



Ohio Legislative Service Commission

Bill Analysis

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Sen. Hite

BILL SUMMARY

Evaluation and cleanup of landfill facilities and properties

- Revises the authority of the Director of Environmental Protection to take actions to abate pollution or contamination at a hazardous or solid waste facility, a construction and demolition debris (C&DD) facility, or any other property.
- Applies the procedures and requirements governing the remediation and abatement of pollution at hazardous waste facilities, including their closure and post-closure care, to solid waste and C&DD facilities.
- Authorizes the Director to expend money credited to the Environmental Protection Remediation Fund for the purpose of closure or post-closure care of a solid waste or C&DD facility or for remediation or pollution abatement activities at those facilities.
- With regard to an agreement with an owner of land on which cleanup activities will occur, specifies that an easement granted to the Director under current law may authorize OEPA to enter upon the land to construct, maintain, repair, remove, or make any other alteration or improvement.
- Specifies that methods of reimbursement for costs of cleanup activities under an agreement with a landowner may include assignment of royalties or proceeds from the sale of timber or other resources.
- Generally authorizes the Director to enter into an agreement with an owner of real or personal property (other than the owner of property that is subject to cleanup activities) for purposes of conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.

- Authorizes the Director to obtain an easement from a person that is not the owner of property subject to cleanup activities to address the use of resources or materials for purposes of conducting the activities.
- In addition to circumstances authorized under current law, specifies that the Director, in the absence of an agreement for reimbursement, may record the unreimbursed portion of the costs of the activities at the office of the county recorder of the county in which the property or facility is located.
- Specifies that the recorded costs constitute a lien against the property and that the lien is superior in priority to any other lien or mortgage on the property with certain exceptions.
- Eliminates provisions of law requiring the Director to use a specified competitive bidding process if the Director contracts for services, construction, and repair for the cleanup of a property or facility, and, thus applies general competitive bidding procedures applicable to state agencies.
- Declares that the state is immune from liability for any injury or damage resulting from specified cleanup or remediation activities, provided that the activities do not constitute reckless, willful, or wanton misconduct.
- Adds specified cleanup and remediation activities to the list of activities from which the state is immune from liability.

Construction and Demolition Debris Law

- Establishes requirements governing processing facilities under the C&DD Law.
- Specifies that a "processing facility" is, in part, a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility.
- Removes the term "transfer facility" from current law, and instead includes the transfer of C&DD as one of the authorized activities of a processing facility.
- Requires the Director to adopt rules governing new and existing processing facilities and the inspection of and issuance of licenses and permits for those facilities.
- Prohibits a person from operating or maintaining a processing facility without an annual license issued by the board of health of the health district in which the facility is located or from the Director if a health district is not approved to regulate C&DD facilities.



- Establishes procedures and requirements governing the issuance of an annual processing facility license that are generally the same as the existing procedures and requirements governing an annual license to operate or maintain a C&DD facility.
- Establishes procedures and requirements governing the issuance of a permit to install a new processing facility that are generally the same as the existing procedures and requirements governing a permit to install a C&DD facility.
- Establishes procedures that an owner or operator of an existing processing facility must comply with in order to continue operating the processing facility.
- Requires an applicant for an annual processing facility license to pay an application fee of \$100 and establishes a penalty for late payment.
- Establishes a \$650 fee for an annual processing facility license and specifies that the issuance of the annual license is conditioned upon payment of the annual fee.

Waste Management Fund

- Revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes and instead allowing money in the Fund to be used for any of those purposes.

Public water system capability

- Requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018.
- Authorizes the Director to take certain actions to improve and ensure the capability of a public water system that has failed to make the required demonstration.
- Requires a public water system to incorporate specified information in the program, including an inventory and evaluation of all assets and a long-term funding strategy to support asset management program implementation.
- Requires a public water system, if requested by the Director, to submit a written description of the asset management program within 30 days after receiving the request.

Receivership of public water systems

- Authorizes the Director to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when both of the following apply:
 - The system serves less than 500 service connections; and
 - Conditions existing at the system present a threat to public health or welfare.
- Prohibits a court from appointing a receiver to operate a system owned and operated by a public entity or regulated by the Public Utilities Commission.
- Establishes requirements governing the contents of a petition for receivership, notice and hearings regarding a petition, the appointment of receivers, powers and duties of a receiver, and the termination of a receivership.
- Specifies that contracts that are necessary to carry out the powers and duties of the receiver are not subject to competitive bidding requirements.
- Specifies that neither a receiver nor the Director is liable for debts incurred by the owner or operator of a public water system for which the receiver was appointed.
- Requires the Director to provide technical assistance to an appointed receiver.

Financial assurance requirement for community water systems

- Requires the owner or operator of certain community water systems to provide financial assurance, in a form approved by the Director, when submitting plans to construct, install, or make a substantial modification to the system instead of requiring the deposit of a cash amount in escrow, as in current law.
- Requires the Director to approve the form of financial assurance.
- Increases the maximum amount of financial assurance that the owner must provide from \$50,000 to \$100,000.

Discharge to a privately owned treatment works

- Specifies that the exclusion of the discharges of waste into a sewerage system from the law prohibiting polluting state waters does not authorize a discharge to a privately owned treatment works in violation of any permit conditions established under federal law.



Section 401 Water Quality Certification

- Authorizes the Director to waive a Section 401 Water Quality Certification for any applicant for a federal license or permit to conduct any activity that may result in a discharge into state waters.
- Authorizes the Director to revoke, transfer, or, at the request or concurrence of the certification holder, modify a Section 401 Water Quality Certification.

