



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Sens. Gardner and Peterson, Hite, LaRose, Eklund

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, but transfers that authority from the Chief to the Director of Agriculture on January 1, 2017.
- 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.
- Terminates the prohibition and its enforcement five years after the bill's effective date unless the standing committees of the General Assembly responsible for agriculture and natural resources recommend its continuation to the Governor.

Phosphorous monitoring for a publicly owned treatment works

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

Dredged material in Lake Erie and tributaries

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

Healthy Lake Erie Fund

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

Study of nutrient loading to Ohio watersheds

- Authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to 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.

Office of Harmful Algae Management and Response

- Establishes the Office of Harmful Algae Management and Response in the Environmental Protection Agency.
- Requires the Director of Environmental Protection, in consultation with specified state and local officials and representatives, to develop a strategic plan that establishes coordinated preventive and response protocols regarding the maintenance of safe drinking water and the management of wastewater in Ohio.
- Requires the Director to include certain protocols and provisions in the strategic plan, including protocols for monitoring water intake structures of public water systems and testing for harmful algae in Lake Erie.



Agricultural pollution abatement

- Transfers, effective January 1, 2017, the administration of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.
- Does all of the following to effect the transfer:
 - Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) to develop and operate under a nutrient utilization plan rather than an operation and management plan as in current law;
 - Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants, including requiring the Director of Agriculture to adopt the rules rather than the Chief of the Division of Soil and Water Resources and requiring the rules to establish abatement standards;
 - Authorizes the supervisors of soil and water conservation districts to develop nutrient utilization plans as necessary and to determine whether nutrient utilization plans that are developed by persons who own or operate agricultural land or AFOs comply with the abatement standards;
 - Applies the program to animal feeding operations rather than concentrated animal feeding operations; and
 - Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program.
- Requires the Directors of Natural Resources and Agriculture to enter into a memorandum of understanding regarding the transfer of the Program.
- States that operation and management plans that were developed or approved under existing law continue as nutrient utilization plans under the bill, as applicable.
- States that it is an affirmative defense in a private civil action for nuisances involving agricultural pollution if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under a nutrient utilization plan, subject to certain conditions.
- Authorizes the Director to require a person that owns or operates agricultural land or an AFO, has not developed a nutrient utilization plan, and has caused agricultural pollution by failure to comply with abatement standards to operate

under a nutrient utilization plan rather than an operation and management plan as in existing law.

- Provides for enforcement of its provisions governing nutrient utilization plans, including corrective actions, civil and administrative penalties, and injunctive relief.
- Narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.
- Specifies that such an operation and management plan may include a soil erosion management plan, a timber harvest plan, or both.
- Generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a nutrient utilization plan.
- Requires the Chief of the Division of Soil and Water Resources to adopt rules governing watersheds in distress notwithstanding any other statute to the contrary.
- Requires those rules to address specified topics, including a definition of "watersheds in distress" and establishment of abatement standards within such watersheds.
- States that a nutrient utilization plan that is approved by the Chief under those rules constitutes an approved nutrient utilization plan for purposes of the bill's provisions governing agricultural pollution abatement.

Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption rather than requiring certain plumbing supplies and materials that are used in a public water system or in plumbing for facilities connected to a public water system to be lead free as in current law.
- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.
- Generally prohibits a person from doing any of the following:
 - Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free;

--Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and

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

- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures that are used exclusively for nonpotable services.
- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law.
- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

Connection to private sewerage system

- Generally authorizes the owner of property that is served by a household sewage treatment system and that is reasonably accessible to a proposed private sewerage system to elect not to connect to the private sewerage system if both of the following apply:
 - The property owner so notifies both the owner or operator of the private sewerage system and the applicable board of health; and
 - The board determines that the household sewage treatment system is not causing a nuisance as specified in the law governing such systems.
- Requires a person that submits plans to install a private sewerage system to simultaneously so notify both the owner of each parcel of property that is served by a household sewage treatment system, that is reasonably accessible to the sewerage system, and that may be required to connect to it and the applicable board of health.
- Specifies what constitutes a reasonably accessible parcel of property.
- States that the bill's authorization and procedure for electing not to connect to a private sewerage system does not apply to a discharging system, and specifies what constitutes a discharging system.

