questions and concerns about the revised program (enclosed). The questions and concerns are focused on land application of manure and wastewater issues. They were briefly noted in a December 19, 2006, letter from this office to Mr. Kevin Elder of ODA and Mr. George Elmaraghy of Ohio EPA. These initial concerns must be resolved, or they may prevent U.S. EPA, Region 5, from approving the revised program. Please respond to the initial questions in writing, so that we can better understand ODA's land application standards. We may identify additional questions and concerns as our review progresses.

Thank you in advance for your responses. We will contact Mr. Elder to continue discussions in an effort to resolve the concerns. A meeting, such as the one requested in your March 20, 2007, letter to Regional Administrator Mary A. Gade, will also provide an opportunity for our two agencies to resolve concerns. I anticipate that we will respond to your March 20, 2007, letter in the near future.

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Thank you for the opportunity to review the Ohio revised program. Do not hesitate to contact me if you have any questions.

Sincerely yours,

Jo Lynn Traub
Director, Water Division

Enclosure

cc: Chris Korleski, Director, Ohio EPA
Mr. Kevin Elder, ODA
Mr. George Elmaraghy, Ohio EPA

Enclosure

Questions

1. The Effluent Limitations Guidelines and New Source Performance Standards for the concentrated animal feeding operations (CAFO) point source category, 40 CFR part 412, prohibit dry-weather discharges of manure, litter, and process wastewater (manure) from land application areas under the control Large CAFOs in the cattle, swine, poultry, and veal subcategories. *See*: 71 *Federal Register* 37769, June 30, 2006. Does chapter 903 of the Ohio Revised Code or chapter 901 of the Ohio Administrative Code require National Pollutant Discharge Elimination System (NPDES) permits to be issued by the Ohio Department of Agriculture (ODA) to prohibit discharges from land application areas when such discharges are not agricultural storm water as defined in rule 901:10-1-01(D)?

2. Rule 901:10-2-14(C)(1)(d) provides that the rate of liquid manure application shall not exceed the available water capacity as described in appendix B of rule 901:10-2-14. When soil moisture is at or above field capacity, appendix B does not identify liquid amounts required to reach the available water capacity. Does rule 901:10-2-14(C)(1)(d) prohibit liquid manure application when soil moisture equals or exceeds field capacity?

3. Rule 901:10-2-14(C)(1)(e) requires CAFO owners or operators to adjust the application rate for liquid manure to avoid surface ponding and/or runoff. Rule 901: 10-2-14(G)(1)(c) allows owners or operators to apply 5,000 gallons (gal) of liquid manure on an acre of frozen ground. When ground is frozen but not covered with snow, which rule governs for the purpose of limiting the rate at which liquid manure may be applied?

4. Rule 901:10-2-14(C)(3) provides that land application of manure shall comply with all restrictions in appendix A of rule 901:10-2-14 unless a compliance alternative is submitted in the manure management plan and approved by the director. Does the allowance for compliance alternatives extend only to the setbacks in appendix A, table 2, of rule 901:10-2-14 or does it extend to all of the best management practices in appendix A of rule 901:10-2-14?

5. The federal regulation at 40 CFR § 412.4(c)(5) contains a 100-foot setback applicable to manure application near conduits to surface water[1]. Ohio rule 901:10-2-14(C)(3) (incorporating appendix A, table 2, by reference) does not expressly incorporate a setback applicable to conduits to surface water. However, it does incorporate a setback applicable to surface waters of the State. Are roadside ditches included within the meaning of the term surface waters of the State as that term is used in rule 901:10-2-14 (C)(3)?

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[1] As compliance alternatives, the regulation provides that a CAFO owner or operator may substitute a 35-foot vegetative buffer or demonstrate that a setback or buffer is not necessary because conservation practices or field conditions provide pollutant reductions equivalent to or better than a 100-foot setback.

6. Rule 901:10-2-14(C)(3) (incorporating appendix A, table 2, by reference) contains a 35-foot setback applicable to surface application of manure near field surface furrows. Rule 901:10-1-01 defines a field surface furrow as "an area of ... concentrated surface water runoff [that] ... is not a river, stream, ditch, or grassed waterway. Field surface furrows are areas that are normally planted with crops each year." A December 22, 2006, memorandum from Kevin Elder to Jo Lynn Traub indicates that such furrows are "derived from the [Ohio] Natural Resources Conservation Service (NRCS) Conservation Practice Standard 607, which was developed to be used predominantly in Northwest Ohio to remove standing water from crops during the growing season. The systems are usually made up of small, temporary lateral surface furrows that convey water to main surface drains (collectors)." Has Ohio NRCS or Ohio State University published criteria applicable to the design and construction of field surface furrows? If so, please provide a copy of the published criteria. If not, please provide ODA's design and construction criteria if they exist.

7. Rule 901:10-2-14(D)(2)(b) requires the owner or operator to subtract the nitrogen credit for crop residue, legumes, and other sources of nitrogen to be given to the next corn crop. Are credits from prior applications of manure included within the meaning of "other sources of nitrogen" as these words are used in rule 901:10-2-14(D)(2)(b)? Please see 68 *Federal Register* 7211, February 12, 2003.

8. Rule 901:10-2-14(D)(2)(b) expressly requires the owner or operator to subtract credits to be given to the next corn crop. Does it or any other rule require the owner or operator to subtract credits to be given to the next crop other than corn? If a rule other than rule 901:10-2-14(D)(2)(b) requires credits to be given to the next crop other than corn, please identify the rule.

9. Rule 901:10-2-14(D)(5) provides that the criteria applicable to manure application and the requirements of paragraph (D) of rule 901:10-2-14 may be changed if the owner or operator can demonstrate nutrient insufficiency to the director. Do the words "criteria applicable to manure application," as used in paragraph (D)(5) of rule 901:10-2-14, refer to all of the criteria in rule 901:10-2-14 or only the criteria in rule 901:10-2-14(D)(1) through (4)?

10. Rule 901:10-2-14(E)(3)(b) provides that application of phosphorus shall not occur on land with soil tests over 150 parts per million (ppm) Bray P1 or equivalent unless an owner or operator can demonstrate an alternative to the director through use of the phosphorus index risk assessment procedure contained in appendix E, table 1, of rule 901:10-2-14. Are all such alternative applications subject to the applicable prohibition or limitation in the *Generalized Interpretation of Phosphorus Index & Management* column in appendix E, table, 1, of rule 901:10-2-14?

11. Rule 901:10-2-14(E)(3)(c) provides that phosphorus applications between 250 and 500 pounds (lbs) per acre may be made if the values for liquid manure exceed 60 lbs per 1,000 gal and if the values for solid manure exceed 80 lbs per ton. Is the allowance in

rule 901:10-2-14(E)(3)(c) subject to any more stringent nitrogen limitation derived under rule 901:10-2-14(D)?

