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901:13-1-01 General provisions.

(A) Purpose.

Chapter 901:13-1 of the Administrative Code applies to the control of pollutants from areas within the state used for agricultural production, including land being used for the production or keeping of animals or for the production of agricultural crops.

Chapter 901:13-1 of the Administrative Code establishes state standards for a level of management and conservation practices in farming and animal feeding operations on farms in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment including pollutants attached to the sediment and animal manure. This chapter further define Ohio's pollution abatement grant program for landowners or operators to voluntarily install conservation practices.

The criteria in this chapter are intended for use in determining the acceptability of the level of management and conservation practices and for use by landowners and operators in planning, applying and maintaining appropriate management measures and conservation practices and to prevent the storage, handling, treatment, disposal, or land application of animal manure such that it is polluting or has a potential to pollute waters of the state contrary to these standards established by this chapter. Technical determinations by a district or the director shall be considered prima facie evidence of agricultural pollution.

(B) Definitions. As used in rules Chapter 901:13-1 of the Administrative Code:

- (1) "Agricultural pollution" or "pollution" means failure to use best management ~~or conservation~~ practices in farming agricultural production operations ~~to abate wind or water erosion of the soil or~~ to abate the degradation of waters of the state by residual farm products, animal manure, or soil sediment including attached substances ~~attached thereto~~.
- (2) "Agricultural production" means the commercial apiculture, animal husbandry or poultry husbandry, the commercial production of field crops, tobacco, fruits, vegetables, timber, nursery stock, sod or flowers or any combination of such husbandry or production and includes the processing, drying, storage, and marketing of food and fiber products and animals used for recreation, fur or wildlife purposes.
- (3) ~~"Agriculture animal"~~ Animal means any animal generally used for food or in agricultural production, including cattle, sheep, goats, rabbits, poultry, ~~and swine;~~ horses; alpacas; llamas; and any other animal included by the director of the Ohio department of agriculture by rule. ~~"Agricultural animal"~~ does not include fish or other aquatic animals regardless of whether they are raised at fish hatcheries, fish farms, or other facilities that raise aquatic animals.
- (4) "Animal feeding operation" means an animal feedlot and animal manure management facilities and land application areas for managing and disposal of animal manure. ~~"Animal feeding operation"~~ does not include operations subject to Chapter 903 of the Revised Code, Chapter 6111. of the Revised Code, or division 901:10 of the Administrative Code.
- (5) "Animal feedlot" means a paved animal feeding or holding area or other lot, pen, yard, or other feeding or holding area where grass or other suitable vegetative cover is not maintained.
- (6) ~~"Aquifer" means an underground consolidated or unconsolidated geologic formation, or series of~~

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~~formations that are hydraulically connected and that have the capability to receive, store, and yield usable quantities of water to wells. "Aquifer" does not include perched ground water.~~

~~(7)~~(6) "Best management practice" ~~or "BMP"~~ means a practice or combination of practices that is determined to be the most effective practicable, ~~(including technological, economic, and institutional considerations,)~~ means of preventing or reducing agricultural pollution sources to a level compatible with water quality goals. ~~BMPs~~Best management practices may include structural and nonstructural practices, conservation practices, and operation and maintenance procedures.

~~(8)~~(7) "Conservation" means the wise use and management of natural resources.

~~(9)~~(8) "Cost-share monies" means state of Ohio public funds used for the purpose of sharing the cost of establishing needed pollution abatement practices.

~~(10)~~(9) "Department" means the Ohio department of agriculture.

~~(11)~~(10) "Director" means the director of the Ohio department of agriculture.

~~(12)~~(11) "Director's designee" means any individual whom ~~Ohio department of agriculture, soil and water conservation district employee, or soil and water conservation district supervisor who~~ the director has given the responsibility to implement the agricultural pollution abatement program.

~~(13)~~(12) "District" means a soil and water conservation district, organized under Chapter 940. of the Revised Code.

~~(14) "Ditch" means an excavation, either dug or natural, for the purpose of drainage or irrigation with intermittent flow.~~

~~(15)~~(13) "Diversion" means a channel constructed across the slope for the purpose of intercepting surface runoff.

~~(16) "Drainageway" means an area of concentrated water flow other than river, stream, ditch, or grassed waterway.~~

~~(17)~~(14) "Erosion" means:

(a) The wearing away of the land surface by running water, wind, ice or other geological agents, including such processes as gravitational creep.

(b) Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(c) Erosion includes:

(i) "Gully erosion" which means: the erosion process whereby water accumulates in narrow channels during and immediately after rainfall or snow or ice melt and actively removes the soil from this narrow area to considerable depths such that the channel would not be obliterated by normal smoothing or tillage operations.

