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## FORGING *a PARTNERSHIP between FARMERS and CONSUMERS*

April 5, 2013

Director David T. Daniels, Ohio Department of Agriculture  
Director James Zehringer, Ohio Department of Natural Resources  
Director Scott J. Nally, Ohio Environmental Protection Agency

Re: Agricultural Nutrients Proposed Draft Legislation

Directors:

The Ohio Farm Bureau Federation (OFBF) would like to thank you for the opportunity to review and submit comments on the proposed draft legislation related to agricultural nutrients.

OFBF is the largest general farm organization in the state of Ohio with members in all of Ohio's 88 counties. Our members produce virtually every kind of agricultural commodity and as a result, OFBF is strongly interested in Ohio's environmental policies and their potential impact to sustaining a viable agbioresource industry. Each year at the county and state level, our members participate in a comprehensive grassroots policy development process where issues important to them are identified, researched and discussed leading to the development of policies to address these issues. Over 340 delegates from all 88 counties meet annually to vote on and adopt the policy proposals. The adopted policies guide the organization as we provide legislative and regulatory oversight.

An abundant supply of high quality water has been long recognized as Ohio's greatest natural resource. Improving and protecting water quality is essential to Ohio's future. OFBF believes that farmers have the responsibility to proactively do our part to solve the nutrient management challenge facing Ohio today. In a letter signed by twenty agricultural organizations and widely distributed to every farmer in Ohio, Ohio agriculture in a single voice committed to the promotion and adoption of the principles of 4R Nutrient Stewardship and challenged all farmers to do the same. OFBF is committed to continuing to lead the effort to develop innovative solutions to this challenge but we cannot do it alone. Municipalities, homeowners and other industries will be expected to do their share to address this issue. State, federal and industry-wide resources must be directed to research, technical assistance and outreach activities as well as monitoring and assessment of progress.

OFBF policies support the development of legislation, regulations and programs that are scientifically based, economically sound and whenever possible, delivered in a flexible and voluntary manner. We recognize that all the residents in a watershed have a role to play in addressing water quality challenges and expect everyone to do their part. We encourage all farmers to voluntarily work with their Soil and Water Conservation District and USDA personnel to develop and properly follow a nutrient management plan.

OFBF policies:

- Recognize the need for additional research to help identify solutions related to nutrient management and water quality
- Expect farmers to use environmental management systems to protect and improve water quality
- Encourage all individuals (including non-agricultural) applying nutrients and crop protectant products to follow recognized management practices including the development of nutrient management plans with soil testing
- Do not support the requirement of a permit or license for farmers who apply lime, fertilizer and other nutrient inputs
- Expect all farm operations regardless of size to complete and follow a nutrient management plan
- Support legislation that provides a safe harbor for farmers who follow industry accepted practices for nutrient management
- Recommend farmers follow the 4R Nutrient Stewardship principles – Right source, Right rate, Right time and Right place
- Support the use of Best Management Practices (BMP) to reduce the potential impact of pesticide and nutrient contamination of ground and surface water.

As a result of the above policies, it is clear that OFBF and our members have expressed a high moral responsibility for the protection of our soil and water resources. As written, the proposed draft legislation lacks sufficient clarity to conduct a thorough and comprehensive review and evaluation. Vagueness and ambiguity in the proposed draft legislation is our primary concern.

Lack of Clarity

Clarity in proposed legislation is essential for adequate review and evaluation.

- The proposed legislation contains two different definitions for fertilizer (page 10 lines 268-273 and page 29 lines 856-861). Why the two different definitions?
- The director of the Ohio Department of Agriculture is granted rule making authority to establish a fertilizer applicator certification program. It will be in these future rules that the program specifics will be established.
- The proposed legislation has many areas that contain language that is vague and open to interpretation. Language such as “immediate hazard” (page 21, line 614), “threat” (page 38, line 1134) and “imminent threat” (page 38, lines 1137, 1141) is prevalent throughout. Defining or eliminating/removing these terms is essential to bringing clarity to the proposed legislation.
- Section 1511.023 (A), pages 37 - 41, contains the circumstances to be used by the chief of the division of soil and water resources to designate a watershed as a critical natural resource area or a watershed in distress. Many of these are vague and must be defined. What constitutes a threat to public health? An imminent threat to public or private water supplies? An imminent threat to fish and other aquatic species? The proposed language also does not provide any insight into the watershed in distress designation process. How many of the four circumstances (3, 4, 5, and 6) must meet the yet undefined conditions to designate a watershed a watershed in distress? Two? A majority? All 4? Why are circumstances 1 and 2 not considered as part of the watershed in distress designation process?