12. Rule 901:10-2-14(E)(3)(b) provides that an owner or operator shall not apply phosphorus on land with soil tests over 150 ppm Bray P1 or equivalent unless the owner or operator can demonstrate an alternative through use of the Ohio phosphorus index procedure. However, rule 901:10-2-14(E)(3)(d) provides that, "[N]otwithstanding the procedures in paragraph (E)(3)(a) or (E)(3)(b) of this rule ..., for a single phosphorus application in a year, the application rate shall not exceed five hundred pounds per acre of phosphorus." Are manure applications conducted in accordance with rule 901: 10-2-14(E)(3)(d) subject to any more stringent prohibition or limitation derived under rule 901:10-2-14(E)(3) or rule 901:10-2-14(E)(3)(b)?

13. Rule 901:10-2-14(G)(1)(a) provides that prior approval for surface application of manure on frozen or snow-covered ground shall be obtained from the director or his or her representative. On what basis will the director or his or her representative grant or deny such approval?

14. Rules 901:10-2-14(G)(1)(b) and (c) provide that the rate of application on frozen or snow-covered ground is limited as follows: 10 tons per acre (solid manure with more than 50 percent moisture), five tons per acre (solid manure with less than 50 percent moisture), and 5,000 gal per acre (liquid manure). The limitations in these rules are not expressed in units of time. Will ODA determine compliance with the limitations during each discrete period of time during which ground is frozen or snow-covered or will ODA determine compliance on a cumulative basis for all periods in a winter during which ground is frozen or snow-covered? For example, if a winter includes three periods during which ground is frozen or snow-covered, could an owner or operator apply 5,000 gal of liquid manure per acre during each period, for a cumulative rate of 15,000 gal per acre, or would he or she be limited to 5,000 gal per acre in total?

Concerns

1. The federal regulation at 40 CFR § 412.4(c)(5) contains a setback applicable to manure application near downgradient open tile line intake structures. Ohio rule 901: 10-2-14(C)(3) (incorporating appendix A, table 2, by reference) does not contain a setback applicable to such structures.

2. The regulation at 40 CFR § 412.4(c)(5) contains a 100-foot setback applicable to manure application near downgradient conduits to surface water. As compliance alternatives, the regulation provides that a CAFO owner or operator may substitute a 35-foot vegetative buffer or demonstrate that a setback or buffer is not necessary because conservation practices or field conditions provide pollutant reductions equivalent to or better than a 100-foot setback. Ohio rule 901:10-2-14(C)(3) (incorporating appendix A, table 2, by reference) contains a 35-foot setback applicable to surface application near field surface furrows. In a December 22, 2006, memorandum from Kevin Elder to

Jo Lynn Traub, ODA contends that the 35-foot setback is a compliance alternative as allowed under the federal regulations. ODA has not provided data and information that a CAFO owner or operator could use to demonstrate that ODA's 35-foot setback provides pollutant reductions equivalent to or better than a 100-foot setback.

3. Rule 901:10-2-14(E)(3) requires CAFO owners and operators to land apply no more manure than allowed in appendix E, table 2. When the phosphorus soil test level is between 100 and 150 ppm Bray P1 or equivalent, Appendix E, table 2, provides that manure shall be applied so as not to exceed the nitrogen requirement or removal for the next crop. It also provides that a single application of the manure phosphorus required by crops to be planted over several years is authorized provided that the field has more than 50 percent ground cover at the time of application or the manure is incorporated within seven days.

According to the Ohio NRCS (2001) and Ohio Environmental Protection Agency (Ohio EPA) (2005), a high potential for phosphorus transport to surface water exists when a CAFO owner or operator uses a soil test to assess the risk of transport and the results show 100 or more ppm of phosphorus in the soil. ODA agreed with Ohio NRCS and Ohio EPA on this point before 2007 (*see*: Ohio Administrative Code 901:10-2-14, appendix E, table 2 (2006)).

Application of manure in excess of crop nutrient requirements increases the pollutant runoff from fields because the crop does not need these nutrients. In areas that have high phosphorus buildup in soil, allowing application at a nitrogen-based rate or multi-year phosphorus-based rate could allow continued discharge of phosphorus. U.S. EPA recognizes that inherent site conditions, conservation practices, and management practices may, in aggregate, reduce field vulnerability to phosphorus transport to surface water. While the Ohio phosphorus index accounts for all of the relevant potentially mitigating conditions and practices, appendix E, table 2 (2007), does not. When soil test phosphorus levels are high (i.e., between 101 and 150 ppm inclusive in the present instance), U.S. EPA, Region 5, is concerned that the appendix E, table 2 (2007), allowance for application at a nitrogen-based rate or multi-year phosphorus-based rate will not minimize phosphorus movement to surface waters as required under 40 CFR § 123.36.

4. Rule 901:10-2-14(C)(6) provides that the owner or operator shall not land apply manure if the forecast predicts a greater than 50 percent chance of more than one-half inch of rain for a period extending to 24 hours after the start of an intended land application event.

U.S. EPA, Region 5, evaluated this Ohio rule to determine whether it will prevent precipitation-related discharges when rain is forecast to occur within 24 hours after an intended manure surface application event. Such an evaluation is supported by 40 CFR § 123.36 (requiring technical standards for nutrient management to address, in part, the timing of land application to minimize nutrient movement to surface waters) and section 4.1.2.4 of the *NPDES Permit Writers' Guidance Manual and Example NPDES Permit for*

Concentrated Animal Feeding Operations (U.S. EPA 2003) (providing that technical standards for nutrient management should prohibit surface application when rain is expected soon after a planned application in an amount that may produce runoff). It is consistent with the Ohio NRCS Conservation Practice Standard for Nutrient Management (2003) (providing that CAFO owners and operators should delay manure application if precipitation capable of producing runoff is forecast within 24 hours of the planned application).

We prepared the attached tables as part of the evaluation. The tables are based on NRCS (1997, 1986) and Soil Conservation Service (SCS) (1972). Procedures in these references account for soil moisture before a rainfall event of interest. The moisture categories are dry (antecedent moisture condition (AMC) I), average (AMC II), and saturated (AMC III). For the purpose of our evaluation, we assumed that CAFO owners and operators will refrain from surface applying solid manure when soil moisture is classified as AMC III, due to possible trafficability problems. With regard to surface application of liquid manure when soil is saturated, we assumed that ODA will answer question 2., above, in the affirmative (i.e., answer that rule 901:10-2-14(C)(1)(d) prohibits liquid manure application when soil moisture is at or above field capacity).

As indicated in the tables, the precipitation amount in the Ohio rule should prevent almost all near-term precipitation-related discharges when soil moisture before a likely rainfall event is classified as AMC I. It should prevent many near-term precipitation-related discharges when soil moisture before a likely event is classified as AMC II and the predominant soil within the land application area is classified as hydrologic soil group (HSG) A or B. However, the precipitation amount in the Ohio rule is not likely to prevent most near-term precipitation-related discharges when soil moisture before a likely event is classified as AMC II and the predominant soil within the land application area is classified as HSG C or D. This is a cause for concern in as much as such discharges may kill fish or otherwise adversely affect surface water quality but nevertheless qualify for the permit shield under 33 U.S.C. § 1342(k) or the agricultural storm water discharge exclusion under 33 U.S.C. § 1362(14) and Ohio rule 901:10-2-14.

