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Bill Analysis

Legislative Service Commission

Sub. S.B. 141*
123rd General Assembly
(As Reported by S. Agriculture)

Sen. Mumper

BILL SUMMARY

- Transfers from the Director of Environmental Protection to the Director of Agriculture the authority to issue national pollutant discharge elimination system (NPDES) permits for agricultural operations that discharge agricultural pollutants from point sources into waters of the state and for the discharge of storm water resulting from agricultural operations, requires the Director of Agriculture to submit to the United States Environmental Protection Agency (USEPA) a program for the issuance of those permits, and provides that the authority of the Director of Agriculture to issue NPDES permits is dependent upon approval from the USEPA.
- Establishes requirements and procedures for the issuance of NPDES permits, and requires the Director of Agriculture to establish terms and conditions of NPDES permits in accordance with rules adopted under the bill.
- Provides for enforcement of the NPDES provisions through orders, adjudication hearings, injunctive relief, and civil and criminal penalties.
- Transfers from the Director of Environmental Protection to the Director of Agriculture the authority to issue permits to construct or modify concentrated animal feeding operations (CAFOs).
- Requires a person applying to the Director of Agriculture for an initial permit to construct a CAFO to submit specified information, provides that

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

information to be included in an application for a permit to modify a CAFO must be established in rules, and establishes causes and procedures for denial of permits.

- Requires the Director to issue a draft permit prior to issuing a permit to modify an existing or construct a new CAFO, and requires the Director to provide notice of and, under certain circumstances, public meetings or public hearings on draft permits.
- Authorizes the issuance, denial, suspension, or revocation of any permit by the Director of Agriculture under the bill to be appealed to the Environmental Review Appeals Commission.
- Requires a person applying for a permit who has not operated a CAFO in Ohio for at least two of the past five years and a person to whom a permitted CAFO is being transferred to submit specified background information, and authorizes the Director to deny a permit if he finds that the person has a history of noncompliance with the Federal Water Pollution Control Act.
- Authorizes the Director of Agriculture to issue, modify, and revoke orders and assess civil penalties to ensure that owners and operators of CAFOs are in compliance with the terms of their permits, and establishes criminal penalties for failure to obtain a permit from the Director for the modification of an existing or the construction of a new CAFO.
- Authorizes the Attorney General, at the Director of Agriculture's request, to bring an action for an injunction or a civil penalty for a violation related to a permit for the modification of an existing or the construction of a new CAFO.
- Establishes requirements and procedures for the issuance and renewal of review compliance certificates for existing CAFOs.
- Requires persons responsible for manure management at a major CAFO and persons who transport, buy, or sell a certain quantity of manure annually to obtain a livestock manager certification issued by the Director of Agriculture.

- Requires an owner or operator of a CAFO to prepare and submit to the Director an insect and rodent control plan and requires the Director to enforce the plan.
- Authorizes the Director to conduct an adjudication hearing and requires the Director to assess a civil penalty against a person who violates the bill's requirements governing certifications or plans.
- Authorizes the Director of Agriculture, if he determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, to issue an order, without prior notice or hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency.
- Provides that any person that is responsible for an unauthorized spill, release, or discharge of agricultural pollutants 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.
- Requires any person proposing to establish a new major CAFO, to expand by 10% an existing major CAFO, or to expand a CAFO by 10% and to a design capacity of more than 10,000 animal units to meet with the board of county commissioners of the county and the board of trustees of the township where the operation is or will be located to discuss the operation's potential impact on local infrastructure prior to applying for an installation permit from the Director of Agriculture, establishes procedures for the determination of recommendations of needed improvements and their cost, requires the person to construct, modify, and maintain the improvements as provided in the recommendations, and authorizes the boards to initiate mediation to seek compliance with the recommendations.
- Authorizes the Director of Agriculture or his authorized representative to enter on property in order to conduct activities that are necessary for the administration and enforcement of the bill, and authorizes the Director or his authorized representative to examine and copy any records pertaining to discharges that are subject to the bill or any records required to be maintained by the terms and conditions of a NPDES permit issued under the bill.

- Authorizes the Director to enter into contracts or agreements to carry out the bill's purposes, and authorizes the Director of Agriculture to administer grants and loans using moneys from the federal government and other sources for carrying out its functions.
- Creates the Livestock Management Fund for the deposit of money collected from application fees paid from civil penalties assessed, and from civil actions to recover costs from agricultural pollutant spills under the bill, and requires money in the fund to be used solely to administer the bill.
- Establishes complaint procedures for nuisances related to a CAFO, and requires the Director of Agriculture to assess a civil penalty if noncompliance is determined and not acted on by the owner or operator of a CAFO.
- Establishes an affirmative defense in a private civil action related to nuisances arising from agricultural activities at a CAFO if the owner or operator is in compliance with best management practices and the activities do not violate federal, state, and local laws governing nuisances.
- Requires the parties to a dispute concerning an alleged nuisance related to agricultural activities conducted at a CAFO to submit the dispute to nonbinding arbitration prior to filing a private civil action.
- Requires the Director of Agriculture to adopt rules that establish procedures for the protection of trade secrets from public disclosure.
- Creates the Concentrated Animal Feeding Operation Advisory Committee consisting of the Directors of Agriculture, Environmental Protection, and Natural Resources, the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, and nine appointed members, requires the committee to advise the Director of Agriculture in carrying out the bill and to conduct other duties, and makes an appropriation for the Committee's operation.
- Makes an appropriation for purposes of the Department of Agriculture's livestock regulation program and the Livestock Management Fund established by the bill.

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CONTENT AND OPERATION



Overview of current law governing water pollution control permits

Current law authorizes the Director of Environmental Protection to issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state under the national pollutant discharge elimination system (NPDES) program established under the Federal Water Pollution Control Act and regulations adopted under it (sec. 6111.03(J)). Such a permit, called a NPDES permit, is issued for each point source of discharge. However, the Director also is authorized to issue general permits, rather than individual permits, for the discharge of storm water and the installation or modification of storm water disposal systems consistent with federal requirements (sec. 6111.035). The Director may attach terms and conditions to any NPDES permit. Current law also authorizes the Director to issue, revoke, modify, or deny permits for the installation or modification of disposal systems or any parts of those systems in compliance with all federal requirements (sec. 6111.03(J)). Again, the Director may set terms and conditions of those permits. (Sec. 6111.03(J).)

NPDES permits for agricultural operations

Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture

The bill transfers from the Environmental Protection Agency to the Department of Agriculture the authority to issue NPDES permits for agricultural operations that discharge agricultural pollutants from point sources into waters of the state. Authority also is transferred for the issuance of NPDES permits for the discharge of storm water resulting from agricultural operations. The bill defines "agricultural operation" as the activities of farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of those activities; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production. "Agricultural operation" does not include nonagricultural activities that occur at agricultural facilities such as the operation of septic systems and the release of waste waters from the treatment of water supplies. (Sec. 903.01(A).) "Agricultural pollutant" is defined as any pollutant, as defined in the Federal Water Pollution Control Act, that is discharged by an agricultural operation or manure from any source (sec. 903.01(B)). The bill specifies that unless the context indicates otherwise, "discharge" means the addition of agricultural

pollutants from a point source into waters of the state (sec. 903.02(E)). The bill defines "waters of the state" as all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters (sec. 903.01(O)).

