



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

Sub. S.B. 1*

131st General Assembly

(As Reported by H. Agriculture & Rural Development)

Sens. Gardner and Peterson, Hite, LaRose, Eklund, Manning, Beagle, Bacon, Balderson, Brown, Burke, Coley, Faber, Hottinger, Hughes, Lehner, Obhof, Oelslager, Patton, Sawyer, Schiavoni, Seitz, Tavares, Thomas, Widener, Williams, Yuko

BILL SUMMARY

Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer, defined as nitrogen or phosphorous, and the application of manure in the western basin of Lake Erie on frozen ground, on saturated soil, and during certain weather conditions.
- States that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.
- Exempts a person in the western basin of Lake Erie from the prohibitions 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 of the Division of Soil and Water Resources in the Department of Natural Resources or the Chief's designee to investigate complaints filed against a person that violates one of the prohibitions, including applying for a search warrant.

* This analysis was prepared before the report of the House Agriculture & Rural Development Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Authorizes the Director or Chief, as applicable, to assess a civil penalty against a person that violates one of the prohibitions only if the person is afforded an opportunity for an adjudication hearing.
- Requires the amount of the civil penalty to be determined in rules, but prohibits the penalty from being more than \$10,000.
- Authorizes the owner or operator of a small or a medium agricultural operation to apply to the Chief for an exemption from the bill's prohibition against the application of manure, defines small agricultural operation and medium agricultural operation, and requires an exemption to be approved or denied within 30 days of submission of an application.
- Allows the Chief or the Chief's designee, if the Chief or designee determines that it is appropriate, to issue an exemption as follows:
 - For a medium agricultural operation, for a period not later than one year after the bill's effective date; or
 - For a small agricultural operation, for a period not later than two years after the bill's effective date.
- Authorizes the Chief or the Chief's designee to deny an application for an exemption or revoke an exemption if the Chief or designee determines that the owner or operator is not in substantial compliance with the Division of Soil and Water Resources Law and rules adopted under it other than violating the bill's prohibition against the application of manure.
- States that an owner or operator that has applied for or been issued an exemption is not subject to civil penalties assessed for a violation of the manure prohibition during the exemption period.
- Requires the Chief to establish the form of the application for an exemption in rules, and requires the rules to require the form to include specified information.
- Requires the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters, not later than three years after the bill's effective date, to jointly assess the results of the implementation of the bill's prohibitions against the application of fertilizer and manure and issue a report.
- States that it is the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution Abatement Program

from the Department of Natural Resources to the Department of Agriculture must be enacted not later than July 1, 2015.

Certification of manure applicators

- Prohibits a person, for the purposes of the cultivation, primarily for sale, of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law unless one of the following applies:
 - The person has been issued a livestock manager certification under that Law; or
 - The person has been certified under the bill to apply the manure by the Director of Agriculture.
- Requires the Director to issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by current law enacted in 2014.

Prohibition against application of sewage sludge

- Prohibits the Director of Environmental Protection, in issuing permits for sludge management under the Water Pollution Control Law, from allowing the placement of sewage sludge on frozen ground in conflict with rules adopted by the Director under that Law.

Phosphorous monitoring for a publicly owned treatment works

- Requires that a publicly owned treatment works with a design flow of one million gallons per day or more or designated as a major discharger by the Director be required to begin monthly monitoring of total and dissolved reactive phosphorous pursuant to a new NPDES permit, an NPDES permit renewal, or a Director-initiated modification not later than December 1, 2016.
- Requires the Director to include in each applicable new NPDES permit, NPDES permit renewal, or Director-initiated modification a requirement that such monitoring be conducted.
- Requires a publicly owned treatment works with a design flow of one million gallons per day or more that is not subject to a phosphorous effluent limit on the bill's effective date to complete and submit to the Director, not later than December 1, 2017, a study that evaluates the capability of the existing treatment facility to reduce phosphorous to one milligram per liter.

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 its 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 areas through the issuance of a section 401 water quality certification.
- Allows the Director of Environmental Protection to authorize the deposit of dredged material from harbor or navigation maintenance activities for specified facilities and projects, including beach nourishment and habitat restoration.
- Requires the Director, in order to coordinate activities and responsibilities established under the Water Pollution Control Law and the Coastal Management Law, to consult with the Director of Natural Resources when approving the location in which dredged material is proposed to be deposited.
- Requires the Director of Environmental Protection 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.
- Requires the committees of the General Assembly that are primarily responsible for environmental protection matters, not later than January 1, 2023, to jointly assess the results of the implementation of the bill's prohibition against depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries that resulted from harbor or navigation maintenance activities and issue a report.

