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H.B. 385
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Cross

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REVISED ANALYSIS*

SUMMARY

- Requires the Director of Environmental Protection to revoke all water pollution discharge permits (NPDES permits) issued to municipal corporations in the Lake Erie western basin for their treatment works and sewerage systems.
- Prohibits the Director from issuing an NPDES permit to such a municipal corporation.
- Prohibits any such municipal corporation from polluting the waters of the western basin.
- Specifies that a municipal corporation that knowingly violates the prohibition must be fined \$250,000 on a first offense and \$1,000 on each subsequent offense.
- Specifies that if the violation involves pollution that exceeds 100 million gallons or more within a 12-month period, the municipal corporation must pay an additional fine of \$1 million.
- Specifies that each day of violation is a separate offense.

* Corrects an error in the original As Introduced analysis that specified that a municipal corporation located in the Western Basin of Lake Erie that knowingly disposes of waste into Ohio waters in violation of the bill must be fined \$100,000 on each subsequent offense after a first offense to instead specify that the fine is \$1,000 on each subsequent offense.

- Requires a municipal corporation that is convicted of or found guilty of violating the bill's prohibition to also reimburse any state agency or a political subdivision for any actual costs that it incurred in responding to the violation, excluding prosecution costs.

DETAILED ANALYSIS

Background: municipal waste discharging with an NPDES permit

Currently, Ohio law prohibits a municipal corporation (or any other person) from causing pollution or placing or causing to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes ("waste") in a location where they cause pollution of any Ohio waters. However, a person may discharge such wastes in accordance with a valid discharge permit issued by the Ohio Environmental Protection Agency (OEPA).¹ These permits are called National Pollutant Discharge Elimination System (NPDES) permits. OEPA issues them to municipal corporations, industry, publicly owned sewerage systems, or other entities that seek to discharge wastewater to a surface water of the state. According to OEPA, NPDES permits regulate wastewater discharges by limiting the quantities of pollutants to be discharged and imposing monitoring requirements and other conditions.²

The Director of Environmental Protection, in accordance with Ohio law,³ has established total maximum daily loads (TMDLs) for Ohio waters, which effectively sets maximum pollutant levels for pollutants that can be disposed of in each body of water. NPDES permit holders also must meet TMDL-based limits or conditions as a term of their permit.⁴ The Director must consider various conditions prior to issuing an NPDES permit for discharges from a publicly owned sewerage system, including an evaluation of the effectiveness and cost of a long-term control plan.⁵

NPDES permit violations

Currently, if a person, including a municipal corporation, *purposely* disposes of waste into Ohio waters in a manner that is not allowed under their NPDES permit, the municipal corporation is guilty of a felony and fined up to \$25,000. If the municipal corporation *knowingly* does so, it is guilty of a misdemeanor and fined up to \$10,000. Each day of violation is a

¹ R.C. 6111.04(A) and (G).

² <https://www.epa.ohio.gov/dsw/permits/gpfact>.

³ See R.C. 6111.561, not in the bill.

⁴ R.C. 6111.563(F), not in the bill.

⁵ R.C. 6111.60, not in the bill.

separate offense.⁶ The municipal corporation also must reimburse any state agency or a political subdivision for any actual costs that it incurred in responding to the violation, excluding prosecution costs. After notice and opportunity for a hearing, the Director may revoke an NPDES permit for cause including the violation of any terms or conditions of the permit. Further, OEPA may bring an action for civil penalties (up to \$10,000 per day of violation) against the municipal corporation.⁷

Municipalities prohibited against discharging waste

The bill prohibits any municipal corporation located within the western basin of Lake Erie (watersheds located around Lake Erie) from causing pollution of any Ohio waters. It also prohibits a municipal corporation from keeping or obtaining an NPDES permit.⁸ Effectively, this bill eliminates a municipal corporation's ability to operate a treatment works or sewerage system that disposes of waste into or around Lake Erie.

As a result of the new prohibition, the bill requires the Director to revoke any NPDES permit issued to a municipal corporation located within the western basin that owns or operates a treatment works or sewerage system. It also prohibits the Director from issuing any new NPDES permit or other permit to a municipal corporation located within the western basin that owns or operates a treatment works or sewerage system.⁹

Penalties

A municipal corporation that knowingly disposes of waste into Ohio waters in violation of the bill must be fined \$250,000 on a first offense and \$1,000 on each subsequent offense. Each day of violation is a separate offense. If the violation involves pollution that exceeds 100 million gallons or more within a 12-month period, the municipal corporation must pay an additional fine of \$1 million.¹⁰

If a municipal corporation is convicted of or pleads guilty to this violation, in addition to financial sanctions, the court imposing the sentence may order the municipal corporation to reimburse the state agency or a political subdivision for any actual costs that it incurred in responding to the violation. Those costs include the cost of restoring affected aquatic resources and compensating the state for adverse impacts to those resources. The state may not recover

⁶ R.C. 6111.99(A) and (B).

⁷ R.C. 6111.07 and 6111.09; Ohio Administrative Code 3745-33-04(G).

⁸ R.C. 6111.61(D).

⁹ R.C. 6111.61(B) and (C).

¹⁰ R.C. 6111.99(F).

costs related to the prosecution of the offense. The bill does not impose any civil penalties for a violation.¹¹

HISTORY

Action	Date
Introduced	08-06-21

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¹¹ R.C. 6111.99(G).