



Eric Vendel

Bill Analysis
Legislative Service Commission

H.B. 43

125th General Assembly
(As Passed by the House)

Reps. Core, Willamowski, Collier, Seitz, Hollister, Gibbs, Olman, Hagan, Widener, Calvert, Hartnett, McGregor, Reinhard, Setzer, Schaffer, Gilb, Jolivette, Woodard, Carmichael, Otterman, Allen, Strahorn, Williams, White, Carano, Flowers, Ujvagi, Webster, Perry, Seaver, Setzer, DeBose, Niehaus, Domenick, Book, Brown, Buehrer, Cates, Chandler, Cirelli, Clancy, Daniels, DeWine, Distel, D. Evans, Faber, Hoops, Hughes, Kearns, Key, S. Patton, T. Patton, Peterson, Raussen, Redfern, Reidelbach, Schlichter, Schneider, S. Smith, J. Stewart, Taylor, Trakas, Wagner, Widowfield, Yates

BILL SUMMARY

- Defines "credible data" for purposes of surface water monitoring and assessment, and requires the Director of Environmental Protection to adopt rules establishing three levels of credible data.
- Requires the rules to include provisions for data assessment, sample collection and analytical methods, and quality assurance and quality control procedures for each level of credible data.
- Specifies the purposes for which each level of credible data must be used.
- Requires the Director to establish by rule a water quality monitoring program for the purpose of collecting credible data under the bill, specifies that the rules must require qualified data collectors to follow plans pertaining to data collection, and requires the submission of a certification that the data were collected in accordance with such a plan.
- Requires the Director to establish and maintain a computerized database or databases of all credible data in the Director's possession, and requires each state agency in possession of surface water quality data to submit them to the Director.

- Establishes certain requirements pertaining to the identification and listing of waters under section 303(d) of the Federal Water Pollution Control Act.

CONTENT AND OPERATION

Definition of "credible data"

The bill generally establishes requirements governing the collection and use of credible data for purposes of Ohio's Water Pollution Control Law. "Credible data" is defined by the bill to mean scientifically valid chemical, physical, or biological water quality monitoring data concerning surface waters, including qualitative scoring of physical habitat characteristics and the sampling of fish, macroinvertebrates, and water quality, that have been collected by or submitted to the Director of Environmental Protection and that comply with the requirements established in rules adopted under the bill (see below). "Credible data" may include historical data if the Director identifies compelling reasons as to why the data are credible. (Sec. 6111.50(A).) "Historical data" means data that are more than five years old (sec. 6111.50(B)).

Rules establishing three levels of credible data

Under the bill, the Director must adopt rules that establish criteria for three levels of credible data related to surface water monitoring and assessment. The rules pertaining to each level must establish requirements for data assessment, sample collection and analytical methods, and quality assurance and quality control procedures that must be followed in order to classify data as credible at that level. (Sec. 6111.51(A)(1).)

The Director is required to file all rules adopted under the bill with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review in accordance with the provisions of the Administrative Procedure Act governing the filing not later than one year after the bill's effective date. As soon as practicable thereafter, the Director of Environment Protection must proceed to adopt the rules in accordance with all other applicable provisions of that Act. (Sec. 6111.51(A)(2).)

The bill requires the credible data rules to provide that level three credible data are collected by employing the most stringent methods and procedures, level two credible data are collected using methods and procedures that are less stringent than methods and procedures used to collect level three credible data, but more stringent than methods and procedures used to collect level one, and level one credible data are collected by employing the least stringent methods and

procedures. In addition, the requirements established in the rules for each level of credible data must be commensurate with, and no more stringent than necessary to support, the purposes for which the data will be used. In adopting the rules, the Director must consider the cost of data collection methods and procedures to persons or entities collecting data, and the burden of compliance with those methods and procedures for those persons or entities, while ensuring the degree of accuracy commensurate with the purpose for which the data will be used. The bill also precludes data from being classified as credible data unless they have been collected in compliance with the applicable methods and procedures for collecting the data established in the rules. (Sec. 6111.51(A)(1).)

In addition, the bill provides that no data can be considered credible unless the data originate from studies and samples collected by the Environmental Protection Agency (EPA), its contractors, federal or state environmental agencies, or qualified data collectors (see below). However, data submitted pursuant to the requirements of a permit issued by an agency of the state or submitted as a result of findings and orders issued by the Director or pursuant to a court order must be considered credible unless the Director identifies reasons why the data are not credible. (Sec. 6111.51(C).) If the Director has obtained credible data for a surface water, he also may use historical data for the purpose of determining whether any water quality trends exist for that surface water (sec. 6111.51(D)). Further, the bill requires the Director's use of credible data to be consistent with the Federal Water Pollution Control Act (sec. 6111.51(F)).

Specified uses for each level of credible data

The bill establishes different purposes for which each level of credible data must be used. Under the bill, only level three credible data must be used for: (1) developing, reviewing, and revising use designations in the water quality standards, (2) developing a statewide water quality inventory or other water assessment report, (3) identifying, listing, and delisting waters of the state for the purpose of section 303(d) of the Federal Water Pollution Control Act (see below), (4) determining whether a water of the state is supporting its designated use or other classification, and (5) establishing a total maximum daily load for a water of the state. (Secs. 6111.51(B)(1) and 6111.52.) Levels two and three credible data must be used for the purpose of evaluating the effectiveness of pollution controls for point sources and nonpoint sources and initial screening of water quality problems to determine if additional study is needed (sec. 6111.51(B)(2)). Levels one through three credible data must be used for public awareness and education activities (sec. 6111.51(B)(3)).