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.

Harmful algae management and response coordinator

- Requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response, and requires the Director or the Director's designee (hereafter Director) to develop plans providing for coordination that may include specified actions and items.
- Requires the Director to consult with certain state and local officials to implement specified actions, including protecting against cyanobacteria in Lake Erie's western basin.
- Requires the Director to develop and implement protocols and actions that may include specified provisions and protocols, including:
 - Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems and testing for cyanobacteria in Lake Erie; and
 - Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems.

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CONTENT AND OPERATION

Application of fertilizer and manure

Fertilizer

The bill establishes provisions governing the application of fertilizer in Lake Erie's western basin and requires the Director of Agriculture to administer and enforce those provisions. Under the bill, fertilizer is nitrogen or phosphorous.¹ Additionally, the western basin of Lake Erie is land in Ohio that is located in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.²

Except as discussed below, the bill prohibits any person in the western basin from surface applying fertilizer under either of the following circumstances:

- (1) On snow-covered or frozen soil; or
- (2) When the top two inches of soil are saturated from precipitation.

Additionally, except as discussed below, the bill prohibits any person in the western basin from surface applying fertilizer in a granular form when the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding one inch in a 12-hour period.³

The bill states that the prohibitions do not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.⁴ It also specifies that the prohibitions do not apply if a person in the western basin applies fertilizer under any of the following circumstances:

- (1) The fertilizer is injected into the ground;
- (2) The fertilizer is incorporated within 24 hours of surface application; or

¹ R.C. 905.326(F).

² R.C. 905.326(E).

³ R.C. 905.326(A).

⁴ R.C. 905.326(D).



(3) The fertilizer is applied onto a growing crop.⁵

Manure

The bill establishes provisions governing the application of manure in Lake Erie's western basin and requires the Chief of the Division of Soil and Water Resources in the Department of Natural Resources to administer and enforce those provisions.

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

(1) On snow-covered or frozen soil;

(2) When the top two inches of soil are saturated from precipitation; or

(3) When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding ½ inch in a 24-hour period.⁶

As with fertilizer, the bill states that the prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.⁷ It also specifies that the prohibition does not apply if a person in the western basin applies manure under any of the following circumstances:

(1) The manure is injected into the ground;

(2) The manure is incorporated within 24 hours of surface application;

(3) The manure is applied onto a growing crop; or

(4) In the event of an emergency, the Chief or the Chief's designee provides written consent and the manure application is made in accordance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.⁸

⁵ R.C. 905.326(B).

⁶ R.C. 1511.10(A).

⁷ R.C. 1511.10(D).

⁸ R.C. 1511.10(B).



Enforcement of fertilizer prohibitions

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

After receiving a complaint or upon receiving information that would indicate a violation, the Director or the Director's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged violation. If an individual denies access to the Director or the Director's designee, the Director may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises to determine if a violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the applicable prohibition. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.⁹

Under the bill, the Director may assess a civil penalty against a person that violates the fertilizer prohibitions. The Director may impose a civil penalty only if the Director affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the person violated the fertilizer prohibitions. The person may waive the right to an adjudication hearing.¹⁰

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.¹¹

A violator must pay a civil penalty in an amount established in rules adopted by the Director. The civil penalty cannot be more than \$10,000 for each violation. Each day

⁹ R.C. 905.326(C).

¹⁰ R.C. 905.327(A).

¹¹ R.C. 905.327(B).



during which fertilizer is applied in violation of the fertilizer prohibitions constitutes a separate violation.¹²

Enforcement of manure prohibition

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

After receiving a complaint or upon receiving information that would indicate a violation, the Chief or the Chief's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged violation. If an individual denies access to the Chief or the Chief's designee, the Chief may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises to determine if a violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the prohibition. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.¹³

Under the bill, the Chief may assess a civil penalty against a person that violates the manure prohibition except as discussed below. The Chief may impose a civil penalty only if the Chief affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Chief's determination that the person violated the manure prohibition. The person may waive the right to an adjudication hearing.¹⁴

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Chief determines that a violation has occurred or is occurring, the Chief may issue an order requiring compliance with the prohibition and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.¹⁵

A violator must pay a civil penalty in an amount established in rules adopted by the Chief. The civil penalty cannot be more than \$10,000 for each violation. Each day

¹² R.C. 905.327(C) and (D).

