



**S.B. 234**

126th General Assembly  
(As Introduced)

**Sen. Niehaus**

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**BILL SUMMARY**

**Permits to install program**

- Requires the Director of Environmental Protection to establish a program for the issuance of permits to install for new construction and demolition debris facilities and the expansion of existing facilities by the Director or boards of health in lieu of the existing program under which licenses are issued for the establishment and modification of facilities.
- Requires the Director to adopt rules establishing requirements and procedures for the permits to install program.
- Establishes requirements governing what must be submitted with an application for a permit to install, including the name and address of the applicant, designs and specifications for the facility, background information, and other specified information.
- Requires a person applying for a permit to install to submit specified background information concerning the person and the person's key employees with the application, and authorizes the Director or a board of health to deny the permit if the Director or board finds that the applicant or any other person listed on the application has a history of noncompliance with any environmental laws of Ohio, other states, the United States, or another country.
- Requires annual updates of background information, and requires the submission of background information upon the transfer of a facility.
- Requires the applicant for a permit to install, not later than 60 days after the receipt of an application for a permit for a new construction and demolition debris facility, to hold a public hearing in the township or

municipal corporation in which the facility or proposed facility is or is to be located, and establishes notification requirements regarding the public hearing.

**Transfer of permit to install or operation license**

- Authorizes the transfer of a permit to install or a license to operate a construction and demolition debris facility only with the approval of the Director or a board of health, and specifies that disapproval of the transfer may be made only for the same reasons for which a permit to install may be denied after a background investigation.

**Siting criteria**

- Establishes additional siting criteria for new construction and demolition debris facilities, and requires the siting criteria to be applied during the permitting process rather than the licensing process.

**Grandfather clause**

- States that certain provisions of the bill do not apply to applications for licenses pending prior to the bill's effective date and the effective date of rules to be adopted under the bill depending on the timing of the submission of an application for such a license.

**Operational plans and fire safety plans**

- With respect to plans for the operation of a construction and demolition debris facility that are required by rules adopted under current law, requires the plans to include the use of best management practices and contingency plans for effective action in response to fire or explosion or to hydrogen sulfide or other gases.
- Requires the plans for operation of a construction and demolition debris facility to be submitted with an application for an initial license for the operation of the facility, and requires annual updates of the plans if necessary.
- Requires the applicant for an initial license for the operation of a facility to submit a copy of the contingency plans for effective action in response to fire or explosion, or to hydrogen sulfide or other gases, to the

appropriate fire department, and requires necessary updates to the plan to be submitted.

### **Ground water and leachate monitoring**

- Adds that rules adopted under current law by the Director governing ground water monitoring at construction and demolition debris facilities must require that ground water monitoring be capable of determining impacts resulting from operation of a facility, include provisions for ground water assessment and corrective actions, and require the submission of an annual ground water monitoring report.
- Requires the Director to adopt rules establishing requirements for the monitoring and sampling of leachate at construction and demolition debris facilities, and specifies that the rules must include requirements that leachate be sampled at least annually, that the leachate be sampled for at least 77 different parameters, and that leachate sampling results be reported to the Director and the applicable board of health.
- Specifies that rules related to ground water and leachate monitoring and sampling apply to new facilities for which a permit to install is required, but, with respect to existing facilities, applies the rules based on the ground water and leachate monitoring systems operating on the bill's effective date.
- Precludes the Director or a board of health, as applicable, from paying for the installation or sampling of ground water monitoring wells or the laboratory analysis of ground water samples at or from a new construction and demolition debris facility for which a permit to install has been issued under the bill from the proceeds of disposal fees levied for ground water monitoring purposes under current law.

### **Closure and post-closure care**

- Revises the statute that requires the Director of Environmental Protection to adopt rules establishing financial assurance requirements for the closure of facilities by requiring the rules to provide that financial assurance amounts must be determined for each facility by the Director or board of health, as applicable, but specifies that financial assurance for the closure of a facility cannot be less than \$13,000 per acre of land that

has been or is being used for the disposal of construction and demolition debris.

- Specifies that the rules must require an explanation of the rationale for financial assurance amounts for closure that exceed \$13,000 per acre.
- Requires the Director to adopt rules establishing requirements for the post-closure care of construction and demolition debris facilities for a period of five years, but authorizes extensions of that five-year period under certain circumstances.
- Requires the Director to adopt rules establishing financial assurance requirements for the post-closure care of facilities that require the determination of the amount of financial assurance to be based on a required cost estimate, and requires that post-closure care financial assurance be for a period of five years after the closure of a facility but authorizes extensions of that five-year period under certain circumstances.

#### **Pulverized debris**

- Prohibits the disposal of pulverized debris at a construction and demolition debris facility, and defines "pulverized debris" to mean debris that, after demolition has occurred, but prior to acceptance of the debris for disposal, has been shredded, crushed, ground, or otherwise rendered to such an extent that the debris is unidentifiable as construction and demolition debris.
- Authorizes a board of health or the Director to request that pulverized debris be removed from a construction and demolition debris facility.