(ii) "Rill erosion" which means ~~:-an~~the erosion process in which numerous small channels only

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several inches deep are formed; occurs mainly on recently disturbed soils. The small channels formed by rill erosion would be obliterated by normal smoothing or tillage operations.

(iii) "Sheet erosion": which means the removal of a fairly uniform layer of soil from the land surface by wind or runoff water.

~~(18)~~(15) "Field ~~Office Technical Guide~~office technical guide" means the ~~localized document used by the soil and water conservation district and developed~~Ohio field office technical guide (current edition) created by the United States department of agriculture, natural resources conservation service, ~~United States department of agriculture,~~ which serves as the technical guide for the conservation of soil, water, air, and related plant and animal resources. The field office technical guide is available by visiting www.nrcs.usda.gov ~~to all Ohio county soil and water conservation districts, available at http://www.oh.nres.usda.gov/technical/ohio_eFOTG.html and which provides:~~

The field office technical guide is adopted in its entirety except that nutrient management standard in code 590 is not adopted and is replaced in its entirety by the appendix attached to this rule.

~~(a) Soil descriptions;~~

~~(b) Sound land use alternatives;~~

~~(c) Adequate conservation treatment alternatives;~~

~~(d) Standards and specifications of conservation practices;~~

~~(e) Conservation cost return information;~~

~~(f) Practice maintenance requirements;~~

~~(g) Erosion prediction procedures.~~

~~(19)~~ "Grassed waterway" means a natural course or constructed channel that is shaped or graded to required dimensions and established with suitable vegetation to filter and convey runoff from fields, terraces, diversions or other concentrated runoff without causing erosion or flooding.

~~(20)~~(16) "Ground water" means any water below the surface of the earth in a zone of saturation, but does not include a perched water table.

~~(21)~~(17) "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, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting, on farm biodigester operation residue that includes at least seventy-five per cent manure, or the composting of animal excreta.

~~(22)~~(18) "Manure ~~storage or treatment~~management facility" means any area or facilities used for the collection, storage, handling or treatment of manure.

~~(23)~~(19) "Mortality composting" means the controlled decomposition of organic solid material consisting of animal mortality that stabilizes the organic fraction of the material.

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- ~~(24)~~ (20) "Ohio soil and water conservation commission" means ~~the seven member board that directs and recommends conservation policies and programs as authorized~~ the Ohio soil and water conservation commission established under section 940.02 of the Revised Code.
- ~~(25)~~ "Ohio Livestock Manure Management Guide" means ~~the 2006 edition of the "Ohio Livestock Manure Management Guide," bulletin 604, the Ohio state university extension, which is available at all county offices of Ohio state university extension, local soil and water conservation district offices, and at <http://ohioline.osu.edu/b604>.~~
- ~~(26)~~ (21) "Operation and management plan" means a written record, developed or approved by the director, the director's designee, or the district board of supervisors of a soil and water conservation district ~~or the director~~, for the owner or operator of agricultural land or an animal feeding ~~operations~~ operation that contains both of the following: ~~implementation schedules and operational procedures for a level of management and best management practices which will abate the degradation of the waters of the state by animal manure and by soil sediment including attached pollutants.~~
- (a) Implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate the degradation of the waters of the state by residual farm products, manure, and soil sediment, including attached pollutants;
- (b) Best management practices that are to be used by the owner or operator.
- ~~(27)~~ "Permeability" means ~~the quality of a soil horizon that enables water or air to move through it. Terms used to describe it are as follows: very slow, slow, moderately slow, moderate, moderately rapid, rapid, and very rapid, measured in inches per hour or inches per day.~~
- ~~(28)~~ (22) "Person" has the same meaning as in section 1.59 of the Revised Code ~~means any individual, corporation, partnership, joint venture, agency, unincorporated association, or any combination thereof.~~
- ~~(29)~~ "Pollution" means ~~failure to use management or conservation practices in farming operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by animal manure or soil sediment including pollutants attached thereto.~~
- ~~(30)~~ (23) "Prima facie evidence" means law evidence adequate to establish a fact or raise a presumption of fact unless refuted.
- ~~(31)~~ "Primary contact recreation resource water" means ~~waters that, during the recreation season of May first to October fifteenth, are suitable for full-body contact recreation such as, but not limited to, swimming, canoeing and scuba diving with minimal threat to public health as a result of water quality.~~
- ~~(32)~~ "RUSLE" means ~~the "Revised Universal Soil Loss Equation" which is a method used to estimate soil loss by sheet and rill erosion and wind erosion. This will be estimated using the current soil loss prediction technologies found in the "Field Office Technical Guide."~~
- ~~(33)~~ "Saturated soil" means ~~soil in which all voids between soil particles are filled with liquid.~~
- (24) "Residual farm products" has the same meaning as found in section 939.01 of the Revised Code.
- ~~(34)~~ (25) "Sediment" means solid material, both mineral and organic, that is in suspension, is being

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transported, or has been moved from its site of origin by air, water, gravity, or ice, and has come to rest on the earth's surface.

