



Ohio Administrative Code Rule 901:10-1-09 Permit modifications.

Effective: February 13, 2021

(A) No permit to install, permit to operate or NPDES permit shall be modified unless the modification is in compliance with this rule. When a permit is modified, only the conditions subject to modification are reopened. A draft permit incorporating the proposed changes must be prepared and is subject to public notice and public participation procedures as set forth in rules 901:10-6-01 to 901:10-6-06 of the Administrative Code.

(B) The director may propose to modify a permit and may seek the consent of the owner or operator modifying the permit. The director may modify a permit for the following reasons which include, but are not limited to:

- (1) Information submitted by the owner or operator requesting to modify the permit;
- (2) Information obtained through inspections;
- (3) A permit is reviewed by the director, or
- (4) Other causes as provided in 40 CFR section 122.62(a).

(C) If the director seeks to modify the permit with the consent of the owner or operator and the owner or operator does not consent to the director's modification, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(D) If the director seeks to modify the permit without seeking the consent of the owner or operator, the director shall issue a notice of the proposed modified permit with the opportunity for an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(E) Either the director or any interested person including the permittee may request to modify a



NPDES permit or revoke and reissue a NPDES permit or both for the following reasons:

- (1) Alterations. There are material and substantial alterations, additions or expansions to the operation which occurred after a permit was issued which justify the application of permit conditions that are different or absent in the existing permit.
- (2) Information. The director has received new information. NPDES permits may be modified during their term for this cause only if the information was not available at the time of permit issuance (other than revised rules or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For a new source of an NPDES discharge this cause shall include any significant information derived from effluent testing required after issuance of the permit.
- (3) New regulations. The standards or rules on which the NPDES permit was based have been changed by promulgation of amended standards or rules or by judicial decision after the permit was issued. NPDES permits may be modified during their terms for this cause only as follows:
 - (a) For promulgation of amended standards or rules, when:
 - (i) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or on promulgated water quality standards or water quality standards approved by the United States environmental protection agency; and
 - (ii) The United States environmental protection agency has revised, withdrawn or modified that portion of the rule or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and
 - (iii) An owner or operator requests modification within ninety days after Federal Register notice of the action on which the request is based.
 - (b) For judicial decisions, when: a court of competent jurisdiction has remanded and stayed rules; if



the remand and stay concern that portion of the rules or guidelines on which the permit condition was based; and a request for a permit modification is filed by the owner or operator within ninety days of judicial remand.

(4) Compliance schedules. The director determines good cause exists for modification of a compliance schedule of a NPDES permit, such as acts of nature or acts of third parties, strike, flood, materials shortage or other events over which the owner or operator has little or no control and for which there is no reasonably available remedy. However, in no case may a NPDES permit compliance schedule be modified to extend beyond any applicable statutory deadline in the act.

(5) When the owner or operator has filed a request for a variance under rule 901:10-3-08 of the Administrative Code or for a "fundamentally different factors" variance within the time specified in 40 CFR section 122.21 or 40 CFR section 125 for an NPDES permit.

(6) To correct technical mistakes (other than the operational changes listed in the appendix to this rule), such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

(7) When the owner or operator is required by the director to incorporate an applicable toxic effluent standard or prohibition pursuant to section 307(a) of the act.

(8) When the owner or operator is required by the director to reopen conditions in a permit which are established in the permits for toxic effluent limitations and standards.

(9) Upon request of the owner or operator who qualifies for effluent limitations on a net basis under 40 C.F.R. section 122.45(g), or when a discharger is no longer eligible for net limitations, as provided in 40 C.F.R. 122.45(g)(1)(ii).

(10) Upon failure of the director to notify as required by paragraph (C) of rule 901:10-6-03 of the Administrative Code, another state whose waters may be affected by a discharge from the facility.

(11) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology based treatment requirements appropriate to the facility



under 40 C.F.R. section 125.3(c).

(12) To establish a notification level for toxic pollutants as provided in 40 C.F.R. section 122.44(f).

(F) The owner or operator may submit a written application for modification to the director for approval by the director if the following apply:

(1) The owner or operator is requesting material or substantial alterations or expansions or additions to the facility or other changes defined as a modification; or

(2) New information or data obtained by the owner or operator justify permit conditions in addition to or different from those in the existing permit.

(G) An application for permit modification shall contain the following information:

(1) The name of the owner or operator and the name and address and telephone number of the facility or operation;

(2) A description of the exact nature of the changes to be made;

(3) An explanation of why the modification is needed or requested; and

(4) Applicable technical information in support of the request for modification including but not limited to, data, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.

(5) If the director decides that the request for modification is not justified, the requestor and the owner or operator shall be notified in writing and provided the reasons for the director's determination.

(H) If the owner or operator plans a type of change that is not listed in the appendix to this rule, the owner or operator shall submit the information listed in paragraph (J) of this rule to the director.

The director shall:



(1) Exercise discretion to determine if the type of change proposed by the owner or operator is a modification, an operational change, a major operational change, or, for NPDES permit holders, a change to the NPDES permit manure management plan;

(2) Notify the owner or operator in writing of the director's determination that the submitted change is a modification, an operational change, a major operational change, or a change to the NPDES permit manure management plan; the approval or denial of the submitted change and the reasons for such determination to approve or deny.