In order to effect the transfer, the bill authorizes the Director of Agriculture to participate in the NPDES program in accordance with the Federal Water Pollution Control Act. Within 180 days after the bill's effective date, the Director must prepare a state program in accordance with applicable federal regulations for point sources that are subject to the bill's NPDES permit requirements and must submit the program to the United States Environmental Protection Agency (USEPA) for approval. (Sec. 903.04(M)(1).) On and after the date on which the USEPA approves the state program submitted by the Director, the authority to enforce terms and conditions of NPDES permits previously issued by the Director of Environmental Protection under the Water Pollution Control Law to agricultural operations or to any other person who discharges, transports, or otherwise handles manure is transferred from the Director of Environmental Protection to the Director of Agriculture. After the transfer of authority, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those permits. In addition, the bill specifies that NPDES permits over which authority has been transferred must be considered to have been issued by the Director of Agriculture. (Sec. 903.04(M)(2).) The Director of Environmental Protection, on the date on which the USEPA approves the state program, must provide the Director of Agriculture with both of the following: (1) copies of all NPDES permits issued by the Director of Environmental Protection for the discharge of agricultural pollutants and the discharge of storm water from agricultural operations on or before that date together with any related information that the Director of Agriculture requests, and (2) all permit applications and accompanying information that were submitted with all NPDES permits issued by the Director of Environmental Protection prior to that date for the activities identified in item (1). (Section 5(C).)

The bill adds clarifying language to the Water Pollution Control Law stating that the owner or operator of an agricultural operation or any other person who discharges, transports, or otherwise handles manure is not required to obtain an NPDES permit under that law on and after the date on which USEPA approves the NPDES program submitted by the Director of Agriculture under the bill (sec. 6111.03(J)(1)). Similarly, it states that on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, the statute

in that law providing for the issuance of general NPDES permits regarding storm water does not apply to any person who discharges agricultural pollutants or to the discharge of storm water from an agricultural operation (sec. 6111.035).

Current law prohibits anyone from causing pollution or placing or causing to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is a public nuisance unless the Director of Environmental Protection has issued a permit under the Water Pollution Control Law. The prohibition does not apply to animal excrement defecated on land or runoff from it into any waters of the state. However, that exclusion does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, federal environmental regulations. The bill removes all references to animal wastes in the exceptions to the prohibition and instead provides that on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, the prohibition does not apply to agricultural pollutants or storm water from an agricultural operation. (Sec. 6111.04 and Section 3.)

Finally, the bill removes a reference to the authority of the Director of Environmental Protection under the Water Pollution Control Law that is currently in soil and water conservation law concerning nuisance actions involving agricultural pollution and concentrated animal feeding operations (sec. 1511.021).

Issuance of permits by Director of Agriculture

The bill prohibits a person, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, from discharging an agricultural pollutant from a point source into waters of the state without obtaining a NPDES permit issued by the Director of Agriculture (sec. 903.04(A)(1)). Whoever violates this prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) The bill defines "person" as any legal entity defined as a person under current law, the state, any political subdivision of the state, any interstate body created by compact, the United States, or any department, agency, or instrumentality of any of those entities (sec. 903.01(L)).

Persons who have been issued a permit by the Director of Environmental Protection for the discharge of agricultural pollutants from a point source prior to the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture may continue to operate under that permit until it expires or is modified or revoked. Such a permit must be enforced by the Director of Agriculture upon the transfer of authority to enforce the terms and conditions of the permit (see above). (Sec. 903.04(A)(2).)

The bill also prohibits a person, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, from discharging storm water resulting from an agricultural operation without a NPDES permit issued by the Director of Agriculture as required by rules adopted under the bill (see "*Rules governing NPDES permits*," below) and the Federal Water Pollution Control Act (sec. 903.04(B)(1)). Whoever violates this prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) Persons who have been issued a permit by the Director of Environmental Protection under the Water Pollution Control Law for the discharge of storm water resulting from an agricultural operation prior to the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture may continue to operate under that permit until it expires or is modified or revoked. Such a permit must be enforced by the Director of Agriculture when authority to enforce the terms and conditions of the permit is transferred (see above). (Sec. 903.04(B)(2).)

The bill requires the Director of Agriculture to issue general NPDES permits in lieu of individual permits for point sources that are subject to the bill where practical and to the extent consistent with the Federal Water Pollution Control Act (sec. 903.04(C)).

Under the bill, the Director of Agriculture must establish terms and conditions of NPDES permits in accordance with rules adopted under the bill. The terms and conditions must be designed to achieve and maintain full compliance with national effluent limitations, national standards of performance for new sources, the most current state water quality standards, the most current antidegradation policy established by rule adopted under the bill, and other requirements of the Federal Water Pollution Control Act. In establishing the terms and conditions of a permit, the Director, to the extent consistent with that act, must consider technical feasibility and economic costs and must allow a reasonable time period for complying with the permit. (Sec. 903.04(D).)

The bill prohibits any person from rendering inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit (sec. 903.04(J)(2)). Anyone who knowingly violates this prohibition must be fined not more than \$25,000, with each day of violation constituting a separate offense (sec. 903.99(C)). The bill also prohibits any person from violating any effluent limitation established in rules adopted under the bill or any other provision of a NPDES permit issued under the bill (sec. 903.04(E)(1) and (2)). Whoever violates that prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(B).) The bill specifies that compliance with a NPDES permit issued under the bill constitutes compliance with the bill (sec. 903.04(E)(3)).

Application requirements and procedures. In accordance with applicable rules, an applicant for a NPDES permit must submit an application to the Director of Agriculture on a form prescribed by him along with a fee in an amount established by rule. The application must include any information required by rule. The Director or his authorized representative may assist an applicant for a NPDES permit during the application process by providing guidance and technical assistance. (Sec. 903.04(F).)

The bill requires the Director to issue or deny an application for a NPDES permit within 180 days after receiving it. The Director must deny an application if any of the following applies:

- (1) The application contains misleading or false information;
- (2) The Administrator of the USEPA objects in writing to the issuance of the permit in accordance with the Federal Water Pollution Control Act; or
- (3) The Director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan in accordance with the Federal Water Pollution Control Act.

Additional grounds for denial are those established in the bill and by rule. (Sec. 903.04(G).)

A NPDES permit cannot be issued for a period exceeding five years (sec. 903.04(H)). The bill prohibits a person from making any false statement, representation, or certification in an application for a NPDES permit or permit renewal (see "**Other permit requirements**," below) or in any form, notice, or report required to be submitted to the Director under the terms and conditions established in a NPDES permit. A person who violates this prohibition is not guilty of the general prohibition against falsification of public documents. (Sec. 903.04(J)(1).) Instead, whoever knowingly violates the prohibition must be fined not more than \$25,000. Each day of violation constitutes a separate offense. (Sec. 903.99(C).)

Other permit requirements

A NPDES permit issued under the bill may be renewed. An application for renewal must be submitted to the Director of Agriculture at least 180 days prior to the expiration date of the permit and must comply with the requirements governing applications for NPDES permits established under the bill and by rule. An application for renewal must be issued or denied in accordance with the bill's provisions governing the issuance or denial of initial NPDES permits. (Sec. 903.04(I).)