#### **Transfer facility certifications**

- Authorizes a construction and demolition debris facility to request that a transfer facility certify that material from the transfer facility is not off-specification material, industrial waste, or solid, infectious, or hazardous waste.
- Specifies that with respect to material that is transferred to a construction and demolition debris facility by a federally regulated railroad, the facility may request the railroad to provide a bill of lading, or a copy of the bill of lading, from the shipper of the material or may request the

railroad to provide written information indicating that the railroad did not process or add to the material.

### **Rejected debris shipments**

- Requires the owner or operator of a construction and demolition debris facility to notify the Director or a board of health if the owner or operator rejects a shipment of debris because the shipment does not comply with the Construction and Demolition Debris Law.
- Requires the transporter or shipper of a rejected shipment to notify the Director of the ultimate disposition of the rejected shipment.
- Requires the Director to adopt rules regarding rejected shipment notifications.

### **Exemptions by boards of health**

- Requires a board of health, before granting an exemption from the Construction and Demolition Debris Law, to obtain approval of the exemption from the Director of Environmental Protection.

### **Operator certification and training**

- Requires the Director, in consultation with boards of health and a statewide association representing construction and demolition debris facilities, to establish a program for the certification of operators of facilities and continuing education training requirements for operators.

### **Information database**

- Requires the Director to establish and maintain a database or databases composed of public information, including at least the record of the annual inspection of each construction and demolition debris facility, information from the annual survey of each health district by the Director, and ground water and leachate data collected in accordance with rules.

### **Use of Environmental Protection Remediation Fund**

- Authorizes money in the existing Environmental Protection Remediation Fund to be used to conduct remediation activities at construction and demolition debris facilities.

**Falsification**

- Specifies that falsification of any information that is required to be submitted to a board of health or the Director with respect to a permit to install or a license issued under the Construction and Demolition Debris Law or an application for such a permit or license, or falsification of any other information that is required to be submitted to a board or the Director under that Law and rules adopted under it, is grounds for the denial, suspension, or revocation of a permit to install or a license issued under that Law.

**Declaration of emergency**

- Declares an emergency, and specifies that the reason for the emergency is that a moratorium on the siting of new construction and demolition debris facilities and expansions of existing facilities is due to expire on December 31, 2005, and additional statutory requirements related to such facilities are necessary to protect public health and the environment.

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## CONTENT AND OPERATION

### Introduction

The Construction and Demolition Debris Law, which was enacted in 1990, requires each construction and demolition debris disposal facility to be licensed and inspected annually by either the applicable board of health or the Director of Environmental Protection. An initial license is required for a new facility or the modification of an existing facility. The Law establishes specific requirements for the issuance of initial licenses. The Director only licenses facilities, and conducts inspections, in areas of the state in which a board of health has not been approved by the Director to administer a construction and demolition debris management program.

The Construction and Demolition Debris Law establishes siting criteria and licensing procedures and requirements and provides for enforcement of its provisions. It also requires the Director to adopt rules governing facilities, their inspection, and the issuance of licenses. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution. Unlike the Solid, Infectious, and Hazardous Waste Law, the Law does not require a background investigation of an applicant for a license.

The bill makes several changes in the construction and demolition debris management program. It requires the issuance of a permit to install for a new construction and demolition debris facility or the expansion of an existing facility in lieu of an initial license and requires an applicant for a permit to install to include background information about past violations of environmental laws in the application for the permit. The bill establishes additional siting criteria, adds requirements for public hearings on permit applications, requires rules to be adopted governing ground water and leachate monitoring, adds requirements for closure and the post-closure care of facilities, adds requirements governing pulverized debris, reporting of rejected waste loads, and certification of materials from transfer facilities, and adds several other requirements to the Construction and Demolition Debris Law.

### **Permits to install program**

Current law prohibits anyone from establishing, modifying, or operating a construction and demolition debris facility without a construction and demolition debris facility installation and operation license. For a proposed new or modified facility, such a license is required before the facility may commence operation. At least 90 days before the proposed operation of the facility, the person proposing to open or modify the facility must submit an application for a license with accompanying plans, specifications, and information regarding the facility and its method of operation to the appropriate board of health or to the Director of Environmental Protection if the facility is or is to be located in a health district whose board of health is not approved by the Director to implement a construction and demolition debris program.<sup>1</sup> After receipt of the application and other required materials, the board of health or the Director, as applicable, must determine if the proposed facility or modification complies with standards established under the Construction and Demolition Debris Law and rules adopted by the Director. A license may be issued with such terms and conditions as the board or Director finds necessary to ensure that the facility will comply with that Law and the rules. If an initial license is approved and after the commencement of operations of a new or modified facility, the owner or operator of the facility is required to annually renew its license. (Sec. 3714.06.)