Qualified data collectors and data collection plans

The bill requires the Director to establish and maintain a water quality monitoring program to collect levels one, two, and three credible data. In the same manner that other rules are adopted under the bill, the Director must adopt rules establishing the program. The rules must describe the training and experience that are required for a person to become a qualified data collector in the program. The requirements must be commensurate with the type and level of data collected. The rules must require the training of qualified data collectors to include a thorough knowledge of applicable sampling protocols and field methods so that the data collection and interpretation are reproducible, scientifically defensible, and free from preconceived bias. Further, the rules are required to authorize individuals with the necessary academic credentials and experience to train other persons to be qualified data collectors. (Sec. 6111.53(A).)

The rules also must require that the data collectors follow plans containing data collection methods, sampling and analysis methods, and quality assurance and quality control procedures that comply with those established in rules adopted under the bill. Plans cannot be required for credible data that are collected by the EPA, its contractors, or federal or state environmental agencies. Except as otherwise required by a permit issued by a state agency, by findings and orders issued by the Director, or pursuant to a court order, plans cannot be required for data that are submitted pursuant to the requirements of the permit. (Sec. 6111.53(A).)

The Director may develop generic plans or generic components of plans for use by qualified data collectors. A qualified data collector may submit credible data to the Director in accordance with a generic plan without submitting an individual plan to the Director for approval (see below). (Sec. 6111.53(A) and (B).)

In lieu of submitting data pursuant to a generic plan, a qualified data collector who intends to submit credible data to the Director may submit a site-specific plan that complies with rules adopted under the bill. If a qualified data collector will be assisted by other persons who are not qualified data collectors, the plan must include procedures for the supervision of their work to ensure the accuracy of their data collection. The plan must identify whether the data to be collected are level one, two, or three credible data. The Director must review the plan to determine if it complies with the rules adopted under the bill. After reviewing the plan, the Director must either approve or disapprove it. A plan that is not disapproved within 60 days must be considered to have been approved. (Sec. 6111.53(C).)

A person who chooses to submit data for consideration as credible data must document the person's status as a qualified data collector, demonstrate compliance with a generic plan or a site-specific plan, and certify to the best knowledge and belief of the qualified data collector that the credible data were collected in accordance with the procedures required by the plan developed or approved under the bill. The bill specifies that the rules adopted by the Director must include a requirement that the plans contain the certification. Further, the Director cannot consider data submitted by a qualified data collector that are not accompanied by the certification. (Sec. 6111.53(A) and (D).)

Finally, the bill specifies that no person is required to submit any of the data collected pursuant to a plan developed or approved under the bill unless submission of the data is otherwise required by law, but a person submitting some data pursuant to such a plan must submit all data collected pursuant to the plan (sec. 6111.53(D)).

The Director must verify that a person submitting data is a qualified data collector, review all data collected by a qualified data collector, verify the accuracy of the data, and determine that all components of the plan for the collection of the data were followed. If the Director determines that the data are accurate and were collected by a qualified data collector in accordance with required procedures, the Director must approve the data as credible. The bill requires the Director to provide the qualified data collector with written notice informing the data collector as to whether the data have been approved, including the level at which the data qualify as credible data. (Sec. 6111.53(E).) All information submitted by a qualified data collector is a public record and must be retained by the Director for a period of not less than ten years from the date of receipt (sec. 6111.53(F)).

Database of credible data and submission of data by state agencies

Following the adoption of rules under the bill, the Director must establish and maintain a computerized database or databases composed of all credible data in his possession and must make the data available to other agencies and all other interested persons. The data must be stored in such a manner that they are easily retrieved and analyzed and are available for sharing with those agencies and all other interested persons. (Sec. 6111.55.) In addition, each state agency in possession of surface water quality data must submit the data to the EPA in a format designated by the Director. Each agency must submit the data to the Director at the same time that the agency compiles or summarizes the data for its own use, but at a minimum must submit the data to the Director annually. If he determines that the data are accurate and were collected in accordance with the rules adopted under the bill, he must approve the data as credible. (Sec. 6111.54.)

Listing waters under § 303(d) of the Federal Water Pollution Control Act

Section 303(d) of the Federal Water Pollution Control Act requires each state to identify those waters for which existing required pollution controls are not stringent enough to achieve that state's water quality standards. For such waters, states are required to establish total maximum daily loads (TMDLs) in accordance with a priority ranking. A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and allocates pollutant loadings among point and nonpoint pollutant sources. By law, the USEPA must approve or disapprove lists and TMDLs established by states.

Under the bill, if the source or sources of a pollutant causing an impairment of a water of the state are unknown, the water of the state may be identified and listed under section 303(d) of the Federal Water Pollution Control Act. However, the Director must continue to monitor the water of the state to determine the source or sources of the impairment before a TMDL is established for the water of the state (sec. 6111.56(A)).

In addition, the Director cannot include a water of the state on a list established under section 303(d) or establish a TMDL for a water of the state if the failure of the water of the state to comply with an applicable water quality standard results solely from the existence of a naturally occurring condition or conditions (see **COMMENT**) (sec. 6111.56(B)).

Finally, the bill requires the Director to establish narrative water quality standards where numerical criteria cannot be established or to supplement numerical criteria (sec. 6111.56(C)).

Applicability of bill to enforcement actions

The bill states that its provisions do not apply to civil or criminal enforcement actions brought under Ohio's Water Pollution Control Law (sec. 6111.51(E)).

COMMENT

Under the bill, "naturally occurring condition" means any condition affecting water quality that is not caused by human influence on the environment, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations (sec. 6111.50(C)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-11-03	p. 139
Reported, H. Energy & Environment	03-20-03	p. 274
Passed House (96-0)	04-01-03	pp. 312-313

H0043-PH-125.doc/jc

