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Bill Analysis

Legislative Service Commission

Am. H.B. 197 123rd General Assembly (As Passed by the House)

**Reps. Krebs, Allen, Opfer, Pringle, Terwilleger, Williams, Logan,
Householder, Ferderber, Barnes, Krupinski, Gooding, Perry, Maier**

BILL SUMMARY

- Authorizes the Director of Environmental Protection to administer and enforce a program for the regulation of sewage sludge management.
- Grants the Director the authority to adopt rules for purposes of the sludge management program and specifies that the rules must ensure compliance with specified provisions of the Federal Water Pollution Control Act.
- Allows the Director's rules to be more stringent than the federal requirements with regard to monitoring sludge and sludge materials and establishing acceptable sludge management practices and pollutant levels in sludge and sludge materials.
- Authorizes the Director to issue sludge management permits, establishes procedures for issuance and denial of the permits, and authorizes the Director to include conditions in the permits to protect public health and the environment.
- Generally prohibits placing sludge or sludge materials on land or releasing them into the air, prohibits causing pollution of the waters of the state in the course of sludge management, and declares such actions to be a nuisance unless a person holds a valid, unexpired permit.
- Grants the Director the authority to enter upon private or public property, examine records, and require maintenance of records for purposes of enforcing the sludge management program.

- Establishes an annual sludge management fee equal to \$3.50 per dry ton of sewage sludge that a sewage sludge facility treats or disposes of in this state, and provides that entities that generate sewage sludge and each sewage sludge facility must pay a minimum sewage sludge fee of \$100 if the entity also is required to pay an annual wastewater discharge fee.
- Provides that persons that treat or dispose of exceptional quality sludge pay 35% of the basic annual sewage sludge fee, with certain exceptions.
- Establishes maximum annual sewage sludge fees.
- Requires the posting of notice after the land application of Class B sludge.

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CONTENT AND OPERATION

Sludge management program

Definitions

The bill alters a number of definitions in existing law related to water pollution control and adds new definitions to that law. First, for the purposes of that law, "pollution" is defined to mean the placing of any sewage, industrial waste, or other wastes in any waters of the state. The bill adds sludge and sludge materials to that list. (Sec. 6111.01(A).) Currently, sewage is defined in part to mean any liquid waste containing animal or vegetable matter in suspension or

solution. The bill defines it to mean any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution. (Sec. 6111.01(B).) In addition, "other wastes" is defined under current law to exclude substances that are not sewage or industrial waste. The bill also excludes sludge and sludge materials from that term. (Sec. 6111.01(D).)

Under current law, "treatment works" is defined to mean any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes. The bill provides that "treatment works" also includes a facility used for the purpose of blending or composting sludge or sludge materials. (Sec. 6111.01(F).) The bill also adds to the definition of "disposal system" by providing that such a system includes a system for disposing of sludge and sludge materials (sec. 6111.01(G)). Finally, the bill adds the following definitions:

(1) "Sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works and includes a solid, semi-solid, or liquid residue that is generated from an industrial wastewater treatment process and that may be applied to land for agronomic benefit. "Sludge" does not include ash generated during the firing of sludge in a sludge incinerator, grit and screening generated during preliminary treatment of sewage in a treatment works, animal manure, or residue generated during treatment of animal manure. (Sec. 6111.01(M).)

(2) "Sludge materials" means solid, semi-solid, or liquid materials derived from sludge and includes products from a treatment works that result from the treatment, blending, or composting of sludge (sec. 6111.01(N)).

(3) "Storage of sludge" means the placement of sludge on land on which the sludge remains for not longer than two years, but does not include the placement of sludge on land for treatment (sec. 6111.01(O)).

(4) "Sludge disposal program" means any program used by an entity that begins with the generation of sludge and includes treatment or disposal of the sludge, as "treatment" and "disposal" are defined in the portion of the bill related to fees (see "***Fees; Definitions***," below) (sec. 6111.01(P)).

(5) "Agronomic benefit" means any process that promotes or enhances plant growth and includes, but is not limited to, a process that increases soil fertility and moisture retention (sec. 6111.01(Q)).

(6) "Sludge management" means the use, storage, treatment, or disposal of, and management practices related to, sludge and sludge materials (sec. 6111.01(R)).

(7) "Sludge management permit" means a permit for sludge management that is issued under the bill (sec. 6111.01(S)).

