

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 303

Senator Brown

Cosponsors: Senators Williams, O'Brien, Schiavoni, Tavares

A BILL

To amend sections 939.03 and 939.07 and to enact 1
sections 901.84 and 901.85 of the Revised Code 2
to revise the law governing agricultural 3
operation and management plans, and to require 4
certain animal feeding facilities to annually 5
report the amount of manure that is applied by 6
or for the facilities. 7

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

Section 1. That sections 939.03 and 939.07 be amended and 8
sections 901.84 and 901.85 of the Revised Code be enacted to 9
read as follows: 10

Sec. 901.84. (A) As used in this section and section 11
901.85 of the Revised Code: 12

(1) "Animal feeding facility" means an animal feeding 13
facility as defined in section 903.01 of the Revised Code, 14
including a facility that has been issued a permit under Chapter 15
903. of the Revised Code or division (J) of section 6111.03 of 16
the Revised Code. 17

(2) "Certified livestock manager" means a person that has 18

been issued a livestock manager certification under section 19
903.07 of the Revised Code. 20

(B) Except as provided in division (C) of this section, 21
the owner or operator of an animal feeding facility or a 22
certified livestock manager for that owner or operator annually 23
shall file a report with the director of agriculture in 24
accordance with rules adopted under section 901.85 of the 25
Revised Code. The owner or operator or manager shall include in 26
the report the following information for the twelve-month period 27
specified in the report: 28

(1) The total estimated amount of manure applied on the 29
surface of agricultural fields by the owner or operator or 30
certified livestock manager; 31

(2) The total estimated amount of manure sold, otherwise 32
transferred, or both by the owner or operator or certified 33
livestock manager to other persons that apply the manure on the 34
surface of agricultural fields; 35

(3) The location, by subwatershed, of the total estimated 36
amount of manure applied on the surface of agricultural fields 37
by the owner or operator or certified livestock manager or sold, 38
otherwise transferred, or both by the owner or operator or 39
certified livestock manager to other persons that apply the 40
manure on the surface of agricultural fields. 41

(C) Division (B) of this section does not apply to the 42
owner or operator of an animal feeding facility or a certified 43
livestock manager for that owner or operator that applies less 44
than three hundred fifty tons of dry manure per year. 45

Sec. 901.85. The director of agriculture shall adopt rules 46
in accordance with Chapter 119. of the Revised Code that 47

establish requirements and procedures governing the filing of a 48
report under section 901.84 of the Revised Code. The rules shall 49
establish procedures to be used by an owner or operator of an 50
animal feeding facility or certified livestock manager for 51
compiling the information required to be submitted with the 52
report under divisions (B) (1) to (3) of that section. 53

Sec. 939.03. (A) (1) A person who owns or operates fifty or 54
more acres of agricultural land or a small or medium 55
concentrated animal feeding operation shall develop an operation 56
and management plan that requires fertilizer or manure to be 57
applied at an agronomic rate. The person shall submit the plan 58
for approval to the director of agriculture or the director's 59
designee under section 939.02 of the Revised Code or to the 60
supervisors of the applicable soil and water conservation 61
district under section 940.06 of the Revised Code. The director, 62
designee, or supervisors shall approve or disapprove the plan. 63
Upon approval, the person who submitted the plan shall operate 64
in accordance with its terms. If the plan is disapproved, the 65
person shall submit a new plan for approval. 66

(2) Division (A) (1) of this section does not apply to a 67
person who operates under an organic systems plan approved by a 68
public or private entity that is accredited by the United States 69
department of agriculture. 70

(3) A person who owns or operates less than fifty acres of 71
agricultural land or an animal feeding operation that is not a 72
concentrated animal feeding operation as defined in section 73
903.01 of the Revised Code may develop and operate under an 74
operation and management plan that requires fertilizer or 75
manure, as applicable, to be applied at an agronomic rate and is 76
approved by the director of agriculture or the director's 77

designee under section 939.02 of the Revised Code or by the 78
supervisors of the applicable soil and water conservation 79
district under section 940.06 of the Revised Code. 80

