



*Working together for Ohio farmers to advance agriculture and strengthen our communities.*

**September 2, 2022**

**Case No. 21-902-GE-BRO**

### **Reply Comments of the Ohio Farm Bureau Federation**

The Ohio Farm Bureau Federation (“OFBF” or “Farm Bureau”) thanks the Ohio Power Siting Board (“OPSB” or “Board”) for the opportunity to submit comments on proposed rule amendments on Ohio Administrative Code (“OAC”) 4906-1 through 4906-7. Moreover, OFBF welcomes the opportunity to share and examine suggestions submitted by other stakeholders and provides the following reply comments.

#### **1. Amend the Definition of “Agricultural District” to be Better Representative and Protective of Ohio’s Farmland Resources**

OFBF would like to reiterate our recommendation to amend the definition of “agricultural district” in proposed rule 4906-1-01 to include lands enrolled in the Current Agricultural Use Valuation (“CAUV”) program under R.C. 5713.30 and ensuing statutes. This definition controls the farmland impact review that is conducted within the confines of the certificate application process. However, from our experience, the limited benefits of the agricultural district program results in under-enrollment of Ohio’s farmland in that program. In contrast, CAUV provides a significant tax benefit to landowners, and nearly all farmers that qualify for the program choose to enroll into CAUV. Many mistakenly believe these programs are one in the same, but they are

separate and distinct programs which landowners must actively enroll in through separate mechanisms. CAUV enrollment is a better indicator and measure of agricultural land in a project area.

## **2. Inclusion of Information on Noxious Weeds Abatement within Health and Safety, Land Use and Ecological Information**

OFBF strongly supports and appreciates the inclusion of the requirement via draft changes to OAC 4906-4-08(B)(5) that an applicant takes steps to prevent establishment and/or further propagation of noxious weeds and invasive species during construction, operation and decommissioning. One point of clarity here - the draft rule refers to noxious weeds identified in *rule 901:5-37* of the Administrative Code. However, this should be edited in either one of two ways - either refer to *chapter 901:5-37* or *rule 901:5-37-01*. The rule at O.A.C. 901:5-37-01 contains the list of designated noxious weeds for the state of Ohio. The Ohio Department of Agriculture maintains the same list of noxious weeds on-line at the following web address: <https://agri.ohio.gov/divisions/plant-health/invasive-pests/noxious-weeds>.

OFBF disagrees with comments citing that this provision is “unnecessarily burdensome,” or that it should be eliminated. Regarding comments asking for a list of plants, we would point to the list maintained by the Ohio Department of Agriculture and listed in the Ohio Administrative Code at the above citation. Noxious weeds are so designated because they have the propensity to propagate rapidly, and pose a significant threat to crop production, livestock, or human health. It must be noted that the local government inspection and the appeals process could take too long to initiate action on eradication. OPSB rules calling for continual inspection, attention and immediate action by the permit holder provides timeliness that helps address this issue.

**3. Inclusion of Additional Information on Field Drainage Systems and Additional Drain Tile Considerations within Health and Safety, Land Use and Ecological Information.**

OFBF appreciates the draft changes to OAC 4906-4-08(E), 4906-4-08(E)(2)(vi) and OAC 4906-4-08(E)(3), as well as the opportunity to recommend new language for consideration as OAC 4906-4-08(E)(4). These provisions require the applicant to provide additional agricultural information, including more robust information on irrigation systems, field drainage systems, soils and structures used for agricultural operations.

OFBF is concerned about comments that attempt to lessen or eliminate the responsibility for developers to identify, preserve, protect and maintain field drainage systems and related infrastructure that impacts the property where the project is located, as well as adjoining property owners.

OFBF and County Farm Bureau volunteer leaders work to help all members get involved in addressing power siting concerns through direct participation in the Ohio Power Siting Board (OPSB) process. Since 2008, OFBF has participated as an intervenor in over 130 OPSB proceedings involving energy transportation and/or renewable energy generation placement on open, agricultural ground. In all cases, OFBF policy has been the foundation for our advocacy and representation. These policies build on the collective experience of members who have had to address a variety of issues concerning placement and maintenance of energy related infrastructure as well as repair and remediation of soil and water resources. These policies and the collective experience they hold are examined, evaluated and updated annually through the organization's extensive policy development process.

OFBF would reject suggestions that these proposed changes to the rules are unnecessary, should be lessened or eliminated. OFBF members are unfortunately familiar with the drainage issues that occur from energy project installations, and have had to call on the assistance of OFBF and the OPSB to address and repair serious drainage infrastructure issues in the past.

Drainage remediation and repair can often be treated as “throw-away” work, that is easily forgotten, hidden, or put out of sight. For example, we are aware of a situation wherein a subcontractor was told to discontinue work to repair damaged tile mains and lateral rerouting. Through calling attention to the requirements of the project’s stipulation and involvement of OPSB staff, drainage remediation work was completed to a safe and satisfactory result.

Subsurface drainage systems were often installed many years ago, prior to the subdivision of large land holdings into various individual lots. The drainage system, however, still provides important service to those farms, businesses and homes that reside on what was once a single farm field. OFBF members have experienced sudden flooding, ponding, and septic system failures due to the severance of tile laterals located on neighboring properties where energy projects are taking place. The addition of the proposed rule can ensure these land and homeowners receive the appropriate attention and remediation necessary.

Damage to drainage tile systems is no small matter - whether to a farmer, business owner or homeowner. This damage can result in additional significant property damage, disruption to business, and crop loss with little to no warning. Even more frustrating, there is little recourse or remedy to these actions aside from instituting costly private legal actions. Land and homeowner members often call OFBF with years-long attempts to remedy damage caused by someone else that results in flooding or other drainage problems. If permit holders are undergoing construction, part of their obligation should be to ensure they are limiting damage and promptly addressing any

damage that they create. Landowners and homeowners should not be forced to mount costly legal challenges to simply ensure that their basement or field is left unflooded.

The weight and impact of drainage repair and remediation is too large to leave to individual casework. As proposed, the OPSB rule will set a baseline which will allow for a basic level of protection. Where necessary, interested parties and intervenors will be able to work with companies for any unique provisions that may be necessary. Given the number of projects that are going forward over the next few years, this basic level of protection is necessary to ensure projects can move forward both safely and efficiently.

### **Conclusion**

For the foregoing reasons, the Ohio Farm Bureau Federation recommends that the above reply comments be considered by the Ohio Power Siting Board as it finalizes this rule package.

Respectfully submitted,

/s/ Leah F. Curtis

Leah F. Curtis  
Ohio Farm Bureau Federation  
Policy Counsel & Sr. Director  
of Member Engagement  
lcurtis@ofbf.org

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Summary: Comments Reply Comments of Ohio Farm Bureau Federation  
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