A December 22, 2006, memorandum from Kevin Elder to Jo Lynn Traub does not allay this concern. In it, ODA said that it need not include a rainfall amount less than one-half inch for HSG C and D soils under AMC II principally because (1) Ohio rule 901: 10-2-14(C)(1)(d) limits applications of liquid manure to the amount which will increase soil moisture to the available moisture capacity and (2) several variables determine whether precipitation will cause runoff. U.S. EPA, Region 5, does not agree that Ohio rule 901:10-2-14(C)(1)(d) will prevent a discharge from a HSG C or D soil in the event of near-term precipitation less than one-half inch. As it is, a likely outcome of a liquid manure application in compliance with rule 901:10-2-14(C)(1)(d) would be to increase soil moisture from AMC I or II to AMC III. As indicated in the attachment, as little as 0.22 or 0.15 inch of rain is required to produce runoff from HSG C or D soils, respectively, when soil moisture before the event is classified as AMC III and dense residue or canopy cover is present. Separately, we note that NRCS (1997, 1986) and SCS (1972) account for most of the variables which are relevant to determining whether rain

will cause runoff. The variables include soil type, the presence or absence of subsurface drains, cover type, and treatment practices (including residue management).
(The NRCS/SCS references do not account for the effect of soil temperature on runoff generation.)

Attachment

References

Natural Resources Conservation Service. 1997. *National Engineering Handbook, Part 630, Hydrology*. United States Department of Agriculture. Washington, D.C.

Natural Resources Conservation Service. 1986. *Urban Hydrology for Small Watersheds*. Technical Release 55. United States Department of Agriculture. Washington, D.C.

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MINIMUM RAIN OR OTHER LIQUID REQUIRED TO PRODUCE RUNOFF[1]

Fallow + Residue Cover (< 20 Percent)

		Rain or Other Liquid (inches (in.))		
HSG[2]	CN[3]	AMC[4] I	AMC II	AMC III
A	76	1.45	0.63	0.25
B	85	0.86	0.35	0.13
C	90	0.56	0.22	0.08
D	93	0.41	0.15	0.04

Fallow + Residue Cover (≥ 20 Percent)

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	74	1.64	0.70	0.27
B	83	0.98	0.41	0.15
C	88	0.67	0.27	0.11
D	90	0.56	0.22	0.08

Fallow (former crop row crop) + Residue Cover (67 Percent)[5] or Row Crop Midway Between Planting and Harvest

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	67	2.26	0.98	0.41
B	78	1.33	0.56	0.22
C	85	0.86	0.35	0.13
D	89	0.63	0.25	0.08

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[1] Derived from: (1) Natural Resources Conservation Service (NRCS). 1997. *National Engineering Handbook, Part 630: Hydrology*, chapters 9 and 10. United States Department of Agriculture (USDA). Washington D.C.; (2) NRCS. 1986. *Urban Hydrology for Small Watersheds*. Technical Release 55. USDA. Washington, D.C.; and (3) Soil Conservation Service. 1972. *National Engineering Handbook, Section 4, Hydrology*. USDA. Washington, D.C.

[2] Hydrologic soil group.

[3] Curve number.

[4] Antecedent moisture condition.

[5] Assumes that average CNs for row crops in straight rows apply when residue covers 67 percent of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), p. 10.15.

Fallow (former crop small grain) + Residue Cover (67 Percent)[6] or Small Grain Crop Midway Between Planting and Harvest

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	63	2.64	1.17	0.50
B	75	1.51	0.67	0.27
C	83	0.98	0.41	0.15
D	87	0.74	0.30	0.11

Fallow (former crop close-seeded or broadcast legumes) + Residue Cover (67 Percent)[7] or Close-seeded or Broadcast Legumes Midway Between Planting and Harvest

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	58	3.26	1.45	0.63
B	72	1.77	0.78	0.33
C	81	1.12	0.47	0.17
D	85	0.86	0.35	0.13

Fallow (former crop row crop) + Residue Cover (> 90 Percent)[8] or Row Crop at Peak Growth

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	60	3.00	1.33	0.56
B	73	1.70	0.74	0.30
C	82	1.03	0.44	0.17
D	88	0.67	0.27	0.11

[6] Assumes that average CNs for small grain crops in straight rows apply when residue covers 67 percent of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), p. 10.15.

[7] Assumes that average CNs for close-seeded or broadcast legume crops in straight rows apply when residue covers 67 percent of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), p. 10.15.

[8] Assumes that normal peak growth CNs for row crops in straight rows apply when residue covers practically all of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), pp. 10.14 and 10.15.

Fallow (former crop small grain) + Residue Cover (> 90 Percent)[9] or Small Grain at Peak Growth

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	52	4.24	1.85	0.82
B	67	2.26	0.98	0.41
C	78	1.33	0.56	0.22
D	84	0.94	0.38	0.15

Fallow (former crop close-seeded or broadcast legumes) + Residue Cover (> 90 Percent)[10] or Close-seeded or Broadcast Legumes at Peak Growth

		Rain or Other Liquid (in.)		
HSG	CN	AMC I	AMC II	AMC III
A	42	6.00	2.76	1.23
B	61	2.88	1.28	0.56
C	74	1.64	0.70	0.27
D	80	1.17	0.50	0.20

[9] Assumes that normal peak growth CNs for small grain crops in straight rows apply when residue covers practically all of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), pp. 10.14 and 10.15.

[10] Assumes that normal peak growth CNs for close-seeded or broadcast legume crops in straight rows apply when residue covers practically all of the soil surface in the time between fall harvest and spring planting. USDA, NRCS, (1997), pp. 10.14 and 10.15.

6-A

NOV 0 8 2007

WN-16J

Robert J. Boggs, Director
Ohio Department of Agriculture
8995 East Main Street
Reynoldsburg, Ohio 43068-3399

Dear Mr. Boggs:

I am writing in response to former Governor Taft's December 28, 2006, letter, in which the State of Ohio asked the U.S. Environmental Protection Agency, Region 5, to approve the transfer of National Pollutant Discharge Elimination System (NPDES) authority for concentrated animal feeding operations (CAFOs) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). The submittal included a program description, an Attorney General's statement, supporting statutes and regulations, a draft Memorandum of Agreement between ODA and EPA Region 5, and supporting documentation.

EPA is committed to working with the State as it seeks to transfer NPDES authority for CAFOs to ODA, and to ensure that the program is not disrupted during the transfer process. In April 2007, we provided an initial response to ODA, expressing four specific concerns regarding ODA's standards for land application of manure, litter, and process wastewater, and indicating that these concerns must be resolved, or they may prevent EPA from approving the revised program. ODA still must resolve these concerns. We also provided additional questions regarding ODA's land application standards, which ODA answered in a June 2007 letter. Thank you for your answers.