Dredged material

- Prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in circumstances specified by the bill.
- Specifies that a person who purposely violates the prohibition is guilty of a felony and must be fined not more than \$25,000 or imprisoned for not more than four years, or both.
- Specifies that a person who knowingly violates the prohibition is guilty of a misdemeanor and must be fined not more than \$10,000 or imprisoned for not more than a year, or both.
- Defines dredged material for purposes of the prohibition as material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.
- Authorizes the Director to adopt rules governing the beneficial use of dredged material necessary to protect public health, safety, and the environment.

Certified water quality professionals

- Requires, rather than authorizes as in current law, the Director to establish a program and adopt rules governing the certification of water quality professionals to assess streams and categorize wetlands in support of applications for Section 401 Water Quality Certifications and isolated wetland permits.
- Requires the Director to establish a multi-sector work group to assist in the development of the rules.
- Revises the Director's rule-making authority regarding audits of certified water quality professionals and establishes rule-making authority regarding the public disclosure of information concerning a certified water quality professional.

- Requires the Director to issue or deny a Section 401 Water Quality Certification within 90 days after the receipt of a complete application when a certified water quality professional conducts a stream or wetland assessment to support the application.
- Specifies that an applicant for a Section 401 Water Quality Certification or an isolated wetlands permit is not required to use the services of a certified water quality professional.

Ohio Lake Erie Commission

- Adds two members from the Great Lakes Protection Fund Board to the Ohio Lake Erie Commission.
- Specifies that the terms of the five existing members of the Commission who are appointed by the Governor expire on the bill's effective date.
- Requires the Governor to appoint five new members with the advice and consent of the Senate not later than 45 days after the bill's effective date to specified staggered terms.
- Authorizes the Governor to reappoint individuals whose terms expire on the bill's effective date.
- Applies new requirements to the five members appointed by the Governor, such as term limits and causes for removal.
- Requires the agencies represented on the Commission to provide administrative services required by the Commission in the performance of its duties.
- Requires the Commission, not later than the last day of March of each year, to publish a Lake Erie Protection and Restoration Strategy that describes the goals of the Commission and prioritizes the uses of the Lake Erie Protection Fund and other funds for the following fiscal year.
- Establishes new duties for the Commission, such as serving as a repository and clearinghouse for information and data related to Lake Erie and the Lake Erie basin and collecting and distributing such information and data at the Commission's discretion.
- Eliminates some of the duties currently required of the Commission, such as the requirement to recommend policies and programs to modify the coastal management program of Ohio.

- Authorizes the Commission to dissolve public advisory councils established for the purpose of assisting in implementing programs established under the laws governing the Commission, but retains the authority to establish the councils.
- Eliminates some of the existing requirements governing public advisory councils, such as the requirement that the members of the councils must represent a broad cross section of interests.
- Specifies that members of the Commission and members of a public advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

Lake Erie Protection Fund

- Eliminates several of the purposes for which the Commission may use the Lake Erie Protection Fund under current law, such as funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination.
- Revises one of the uses of the Fund by specifying that the Fund may be used for accelerating the pace of cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy.
- Allows grants made from the Fund to be used for projects and programs that are designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy.

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CONTENT AND OPERATION

Evaluation and cleanup of landfill facilities and other properties

Investigatory and enforcement action

The bill revises the authority of the Director of Environmental Protection to take certain actions to abate pollution or contamination at a parcel of property by doing all of the following:

(1) Authorizing the Director to conduct investigations at a facility or property where solid wastes or construction and demolition debris (C&DD) are disposed of, rather than only at locations where hazardous waste is disposed of as under current law;

(2) Authorizing the Director to expend money from the Environmental Protection Remediation Fund to conduct investigations at a facility or property where solid waste or C&DD was disposed of; and

(3) Requiring the Director to initiate appropriate actions under specified environmental laws or seek any other appropriate legal or equitable remedies if the Director determines that conditions at a facility or property where solid waste or C&DD is disposed of constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil

contamination. Under current law, the Director is required to take such actions only with regard to locations at which hazardous waste is disposed of.¹

Liens

Under current law, the Director may record costs of measures performed at a parcel of property, and those recorded costs constitute a lien against the property. The lien continues until it is discharged. The bill specifies that the Director also may record investigatory costs and that all recorded costs attach to the real property and constitute a perfected lien against the property. In addition, the bill specifies that a lien so imposed is superior in priority to any other lien or mortgage except a tax lien of the state and continues until discharged or upon a filing by the Director of a release of the lien in the office of the county recorder of the county where the facility or property subject to the lien is located.²

Plan for cleanup activities

Under current law, the Director is required to develop a plan for cleanup of a hazardous waste facility. The bill instead expands this requirement by requiring the Director to develop a plan for cleanup activities at *any* property contaminated by hazardous waste and, as added by the bill, solid waste or construction and demolition debris.

Current law requires the plan to include only those measures necessary to abate conditions that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a threat to public health or safety. Under the bill, with regard to a parcel of property contaminated with hazardous waste, the plan may include specified measures necessary for the following:

- (1) The proper closure of the hazardous waste facility (or any solid waste facility containing significant quantities of hazardous waste);
- (2) The development and construction of suitable hazardous waste facilities to the extent the Director determines that such facilities are not available; and
- (3) The abatement of conditions at a facility that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety.

¹ R.C. 3734.20(A) and (B).

² R.C. 3734.20(B).