- ~~(35)~~(26) "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.
- ~~(36)~~(27) "Snow pack manure" means the accumulation of snow and ice when combined with manure from animal feedlot.
- ~~(37)~~(28) "Soil" means unconsolidated, erodible earth material consisting of minerals and organics.
- ~~(38)~~ "Soil horizon" means a layer of soil, approximately parallel to the soil surface, with characteristics produced by soil forming processes.
- ~~(39)~~(29) "Soil loss" means soil moved from a given site by the forces of erosion and redeposited at another site, on land or in a body of water.
- ~~(40)~~(30) "Stream" means a body of water running or flowing on the earth's surface or channel in which such flow occurs. Flow may be seasonally intermittent.
- ~~(41)~~ "Substantial", when referring to compliance with the provisions of an approved operation and management plan, means following the approved schedule of conservation practice implementation.
- ~~(42)~~ "T" means the soil loss tolerance expressed in tons per acre per year. This represents the tons of soil (related to the specific soil series) which can be lost through erosion annually without causing significant degradation of the soil or potential for crop production.
- ~~(43)~~(31) "Useful life" means the expected service life of a best management practice as defined by the ~~"Field Office Technical Guide"~~field office technical guide or by the director.
- ~~(44)~~ "Waters of the state" has the same meaning as found in section 939.01 of the Revised Code~~means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.~~
- ~~(45)~~ "Watershed in Distress" means a watershed, and boundaries thereof as established by the United States geological survey, which has aquatic life and health that is impaired by nutrients or sediment from agricultural land uses and where there is a threat to public health, drinking water supplies, recreation, or public safety and welfare.

901:13-1-02 Overflow and discharge from manure management facilities.

- (A) Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution by operating and maintaining manure management facilities so that overflow or discharge into waters of the state is prevented.
- (B) Animal feeding operations found by the director or the director's designee to have failed to implement best management practices for manure management facilities and have caused pollution to waters of the state

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shall develop, obtain approval, and implement modifications to their operations according to the field office technical guide or other methods approved by the director or the director's designee.

(C) To prevent overflow and discharge from manure management facilities the following should be taken into consideration:

- (1) The number, weight, and kind of animals;
- (2) The average seasonal weather patterns;
- (3) Type of system and the required management;
- (4) Method and seasonal time of utilization and application;
- (5) Soil types; and
- (6) Cropping system, including tillage methods.

(D) Animal feeding operations shall account for a reasonable storage safety factor in order to accommodate unexpected conditions. However, overflow or discharge caused by an infrequent storm event or other condition beyond the control of such person shall not indicate non-compliance with this provision if the planned or prescribed management system is followed.

901:13-1-03 Seepage from animal manure management facilities.

- (A) Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution by designing, constructing, operating and maintaining their operations to prevent seepage from manure management facilities from entering waters of the state.
- (B) Animal feeding operations found by the director or the director's designee to have failed to implement best management practices and have caused pollution to waters of the state shall develop, obtain approval, and implement modifications to their manure management facilities according to the field office technical guide or other methods approved by the director or the director's designee.
- (C) Consideration should be given to soils, geology, and ground water where manure management facilities are located.
- (D) Geologic investigations shall be made prior to design and construction of all earthen holding ponds and lagoons to identify the potential for pollution of waters of the state. Information collected from these investigations should be used in the design and construction of manure management facilities.

901:13-1-04 Manure contaminated runoff from feedlots and manure management facilities.

- (A) Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution from discharge of manure contaminated runoff from animal feedlots and manure management facilities.
- (B) Animal feeding operations found by the director or the director's designee to have failed to implement best management practices to prevent manure contaminated runoff from animal feedlots and manure management facilities and have caused pollution of waters of the state shall design, construct, operate, and maintain practices to prevent runoff from animal feedlots and manure management facilities according to the

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field office technical guide or other methods approved by the director or the director's designee.