EPA Region 5 has been working with EPA Headquarters on a comprehensive review of the remainder of Ohio's application. Our review has identified an additional concern regarding application of manure on snow or frozen soil. Please see section II of the enclosure. In addition, certain aspects of ODA's statutory and regulatory authority do not appear to be consistent with federal regulations. We are therefore seeking clarification or revisions with respect to ODA's authority to regulate CAFOs to the extent required by the federal regulations. For each topic raised in section I of the enclosure, ODA will need to either revise the relevant provision or element of the application, or provide clarification as to the adequacy of its current authority.

6-B

Thank you for the opportunity to review Ohio's revised program. Once you have had an opportunity to review the enclosure, please have your staff contact Matt Gluckman, CAFO Coordinator, at (312) 886-6089 to discuss these issues, or feel free to contact me directly.

Sincerely yours,

/s/ RDT

Robert D. Tolpa
Acting Director, Water Division

Enclosure

cc: Chris Korleski, Director, Ohio EPA
Marc Dann, Ohio Attorney General
Mr. Kevin Elder, ODA
Mr. George Elmaraghy, Ohio EPA

bcc: Ms. Linda Boornazian, OWM
Ms. Allison Weideman, OWM-Permits Division
Mr. George Utting, OWM- Permits Division
Mr. Louis Eby, OWM- Permits Division
Michael Berman, CA-14J
Gary Prichard, CA-14J
Timothy Henry, WD-15J
Peter Swenson
Steven Jann
Matt Gluckman

G:NPDES/comment letter on ODA submittal 1107/M/Gluckman/11/16/07

EPA Comments on the Ohio Department of Agriculture's December 28, 2006 Application for NPDES Program Authority for Concentrated Animal Feeding Operations

I. Comments

A. Statutory authority

1. Scope of ODA's authority to regulate discharged pollutants. The Clean Water Act prohibits the unauthorized discharge of "pollutants," which are defined in §502(6) as

   "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. . ."

   ODA's regulations purport to give the ODA Director authority to regulate "pollutants." However, ODA's statutory authority appears to be limited to regulation of manure, CAFO-related process/process-generated wastewater, and storm water. As a result, ODA does not appear to have the statutory authority to regulate the discharge of pollutants beyond those within the definition of manure and storm water, such as might be introduced from a co-located facility, or into a CAFO from a commercial or industrial source (e.g., a food processor). Ohio will need to revise ODA's authority to enable ODA to address such situations, or specify the State's current authority to do so, including which State agency or department has authority to administer the authorizing statute.

2. ORC 903.10(C) and (F) require ODA to adopt rules that, among other things, establish (1) best management practices (BMPs) which govern the storage, transportation, and land application of manure and (2) terms and conditions to be included in a permit, including, as applicable, BMPs. The statute defines BMPs as practices established in rules. ORC 903.01(C).

   Chapter 901 of the OAC specifies a number of BMPs that govern the storage, transportation, and land application of manure. *See*, for example, OAC 901:10-2-14. At the same time, it requires ODA to establish NPDES permit conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Federal Water Pollution Control Act (FWPCA) and regulations thereunder including, but not limited to 40 CFR 122.44. Paragraph (k) in 122.44 requires NPDES permits to include BMPs under certain circumstances. While the paragraph does not specify the BMPs required in each instance, it does establish expectations for the outcomes that the practices must achieve.

It appears that the ORC may require ODA to establish a specific BMP in the OAC before ODA will have authority to impose the practice as a condition in an NPDES permit. Please specify ODA's authority for setting a specific BMP in a permit, when such a BMP does not exist in ODA rules.

3. Terms and conditions of permits. ORC 903.08(G) states that, in establishing the terms and conditions of an NPDES permit the director, to the extent consistent with the FWPCA, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit. For Large CAFOs, EPA already accounted for technical feasibility and economic costs when it developed the Effluent Limitations Guidelines and New Source Performance Standards for the CAFO Point Source Category, and except for limited opportunities for variances from technology-based standards, ODA would not be able to consider these factors further in establishing effluent limitations. For Medium and Small CAFOs, and for land application under the control of Large horse, sheep and duck CAFOs for which EPA has not established technology-based standards, these factors may be considered in setting Best Professional Judgment-based limitations to the extent consistent with 40 CFR 125.3(d). However, these factors are not relevant in setting water quality-based effluent limitations, although they may be relevant outside of the permitting context in evaluating the water quality standards upon which such limitations are based in accordance with Section 303(c) of the Clean Water Act. With respect to compliance schedules, such schedules would be available in establishing water quality-based effluent limits to the extent authorized by EPA requirements and where the State's water quality standards clearly authorize the use of such schedules, but would not otherwise be available in setting water quality-based effluent limitations. Please confirm that use of the factors referenced in Subpart (G) would be limited consistent with federal requirements identified above for the purpose of establishing NPDES permit conditions.

4. Public Participation. Public participation and notice are required elements of the NPDES program, see, CWA §402(b)(3); 40 CFR 123.25. ORC 903.09 and OAC 901:10-6 establish public participation requirements for ODA to follow in the issuance of NPDES permits. ORC 903.09(E) and OAC 901:10-6-01(C) address situations where the Director fails to provide adequate notice or to provide for a public meeting. It appears that these provisions may authorize inadequate notice, or limit opportunities for public hearings. Ohio will need to revise or delete ORC 903.09(E) and OAC 901:10-6-01(C), or specify how ODA's authority to provide public participation consistent with the federal requirements would be retained, in light of these provisions.

5. Conflict of Interest. ORC 903.081 addresses the effect of receipt of income from permittees or applicants for permits. The focus of this provision is on whether a person may take a *specific action* (i.e., issue, vacate, modify) on an NPDES permit during a two year period from receiving significant income from an NPDES permittee or permit applicant. Under 40 CFR 123.25(c), persons who

have received a significant portion of their income from an NPDES permittee or applicant *may not serve* on such boards or bodies. The federal provision specifically includes "any individual, including the Director, who has or shares the authority to approve all or portions of permits either in the first instance as modified or reissued, or on appeal." While the Statement of Legal Authority indicates on page 127 that the ODA program has identical conflict of interest provisions as the federal requirements, the State statutory provision appears to be narrower than the federal provision. The State's conflict of interest authority will need to be revised consistent with the federal requirement.

6. Denial of request for permit modification. 40 CFR 124.5(b) requires a state implementing a permitting program to provide a written response denying a request for a permit modification to interested parties as well as to owners and operators. ORC 903.09(F) only covers such notice to owners and operators, and thus appears to be narrower than the federal requirement. Ohio will need to revise its authority to ensure that written responses to denials of requests for permit modification will be provided to interested parties other than CAFO owners or operators, or specify the provisions which establish that requirement.

