



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

S.B. 16

131st General Assembly
(As Introduced)

Sens. Brown, Cafaro, Gentile, Sawyer, Schiavoni, Skindell, Tavares, Thomas, Williams, Yuko

BILL SUMMARY

Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer on frozen or saturated soil and during certain weather conditions.
- 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 from the prohibition if the person applies fertilizer under specified circumstances, including injecting the fertilizer into the ground and applying the fertilizer onto a growing crop at a rate at which the fertilizer can be added to soil for optimum crop growth.
- Prohibits the application of manure on snow-covered or frozen soil unless:
 - The manure is injected into the ground and incorporated within 24 hours of surface application; and
 - In the event of an emergency, the person is provided written consent by the Chief of the Division of Soil and Water Resources or the Director of Agriculture and the person applies the manure in compliance with federal standards for the application of manure on snow-covered or frozen soil.
- Generally prohibits the application of manure on saturated soil and during certain weather conditions.
- Requires the Chief to administer the manure provisions until January 1, 2017, and transfers that authority to the Director on that date.

- Exempts a person from the above prohibitions if the person applies manure on a growing crop at a rate at which the manure can be added to soil for optimum crop growth.
- Authorizes the Director or the Director's designee or the Chief or the Chief's designee to investigate complaints filed against a person that violates the above prohibitions, including applying for a search warrant.
- Authorizes the Director or Chief, as applicable, to assess a civil penalty against a person that violates the above prohibitions 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.
- Requires the Director and the Chief, not later than a specified date, to assess the results of the bill's fertilizer and manure application prohibitions and issue a report to the standing committees of the General Assembly responsible for agriculture and natural resources.
- Requires the standing committees to review the report and issue a report to the Governor containing their findings and recommendations, which may include revisions to or repeal of the prohibitions.
- Requires certification of fertilizer applicators to begin June 30, 2015, rather than September 30, 2017, as in current law, and requires manure applicators to be certified by the Director in the same manner as fertilizer applicators.

Annual report of manure application

- Generally requires the owner or operator of an animal feeding facility or a certified livestock manager for that owner or operator to annually file a report with the Director that must include both of the following:
 - The total estimated amount of manure applied on the surface of agricultural fields by the owner or operator or manager; and
 - The total estimated amount of manure sold, otherwise transferred, or both by the owner or operator or manager to other persons that apply the manure on the surface of agricultural fields.
- Exempts from the reporting requirement the owner or operator of an animal feeding facility or a certified livestock manager for that owner or operator that annually

applies less than 350 tons of dry manure or 100,000 gallons of liquid manure per year.

- Requires the Director to adopt rules that establish requirements and procedures governing the filing of the report, and requires the rules to include guidelines for determining the estimated annual amount of manure generated.

Study of nutrient loading to Ohio watersheds

- Authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to Ohio watersheds 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 point source discharges into Ohio 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.

CONTENT AND OPERATION

Application of fertilizer and manure

Overview

The bill establishes prohibitions against the application of fertilizer and manure on frozen or saturated soil and during certain weather conditions with specified exceptions. It requires the Director of Agriculture to administer and enforce 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, but transfers that authority from the Chief to the Director of Agriculture on January 1, 2017.

The bill also revises current law regarding the certification of fertilizer applicators by requiring those applicators to be certified by June 30, 2015, rather than September 30, 2017. Finally, it requires manure applicators to be certified in the same manner as fertilizer applicators.

Fertilizer

Except as discussed below, the bill prohibits any person 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

(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.¹

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.² It also specifies that the prohibition does not apply if a person 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 at the agronomic rate, which is the rate at which fertilizer can be added to soil for optimum crop growth.³

Manure

The bill establishes similar prohibitions governing the application of manure. The Chief of the Division of Soil and Water Resources must administer and enforce the provisions governing the application of manure until January 1, 2017, at which time the Director of Agriculture is required to administer them.⁴

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

(1) On snow-covered or frozen soil unless:

--The manure is injected into the ground;

--The manure is incorporated within 24 hours of surface application; or

--In the event of an emergency, the Chief or the Chief's designee (hereafter, Chief) or the Director or the Director's designee (hereafter, Director), as applicable, provides written consent and the manure application is made in

¹ R.C. 905.326(A).