- The relationship between the fertilizer application certification program and the power granted to the director of agriculture to suspend certifications as well as the operation and nutrient management plans (with 4R requirements) and the implementation of the watershed management plans is not specified. These interactions have the potential to prohibit nutrient application in critical natural resource area and watersheds in distress adversely impacting the sustainability and viability of Ohio agriculture.
- The criteria and process for removing the critical natural resource area or watershed in distress designation is not described.

### Specific Comments

Page 10 lines 268-273 and Page 29 lines 856-861

The proposed legislation contains two similar but different definitions of “fertilizer”. Why the inconsistency? This only leads to confusion. A single definition should be used. For example, would both of these definitions consider manure as a fertilizer? Why or why not? If not, why the difference?

Page 13, lines 370-372

The new definition of “agricultural production” establishes a ten acre threshold. What criteria were used to establish the threshold at this level? Would the definition as proposed address pasture or hay production? The rationale for the threshold needs to be provided.

Page 14, lines 411-416

The new definition of “directly supervised” is unclear. What criteria will be used to demonstrate directly supervised? How do the various farm structures fit into the criteria? Under a partnership or family run scenario, who needs to get certified when there is no employment or employer? Why is the portion of the definition that defines what constitutes “under the instructions and control” being left to a future rule making? (page 16, lines 455-457)

Page 15, line 420

How often will an individual be required to apply for and be certified to apply fertilizer? Every year? Every 3 years like the restricted use pesticide applicators?

Pages 15 and 16, lines 430-457

All of the critical components of the proposed nutrient application certification program are being left to a future rule making process. The lack of detail and clarity regarding this proposed program is troubling. It is impossible to adequately comment on the proposed certification program without the specific details.

Page 21, lines 611-623

This section of the proposed legislation gives the director of agriculture the power to suspend a certification if the director believes that the fertilizer or the application of fertilizer poses an immediate hazard to human or animal health or a hazard to the environment. What is meant by the terms “immediate hazard” and “hazard”? What criteria will be used to determine an “immediate hazard” and “hazard”? If dealing with a critical resource area or a watershed in distress could this lead to the suspension of all certifications in the watershed making nutrient application impossible?

Page 26, lines 757-765

What constitutes a violation under this section? Will all “violations” be treated the same way or will a paper violation (missing a filing deadline) be evaluated differently from others?

Page 27, lines 800-803

What criteria are currently used by the director of natural resources to designate an area as a “critical natural resource area”? How will the current process change due to the revised designation process that is being proposed?

Page 28, lines 813-818

What criteria will be used to establish the point when nitrogen, phosphorus, potassium or any recognized plant nutrient is considered a pollutant? Recommend adding qualifying language related to the misapplication or misuse of fertilizer or animal waste.

Page 28, lines 828-838

What will be the threshold for designating a farm as an animal feeding operation (AFO)? Does one animal kept in a paddock with little vegetation classify as an AFO? Why not use the current threshold of 350 tons and/or 100,000 gallons of manure on an annual basis that is being used in the Grand Lake St. Marys watershed?

What is meant by “abate the possible degradation of waters of the state”? What criteria can possibly be used to evaluate and abate the possible degradation of waters of the state? The water is either degraded or not.

Page 29, lines 856-861

The definition of “fertilizer” recognizes that biosolids have nutrient content. Recommend acknowledging that animal waste and manure also have nutrient content.

Page 29, lines 859-861 and page 33, lines 997-1001

Why is there a need to duplicate the activities taking place in the Ohio EPA biosolids program? The 503 program and biosolids management plans developed by the municipal wastewater treatment plants under the federal clean water act requires chemical analysis of biosolids prior to land application.

Pages 37 to 41, lines 1119-1224 Two Tiered Watershed Classification Process

The reason for separating circumstances 1 and 2 on page 38 is not clear. A watershed that meets the conditions established under number 1 (be on the 303d list) will automatically meet the conditions established under number 2 (approved TMDL). The 303d list drives TMDL development. In essence, watersheds that meet the conditions under number 2 will be a subset of the watersheds that meet the conditions under number 1. Separating the two circumstances would be important if they were used as a way to determine whether or not a watershed is classified a critical natural resource area or a watershed in distress. As the proposed draft legislation is currently written, both 1 and 2 are only used in the determination of a watershed as a critical natural resource area (page 38, lines 1147-1150).

The criteria to be used by the chief when considering the designation of a watershed in distress (3, 4, 5 and 6) are vague and must be defined. What constitutes a threat to public health? An imminent threat to public or private water supplies? An imminent threat to fish and other aquatic species”?