7. Designation authority. ORC 903.10(F)(1) requires ODA to adopt rules that designate concentrated animal feeding operations which are subject to NPDES permit requirements. It provides that this designation "shall include only those point sources for which the issuance of NPDES permits is required under the [FWPCA]." Under the federal NPDES program, AFOs meeting the definition of "Large CAFO" and certain AFOs meeting the definition of "Medium CAFO" are defined as point sources, § 502(14) of the CWA and 40 CFR 122.23(a). These CAFOs require permits for discharges and proposed discharges. 40 CFR 122.21. Other AFOs are not defined as point sources. They do not require permits as a general matter. However, federal regulations provide that the Director may designate an AFO as a CAFO under certain circumstances. 40 CFR 122.23(c). Under the federal program, the designation of an AFO as a CAFO is a discretionary action; there is nothing in the FWPCA or regulations which compel the Director to require an AFO that is not defined as a CAFO to obtain a permit. As discussed on page 21 of the Statement of Legal Authority, OAC 901:10-3-07 appears to provide a designation procedure identical to that provided under 40 CFR 122.23(c). However, it appears that the language in ORC 903.10(F)(1) highlighted above potentially limits ODA's designation authority. Ohio needs to either revise or clarify its authority so ODA can designate AFOs as CAFOs to the same extent as under the federal regulations.

B. <u>Regulatory authority</u>

8. Definition of nonpoint source. Rule 901:10-1-01(LLLL) defines nonpoint source pollution to mean any source of pollutants other than those defined as point sources. It provides that nonpoint sources include but are not limited to direct wet and dry deposition and overland runoff.

This definition appears to improperly exclude direct wet and dry deposition and overland runoff from the scope of ODA's proposed NPDES program. Ohio needs to strike the second sentence from the definition or clarify that the sentence does not have the effect of excluding the following from the ODA program:

a. Uncollected and unchannelized additions of pollutants that flow over land to which a CAFO owner or operator has applied manure, litter, or process wastewater. Please note that the Second Circuit Court of Appeals rejected a claim that such discharges are excluded from the scope of the federal NPDES program. *See Waterkeeper Alliance, et al.*, v. *EPA*, 399 F.3d 510, 511 (2nd Cir. 2005).
b. Overland runoff from the production area at an AFO that is defined or designated as a Large CAFO, a Medium CAFO, or a Small CAFO. Please note that overland runoff from production areas at Large CAFOs is included within the scope of the federal NPDES program, as is overland runoff from Medium CAFOs and Small CAFOs where such runoff discharges directly to waters of the United States which originate outside of and pass over, across, or through the facility (production area).
c. Process wastewater discharges that result from direct wet or dry deposition of manure, as the term is defined in 40 CFR 122.23(b)(5), originating from a CAFO production area. Please note that process wastewater discharges from production areas including, but not limited to, precipitation that has come into contact with raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding, is included within the scope of the federal NPDES program. 40 CFR 122.23(b)(7), 122.23(e), 68 *Federal Register* 7198, February 12, 2003.

9. Based on the language in OAC 901:10-1-02(A)(2) and ODA's Program Description, it is our understanding that CAFOs would need to have both a permit to operate (PTO) and an NPDES permit, and that the NPDES provisions would be incorporated into, and specified in the PTO. Understanding of this dual permitting approach is critical to understanding how ODA intends to regulate CAFOs. For readers not familiar with this structure, however, use of terms such as Concentrated Animal Feeding Facility (CAFF), Major Concentrated Animal Feeding Facility (MCAFF) and the interrelationship between PTOs and NPDES permits may not be clear. Please provide, perhaps in the Program Description, further clarification as to the relationship between PTOs and NPDES permits. In particular, are there facilities that would be required to obtain PTOs but not NPDES permits, or visa versa, and which types of facilities would be in those categories?

10. OAC 901:10-1-02(A)(2) states, "the term NPDES permit, NPDES operation, and concentrated animal feeding operation is an animal feeding facility that is subject to the NPDES permit as established in section 402 of the Act . . . ." The intent of this provision appears to be to establish that where the regulations use the terms NPDES permit, NPDES operation and CAFO, they refer to the portion of a PTO dealing with NPDES, and recognize that the NPDES language will be in PTOs. As written, however, this provision could be read as defining CAFOs as only those facilities with NPDES permits. The term "NPDES operation" is also not defined in the state regulations. Please clarify the intent of this provision, and whether the use of "NPDES operation" is creating a new regulatory term.

11. Bases for permit modifications. OAC 901:10-1-09 does not appear to require permit modification in the circumstances described in 40 CFR 122.62(a)(6), (7), (8), (10), (11), (12), or (16). ODA will need to revise its regulations to include those provisions relevant to CAFOs or clarify its authority to modify permits consistent with the listed causes.

12. Sampling and analysis. OAC 901:10-2-4(A) and 901:10-2-10 provide that manure shall be sampled and analyzed in accordance with certain requirements[2]. Paragraph (B) in OAC 901:10-2-04 and paragraph (A) in OAC 901:10-2-10 provide exceptions to the sampling and analysis requirements. While the exception in OAC 901:10-2-10(A) applies only when a person applies for a permit to install or requests approval of an operational change in accordance with OAC 901:10-1-09, the exception in OAC 901:10-2-04(B) appears to be expressed without qualification. ODA will need to revise OAC 901:10-2-04(B) or clarify that the exception established therein is limited to the circumstances provided in OAC 901:10-2-4(A).

13. Additional requirements for an NPDES permit application. OAC 901:10-3-01(E) states: "In establishing terms and conditions of the NPDES permit, the director, to the extent consistent with the Federal Water Pollution Control Act, shall consider technical feasibility and economic costs and shall allow a reasonable period of time for coming into compliance with the permit." See also, OAC 901:10-3-10(A). This provision raises the same questions as comment 3 above, regarding ORC 903.08(G). Please confirm that use of the factors referenced in Subpart (E) would be limited consistent with federal requirements identified in comment 3 for the purpose of establishing NPDES permit conditions.

14. Defined Terms Relating to Who Needs to Apply for NPDES Permit. OAC 901:10-3-02(B) states that an animal feeding operation is defined as a concentrated animal feeding operation *only* if the specific threshold specified in division (M) of section 903.01 of the Revised Code [for Large CAFOs] is met for any one animal species. It also states that "concentrated animal feeding operation" *may* also mean any animal feeding facility that meets the criteria of

2 For comparison purposes, 40 CFR § 412.4(c)(3) requires Large CAFOs in the cattle, swine, and poultry subcategories to analyze manure samples for nitrogen and phosphorus content a minimum of once per year.

division (Q) [Medium CAFOs] or division (EE) of section 903.01 [Small CAFOs] of the Revised Code. Use of the terms such as "only" and "may" in this provision appear to qualify the requirement for CAFOs to seek NPDES permits, although it appears from ORC 903.01(F) and OAC 901:10-3-01(A) that all CAFOs are required to get permits to the same extent as the federal requirements. ODA will need to revise OAC 901:10-3-02(B) to ensure that CAFOs are required to seek NPDES permits to the extent required under the federal regulations, or clarify that the provision does not affect the State's other provisions regarding which operations must apply for permits.