Emergency

- Declares an emergency.

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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. However, the bill transfers that authority from the Chief to the Director of Agriculture on January 1, 2017.¹ Under the bill, the western basin of Lake Erie is land in Ohio that is located in the St.

¹ R.C. 939.12(A).



Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.²

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.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 fertilizer or manure, as applicable, under any of the following circumstances:

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

² R.C. 905.326(E) and 939.12(F).

³ R.C. 905.326(A) and 939.12(B).

⁴ R.C. 905.326(D) and 939.12(E).

⁵ R.C. 905.326(B) and 939.12(C).



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 Chief 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 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 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 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.⁷

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.⁸

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.⁹

⁶ R.C. 905.326(C) and 939.12(D).

⁷ R.C. 905.327(A) and 939.13(A).

⁸ R.C. 905.327(B) and 939.13(B).

⁹ R.C. 905.327(C) and (D) and 939.13(C) and (D).



Termination of prohibition

Under the bill, the above provisions cease to operate five years after the bill's effective date unless the standing committees of the General Assembly that are primarily responsible for agriculture and natural resources matters jointly recommend continuing the prohibition and its enforcement. The bill requires the committees to jointly review the effectiveness of the prohibition and its enforcement not later than four years after the bill's effective date. The committees must issue a joint report to the Governor containing their findings and recommendations. If they recommend continuing the prohibition and its enforcement, they may also recommend revisions to the governing statutes.¹⁰

Phosphorous monitoring for a publicly owned treatment works

The bill requires a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger, to begin monthly monitoring of total and dissolved phosphorous not later than December 1, 2016. Additionally, a publicly owned treatment works that is not subject to a phosphorus effluent limit of one milligram per liter as a 30-day average on the bill's effective date must complete and submit an optimization study that evaluates the publicly owned treatment works' ability to reduce phosphorous to that limit. Finally, the Director must modify NPDES permits to include those requirements.¹¹

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

¹⁰ Section 9.

¹¹ R.C. 6111.03.



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

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

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

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

Finally, the bill requires the Director, in order to ensure the regular and orderly maintenance of federal navigation channels and ports in Ohio, to endeavor to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the bill's requirements.¹²

Healthy Lake Erie Fund

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

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

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

¹² R.C. 6111.32.

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

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

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

The bill retains the use of the Fund for soil testing.¹³

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.¹⁴

Office of Harmful Algae Management and Response

The bill establishes the Office of Harmful Algae Management and Response in the Environmental Protection Agency. It requires the Director of Environmental Protection, in consultation with the Directors of Agriculture, Health, and Natural Resources and representatives of local governments, publicly owned treatment works, and public water systems, to develop a strategic plan that establishes preventive and response protocols regarding the maintenance of safe drinking water and the management of wastewater in Ohio.

Under the bill, the Director of Environmental Protection must include all of the following in the strategic plan:

¹³ Sections 3 and 4.

¹⁴ R.C. 6111.03(T).



(1) Protocols for monitoring water intake structures of public water systems and testing for harmful algae in Lake Erie;

(2) Provision of training, testing, and treatment support by employees of the Environmental Protection Agency and the Departments of Agriculture, Health, and Natural Resources to employees of publicly owned treatment works and public water systems. The plan may include provision of such support for other activities.

(3) Promotion of source water protection, emergency planning, water asset management planning, and related communication protocols.

