



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

Sub. H.B. 61

131st General Assembly
(As Reported by H. Agriculture & Rural Development)

Reps. Buchy and Hall, Hill, Patterson, Boose, Cera, Retherford, Ruhl

BILL SUMMARY

Application of manure and fertilizer

- Prohibits, with certain exceptions, the application of manure or fertilizer in the western Lake Erie basin 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 Lake Erie basin from the prohibitions if the person applies manure or fertilizer, 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 the applicable prohibition, including applying for a search warrant.
- Precludes the Chief from assessing a civil penalty against a person that is violating or has violated the prohibition against the application of manure unless all of the following occur:
 - The person is notified of the deficiencies, the actions the person must take to correct the deficiencies, and the time period the person has to correct the deficiencies;

--After the time period has ended, the Chief or the Chief's designee has inspected the property where the violation occurred, determined that the person is still in violation, and notified the person of the opportunity for an adjudication hearing; and

--The Chief affords the person an opportunity for an adjudication hearing to challenge the Chief's determination of a violation, proposed imposition of the civil penalty, or both.

- Allows either of the following to request assistance from the Chief or other specified persons to develop technically feasible and economically reasonable measures or a plan and a schedule to implement the measures or plan in order to cease or prevent violation of the prohibition against the application of manure:

--A person in the western Lake Erie basin that is in violation of the prohibition, but has not been notified under the bill of the deficiencies resulting in a violation; or

--A person in the western Lake Erie basin that is not in violation of the prohibition, but whose future application may violate it.

- Precludes the Chief from making a determination of violation and assessing a civil penalty against a person that is violating or has violated the prohibition if any of the following applies:

--The person has made a request for assistance under the bill;

--The person is receiving such assistance; or

--The person is implementing the measures or plan in accordance with the schedule developed under the bill.

- Authorizes the Director to assess a civil penalty against a person that violates the prohibition against the application of fertilizer only if the person is afforded an opportunity for an adjudication hearing.
- Requires the amount of the civil penalty for violation of either of the prohibitions to be determined in rules, but prohibits the penalty from being more than \$10,000.
- States that it is the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture must be enacted not later than July 1, 2015.



Prohibition against application of sewage sludge

- States that a person can only surface apply sewage sludge in accordance with rules adopted by the Director of Environmental Protection under the Water Pollution Control Law, and prohibits a person from recklessly violating that provision.

Phosphorous monitoring for 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 Maumee basin

- Beginning July 1, 2020, prohibits a person from depositing dredged material in the Maumee River, Maumee Bay Federal Navigation Channel, and Toledo Harbor (hereafter Maumee basin) 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 then allow open lake placement of dredged material in the Maumee basin 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.



Review

- Requires the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters, not later than three years after the bill's effective date, to jointly assess the results of the implementation of the bill's prohibition against the application of manure and fertilizer.
- Requires the committees of the General Assembly that are primarily responsible for environmental protection matters, not later than January 1, 2023, to jointly assess the results of the implementation of the bill's prohibition against depositing dredged material in the Maumee basin that resulted from harbor or navigation maintenance activities.

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CONTENT AND OPERATION

Application of manure and fertilizer

Introduction

The bill establishes provisions governing the application of manure and fertilizer in Lake Erie's western basin. Under the bill, fertilizer is nitrogen or phosphorous.¹ The Director of Agriculture must administer and enforce the provisions governing the application of fertilizer. The Chief of the Division of Soil and Water Resources in the Department of Natural Resources must administer and enforce the provisions governing the application of manure. Under the bill, the western basin of Lake Erie is land in Ohio that is located in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-

¹ R.C. 905.326(F).



Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.²

Manure prohibition and exemptions

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.³

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.⁴ 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) The manure is applied onto a growing crop; or
- (4) In the event of an emergency, the Chief 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.⁵

Enforcement of manure prohibition

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

² R.C. 905.326(E) and 1511.10(E).

³ R.C. 1511.10(A).

⁴ R.C. 1511.10(D).

⁵ R.C. 1511.10(B).



After receiving a complaint or upon receiving information that would indicate a violation, 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, the 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 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.⁶

Under the bill, the Chief may propose to require corrective actions and assess a civil penalty against a person that is violating or has violated the above prohibition. The Chief may assess a civil penalty only if all of the following occur:

(1) The person is notified in writing of the deficiencies resulting in a violation, the actions that the person must take to correct the deficiencies, and the time period within which the person must correct the deficiencies and cease violation;

(2) After that time period has ended, the Chief or the Chief's designee has inspected the property where the violation occurred, determined that the person is still in violation, and notified the person of the opportunity for an adjudication hearing as provided in the bill; and

(3) The Chief affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Chief's determination that the person is in violation, the Chief's proposed imposition of a civil penalty, or both. The person may waive the right to an adjudication hearing.⁷

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Chief determines that a violation has occurred or is occurring, the Chief may issue an order requiring a person to cease violating the prohibition and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.⁸

A person that has been assessed a civil penalty must pay the civil penalty in the amount established in rules adopted by the Chief. The civil penalty cannot be more than

⁶ R.C. 1511.10(C).

