



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 1*

131st General Assembly
(As Reported by S. Agriculture)

Sens. Gardner and Peterson, Hite, LaRose, Eklund

BILL SUMMARY

Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer and the application of manure in the western basin of Lake Erie on frozen ground, on saturated soil, and during certain weather conditions.
- States that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.
- Exempts a person in the western basin of Lake Erie from the prohibitions if the person applies fertilizer or manure, as applicable, under specified circumstances, including injecting the fertilizer or manure into the ground and incorporating the fertilizer or manure within 24 hours of surface application.
- Authorizes the Director of Agriculture or the Director's designee or the Chief of the Division of Soil and Water Resources in the Department of Natural Resources or the Chief's designee to investigate complaints filed against a person that violates one of the prohibitions, including applying for a search warrant.
- Authorizes the Director or Chief, as applicable, to assess a civil penalty against a person that violates one of the prohibitions only if the person is afforded an opportunity for an adjudication hearing.

* This analysis was prepared before the report of the Senate Agriculture Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires the amount of the civil penalty to be determined in rules, but prohibits the penalty from being more than \$10,000.
- Terminates the prohibitions and their enforcement five years after the bill's effective date unless the standing committees of the General Assembly responsible for agriculture and natural resources recommend their continuation to the Governor.

Phosphorous monitoring for a publicly owned treatment works

- Requires specified publicly owned treatment works, including those with a design flow of one million gallons per day or more, to begin monthly monitoring of total and dissolved phosphorous by December 1, 2016.
- Requires a publicly owned treatment works that is not subject to a specified phosphorous effluent limit on the bill's effective date to complete and submit an optimization study that evaluates its ability to reduce phosphorous to that limit.

Dredged material in Lake Erie and tributaries

- Beginning July 1, 2020, prohibits a person from depositing dredged material in Ohio's portion of Lake Erie and direct tributaries that resulted from harbor or navigation maintenance activities unless authorized by the Director of Environmental Protection.
- Authorizes the Director, in consultation with the Director of Natural Resources, to determine that factors exist that result in the inability to comply with the above prohibition and, after making that determination, to allow open lake placement of dredged material from specified bodies of water through the issuance of a section 401 water quality certification.
- Allows the Director to authorize the deposit of dredged material from harbor or navigation maintenance activities for specified facilities and projects, including beach nourishment and habitat restoration.
- Authorizes the Director to consult with the Director of Natural Resources for the above purpose, but specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited.
- Requires the Director to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the above requirements.

Healthy Lake Erie Fund

- Revises the use of money in the existing Healthy Lake Erie Fund by doing both of the following:
 - Eliminating most uses of the money, including implementing nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group and conducting research and establishing pilot projects that have the goal of reducing algae blooms in Lake Erie, but retaining its use for soil testing; and
 - Instead requiring the money to be used for funding assistance for winter cover crops, edge of field testing, tributary monitoring, and animal waste management and conservation measures in Lake Erie's western basin and reduction of nutrient runoff as determined by the Director of Natural Resources.

Study of nutrient loading to Ohio watersheds

- Authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to watersheds in the Lake Erie basin and the Ohio River basin from point and nonpoint sources.
- Requires the Director or the Director's designee, in order to evaluate nutrient loading contributions, to use available data, including data on water quality and stream flow and point source discharges into those watersheds.
- Requires the Director or the Director's designee to report and update the study's results to coincide with the release of the Ohio Integrated Water Quality Monitoring and Assessment Report.

Harmful algae management and response coordinator

- Requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response, and requires the Director or the Director's designee (hereafter Director) to develop plans providing for coordination that may include specified actions and items.
- Requires the Director to consult with certain state and local officials to implement specified actions, including protecting against cyanobacteria in Lake Erie's western basin.
- Requires the Director to develop and implement protocols and actions that may include specified provisions and protocols, including:

--Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems and testing for cyanobacteria in Lake Erie; and

--Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems.

Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption rather than requiring certain plumbing supplies and materials that are used in a public water system or in plumbing for facilities connected to a public water system to be lead free as in current law.
- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.
- Generally prohibits a person from doing any of the following:
 - Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free;
 - Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and
 - Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use it in the installation or repair of any plumbing providing water for human consumption.
- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures that are used exclusively for nonpotable services.
- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law.
- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

Emergency

- Declares an emergency.

TABLE OF CONTENTS

Application of fertilizer and manure	5
Fertilizer	5
Manure.....	6
Enforcement.....	7
Termination of prohibitions	8
Phosphorous monitoring for a publicly owned treatment works	8
Dredged material in Lake Erie and tributaries	8
Healthy Lake Erie Fund.....	9
Study of nutrient loading to Ohio watersheds	10
Harmful algae management and response coordinator	11
Lead contamination of drinking water from plumbing	12

CONTENT AND OPERATION

Application of fertilizer and manure

Fertilizer

The bill establishes provisions governing the application of fertilizer in Lake Erie's western basin and requires the Director of Agriculture to administer and enforce those provisions. Under the bill, the western basin of Lake Erie is land in Ohio that is located in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.¹

Except as discussed below, the bill prohibits any person in the western basin from surface applying fertilizer under either of the following circumstances:

- (1) On snow-covered or frozen soil; or
- (2) When the top two inches of soil are saturated from precipitation.