(C) Pollution caused from a discharge of manure contaminated runoff from animal feedlots and manure management facilities may be prevented by best management practices, or any combination thereof, including but not limited to:

(1) Constructing, operating, and maintaining settling, grass filtration, or soil infiltration systems in accordance with the criteria in the field office technical guide;

(2) Diverting land surface water and roof water away from the feedlot and animal manure management facilities;

(3) Constructing roof coverings over feedlots, manure storage areas, and composting facilities;

(4) Providing an appropriate volume of manure storage to comply with the restrictions on land application of manure found in rule 901:13-1-11 of the Administrative Code; and

(5) Maintaining vegetative cover and protecting stream channels and areas adjacent to such channels from animal feeding operations.

901:13-1-05 Residual farm products.

(A) Each owner, operator, animal manure applicator, or person responsible shall prevent pollution from residual farm products and milking facility waste waters.

(B) Animal feeding operations found by the director or the director's designee to have failed to implement best management practices to prevent pollution from residual farm products and milking facility waste waters and have caused pollution to waters of the state shall design, construct, operate, and maintain such facilities in accordance with the criteria in the field office technical guide or other methods approved by the director or the director's designee.

901:13-1-06 Flooding of animal feeding operations.

(A) Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution caused from flooding of animal feeding operations.

(B) Animal feeding operations shall not be constructed such that manure will be inundated by the twenty-five year frequency flood. If the twenty-five year frequency flood elevation is not readily known, it shall be based on the best information available or by determining the water elevation associated with the twenty-five year frequency, twenty-four hour duration rainfall event.

901:13-1-07 Sheet and rill erosion.

(A) Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by sheet and rill erosion.

(B) Agricultural operations found by the director or the director's designee to have failed to implement best management practices to prevent sheet and rill erosion and have caused pollution to waters of the state shall

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apply and maintain best management practices as outlined in paragraph (C) of this rule.

(C) Agricultural operations subject to paragraph (B) of this rule shall:

(1) Utilize the field office technical guide to determine the combined soil loss values of:

(a) Predicted soil loss for sheet and rill erosion under current and planned cropping and management conditions; and

(b) Predicted soil loss from wind erosion, if applicable.

(2) Apply best management practices to ensure that the combined soil loss value determined in paragraph (C)(1) of this rule is equal to or less than the field office technical guides permissible soil loss for the agricultural operations specific soil series.

901:13-1-08 **Gully erosion.**

(A) Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by gully erosion.

(B) Agricultural operations found by the director or the director's designee to have failed to implement best management practices to prevent gully erosion and have caused pollution to waters of the state shall apply and maintain best management practices as listed in the field office technical guide.

901:13-1-09 **Wind erosion.**

(A) Each owner, operator, or person responsible for agricultural operations shall prevent pollution caused by wind erosion.

(B) Agricultural operations found by the director or the director's designee to have failed to implement best management practices to prevent wind erosion and have caused pollution to waters of the state shall apply and maintain best management practices as outlined in paragraph (C) of this rule.

(C) Agricultural operations subject to paragraph (B) of this rule shall:

(1) Utilize the field office technical guide to determine the combined soil loss values of:

(a) Predicted soil loss for wind erosion under current and planned cropping and management conditions; and

(b) Predicted soil loss from sheet and rill erosion, if applicable.

(2) Apply best management practices to ensure that the combined soil loss value determined in paragraph (C)(1) of this rule is equal to or less than the field office technical guides permissible soil loss for the agricultural operations specific soil series.

901:13-1-12 **Placing and sloughing.**

(A) Each owner, operator, or person responsible for agricultural production operations shall prevent pollution

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caused by placing soil directly into or in such a position that it may readily erode or slough into waters of the state.

(B) Agricultural production operations found by the director or the director's designee to have failed to implement best management practices to prevent sloughing of soil and have caused pollution to waters of the state shall apply and maintain best management practices to prevent soil sloughing from occurring as outlined in the field office technical guide.

(C) Except for those practices constructed or implemented in accordance with generally accepted agricultural and engineering practices, agricultural production operations shall not use earth disturbing practices, including tillage, immediately adjacent to waters of the state such that the disturbed soil is placed or may readily erode or slough into waters of the state.

901:13-1-13 Composting of animal mortality.

(A) Each owner, operator, or person responsible for an animal feeding operation shall prevent pollution caused by composting of animal mortality.

(B) Animal feeding operations found by the director or the director's designee, which have failed to implement best management practices for composting animal mortality shall use the best management practices of composting as established in the field office technical guide or other such standard as approved by the director or the director's designee.