With regard to property where solid waste or C&DD was disposed of, the plan may include specified measures necessary for the following:

(1) The closure or post-closure care of the solid waste or C&DD facility; and

(2) Remediation or abatement of conditions that cause, contribute to, or threaten to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety at property where solid waste or C&DD is disposed of.³

Agreements regarding cleanup activities and reimbursement of costs

Under current law largely retained by the bill, the Director must endeavor to enter into an agreement with the owner of land on which cleanup activities will be conducted, specifying the activities to be performed and authorizing appropriate personnel to enter upon the land. Current law limits such agreements to cleanup activities at hazardous waste facilities. The bill requires the Director to endeavor to enter into such an agreement regarding any property on which hazardous or solid waste or C&DD is disposed of. Further, the Director may enter into an agreement with any other owner of real or personal property (other than the landowner where the cleanup activities will take place) for purposes of conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.

Current law authorizes agreements entered into by the Director to contain provisions for the reimbursement of the state for the costs of the activities. The bill specifies that methods of reimbursement for costs of cleanup activities may include assignment of royalties or proceeds from the sale of timber or other resources present at the location. The bill also adds that "when necessary or appropriate," rather than "when necessary" as in current law, an agreement may require an owner to enter an environmental covenant with the Director.

The bill amends the law that specifies that the agreement may require the owner to execute an easement whereby the Director, an authorized employee of the agency, or a contractor may enter upon the facility to sample, repair, or reconstruct air and water quality monitoring equipment. The bill does so by adding that the easement also may allow the Director to construct, maintain, repair, remove, or make any other alteration or improvement, as determined appropriate by the Director. The Director also may obtain an easement from any person who is not the land owner to address the use of resources or materials for purposes of conducting the cleanup activities.

³ R.C. 3734.21(C).

In the absence of an agreement for reimbursement, the Director may record the unreimbursed portion of the costs of cleanup activities at the office of the county recorder of the county in which the land or facility is located. Under current law, the Director may only record such costs upon a breach of the reimbursement provisions of the agreement by the owner of the land or facility or upon notification to the Director that the owner is unable to perform the duties under the reimbursement provisions of the agreement.

Finally, the bill specifies that any recorded costs constitute a lien against the property that is superior in priority to any other lien or mortgage on the property, except for a tax lien imposed by the state or a lien imposed by the Director for investigatory or other measures. In addition, the bill specifies that such a lien continues until it is discharged or upon a filing by the Director of a release of the lien in the office of the county recorder of the county where the property subject to the lien is located.⁴

Acquisition of property for cleanup purposes

Under current law, the Director is authorized to acquire a hazardous waste facility or a solid waste facility with significant quantities of hazardous waste for cleanup purposes. With regard to the facility, the Director is required to perform closure or other measures necessary to abate conditions at the facility that threaten the environment or public health. The bill also requires the Director to perform post-closure care of the facility.⁵

Competitive bidding

The bill eliminates provisions requiring the Director to use a specified competitive bidding process if the Director contracts for services, construction, and repair for the cleanup of a property or facility. This effectively applies general competitive bidding procedures that are applicable to state agencies to such contracts.⁶

Immunity

The bill alters the law that declares that the state is immune from liability for any injury or damage resulting from the operation of a hazardous waste facility by a person other than an agency, department, or institution of the state or resulting from conditions present at a facility that is acquired by the state. The bill does so by adding the following specified activities from which the state is immune:

⁴ R.C. 3734.22.

⁵ R.C. 3734.23(A) and (B).

⁶ R.C. 3734.23(C).



(1) The operation of a solid waste or C&DD facility by a person other than an agency, department, or institution of the state; and

(2) Cleanup or remediation conducted pursuant to state law, including activities for which money may be expended from specified state funds, provided that those activities do not constitute reckless, willful, or wanton misconduct.⁷

Definition of "soil contamination"

The bill expands the definition of soil contamination for purposes of the provisions outlined above to include solid waste and C&DD or any constituents thereof having characteristics that are or threaten to be harmful, inimical, or injurious to the public health or safety, plant or animal life, or the environment, or that unreasonably interfere with the comfortable enjoyment of life or property.⁸ Under current law, the definition of "soil contamination" only includes provisions referencing hazardous waste or hazardous waste residues.

Environmental covenants

The bill amends the definition of "environmental response project" under the law governing environmental covenants to include property subject to corrective action, closure, or post-closure under the C&DD Law and the use or reservation of soil to be used in the performance of the corrective action, or closure or post-closure care.⁹

Construction and Demolition Debris Law

Processing facilities

The bill establishes requirements governing processing facilities under the C&DD Law. Under the bill, a processing facility is a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility. Transferring includes the receipt, storage, and movement of construction and demolition debris from vehicles or containers to a working surface and into other vehicles or containers for transportation to a solid waste landfill facility, a C&DD facility, or a processing facility.

⁷ R.C. 3734.30.

⁸ R.C. 3734.19(B).

⁹ R.C. 5301.80(E)(1)(a).



