



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 385
(1_134_1731-2)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 385's Bill Analysis](#)

Version: In House Agriculture and Conservation

Primary Sponsor: Rep. Cross

Local Impact Statement Procedure Required: Yes

Jamie Duskocil, Fiscal Supervisor

Highlights

- Local governmental entities located within the Western Basin of Lake Erie may be subjected to higher fines if found in violation of the terms of their existing National Pollutant Discharge Elimination System (NPDES) permit. Fines will increase from \$25,000 (for a purposeful violation) or \$10,000 (for a knowing violation) per day of violation to \$250,000 to \$1 million per day of violation. Fines are deposited to the credit of the Ohio Environmental Protection Agency's (Ohio EPA) Surface Water Protection Fund (Fund 4K40) and the Environmental Education Fund (Fund 6A10) as established in current law.
- Owners or operators of a publicly owned sewerage system that do not already have an existing NPDES permit will experience a one-time increase to apply for the newly created operation permit (\$200) and then ongoing administrative costs to adhere to the conditions of that permit. The application fee is deposited to the credit of the Surface Water Protection Fund (Fund 4K40). Fines related to the operation permit are subject to current law: \$25,000 (for a purposeful violation) or \$10,000 (for a knowing violation) per day of violation. Fines are deposited to the credit of Ohio EPA's Surface Water Protection Fund (Fund 4K40) and the Environmental Education Fund (Fund 6A10) as established in current law.
- Owners or operators of a publicly owned sewerage system that do not report any sanitary sewer overflows to Ohio EPA within 72 hours after discovering the overflow may be fined up to \$1,000 per day of violation. Fines are to be deposited to the credit of the Water Pollution Control Administration Fund (Fund 6990).
- Ohio EPA will experience an annual expenditure increase related to enforcement of the bill's requirements, including investigating complaints and then assessing and collecting fines, the magnitude of which is uncertain.

- The Attorney General's Environmental Enforcement Section will likely experience additional workload costs if Ohio EPA requests assistance in pursuing civil and criminal remedies for violations of the bill's provisions, the magnitude of which is uncertain.

Detailed Analysis

Overview

The bill enhances the criminal penalties against those municipal corporations holding a National Pollutant Discharge Elimination System (NPDES) permit located within the Western Basin of Lake Erie that unlawfully discharge waste into Ohio waters. The bill also establishes certain requirements for publicly owned sewerage systems that currently do not hold an NPDES permit.

Publicly operated treatment works located within the Western Basin

Approximately 150 publicly operated treatment works (POTW) are located in the Western Basin of Lake Erie, most of which have an existing NPDES permit on file with the Ohio Environmental Protection Agency (Ohio EPA).¹ A complete listing of the impacted entities and areas is attached to this document. Of these entities, 121 are municipalities that own or operate a POTW with an NPDES permit, and 33 public entities (cities, villages, townships, or counties) own a satellite system tributary to a permitted POTW. There are 11 impacted watersheds located in the Western Basin (a map of the area is attached to this document for reference).

For these entities located in the Western Basin, the bill increases the fine for discharging into the waters of the state in violation of the permit from \$25,000 (for a purposeful violation) or \$10,000 (for a knowing violation) per day of violation to \$250,000 to \$1 million per day of violation.

Under current law, an NPDES permit must be obtained from Ohio EPA's Division of Surface Water whenever there is a discharge of treated or partially treated water to a water of the state. NPDES permits exist to regulate wastewater discharges by placing limitations on the quantity of pollutants that may be discharged and to establish monitoring requirements and other conditions. Created in 1972 by the Clean Water Act, the NPDES permit program is authorized to state governments by U.S. EPA to perform many permitting, administrative, and enforcement aspects of the program. Annual ongoing administrative costs for enforcement of the bill's requirements, including investigating complaints, then assessing, and collecting fines, is uncertain. If fines are assessed and collected, those amounts would be deposited to the credit of the Surface Water Protection Fund (Fund 4K40) and the Environmental Education Fund

¹ 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 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 Ohio EPA. NPDES permits regulate wastewater discharges by limiting the quantities of pollutants to be discharged and imposing monitoring requirements and other conditions.