15. Stockpiles. OAC 901:10-3-2 through 10-3-11 contain effluent limitations applicable to the production and land application areas at Large CAFOs. The rules generally provide, in part, that there shall be no discharge of manure from production areas at such CAFOs. ORC 903.01(AA) defines production areas to include manure storage and treatment facilities, among other features. While OAC 901:10-1-01(CCC) defines such facilities to include stockpiles without regard to the period of time over which they are maintained, OAC 901:10-1-01(JJJJ) appears to provide that stockpiles maintained for a period of 14 days or less are not included within the meaning of the term manure storage facilities. Based on this definition, it appears that stockpiles maintained for 14 days or less are not subject to the production area effluent limitations in OAC 901:10-3-2 through 10-3-11. ODA needs to revise this definition to ensure that manure stockpiles, even those maintained for less than 14 days, are considered part of a CAFO's production area, and are thus subject to effluent limitations to the same extent as under the federal requirements.

16. Standard permit terms and conditions, monitoring and records. 40 CFR 122.41(l)(4) requires that monitoring results be reported on Discharge Monitoring Reports (DMRs). There does not appear to be a specific counterpart to this requirement in OAC 901, although OAC 901:10-3-10(L)(4) provides authority for ODA to require reporting on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than one [per] year. Please clarify whether this or other provisions provide authority to require permitted CAFOs to submit monthly monitoring reports. While the need for CAFOs to submit DMRs will be limited (e.g., for Medium CAFOs with discharges or facilities using voluntary alternative performance standards under 40 CFR Part 412), such authority remains necessary for implementation of a CAFO permitting program.

17. Bypass. 40 CFR 122.41 defines bypass as the intentional diversion of waste streams from any portion of *a treatment facility*. ODA's regulations define bypass as any intentional diversion of manure from any portion of *the production area*. (OAC 901:10-3-10(T)) [emphasis added]. While recognizing that the state has tailored its bypass provision for the CAFO context, it appears that the change may expand the provision to encompass a much broader set of circumstances than the narrow ones addressed by the federal bypass regulation.

In addition, the wording in OAC 901:10-3-10(T)(4) of the State's bypass provision varies from the federal bypass provision at 40 CFR 122.41(m)(4)(i). Under the federal provision, all three circumstances listed in the provision must be satisfied to avoid a potential enforcement action for a bypass. By ending each paragraph with a period and failing to include the word 'and,' the Ohio provision appears to allow the possibility of avoiding enforcement if any of the three circumstances exist.

To address both of these issues, ODA will need to revise OAC 901:10-3-10(T)(4) to be consistent with the federal bypass provisions.

18. General permits. It is our understanding that ODA is not intending to establish a general permit by rule for CAFOs. However, some of the language in OAC 901:10-4-05, in particular the reference to "this permit" in the introductory paragraph, gives the appearance that ODA is attempting to establish a general permit-by-rule. If ODA intends for OAC 901:10-4-05 to establish an NPDES general permit-by-rule, then the Department will need to submit the rule to the Region for review under the CWA § 402(d) and 40 CFR 123.44 subsequent to any EPA, Region 5, approval of the present revision to the Ohio NPDES program. If it is not ODA's intent to establish a permit-by-rule for CAFOs, reference to "this permit" should be removed from OAC 901:10-4-05. Please clarify ODA's intent regarding a potential general permit-by-rule.

19. Response to complaints. Among other duties, 40 CFR 123.27(d) creates an obligation for a state implementing an NPDES program to investigate all complaints and to not oppose permissive intervention where authorized by statute or rule, or to provide for intervention as of right in civil or administrative actions by any citizen having an interest which is or may be adversely affected. In addition, 123.26(b)(4) requires states to have a process for consideration of publicly submitted information regarding violations. Under ORC 903.15(B), as well as OAC 901:10-5-01(B)(1) and (C), ODA appears to only be obligated to investigate complaints from persons aggrieved or adversely affected by an alleged nuisance, and only to investigate whether or not a CAFO owner or operator is in compliance with a permit. These provisions will need to be revised to ensure that ODA's obligation to investigate complaints is not limited to those made by persons who can show they have been aggrieved or adversely affected, and that it has full authority to investigate a complaint that may result in a finding of an unpermitted discharge.

20. Draft permits. 40 CFR 124.6(d) specifies elements that must be included in draft permits, including those drafted by state permitting authorities. ODA's regulations do not appear to address draft permit content. The State regulations will need to be revised to ensure that draft permits contain the elements required by the federal regulations.

21. 40 CFR 124.10(d)(iv) requires that the name, address and telephone number of a person from whom interested persons may obtain further information (including copies of the draft permit or draft general permit, as well as a statement of basis or fact sheet and the application) be included in a public notice. The state provision regarding the contents of public notice, OAC 901:10-6-02(A)(1), includes similar language, but refers to the location where records are located and may be inspected and copied. Under the federal provision, interested persons are able to request permit-related information without having to travel to the place it is maintained. Please clarify whether the public has similar ability to access permit-related information under the state provision. If not, this provision will need to be revised consistent with the federal requirement.

22. Additionally, it appears that some of the requirements in 40 CFR 124.10(d)(v) are absent from the Ohio requirements regarding public notices. Section 124.10(d)(v) requires the inclusion of a statement of procedures to request a hearing, the time and place that any hearing will be held, and other procedures by which the public may participate in the final permit decision. Such provision will need to be added to ODA's regulations to ensure that public notices will include the information required under the federal regulations.

23. Public Notice of permit actions and public comment period. 40 CFR 124.10(c)(iii) requires permitting authorities to provide public notice by mail to federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, etc. OAC 901:10-6-03(C) states that public notice regarding permit actions will be provided to state, interstate, federal and local government agencies *with jurisdiction over waters that may be affected by the discharge to waters of the State* [emphasis added]. Please provide clarification as to whether notice will be provided to the agencies within the scope and to the extent required by the federal requirements. In any event, ODA should remove the above highlighted language when it updates its regulations to incorporate revisions to the federal regulations, and replace it with language consistent with 124.10(c)(iii).

24. Response to public comments. Under 40 CFR 124.17, NPDES permitting authorities must consider and respond to comments submitted during a public comment period or during any hearing. The Statement of Legal Authority indicates on page 99 that OAC 901:10-6-04(J) requires a responsiveness summary for all public noticed permits, but OAC 901:10-6-04(J) deals with public meetings, and only appears to require a report on comments received during such public meetings. ODA will need to revise its regulations to ensure that a response to comments is required for all public noticed permits, or clarify which provision requires such a response in the event a public hearing is not held.