(C) The owner or operator of any existing or planned animal feeding operation, or owner of animals raised by an owner or operator of an animal feeding operation wishing to conduct composting of animal mortality resulting from the operation shall participate in an educational course concerning composting conducted by the Ohio state university extension service and obtain a certificate of course completion.

901:13-1-14 Agricultural pollution abatement cost sharing.

~~Cost share monies from the state~~The department may ~~be available to~~ assist landowners in installing needed best management practices which abate ~~animal manure pollution,~~ soil erosion or degradation of the waters of the state by residual farm products, manure, or soil sediment, including pollutants attached thereto. ~~Best management practices specified as eligible for cost sharing must require expenditures that are likely to exceed the economic returns to the owner or operator.~~

(A) The department may offer to share the cost of establishing eligible best management practices up to thirty thousand dollars per person per year. If other public funds are involved in cost sharing to establish an eligible best management practice or practices, state funds can be used only to the extent that the combined public funds amount to no more than seventy-five per cent of the cost of establishing the best management practice or practices, or not more than thirty thousand dollars per person per year, whichever is smaller. The maximum of thirty thousand dollars of public funds per person per year limit may be waived by majority vote of the Ohio soil and water conservation commission.

(1) Eligible practices include but are not limited to:

(a) Animal manure storage and treatment systems;

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- (b) Settling basins and filter strips;
- (c) Critical area seeding and fencing;
- (d) Off stream watering and stream crossing stabilization;
- (e) Roofing and gutters;
- (f) Water diversions;
- (g) Grass waterways;
- (h) Water and sediment control basins;
- (i) Erosion control structures;
- (j) Wetland treatment facilities;
- (k) Composting facilities;
- (l) Access roads;
- (m) Heavy use protection pad;
- (n) Drainage water management structures; and
- (o) Other practices as approved by the Ohio soil and water conservation commission.

(2) Restrictions on use of cost share funds include:

- (a) Cost sharing shall be available for previously installed eligible practices which have lost their effectiveness through natural causes. However, cost sharing will not be available for previously installed eligible practices which have lost their effectiveness due to operator negligence or mismanagement. ~~Eligible practices which, through natural causes, have lost their effectiveness, shall qualify for further financial assistance. However, cost share monies will not be awarded to reestablish previously installed practices which have deteriorated due to operator negligence or mismanagement.~~
- (b) Surface mined lands and oil and gas well drilling areas must have been reclaimed and currently used ~~be in active~~ agricultural production ~~uses~~ as determined by the director or the director's designee in order to be eligible for cost sharing on needed conservation practices.
- (c) The director or the director's designee may only use cost share funds for those practices necessary to control agricultural pollution. Eligibility consists of those pollution control practices needed to directly control animal manure discharges and/or soil erosion exceeding permissible soil loss ~~"T"~~ in order to meet standards outlined in this Chapter ~~in rules 901:13-1-02 to 901:13-1-13 of the Administrative Code.~~
- ~~(d) Cost share funds will be available only to owners and operators with a current operation and management plan.~~

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~~(e)~~ (d) Eligible best management practices for cost sharing must require expenditures that are likely to exceed the economic returns to the owner or operator.

~~(f)~~ (e) All practices must meet the standards and specifications listed in the field office technical guide, or other methods approved by the director or the director's designee.

(3) The director, subject to approval of the Ohio soil and water conservation commission, shall determine best management practices eligible for cost sharing, percentage rates of cost sharing for each best management practice and the maximum amount of cost sharing for each best management practice up to a maximum of thirty thousand dollars. ~~Information about eligible practices will be maintained by the department and included in updates of its administrative procedures handbook available in district offices.~~

(4) If approved by the director or the director's designee, a person may use a more elaborate or expensive practice; however, cost-share grants shall be based upon the estimated cost of the least expensive acceptable practice.

~~(B) All practices must meet the standards and specifications listed in the "Field Office Technical Guide", or other methods approved by the director or the director's designee.~~

~~(C) If approved by the director or the director's designee, a person may use a more elaborate or expensive practice; however, cost-share grants shall be based upon the estimated cost of the least expensive acceptable practice.~~

~~(D)~~ (B) Operating procedures.

(1) Practice installation.

(a) Design, construction and operation and management plans shall be submitted to the director or the director's designee for approval prior to implementation.

(b) The director or the director's designee shall inspect practice installation.

(2) Cost-share payment. Once a project has an approved cost-share application and installation is approved by the director or the director's designee, cost-share payment shall be granted.

(3) Maintenance and management of cost-shared best management practices.

(a) Best management practices installed with cost-share monies are to be maintained in good operating condition to assure continued effective control of agricultural pollution. Applicants for cost sharing must agree to care for, manage, and maintain such practices for their useful life as noted in the cost-share agreement. Failure to care for, manage, and maintain the practices shall obligate the owner or operator to full repayment to the department.