(Fund 6A10) as established in current law. For those systems that are found in violation of the bill's prohibitions, fines could increase substantially as opposed to those under current law.

Publicly owned sewerage systems

New permitting process

The bill prohibits the owner or operator of a publicly owned sewerage system that discharges or has the potential to discharge from a sewer collection system during wet weather events and that is not otherwise required to obtain an NPDES permit from operating the system without an operation permit issued by the Ohio EPA Director. The bill prescribes certain provisions that are included in the permit including notification requirements if a discharge event occurs, annual reporting requirements, public notification procedures, and emergency response planning. Ohio EPA is authorized to charge a fee up to \$200 per application, to be deposited to the credit of the Surface Water Protection Fund (Fund 4K40). Violations of any of the terms included in the permit is subject to all existing civil and criminal penalties that are generally applicable to such permits issued by Ohio EPA. Penalties and fines under current law include either an unclassified felony with imprisonment of not more than four years and/or a \$25,000 fine (for a purposeful violation) or an unclassified misdemeanor with imprisonment of not more than one year and/or a \$10,000 fine (for a knowing violation) per day of violation. Fines are deposited to the credit of Ohio EPA's Surface Water Protection Fund (Fund 4K40) and the Environmental Education Fund (Fund 6A10) as established in current law.

Ohio EPA may request assistance from the Office of the Attorney General to prosecute or bring an injunction against any person who violates the operation permit's terms. Because of these new provisions, it is possible that additional criminal and civil cases will result. Locally owned or operated sewerage systems may incur additional expenses to comply with the bill's requirements, likely in terms of minimal administrative costs. If there are violations, those systems may incur costs to participate in the investigation, adjudication costs, and possibly fines if found to be in violation of the law.

Overflow reporting requirements

The bill requires a publicly owned sewerage system to report any sanitary sewer overflows to Ohio EPA within 72 hours after discovering the overflow, unless the system's issued permit specifically addresses overflow reporting in a different manner. If the system's owner fails to comply with this requirement, the owner may be subjected to a civil penalty of up to \$1,000 for each day of violation. These civil penalties would be deposited to the credit of the Water Pollution Control Administration Fund (Fund 6990). Civil actions would be commenced by the Attorney General at the request of Ohio EPA. The Attorney General's Environmental Enforcement Section is funded through a mix of funding sources including the General Revenue Fund (GRF) and other various non-GRF funds.

Annual, ongoing administrative costs for enforcement of the bill's requirements, including investigating complaints, then assessing, and collecting fines, is uncertain.

Synopsis of Fiscal Effect Changes

The substitute bill (I_134_1731-2) retains current law by removing provisions in the As Introduced version of the bill that would have prohibited a municipal corporation located in the Western Basin of Lake Erie from having a National Pollutant Discharge Elimination System

(NPDES) permit or from discharging any pollution into the waters of the state. The As Introduced version would have effectively eliminated a municipal corporation's ability to operate a treatment works or sewerage system that disposes of waste into waters of the state.

The substitute bill essentially negates all of the prior fiscal effects that were outlined in the As Introduced version of the fiscal note. The substitute bill enhances the criminal penalties against those municipal corporations holding an NPDES permit located within the Western Basin of Lake Erie that unlawfully discharge waste into Ohio waters. The bill also establishes certain requirements for publicly owned sewerage systems that currently do not hold an NPDES permit.