A processing facility does not include any construction site where construction debris and trees and brush removed in clearing the construction site are used as fill material on the site where the materials are generated or removed. Processing facility also does not include any site where materials composed exclusively of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone are recycled or used as fill material, either alone or in conjunction with clean soil, sand, gravel, or other clean aggregates, in legitimate fill operations for construction purposes or to bring the site up to a consistent grade.¹⁰ As a result of the addition of the new term "processing facility," the bill removes the existing term "transfer facility" in the C&DD law, and instead includes the transfer of C&DD as one of the authorized activities of a processing facility.¹¹

Under the bill, "recycling" means processing C&DD that would otherwise be disposed of and returning the material to commerce as a commodity for use or exchange in a legitimate market or for use in a beneficial manner that does not constitute disposal.¹²

Rules

The bill requires the Director of Environmental Protection to adopt rules governing processing facilities and the inspection of and issuance of permits to install and licenses for those facilities. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.¹³ The rules may establish all of the following:

- (1) Requirements for the location, design, construction, operation, and closure of processing facilities;
- (2) Requirements for the acceptance, storage, and accumulation of materials, including the accumulation of material for product development;
- (3) The authorized maximum daily receipts;
- (4) Fire prevention measures;
- (5) Record-keeping procedures;

¹⁰ R.C. 3714.01.

¹¹ R.C. 3714.01.

¹² R.C. 3714.01.

¹³ R.C. 3714.022(A).

(6) The process for the closure of a processing facility;

(7) Financial assurance requirements;

(8) The management of stormwater and leachate; and

(9) Standards and procedures for the issuance of permits to install (see "**Permits to install**," below) that must include all of the following:

--Information that must be included in the designs and plans required to be submitted with the application for a permit to install under requirements established by the bill and criteria for approving, disapproving, or requiring modification of the designs and plans;

--Information that must be included with an application for a permit to install in addition to the information required under the bill;

--Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install;

--Grounds for the denial, modification, suspension, or revocation of permits to install;

--A requirement that a person that is required to obtain both a permit to install and an operation license under the bill obtain both the permit and license prior to operation;

--Criteria for establishing time periods after which a permit to install expires;

--Any other requirements that the Director determines necessary in order to establish the program for the issuance of permits to install under the bill.¹⁴

Rules establishing financial assurance requirements for the closure of a processing facility must require that prior to being issued an initial license for the facility, the owner or operator of a facility submit a surety bond, a letter of credit, or other acceptable financial assurance in a fixed amount as specified by the Director plus the fixed per cubic yard cost of transportation to and disposal of mixed construction and demolition debris at an authorized disposal facility.¹⁵

¹⁴ R.C. 3714.022(B).

¹⁵ R.C. 3714.022(C).



Just as the Director is prohibited from adopting rules governing C&DD facilities that prohibit the open burning of construction debris on a construction site, the bill prohibits the Director from adopting rules governing processing facilities that prohibit the open burning of construction debris on a construction site if done in compliance with specified air pollution control laws.¹⁶

Licensing and permitting of a processing facility

Processing license

The bill prohibits a person from operating or maintaining a processing facility without an annual license issued by the board of health of the health district in which the facility is located or from the Director (if the health district is not approved). The license may be issued with such terms and conditions as the board or the Director finds necessary to ensure that the processing facility will comply with C&DD Law and to protect the public health and safety and the environment. Processing facility licenses expire annually on December 31.¹⁷ The bill establishes procedures and requirements governing the issuance of an annual processing facility license that are generally the same as the procedures and requirements governing an annual license to operate or maintain a C&DD facility.¹⁸

In addition, the bill requires an applicant for an annual processing facility license to submit an application to the board of health or the Director on a form that the Director prescribes. The applicant must include with the application a nonrefundable application fee of \$100. If the application is submitted after the last day of September of the year preceding that for which the license is sought, the applicant must pay a late fee equal to 10% of the amount owed for the application fee.

Upon issuance of a license, the licensee must pay to the board of health or Director, as appropriate, an annual license fee of \$650. The annual license fee applies to private operators and the state and its political subdivisions. The licensee must pay the annual license fee within 30 days after the issuance of the license. Each license must specify that it is conditioned upon the payment of the annual license fee within that time frame. All application, license, and late fees must be credited to the special fund of

¹⁶ R.C. 3714.022(D).

¹⁷ R.C. 3714.06(A).

¹⁸ R.C. 3714.06(B) and (D).



the health district or, if the application is submitted to the Director, the existing Waste Management Fund.¹⁹

The bill prohibits the Director or a board of health from issuing a license for a new processing facility when the horizontal limits of the C&DD processing or storage at the proposed facility are to be located in any of the following locations:

(1) Within 100 feet of a perennial stream as defined by the United States Geological Survey 7½ minute quadrangle map or a category 3 wetland; or

(2) Within 100 feet of the facility's property line.²⁰

The Director or a board of health is also prohibited from issuing a license for a processing facility unless the new facility will have all of the following:

(1) Access roads constructed in a manner that allows use in all weather conditions and that will withstand the anticipated degree of use and minimize erosion and generation of dust;

(2) Surface water drainage and sediment controls that are required by the Director; and

(3) If the facility is proposed to be located in an area in which an applicable zoning resolution allows residential construction, vegetated earthen berms or an equivalent barrier with a minimum height of six feet separating the facility from adjoining property.²¹

The bill authorizes the Director to adopt rules allowing for the issuance of a single license governing both a C&DD facility and a processing facility located on the same property.²²

Initial processing license

The bill establishes procedures that the owner or operator of an existing processing facility must take in order to continue operating the processing facility after the bill's effective date. The owner or operator of a processing facility that is in operation on the effective date of the bill, within six months after the effective date of

¹⁹ R.C. 3714.06(C).

²⁰ R.C. 3714.06(E).

²¹ R.C. 3714.06(F).

²² R.C. 3714.022(E).



the rules adopted by the Director governing processing facilities, must submit to the board of health in the health district in which the processing facility is located an application for an initial processing facility license.