The bill replaces the requirement that a proposed new construction and demolition debris facility or modification of an existing facility receive an initial license with a requirement that a proposed new facility or an expansion of an existing facility receive a permit to install. Facilities are still required under the bill to receive an annual operating license.

### **Establishment of permit to install program**

The bill requires the Director of Environmental Protection to establish a program for the issuance of permits to install for new construction and demolition debris facilities not later than 180 days after the bill's effective date (sec. 3714.051(A)(1)). The bill defines "new construction and demolition debris facility" to include an existing facility that is proposing to expand the facility beyond the limits of construction and demolition debris placement approved by a board of health or the Director, as applicable, under the Construction and Demolition Debris Law (sec. 3714.01(G)). On and after the bill's effective date, no person may establish a new construction and demolition debris facility without

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<sup>1</sup> *Current law requires the Director of Environmental Protection to establish a list of health districts that are approved to license construction and demolition debris facilities and implement a construction and demolition debris program (sec. 3714.09).*

first obtaining a permit to install issued by the board of health of the health district in which the facility is or is to be located or from the Director if the facility is or is to be located in a health district that is not approved by the Director to implement a construction and demolition debris program or if a board of health requests the Director to issue the permit as discussed below (see "**Application and permit requirements**," below) (sec. 3714.051(A)(2)).

In establishing the program, the Director must adopt rules establishing standards and procedures for the issuance of permits to install (sec. 3714.02(A)). The rules must include standards for the design and construction of facilities, information that must be included in the designs and plans required to be submitted with an application for a permit (see "**Application and permit requirements**," below), and criteria for approving, disapproving, or requiring modification of the designs and plans. In addition, the rules are required to establish the information that must be included with an application for a permit to install in addition to the information that is specified in the bill (see "**Application and permit requirements**," below). The rules also must establish procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install and grounds for the denial, modification, suspension, or revocation of permits. Finally, the rules must establish criteria for establishing time periods after which a permit to install expires, a requirement that a person that is required to obtain both a permit to install and a license for the operation of a facility obtain both the permit and the license prior to operation, and any other requirements that the Director determines necessary in order to establish the program. (Sec. 3714.02(A)(1) to (8).)

### **Application and permit requirements**

The bill authorizes the Director, the Director's authorized representative, a board of health, or an authorized representative of the board to assist an applicant for a permit during the permitting process by providing guidance and technical assistance (sec. 3714.051(B)). Under the bill, an applicant must submit an application to a board of health or the Director, as applicable, on a form that the Director prescribes. The applicant must include with the application all of the following:

(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 designs and plans for the construction and demolition debris facility that include the location or proposed location of the facility, design and construction plans and specifications, anticipated beginning and ending dates for

work performed, and any other related information that the Director requires by rule;

(3) The background information required under the bill (see "**Background information**," below);

(4) An application fee of \$2,000. If a board of health collects the application fee, the board must deposit money from the fee into the special fund of the health district created under existing law for the purpose of funding the district's construction and demolition debris program. If the Director collects the application fee, the Director must transmit money from the fee to the Treasurer of State to be credited to the existing Construction and Demolition Debris Oversight Fund, which is used by the Director to implement the construction and demolition debris program. Not later than six months after a facility that is issued a permit to install begins accepting construction and demolition debris for disposal, a board of health or the Director, as applicable, must refund the application fee to the person that submitted the application for the permit.

(5) Any other information required by the Director in accordance with rules. (Sec. 3714.051(C)(1) to (5).)

A permit to install may be issued with terms and conditions that a board of health or the Director, as applicable, finds necessary to ensure that the facility will comply with the Construction and Demolition Debris Law and rules adopted under it and to protect public health and safety and the environment (sec. 3714.051(D)).

A permit to install expires after a time period specified by the Director or board of health, as applicable, in accordance with rules adopted under the bill unless the applicant has undertaken a continuing program of construction or has entered into a binding contractual obligation to undertake and complete a continuing program of construction within a reasonable time, in which case the Director or board, as applicable, may extend the expiration date of a permit to install upon request of the applicant (sec. 3714.051(E)). The Director or a board of health, as applicable, may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules (sec. 3714.051(F)).

A board of health must notify the Director of its receipt of an application for a permit to install. A board, or its authorized representative, may request the Director to review an application, or part of an application, for a permit and also may request that the Director issue or deny it when the board determines that additional expertise is required. The Director must comply with such a request. Upon a board of health's issuance of a permit to install for a new construction and demolition debris facility, the board must mail a copy of the permit to the Director

together with approved plans, specifications, and information regarding the facility. (Secs. 3714.05 and 3714.051(G).)

