

# SWCD Standard Operating Procedures (SOP) for Handling Agricultural Pollution Complaints

## BACKGROUND

Ohio Revised Code authorizes the director of agriculture and supervisors of a soil and water conservation district (SWCD) to enter into cooperative agreements to obtain compliance with rules of the director pertaining to agricultural pollution abatement. This agreement, or Memorandum of Understanding (MOU), spells out the responsibilities of both parties with respect to program implementation, administration and accounting, evaluation, recording accomplishments, quality control, and maintenance in obtaining compliance with rules and orders of the director pertaining to agricultural pollution abatement (the rules in Ohio Administrative Code 901:13-1).

This document (the SOP) defines what steps the SWCDs are expected to take when investigating a pollution complaint.

## COMPLAINT TRACKING FOR WRITTEN AND VERBAL COMPLAINTS

If the SWCD is receiving the complaint directly from the public, the SWCD shall gather all pertinent information, including:

1. The location and description of property and/or waters of the state allegedly being impacted;
2. The nature and extent of the impact;
3. The alleged sources of pollution;
4. Any efforts made to obtain voluntary cooperation to eliminate the problem.

If the complaint alleges a major impact to waters of the state, then the investigation should be performed within 24 hours. In this situation the SWCD should contact their ODA-DSWC Area Program Specialist immediately upon receipt of the complaint. If their ODA-DSWC Area Program Specialist is not immediately available, contact ODA-DSWC at 614-265-6610. Examples of major impacts include, but are not limited to:

- threats to public health,
- threats to drinking water sources (public or private),
- threats to a primary contact recreation resource water,
- when the agricultural pollution directly causes flooding,
- an ongoing and uncontrolled flow of manure,
- when a large amount of manure is released (thousands of gallons),
- when the agricultural pollution affects a sizable length of surface water (thousands of feet), or death of wildlife, such as a fish kill.

If the complaint does not allege a major impact, then the SWCD will perform an investigation within three business days. The SWCD should give priority to investigating the complaint, especially if the complaint is time sensitive (e.g. the pollution is related to precipitation). If the SWCD is unable to perform the

investigation within three business days, the SWCD will contact their ODA-DSWC Area Program Specialist, who will ensure that the DSWC investigates the complaint within three business days of notification by the SWCD.

Complaints involving silvicultural operations are not covered by this procedure. Please refer to the Ohio Dept. of Natural Resources, Division of Forestry for guidance on handling complaints from logging operations.

If the alleged violator is a permitted livestock or poultry facility, or a Certified Livestock Manager (CLM), then the SWCD and the Division of Soil and Water Conservation may not have the authority to investigate. Please contact the Ohio Department of Agriculture, Division of Livestock Environmental Permitting at (614)387-0470.

## INVESTIGATION

It is recommended that all investigations are performed with a minimum of two individuals. It is appropriate for other agencies to accompany the SWCD representative, but the SWCD representative should take the lead. To avoid confusion complaints should be investigated using vehicles owned by the SWCD or ODA.

Before the investigation, the SWCD should contact the alleged violator (if known). Explain the district's role in the agricultural pollution abatement program. Obtain permission to access the site and perform an investigation. If possible, invite the alleged violator to meet at the site for the investigation.

The goal of the investigation is to gather enough information to determine if there is a violation of the APAP rules. The investigators should consult the Pollution Investigation Forms provided by ODA to ensure that all necessary information is gathered during the investigation.

Photos are essential to an investigation. The SWCD should take photos during all investigations, including those that do not find violations, to document and substantiate the SWCDs findings. Do not use a personal phone or other personal device to take pictures during the investigation.

After the investigation, if the investigator is unsure if a violation exists, then the investigator should contact their ODA-DSWC Area Program Specialist and request guidance.

## AFTER THE INVESTIGATION If a violation is not observed

Within ten working days of receipt of the complaint, the SWCD will enter the complaint into "BEEHIVE" by creating a project for that incident. The SWCD will also create an intake event and investigation event for that project. Reports and photos should be attached under the investigation event that they were recorded.

If the investigation indicates that the operation is in compliance with OAC 901:13-1 rules and no violation exists, the SWCD will:

1. Offer to assist the owner/operator in the development of an operation and management plan for the operation if there is not a current plan for the operation,

2. If there is a current operation and management plan, offer to review the plan to ensure it meets the requirements of OAC 901:13-1 rules. If the review indicates updates are needed, the SWCD should notify the owner/operator and offer to assist.
3. Contact the ODA-DSWC Area Program Specialist to request that the Resolution Event status in BEEHIVE be changed to "Resolved".
4. If the investigation determines that there may be violations of other laws which are outside of the SWCD's authority, then forward the complaint to the appropriate agency.