The bill authorizes the Director to modify, suspend, or revoke a NPDES permit for cause as established by rule. It precludes a NPDES permit from being modified, suspended, or revoked without a written order stating the findings that led to the action. A copy of the order must be sent by certified mail to the person to whom the NPDES permit was issued. (Sec. 903.04(K).)

A NPDES permit may be transferred upon the sale of the agricultural operation or other facility for which it was issued to the new owner or operator in accordance with rules unless the new owner is required to submit background information that shows that the new owner has a history of substantial noncompliance with the Federal Water Pollution Control Act (see "**Background information requirements for certain persons**," below) (sec. 903.04(L)).

The issuance of NPDES permits under the bill and the state NPDES program that the Director of Agriculture must prepare (see above) must be administered in a manner consistent with the Federal Water Pollution Control Act (sec. 903.04(N)).

Appeals concerning permits

The bill specifies that the issuance, denial, modification, suspension, or revocation of a permit by the Director may be appealed to the Environmental Review Appeals Commission as provided in current law governing the Ohio Environmental Protection Agency (OEPA) (sec. 903.04(O)). In addition, the bill specifies that as used in statutory provisions governing appeals to the Commission, "Director of Environmental Protection" and "Director" are deemed to include the Director of Agriculture, and "Environmental Protection Agency" is deemed to include the Department of Agriculture for purposes of the bill's provisions governing agricultural operations (sec. 3745.04).

Rules governing NPDES permits

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act establishing all of the following concerning NPDES permits issued under the bill:

(1) A list of the categories of point sources that discharge agricultural pollutants or storm water into waters of the state that are subject to permit requirements under the bill. The categories must include only point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act;

(2) Effluent limitations governing discharges into waters of the state that are authorized by permits;

(3) Variances from effluent limitations and other permit requirements to the extent that the variances are consistent with the Federal Water Pollution Control Act;

(4) Terms and conditions to be included in a permit, including, as applicable, best management practices; installation of discharge or water quality monitoring methods or equipment; creation and retention of records; submission of periodic reports; schedules of compliance; net volume, net weight, and, where necessary, concentration and mass loading limits of agricultural pollutants that may be discharged into waters of the state; and authorized duration and frequency of any discharges into waters of the state;

(5) Procedures for the submission of applications for permits, including information that must be included in the applications. The rules must include provisions directing a person who is required to obtain both an installation permit for a concentrated animal feeding operation (see "**Permits to construct or modify concentrated animal feeding operations**," below) and a NPDES permit to submit applications for those permits simultaneously;

(6) The amount of the fee that must be submitted with an application for a permit;

(7) Procedures for processing permit applications, including public notice and participation requirements. If a person is required to obtain both an installation permit for a concentrated animal feeding operation and a NPDES permit under the bill and the Director determines that public hearings are necessary for both permits, the permit hearings must be combined and must address the issuance of both permits;

(8) An antidegradation policy consistent with the antidegradation policy that is required to be established by the Director of Environmental Protection under the Water Pollution Control Law. The antidegradation policy established in rules also must apply to installation permits for a concentrated animal feeding operation if the Director determines that the application is necessary in order to comply with the policy established under the Water Pollution Control Law;

(9) Procedures for notifying the USEPA of the submission of permit applications, the Director's action on those applications, and any other reasonable and relevant information;

(10) Procedures for notifying and receiving and responding to recommendations from other states whose waters may be affected by the issuance of a permit;

(11) Procedures for the transfer of permits to new owners or operators; and

(12) Grounds and procedures for the denial, modification, suspension, or revocation of permits. (Sec. 903.05(F).)

The bill requires the rules concerning NPDES permits to be consistent with the requirements of the Federal Water Pollution Control Act (sec. 903.05(F)).

Enforcement of NPDES permit requirements

The bill authorizes the Director of Agriculture or his authorized representative to issue, modify, or revoke orders in accordance with the Administrative Procedure Act requiring compliance with the bill's provisions governing NPDES permits, a NPDES permit issued under those provisions, or rules adopted under the bill concerning NPDES permits (see above). To the extent consistent with the Federal Water Pollution Control Act, the Director or his authorized representative must consider technical feasibility and economic costs in issuing orders and must allow a reasonable period of time for coming into compliance with an order. The bill prohibits violation of an order. (Sec. 903.16(A).)

The bill requires the Attorney General, upon the Director's written request, to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate the bill's NPDES permit provisions, a NPDES permit issued under those provisions, NPDES permit rules adopted under the bill, or an order issued as described above. The court must grant an injunction restraining the person from the violation or threatened violation if the activity endangers public health or the environment. (Sec. 903.16(C)(1).)

If the Director or his authorized representative has reason to believe that any person has violated or is violating a provision, permit, rule, or order as described above, the Director or his authorized representative may conduct an adjudication hearing in accordance with the Administrative Procedure Act to determine whether a violation has occurred or is occurring. The owner or operator may waive the right to such an adjudication hearing. If the Director or his authorized representative determines that a violation has occurred or is occurring, the Director or his authorized representative must assess a civil penalty of not more than \$10,000 per violation against the violator. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. (Sec. 903.16(B).)

In lieu of seeking civil penalties himself, the Director may request the Attorney General, in writing, to bring an action for a civil penalty of not more than \$10,000 per violation in a court of competent jurisdiction against any person that

has violated or is violating a provision, permit, rule, or order as described above. For purposes of determining the civil penalty, each day that a violation continues constitutes a separate and distinct violation. (Sec. 903.16(C)(2).)

Permits to construct or modify concentrated animal feeding operations

Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture

The bill transfers the authority to enforce terms and conditions of installation permits for concentrated animal feeding operations (CAFOs) issued prior to the date on which the Director of Agriculture has finalized the program required by the bill for the issuance of permits for the construction or modification of CAFOs (see below) from the Director of Environmental Protection to the Director of Agriculture. Further, the bill grants the Director of Agriculture the authority to issue all new installation permits for disposal systems for agricultural pollutants. On and after that date, the Director of Environmental Protection will have no authority to enforce the terms and conditions of those installation permits. (Sec. 903.15(B).) Additionally, on that date the Director of Environmental Protection must provide the Director of Agriculture with both of the following: (1) copies of all permits issued by the Director of Environmental Protection on or before that date for the installation of disposal systems for agricultural operations and any related information requested by the Director of Agriculture, and (2) all permit applications and accompanying information that were submitted to the Director of Environmental Protection prior to that date for the installation of such disposal systems (Section 5(B)).

The bill defines "concentrated animal feeding operation" to mean a site, tract of land, building, or structure to which all of the following apply:

(1) Animals, other than aquatic animals, have been, are, or will be stabled or confined, and fed or maintained, there for a total of 45 days or more during any 12-month period;

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season on any portion of the site or tract of land on which are located buildings or structures in which animals are stabled or confined;

(3) Buildings or structures in which animals are stabled or confined on the site or tract of land, together with buildings or structures in which animals are stabled or confined on adjoining sites or tracts of land or on sites or tracts of land with which is shared a common waste disposal system, have a total design capacity of more than 1,000 animal units. (Sec. 903.01(D).)

The bill defines "animal unit" as a unit of measurement calculated by adding the following numbers:

- (1) The number of slaughter and feeder cattle multiplied by one;
- (2) The number of mature dairy cattle whether milked or dry multiplied by 1.4;
- (3) The number of swine each weighing over 55 pounds multiplied by .4;
- (4) The number of horses multiplied by two;
- (5) The number of sheep or lambs multiplied by .1;
- (6) The number of turkeys multiplied by .02;
- (7) The number of laying hens or broilers multiplied by .01; and
- (8) The number of ducks multiplied by .2. (Sec. 903.01(A).)