The owner or operator also must submit accompanying plans, specifications, and information regarding the facility and its method of operation. If the health district in which such an existing processing facility is located is not on the approved list, the owner or operator of the facility must submit the application for the initial license and accompanying plans, specifications, and information regarding the facility and its method of operation to the Director.²³

The board or the Director must issue an initial processing facility license not later than 90 days after receiving a complete application, and accompanying plans, specifications, and information if the board or the Director finds that the processing facility complies with the established rules.²⁴ After the initial processing facility license expires, the owner or operator of the processing facility must apply for an annual processing facility license.²⁵ If the board or the Director denies an application for the initial processing license, the board or the Director must include in the order denying the application a statement containing all of the following requirements:

(1) That the owner or operator of the processing facility must stop accepting C&DD for disposal;

(2) That the owner or operator of the processing facility must submit a plan for closure of the facility to the board or the Director, as applicable, for approval within six months after the issuance of the order; and

(3) That the owner or operator of the processing facility must commence closure of the facility within one year after issuance of the order.²⁶

Permit to install

The bill requires the Director to establish a program for the issuance of permits to install for new processing facilities. On and after the bill's effective date, a person is prohibited from establishing a new processing facility without first obtaining a permit to install issued by the board of health of the health district in which the processing

²³ Section 4(A).

²⁴ Section 4(B).

²⁵ Section 4(D).

²⁶ Section 4(C).

facility is or is to be located or from the Director if the facility is or is to be located in a health district that is not on the approved list. An applicant for a permit to install must submit an application to a board of health or the Director on a form and in the manner that the Director prescribes.²⁷

A permit to install for a processing facility may be issued with terms and conditions that a board of health or the Director finds necessary to ensure that the facility will comply with the C&DD Law and to protect public health and safety and the environment. The Director or a board of health may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules.²⁸

Processing facility operator continuing education training

The bill requires the Director, in consultation with boards of health, to establish a certification program for operators of processing facilities, including a continuing education training program for the operators. Current law requires the Director to establish those programs for operators of C&DD facilities.²⁹ The program must include instruction in and must emphasize, at a minimum, both of the following:

(1) The laws governing C&DD facilities, processing facilities, and disposal of Cⅅ and

(2) Best management practices governing C&DD facilities, processing facilities, and disposal of C&DD.³⁰

Current law also requires the Director to accredit educational programs and approve statewide associations representing C&DD facilities to provide continuing education training for operators of C&DD facilities. The bill requires operators of processing facilities to be included in these education program requirements.³¹

Waste Management Fund

The bill revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes. Instead, the

²⁷ R.C. 3714.051(H).

²⁸ R.C. 3714.051(I).

²⁹ R.C. 3714.062(A).

³⁰ R.C. 3714.062(B).

³¹ R.C. 3714.062(C).

bill requires any money in the Fund to be used by the Environmental Protection Agency generally to pay for all of the following:

(1) The costs of administering and enforcing the laws governing solid, hazardous, and infectious waste, and Cⅅ

(2) Ground water evaluations related to solid wastes, infectious wastes, and Cⅅ and

(3) Addressing violations of the Air Pollution Control Law and the Water Pollution Control Law at solid, hazardous, and infectious waste facilities and C&DD facilities.

Current law does all of the following with regard to the purposes for which the Fund is used:

(1) Requires money collected from the following sources to be used for the administration and enforcement of the laws pertaining to solid wastes, infectious wastes, and C&DD and to address violations of the Air and Water Pollution Control Laws at solid, hazardous, and infectious wastes facilities:

--One of the four state fees levied on the transfer or disposal of solid wastes; and

--Reimbursement of expenses incurred by the Director of Environmental Protection in preparing and ordering the implementation of an initial or amended solid waste management plan.

(2) Requires money collected from the following sources to be used exclusively for the administration and enforcement of the C&DD Law:

--The application fee for the issuance of a permit to install a new C&DD facility;

--The disposal fee for C&DD or asbestos or asbestos containing material; and

--Reimbursement of expenses incurred by the Director for the inspection of, or investigation of a violation by, a C&DD facility.

(3) Requires money collected from the following sources to be used exclusively for the administration and enforcement of the law governing infectious waste:

--The registration fee for an infectious waste generator; and

--Reimbursement of expenses incurred by the Director for the inspection of an infectious waste treatment facility or a solid waste facility that accepts infectious wastes.³²

Public water system capability

The bill requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018. However, the Director of Environmental Protection may require a system to implement an asset management program prior to that date.³³

A public water system must include in the asset management program all of the following information:

- (1) An inventory and evaluation of all assets;
- (2) Operation and maintenance programs;
- (3) An emergency preparedness and contingency planning program;
- (4) Criteria and timelines for infrastructure rehabilitation and replacement;
- (5) Approved capacity projections and capital improvement planning; and
- (6) A long-term funding strategy to support asset management program implementation.³⁴

A public water system, if requested by the Director, must submit a written description of the asset management program not later than 30 days after the date of the request.³⁵

If a public water system fails to demonstrate technical, managerial, and financial capability, the Director may take specified actions to improve and ensure the capability of the public water system, including denying a plan for the construction or installation of, or substantial change in, a public water system.³⁶

³² R.C. 3734.061.

³³ R.C. 6109.24(B)(1) and (2).

³⁴ R.C. 6109.24(B)(3).

³⁵ R.C. 6109.24(C).

³⁶ R.C. 6109.24(D).