Requirements of the sludge management program

The bill authorizes the Director of Environmental Protection to administer and enforce a program for the regulation of sludge management. The Director has exclusive authority under the bill to regulate sludge management in this state. The sludge program must be consistent with section 405 of the Federal Water Pollution Control Act and regulations adopted under it. (Sec. 6111.03(S).)¹ The Director must adopt rules setting forth and requiring compliance with national sludge use and disposal standards as necessary to ensure compliance with section 405 of the Federal Water Pollution Control Act (sec. 6111.042). However, the Director may adopt rules that establish requirements that are more stringent than section 405 and regulations adopted under it with regard to monitoring sludge and sludge materials and establishing acceptable sludge management practices and pollutant levels in sludge and sludge materials. (Sec. 6111.03(S).)

In administering the program, the Director, in addition to exercising the authority provided in the state Water Pollution Control Law, may do any of the following:

(1) Develop plans and programs for the disposal and utilization of sludge and sludge materials;

(2) Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

(3) Collect and disseminate information relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

¹ Section 405 of the Federal Water Pollution Control Act is codified at 33 U.S.C. § 1345. That section authorizes the Administrator of the United States Environmental Protection Agency to develop and publish regulations for the disposal of sludge and the utilization of sludge for various purposes. That section also authorizes the Administrator to issue permits for the management of sewage sludge.

(4) Issue, modify, or revoke orders to prevent, control, or abate the use and disposal of sludge and sludge materials or the effects of the use of sludge and sludge materials on land located in the state and on the air and waters of the state; and

(5) Adopt and enforce, modify, or rescind rules necessary for the implementation of the sludge management program. The rules reasonably must protect public health and the environment, encourage the beneficial reuse of sludge and sludge materials, and minimize the creation of nuisance odors. (Sec. 6111.03(S).)

Sludge management permits and plan approval

The bill authorizes the Director to issue, revoke, modify, or deny sludge management permits in compliance with regulations adopted under section 405 of the Federal Water Pollution Control Act. The Director must impose as conditions of each permit, where necessary and appropriate, water quality related effluent limitations in accordance with that section. The Director must specify in a sludge management permit that the permit is conditioned upon payment of applicable fees (see "***Fees***," below) and on the right of the Director's authorized representative to enter on the permit holder's premises to determine compliance with applicable law. (Sec. 6111.03(J).) The Director may condition permits on the implementation of treatment, storage, disposal, distribution, or application management methods and the filing of periodic reports on the amounts, composition, and quality of sludge and sludge materials that are disposed of, used, treated, or stored (sec. 6111.03(S)).

The Director must issue or deny an application for a sludge management permit within 180 days of the date on which a complete application with all plans, specifications, construction schedules, and other pertinent information required by the Director is received. A permit may be issued for a period of up to five years and may be renewed. In addition, a permit may be modified, suspended, or revoked for cause, including, but not limited to, violation of any condition of the permit, obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts of the sludge use, storage, treatment, or disposal practice. If an applicant for a sludge management permit also applies for a related permit for the discharge of sewage, industrial waste, or other wastes into the waters of the state, the Director may combine the two permits and issue one permit to the applicant. (Sec. 6111.03(J).)

The bill authorizes the Director to specify in sludge management permits the net volume, net weight, quality, and pollutant concentration of the sludge or sludge materials that may be used, stored, treated, or disposed of, and the manner and frequency of the use, storage, treatment, or disposal, to protect public health

and the environment from adverse effects relating to those activities. The Director must impose other terms and conditions to protect public health and the environment, minimize the creation of nuisance odors, and achieve compliance with the state Water Pollution Control Law and rules adopted under it. In doing so, the Director must consider whether the terms and conditions are consistent with the goal of encouraging the beneficial reuse of sludge and sludge materials. (Sec. 6111.03(S).)

Under current law, no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person is permitted to provide or install sewerage or treatment works for sewage until plans for the works have been submitted to and approved by the Director. The bill also requires plan approval for sewerage or treatment works for sludge or sludge materials disposal or treatment. (Sec. 6111.44.) For purposes of existing law that requires plan approval for facilities where industrial waste is produced, treated, or disposed of, the bill includes sludge or sludge materials in the definition of "industrial waste" (sec. 6111.45). Further, under existing law, the Environmental Protection Agency is required to exercise general supervision of the disposal of sewage and industrial wastes and the operation of maintenance or works installed for the collection, treatment, or disposal of those wastes. The bill requires the Agency also to exercise general supervision of the use, storage, and treatment of sewage and industrial wastes. (Sec. 6111.46.)