(B) A person who wishes to make a complaint regarding 81
nuisances involving agricultural pollution may do so orally or 82
by submitting a written, signed, and dated complaint to the 83
director or to the director's designee. After receiving an oral 84
complaint, the director or the director's designee may cause an 85
investigation to be conducted to determine whether agricultural 86
pollution has occurred or is imminent. After receiving a 87
written, signed, and dated complaint, the director or the 88
director's designee shall cause such an investigation to be 89
conducted. 90

(C) In a private civil action for nuisances involving 91
agricultural pollution, it is an affirmative defense if the 92
person owning, operating, or otherwise responsible for 93
agricultural land or an animal feeding operation is operating 94
under and in substantial compliance with an approved operation 95
and management plan developed under division (A) of this 96
section, with an operation and management plan developed by the 97
director or the director's designee under section 939.02 of the 98
Revised Code or by the supervisors of the applicable soil and 99
water conservation district under section 940.06 of the Revised 100
Code, or with an operation and management plan required under 101
division (A) (2) of section 939.02 of the Revised Code. Nothing 102
in this section is in derogation of the authority granted to the 103
director in division (E) of section 939.02 and in section 939.07 104
of the Revised Code. 105

(D) As used in this section: 106

(1) "Agronomic rate" means the rate at which fertilizer or 107

manure can be added to soil in a twelve-month period for optimum 108
crop growth based on all of the following: 109

(a) Nutrient content of the fertilizer, manure, or both to 110
be applied; 111

(b) Nutrient needs of the current or planned crops; 112

(c) Nutrient holding capacity of the soil; 113

(d) Nutrient content in the soil as determined by soil 114
tests. 115

(2) "Fertilizer" has the same meaning as in section 905.31 116
of the Revised Code. 117

(3) "Organic systems plan" means a plan of management of 118
an organic production or handling operation that has been agreed 119
to by the producer or handler and the certifying agent and that 120
includes written plans concerning all aspects of agricultural 121
production or handling specified in the "Organic Foods 122
Production Act of 1990," 7 U.S.C. 6501 et seq., 104 Stat. 3935, 123
as amended, and defined in 7 C.F.R. 205.2. 124

(4) "Small concentrated animal feeding operation" and 125
"medium concentrated animal feeding operation" have the same 126
meanings as in section 903.01 of the Revised Code. 127

Sec. 939.07. (A) (1) The director of agriculture ~~may~~shall 128
propose to require corrective actions and assess a civil penalty 129
against the owner or operator of agricultural land or an animal 130
feeding operation if the director or the director's designee 131
determines that the owner or operator is doing one of the 132
following: 133

(a) Not complying with a standard established in rules 134
adopted under division (E) (1) of section 939.02 of the Revised 135

Code;	136
(b) Not operating in accordance with an approved operation and management plan that is developed under division (A) of section 939.03 of the Revised Code, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required by the director under division (A) (2) of this section;	137 138 139 140 141 142 143 144 145
(c) Not complying with a standard established in rules adopted under division (E) (5) (a) of section 939.02 of the Revised Code;	146 147 148
(d) Not operating in accordance with a composting plan that is approved in accordance with rules adopted under division (E) (5) (b) of section 939.02 of the Revised Code or required by the director under division (A) (2) of this section.	149 150 151 152
(2) The director may <u>shall</u> include in the corrective actions a requirement that an owner or operator do one of the following:	153 154 155
(a) Operate under an operation and management plan approved by the director or the director's designee under section 939.02 of the Revised Code;	156 157 158
(b) If the owner or operator has failed to operate in accordance with an existing operation and management plan, operate in accordance with that plan;	159 160 161
(c) Prepare a composting plan in accordance with rules adopted under division (E) (5) (b) of section 939.02 of the Revised Code and operate in accordance with that plan;	162 163 164

(d) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.