Under current law, a public water system that is a community water system, or that is not a community water system and serves a nontransient population must include with the submission of plans for the construction or installation of, or substantial change in, a public water system required documentation that demonstrates the technical, managerial, and financial capability of the system to comply with the Safe Drinking Water Law and rules adopted under it. The Director may deny the plans if the public water system fails the demonstration.³⁷

Receivership of a public water system

The bill authorizes the Director of Environmental Protection to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when the system serves less than 500 service connections and conditions existing at the system present a threat to public health or welfare. However, the Director may not petition the court to appoint a receiver for a system owned and operated by a public entity or a system regulated by the Public Utilities Commission.³⁸ Under current law, a public water system generally is a system for the provision to the public of water for human consumption that has at least 15 service connections or regularly serves at least 25 individuals.³⁹

Procedure for appointing a receiver

The bill requires the Director to include all of the following in the petition for receivership:

- (1) A description of the specific conditions existing at the public water system which present a threat to public health or welfare;
- (2) A statement of the absence of other adequate remedies at law;
- (3) The population served by the public water system;
- (4) A statement that declares both of the following:

--The facts concerning the conditions at the public water system have been brought to the attention of the owner and operator or that efforts to contact the owner or operator have been unsuccessful; and

³⁷ R.C. 6109.24.

³⁸ R.C. 6109.25(A)(1).

³⁹ R.C. 6109.01, not in the bill.



--The conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the public water system as a pattern or practice.

(5) The name and address of the owner of the public water system.⁴⁰

The court in which a petition is filed must notify the owner of the public water system of the filing. The Director must notify the appropriate local board of health, customers of the public water system, and any other appropriate persons identified by the Director.

Under the bill, the court must hold a hearing on a petition within five court days of the day it was filed. However, the court may appoint a receiver before that if the court determines that the circumstances require such action. Following the hearing on the petition, and after determining that appointment of a receiver is warranted, the court must appoint a receiver and notify the Director and appropriate persons of the appointment.⁴¹

Appointment of a receiver; powers and duties

The court may not appoint a person with an interest in the public water system as a receiver. To assist the court in selecting a qualified receiver, the Director may maintain a list of the names of such persons. The Director may adopt rules establishing standards for evaluating persons desiring to be included on such a list. Prior to acting as a receiver, the receiver must be sworn to perform the duties of receiver faithfully, and, with surety approved by the court. The receiver must execute a bond in an amount required by the court, to the effect that the receiver will faithfully discharge the duties of receiver and obey the order of the court.⁴²

In establishing a receivership under the bill, a court must set forth the powers and duties of the receiver. The court may authorize the receiver to take actions necessary to safely and efficiently operate the public water system within the requirements of state and federal law. However, the receiver is required to obtain court approval prior to making any single expenditure of more than \$15,000. The court must closely review the conduct of the receiver and require the receiver to submit regular and detailed reports.⁴³ Furthermore, a receiver may, under the control of the appointing

⁴⁰ R.C. 6109.25(A)(2).

⁴¹ R.C. 6109.25(B)(1) and (2).

⁴² R.C. 6109.25(E) and (F).

⁴³ R.C. 6109.25(C).

court, bring and defend actions in the receiver's own name, and take and keep possession of property. The court is required by the bill to authorize the receiver to do all of the following:

(1) Collect payment for all goods and services provided to persons served by the public water system during the period of the receivership at the same rate as was charged by the owner at the time the petition for receivership was filed, unless a different rate is set by the court;

(2) Honor all leases, mortgages, and secured transactions governing all buildings, goods, and fixtures of which the receiver has taken possession and continues to use, subject to the following conditions:

--In the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the receivership;

--In the case of a purchase agreement, only to the extent of payments that come due during the period of the receivership.

(3) Make periodic reports on the status of the public water system to the Director;

(4) Compromise demands or claims;

(5) Take actions necessary for the operation of the public water system in compliance with the Safe Drinking Water Law; and

(6) Perform any other action regarding the public water system as the court authorizes.⁴⁴

The bill specifies that contracts that are necessary to carry out the powers and duties of the receiver do not need to comply with competitive bidding requirements. The bill also specifies that neither the receiver nor the Director is liable for debts incurred by the owner or operator of a public water system for which a receiver was appointed. The Director must provide technical assistance to an appointed receiver.⁴⁵

Termination of receivership

The court must terminate a receivership if the court determines either of the following:

⁴⁴ R.C. 6109.25(G).

⁴⁵ R.C. 6109.25(H), (I), and (J).

(1) The public water system is closed and no longer operating; or

(2) Circumstances no longer exist at the public water system that present a threat to public health or welfare, and there is no deficiency in the public water system likely to create a future risk of harm.

However, a court may not terminate a receivership for a public water system if the system previously operated under another receivership under the same owner unless the responsibility for the operation of the system is transferred to an owner or operator approved by the court and the Director.⁴⁶

Financial assurance requirement for community water systems

The bill alters the financial assurance requirements for community water systems that serve fewer than 500 service connections. Specifically, the owner or operator of such a system must provide financial assurance, in a form acceptable to the Director of Environmental Protection, when the person submits plans to the Director for the construction, substantial modification, or installation of such a system. The financial assurance must be in an amount equal to 15% of the cost of the system or part thereof, but not more than \$100,000. The Director may not approve the plans unless the owner or operator provides the financial assurance. The financial assurance requirements do not apply to a community water system that is operated by a public entity or regulated by the Public Utilities Commission. A community water system is a public water system (see above) that has at least 15 service connections used by year-round residents or that serves at least 25 year-round residents.