The Director of Environmental Protection may include in the strategic plan protocols for monitoring of the tributaries of Lake Erie's western basin for phosphorous, nitrogen, and sediment runoff and other chemical and biological agents, as determined by the Director, that may result in harmful algae, cyanotoxins, and other adverse impacts on the waters of the state.¹⁵

Agricultural pollution abatement

Administrative transfer

The bill transfers, effective January 1, 2017, the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.¹⁶ To effect that transfer, the bill does all of the following:

(1) Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) (see below) to develop and operate under a nutrient utilization plan rather than an operation and management plan as in current law (see below). A nutrient utilization plan must be approved by the Director of Agriculture, the Director's designee, or the supervisors of the applicable soil and water conservation district (hereafter supervisors of a conservation district).¹⁷ Under current law, an operation and utilization plan must be approved by the Chief of the Division of Soil and Water Resources or the supervisors of a conservation district. A nutrient management plan is a written record that contains both of the following: (1) implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate water degradation by residual farm products (see below) or manure,

¹⁵ R.C. 3745.50.

¹⁶ Section 10.

¹⁷ R.C. 939.03(A).



including attached substances (hereafter water degradation), and (2) best management practices (see below) that are to be used by the owner or operator.¹⁸

(2) Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants by requiring:

--The Director to adopt the rules rather than the Chief subject to the approval of the Ohio Soil and Water Conservation Commission as in existing law;

--The rules to establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate water degradation (hereafter abatement standards) rather than by animal waste, including attached substances, as in current law; and

--The Director to adopt rules that are identical to specified rules adopted by the Chief and currently in effect regarding the Program, including rules regarding composting of dead animals that is conducted in conjunction with agricultural operations.¹⁹

(3) Authorizes the supervisors of conservation districts to develop nutrient utilization plans as necessary and to determine whether nutrient utilization plans that are developed by persons who own or operate agricultural land or AFOs comply with abatement standards;²⁰

(4) Applies the Program to animal feeding operations rather than concentrated animal feeding operations, which is not defined for that purpose in current law, and defines "animal feeding operation" to mean the production area of an agricultural operation where agricultural animals are kept and raised in confined areas other than a facility that possesses a permit issued under the Concentrated Animal Feeding Facilities Law or a discharge permit issued under the Water Pollution Control Law.²¹

(5) Requires a person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the operation to comply with certain requirements, including composting the animals in accordance with rules adopted by the Director rather than by the Chief as in existing law, and requires any

¹⁸ R.C. 939.01(E).

¹⁹ R.C. 939.02(C) and Section 6.

²⁰ R.C. 1515.08(R) and (S).

²¹ R.C. 939.01(I).



such person who fails to comply with those rules to prepare and operate under a composting plan in accordance with a requirement of the Director to take a corrective action rather than an order of the Chief as in existing law;²²

(6) Transfers from the Chief to the Director responsibility for administering the Agricultural Pollution Abatement Fund, which is used to pay the costs of investigating, mitigating, minimizing, removing, or abating water degradation caused by agricultural pollution or an unauthorized release, spill, or discharge of manure or residual farm products into or on the environment that requires emergency action to protect the public health;²³

(7) Creates the Soil and Water Administration Fund to pay the Chief's costs in administering and enforcing the Soil and Water Resources Law;²⁴

(8) Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program, including requiring the Director to enter into cooperative agreements with the supervisors of an interested conservation district regarding compliance with the Director's rules pertaining to agricultural pollution abatement and authorizing the Director or the Director's designee to enter on property to inspect and investigate conditions relating to agricultural pollution of water, provided that, in the case of private property, the owner's consent has been obtained.²⁵ Agricultural pollution is failure to use management or conservation practices in farming operations to abate water degradation.²⁶

(9) Makes conforming changes regarding the Agricultural Pollution Abatement Program's transfer.²⁷

The bill requires the Director of Natural Resources to enter into a memorandum of understanding with the Director of Agriculture regarding the transfer of the Program.²⁸ It also states that operation and management plans that were developed or

²² R.C. 939.04.

²³ R.C. 939.11, 1511.071 (repealed), and 1511.99 and Section 8.

²⁴ R.C. 1511.09.

²⁵ R.C. 939.02, 939.06, 939.07, 939.08, 939.10, and 1515.08(T).

²⁶ R.C. 939.01(C).