(3) The director ~~may~~shall impose a civil penalty only if all of the following occur:

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

~~(b) After the time period specified in the notice has elapsed, the director or the director's designee has inspected the agricultural land or animal feeding operation, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.~~

~~(c) The~~the director affords 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.

(4) 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~~shall 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.

(5) A person who has violated rules adopted under division 194
(E) of section 939.02 of the Revised Code shall pay a civil 195
penalty in an amount established in rules adopted under that 196
section. 197

(B) The attorney general, upon the written request of the 198
director, shall bring an action for an injunction in any court 199
of competent jurisdiction against a person violating or 200
threatening to violate rules adopted under division (E) of 201
section 939.02 of the Revised Code or an order issued under 202
division (A) (4) of this section. 203

(C) (1) In lieu of imposing a civil penalty under division 204
(A) of this section, the director may request the attorney 205
general, in writing, to bring an action for a civil penalty in a 206
court of competent jurisdiction against a person that has 207
violated or is violating a rule adopted under division (E) of 208
section 939.02 of the Revised Code. 209

(2) The civil penalty for which an action may be brought 210
under division (C) (1) of this section shall not exceed ten 211
thousand dollars per violation. Each day that a violation 212
continues constitutes a separate violation. 213

(D) In addition to any other penalties imposed under this 214
section, the director may impose an administrative penalty 215
against the owner or operator of agricultural land or an animal 216
feeding operation if the director or the director's designee 217
determines that the owner or operator is not in compliance with 218
best management practices that are established in rules adopted 219
under division (E) of section 939.02 of the Revised Code. The 220
administrative penalty shall not exceed five thousand dollars. 221

The director shall afford the owner or operator an 222

opportunity for an adjudication hearing under Chapter 119. of 223
the Revised Code to challenge the determination of the director 224
or the director's designee under this division, the director's 225
imposition of an administrative penalty under this division, or 226
both. The determination and the imposition of the administrative 227
penalty may be appealed in accordance with section 119.12 of the 228
Revised Code. 229

(E) Notwithstanding any other provision in this section, 230
if the director determines that an emergency exists requiring 231
immediate action to protect public health or safety or the 232
environment, the director may issue an order, without notice or 233
adjudication hearing, stating the existence of the emergency and 234
requiring that action be taken that is necessary to address the 235
emergency. The order shall take effect immediately. A person to 236
whom the order is issued shall comply immediately, but on 237
application to the director shall be afforded an adjudication 238
hearing in accordance with Chapter 119. of the Revised Code as 239
soon as possible, but not later than thirty days after the 240
director's receipt of the application. Following the hearing, 241
the director shall continue the order in effect, revoke it, or 242
modify it. The order may be appealed in accordance with section 243
119.12 of the Revised Code. An emergency order shall not remain 244
in effect for more than one hundred twenty days after its 245
issuance. 246

If a person to whom an order is issued does not comply 247
with the order within a reasonable period of time as determined 248
by the director, the director or the director's designee may 249
enter on private or public lands to investigate and take action 250
to mitigate, minimize, remove, or abate the conditions that are 251
the subject of the order. 252

(F) A person that is responsible for causing or allowing 253
the unauthorized spill, release, or discharge of manure or 254
residual farm products is liable to the director for the costs 255
incurred in investigating, mitigating, minimizing, removing, or 256
abating the spill, release, or discharge. Upon request of the 257
director, the attorney general shall bring a civil action 258
against the responsible person or persons to recover those 259
costs. 260

(G) Money recovered under division (F) of this section and 261
money collected from civil penalties assessed under this section 262
shall be paid into the state treasury to the credit of the 263
agricultural pollution abatement fund created in section 939.10 264
of the Revised Code. 265

(H) As used in this section, "noncompliance" means doing 266
one of the actions specified in division (A)(1) of this section. 267

Section 2. That existing sections 939.03 and 939.07 of the 268
Revised Code are hereby repealed. 269