¹³ R.C. 1511.10(C).

¹⁴ R.C. 1511.11(A).

¹⁵ R.C. 1511.11(B).

during which manure is applied in violation of the manure prohibition constitutes a separate violation.¹⁶

Exemption for small and medium agricultural operations

Under the bill, the owner or operator of a small agricultural operation or a medium agricultural operation may apply to the Chief for an exemption from the manure prohibition. A small agricultural operation is an agricultural operation in the western basin that stables or confines fewer than any of the numbers of animals specified for a medium concentrated animal feeding operation in the Concentrated Animal Feeding Facility Law. A medium agricultural operation is an agricultural operation in the western basin that stables or confines any of the numbers of animals specified for a medium concentrated animal feeding operation in that Law.¹⁷

If the Chief or the Chief's designee determines that it is appropriate, the Chief or designee may issue such an exemption as follows:

(1) For a medium agricultural operation, for a period ending not later than one year after the bill's effective date; or

(2) For a small agricultural operation, for a period ending not later than two years after the bill's effective date.¹⁸

The Chief or the Chief's designee must approve or deny an application for an exemption not later than 30 days after an application has been submitted. The Chief or the Chief's designee may deny an application or revoke an exemption that has been approved if the Chief or designee determines that the owner or operator is not in substantial compliance with the Soil and Water Resources Law and rules adopted under it other than violating the manure prohibition.

The bill then states that an owner or operator that has been issued an exemption is not subject to civil penalties assessed for a violation of the manure prohibition during the exemption period. An owner or operator that has an initial application for an exemption that is pending the Chief's review also is not subject to the civil penalties.¹⁹

¹⁶ R.C. 1511.11(C) and (E)(1).

¹⁷ R.C. 1511.11(F).

¹⁸ R.C. 1511.11(D)(1).

¹⁹ R.C. 1511.11(D)(3) to (6).



The Chief must establish the form of the application for an exemption in rules. The rules must require the form to include all of the following:

(1) A statement from the applicant affirming that the applicant understands the bill's manure prohibition and associated enforcement provisions;

(2) A statement from the applicant affirming that the applicant understands that the applicant must be in compliance with procedures established in the U.S. Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio except procedures that are in conflict with the bill's manure prohibition and associated enforcement provisions;

(3) A place for the applicant to explain the reasons for the necessity for the exemption;

(4) A place on the form that provides information on programs that may assist an applicant with methods to comply with the manure prohibition; and

(5) A place on the form that provides the applicant an opportunity to request technical assistance or information from the Chief or the applicable soil and water conservation district to assist the applicant to comply with the manure prohibition.²⁰

Review of prohibitions

The bill requires the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters, not later than three years after the bill's effective date, to jointly assess the results of the implementation of the bill's prohibitions against the application of fertilizer and manure in the western Lake Erie basin on frozen ground, on saturated soil, and during certain weather conditions. It also requires the committees to jointly issue a report to the Governor containing their findings and any recommendations based on the assessment. The committees may include in the report recommendations for revisions to or the repeal of the prohibitions.²¹

Intent to transfer Agricultural Pollution Abatement Program

The bill states that it is the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution

²⁰ R.C. 1511.11(E)(2).

²¹ Section 5(A).



Abatement Program from the Department of Natural Resources to the Department of Agriculture must be enacted not later than July 1, 2015.²²

Certification of manure applicators

The bill prohibits a person, for the purposes of the cultivation, primarily for sale, of plants or any parts of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility issued a permit under the Concentrated Animal Feeding Facilities Law unless one of the following applies:

(1) The person has been issued a livestock manager certification under that Law;
or

(2) The person has been certified under the bill to apply the manure by the Director of Agriculture.