² R.C. 905.326(D).

³ R.C. 905.326(B) and (E).

⁴ R.C. 901.80(A).



accordance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.

(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

The bill specifies that the prohibition does not apply if a person applies manure onto a growing crop at the agronomic rate, which is the rate at which manure can be added to soil for optimum crop growth.⁶

Enforcement

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of the above prohibitions against the application of fertilizer or manure, as applicable, the Director or the Chief may investigate or make inquiries into any alleged violation of the prohibitions.

After receiving a complaint or upon receiving information that would indicate a violation, the Director or the Chief 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 Chief, 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.⁷

Under the bill, the Director or Chief may assess a civil penalty against a person that violates the applicable 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

⁵ R.C. 901.80(B).

⁶ R.C. 901.80(C) and (E).

⁷ R.C. 901.80(D) and 905.326(C).



Director's or Chief's determination that the person violated the applicable prohibition. The person may waive the right to an adjudication hearing.⁸

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.⁹

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

Review of prohibitions

The bill requires the Director and the Chief, not later than 42 months after the bill's effective date, to assess the results of the implementation of the above provisions. The Director and Chief must issue a report of their assessment to the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters. The bill requires the committees to review the report not later than four years after the bill's effective date and to jointly issue a report to the Governor containing their findings and recommendation. The committees may include recommendations for revisions to or the repeal of the governing statutes.¹¹

Certification of applicators

The bill requires certification of fertilizer applicators to begin June 30, 2015, rather than September 30, 2017, as required in law enacted in 2014.¹² It also requires manure applicators to be certified by the Director of Agriculture in the same manner as fertilizer applicators are certified under that law. Manure is animal excreta.¹³

⁸ R.C. 901.81(A) and 905.327(A).

⁹ R.C. 901.81(B) and 905.327(B).

¹⁰ R.C. 901.81(C) and (D) and 905.327(C) and (D).

¹¹ Section 3.

¹² R.C. 905.321(A).

¹³ R.C. 905.321(D).



Annual report of manure application

The bill requires both of the following to annually file a report with the Director of Agriculture in accordance with rules except as discussed below:

(1) The owner or operator of an animal feeding facility that is regulated under the Concentrated Animal Feeding Facilities Law or issued an NPDES permit under the Water Pollution Control Law; and

(2) The certified livestock manager, as certified under the Concentrated Animal Feeding Facilities Law, for that owner or operator.

The owner or operator or certified livestock manager must include in the report the following information for the 12-month period specified in the report with regard to each applicable watershed or subwatershed in the state:

(1) The total estimated amount of manure applied on the surface of agricultural fields by the owner or operator or manager; and

(2) The total estimated amount of manure sold, otherwise transferred, or both by the owner or operator or manager to other persons that apply the manure on the surface of agricultural fields.¹⁴

The above reporting requirement does not apply to the owner or operator of an animal feeding facility or a certified livestock manager for that owner or operator that applies less than 350 tons of dry manure per year or less than 100,000 gallons of liquid manure per year.¹⁵

The Director must adopt rules in accordance with the Administrative Procedure Act that establish requirements and procedures governing the filing of the report. The rules must include guidelines for use by an owner or operator or manager when determining the estimated annual amount of manure generated by agricultural animals. The guidelines also must use animal units, as defined in the Concentrated Animal Feeding Facility Law, as the unit of measurement.¹⁶

¹⁴ R.C. 901.82(A) and (C).

¹⁵ R.C. 901.82(B).

¹⁶ R.C. 901.83.



Study of nutrient loading to Ohio watersheds

The bill authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to Ohio watersheds 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 Ohio watersheds. In order to evaluate nutrient loading contributions, the Director or the Director's designee must conduct a study of the statewide nutrient mass balance for both point and nonpoint sources in Ohio watersheds using available data, including data on water quality and on point source discharges into Ohio 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.¹⁷

HISTORY

ACTION	DATE
Introduced	02-02-15

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¹⁷ R.C. 6111.03(T).