The bill adds clarifying language to the Water Pollution Control Law stating that the owner or operator of an agricultural operation or any other person who discharges, transports, or otherwise handles manure is not required to obtain an installation permit under that law on and after the date on which the Director of Agriculture has finalized the program for the issuance of permits for the construction or modification of CAFOs required under the bill (sec. 6111.03(J)(1)).

Existing law prohibits anyone from providing or installing sewerage or treatment works for sewage disposal or making a change in any sewerage or sewage treatment works until the plans have been submitted to and approved by the Director of Environmental Protection. The Director may stipulate modifications, conditions, and rules that the public health and prevention of pollution require. Exempt from obtaining plan approval are animal waste treatment and disposal works and related management and conservation practices that are subject to rules adopted under the Division of Soil and Water Conservation Law and that involve fewer than 1,000 animal units, other than those having a controlled direct discharge to waters of the state. Under the bill, these provisions also do not apply to agricultural pollutants or storm water from an agricultural operation (see above). (Sec. 6111.44.)

Issuance of permits by Director of Agriculture

Application requirements and procedures. Not later than 180 days after the bill's effective date, the Director of Agriculture must prepare a state program

for the issuance of permits for the construction or modification of CAFOs (installation permits) under the bill (sec. 903.02(B)(1)). On and after the date on which the Director has finalized the program, no one can modify an existing or build a new CAFO without obtaining an installation permit issued by the Director (sec. 903.02(B)(2)). The Director or his authorized representative may offer assistance to an applicant by providing guidance and technical assistance during the permitting process (sec. 903.02(C)).

The bill requires an applicant for an initial permit to submit an application on a form prescribed and provided by the Director. The applicant also must submit an application fee in an amount established in rules (see "**Rules governing installation permits**," below). The following information must be included in an application for an initial permit:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The type of livestock and the number of animal units that the operation would have the design capacity to raise or maintain;

(3) Design and engineering plans for the proposed construction of the operation that include the proposed location of the construction, design and engineering construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the Director requires by rule;

(4) A manure management plan for the operation that conforms to best management practices, as established in rules, regarding the handling, storage, transportation, and land application of manure generated at the operation and that contains any other information required by rule. "Manure" means animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta (sec. 903.01(H)). "Mortality composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material (sec. 903.01(J));

(5) An insect and rodent control plan for the operation (see "**Insect and rodent control plans**," below);

(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act, if required (see "**Background information requirements for certain persons**," below);

(7) If the application is for an operation that would have a total design capacity to raise or maintain more than 10,000 animal units, written proof that the person who would be responsible for the supervision of the management and handling of manure at the operation has been issued a livestock manager certification (see "**Livestock manager certifications**," below);

(8) If an application meets the criteria established under the bill requiring a meeting with county commissioners and township trustees, written statements from both the applicable commissioners and trustees certifying that the applicant has met and discussed with them the potential impact of the new or expanded operation on county and township roads (see "**Discussions with boards of county commissioners and boards of township trustees**," below);

(9) A statement of the quantity of water that the CAFO will utilize on an average daily and annual basis, a detailed description of the basis for the calculation utilized in determining the quantity of water utilized, and a statement identifying the source for the water; and

(10) Any other information required by rule. (Sec. 903.02(D).)

The bill specifies that information required to be included in an application for a permit modification, along with the applicable fee amount, must be established in rules. (Sec. 903.02(D).)

Prior to issuing an installation permit, the Director must issue a draft permit. Notice of the issuance of the draft permit must be published once in newspapers of general circulation determined by the Director to provide reasonable notice to persons that may be affected by the issuance of the permit. The Director also may submit notice to trade journals for publication and may notify directly by mail or otherwise trade associations and other persons that may be interested in the issuance of the permit. The notice must include the address where written comments concerning the draft permit may be submitted and the period of time during which comments will be accepted. If the Director receives written comments in an amount that demonstrates significant public interest, as defined by rule adopted under the bill (see below), in the draft permit, the Director must schedule a public meeting or a public hearing. The public meeting or hearing must be held within 30 days after the expiration of the public comment period. Notice of the public meeting or hearing must be provided in the same manner as the notice of the issuance of the draft permit and must be provided within 14 days prior to the meeting or hearing. The bill specifies that failure of the Director to

provide notice does not invalidate an installation permit issued under the bill. (Sec. 903.02(E).)

Within 90 days after receiving a permit application, the Director must issue or deny the permit. However, if the operation also is required to obtain a NPDES permit from the Director of Agriculture, the Director must issue or deny the installation permit not later than 180 days after receiving the application (see above). If the permit is denied, the Director must notify the applicant in writing of the reason for the denial. The Director must deny a permit if either of the following applies:

(1) The permit application contains incomplete, misleading, or false information; or

(2) The design and engineering plans, manure management plan, or insect and rodent control plan fails to conform to best management practices. (Sec. 903.02(F).)

Additional grounds for the denial of a permit are those established in the bill and rules adopted under it (sec. 903.02(F)). In addition, the Director may suspend or revoke a permit in accordance with rules (sec. 903.02(I)).

An installation permit cannot be issued for a period exceeding five years (sec. 903.02(G)). A permit may be renewed. An application for renewal must be submitted to the Director at least 180 days prior to the expiration date of the permit and must comply with the requirements governing applications for initial permits established under the bill and by rule. (Sec. 903.02(H).)

Under the bill, when ownership of an operation for which a permit has been issued under the bill or an installation permit has been issued under the Water Pollution Control Law is transferred, the permit or installation permit is transferable to the new owner of the operation unless the new owner is required to submit background information that shows that the new owner has a history of substantial noncompliance with the Federal Water Pollution Control Act (see "**Background information requirements for certain persons**," below). The new owner is not required to apply for a permit solely because ownership of the operation has been transferred. (Sec. 903.02(J).)

Under the bill, the issuance, denial, suspension, or revocation of a permit by the Director may be appealed to the Environmental Review Appeals Commission as provided in current law governing OEPA (sec. 903.02(K)).

The bill specifies that nothing in it affects existing law that requires the registration of and reporting by facilities having the capacity to withdraw more than 100,000 gallons of water in the state (sec. 903.02(L)).

Background information requirements for certain persons. The bill requires that each application for an installation permit issued under the bill that is submitted by an applicant who has not operated a CAFO in Ohio for at least two of the five years immediately preceding the submission of the application must be accompanied by all of the following information enumerated under (1) to (3), below, in addition to the other information required under the bill (see above). The bill also requires a person who seeks to acquire a CAFO that has been issued an installation permit or NPDES permit, prior to the transfer of the permit, to submit to the Director of Agriculture all of the following information:

(1) A listing of all CAFOs that the owner or operator of the proposed new or modified CAFO has operated or is operating in this state;

(2) A listing of the CAFOs that the owner or operator has operated or is operating in other areas of the United States and that are regulated under the Federal Water Pollution Control Act; and

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act that was alleged to have occurred or to be occurring at any CAFO that the owner or operator has operated or is operating in the United States. (Sec. 903.03(A) and (C).)