(b) If the land on which best management practices have been established with cost-share monies is sold, the new owner shall be responsible for maintaining the practices in good operating condition for their remaining useful life. The director or the director's designee shall inform the new owner of the responsibility to maintain and operate cost-shared practices.

(c) If the land on which best management practices were established with cost-share monies is sold for or

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converted to other uses than an agricultural production operation, the state may recover the cost-share monies paid for such practices from the cost-share recipient on a prorated basis, considering the useful life of the practice.

(d) The director or the director's designee shall monitor the management and maintenance of best management practices established with cost-share monies. Any failure to manage or maintain such practices, or conversion of such land to other uses than an agricultural production operation, shall immediately be reported to the department thereby subjecting a person to recovery of cost-share monies in accordance with ~~paragraphs (D)(3)(a), (D)(3)(b) and (D)(3)(c) of this rule.~~

~~(e) Upon discovery by the director or the director's designee, pursuant to paragraph (D)(3)(d) of this rule, the director, after any necessary investigation determines that recovery of state cost share funds is warranted, shall proceed to recover the cost share monies pursuant to section 131.02 of the Revised Code, or other appropriate means.~~

(e) Pursuant to section 131.02 of the Revised Code, the director may proceed to recover any cost share funds that recovery is deemed warranted.

901:13-1-16 Operating procedures.

(A) Operation and management plans.

The district shall approve or disapprove operation and management plans at their regularly scheduled board meetings and shall maintain a record of their actions as part of their meeting minutes. Approved plans shall be signed by the chairman. Plans may also be submitted by the owner or operator to the director for approval. District boards of supervisors may establish such guidelines as may be needed for plan format and submission; however, all plans shall meet the standards for agricultural pollution abatement contained in rules of this Chapter. Any portion of an operation and management plan specifying control of agricultural pollution shall allow the owner or operator to phase in installation of conservation practices under a schedule approved by the director or the director's designee until compliance with Chapter 901:13-1 of the Administrative Code is accomplished.

- (1) If the director or the director's designee determines that any person owning or responsible for an agricultural production operation is managing such operation in accordance with an operation and management plan currently approved by the director or the director's designee, the person shall be considered in compliance with the state rules for agricultural pollution abatement. In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural production operations is operating under and in substantial compliance with an approved operation and management plan.
- (2) In the event that the district finds that an operation and management plan does not meet agricultural pollution abatement standards as contained in these rules, the district shall provide a written explanation, by certified mail listing all the deficiencies to be corrected, to the person who submitted the plan. Any person may appeal the district's decision to the director. Upon such appeal, the director shall review the plan for compliance with these standards, and uphold the district's action or reverse it. If the director reverses the district's action the plan shall be deemed approved. In either case, the director shall make such determination within thirty days of receiving the appeal and shall inform the owner or operator and the district of his decision in writing. Such notification shall include the reasons for the director's

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decision.

(3) In the event that any person operating or owning an agricultural production operation in accordance with an approved operation and management plan who, in good faith, is following that plan, causes agricultural pollution, the plan shall be revised in a manner necessary to mitigate the agricultural pollution, as determined and approved by the district board.

(4) In the event that the district board determines that it lacks staff or expertise to adequately review an operation and management plan, the district board of supervisors may submit such plan to the director for review and approval or disapproval.

(B) Pollution complaints.

(1) Any person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written complaint to the director or the director's designee.

(2) By written agreement with the director, the district may receive complaints and investigate them to determine whether agricultural pollution has occurred or is imminent however, the director reserves the right to assume responsibility to investigate and resolve any complaint.

(a) The district shall provide the director a copy of any complaint received.

(b) The district also shall inform the director of the disposition of the complaint and provide relevant information concerning the agricultural production operation.

901:13-1-17 **Enforcement.**

(A) Investigations and inspections.

(1) The director or the director's designee may enter at reasonable times on private property, with the consent of the property owner, or on public property to inspect and investigate conditions to determine whether or not there is compliance with the rules of this Chapter or Chapter 939. of the Revised Code.

(2) Upon reason to believe there is a violation, the director or the director's designee may apply for and a judge of the court of common pleas for the county where the land is located may issue an appropriate search warrant as necessary to achieve the purposes of this chapter.

(B) Notice of deficiencies.

(1) Where the department or district has determined that deficiencies to this Chapter or Chapter 939 of the Revised Code has occurred or is occurring, the department or district shall inform the responsible person of the provisions violated.

