

As Introduced

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S. B. No. 224

Senator Brown

Cosponsors: Senators Cafaro, Schiavoni, Thomas, Williams, Yuko, Tavares

A BILL

To amend sections 939.03 and 939.07 and to enact 1
sections 901.80 and 901.81 of the Revised Code 2
to revise the application and enforcement of the 3
law governing operation and management plans, 4
and to require certain animal feeding facilities 5
to annually report the amount of manure that is 6
applied by 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 901.80 and 901.81 of the Revised Code be enacted to 9
read as follows: 10

Sec. 901.80. (A) Except as provided in division (B) of 11
this section, the owner or operator of an animal feeding 12
facility or a certified livestock manager for that owner or 13
operator annually shall file a report with the director of 14
agriculture in accordance with rules adopted under section 15
901.81 of the Revised Code. The owner or operator or manager 16
shall include in the report the following information for the 17
twelve-month period specified in the report: 18

(1) The total estimated amount of manure applied on the surface of agricultural fields by the owner or operator or certified livestock manager; 19
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(2) The total estimated amount of manure sold, otherwise transferred, or both by the owner or operator or certified livestock manager to other persons that apply the manure on the surface of agricultural fields; 22
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(3) The location, by subwatershed, of the total estimated amount of manure applied on the surface of agricultural fields by the owner or operator or certified livestock manager or sold, otherwise transferred, or both by the owner or operator or certified livestock manager to other persons that apply the manure on the surface of agricultural fields. 26
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(B) Division (A) of this section does not apply to the owner or operator of an animal feeding facility or a certified livestock manager for that owner or operator that applies less than three hundred fifty tons of dry manure per year. 32
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(C) As used in this section and section 901.81 of the Revised Code: 36
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(1) "Animal feeding facility" means an animal feeding facility as defined in section 903.01 of the Revised Code, including a facility that has been issued a permit under Chapter 903. of the Revised Code or division (J) of section 6111.03 of the Revised Code. 38
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(2) "Certified livestock manager" means a person that has been issued a livestock manager certification under section 903.07 of the Revised Code. 43
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Sec. 901.81. The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that 46
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establish requirements and procedures governing the filing of a 48
report under section 901.80 of the Revised Code with the 49
director by the owner or operator of an animal feeding facility 50
or the certified livestock manager for that owner or operator. 51
The rules shall include guidelines for use by such an owner or 52
operator or manager when determining both of the following: 53

(A) The estimated annual amount of manure generated by 54
agricultural animals. The guidelines shall use animal units, as 55
defined in section 903.01 of the Revised Code, as the unit of 56
measurement. 57

(B) The subwatershed location where manure was applied by 58
the owner or operator or certified livestock manager or in which 59
manure was sold, otherwise transferred, or both by the owner or 60
operator or certified livestock manager to other persons that 61
applied the manure on the surface of agricultural fields. 62

Sec. 939.03. (A) (1) Except as otherwise provided in this 63
division, a person who owns or operates fifty or more acres of 64
agricultural land or a small or medium concentrated animal 65
feeding operation shall develop and operate under an operation 66
and management plan that requires fertilizer or manure, as 67
applicable, to be applied at an agronomic rate and is approved 68
by the director of agriculture or the director's designee under 69
section 939.02 of the Revised Code or by the supervisors of the 70
applicable soil and water conservation district under section 71
940.06 of the Revised Code. This division does not apply to a 72
person who operates under an organic systems plan approved by a 73
public or private entity that is accredited by the United States 74
department of agriculture. 75

(2) A person who owns or operates less than fifty acres of 76
agricultural land or an animal feeding operation that is not a 77

concentrated animal feeding operation as defined in section 78
903.01 of the Revised Code may develop and operate under an 79
operation and management plan that requires fertilizer or 80
manure, as applicable, to be applied at an agronomic rate and is 81
approved by the director ~~of agriculture~~ or the director's 82
designee under section 939.02 of the Revised Code or by the 83
supervisors of the applicable soil and water conservation 84
district under section 940.06 of the Revised Code. 85

(B) A person who wishes to make a complaint regarding 86
nuisances involving agricultural pollution may do so orally or 87
by submitting a written, signed, and dated complaint to the 88
director or to the director's designee. After receiving an oral 89
complaint, the director or the director's designee may cause an 90
investigation to be conducted to determine whether agricultural 91
pollution has occurred or is imminent. After receiving a 92
written, signed, and dated complaint, the director or the 93
director's designee shall cause such an investigation to be 94
conducted. 95

(C) In a private civil action for nuisances involving 96
agricultural pollution, it is an affirmative defense if the 97
person owning, operating, or otherwise responsible for 98
agricultural land or an animal feeding operation is operating 99
under and in substantial compliance with an approved operation 100
and management plan developed under division (A) of this 101
section, with an operation and management plan developed by the 102
director or the director's designee under section 939.02 of the 103
Revised Code or by the supervisors of the applicable soil and 104
water conservation district under section 940.06 of the Revised 105
Code, or with an operation and management plan required under 106
division (A)(2) of section 939.02 of the Revised Code. Nothing 107
in this section is in derogation of the authority granted to the 108

director in division (E) of section 939.02 and in section 939.07 109
of the Revised Code. 110

(D) As used in this section: 111

(1) "Agronomic rate" means the rate at which fertilizer or 112
manure can be added to soil in a twelve-month period for optimum 113
crop growth based on all of the following: 114