The lists of CAFOs operated by the owner or operator within or outside Ohio must include, respectively, all such operations operated by the owner or operator during the five-year period immediately preceding the submission of the application. (Sec. 903.03(A).)

If the person has been involved in any prior activity involving the operation of a CAFO, the Director of Agriculture may deny the application or, if applicable, must prohibit the permit from being transferred if he finds from the application, the information submitted under (1) to (3), above, pertinent information submitted to him, and other pertinent information obtained by him at his discretion that the person and, in the case of an applicant for a permit, associates of the applicant, in the operation of CAFOs, have a history of substantial noncompliance with the Federal Water Pollution Control Act that indicates that the person lacks sufficient

reliability, expertise, and competence to operate the proposed new or modified CAFO in substantial compliance with the bill and rules adopted under it. (Sec. 903.03(B) and (C).)

Rules governing installation permits. The bill requires the Director of Agriculture to adopt rules on specified topics in accordance with the Administrative Procedure Act. First, the rules must establish all of the following concerning installation permits issued under the bill:

- (1) A description of what constitutes a modification of a CAFO;
- (2) The amount of the fee that must be submitted with an initial permit application and an application for a permit modification;
- (3) Information that must be included in design and engineering plans required to be submitted with the permit application and criteria for approving, disapproving, or requiring modification of the plans;
- (4) Information that must be included in a manure management plan required to be submitted with a permit application;
- (5) Information that must be included in an application for the modification of a permit that initially was issued under the Water Pollution Control Law for the installation of a disposal system at a CAFO and of a permit that initially was issued under the bill;
- (6) Any additional information that must be included with a permit application;
- (7) A definition of what constitutes significant public interest and procedures for public meetings and public hearings held on applications for installation permits (see above). The rules must provide that information presented at such a public meeting or hearing be limited to the criteria determined by the Director to be essential to the issuance of the permit that is the subject of the public meeting or hearing; and
- (8) Grounds for the denial, suspension, or revocation of a permit in addition to the grounds established under the bill. (Sec. 903.05(C).)

The rules also must establish best management practices that minimize water pollution, odors, insects, and rodents and that govern all of the following activities that occur at a CAFO:

- (1) Manure management, including, without limitation, the storage, handling, transportation, and land application of manure. The rules must include

practices that prevent ground water contamination caused by the land application of manure or the contamination of water in drainage tiles that may be caused by that application.

- (2) Disposal of dead livestock; and
- (3) Any other activity that the Director considers appropriate.

Best management practices established in the rules must not conflict with best management practices established in rules that have been adopted under existing law and that are in effect on the bill's effective date. (Sec. 903.05(D).)

The bill requires the rules to establish the amount of civil penalties assessed for violation of the terms of a permit, but the rules cannot establish a civil penalty of more than \$10,000 for each violation (see "*Enforcement of permit requirements*," below) (sec. 903.05(E)). Finally, the bill requires the rules to establish any other provisions necessary to administer and enforce the bill (sec. 903.05(I)).

Enforcement of permit requirements. The bill authorizes the Director of Agriculture, in accordance with an adjudication hearing conducted under the Administrative Procedure Act, to issue, modify, or revoke orders and assess civil penalties in an amount established in rules to ensure that the owner or operator of a CAFO for which a permit has been issued complies with the terms of the permit, including, but not limited to, the manure management plan and the insect and rodent control plan. The Director may so enforce permits issued by him under the bill as well as permits for the installation of disposal systems at CAFOs issued under the Water Pollution Control Law prior to the bill's effective date. (Sec. 903.15(A).)

In lieu of seeking civil penalties as described above, the Director may request the Attorney General, in writing, to bring an action for a civil penalty of not more than \$10,000 per violation in a court of competent jurisdiction against any person that has violated or is violating the bill's provisions governing the issuance of installation permits; the terms of an installation permit; rules governing installation permits; or an order to enforce compliance with an installation permit, a manure management plan, or an insect and rodent control plan. For purposes of determining such a civil penalty, each day that a violation continues constitutes a separate and distinct violation. (Sec. 903.15(C)(2).)

The bill requires the Attorney General, upon the written request of the Director of Agriculture, to bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate the bill's provisions governing the issuance of installation permits; the terms of an

installation permit; rules governing installation permits; or an order to enforce compliance with an installation permit, a manure management plan, or an insect and rodent control plan. The court must grant an injunction restraining the person from the violation or threatened violation if the activity endangers public health or the environment. (Sec. 903.15(C)(1).)

Under the bill, whoever does not obtain a permit from the Director for the modification of an existing or construction of a new CAFO is guilty of a third degree misdemeanor on a first offense, a second degree misdemeanor on a second offense, and a first degree misdemeanor on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense. (Sec. 903.99(A).)

Review compliance certificates for existing CAFOs

The bill prohibits any person, on and after two years after the date on which the Director has finalized the program for the issuance of permits for the construction or modification of CAFOs, from operating an existing concentrated animal feeding operation without a review compliance certificate issued under the bill (sec. 903.021(B)). The bill defines "existing concentrated animal feeding operation" as a concentrated animal feeding operation that was in existence prior to the date on which the Director finalized the program and that has received an installation permit under the Water Pollution Control Law prior to that date (sec. 903.021(A)).

Within two years after the date on which the Director has finalized the program, the Director must review the installation permit that was issued to an existing operation under the Water Pollution Control Law and must inspect the operation to determine if it is in compliance with that permit (sec. 903.021(B)(1)). Also within that time frame, and except as otherwise provided under the bill (see below), the owner or operator of an existing operation must furnish all of the following to the Director on a form prescribed by the Director:

(1) The name and address of the owner, of all partners if the owner is a partnership or of all officers and directors if the owner is a corporation, and of any other person who has a right to control or in fact controls management of the operation or the selection of officers, directors, or managers of the operation;

(2) The type of livestock and number of animal units that the operation would have the design capacity to raise or maintain;

(3) A manure management plan for the operation that conforms to best management practices regarding the handling, storage, transportation, and land

application of manure generated at the operation and that contains any other information required by rule adopted under the bill;

(4) An insect and rodent control plan for the operation prepared in accordance with the bill (see "***Insect and rodent control plans***," below); and

(5) In the case of a major CAFO, written proof that the person who would be responsible for the supervision of the management and handling of manure at the operation has been issued a livestock manager certification in accordance with the bill (see "***Livestock manager certifications***," below). (Sec. 903.021(B)(2).) "Major concentrated animal feeding operation" is defined as a CAFO with a total design capacity of more than 10,000 animal units (sec. 903.02(G)).

The owner or operator does not need to furnish any information otherwise required under the bill if that information is included in the installation permit that was issued for the existing operation (sec. 903.021(B)(2)).

After a review of the existing installation permit, an inspection of the operation, and a review of the information furnished under the bill, and upon determining that the existing operation is being operated in a manner that protects the waters of the state and minimizes the presence and negative effects of insects and rodents at the operation and in surrounding areas, the Director must issue a review compliance certificate to the operation. In issuing the certificate, the Director must consider technical feasibility and economic costs. The Director must not require a significant capital expenditure, as defined by rule adopted under the bill (see below), by the operation before issuing a certificate. (Sec. 903.021(C).)