### **Background information**

As indicated above, one of the items that must be included with an application for a permit to install is information concerning the background of the owner or operator<sup>2</sup> of the facility. Under the bill, that background information must include all of the following:

(1) A listing of all construction and demolition debris facilities or other waste disposal facilities that the owner or operator of the proposed new facility or a key employee of the owner or operator has operated or is operating in Ohio. Under the bill, "key employee" means an individual employed by an applicant for a permit to install for, or by the proposed transferee of a permit to install or license for, a construction and demolition debris facility in a supervisory capacity or who is empowered to make discretionary decisions with respect to the construction and demolition debris operations of the applicant or transferee, but does not include an employee who is exclusively engaged in the physical or mechanical collection, transfer, transportation, storage, or disposal of construction and demolition debris. If the applicant or transferee has entered into a contract with another person to operate the facility that is the subject of the application or transfer, "key employee" includes an employee of the contractor who acts in a supervisory capacity or is empowered to make discretionary decisions with respect to the operation of the facility. (Sec. 3714.052(G).)

(2) A listing of the construction and demolition debris facilities or other waste disposal facilities that the owner or operator or a key employee of the owner or operator has operated or is operating elsewhere in the United States together with a listing of the construction and demolition debris facilities or other waste disposal facilities that the owner or operator or a key employee of the owner or operator has operated or is operating outside the United States;

(3) A listing of all administrative enforcement orders issued to the owner or operator or a key employee of the owner or operator, all civil actions in which the owner or operator or a key employee of 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 or a key employee of the owner or operator pleaded guilty or was convicted,

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<sup>2</sup> *The bill requires the Director of Environmental Protection to adopt rules establishing definitions of "owner" and "operator" for purposes of the Construction and Demolition Debris Law (sec. 3714.02(P)).*

during the ten years immediately preceding the submission of the application, in connection with any violation by the owner or operator or a key employee of the owner or operator of an applicable state or federal law pertaining to environmental protection or the environmental laws of another country; and

(4) A listing of all administrative enforcement orders, civil actions, or criminal actions pending at the time of the submission of the application for a permit to install in connection with a violation of any applicable state or federal law or law of another country pertaining to environmental protection that was alleged to have been committed by the owner or operator or a key employee of the owner or operator. (Sec. 3714.052(A)(1) to (4).)

The lists of construction and demolition debris facilities or other waste disposal facilities operated by the owner or operator or a key employee of the owner or operator within or outside Ohio or outside the United States must include all such facilities operated by the owner or operator or a key employee of the owner or operator during the ten-year period immediately preceding the submission of the application (sec. 3714.052(A)).

If the applicant for a permit to install has been involved in any prior activity involving the operation of a construction and demolition debris facility or other waste disposal facility, the Director or a board of health, as applicable, may deny the application if the Director or board finds from the application, the information submitted under the bill, pertinent information submitted to the Director or board, and other pertinent information obtained by the Director or board at the Director's or board's discretion that the applicant or any other person listed on the application, in the operation of construction and demolition debris facilities or other waste disposal facilities, has a history of noncompliance with state and federal laws pertaining to environmental protection or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new construction and demolition debris facility in substantial compliance with the Construction and Demolition Debris Law and rules adopted under it (sec. 3714.052(B)).

The bill establishes requirements for updating background information. Under the bill, at the same time that an application for an annual operation license is submitted, an owner or operator of a construction and demolition debris facility that has submitted the initial background information required under the bill must submit to the Director or board of health, as applicable, all information required to be submitted under the bill that has changed or been added since the issuance of the most recent annual operation license for the facility. If, during that period, there have been no changes in or additions to that information, the owner or operator must submit to the Director or board an affidavit stating that there have been no changes in or additions to that information during that time period. The

Director or board may revoke the license for the facility if the updated information indicates any of the reasons discussed above for the denial of an application for a permit to install. (Sec. 3714.052(C).)

A person to whom the permit to install or the license for a construction and demolition debris facility is proposed to be transferred (see "**Transfer of permit to install or license**," below) also must submit to the Director or a board of health, as applicable, the same background information that is required to be submitted by an applicant for a permit to install not later than 120 days prior to the proposed acquisition of the facility by the transferee. The Director or board of health may deny the transfer of the permit or license, as applicable, if the information regarding the transferee indicates any of the reasons discussed above for the denial of an application for a permit to install. (Sec. 3714.052(D).)

When the owner or operator of a facility employs a new key employee, the owner or operator must submit or must require the new key employee to submit to the Director or a board of health, as applicable, background information regarding the new key employee. The Director or board may revoke the permit to install or the license for the facility, as applicable, if the information regarding the new key employee indicates any of the reasons discussed above for the denial of an application for a permit to install. (Sec. 3714.052(E).)