Under the bill, the Director must issue, renew, and deny certifications for the application of manure in the same manner as for the certification of fertilizer applicators as required by current law enacted in 2014. Procedures, requirements, and other provisions governing the certification of fertilizer applicators apply to the certification of persons under the bill.²³

Prohibition against application of sewage sludge

The bill prohibits the Director of Environmental Protection, in issuing permits for sludge management under the Water Pollution Control Law, from allowing the placement of sewage sludge on frozen ground in conflict with rules adopted by the Director under that Law.²⁴

Phosphorous monitoring for a publicly owned treatment works

The bill requires that a publicly owned treatment works with a design flow of one million gallons per day or more or designated as a major discharger by the Director be required to begin monthly monitoring of total and dissolved reactive phosphorous pursuant to a new NPDES permit, an NPDES permit renewal, or a Director-initiated modification not later than December 1, 2016. The Director must include in each applicable new NPDES permit, NPDES permit renewal, or Director-initiated modification a requirement that such monitoring be conducted. A Director-initiated

²² Section 6.

²³ R.C. 903.40.

²⁴ R.C. 6111.03(J)(1).



modification for that purpose must be considered and processed as a minor modification pursuant to rules adopted by the Director governing NPDES permits.

Additionally, under the bill, a publicly owned treatment works with a design flow of one million gallons per day or more that is not subject to a phosphorous effluent limit on the bill's effective date must complete and submit to the Director, not later than December 1, 2017, a study that evaluates the technical and financial capability of the existing treatment facility to reduce the final effluent discharge of phosphorous to one milligram per liter using possible source reduction measures, operational procedures, and unit process configurations.²⁵

Dredged material in Lake Erie and tributaries

Beginning July 1, 2020, the bill prohibits a person from depositing dredged material in the portion of Lake Erie that is within Ohio's jurisdictional boundaries or in the direct tributaries of Lake Erie within Ohio that resulted from harbor or navigation maintenance activities unless the Director of Environmental Protection has determined that the dredged material is suitable for one of the locations, purposes, or activities specified below and has issued a section 401 water quality certification authorizing the deposit. The bill then authorizes the Director, in consultation with the Director of Natural Resources, to 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.

The bill allows the Director of Environmental Protection to authorize the 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

²⁵ R.C. 6111.03.



(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, in order to coordinate the activities and responsibilities established under the Water Pollution Control Law and the Coastal Management Law, the Director must consult with the Director of Natural Resources when approving the location in which dredged material is proposed to be deposited in Ohio's portion of Lake Erie or its direct tributaries. The Director of Environmental Protection may adopt necessary rules.

Finally, the bill requires the Director of Environmental Protection, 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.²⁶

Review

The bill requires the committees of the General Assembly that are primarily responsible for environmental matters, not later than January 1, 2023, to jointly assess the results of the implementation of the bill's prohibition against depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries that resulted from harbor or navigation maintenance activities. It also requires the committees to jointly issue a report to the Governor containing their findings and any recommendations based on the assessment. The committees may include in the report recommendations for revisions to or the repeal of the prohibitions.²⁷

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:

²⁶ R.C. 6111.32.

²⁷ Section 5(B).



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

--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.²⁸

Harmful algae management and response coordinator

The bill requires the Director of Environmental Protection to serve as coordinator, or designate a coordinator, of harmful algae management and response. The Director or the Director's designee (hereafter Director) must develop plans providing for coordination that may include the actions and items discussed below.

Under the bill, the Director must consult with the Directors of Agriculture, Health, and Natural Resources and representatives of local governments, publicly owned treatment works, and public water systems to implement actions that do both of the following:

(1) Protect against cyanobacteria in the western basin of Lake Erie and public water supplies; and

(2) Manage wastewater to limit nutrient loading into the western basin.

The Director must develop and implement protocols and actions that may include the following:

(1) Analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems, testing for cyanobacteria in Lake Erie, and establishing public health advisory levels and public notification protocols if trigger levels of cyanotoxins are detected;

(2) Provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application,

²⁸ Sections 3 and 4.

public notification, and source water protection for employees of publicly owned treatment works and public water systems; and

(3) Protocols requiring public water systems to notify the Environmental Protection Agency if any of the following occurs:

--Cyanotoxins are detected in finished drinking water;

--Cyanobacteria are detected in their source water; or

--Application of an algaecide is anticipated to the source water.²⁹

HISTORY

ACTION	DATE
Introduced	02-02-15
Reported, S. Agriculture	02-17-15
Passed Senate (32-0)	02-18-15
Reported, H. Agriculture & Rural Development	---

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²⁹ R.C. 3745.50.