Additionally, except as discussed below, the bill prohibits any person in the western basin from surface applying fertilizer in a granular form when the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding one inch in a 12-hour period.²

¹ R.C. 905.326(E).

² R.C. 905.326(A).



The bill states that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.³ It also specifies that the prohibitions do not apply if a person in the western basin applies fertilizer under any of the following circumstances:

- (1) The fertilizer is injected into the ground;
- (2) The fertilizer is incorporated within 24 hours of surface application; or
- (3) The fertilizer is applied onto a growing crop.⁴

Manure

The bill establishes provisions governing the application of manure in Lake Erie's western basin and requires the Chief of the Division of Soil and Water Resources in the Department of Natural Resources to administer and enforce those provisions.

Except as discussed below, the bill prohibits any person in the western basin from surface applying manure under any of the following circumstances:

- (1) On snow-covered or frozen soil;
- (2) When the top two inches of soil are saturated from precipitation; or
- (3) When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding ½ inch in a 24-hour period.⁵

As with fertilizer, the bill states that the prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.⁶ It also specifies that the prohibition does not apply if a person in the western basin applies manure under any of the following circumstances:

- (1) The manure is injected into the ground;
- (2) The manure is incorporated within 24 hours of surface application;

³ R.C. 905.326(D).

⁴ R.C. 905.326(B).

⁵ R.C. 1511.10(A).

⁶ R.C. 1511.10(D).

(3) The manure is applied onto a growing crop; or

(4) In the event of an emergency, the Chief or the Chief's designee provides written consent and the manure application is made in accordance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.⁷

Enforcement

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of one of the above prohibitions, the Director or the Director's designee or the Chief or the Chief's designee, as applicable, may investigate or make inquiries into any alleged violation of the applicable prohibition.

After receiving a complaint or upon receiving information that would indicate a violation, the Director or the Director's designee or the Chief or the Chief's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged violation. If an individual denies access to the Director or the Director's designee or the Chief or the Chief's designee, the Director or Chief may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises to determine if a violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the applicable prohibition. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.⁸

Under the bill, the Director or Chief may assess a civil penalty against a person that violates one of the above prohibitions. The Director or Chief may impose a civil penalty only if the Director or Chief affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's or Chief's determination that the person violated one of the above prohibitions. The person may waive the right to an adjudication hearing.⁹

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director or Chief determines that a violation has occurred or is occurring, the Director or Chief may issue an order requiring compliance and assess the

⁷ R.C. 1511.10(B).

⁸ R.C. 905.326(C) and 1511.10(C).

⁹ R.C. 905.327(A) and 1511.11(A).

civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.¹⁰

A violator must pay a civil penalty in an amount established in rules adopted by the Director or Chief. The civil penalty cannot be more than \$10,000 for each violation. Each 30-day period during which a violation continues constitutes a separate violation.¹¹

Termination of prohibitions

Under the bill, the above provisions cease to operate five years after the bill's effective date unless the standing committees of the General Assembly that are primarily responsible for agriculture and natural resources matters jointly recommend continuing the prohibitions and their enforcement. The bill requires the committees to jointly review the effectiveness of the prohibitions and their enforcement not later than four years after the bill's effective date. The committees must issue a joint report to the Governor containing their findings and recommendations. If they recommend continuing the prohibitions and their enforcement, they may also recommend revisions to the governing statutes.¹²

Phosphorous monitoring for a publicly owned treatment works

The bill requires a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger, to begin monthly monitoring of total and dissolved phosphorous not later than December 1, 2016. Additionally, a publicly owned treatment works that is not subject to a phosphorus effluent limit of one milligram per liter as a 30-day average on the bill's effective date must complete and submit an optimization study that evaluates the publicly owned treatment works' ability to reduce phosphorous to that limit.¹³

Dredged material in Lake Erie and tributaries

Beginning July 1, 2020, the bill prohibits a person from depositing dredged material in the portion of Lake Erie that is within Ohio's jurisdictional boundaries or in the direct tributaries of Lake Erie within Ohio that resulted from harbor or navigation maintenance activities unless the Director of Environmental Protection has determined

¹⁰ R.C. 905.327(B) and 1511.11(B).

¹¹ R.C. 905.327(C) and (D) and 1511.11(C) and (D).

¹² Section 5.

¹³ R.C. 6111.03.



that the dredged material is suitable for one of the locations, purposes, or activities specified below and has issued a section 401 water quality certification authorizing the deposit. The Director, in consultation with the Director of Natural Resources, may determine that financial, environmental, regulatory, or other factors exist that result in the inability to comply with the above prohibition. After making that determination, the Director of Environmental Protection, through the issuance of a section 401 water quality certification, may allow for open lake placement of dredged material from the Maumee River, Maumee Bay Federal Navigation Channel, and Toledo Harbor.