The bill's background information requirements do not apply to an applicant for a permit to install or a license for, or the proposed transferee of a permit to install or a license for, a construction and demolition debris facility if an investigation of the applicant or transferee and the key employees of the applicant or transferee, as applicable, has been conducted under the Solid, Infectious, and Hazardous Waste Law, and the investigation has not revealed anything that would result in the denial of a permit, license, or renewal under that Law. The applicant for a permit to install or a license, or the proposed transferee of a permit to install or a license, for a construction and demolition debris facility that has been subject to an investigation under that Law also must submit information to the Attorney General under that Law concerning any key employees of the construction and demolition debris facility. The Director must provide notice in writing to the applicable board of health that the applicant or proposed transferee has complied with the background investigation requirements of the Solid, Infectious, and Hazardous Waste Law and has sufficient reliability, expertise, and competence to operate the construction and demolition debris facility in substantial compliance with the Construction and Demolition Debris Law and the rules adopted under it. (Sec. 3714.052(F).)

### **Public hearings**

The bill requires that not later than 60 days after the Director of Environmental Protection or a board of health, as applicable, receives an application for a permit to install a new construction and demolition debris facility, the applicant must hold a public hearing in the township or municipal corporation in which the facility or proposed facility is or is to be located. At least 30 days prior to the public hearing, the applicant must provide notice of the time, day, and location of the public hearing in a newspaper of general circulation in the locality of the facility or proposed facility and must mail a copy of the notice to the Director or the board of health, whichever is applicable. Further, at least 30 days prior to the public hearing, the applicant must provide notification of the public hearing by certified mail to the owner of each parcel of real property that is adjacent to the facility or proposed facility. (Sec. 3714.053.)

### **Miscellaneous**

The bill makes changes in the Construction and Demolition Debris Law that are necessary to conform that Law to the bill's requirements related to the issuance of permits to install. For example, the bill requires that an application for a license for the operation of a new construction and demolition debris facility must be submitted prior to operation of the new facility and is valid until the time that the next annual license is required to be obtained for the facility<sup>3</sup> (sec. 3714.06(B)). Other changes involve the addition of references to permits to install in statutes dealing with exemptions from the Construction and Demolition Debris Law, the authority of boards of health to implement that Law, and enforcement of that Law (secs. 3714.04, 3714.05, 3714.09, 3714.11, 3714.12, and 3714.13).

### **Transfer of permit to install or operation license**

Current law authorizes a person who has received a license, upon sale or disposition of the facility, with the consent of the board of health or the Director of Environmental Protection, as appropriate, to have the license transferred to another person. The bill authorizes a person to have the license as well as a permit to install for the facility transferred to another person, but only with the approval of the board or the Director. The bill authorizes the board or Director to disapprove the transfer of the permit or license only for the reasons for which a permit to install may be denied under the bill's background investigation provisions (see above). (Sec. 3714.06(B).)

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<sup>3</sup> Presumably, this means that the license is valid, not the application.

### **Modification of operation licenses**

The bill requires the Director to adopt rules establishing standards and procedures governing the modification of operation licenses and specifies that a license may be modified in accordance with those rules (secs. 3714.02(L) and 3714.06(D)).

### **Siting criteria**

Current law generally prohibits the Director or a board of health from issuing a license for the establishment and operation of a construction and demolition debris facility within certain flood-prone areas and within the boundaries of sole source aquifers. The bill revises the prohibition by prohibiting the issuance of a permit to install to establish a new facility when the horizontal limits of construction and demolition debris placement at the new facility, rather than any portion of the facility, are proposed to be located in those areas. (Sec. 3714.03(B).)

Current law provides that for purposes of determining the location of the 100-year flood plain of a watercourse under the above siting criteria, if no maps have been prepared, the boundaries of the 100-year flood plain must be determined based upon a design storm of seven inches of precipitation in 24 hours and upon standard methodologies set forth in "Urban Hydrology for Small Watersheds" and section 4 of the "National Engineering Hydrology Handbook" of the Soil Conservation Service of the United States Department of Agriculture. The bill revises the requirement by eliminating "of a watercourse" for purposes of determining a 100-year flood plain. In addition, the bill eliminates "a design storm of seven inches of precipitation in 24 hours." Thus, the bill provides that the boundaries of a 100-year flood plain must be determined based upon standard methodologies set forth in the Soil Conservation Service documents specified above. (Secs. 3714.03(B)(1) and 3714.04.)

The bill also prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility when the horizontal limits of construction and demolition debris placement at the new facility are proposed to be located in any of the following locations:

(1) Within 100 feet of a perennial stream as defined by the United States Geological Survey seven and one-half minute quadrangle map or within 100 feet of a category 3 wetland. The bill defines "category 3 wetland" to mean a wetland that supports superior habitat or hydrological or recreational functions as determined by an appropriate wetland evaluation methodology acceptable to the Director. "Category 3 wetland" includes a wetland with high levels of diversity, a high proportion of native species, and high functional values and includes, but is

not limited to, a wetland that contains or provides habitat for threatened or endangered species. "Category 3 wetland" may include high quality forested wetlands, including old growth forested wetlands, mature forested riparian wetlands, vernal pools, bogs, fens, and wetlands that are scarce regionally. (Sec. 3714.03(A)(2).)