(2) The initial notification may be in person, by telephone, fax, or email.

(3) If the initial notice is not in writing, the investigating authority shall, within a reasonable time, serve on the responsible party or mail to the responsible party's last known address, a written notification of the findings of the inspection, including the specific provisions violated.

(4) If the violation can be corrected, the written notice will also include the corrective measures which must be taken to achieve compliance, including the amount of time allowed to take corrective measures.

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(5) In order to assist the owner, operator, or person responsible with the violations identified in the notice, the department or district may:

(a) Offer information and technical assistance for developing and evaluating alternative solutions;

(b) Provide information on financial assistance available;

(c) Offer to develop an operation and management plan which complies with the rules for agricultural pollution abatement; and

(d) Secure district or director approval of the operation and management plan to provide assurance that the operation is considered in compliance with the rules for agricultural pollution abatement.

(C) Notice of adjudication hearing.

(1) If the owner, operator, or responsible person in charge fails to correct or is unable to correct the deficiencies outlined in the notice within the time period offered for compliance which was issued pursuant to paragraph (B) of this rule, the director may issue an notice of adjudication hearing requiring compliance with the rules and assess a civil penalty. The civil penalties proposed must be in accordance with rule 901:13-1-99 of the Administrative Code.

(2) The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.

(D) Director's order.

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that noncompliance has occurred or is occurring, the director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(E) Danger to public health.

(1) Notwithstanding any other provision in this section, if the director determines that an emergency exists requiring immediate action to protect public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to address the emergency. The order shall take effect immediately.

(2) A person to whom the order is issued shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible, but not later than thirty days after the director's receipt of the application. Following the hearing, the director shall continue the order in effect, revoke it, or modify it. The order may be appealed in accordance with section 119.12 of the Revised Code.

(3) If a person to whom an order is issued does not comply with the order within a reasonable period of time as determined by the director, the director or the director's designee may enter on private or public lands to investigate and take action to mitigate, minimize, remove, or abate the conditions that are the subject of the order.

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(4) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge.

(5) Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs.

901:13-1-18 Grants.

Pursuant to the authority in sections 939.02 and 939.05 of the Revised Code, the director may enter into agreements with soil and water districts to make grants to owners and operators of agricultural land or animal feeding operations to implement operation and management plans approved by the district board of supervisors. Terms of the agreements shall be approved by the Ohio soil and water conservation commission.

901:13-1-19 Nutrient management planning requirements for watersheds in distress.

- (A) Each owner, operator, or person responsible for producing, applying, or receiving in excess of three hundred fifty tons and/or one hundred thousand gallons of manure on an annual basis in watersheds in distress shall develop and operate in conformance with a nutrient management plan that addresses the methods, amount, form, placement, cropping system, and timing of all nutrient applications. ~~Nutrient management plans shall be submitted to and approved by the director or the director's designee.~~ The director or the director's designee shall review and approve or disapprove nutrient management plans. This paragraph does not apply to operations subject to subject to Chapter 903. of the Revised Code, Chapter 6111. of the Revised Code, or section 901:10 of the Administrative Code.
- (B) In watersheds designated by the director as distressed, the director will establish a deadline for all nutrient management plans to be submitted for review and approval. ~~The deadline will be no earlier than six months and no longer than two years once a watershed has been designated distressed.~~
- (C) Nutrient management plans shall be in the form of the Ohio nutrient management workbook, USDA natural resources conservation service comprehensive nutrient management plan (CNMP), or an equivalent document approved by the director or the director's designee and shall contain the following information:
- (1) Land application area's soil tests conducted in accordance with the ~~"Field Office Technical Guide"~~ and that field office technical guide which are no older than three years;
 - (2) Annual manure analysis that is representative of the manure being applied;
 - (3) Spreading agreements for all land used for manure application not under control of the party responsible for the nutrient management plan;
 - (4) The number, weight, and kind of all animals;
 - (5) Total annual volume of manure produced;
 - (6) Method and seasonal time of utilization and application that recognizes a prohibition on manure

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application from December fifteenth to March first;