Under the bill, an approval of a treatment works sludge disposal program may contain any terms and conditions, including schedules of compliance, necessary to achieve compliance with the state Water Pollution Control Law and rules adopted under it. (Sec. 6111.03(S).)

Prohibitions and enforcement

If the Director administers a sludge management program, no person, in the course of sludge management, is permitted to place on land located in the state or release into the air of the state sludge or sludge materials. The bill declares such actions to be a public nuisance. The bill also prohibits anyone from placing or causing to be placed sludge or sludge materials in a location where they cause water pollution regardless of whether the Director administers a sludge management program. Similarly, any such action is a public nuisance. However, these prohibitions and declarations of a nuisance do not apply if the person placing or releasing the sludge or sludge materials holds a valid, unexpired permit or renewal permit governing the placement or release or if the person's application for renewal of such a permit is pending. (Sec. 6111.04(A) and (B).)

Under the bill, no person to whom a permit has been issued is allowed to place or discharge, or cause to be placed or discharged, in any waters of the state any sludge or sludge materials in excess of the permissive discharges specified under the existing permit without first receiving a permit from the Director to do so (sec. 6111.04(C)). Further, the bill provides that no person to whom a sludge management permit has been issued is allowed to place on the land or release into the air of the state any sludge or sludge materials in excess of the permissive amounts specified under the existing sludge management permit without first receiving a modification of the existing sludge management permit or a new sludge management permit to do so from the Director (sec. 6111.04(D)).

Current law provides exemptions to the prohibitions regarding the discharge of sewage without a permit. The bill applies those exemptions to the management of sludge without a permit and also exempts from the prohibitions exceptional quality sludge (see "***Fees; Definitions***," below) generated outside of this state and contained in bags or other containers not greater than 100 pounds in capacity. (Sec. 6111.04(F)(7).)

Penalties in existing law apply to violations of the bill's prohibition. They include a criminal fine of not more than \$25,000, a term of imprisonment of not more than one year, and a civil penalty of not more than \$10,000 per day of violation. (Secs. 6111.09 and 6111.99, not in the bill.)

The bill repeals existing language that provides that no person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state can continue or cause the continuance of the discharge without first obtaining a permit issued by the Director (sec. 6111.04(C)).

Under current law, the Director, on the Director's own initiative, may investigate or make inquiries into any alleged act of pollution or failure to comply with the state Water Pollution Control Law or any order, any rule, the terms and conditions of a permit, or any other determination pursuant thereto. Current law also provides procedures for the entrance on property, the examination of records, and the maintenance of records. The bill also allows the Director or the Director's authorized representative to enter at reasonable times upon private or public property to inspect and investigate conditions relating to pollution of any air of the state or land located in the state related to the use, storage, treatment, or disposal of sludge or sludge materials. The bill also provides that any authorized representative of the Director at reasonable times may examine any records or memoranda pertaining to sludge management. Further, the Director may require the maintenance of records relating to sludge management. (Sec. 6111.05.)

Current law prohibits anyone from knowingly submitting false information or records or failing to submit information or records pertaining to discharges required as a condition of a permit. The bill instead prohibits anyone from knowingly submitting false information or records pertaining to discharges of sewage, industrial wastes, or other wastes or to sludge management required as a condition of a permit or knowingly rendering inaccurate any monitoring device or other method required to be maintained by the Director. (Sec. 6111.07(C).) The penalties for violating this prohibition are a criminal fine of not more than \$25,000 and a civil penalty of not more than \$10,000 per day of violation. (Secs. 6111.09 and 6111.99, not in the bill.)

Finally, the bill authorizes the Director to institute or cause to be instituted in any court of competent jurisdiction proceedings to ensure compliance with the provisions of the Federal Water Pollution Control Act governing the management of sewage sludge (sec. 6111.03(K)).

Fees

Definitions

The bill establishes the following definitions pertaining to the fees associated with the sewage sludge management program:

(1) "Sewage sludge facility" means an entity that performs treatment on or is responsible for the disposal of sewage sludge.