²⁷ R.C. 901.22, 903.082, 903.25, 941.14, 953.22, 1515.01, 3734.02, 3734.029, 3745.70, 6111.03, 6111.04, and 6111.44.

²⁸ Section 5.



approved under existing law continue as nutrient utilization plans under the bill, as applicable.²⁹

Complaints

Under the bill, a person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the Director or to the Director's designee. After receiving an oral complaint, the Director or the Director's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the Director or the Director's designee must cause such an investigation to be conducted.³⁰

Affirmative defense

Under the bill, in a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under and in substantial compliance with an approved nutrient utilization plan developed by the person or with a nutrient utilization plan developed by the Director or the Director's designee or the supervisors of a conservation district or required by the Director. The bill states that nothing in its provisions governing the development of nutrient utilization plans, the filing of complaints regarding nuisances involving agricultural pollution, and the providing of an affirmative defense is in derogation of the authority to adopt rules or take corrective actions granted to the Director in the bill.³¹

Enforcement

Corrective actions and civil penalties

Under the bill, the Director may propose to require corrective actions and assess a civil penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is doing one of the following (hereafter noncompliance):

(1) Not complying with abatement standards;

(2) Not operating in accordance with an approved nutrient utilization plan that is developed by the owner, with a nutrient utilization plan developed by the Director or

²⁹ Section 7.

³⁰ R.C. 939.03(B).

³¹ R.C. 939.03(C).

the Director's designee or by the supervisors of the applicable conservation district, or with a nutrient utilization plan required by the Director under the bill (see below);

(3) Not complying with standards governing the composting of dead animals established by the Director under the bill; or

(4) Not operating in accordance with a composting plan that is approved in accordance with rules adopted by the Director under the bill or required by the Director under the bill (see below).³²

The Director may include in the corrective actions a requirement that an owner or operator do one of the following:

(1) Operate under a nutrient utilization plan approved by the Director or the Director's designee under the bill;

(2) If the owner or operator has failed to operate in accordance with an existing nutrient utilization plan, operate in accordance with that plan;

(3) Prepare a composting plan in accordance with rules adopted by the Director under the bill and operate in accordance with that plan; or

(4) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.³³

The Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator receives a written notice that contains specified information, including the time period within which the owner or operator must correct the deficiencies and attain compliance;

(2) After the specified time period has elapsed, the Director or the Director's designee has inspected the agricultural land or AFO, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing; and

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's

³² R.C. 939.09(A)(1).

³³ R.C. 939.09(A)(2).

determination, the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.³⁴

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that noncompliance has occurred or is occurring, the Director 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.³⁵

Additionally, a person who has violated rules adopted by the Director under the bill must pay a civil penalty in an amount established in those rules.³⁶

Administrative penalties

In addition to any other penalties imposed under the bill, the Director may impose an administrative penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is not in compliance with best management practices that are established in the Director's rules. The administrative penalty cannot exceed \$5,000. The Director must afford the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, the Director's imposition of an administrative penalty, or both. The Director's determination and the imposition of the administrative penalty may be appealed in accordance with the Administrative Procedure Act.³⁷

Actions of the Attorney General

The Attorney General, upon the written request of the Director, must bring an action for an injunction against any person violating or threatening to violate rules adopted by the Director or an order issued by the Director requiring compliance with a corrective action proposed by the Director. Also, in lieu of seeking civil penalties, the Director may request the Attorney General, in writing, to bring an action for a civil penalty against any person that has violated or is violating a rule adopted by the

³⁴ R.C. 939.09(A)(3).

³⁵ R.C. 939.09(A)(4).

³⁶ R.C. 939.09(A)(5).

³⁷ R.C. 939.09(D).