C. <u>ODA-EPA Memorandum of Agreement (MOA)</u>

1. Regulation of AFOs/CAFOs discharging to POTWs. Pages 2-3 of the MOA indicate that Ohio EPA will retain jurisdiction for CAFO's discharging to Publicly Owned Treatment Works (POTW). Page 85 of the Statement of Legal Authority specifies that authority for POTWs will continue to reside with Ohio EPA, and that "any facility or operation subject to chapter 903 of the Revised Code that introduces manure, including process wastewater, into a publicly owned treatment works must comply with 40 CFR part 403 and chapter 6111 of the Revised Code and rules promulgated thereunder." This language suggests, but does not specifically state, which agency would regulate discharges from CAFOs to POTWs. Please provide clarification as to which agency has the authority and responsibility for regulating such operations.

2. Proposed permits, page 11. We had previously commented that this section should replace the term "draft" with "proposed" permits. Upon further consideration, we now believe that use of both terms is appropriate, and so withdraw that previous comment. We do, however, have an additional comment. Specifically, the revised language states that "U.S. EPA will, within 45 days after receipt of the draft or proposed individual permits..." This language could limit EPA's timeframe to object to draft permits to 45 days, which is less than the 90 days we otherwise have under the regulations and other sections of the MOA. Please revise this language to clarify that EPA will continue to have 90 days to review and object to draft permits as specified under section III.C.2 and III.C.3 of the MOA.

D. Program Description

Criminal investigation. ODA's criminal enforcement authority is at ORC 903.99. The MOA with EPA Region 5 commits ODA to implement an enforcement program, including a compliance assessment program, which enables ODA to take timely and effective enforcement for violations. The program description and organizational chart/position descriptions indicate that ODA has four livestock inspectors, and that through the Livestock Environmental Permitting Program Executive Director, ODA can refer criminal cases to the Attorney General's office. Please clarify whether ODA staff would include a criminal investigator, and if not, who would be assigned if there is a potential criminal issue.

II. Concern Regarding Land Application of Manure or Litter

Surface application of manure or litter on snow or frozen soil. Paragraph (G) in rule 901:10-2-14 contains ODA's technical standards for application of manure, litter, and process wastewater on snow or frozen soil. EPA, Region 5, understands that the standards in paragraph (G) apply in addition to the technical standards expressed elsewhere in rule 901:10-2-14. Pages 46 through 48 of the Program Description describe enforcement procedures that ODA will implement when a CAFO fails to comply with the rules applicable to manure, litter, and

process wastewater application on snow or frozen soil. However, since the procedures in the Program Description will not apply to a CAFO that is not subject to enforcement, they do not establish technical standards for nutrient management as required by 40 CFR 123.36.

Appendix L in EPA's *Managing Manure Nutrients at Concentrated Animal Feeding Operations* (EPA-821-B-04-006, August 2004) contains winter spreading technical guidance. EPA, Region 5, used Appendix L to evaluate the ODA technical standards to determine the degree to which they affect the movement of nutrients and manure pollutants in runoff from melted snow where waters of the United States are downslope from a land application area and a crop will not be grown in the winter or nutrients need not be supplied in that season to grow a winter crop. For the purpose of step 1 in Appendix L, EPA established 18 pounds per acre as a "standard" for the mass of total nitrogenous (and carbonaceous) biochemical oxygen demand (BOD) that would be permitted in runoff from one inch of precipitation[3]. For the purpose of step 3, we established antecedent moisture condition III and 3° C as the design conditions for soil moisture and temperature, respectively. Based on the evaluation, EPA, Region 5, is concerned that the ODA technical standards will not minimize movement of nutrients to waters of the United States, as required by 40 CFR 123.36, when dairy, layer, or broiler manure or litter is surface applied on snow or frozen soil under the circumstances identified in the Attachment.

III. Technical corrections – ODA should address the following when it updates its regulations to incorporate the revised federal regulations.

1. In OAC 901:10-2-14(C)(1)(e), "avoid" was not changed to "preclude" in the version of the rules we were provided, as ODA indicated it had done.

2. OAC 901:10-3-04 should cite "(II)", not "(HH)"

3. OAC 901:10-3-08 (B)(6): This section appears to be the equivalent requirement to section 124.62(b)(2) of the federal regulations. However, this provision cites to Section 301 of the CWA instead of Section 302(b)(2) of CWA, which is the section that applies to the modifications of effluent limitations and is cited in 124.62(b)(2). This citation should be corrected when ODA revises its regulations to incorporate revisions to federal regulations.

4. OAC 901:10-3-10 does not include a provision similar to 122.41(l)(4)(iii), which requires that calculations for all limitations that require averaging of

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3 Eighteen pounds per acre is the product of 160 milligrams per liter total BOD times the volume of water, 13,650 gallons, that will runoff an acre of land after one inch of water has been applied to Hydrologic Soil Group D soils under good hydrologic and saturated soil moisture conditions. One hundred sixty milligrams per liter is the concentration of total BOD that publicly-owned treatment works would need to meet on a maximum daily basis if they are to have a reasonable chance of achieving secondary treatment standards on a monthly average basis.

measurements use the arithmetic mean unless otherwise specified by the Director in the permit.

5. OAC 901:10-3-10(J)(1) Monitoring and records. Unlike the federal requirement regarding representativeness of samples at 122.41(i)(4), the State provision includes the qualifier "records of" before "samples and measurements," which potentially shifts the requirement for representativeness from the sample to the sampling records, and makes the requirement more limited in coverage than the federal requirement. The term "records of" should be deleted when ODA revises its rules to incorporate revisions to the federal regulations.

Attachment
Circumstances under which Surface Application of Manure or Litter on Snow or Frozen Soil is a Cause for Concern

Land Slope Greater Than Zero But Less Than or Equal to Six Percent

1. Dairy, layer, or broiler manure or litter applied on Hydrologic Soil Group (HSG) D soils.
2. Dairy manure applied on HSG C soils.
3. Layer or broiler manure or litter applied on HSG C soils where the former crop was a row crop or small grain.
4. Dairy manure applied on HSG B soils where the former crop was a row crop.

Land Slope Greater Than Six Percent

1. Dairy manure applied on HSG D soils.
2. Dairy manure applied on HSG C soils where the former crop was a row crop or small grain.

Exhibit 7-A

Congress of the United States
Washington, DC 20510

December 11, 2008

Matt Gluckman
EPA Region 5
NPDES Programs Branch
WN-16J
77 West Jackson Boulevard
Chicago, Illinois 60604

RE: FRL-8728-5

Dear Mr. Gluckman:

This letter is in response to the October 15, 2008 Federal Register notice regarding Ohio's application to transfer the National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFO) from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Agriculture (ODA).

We support Ohio's efforts to transfer permitting authority. As you may know, this is a significant issue for all stakeholders involved, from our livestock and environmental interests to Ohio's state legislature and government agencies. Interested parties in the state have worked collectively for many years, in a transparent and bipartisan manner to prepare a thorough application that meets the federal government's requirements for transfer of permit authority from one state agency to another. As noted in the Federal Register announcement, U.S. EPA considers Ohio's application to be approvable, contingent upon enactment and adoption of statutory and rule changes. As we understand, Ohio is currently taking the necessary steps to accomplish these final requirements.