(3) The owner or operator shall not commence any change until the director has acted in accordance with the requirements in paragraph (H)(2) of this rule.

(I) Major operational changes. The owner or operator shall submit to the directors authorized representative any planned major operational change listed in the appendix to this rule in accordance with paragraph (J) of this rule.

The owner or operator shall not commence with any changes proposed in the planned major operational change submitted to the department until:

(1) The department has approved the planned major operational change and has notified the owner or operator in writing of such approval.

(2) If the department determines the planned major operational change submitted by the owner or operator is not approved, the owner or operator shall be notified in writing and provided the reasons for the departments determination.

(J) An owner or operator's application for a major operational change shall contain the following information:

(1) The name of the owner of operator and the name, address and telephone number of the facility or operation;



- (2) A description of the exact nature of the changes requested;
- (3) An explanation of why the major operational change is requested; and
- (4) Applicable technical information in support of the request for the change, including but not limited to: date, records, reports, trend analysis, site plans and engineering plans that show the location and extent of work to be performed or the plan to be modified.
- (K) Operational changes. The owner or operator shall record operational changes in the operating record to be maintained at the facility.
- (1) The directors authorized representative may review any operational change and any applicable information with the operational change; and
- (2) The directors authorized representative may approve the operational change in writing. The directors authorized representative may signify approval of an operational change by the representatives signature and date in the operating record.
- (L) Operational changes and/or major operational changes made by the owner or operator and approved by the director in accordance with the requirements of this rule shall be recorded in the operating record as required in rule 901:10-2-16 of the Administrative Code and in the permit to install or permit to operate as applicable.
- (M) Changes to NPDES permit manure management plans. For NPDES permits, where a permittee makes changes to the concentrated animal feeding operations manure management plan previously approved by the director, other than as a result of calculations made in accordance with the requirements of paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code, the permittee must provide the director with the most current version of the manure management plan and identify changes from the previous version. The director must review the revised manure management plan to ensure it meets the requirements of rules 901:10-2-08 to 901:10-2-11, 901:10-2-13 to 901:10-2-16 and rule 901:10-2-18, and any applicable provisions in rules 901:10-3-02 to 901:10-3-11 of the Administrative Code, and must determine whether the changes to the manure management plan necessitate revision to the terms of the manure management plan incorporated



into the permit issued to the concentrated animal feeding operation pursuant to paragraph (D)(1)(g) of rule 901:10-3-01 of the Administrative Code. If revision to the terms of the manure management plan is not necessary, the director shall notify the permittee and upon notification the permittee may implement the revised manure management plan. If revision to the terms of the manure management plan is necessary the director shall determine whether the changes are substantial changes under this provision.

(1) Substantial changes to the terms of a manure management plan incorporated as terms and conditions of an NPDES permit include, but are not limited to:

(a) Addition of new land application areas not previously included in the permittees manure management plan, unless the land application area is covered by the terms of a manure management plan incorporated into an existing NPDES permit and the permittee complies with the terms applicable to the land application area under the existing NPDES permit.

(b) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop established pursuant to paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code.

(c) Addition of any crop or other uses not included in the terms of the permittees manure management plan and corresponding field-specific rates of application expressed in accordance with paragraph (D)(1)(g)(ix) of rule 901:10-3-01 of the Administrative Code.

(d) Changes to site-specific components of the nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to surface waters of the state.

(2) If the director determines that the changes to the terms of the manure management plan are not substantial, the director must make the revised manure management plan publicly available, revise the terms of the manure management plan incorporated into the permit, and notify the owner or operator and inform the public through the Ohio department of agriculture livestock environmental permitting program web site of any changes to the terms of the manure management plan that are incorporated into the permit.



(3) If the director determines that the changes to the terms of the manure management plan are substantial, the director shall notify the public and make the proposed changes and the information submitted by the permittee available for public review and comment. A comment period of thirty days shall be provided for public review and comment, with notice of the comment period being provided to the permittee and published on the Ohio department of agriculture livestock environmental permitting program web site. During the comment period any interested person may submit written comments on the notice and may request a public meeting. The grounds for a public meeting shall be the same as those provided in paragraph (D) of rules 901:10-6-01 and 901:10-6-04 of the Administrative Code. Any public meeting shall be conducted as described in rule 901:10-6-04 of the Administrative Code, except that notice regarding the scheduling of the public meeting shall be provided on the Ohio department of agriculture livestock environmental permitting program web site, rather than through publication in the legal notice section of a newspaper. The provisions of paragraph (J) of rule 901:10-6-04 of the Administrative Code shall also apply to the public comment period. The director shall, if necessary, require the applicant to further revise the manure management plan in order to approve the revision to the terms of the manure management plan incorporated into the concentrated animal feeding operations permit. Once the director incorporates the revised terms of the manure management plan into the permit, the director must notify the permittee and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

(N) The incorporation of the terms of a concentrated animal feeding operations manure management plan into the terms and conditions of a general NPDES permit issued under Chapter 901:10-4 of the Administrative Code is not a cause for modification pursuant to this rule.