Director under the bill. The civil penalty cannot exceed \$10,000 per violation. Each day that a violation continues constitutes a separate violation.³⁸

Emergency actions

Notwithstanding any other enforcement provision in the bill, if the Director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the Director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order takes effect immediately. A person to whom the order is directed must comply immediately, but on application to the Director must be afforded an adjudication hearing in accordance with the Administrative Procedure Act as soon as possible and not later than 30 days after application. On the basis of the hearing, the Director must continue the order in effect, revoke it, or modify it. The Director's order is appealable in accordance with the Administrative Procedure Act. No emergency order can remain in effect for more than 120 days after its issuance.³⁹

A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products that requires emergency action to protect public health or safety or the environment is liable to the Director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the Director, the Attorney General must bring a civil action against the responsible person or persons to recover those costs. Money recovered by the Attorney General and money collected from civil penalties by the Director or the Attorney General on the Director's behalf must be credited to the Agricultural Pollution Abatement Fund.⁴⁰

Current law

If a person violates rules adopted by the Chief of the Division of Soil and Water Resources governing abatement standards and water degradation or governing composting of dead animals, the Chief, after affording the person an adjudication hearing, must issue orders requiring compliance with the rules. As part of the compliance, the Chief may require a person to operate under an operation and

³⁸ R.C. 939.09(B) and (C).

³⁹ R.C. 939.09(E).

⁴⁰ R.C. 939.09(F) and (G).



management plan approved by the Chief or the Chief must require a person to prepare a composting plan and operate in accordance with that plan, as applicable.⁴¹

Existing law prohibits a person from failing to comply with an order of the Chief.⁴² Violation is a first degree misdemeanor. In addition, a violator may be required to pay for damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by the violation.⁴³

The Chief may apply to the applicable court of common pleas for an order to compel a violator to cease the violation. The Chief also may issue emergency orders to take necessary action when an unauthorized release, spill, or discharge of animal waste, or a violation of a rule adopted by the Chief regarding composting of dead animals, occurs that causes water pollution. The Attorney General, upon the written request of the Chief, must bring appropriate legal action in Franklin County against any person who fails to comply with an order of the Chief.⁴⁴

Finally, a person may appeal an order of the Chief to the Franklin County Court of Common Pleas or the court of common pleas of the county in which the alleged violation exists. If the court finds that the order was unreasonable or unlawful, it must vacate the order and make the order that it finds the Chief should have made. The judgment of the court is final unless reversed, vacated, or modified on appeal.⁴⁵

Operation and management plans

The bill narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.⁴⁶ It specifies that such an operation and management plan developed by a person who owns or operates agricultural land, developed by the Chief or by the supervisors of a conservation district, or required by an order issued by the Chief may include a soil erosion management plan, a timber harvest plan, or both.⁴⁷

⁴¹ R.C. 1511.02(G).

⁴² R.C. 1511.07(A)(1).

⁴³ R.C. 1511.99.

⁴⁴ R.C. 1511.07.

⁴⁵ R.C. 1511.08, not in the bill.

⁴⁶ R.C. 1511.01(G) and (H), 1511.02(E) and (G), 1511.021(B) and (C), 1511.05, 1511.07, and 1515.08(L) and (Q).

⁴⁷ R.C. 1511.021(A)(2).



A soil erosion management plan or timber harvest plan is a written record, developed or approved by the supervisors of a conservation district or the Chief, that contains implementation schedules and operational procedures for a level of land and water management that will abate wind or water erosion of the soil or abate water degradation by sediment from agricultural operations or timber operations, as applicable.⁴⁸

Disclosure of information

The bill generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a nutrient utilization plan or an operation and management plan. Except as provided below, the bill prohibits the Director of Agriculture, an employee of the Department of Agriculture, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing either of the following:

(1) Information, including data from geographic information systems and global positioning systems, provided by a person who owns or operates agricultural land or an AFO and operates under a nutrient utilization plan; or

(2) Information gathered as a result of an inspection of agricultural land or an AFO to determine whether the person who owns or operates the land or AFO is in compliance with a nutrient utilization plan.⁴⁹

The Director or the supervisors of a district may release or disclose information specified above to a person or a federal, state, or local agency working in cooperation with the Director or the supervisors in the development of a nutrient utilization plan or an inspection to determine compliance with such a plan if the Director or supervisors determine that the person or agency will not subsequently disclose the information to another person.⁵⁰

The bill largely retains current law that prohibits the Director of Natural Resources, an employee of the Department of Natural Resources, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing the same information as described above for a person who owns or operates agricultural land and operates under an operation and

⁴⁸ R.C. 1511.01(G) and (I).