(2) Within 100 feet of the facility's property line;

(3) Within 500 feet of a residential or public water supply well. However, there are three circumstances having different requirements for siting near a residential or public water supply well. First, if the well is controlled by the owner or operator of the construction and demolition debris facility, the horizontal limits of construction and demolition debris placement may be located any distance from the well, provided that the location of the horizontal limits of construction and demolition debris placement does not violate any other siting criteria. Second, if the well is hydrologically separated from the horizontal limits of construction and demolition debris placement, those limits may be located within the distance comprising the horizontal hydrological separation. Finally, if the well is upgradient from the horizontal limits of construction and demolition debris placement and the geologic material that separates the uppermost aquifer and the horizontal limits of construction and demolition debris placement consists of at least five feet of material that has a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/sec and all of the geologic material comprising the five feet has a hydraulic conductivity equivalent to or less than  $1 \times 10^{-6}$  cm/sec, the limits of horizontal construction and demolition debris placement cannot be located within a minimum of 300 feet for a residential or public water supply well and a maximum of 500 feet for a public water supply well.

(4) Within 500 feet of a local park, a state park established or dedicated under the Division of Parks and Recreation Law, a state park purchase area established under that Law, a national recreation area, any unit of the national park system, or any property that lies within the boundaries of a national park or recreation area, but that has not been acquired or is not administered by the Secretary of the United States Department of the Interior, located in Ohio, or any area located in this state that is recommended for study for potential inclusion in the national park system in accordance with federal law;

(5) Within 500 feet of a natural area, any area established by the Department of Natural Resources as a state wildlife area under the Division of Wildlife Law and rules adopted under it, any area that is formally dedicated as a nature preserve under the Division of Natural Areas and Preserves Law, or any area designated by the United States Department of the Interior as a national wildlife refuge. The bill defines "natural area" as either of the following: (1) an area designated by the Director of Natural Resources as a wild or scenic river

under the Division of Natural Areas and Preserves Law, or (2) an area designated by the United States Department of the Interior as a national wild or scenic river (sec. 3714.03(A)(3)).

(6) Within 500 feet of a lake or reservoir of one acre or more that is hydrogeologically connected to ground water. A lake or reservoir does not include a body of water constructed and used for purposes of surface water drainage or sediment control.

(7) Within 500 feet of a state forest purchased or otherwise acquired under the Division of Forestry Law;

(8) Within 500 feet of land that is placed on the state registry of historic landmarks; and

(9) Within 500 feet of an occupied dwelling unless written permission is given by the owner of the dwelling. Under the bill, "occupied dwelling" means a residential dwelling and also includes a place of worship as defined in the Child Day Care Law, a child day-care center as defined in that Law, a hospital as defined in the Hospital Law, a nursing home as defined in that Law, a school, and a restaurant or other eating establishment. "Occupied dwelling" does not include a dwelling owned or controlled by the owner or operator of a construction and demolition debris facility to which the siting criteria established under the bill are being applied. "Residential dwelling" means a building used or intended to be used in whole or in part as a personal residence by the owner, part-time owner, or lessee of the building or any person authorized by the owner, part-time owner, or lessee to use the building as a personal residence. (Sec. 3714.03(A)(4) and (5) and (C).)

The bill also prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility when the limits of construction and demolition debris placement at the new facility are proposed to have an isolation distance of less than five feet from the uppermost aquifer system that consists of material that has a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/sec and all of the geologic material comprising the isolation distance has a hydraulic conductivity equivalent to or less than  $1 \times 10^{-6}$  cm/sec (sec. 3714.03(D)). The bill defines "aquifer system" as one or more geologic units or formations that are wholly or partially saturated with water and are capable of storing, transmitting, and yielding significant amounts of water to wells or springs (sec. 3714.03(A)(1)).

In addition, the bill prohibits the Director or a board from issuing a permit to install a new construction and demolition debris facility when the road that is designated by the owner or operator as the main hauling road at the facility to and

from the limits of construction and demolition debris placement is proposed to be located within 500 feet of an occupied dwelling unless written permission is given by the owner of the occupied dwelling (see above) (sec. 3714.03(E)).

Finally, neither the Director nor any board of health is permitted to issue a permit to install to establish a new construction and demolition debris facility unless the new facility will have all of the following:

(1) Access roads that must be constructed in a manner that allows use in all weather conditions and will withstand the anticipated degree of use and minimize erosion and generation of dust.

(2) Surface water drainage and sediment controls that are required by the Director; and

(3) If the facility is proposed to be located in an area in which an applicable zoning resolution allows residential construction, vegetated earthen berms or an equivalent barrier with a minimum height of six feet separating the facility from adjoining property. (Sec. 3714.03(F).)