A certificate is valid for a period not to exceed five years. The Director must renew the certificate issued to an existing operation unless a court with competent jurisdiction has finally determined that the operation has violated the bill's provisions or rules adopted under it during the immediately preceding five-year period (sec. 903.021(D)(1)). The bill authorizes the Director to revoke a certificate if a court with competent jurisdiction has finally determined that the operation has violated the bill's provisions or rules adopted under it during the immediately preceding five-year period. An existing operation whose certificate was revoked must obtain an installation permit under the bill (see above) and, if applicable, a NPDES permit issued under the bill (see above) in order to resume operations. (Sec. 903.021(D)(2).)

An existing operation that is issued a certificate must comply with all state and federal laws (sec. 903.021(E)). The bill specifies that a certificate must not be considered a new permit or a modification of an existing permit requiring public notice or hearing (sec. 903.021(F)(1)). Finally, the issuance of a certificate

is not subject to appeal under the Administrative Procedure Act or to the Environmental Review Appeals Commission (sec. 903.021(F)(2)).

The bill authorizes the Director to issue orders to ensure that the holder of a review compliance certificate complies with a certificate. Orders may be enforced in the same manner as orders issued to enforce installation permits (see above). (Sec. 903.15(A).)

Rules governing review compliance certificates

The bill requires the Director to adopt rules for the purposes of review compliance certificates in accordance with the Administrative Procedure Act. The rules must establish the form of a certificate and criteria for what constitutes a significant capital expenditure that cannot be required by the Director (see above). (Sec. 903.05(H).)

Livestock manager certifications

On and after the date that is 18 months after the bill's effective date, the bill requires certain persons to obtain a livestock manager certification. Under the bill, the management and handling of manure at a major concentrated animal feeding operation, including at least the land application of manure or the removal of manure from a manure storage or treatment facility, must be conducted only by or under the supervision of a person holding a valid livestock manager certification. "Manure storage or treatment facility" means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure (sec. 903.01(I)). A person managing or handling manure who is acting under the instructions and control of a person holding a valid livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present at the time of the manure management or handling. (Sec. 903.07(A)(1).) In addition, a person is prohibited from transporting, buying, or selling annually the volume of manure established by rules adopted by the Director of Agriculture unless the person holds a valid livestock manager certification (see "**Rules governing livestock manager certifications**," below) (sec. 903.07(A)(2)). A person who is required to obtain a livestock manager certification and who fails to do so is required to pay a civil penalty (see "**Civil penalties applicable to livestock manager certifications and insect and rodent control plans**," below).

The bill requires the Director to issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the Director, together with the appropriate application fee, and who successfully has completed the required training and has passed the

required examination. The Director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked certification in accordance with rules. (Sec. 903.07(B).) Information required to be included in an application for a livestock manager certification, the amount of the application fee, and requirements regarding training and the examination must be established by rules adopted by the Director (sec. 903.07(C)).

Rules governing livestock manager certifications

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning livestock manager certifications:

(1) The information to be included in an application for a certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant. The training must include and the examination must test the applicant's knowledge of information on topics that include, without limitation, calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment (see above);

(3) Criteria and procedures for the denial, suspension, revocation, or reinstatement of a certification;

(4) The length of time during which certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported, bought, or sold annually by a person in order for the person to be required to obtain a livestock manager certification; and

(6) Any other provisions necessary to administer and enforce the bill's provisions concerning livestock manager certifications. (Sec. 903.05(A).)

Insect and rodent control plans

The bill requires an owner or operator of a CAFO to prepare and submit to the Director of Agriculture in accordance with rules adopted under the bill an insect and rodent control plan designed to minimize the presence and negative effects of insects and rodents at the operation and in surrounding areas, including

land on which manure is stored or applied (see "*Rules governing insect and rodent control plans*," below). In addition, the plan must conform to best management practices established in rules. The Director must approve or deny the plan not later than 30 days following its receipt and may require modification of the plan at that time or a later time in accordance with rules. (Sec. 903.09(B).)

On and after the date that is 18 months after the bill's effective date, the bill prohibits a person from owning or operating a CAFO unless an insect and rodent control plan for the operation has been approved by the Director of Agriculture (sec. 903.09(C)). The bill requires the Director to enforce an insect and rodent control plan in accordance with rules adopted under the bill and to assess a civil penalty, in accordance with those rules and the bill's provisions, against an owner or operator of a CAFO who operates it without an insect and rodent control plan approved by the Director or who violates the operation's plan (see "*Civil penalties applicable to livestock manager certifications and insect and rodent control plans*," below) (sec. 903.09(D)).

Rules governing insect and rodent control plans

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning insect and rodent control plans:

- (1) The information to be included in a plan;
- (2) Criteria for approving, disapproving, or requiring modification of a plan;
- (3) Criteria for determining compliance with or violation of a plan;
- (4) Procedures and standards for monitoring plans;
- (5) Procedures and standards for enforcing plans at CAFOs at which insects or rodents constitute a nuisance or adversely affect public health; and
- (6) The amount of civil penalties for violation of a plan assessed under the bill's provisions, provided that the rules must not establish a civil penalty of more than \$10,000 for a violation involving a CAFO with a total design capacity of 10,000 or fewer animal units or more than \$25,000 for a violation involving a major CAFO. (Sec. 903.05(B).)

Civil penalties applicable to livestock manager certifications and insect and rodent control plans

The bill authorizes the Director of Agriculture or his authorized representative to conduct an adjudication hearing in accordance with the Administrative Procedure Act whenever the Director or his authorized representative has cause to believe that any person has violated or is violating any of the following: (1) the bill's requirement that the management and handling of manure at a major CAFO be conducted only by or under the supervision of a person holding a valid livestock manager certification, (2) the bill's prohibition against a person transporting, buying, or selling annually the volume of manure established by rules adopted by the Director unless the person holds a valid livestock manager certification, or (3) the bill's prohibition against a person owning or operating a CAFO unless an insect and rodent control plan for the operation has been approved by the Director.

If the Director or his authorized representative determines that the person has violated or is violating (1), (2), or (3), above, the Director must assess a civil penalty against the person. The owner or operator may waive the right to such an adjudication hearing. A person who has violated (1) or (2), above, must pay a civil penalty of not more than \$10,000 for each violation. A person who has violated (3), above, must pay, for each violation, a civil penalty in an amount established in rules adopted by the Director (see above). In the case of a violation of (1) or (2), above, each 30-day period during which the violation continues constitutes a separate violation. In the case of a violation of (3), above, each seven-day period during which the violation continues constitutes a separate violation. (Sec. 903.14.)

Emergency enforcement authority and recovery of costs for clean-up of agricultural pollutant spills

If the Director of Agriculture determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the Director, notwithstanding the bill's other enforcement provisions, may issue an order, without notice or 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 a hearing as soon as possible and not later than 30 days after the application. On the basis of the hearing, the Director must continue the order in effect, revoke it, or modify it. No emergency order can remain in effect for more than 120 days after its issuance. (Sec. 903.17(A).)

A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of agricultural pollutants 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. Moneys recovered must be paid into the state treasury to the credit of the Livestock Management Fund created by the bill (see "*Management of NPDES and CAFO programs by Department of Agriculture; Livestock Management Fund*," below.) (Sec. 903.17(B).)