⁴⁹ R.C. 939.05(A).

⁵⁰ R.C. 939.05(B).

management plan and that provides for the release or disclosure of information under similar circumstances. Because of the transfer discussed above, the bill removes animal feeding operations from that provision.⁵¹

Watersheds in distress

The bill requires the Chief of the Division of Soil and Water Resources to adopt rules in accordance with the Administrative Procedure Act governing watersheds in distress notwithstanding any other statute to the contrary. The rules must do all of the following:

(1) Define "watersheds in distress" and "nutrient management plan";

(2) Establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming or silvicultural operations that will abate the degradation of the waters of the state by animal waste within watersheds in distress;

(3) Establish criteria for the development of nutrient management plans that address the methods, amount, form, placement, cropping system, and timing of all animal waste applications within watersheds in distress; and

(4) Establish requirements and procedures governing the development and the approval or disapproval of such nutrient management plans.⁵²

The bill states that a nutrient management plan that is approved by the Chief under the above rules constitutes an approved nutrient utilization plan for purposes of the bill's provisions governing agricultural pollution abatement.⁵³

Additional definitions

The bill defines several relevant terms and revises the definitions of several others. Under the bill, best management practices are practices or a combination of practices that are determined to be the most effective and practicable means of preventing or reducing agricultural pollution sources to a level compatible with the attainment of applicable water quality standards. They include structural and nonstructural practices, conservation practices, and operation and maintenance

⁵¹ R.C. 1511.023.

⁵² R.C. 1511.024.

⁵³ R.C. 939.03(A).

procedures.⁵⁴ Residual farm products are bedding, wash waters, waste feed, and silage drainage, including compost products resulting from the composting of dead animals in agricultural operations regulated by the Director of Agriculture when certain conditions are met.⁵⁵

The bill replaces the term "agricultural pollution" with "sediment pollution" in the Soil and Water Resources and Soil and Water Conservation Commission Laws and generally applies the existing definition of "agricultural pollution" to "sediment pollution" by removing references to animal waste.⁵⁶ Finally, the bill replaces the term "pollution abatement practice" with "erosion and sediment abatement practice" in the Soil and Water Resources Law. It generally applies the existing definition of "pollution abatement practice" to "erosion and sediment abatement practice" by specifying that it means, in part, any erosion control and sediment reduction structure, practice, or procedure and the design, operation, and management associated with it rather than any erosion control or animal waste pollution abatement facility, structure, or procedure and the operation and management associated with it.⁵⁷ The bill makes conforming changes regarding the replacement of the term.⁵⁸

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.⁵⁹

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

⁵⁴ R.C. 939.01(L).

⁵⁵ R.C. 939.01(F).

⁵⁶ R.C. 1511.01(D).

⁵⁷ R.C. 1511.01(C).

⁵⁸ R.C. 1511.01(F) and 1511.02(E)(5).

⁵⁹ R.C. 6109.10(B)(1) and (D)(1).



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

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

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.⁶⁰

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

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

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are at least two inches in diameter.⁶¹

Under the bill, the owner or operator of a public water system must identify and provide notice to persons that may be affected by lead contamination of their drinking water if the contamination results from the lead content in the construction materials of the public water distribution system, the corrosivity of the water supply is sufficient to cause the leaching of lead, or both. Current law instead requires each public water system to identify and provide notice to persons that may be affected by lead contamination of their drinking water.⁶²

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.⁶³

⁶⁰ R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).

⁶¹ R.C. 6109.10(D)(4).

⁶² R.C. 6109.10(C).

⁶³ R.C. 6109.10(A)(1).