### If a violation is observed

If a major impact is verified, then the SWCD will immediately notify the ODA-DSWC Area Program Specialist (or the ODA-DSWC main line 614-265-6610). Then, the SWCD will ensure that the Ohio Environmental Protection Agency Spill Hotline (800-282-9378) is also notified immediately. If there is an impact to wildlife, notify the Ohio Department of Natural Resources – Division of Wildlife (614-799-9538).

If a violation exists (without a major impact), the SWCD will inform their ODA-DSWC Area Program Specialist of the details of the complaint as soon as possible, but within 24 hours of the investigation.

Within ten working days of receipt of the complaint, the SWCD will enter the complaint into BEEHIVE by creating a project for the incident. The SWCD will also create an Intake Event and Investigation Event for that project. Reports and photos should be attached under the investigation event that they were recorded.

The SWCD will inform the complainant and any other involved agencies of the status of the complaint. Such information will be made available to ODNR-DOW and OEPA, as appropriate.

The SWCD shall determine what corrective actions, both temporary and permanent, are necessary to correct the violation. The SWCD staff and board may consult with ODA staff to make this determination. Corrective actions may include the development of an operation and management plan to be approved by the district or ODA. A second investigation may be necessary to fully determine the extent of the violation(s) and possible solutions. That second investigation will be entered into the project in BEEHIVE under a NEW Investigation Event. Every visit to the site will require a new Investigation Event.

Once the corrective actions are determined, the SWCD shall send a Notice of Deficiency (NOD) letter via certified mail to the person(s) responsible (owner, operator, or manure applicator) that states:

1. The rules(s) that were violated;
2. The corrective action(s) that the owner or operator must take to correct the deficiencies;
3. The time period(s) within which the owner or operator must perform the corrective action(s);
4. An offer of technical assistance for developing and evaluating solutions;
5. An offer to develop an operation and management plan;
6. Information on financial assistance available;
7. If adequate progress is not made, then the district may refer the complaint to ODA for resolution or possible further enforcement action.

The SWCD may attempt to secure and offer state and/or federal cost sharing to resolve the rule violations.

The SWCD shall continue to perform follow-up investigations to ensure that the corrective actions are performed with the time period specified in the NOD. Documentations of these subsequent inspections should be recorded in BEEHIVE as a new Investigation Event for each inspection.

If all corrective actions specified in the NOD are performed within the specified time periods, then the SWCD will contact the ODA-DSWC Area Program Specialist to request a change in the BEEHIVE "status" of the complaint to "Resolved."

If all corrective actions specified in the NOD are not performed within the specified time periods, then the SWCD board and staff should consult with their Area Program Specialist to determine if satisfactory progress has been made. The board may choose to invite the owner, operator, or person responsible by certified mail to the next regularly scheduled board meeting. If the SWCD chooses to extend the time periods specified in the NOD, then the SWCD will send an updated NOD via certified mail that:

1. Specifies the rules(s) that were violated;
2. Acknowledges any progress made toward the corrective action(s);
3. Defines the remaining corrective action(s) that the owner or operator must take to correct the deficiencies; and
4. Revises the time period(s) within which the owner or operator must perform the corrective action(s).

If the violations are not corrected in the time periods established by the SWCD, and the SWCD board is not satisfied with the progress, then the case shall be referred to ODA for enforcement action.

If the complaint is not resolved within six months of the investigation, then ODA staff will review the complaint to determine if adequate progress has been made. ODA may request that the SWCD refer the complaint to ODA for enforcement action. ODA reserves the right to assume responsibility to investigate and resolve any complaint.

## REFERRAL OF VIOLATIONS TO ODA FOR ENFORCEMENT

The SWCD may refer a violation to ODA for enforcement actions and/or civil penalties if the owner, operator or person responsible has failed to implement the corrective action(s) in the time specified. To refer the complaint to ODA the SWCD shall send a copy of their findings to ODA, the alleged violator, and the complainant, if appropriate. The findings must include:

1. The Pollution Intake and Investigation Forms and any other documentation of the investigation;
2. A copy of the NOD including the verification of delivery via certified mail;
3. Any pertinent testimony by the person in violation;
4. Documentation of any progress toward the corrective actions; and
5. A copy of the district's decision to refer the complaint (board meeting minutes).