While the review process has taken longer than originally estimated, given that Ohio submitted the application to U.S. EPA in January 2007, we recognize the time and efforts put forth by the agency and thank U.S. EPA for working closely with ODA and the State of Ohio to reach this critical stage in the application process.

7-B

Following the conclusion of the public comment period, we would respectfully urge U.S. EPA to give the application an unexpurgaled review that diligently addresses the concerns of all parties, and complete this process as soon as it is feasibly possible.

Thank you for your work on this effort.

Sincerely.

GEORGE V. VOINOVICH
United States Senator

JOHN A. BOEHNER
Member of Congress

JIM JORDAN
Member of Congress

ZACK SPACE
Member of Congress

PATRICK J. TIBERI
Member of Congress

BOB LATTA
Member of Congress

MICHAEL TURNER
Member of Congress

Cc: Governor Ted Strickland. Ohio
Robert Boggs. Ohio Department of Agriculture
Administrator Steve Johnson, U.S. Environmental Protection Agency Director

Exhibit 14 — 7-C

BOB GIBBS
18TH DISTRICT, OHIO

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEES
CHAIRMAN
WATER RESOURCES AND ENVIRONMENT
HIGHWAYS AND TRANSIT
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

AGRICULTURE COMMITTEE
SUBCOMMITTEES
CONSERVATION, ENERGY AND FORESTRY
GENERAL FARM COMMODITIES AND RISK MANAGEMENT

Congress of the United States
House of Representatives
Washington, DC 20515–3518

328 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6265

1165 MILITARY ROAD
SUITE B3
ZANESVILLE, OH 43701
(740) 452-2279

September 16, 2011

Administrator Lisa Jackson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: ***U.S. EPA Approval of Transfer of Regulatory Authority from Ohio EPA to ODA***

We would respectfully request the approval to transfer regulatory responsibility over the Ohio National Pollutant Discharge Elimination System (NPDES) program from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). It is our understanding that transfer of this authority over concentrated animal feeding operations and storm water from animal feeding operations was set into motion with the Clean Water Act (CWA) and has been in process for over four years.

In 2001, Ohio passed legislation to transfer state NPDES permitting authority over concentrated animal feeding operations (CAFOs) from Ohio EPA to ODA. That same year, Ohio informally notified U.S. EPA about this desired state program change, and ODA passed its first CAFO NPDES rules a year later in 2002.

In 2007, the ODA formally applied for the transfer of authority and, over the past four years, the department has responded to numerous requests from U.S. EPA for statutory and regulatory revisions and changes that would ultimately authorize the NPDES transfer. Despite all of these best efforts, the transfer still has not culminated due to even more requests for revisions.

In October 2008, U.S. EPA Region 5 notified the public that it was proposing to approve Ohio's request to transfer the state's NPDES program for CAFOs to ODA pending Ohio's approval of the additional rule and statutory changes. Ohio's legislature moved swiftly to adopt these changes hoping it would be the last step necessary to obtain the approval of the transfer.

In May 2011, the ODA initiated a fifth rulemaking process to respond to any EPA comments and to prepare for any updates or changes necessitated by U.S. EPA's revisions. This request has remained pending during the administration of three Ohio governors, two Republicans and one Democrat, and has yet to be approved. During this whole process, ODA has continued to work closely with Ohio EPA in preparing for the transfer of the CAFO NPDES authority between the two state agencies.

7-D

There are a number of reasons to prompt a decision from U.S. EPA to approve the transfer of authority:

- ODA's state-only permits (Permit to Install and Permit to Operate) are more comprehensive in the scope of regulatory requirements over permitted activities of CAFOs than permits previously issued by Ohio EPA.
- Approval of Ohio's request will allow Ohio EPA to re-direct its resources toward other sources of water pollution.
- ODA has a larger staff for engineering, inspections, communications and legal support than Ohio EPA ever employed for environmental oversight over livestock facilities.
- The ODA staff is trained in agricultural engineering, agronomy, animal science, water quality, insect and rodent control and has the expertise that is required to prevent environmental problems.
- Ohio still has duplicative and overlapping permit programs that can only be eliminated if U:S. EPA authorizes ODA to issue and enforce NPDES permits along with the state-only permits.
- This transfer will allow ODA to deliver a more comprehensive regulatory program that is protective of the environment.
- This is a sensible re-distribution of regulatory work between two state agencies.
- Permitted farm owners/operators would be working with the same staff for both the NPDES permits and state-only permits, making the permit process and communications more uniform and predictable.

There is precedent that authority can, and has been, shared between state agencies in other federal environmental programs. The Ohio program for the Underground Injection Control Program established pursuant to Sections 1422 and 1425 of the Safe Drinking Water Act is administered by the Ohio Department of Natural Resources and the Ohio EPA, with both programs authorized by U.S. EPA. Similarly, the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. 6921, as amended, is implemented in Ohio by two cabinet-level departments: the Ohio EPA for hazardous waste regulation and the Ohio Department of Commerce State Fire Marshal's Office for underground storage tanks. U.S. EPA has also recognized the ODA as an effective regulator in another environmental program area. The ODA has been in charge of Ohio's regulatory and enforcement programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for over thirty years.

We are confident that the State of Ohio has provided sufficient documentation for the EPA to determine that the Ohio Department of Agriculture possesses adequate authority to implement the proposed NPDES program, in accordance with CWA section 402(b) and 40 C.F.R. Part 123.

We look forward to receiving notification of the U.S. EPA's timely approval.

Bob Gibbs
Member of Congress

Jim Jordan
Member of Congress

7-E

Jean Schmidt
Member of Congress

Jim Renacci (OH-16)
Member of Congress

Bob Latta
Member of Congress

Steve Chabot
Member of Congress

Bill Johnson
Member of Congress

Patrick Tiberi
Member of Congress

8-A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 22 2013

REPLY TO THE ATTENTION OF:

WN-16J

Mrs. Vickie Askins
6335 Solether Road
Cygnet, Ohio 43413

Re: Freedom of Information Act Request
EPA-R5-2014-000825

Dear Mrs. Askins:

This letter responds to your Freedom of Information Act (FOIA) request dated November 3, 2013. You requested from the U.S. Environmental Protection Agency copies all approved/signed Memorandums of Agreement (MOAs) between the State of Ohio and EPA on behalf of the Ohio Department of Agriculture and the Ohio EPA. EPA's response to your request is due on December 4, 2013. This is the Water Division, National Pollutant Discharge Elimination System (NPDES) Programs Branch's response to your FOIA request.

Responsive records from the Water Division, NPDES Programs Branch, have been uploaded into FOIA online and a link to those documents will be provided to you by the FOIA office. Enclosure A is an itemized list of the responsive records. All responsive records are signed MOAs between EPA and Ohio EPA. The Water Division has no signed MOAs between EPA and the Ohio Department of Agriculture.

123,24

The cost of responding to your request was less than $14; therefore, there is no fee for this response.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, email: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, D.C. 20004. Your appeal must be made in writing and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request number EPA-R5-2014-000825. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."