#### **Applicability of siting criteria**

The bill provides that siting criteria must be applied to an application for a permit to install at the time that the application is submitted to the Director or a board of health, as applicable. The bill declares that circumstances related to the siting criteria that change after the application is submitted must not be considered in approving or disapproving the application. (Sec. 3714.03(G)(1).)

In addition, the bill declares that the new siting criteria established by the bill do not apply to an expansion of a construction and demolition debris facility that was in operation prior to the effective date of the bill onto property within the property boundaries identified in the application for the initial license for that facility. The siting criteria established prior to the effective date of the bill apply to such an expansion. (Sec. 3714.03(G)(2).)

#### **Grandfather clause**

Certain provisions of the bill do not apply to applications for licenses that were pending prior to the bill's effective date and the effective date of rules to be adopted under the bill. Which provisions apply depends on the timing of the submission of an application for such a license.

Under the bill, an application for a license to establish or modify a construction and demolition debris facility submitted to a board of health or the Director of Environmental Protection, as applicable, prior to July 1, 2005, must be

reviewed and the license must be issued or denied in accordance with the provisions of the Construction and Demolition Debris Law as they existed on July 1, 2005, if all of the following apply to the applicant for the license:

(1) The applicant has acquired an interest in the property on which the facility will be located on or before May 1, 2005;

(2) The applicant has begun a hydrogeologic investigation pursuant to a specified rule of the Environmental Protection Agency prior to submitting the application; and

(3) The applicant has begun the engineering plans for the facility prior to submitting the application.

The Director must determine if the above provisions apply to an applicant within 45 days after receiving an applicant's request for such a determination. (Section 3(A).)

An application for a license to establish or modify a construction and demolition debris facility submitted to a board of health or the Director, as applicable, on or after July 1, 2005, but prior to or on December 31, 2005, must be reviewed and the license must be issued or denied in accordance with the provisions of the Construction and Demolition Debris Law as they existed on July 1, 2005. However, unless the facility is exempt from the new siting criteria because the facility is expanding within previously defined property boundaries (see above), a board of health or the Director, as applicable, may apply any of the siting criteria established by the bill to such an application and may deny the application if the facility that is the subject of the application will not comply with that siting criterion. (Section 3(B).)

Finally, beginning January 1, 2006, and until the effective date of the rules to be adopted under the bill, a person may submit an application to a board of health or the Director, as applicable, for a license to establish or modify a construction and demolition debris facility, and such an application must be reviewed and the license must be issued or denied in accordance with the provisions of the Construction and Demolition Debris Law as they existed on July 1, 2005. However, unless the facility is exempt from the new siting criteria because the facility is expanding within previously defined property boundaries (see above), a board of health or the Director, as applicable, must apply all of the siting criteria established in the bill to such an application and must deny the application if the facility that is the subject of the application will not comply with any of those siting criteria. In addition, the applicant for the license must submit the background information that is required from applicants for permits to install under the bill (see above). An application for a license may be denied if the

background information regarding the applicant indicates any of the reasons for which an application for a permit to install may be denied. (Section 3(C).)

### **Operational plans and fire safety plans**

Current law requires the Director to adopt rules establishing requirements respecting written, narrative plans for the operation of construction and demolition debris facilities. The bill specifies that the rules must require the owner or operator of a facility to use best management practices. Current law also requires the Director to adopt rules establishing requirements respecting contingency plans for effective action in response to fire or explosion at a facility. The bill requires the rules related to contingency plans also to address effective action in response to hydrogen sulfide or other gases created by the operation of a facility that pose a nuisance, cause an offensive odor, or pose a threat to public health or safety or the environment. The rules adopted under the bill must require the operation plans that are discussed above to include those contingency plans. (Sec. 3714.02(G) and (H).)

In addition, the bill requires a person who submits an application for an initial license to operate a construction and demolition debris facility to submit with the application the plans for the operation of the facility that are required in rules. The owner or operator of the facility then must submit any necessary updates to the plans for the operation of the facility as required in rules when submitting an application for an annual license for the continued operation of the facility. (Sec. 3714.061(A).) The bill requires a board of health to submit a copy of the plans for operation of a facility or any necessary plan updates, as applicable, to the Director upon the issuance by the board of a license for the operation of the facility (sec. 3714.06(C)).

Under the bill, a person who submits an application for an initial license to operate a construction and demolition debris facility must provide a copy of the contingency plans required in rules to the fire department that would respond to the facility. The plans must be submitted to the fire department at the time that the application for the license is submitted. In addition, the owner or operator of the facility must submit any necessary updates to the plans at the time that the owner or operator submits an application for an annual license for continued operation of the facility. (Sec. 3714.061(B).)