The bill allows the Director to authorize deposit of dredged material that resulted from harbor or navigation maintenance activities for any of the following:

- (1) Confined disposal facilities;
- (2) Beneficial use projects;
- (3) Beach nourishment projects if at least 80% of the dredged material is sand;
- (4) Placement in the littoral drift if at least 60% of the dredged material is sand;
- (5) Habitat restoration projects; and

(6) Projects involving amounts of dredged material that do not exceed 10,000 cubic yards, including material associated with dewatering operations related to dredging operations.

Under the bill, the Director may consult with the Director of Natural Resources for purposes of the above provisions. The bill specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited. The Director may adopt necessary rules.

Finally, the bill requires the Director, in order to ensure the regular and orderly maintenance of federal navigation channels and ports in Ohio, to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the bill's requirements.¹⁴

Healthy Lake Erie Fund

The bill revises the use of the existing Healthy Lake Erie Fund by doing both of the following:

¹⁴ R.C. 6111.32.



(1) Eliminating a requirement that the Director of Natural Resources consult with the Directors of Agriculture and Environmental Protection in using money in the Fund to implement nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group and instead requiring the Director of Natural Resources to use money in the Fund in support of all of the following:

--Conservation measures in Lake Erie's western basin as determined by the Director;

--Funding assistance for winter cover crops, edge of field testing, tributary monitoring, and animal waste management; and

--Any additional efforts to reduce nutrient runoff as determined by the Director.

(2) Eliminating the authority of the Director to use money in the Fund for monitoring the quality of Lake Erie and its tributaries and conducting research and establishing pilot projects that have the goal of reducing algae blooms in Lake Erie.

The bill retains the use of the Fund for soil testing.¹⁵

Study of nutrient loading to Ohio watersheds

The bill authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to watersheds in the Lake Erie basin and the Ohio River from point and nonpoint sources. The study must determine comparative contributions by those sources and utilize the information derived from those calculations to determine the most environmentally beneficial and cost-effective mechanisms to reduce nutrient loading to those watersheds. In order to evaluate nutrient loading contributions, the Director or the Director's designee must conduct a study of the nutrient mass balance for both point and nonpoint sources in watersheds in the Lake Erie basin and the Ohio River basin using available data, including data on water quality and stream flow and on point source discharges into those watersheds. The Director or the Director's designee must report and update the study's results to coincide with the release of the Ohio Integrated Water Quality Monitoring and Assessment Report.¹⁶

¹⁵ Sections 3 and 4.

¹⁶ R.C. 6111.03(T).



Harmful algae management and response coordinator

The bill requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response. The Director or the Director's designee (hereafter Director) must develop plans providing for coordination that may include the actions and items discussed below.

Under the bill, the Director must consult with the Directors of Agriculture, Health, and Natural Resources and representatives of local governments, publicly owned treatment works, and public water systems to implement actions that do both of the following:

- (1) Protect against cyanobacteria in the western basin of Lake Erie and public water supplies; and
- (2) Manage wastewater to limit nutrient loading into the western basin.

The Director must develop and implement protocols and actions that may include the following:

(1) Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems, testing for cyanobacteria in Lake Erie, and establishing public health advisory levels and public notification protocols if trigger levels of cyanobacteria are detected;

(2) Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems;

(3) Protocols for monitoring the tributaries of Lake Erie's western basin for phosphorous, nitrogen, and sediment runoff and other chemical and biological agents, as determined by the Director, that may result in harmful algae, cyanotoxins, and other adverse impacts on the waters of the state; and

(4) Protocols requiring public water systems to notify the Environmental Protection Agency if any of the following occurs:

- Cyanotoxins are detected in finished drinking water;
- Cyanobacteria are detected in their source water; or



--Application of an algaecide is anticipated to the source water.¹⁷

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.¹⁸

The bill also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.¹⁹

The bill exempts the following from all of the above prohibitions:

(1) Pipes, pipe fittings, or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services; and

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are at least two inches in diameter.²⁰

¹⁷ R.C. 3745.50.

¹⁸ R.C. 6109.10(B)(1) and (D)(1).

¹⁹ R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).

²⁰ R.C. 6109.10(D)(4).



Under the bill, the owner or operator of a public water system must identify and provide notice to persons that may be affected by lead contamination of their drinking water if the contamination results from the lead content in the construction materials of the public water distribution system, the corrosivity of the water supply is sufficient to cause the leaching of lead, or both. Current law instead requires each public water system to identify and provide notice to persons that may be affected by lead contamination of their drinking water.²¹

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.²²

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the bill's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.²³

HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Agriculture	---

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²¹ R.C. 6109.10(C).

²² R.C. 6109.10(A)(1).

²³ R.C. 6109.10(A)(2).