Under current law, the owner or operator of such a community water system must deposit in escrow an amount equal to 15% of the cost of the system or part thereof, but not more than \$50,000, prior to approval of plans for the construction, substantial modification, or installation of the system.⁴⁷

Discharge to a privately owned treatment works

Under current law, the discharge of sewage, industrial waste, or other wastes into a sewer system to a treatment works is exempt from the prohibition against polluting the waters of the state. The bill specifies that the exemption does not authorize

⁴⁶ R.C. 6109.25(D).

⁴⁷ R.C. 6109.08 and 6109.01, not in the bill.

such a discharge to a privately owned treatment works in violation of any permit conditions issued under federal law governing privately owned treatment works.⁴⁸

Section 401 Water Quality Certification

The bill authorizes the Director of Environmental Protection, pursuant to section 401 of the Federal Water Pollution Control Act, to do both of the following:

(1) Waive a Section 401 Water Quality Certification for any applicant for a federal license or permit to conduct any activity that may result in any discharge into the waters of the state; and

(2) Revoke, transfer, or, at the request or concurrence of the certification holder, modify a Section 401 Water Quality Certification.⁴⁹

Under section 401 of the Federal Water Pollution Control Act, an applicant for a federal license or permit for an activity that may result in a discharge of dredge or fill material into navigable waters, including wetlands, must receive a certification from the state in which the discharge would originate. The certification must confirm that the proposed activity that would cause the discharge will comply with state water quality standards as well as applicable provisions of the Federal Water Pollution Control Act.

Dredged material

Prohibition against placing dredged material

The bill prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in accordance with one of the following:

(1) The law governing the deposit of dredged material in Lake Erie;

(2) Rules adopted under the bill governing the beneficial use of dredged material (see below);

(3) Permits issued under the Water Pollution Control Law; or

(4) Any authorization issued by the Director of Environmental Protection.⁵⁰

The penalty for a violation of the prohibition is as follows:

⁴⁸ R.C. 6111.04(F)(6); see also 40 C.F.R. 122.44(m).

⁴⁹ R.C. 6111.03(P).

⁵⁰ R.C. 6111.33(B)



Mental state	Criminal penalty
A purposeful violation	A felony, punishable by a fine of not more than \$25,000, imprisonment for not more than four years, or both.
A knowing violation	A misdemeanor, punishable by a fine of not more than \$10,000, imprisonment for not more than one year, or both.

The Attorney General, upon request of the Director, must prosecute a violation of the prohibition.⁵¹

For purposes of the prohibition, dredged material is material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.⁵²

Beneficial use of dredged material

The bill authorizes the Director to adopt rules governing the beneficial use of dredged material necessary to protect public health, safety, and the environment. The Director must ensure that the rules establish both of the following:

(1) Criteria for determining when dredged material does not constitute solid wastes or other wastes; and

(2) Requirements and procedures for the issuance, modification, suspension, revocation, and denial of an authorization, authorization by rule, and general and individual permits for the beneficial use of dredged material.⁵³

The Director also must ensure that the criteria and requirements in rules are no less stringent than any applicable standard established under the Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act.⁵⁴

⁵¹ R.C. 6111.07(A) and (B); R.C. 6111.99, not in the bill.

⁵² R.C. 6111.33(A).

⁵³ R.C. 6111.34(A) and (B).

⁵⁴ R.C. 6111.34(C).

Certified water quality professionals

Under current law, certified water quality professionals assess streams to determine existing aquatic life and categorize wetlands in support of applications for Section 401 Water Quality Certifications (see above). The bill specifies that when a certified water quality professional conducts a stream or wetland assessment to support an application for a Section 401 Water Quality Certification, the Director must issue or deny the certification not later than 90 days after the complete application for it is received. Under current law, the Director must issue or deny the certification not later than 180 days after the application is received regardless of whether a certified water professional conducted the stream or wetland assessment.⁵⁵

The bill requires, rather than authorizes as in current law, the Director to establish a program and adopt rules to certify water quality professionals to assess streams and categorize wetlands in support of applications for Section 401 Water Quality Certification and isolated wetland permits. The bill further requires the Director to establish a multi-sector work group to assist in the development of the rules.⁵⁶

In addition to requiring the Director to adopt the rules regarding certified water quality professionals, the bill alters and expands the required scope of the rules by doing both of the following:

(1) Requiring the rules to authorize audits, rather than random audits as in current law, of documentation developed or submitted by certified water quality professionals;

(2) Requiring the rules to authorize the Director to require public disclosure, including publication of specified information on the Environmental Protection Agency's website, of the following information for each certified water quality professional:

--Name;

--Qualifications and credentials;

--Status of the professional's certifications;

--Documents and reports submitted by the certified water quality professional;

⁵⁵ R.C. 6111.30(G).

⁵⁶ R.C. 6111.30(J).

--Documentation and results of agency audits of the certified water quality professional's work; and

--Any final disciplinary action related to the certified water quality professional's performance.⁵⁷

The bill specifies that nothing in the law regarding certified water quality professionals requires an applicant for a Section 401 Water Quality Certification or a permit for impacts to an isolated wetland to use the services of a certified water quality professional.⁵⁸

Ohio Lake Erie Commission

Membership and duties

The bill revises the membership and terms of the members of the Ohio Lake Erie Commission. Under current law, the Commission consists of the Directors of Environmental Protection, Natural Resources, Health, Agriculture, Transportation, and Development Services, or their designees, and five additional members appointed by the Governor. The bill adds to the Commission the two members of the Great Lakes Protection Fund Board who are appointed to that Board by the Governor. Those Board members must serve as ex officio, nonvoting, members on the Commission.