(2) "Sewage sludge" means a solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works as defined in the state Water Pollution Control Law. "Sewage sludge" includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screenings generated during preliminary treatment of domestic sewage in a treatment works, animal manure, or residue generated during treatment of animal manure.

(3) "Exceptional quality sludge" means sewage sludge that meets all of the following qualifications: (a) satisfies the class A pathogen standards in 40 C.F.R. 503.32(a), (b) satisfies one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) to (b)(8), (c) does not exceed the ceiling concentration limitations for metals listed in table one of 40 C.F.R. 503.13, and (d) does not exceed the concentration limitations for metals listed in table three of 40 C.F.R. 503.13.

(4) "Treatment" means the preparation of sewage sludge for final use or disposal and includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge.

(5) "Disposal" means the final use of sewage sludge, including, but not limited to, land application, land reclamation, surface disposal, or disposal in a landfill or an incinerator.

(6) "Land application" means the spraying or spreading of sewage sludge onto the land surface, the injection of sewage sludge below the land surface, or the incorporation of sewage sludge into the soil for the purposes of conditioning the soil or fertilizing crops or vegetation grown in the soil.

(7) "Land reclamation" means the returning of disturbed land to productive use.

(8) "Surface disposal" means the placement of sludge on an area of land for disposal, including, but not limited to, monofills, surface impoundments, lagoons, waste piles, or dedicated disposal sites.

(9) "Incinerator" means an entity that disposes of sewage sludge through the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

(10) "Incineration facility" includes all incinerators owned or operated by the same entity and located on a contiguous tract of land. Areas of land are considered to be contiguous even if they are separated by a public road or highway.

(11) "Annual sludge fee" means the basic annual fee assessed under the bill. (Sec. 3745.11(Y)(7).)

Basic annual fee

With certain exceptions, the bill requires each sewage sludge facility to pay a nonrefundable annual sludge fee equal to \$3.50 per dry ton of sewage sludge that the sewage sludge facility treats or disposes of in Ohio. The annual volume of sewage sludge treated or disposed of by a sewage sludge facility must be calculated using January 1 through December 31 of the calendar year preceding the date on which payment of the fee is due. (Sec. 3745.11(Y)(1).)

Exceptions to the basic annual fee

(1) Each sewage sludge facility that generates sewage sludge and is required to pay an annual wastewater discharge fee under existing law and each entity that treats sewage sludge must pay a minimum annual sewage sludge fee of \$100 (sec. 3745.11(Y)(2)(a)).

(2) The annual sludge fee required to be paid by a sewage sludge facility that treats or disposes of exceptional quality sludge in this state is required to be 35% less per dry ton of exceptional quality sludge than the basic annual fee. There are two exceptions to this 35% discount under the bill. First, a sewage sludge facility that treats exceptional quality sludge must pay a minimum annual sewage sludge fee of \$100. Second, a sewage sludge facility that treats or disposes of exceptional quality sludge is not required to pay the annual sludge fee for treatment or disposal in this state of exceptional quality sludge generated outside of Ohio and contained in bags or other containers not greater than 100 pounds in capacity. (Sec. 3745.11(Y)(2)(b).)

Maximum annual fee

No sewage sludge facility required to pay the annual sludge fee is required to pay more than the maximum annual fee for each disposal method that the sewage sludge facility uses. The maximum annual fee does not include the additional amount that may be charged for late payment of the annual sludge fee (see below). The maximum annual fee for the following methods of disposal of sewage sludge is as follows: (1) incineration: \$5,000, (2) disposal in a landfill: \$5,000, and (3) land application, land reclamation, surface disposal, or any other disposal method not specified in (1) or (2): \$20,000. (Sec. 3745.11(Y)(3).) The maximum annual fees apply to a sewage sludge facility that treats or disposes of exceptional quality sludge (sec. 3745.11(Y)(2)(b)).

Other fee requirements

A sewage sludge facility that transfers sewage sludge to a treatment works in this state, as "treatment works" is defined in the state Water Pollution Control Law, or to another sewage sludge facility in Ohio for further treatment prior to disposal in this state is not required to pay the annual sludge fee for the tons of sewage sludge that have been transferred. Instead, the treatment works or sewage sludge facility that disposes of the sewage sludge must pay the annual sludge fee. In the case of a sewage sludge facility that treats sewage sludge in Ohio and transfers it out of this state to another entity for disposal, the sewage sludge facility in Ohio must pay the annual sludge fee for the tons of sewage sludge that have

been transferred. However, the facility transferring the sewage sludge must pay the \$100 minimum fee. (Sec. 3745.11(Y)(2)(c).)