How many of circumstances 3, 4, 5 and 6 must be met in order for the chief to recommend that the watershed is designated a watershed in distress? As the draft proposed language currently reads it only takes one. Why has the process to designate a watershed a watershed in distress been weakened from those in the current rules (1501:15-5-20) effectively lowering the threshold for designation? Why are circumstances 1 and 2 not included as part of the watershed in distress determination?

After a watershed has been designated a critical natural resource area or a watershed in distress, the director of ODNR is to conduct a watershed assessment to identify the sources and causes of agricultural pollution and establish a watershed plan to address the causes and sources of agricultural pollution (page 39, lines 1153-1159 and page 40, lines 1185-1191). This is clearly a duplication of efforts already undertaken by Ohio EPA. A watershed assessment had to take place prior to a watershed being placed on the 303d list. In the watersheds with an approved TMDL report, the watershed assessment, establishment of restoration target, development of the plan to reach the target, implement the solution and evaluate progress are all components of the TMDL report. Why duplicate the efforts of Ohio EPA?

A watershed management plan must be developed for a watershed in distress that may include the requirements to develop an operation and nutrient management plan as well as a schedule for implementing the requirements. By definition (page 28, lines 828-838) the operation and nutrient management plan is to identify the method, amount, form, placement and timing of all nutrient applications. The expansion of authority given to ODNR to comply with this requirement is troubling. It would not be inconceivable to have the situation in the future where the watershed plan (TMDL) would establish a restoration target for nutrient reduction of X amount. In order to meet this target, the required operation and nutrient management plans could very easily require every farmer to reduce their nutrient applications by this same amount. In essence, nonpoint sources which are exempt from regulation under the federal clean water act will be regulated by ODNR.

Page 40, lines 1206-1213

Current OFBF policies support providing the SWCDs the flexibility to direct their programs and services on geographical boundaries to address the identified resource needs. The proposed language removes this flexibility and grants the director of ODNR the power to redirect SWCD GRF funds solely to critical natural resource areas or watersheds in distress. We cannot support removing the ability and flexibility of the SWCDs to direct where their programs and services are implemented. The SWCD funding allocation formula should be modified to reflect the importance of directing programs and activities to critical natural resource areas and watersheds in distress in addition to addressing locally identified priorities.

Page 40, lines 1214-1219

What criteria will be used to determine that a watershed is no longer a critical natural resource area or a watershed in distress? Current rules do not address this issue.

Page 41, lines 1225-1248

The protection of and prevention of the release of propriety or confidential information used in the development, operation or on-site inspection related to an operation and nutrient management plan is important. While we are pleased to see the concept in the proposed

draft legislation we do question if this is the appropriate and legal mechanism. An amendment to Ohio's Public Records Law might be the better approach to pursue.

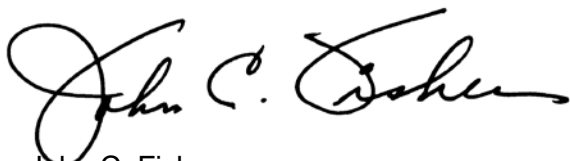
### Recommendations

OFBF would like to offer the following recommendations for your consideration:

- The development of a white paper describing the proposed fertilizer applicator certification program could serve as the blueprint for the future rulemaking process and remove much of the uncertainty. Certification requirements, training, testing, continuing education requirements, length of certification, cost of certification, infrastructure needed to certify, track and administer the program should be discussed. It is imperative that if a fertilizer applicator certification program is developed in the future it must be meaningful and beneficial to the farmer.
- A white paper describing the proposed two tiered watershed classification system should be developed. The distinction between the two classifications is not clearly stated. The intent behind listing a watershed as a critical natural resource area should be to direct resources to the area so that it does not become a watershed in distress. Specific benchmarks and criteria need to be established for the listing process as well as the delisting process.
- A uniform format for an operation and nutrient management plan should be developed that will meet the needs of ODNR, SWCDs and USDA NRCS. A single plan should be sufficient to meet all program requirements.
- The Soil and Water Conservation Commission should continue to have a prominent role in the two tiered watershed classification listing procedure and in the allocation of resources to SWCDs in the two designated areas. The SWCD funding allocation formula should be modified to reflect the importance of directing programs and activities to critical natural resource areas and watersheds in distress in addition to addressing locally identified priorities.

Once again, thank you for the opportunity to provide comments. Feel free to give Dr. Larry Antosch of our staff a call, at 614-246-8264, if you have any questions regarding these comments.

Sincerely,



John C. Fisher  
Executive Vice President

JCF/lma

cpy: Steve Hirsch, President OFBF  
OFBF Board of Trustees  
OFBF Cabinet