⁷ R.C. 1511.11(A).

⁸ R.C. 1511.11(B).

\$10,000 for each violation. Each 30-day period during which a violation continues constitutes a separate violation.⁹

The bill then establishes an exception to the above provisions. Under the bill, either of the following may request assistance from the Chief, the board of supervisors of the applicable soil and water conservation district, or another qualified person as determined by the Chief or the Chief's designee to develop technically feasible and economically reasonable measures or a plan and a schedule to implement the measures or plan in order to cease or prevent violation of the above prohibition:

(1) A person in the western basin that is in violation of the prohibition, but has not been notified under the bill of the deficiencies resulting in the violation; or

(2) A person in the western basin that is not in violation of the prohibition, but whose future application may violate the prohibition.¹⁰

Upon receiving a request for assistance, the Chief, the board, or another qualified person must develop or assist in the development of technically feasible and economically reasonable measures or a plan and a schedule to implement the measures or plan. The bill precludes the Chief from making a determination of violation and assessing a civil penalty against a person that is violating or has violated the manure prohibition if any of the following applies:

(1) The person has made a request for assistance under the bill;

(2) The person is receiving assistance under the bill; or

(3) The person is implementing the measures or plan in accordance with the schedule developed under the bill.¹¹

Fertilizer prohibition and exemptions

Except as discussed below, the bill prohibits any person in the western basin from surface applying fertilizer 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

⁹ R.C. 1511.11(C) and (D).

¹⁰ R.C. 1511.12(A).

¹¹ R.C. 1511.12(B) and (C).



(3) 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.¹²

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.¹³ It also specifies that the prohibition does 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.¹⁴

Enforcement of fertilizer prohibition

The bill's investigation procedures to be followed by the Director or the Director's designee for a violation of the fertilizer prohibition are the same as those to be followed by the Chief or the Chief's designee for a violation of the manure prohibition as discussed above.¹⁵

Under the bill, the Director may assess a civil penalty against a person that violates the fertilizer prohibition. The Director may impose a civil penalty only if the Director affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the person violated the above prohibition. The person may waive the right to an adjudication hearing.¹⁶

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

¹² R.C. 905.326(A).

¹³ R.C. 905.326(D).

¹⁴ R.C. 905.326(B).

¹⁵ R.C. 905.326(C).

¹⁶ R.C. 905.327(A).

penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.¹⁷

A violator must pay a civil penalty in an amount established in rules adopted by the Director. 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.¹⁸

Intent to transfer Agricultural Pollution Abatement Program

The bill states that it is the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture must be enacted not later than July 1, 2015.¹⁹

Prohibition against application of sewage sludge

The bill states that a person can only surface apply sewage sludge in accordance with rules adopted by the Director of Environmental Protection under the Water Pollution Control Law. Additionally, it prohibits a person from recklessly violating that provision.²⁰

Phosphorous monitoring by 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. Finally, the Director must modify NPDES permits to include those requirements.²¹

¹⁷ R.C. 905.327(B).

¹⁸ R.C. 905.327(C) and (D).

¹⁹ Section 4.

²⁰ R.C. 6111.0310.

²¹ R.C. 6111.03.



Dredged material in Maumee basin

Beginning July 1, 2020, the bill prohibits a person from depositing dredged material in the Maumee River, Maumee Bay Federal Navigation Channel, and Toledo Harbor (hereafter Maumee basin) that resulted from harbor or navigation maintenance activities unless the Director of Environmental Protection has determined 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 that 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 in the Maumee basin.

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 the Maumee basin, 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.²²

Review

The bill requires the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters, not later than three years after the bill's effective date, to jointly assess the results of the implementation of the bill's prohibitions against the application of manure and fertilizer in the western Lake Erie basin on frozen ground, on saturated soil, and during certain weather conditions. It also requires the committees of the General Assembly that are primarily responsible for environmental matters, not later than January 1, 2023, to jointly assess the results of the implementation of the bill's prohibition against depositing dredged material in the Maumee basin that resulted from harbor or navigation maintenance activities.

The bill requires the committees to jointly issue a report to the Governor containing their findings and any recommendations based on the respective assessment. The committees may include in the respective report recommendations for revisions to or the repeal of the prohibitions.²³

HISTORY

ACTION	DATE
Introduced	02-11-15
Reported, H. Agriculture & Rural Development	03-04-15

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²² R.C. 6111.32.

²³ Section 3.