A sewage sludge facility that generates sewage sludge and that is not required to pay an annual wastewater discharge fee is not subject to the basic annual fee (sec. 3745.11(Y)(2)(d)).

In the case of an entity that generates sewage sludge or a sewage sludge facility that treats sewage sludge and transfers the sewage sludge to an incineration facility for disposal, the incineration facility, and not the entity generating the sewage sludge or the sewage sludge facility treating the sewage sludge, must pay the annual sludge fee for the tons of sewage sludge that are transferred. However, the entity or facility generating or treating the sewage sludge must pay the \$100 minimum fee. (Sec. 3745.11(Y)(4)(a).) In the case of an entity that generates sewage sludge or a sewage sludge facility that treats sewage sludge and transfers the sewage sludge to a landfill for disposal, the entity generating the sewage sludge or the sewage sludge facility treating the sewage sludge, and not the landfill, must pay the annual sludge fee for the tons of sewage sludge that are transferred (sec. 3745.11(Y)(4)(b)).

Not later than April 1 of the calendar year following the bill's effective date and each April 1 thereafter, the Director must issue invoices to persons who are required to pay the annual sludge fee. The invoice must identify the nature and amount of the annual sludge fee assessed and state May 1 as the deadline for receipt by the Director of objections regarding the amount of the fee and July 1 as the deadline for payment of the fee. (Sec. 3745.11(Y)(5).)

Not later than May 1 following receipt of an invoice, a person required to pay the annual sludge fee may submit objections to the Director concerning the accuracy of information regarding the number of dry tons of sewage sludge used to calculate the amount of the annual sludge fee or regarding whether the sewage sludge qualifies for the exceptional quality sludge discount. The Director may consider the objections and adjust the amount of the fee to ensure that it is accurate. If the Director does not adjust the amount of the annual sludge fee in response to a person's objections, the person may appeal the Director's determination in accordance with the Administrative Procedure Act. Not later than June 1, the Director must notify the objecting person regarding whether the Director has found the objections to be valid and the reasons for the finding. If the Director finds the objections to be valid and adjusts the amount of the annual sludge fee accordingly, the Director must issue with the notification a new invoice to the person identifying the amount of the annual sludge fee assessed and stating July 1 as the deadline for payment. (Sec. 3745.11(Y)(5).)

Not later than July 1, any person who is required to do so must pay the annual sludge fee. Any person who is required to pay the fee, but who fails to do so on or before that date must pay an additional amount that equals 10% of the required annual sludge fee. (Sec. 3745.11(Y)(5).)

The bill requires the Director to transmit all moneys collected from the fees to the Treasurer of State for deposit into the Surface Water Protection Fund created under current law. The moneys must be used to defray the costs of administering and enforcing provisions in the state Water Pollution Control Law and rules adopted under it that govern the use, storage, treatment, or disposal of sewage sludge. (Sec. 3745.11(Y)(6).)

Miscellaneous provisions

Currently, the Director is authorized to issue, modify, or revoke orders to prevent, control, or abate water pollution by requiring compliance with any standard or rule adopted under statutes concerning water quality standards and compliance with national effluent standards. The bill broadens this authority to include the issuance of orders requiring compliance with any standard or rule adopted under other statutes governing such areas as the Director's authority under the state Water Pollution Control Law, including the issuance of permits, the operation of the Water Pollution Control Loan Fund, the injection of wastes into wells, and the investigation of alleged acts of pollution. (Sec. 6111.03(H)(4).)

Existing law authorizes the Director, to the extent that federal effluent limitations adopted under section 304 of the Federal Water Pollution Control Act are inapplicable, to establish on a case-by-case basis effluent limitations in a permit issued under the state Water Pollution Control Law, based on best engineering judgment. The bill changes that to best professional judgment. (Sec. 6111.042.)

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act requiring the posting of notice regarding the land application of sludge that is classified as Class B sludge under federal regulations (sec. 6111.039).

HISTORY

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