- (7) Planned manure application rates;
 - (8) Other nutrients applied, including but not limited to manufactured fertilizer, sewage sludge, and bio-digester residue;
 - (9) Field information including, but not limited to: location, spreadable acreage, crops grown, and actual and projected yields;
 - (10) Type of manure storage and capacity; and
 - (11) Emergency contact information in case of a spill.
- (D) Each land application area receiving manure shall be assessed with the Ohio nitrogen leaching risk assessment procedure and the phosphorus index and the soil test risk assessment procedure for phosphorus as necessary and provided for in the field office technical guide. Manure application rates and setback distances shall be based on the most limiting factor of these risk assessment procedures, other criteria outlined in the ~~"Field Office Technical Guide,"~~ field office technical guide or by other methods approved by the director.
- (E) Operating records including manure nutrient application, weather forecasts, manure and soil analysis, and manure storage volumes shall be kept a minimum of five years by the owner, operator, or person responsible and shall be made available for review by the director or the director's designee ~~with a minimum of twenty-four hours notice~~. The director or the director's designee shall visit the animal feeding operation and review records a minimum of once every ~~three~~ five years and provide a report of the findings to the soil and water conservation district board of supervisors and the department.
- (F) Nutrient management plans shall be updated and resubmitted to the soil water conversation district board of supervisors for approval once every five years. Plans shall be updated as conditions change, when the number of animals increases by more than ten percent, when there is a change in ownership, or otherwise indicated by the director or his designee.
- ~~(F) After plan approval, nutrient management plans shall be updated as conditions change and shall be submitted a minimum of once every three years to the soil and water conservation district board of supervisors or the director for approval. Changes which would require the plan to be updated include, but are not limited to, when the number of animals increase by more than ten per cent or when there is a change in ownership. This plan shall be updated prior to any expansion in the number of agricultural animals by more than ten per cent.~~
- (G) For new animal feeding operations located in watersheds in distress, plans must be submitted and approved prior to any initiation of construction of a new facility.
- (H) Upon disapproval of a nutrient management plan, any person may request an adjudication hearing pursuant to Chapter 119. of the Revised Code.
- ~~(I) Appeals. Any person denied approval of a nutrient management plan by the director may appeal to the court of common pleas of Franklin county.~~

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901:13-1-20 Designating watersheds in distress.

(A) The director may designate a watershed to be in distress; and ~~thereby~~ within the designated watershed boundaries set requirements for: ~~the storage, handling and land application of manure; and/or the control of the erosion of sediment and substances attached thereto; and associated nutrient management plans for land and operations within the designated watershed boundaries.~~ In evaluating a potential designation, the director may consider whether:

- (1) Storage, handling, and land application of manure;
- (2) Control of the erosion of sediment and substances attached thereto; and
- (3) Associated nutrient management plans for land and operations.

(B) In evaluating a potential designation, the director may consider whether:

(1) The watershed is listed as impaired by nutrients and/or sediments from agricultural sources as determined by the director of the Ohio environmental protection agency and published in the ~~"Ohio Integrated Water Quality Monitoring and Assessment Report" pursuant to Section 303(d) of the Federal Water Pollution Control Act~~ integrated water quality monitoring and assessment report which can be found by visiting the Ohio environmental protection agency's website www.epa.ohio.gov; or waters are identified as such in an approved "Total Maximum Daily Load Report" pursuant to rule 3745-2-12 of the Administrative Code as required by Section 303(d) of the Federal Water Pollution Control Act;

(2) The waters are identified as such in an approved "Total Maximum Daily Load Report" total maximum daily load report pursuant to rule 3745-2-12 of the Ohio Administrative Code as required by Section 303(d) of the Federal Water Pollution Control Act;

~~(2)~~ (3) The watershed or a portion of the watershed exhibits conditions that are a threat to public health based on information provided by the Ohio department of health or local health district;

~~(3)~~ (4) Streams, lakes, or other waterbodies within the watershed exhibit periodic evidence of algal and/or cyanobacterial blooms capable of producing toxins that are harmful to humans, domestic animals, or wildlife;

~~(4)~~ (5) There is a threat to, or presence of contaminants in public or private water supplies;

~~(5)~~ (6) There is a threat to, or presence of contaminants in a primary contact recreational water or a bathing water as designated in Chapter 3745-1 of the Administrative Code;

~~(6)~~ (7) Other unacceptable nuisance conditions exist including the depletion of dissolved oxygen in water that results in impacts to aquatic life;

~~(7)~~ (8) Other situations as determined by the director upon consultation with other federal, state and local agencies.

~~(B)~~ (C) Prior to proposing to designate a watershed in distress, the director shall prepare and issue a report documenting the factors in the watershed relating to the items in paragraph ~~(A)~~ (B) of this rule.

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- ~~(C)~~ (D) No designation of a watershed in distress shall be issued until the Ohio soil and water conservation commission consents by a majority vote to a proposed designation.
- ~~(D)~~ (E) The director may remove the watershed in distress designation upon reasonable confirmation of a sustained recovery, restoration, and mitigation of the factors leading to the original designation.