The bill specifies that the terms of the existing five additional members expire on the bill's effective date and that the Governor may reappoint those individuals. The Governor must appoint the initial five additional members with the advice and consent of the Senate not later than 45 days after the bill's effective date. The terms of the initially appointed five additional members are as follows:

--Two members must serve a term ending on September 1, 2017;

--Two members must serve a term ending on September 1, 2018;

--One member must serve a term ending September 1, 2019.

After these terms are completed, the five additional members appointed by the Governor must serve three-year terms.

All of the following apply to the five additional members appointed by the Governor:

⁵⁷ R.C. 6111.30(J)(6) and (8).

⁵⁸ R.C. 6111.30(K).

--Each member must hold office from the date of the member's appointment until the end of the term for which the member was appointed.

--In the event of the death, removal, resignation, or incapacity of a member, the Governor, with the advice and consent of the Senate, must appoint a successor who must hold office for the remainder of the term for which the successor's predecessor was appointed.

--A member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

--Members may be reappointed for not more than two total terms.

--The Governor at any time may remove a member for misfeasance, nonfeasance, or malfeasance in office.

The bill also requires the agencies represented on the Commission to furnish administrative services required by the Commission in the performance of its duties.⁵⁹

Lake Erie Protection and Restoration Strategy

The bill requires the Commission, not later than the last day of March of each year, to publish a Lake Erie Protection and Restoration Strategy that describes the goals of the Commission and prioritizes the uses of the Lake Erie Protection Fund (see below) and other funds for the following fiscal year. The Commission must hold at least one public meeting in the Lake Erie basin regarding the Strategy and submit the Strategy to the Governor, the President of the Senate, and the Speaker of the House of Representatives.⁶⁰ Current law requires the Commission to publish a Lake Erie Protection Agenda each March that describes the proposed uses of the Fund for the following fiscal year.⁶¹

Duties of the Commission

The bill requires the Commission to do all of the following:

(1) Ensure the coordination and implementation of federal, state, and local policies, and issues pertaining to Lake Erie, including nutrient related water quality and

⁵⁹ R.C. 1506.21(A) and Section 5.

⁶⁰ R.C. 1506.21(B)(4) and 1506.23(C).

⁶¹ R.C. 1506.23(C).



beneficial use of dredged material, with a priority on policies, programs, and issues identified in the Lake Erie Protection and Restoration Strategy. Under current law, the Commission must ensure the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection.

(2) Review, and make recommendations concerning, the development and implementation of policies, programs, and issues that are consistent with the Great Lakes Water Quality Agreement and other international, federal, and state compacts and agreements. Current law requires the Commission to review, and make recommendations concerning, the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Agreement.

(3) Serve as a repository and clearinghouse for information and data related to Lake Erie and the Lake Erie basin and collect and distribute such information and data at the Commission's discretion;

(4) Publish and submit the Lake Erie Protection and Restoration Strategy rather than the Lake Erie protection agenda as under current law.

(5) Provide representation regarding the interests of Ohio in state, regional, national, and international forums pertaining to Lake Erie and the Lake Erie basin. Current law requires the Commission to provide such representation regarding the resources and water quality of Lake Erie and the Lake Erie basin.

(6) Develop, implement, and coordinate an education, public information, and community relations program concerning the Commission's policies, programs, and issues and the resources of Lake Erie, rather than promoting education concerning the wise management of the resources of Lake Erie as in current law; and

(7) Develop and implement a marketing program promoting the sale of the Lake Erie license plate and other public and private fundraising initiatives to support the Commission's programs.⁶²

The bill eliminates all of the following duties currently required of the Commission:

(1) A requirement that the Commission consider matters relating to the laws governing the Commission and its funding at each regular meeting of the Commission;

⁶² R.C. 1506.21(B).

(2) A requirement that the Commission ensure the implementation of a basinwide approach to Lake Erie issues; and

(3) A requirement that the Commission recommend policies and programs to modify the coastal management program of Ohio.⁶³

The bill authorizes the Commission to dissolve public advisory councils established for the purpose of assisting in implementing programs established under the laws governing the Commission. The bill eliminates the existing requirements that members of public advisory councils must represent a broad cross section of interests, have experience or expertise in the subject for which the public advisory council was established, and serve without compensation.⁶⁴

Membership on the Commission or membership on a public advisory council established by the Commission does not constitute holding a public office or position of employment and is not grounds for removal of public officers or employees from their offices or positions of employment. Members of the Commission and members of a public advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.⁶⁵

Lake Erie Protection Fund

The bill eliminates all of the following purposes for which the Lake Erie Protection Fund may be used under current law:

(1) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;

(2) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;

(3) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants; and

⁶³ R.C. 1506.21(B)(3) and (6).

⁶⁴ R.C. 1506.21(B)(8).

⁶⁵ R.C. 1506.21(A) and (B)(8).



(4) Supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection.⁶⁶

The bill authorizes the Fund to be used for accelerating the pace of cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy. Current law authorizes the Fund to be used for accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries.⁶⁷

The bill revises the use of the Fund for awarding grants to allow grants from the Fund to be made for projects and programs that are designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy, rather than for projects and programs designed to protect Lake Erie by reducing toxic contamination or improving water quality in Lake Erie as in current law.⁶⁸

HISTORY

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⁶⁶ R.C. 1506.23(A)(2) through (5).

⁶⁷ R.C. 1506.23(A)(1).

⁶⁸ R.C. 1506.23(A)(3).