**Table 1. Affected NPDES Permittee in the Western Basin of Lake Erie
Subject to Proposed Penalty Enhancements**

WWTP = Waste Water Treatment Plant STP = Sewage Treatment Plant WPC = Water Pollution Control WRRF = Water Resource Recovery Facility			
Ada WWTP	Lindsey WWTP	Lindsey WWTP	Port Clinton WWTP
Antwerp WWTP	Luckey WWTP	Luckey WWTP	Put-In-Bay WWTP
Archbold WWTP	Lyons STP	Lyons STP	Rawson WWTP
Arlington WWTP	Malinta WWTP	Malinta WWTP	Republic WWTP
Attica STP	McClure WWTP	McClure WWTP	Risingsun WWTP
Beaverdam WWTP	McComb Village WWTP	McComb Village WWTP	Rockford STP
Bettsville WWTP	Mendon WWTP	Mendon WWTP	Sandusky WPC
Bloomdale WWTP	Metamora WWTP	Metamora WWTP	Sawmill Creek WWTP
Bloomville WWTP	Middle Point WWTP	Middle Point WWTP	Sherwood WWTP
Bluffton WWTP	Montpelier WWTP	Montpelier WWTP	Spencerville WWTP
Bowling Green	Mt. Blanchard WWTP	Mt. Blanchard WWTP	St. Marys City WWTP
Bradner WWTP	Napoleon WWTP	Napoleon WWTP	Stryker STP
Bryan WWTP	Nevada WWTP	Nevada WWTP	Swanton WRRF
Buckland WWTP	New Bremen WWTP	New Bremen WWTP	Sycamore WWTP
Bucyrus WWTP	New Knoxville STP	New Knoxville STP	Tiffin WWTP
Carey WWTP	New Washington WWTP	New Washington WWTP	Toledo Bay View Park WWTP

**Table 1. Affected NPDES Permittee in the Western Basin of Lake Erie
Subject to Proposed Penalty Enhancements**

**WWTP = Waste Water Treatment Plant
STP = Sewage Treatment Plant
WPC = Water Pollution Control
WRRF = Water Resource Recovery Facility**

Cecil WWTP	Ney WWT Lagoon	Ney WWT Lagoon	Tontogany WWTP
City of Bellevue WWTP	North Baltimore WWTP	North Baltimore WWTP	Uniopolis WWTP
Clyde WWTP	Oak Harbor WWTP	Oak Harbor WWTP	Upper Sandusky WWTP
Columbus Grove WWTP	Oakwood WWTP	Oakwood WWTP	Van Wert WWTP
Continental WWTP	Ohio City WWTP	Ohio City WWTP	Vanlue STP
Convoy WWTP	Oregon WWTP	Oregon WWTP	Wapakoneta WWTP
Crestline WWTP	Ottawa WWTP	Ottawa WWTP	Wauseon WWTP
Cridersville WWTP	Ottoville WWTP	Ottoville WWTP	Wayne WWTP
Custar WWTP	Pandora WWTP	Pandora WWTP	West Unity STP
Cygnets WWTP	Paulding WWTP	Paulding WWTP	Westminster WWTP
Defiance WWTP	Payne WWTP	Payne WWTP	Weston WWTP
Delphos WWTP	Pemberville WWTP	Pemberville WWTP	Wharton WWTP
Delta WWTP	Perrysburg WWTP	Perrysburg WWTP	Willshire WWTP
Deshler WWTP	Pioneer WWTP	Pioneer WWTP	Woodville WWTP
Dunkirk WWTP			

**Table 2. Affected Satellite Operations Located in the Western Basin of Lake Erie
Subject to Proposed Penalty Enhancements**

Arcadia	Holland	Okolona	Rudolph
Auglaize County	Jackson Township	Ottawa County	Sandusky County
Ayersville	Jerry City	Ottawa Hills	Shawnee Oaks
Defiance County	Middleton Township	Perrysburg Township	Sylvania Township

Table 2. Affected Satellite Operations Located in the Western Basin of Lake Erie Subject to Proposed Penalty Enhancements

Erie County	Millbury	Portage	Van Buren
Fulton County	Moline	Putnam County	Walbridge
Glandorf	New Riegel	Ridgeville	Washington Township
Green Springs	Northwood	Rossford	West Millgrove
Harbor View			

Table 3. Western Basin of Lake Erie Watersheds²

Ottawa-Stony
Raisin
St. Joseph
St. Marys
Upper Maumee
Tiffin
Auglaize
Blanchard
Lower Maumee
Cedar-Portage
Sandusky

² Map source: U.S. Department of Agriculture; www.nrcs.usda.gov/wps/portal/nrcs/oh/programs/landscape/western+lake+erie+basin+project/.