Discussions with boards of county commissioners and boards of township trustees

The bill requires that any person who proposes to establish a new major CAFO or to expand certain existing CAFOs first meet with the board of county commissioners of the county and the board of trustees of the township in which a proposed new or expanded operation is or is to be located. This requirement applies to any person who proposes to do any of the following:

(1) Establish a new major CAFO;

(2) Increase the number of animal units of design capacity of an existing major CAFO by 10% or more in excess of the design capacity set forth in the current permit for construction or modification of the operation issued by the Director of Agriculture under the bill or the current permit for the installation or modification of the disposal system for manure at the operation issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable (see above); or

(3) Increase the number of animal units of design capacity of an existing CAFO to more than 10,000 animal units and by 10% or more in excess of the design capacity set forth in the current permit for the construction or modification of the operation issued by the Director of Agriculture under the bill or the current permit for the installation or modification of the disposal system for manure at the operation issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable. (Secs. 307.203(B) and 505.266(B).)

The bill establishes identical requirements governing meetings with county commissioners and township trustees. Under those requirements, in order to initiate a meeting with either the board of county commissioners or the board of township trustees, the person must notify the board of the proposed construction or expansion of the operation not later than ten days prior to a regular or special session of the board. The bill further requires the person to submit the anticipated

travel routes of motor vehicles to and from the operation and the anticipated number and weights of motor vehicles traveling to and from the operation.

If the board receives a timely notice from the person, it must schedule the meeting. The meeting with the board of county commissioners may be conducted jointly with the meeting with the board of township trustees. Such a joint meeting must be conducted not later than 30 days after receipt of the notice required under the bill. (Secs. 307.203(C) and 505.266(C).)

At the meeting, the board and the person must discuss the potential impacts of the operation on county or township infrastructure, as applicable. At the board's request, the county engineer may attend the meeting and advise the board on both of the following:

(1) Improvements and maintenance of improvements that are reasonably needed in order to accommodate the impact on county or township infrastructure that is anticipated as a result of the operation, including increased travel or the types of vehicles on county or township roads; and

(2) The projected costs of the improvements and maintenance. (Secs. 307.203(D) and 505.266(D).)

"Improvement" is defined to mean the construction, modification, or both of county or township infrastructure, as applicable (secs. 307.203(A) and 505.266(A)).

Following the meeting, the board may request the person to provide additional reasonable and relevant information regarding the impact of the operation on county or township infrastructure. The person must respond in a timely manner. (Secs. 307.203(D) and 505.266(D).)

Not later than 30 days after the meeting, the board must submit to the person its recommendations concerning the improvements that will be needed as a result of the operation and the cost of those improvements (secs. 307.203(E)(1) and 505.266(E)(1)). Not later than 15 days after receipt of the board's recommendations, the person must notify the board either that the person agrees with the recommendations and will implement them or that the person is submitting reasonable alternative recommendations or modifications to the board. If the person agrees with the recommendations, they must be considered to be the board's final recommendations (secs. 307.203(E)(2) and 505.266(E)(2)). If the board receives alternative recommendations or modifications, the board must select final recommendations and submit them to the person not later than 30 days after receiving the alternative recommendations or modifications (secs. 307.203(E)(3) and 505.266(E)(3)).

The bill requires the board to prepare a written, dated statement certifying that the meeting occurred and that final recommendations were selected regarding needed improvements and the costs of those improvements. The board must provide the person with the original of the statement so that the person can include it with the application for a permit for the operation as required under the bill (see above). The board must retain a copy of the statement for its records. (Secs. 307.203(F) and 505.266(F).)

The bill requires the person to construct, modify, and maintain or finance the construction, modification, and maintenance of improvements as provided in the board's final recommendations and with the approval and oversight of the county engineer. If the person fails to do so, the board must notify the person by certified mail that the board intends to initiate mediation with the person if the person remains out of compliance with the final recommendations. If the person remains out of compliance, the board may initiate mediation with the person in order to resolve the differences between them. If mediation fails to resolve the differences, the board and the person first must attempt to resolve the differences through any legal remedies before seeking redress through a court of common pleas. (Secs. 307.203(G) and 505.266(G).)

If the person subsequently submits an application under the bill for a permit to modify the operation (see above), or if the routes of travel to or from the operation change for any reason other than road construction conducted by the county or township, as applicable, the board or the person may request a meeting and must proceed as provided under the bill for the original meeting (see above) (secs. 307.203(H) and 505.266(H)).

Management of NPDES and CAFO programs by Department of Agriculture

Authority to enter upon property

The bill authorizes the Director of Agriculture or his authorized representative at reasonable times to enter upon any public or private property, real or personal, to make investigations and inspections, including the sampling of discharges and the inspection of discharge monitoring equipment, or to otherwise execute duties necessary for the administration and enforcement of the bill.

The Director or his authorized representative at reasonable times may examine and copy any records pertaining to discharges that are subject to the bill or any records that are required to be maintained by the terms and conditions of a NPDES permit issued under the bill (see above). If refused entry, the Director or his authorized representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant. (Sec. 903.06(A).) The bill prohibits any person to whom an installation or NPDES permit has been issued

from refusing entry to the Director or his authorized representative or purposely hindering or thwarting the Director or his authorized representative in the exercise of any authority granted as described above (sec. 903.06(B)).

Contracts; grants and loans

The bill authorizes the Director to enter into contracts or agreements to carry out the bill's purposes with any person or public or private organization, including, without limitation, The Ohio State University Extension Service, the Natural Resources Conservation Service in the United States Department of Agriculture, the Environmental Protection Agency, the Division of Soil and Water Conservation in the Department of Natural Resources, and soil and water conservation districts established under existing law. However, the bill prohibits the Director from entering into such a contract or agreement for the review of applications for NPDES permits or for the issuance of those permits. (Sec. 903.08(A).) The bill also allows the Director to administer grants and loans using moneys from the federal government and other sources, public or private, for carrying out any of the Director's functions, including moneys from the Water Pollution Control Loan Fund and the Nonpoint Source Pollution Management Fund established under existing law (sec. 903.08(B)). The bill authorizes the Director of Environmental Protection to enter into agreements to make passthrough grants of moneys credited to the Water Pollution Control Loan Fund to the Director of Agriculture for those purposes (sec. 6111.036(R)). Current law authorizes the Director of Environmental Protection to enter into agreements to make grants of moneys credited to the Nonpoint Source Pollution Management Fund, including passthrough grants to other state departments or agencies (sec. 6111.037(A), not in the bill).

Livestock Management Fund

The bill creates the Livestock Management Fund in the state treasury into which all money collected by the Director from application fees paid and from civil penalties assessed under the bill and all money collected from civil actions brought to recover the costs of clean-ups of spills of agricultural pollutants (see above) must be deposited. Money credited to the fund must be used solely for administering the bill. (Sec. 903.10.)

Nuisances

Complaint procedures

The bill authorizes a person who is aggrieved or adversely affected by an alleged nuisance related to a CAFO to submit a complaint to the Director of Agriculture alleging that the nuisance exists. The complaint may be made orally

or in writing. If the complaint is made in writing, it must be signed by the person making it and dated. (Sec. 903.11(A).) After receiving a written, signed, and dated complaint, the Director must, or after receiving an oral complaint the Director may, cause an investigation to be conducted to determine if the owner or operator of the CAFO is complying with an installation or NPDES permit or with best management practices established in rules adopted under the bill (see above). (Sec. 903.11(B).)