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the bill's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.⁶⁴

Connection to private sewerage system

The bill generally authorizes the owner of property that is served by a household sewage treatment system and that is reasonably accessible to a proposed private sewerage system to elect not to connect to the private sewerage system under certain circumstances. It establishes a procedure for that opt-out.

Under the bill, a person that submits plans to install a private sewerage system to the Director of Environmental Protection must simultaneously so notify both the owner of each parcel of property that is served by a household sewage treatment system and the board of health of the health district in which the affected parcel of property is located if the owner or operator of the sewerage system has determined that the parcel is reasonably accessible to the sewerage system and may be required to connect to it. The notice must include a statement indicating that if the person receiving the notice chooses to elect out of connecting to the sewerage system after receiving the notice, the cost of connecting to the system in the future may be higher. The notice must be in writing and sent via certified mail.⁶⁵ The bill states that a parcel of property is reasonably accessible if all of the following apply:

(1) The office of the sanitary engineer of the applicable jurisdiction and the Environmental Protection Agency have certified that the new sewerage system and its receiving treatment works have the capacity to accept the additional waste from the parcel of property;

⁶⁴ R.C. 6109.10(A)(2).

⁶⁵ R.C. 6112.06(B)(1).



(2) The foundation wall of the structure from which sewage or other waste originates is 400 feet or less from the nearest boundary of the right-of-way within which the new sewerage system is located; and

(3) There are no physical barriers between the parcel of property and the new sewerage system that would prevent the parcel from connecting to the new sewerage system.⁶⁶

The bill then states that a person who receives such a notice cannot be required to connect to the sewerage system if both of the following apply:

(1) The person notifies the owner or operator of the sewerage system and the applicable board of health that the person elects not to connect to the sewerage system. The notice must be in writing and sent via certified mail not later than 60 days after the person has received the notice regarding the new system. Not later than 120 days after the board of health receives the notice from the property owner, the board must evaluate the household sewage treatment system serving the affected parcel of property to determine if the system operates and is maintained in accordance with state law governing household sewage treatment systems and rules adopted under that law by the Director of Health and by the board, if any. The property owner is responsible for the costs of the evaluation.

Under the bill, if the property owner is aware that the property will be vacant at any time during the 120-day period, the owner must notify the board of health of the dates during which the property will be vacant. In order for the inspection to occur, the owner must ensure that the property is occupied for at least 90 consecutive days within the 120-day period and notify the board of health of the dates of occupancy. The bill stipulates that failure to so notify the board or to so occupy the property constitutes termination of the bill's authorization for the property owner to elect out of connecting to the sewerage system.

(2) The applicable board of health determines that the household sewage treatment system operates and is maintained in accordance with the above law and rules. The board then must so notify the person and the owner or operator of the sewerage system. However, if the board determines that a nuisance exists as specified in that law, the board must so notify the person, and the person may repair the system within 60 days to eliminate the nuisance. The board may assist the person in developing a plan for the incremental repair or replacement of the system. The plan must establish a phased approach to repair, alter, or replace the system over a period of time specified in the plan and approved by the board. The plan also must require sufficient alterations

⁶⁶ R.C. 6112.06(B)(2).

to the system to correct the nuisance in a timely manner in order for the person not to be required to connect to the sewerage system. Failure to repair, alter, or replace the system to eliminate the nuisance constitutes termination of the bill's authorization for the property owner to elect out of connecting to the sewerage system.⁶⁷

The bill's authorization and procedure for an owner of a household sewage treatment system to elect not to connect to a sewerage system does not apply to a household sewage treatment system that is a discharging system. A discharging system is one of the following:

(1) A system for which an NPDES permit has been issued under the Water Pollution Control Law and rules adopted under it; or

(2) A system for which an NPDES permit would be required, but that has not been issued such a permit.

However, the notification required by the bill must be issued to an applicable property owner regardless of whether the property owner's system is a discharging system.⁶⁸

HISTORY

ACTION	DATE
Introduced	02-02-15

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⁶⁷ R.C. 6112.06(C).

⁶⁸ R.C. 6112.06(D).

