



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

H.B. 61

131st General Assembly
(As Introduced)

Reps. Buchy and Hall

BILL SUMMARY

Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer or manure in the western basin of Lake Erie on frozen ground, on saturated soil, and during certain weather conditions.
- Requires the Director of Agriculture to administer the fertilizer provisions and the Chief of the Division of Soil and Water Resources in the Department of Natural Resources to administer the manure provisions.
- 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.
- Exempts a person in the western basin of Lake Erie from the prohibition 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 or the Chief's designee to investigate complaints filed against a person that violates the above prohibition, including applying for a search warrant.
- Authorizes the Director or Chief, as applicable, to assess a civil penalty against a person that violates the prohibition only if the person is afforded an opportunity for an adjudication hearing.

- Requires the amount of the civil penalty to be determined in rules, but prohibits the penalty from being more than \$10,000.

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, 2015.
- 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.
- 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.

CONTENT AND OPERATION

Application of fertilizer and manure

Prohibition and exemptions

The bill establishes prohibitions governing the application of fertilizer and manure in Lake Erie's western basin. 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-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.¹

Except as described below, the bill prohibits any person in the western basin from surface applying fertilizer or manure, as applicable, 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;
- (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.²

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.³ It also specifies that the prohibition does not apply if a person in the western basin applies fertilizer or manure, as applicable, under any of the following circumstances:

- (1) The fertilizer or manure is injected into the ground;
- (2) The fertilizer or manure is incorporated within 24 hours of surface application;
- (3) The fertilizer or manure is applied onto a growing crop;
- (4) The fertilizer consists of potash or gypsum; or
- (5) In the event of an emergency, the Director or the Director's designee or the Chief, as applicable, provides written consent and the fertilizer or 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.⁴

¹ R.C. 905.326(E) and 1511.10(E).

² R.C. 905.326(A) and 1511.10(A).

³ R.C. 905.326(D) and 1511.10(D).

⁴ R.C. 905.326(B) and 1511.10(B).



Enforcement

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of the above prohibition, the Director or the Director's designee or the Chief or the Chief's designee may investigate or make inquiries into any alleged violation of the 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, 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 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.⁵

Under the bill, the Director or Chief may assess a civil penalty against a person that violates the above prohibition. 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 the above prohibition. The person may waive the right to an adjudication hearing.⁶

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 civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.⁷

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.⁸

⁵ R.C. 905.326(C) and 1511.10(C).

⁶ R.C. 905.327(A) and 1511.11(A).

⁷ R.C. 905.327(B) and 1511.11(B).

⁸ R.C. 905.327(C) and (D) and 1511.11(C) and (D).

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, 2015. 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.⁹

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 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 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.

⁹ R.C. 6111.03.



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.¹⁰

HISTORY

ACTION	DATE
Introduced	02-11-15

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¹⁰ R.C. 6111.32.