If, upon completion of the investigation, the Director determines that the owner or operator is in compliance with an installation or NPDES permit or with best management practices, he must dismiss the complaint and notify the complainant and the owner or operator of the dismissal. However, if the Director determines that the owner or operator is not in compliance with such a permit or with best management practices, he must issue an order in accordance with the Administrative Procedure Act that describes the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct them, and the time period within which the owner or operator must correct the deficiencies and attain compliance with the permit or with best management practices. In addition, the bill authorizes the Director to conduct an adjudication hearing in accordance with the Administrative Procedure Act regarding the issue of compliance with the permit or with best management practices. If the adjudication confirms the Director's determination that the owner or operator is not in compliance, the Director may assess a civil penalty against the owner or operator in an amount established in rules. The owner or operator may waive the right to such an adjudication hearing. (Sec. 903.11(C).)

If the owner or operator fails to attain compliance within the time period specified in the order, the Director must conduct an adjudication hearing as described above. If the adjudication hearing confirms the Director's determination that the owner or operator is not in compliance, the Director must assess a civil penalty against the owner or operator in an amount established in rules. The owner or operator may waive the right to such an adjudication hearing. (Sec. 903.11(D).)

Affirmative defense for CAFO owners and operators meeting specified requirements

The bill stipulates that in a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFO, it is an affirmative defense if the person owning, operating, or otherwise responsible for the CAFO is in compliance with best management practices established in rules and the agricultural activities do not violate federal, state, and local laws governing nuisances. (Sec. 903.12.)

Nonbinding arbitration

The bill requires that prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFO, the parties to the dispute submit the dispute to an arbitrator for nonbinding arbitration. The parties must pay the arbitrator a reasonable compensation based on the extent and duration of actual service rendered. The bill requires that the cost of the arbitrator's services be divided proportionately among the parties. If the decision reached by the arbitrator is not accepted by all parties to the dispute, the complaining parties may file a civil action, and the claim will proceed as if it had not been submitted to nonbinding arbitration. The bill further provides that no oral or written statement prepared for or made in the nonbinding arbitration by the arbitrator or any of the parties, including any mental impression, recommendation, or decision by the arbitrator, is subject to discovery or admissible into evidence in any litigation or proceeding for any purpose, including impeachment. The arbitrator must be disqualified as a witness, consultant, or expert on any subject that is related to the arbitration. (Sec. 903.13.)

Rules governing protection of trade secrets

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish procedures for the protection of trade secrets from public disclosure. The procedures must authorize the release of trade secrets to officers, employees, or authorized representatives of the state, another state, or the United States when necessary for an enforcement action brought under the bill or when otherwise required by the Federal Water Pollution Control Act (see above). The rules must require at least ten days' written notice to the person to whom a trade secret applies prior to the release of the trade secret. The rules do not apply to any information that is contained in applications, including attachments, for NPDES permits and that is required to be submitted under the bill's provisions governing the issuance of NPDES permits or under rules concerning NPDES permits that must be adopted under the bill. (Sec. 903.05(G).)

Concentrated Animal Feeding Operation Advisory Committee

The bill creates the Concentrated Animal Feeding Operation Advisory Committee consisting of the Directors of Agriculture, Environmental Protection, and Natural Resources and the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, or their designees, as members *ex officio*, and nine members to be appointed by the Director of Agriculture. Of the appointed members, the designated number of persons must represent the following interests: one, the interests of poultry producers; one, the interests of swine producers; one, the interests of dairy farmers; one, the interests

of beef cattle producers; one, the interests of sheep producers; and four, the interests of the public. The bill requires the Director, prior to making an appointment, to solicit a list of suggested candidates from the appropriate statewide trade associations to represent the above named interests, other than the public. It also specifies that the members representing the public cannot be owners or operators of CAFOs or associated with CAFOs by contract. The Director must make initial appointments to the committee within 30 days after the bill becomes effective. Initial terms of office are staggered for one-, two-, and three-year terms, with terms of office following initial appointments lasting three years. (Sec. 903.18(A).)

The bill enacts standard language regarding the appointment of members, the filling of vacancies, and a member's duty to continue in office until the expiration of his term. Members may be reappointed. Serving as an appointed member of the committee does not constitute holding a public office or a position of employment and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The Director of Agriculture, after notice and a public hearing, may remove any appointed member for misfeasance, nonfeasance, or malfeasance in office. Appointed members must serve without compensation for attending meetings, and all members are to be reimbursed for actual and necessary expenses incurred in the performance of their official duties. (Sec. 903.18(A).)

The committee is required to meet as the chairperson or a majority of the committee considers appropriate, provided that at least seven days' written notice of a committee meeting is provided to all members when a meeting is held on the call of the chairperson. The Director of Agriculture must designate a chairperson and vice-chairperson for the committee annually. A majority vote of the members is necessary for the committee to take action, but a vacancy on the committee does not impair the right of remaining members to exercise all committee powers. (Sec. 903.18(A).)

The committee may adopt rules or procedures governing the conduct of its internal affairs and request from the Director of Agriculture, and the Director must provide, meeting space, staff support, services, and data to enable it to carry out its functions (sec. 903.18(B)). The bill requires the committee to do all the following:

- (1) Advise the Director of Agriculture in the administration of the bill;
- (2) Keep abreast of advances in manure management practices and annually advise the Directors of Agriculture, Environmental Protection, and Natural Resources of those advances and the need for amending what constitutes best management practices;

(3) In consultation with the Director of Agriculture, prepare, and, upon request, distribute written materials designed to assist persons who propose to establish a new or modify an existing CAFO in applying for an installation permit issued by the Director under the bill (see above). The materials also must include information indicating that, in addition to obtaining that permit, it may be necessary to obtain a NPDES permit under the bill to discharge agricultural pollutants or storm water (see above). The written materials also must include information indicating what constitutes a "complete application" for all of those permits, information about the public hearing process conducted in connection with the issuance of the permits under the bill (see above), and a summary of the antidegradation policy established in rules adopted under the bill (see above) and an indication of the possibility that the new or modified disposal system for manure or discharges also may be subject to that policy; and

(4) Not later than 12 months after the bill's effective date, conduct an examination of the scientific appropriateness of the definition of "animal unit" established in the bill (see above) and prepare and submit findings and recommendations to the General Assembly, the Governor, and the Directors of Agriculture, Environmental Protection, and Natural Resources concerning any legislative changes in the definition that are necessary or appropriate to reflect on a more scientific basis manure generation rates among livestock species and types of CAFOs. (Sec. 903.18(C).)

The bill specifies that current law requiring certain boards, commissions, committees, or councils to expire four years after their creation or renewal does not apply to the Committee (sec. 903.18(D)). Finally, the bill appropriates \$25,000 from the General Revenue Fund in fiscal year 2001 for the Committee's operation (Section 4).

Appropriations

In addition to the appropriation for the Concentrated Animal Feeding Operation Advisory Committee, the bill appropriates \$1.7 million to the Department of Agriculture from the General Revenue Fund in fiscal year 2001 for purposes of the livestock regulation program established in the bill. The bill also appropriates \$250,000 from the State Special Revenue Fund Group in fiscal year 2001 for purposes of the Livestock Management Fund. (Section 4.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-12-99	p. 423



Reported, S. Agriculture

S0141-RS.123/jc