(a) Nutrient content of the fertilizer, manure, or both to 115
be applied; 116

(b) Nutrient needs of the current or planned crops; 117

(c) Nutrient holding capacity of the soil; 118

(d) Nutrient content in the soil as determined by soil 119
tests. 120

(2) "Organic systems plan" means a plan of management of 121
an organic production or handling operation that has been agreed 122
to by the producer or handler and the certifying agent and that 123
includes written plans concerning all aspects of agricultural 124
production or handling specified in the "Organic Foods 125
Production Act of 1990," 7 U.S.C. 6501 et seq., 104 Stat. 3935, 126
as amended, and defined in 7 C.F.R. 205.2. 127

(3) "Small concentrated animal feeding operation" and 128
"medium concentrated animal feeding operation" have the same 129
meanings as in section 903.01 of the Revised Code. 130

Sec. 939.07. (A) (1) The director of agriculture ~~may~~ shall 131
propose to require corrective actions and assess a civil penalty 132
against the owner or operator of agricultural land or an animal 133
feeding operation if the director or the director's designee 134
determines that the owner or operator is doing one of the 135
following: 136

(a) Not complying with a standard established in rules adopted under division (E) (1) of section 939.02 of the Revised Code;	137 138 139
(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;	140 141 142 143 144 145 146 147 148
(c) Not complying with a standard established in rules adopted under division (E) (5) (a) of section 939.02 of the Revised Code;	149 150 151
(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.	152 153 154 155
(2) The director may <u>shall</u> include in the corrective actions a requirement that an owner or operator do one of the following:	156 157 158
(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;	159 160 161
(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;	162 163 164
(c) Prepare a composting plan in accordance with rules	165

adopted under division (E) (5) (b) of section 939.02 of the Revised Code and operate in accordance with that plan;

(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 119.12 195
of the Revised Code. 196

(5) A person who has violated rules adopted under division 197
(E) of section 939.02 of the Revised Code shall pay a civil 198
penalty in an amount established in rules adopted under that 199
section. 200

(B) The attorney general, upon the written request of the 201
director, shall bring an action for an injunction in any court 202
of competent jurisdiction against a person violating or 203
threatening to violate rules adopted under division (E) of 204
section 939.02 of the Revised Code or an order issued under 205
division (A) (4) of this section. 206

(C) (1) In lieu of imposing a civil penalty under division 207
(A) of this section, the director may request the attorney 208
general, in writing, to bring an action for a civil penalty in a 209
court of competent jurisdiction against a person that has 210
violated or is violating a rule adopted under division (E) of 211
section 939.02 of the Revised Code. 212

(2) The civil penalty for which an action may be brought 213
under division (C) (1) of this section shall not exceed ten 214
thousand dollars per violation. Each day that a violation 215
continues constitutes a separate violation. 216

(D) In addition to any other penalties imposed under this 217
section, the director may impose an administrative penalty 218
against the owner or operator of agricultural land or an animal 219
feeding operation if the director or the director's designee 220
determines that the owner or operator is not in compliance with 221
best management practices that are established in rules adopted 222
under division (E) of section 939.02 of the Revised Code. The 223

administrative penalty shall not exceed five thousand dollars. 224

The director shall afford the owner or operator an 225
opportunity for an adjudication hearing under Chapter 119. of 226
the Revised Code to challenge the determination of the director 227
or the director's designee under this division, the director's 228
imposition of an administrative penalty under this division, or 229
both. The determination and the imposition of the administrative 230
penalty may be appealed in accordance with section 119.12 of the 231
Revised Code. 232

(E) Notwithstanding any other provision in this section, 233
if the director determines that an emergency exists requiring 234
immediate action to protect public health or safety or the 235
environment, the director may issue an order, without notice or 236
adjudication hearing, stating the existence of the emergency and 237
requiring that action be taken that is necessary to address the 238
emergency. The order shall take effect immediately. A person to 239
whom the order is issued shall comply immediately, but on 240
application to the director shall be afforded an adjudication 241
hearing in accordance with Chapter 119. of the Revised Code as 242
soon as possible, but not later than thirty days after the 243
director's receipt of the application. Following the hearing, 244
the director shall continue the order in effect, revoke it, or 245
modify it. The order may be appealed in accordance with section 246
119.12 of the Revised Code. An emergency order shall not remain 247
in effect for more than one hundred twenty days after its 248
issuance. 249

If a person to whom an order is issued does not comply 250
with the order within a reasonable period of time as determined 251
by the director, the director or the director's designee may 252
enter on private or public lands to investigate and take action 253

to mitigate, minimize, remove, or abate the conditions that are 254
the subject of the order. 255

(F) A person that is responsible for causing or allowing 256
the unauthorized spill, release, or discharge of manure or 257
residual farm products is liable to the director for the costs 258
incurred in investigating, mitigating, minimizing, removing, or 259
abating the spill, release, or discharge. Upon request of the 260
director, the attorney general shall bring a civil action 261
against the responsible person or persons to recover those 262
costs. 263

(G) Money recovered under division (F) of this section and 264
money collected from civil penalties assessed under this section 265
shall be paid into the state treasury to the credit of the 266
agricultural pollution abatement fund created in section 939.10 267
of the Revised Code. 268

(H) As used in this section, "noncompliance" means doing 269
one of the actions specified in division (A)(1) of this section. 270

Section 2. That existing sections 939.03 and 939.07 of the 271
Revised Code are hereby repealed. 272