### **Ground water and leachate monitoring**

Current law requires the Director to adopt rules establishing requirements for the installation of ground monitoring wells and the monitoring of ground water quality at any facility where the operation of the facility threatens to contaminate ground water. The bill establishes additional requirements that must be included

in the rules governing ground water monitoring. Specifically, the bill provides that the rules must require that ground water monitoring be capable of determining impacts resulting from the operation of construction and demolition debris facilities. The rules also must include provisions for ground water assessment and corrective actions for impacts to ground water. Further, the rules must require that the owner or operator of a construction and demolition debris facility submit a monitoring report to the Director or a board of health, as applicable, that has been prepared by a qualified ground water scientist and that includes all of the following:

(1) A determination of any impacts to ground water from the migration of contaminants from the facility;

(2) A list of the contaminants from the facility that may be causing contamination of ground water; and

(3) Recommendations for actions, if any are necessary, that should be taken to investigate or remediate the source of any ground water contamination. (Sec. 3714.02(E).)

The bill defines "qualified ground water scientist" to mean a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has at least five years of relevant experience in ground water hydrogeology and related fields that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective measures (sec. 3704.01(J)).

Current law does not include a specific requirement that the Director adopt rules governing the monitoring and sampling of leachate.<sup>4</sup> The bill requires the Director to adopt rules establishing requirements for the monitoring and sampling of leachate. The rules must include all of the following:

(1) A requirement that the owner or operator of a construction and demolition debris facility provide for sampling of leachate at least annually. However, the rules must require that if leachate is recirculated through a facility instead of being disposed of off-site, the leachate be sampled at least every calendar quarter.

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<sup>4</sup> Presumably, any current requirements in rules related to leachate monitoring or sampling have been adopted in accordance with general rule making authority in the Construction and Demolition Debris Law that authorizes the Director to adopt rules that ensure that construction and demolition debris facilities will not cause or contribute to air or water pollution. (Sec. 3714.02.)

(2) A requirement that the owner or operator of a facility sample for at least 77 parameters that the Director must establish by rule. The 77 parameters must include arsenic, copper, and chromium.

(3) Requirements governing facilities that do not have a system for sampling leachate. The rules must require that the owner or operator of such a facility monitor ground water for the same parameters required for leachate monitoring and sampling.

(4) A requirement that a facility that monitors ground water and leachate add to the parameters monitored by the ground water monitoring system any parameter that is detected through the monitoring of leachate; and

(5) Requirements governing the reporting of leachate sampling data. The rules must require that reports be submitted to the Director and the applicable board of health. (Sec. 3714.02(F).)

Under the bill, the new rules related to ground water and leachate monitoring and sampling apply to all new construction and demolition debris facilities for which a permit to install is required on and after the effective date of the bill. With respect to a facility that is licensed and operating on the effective date of the bill: if the facility does not have a ground water monitoring or leachate monitoring system, the facility is not required to comply with ground water and leachate monitoring and sampling rules; if the facility has a ground water monitoring system, but not a leachate monitoring system, the facility must comply only with rules related to ground water monitoring and sampling; and if the facility has a leachate monitoring system, but not a ground water monitoring system, the facility must comply only with rules related to leachate monitoring and sampling. (Sec. 3714.02.)

#### **Use of fee levied for ground water monitoring**

Current law authorizes the Director to adopt rules establishing a fee of not more than 5¢ per cubic yard or 10¢ per ton on the disposal of construction and demolition debris. This fee is in addition to the general disposal fees otherwise established by law. Proceeds collected by the Director or a board of health, as applicable, must be used by the Director or board to conduct ground water monitoring at construction and demolition debris facilities through the installation of ground water monitoring wells and the performance of ground water sampling and laboratory analysis. Such ground water monitoring may be conducted only at certain facilities in operation before April 15, 2005. The bill precludes the Director or a board, as applicable, from paying for the installation of ground water monitoring wells, ground water sampling, or the laboratory analysis of ground

water samples at or from a new construction and demolition debris facility for which a permit to install has been issued under the bill. (Sec. 3714.071.)

### **Closure and post-closure care**

Current law requires the Director of Environmental Protection to adopt rules establishing requirements for the closure of facilities and requirements governing financial assurance for their closure. The rules regarding closure must include minimum requirements for the closure of all facilities and additional requirements that are reasonably related to the location of a facility and the type and quantity of materials disposed of in it (sec. 3714.02(I)). Concerning financial assurance, the rules are required to include provisions requiring the owner or operator of a facility, before being issued a license for the facility, to submit a surety bond, a letter of credit, or other acceptable financial assurance in an amount equal to the estimated costs for closure of those portions of the facility that have been, are being, or are to be used for the disposal of construction and demolition debris. The costs are required to be estimated in the closure plan for the facility approved by the board of health of the health district in which the facility is or is to be located or the Director if the facility is located in a health district that is not approved to implement a construction and demolition debris program. (Sec. 3714.02(H).) There is no requirement in current law that the Director adopt rules related to post-closure care.

The bill retains the requirements in current law regarding the rules governing closure. However, it revises the requirements concerning financial assurance for the closure of facilities. The bill generally eliminates the provisions of law that require financial assurance for the closure of a facility to be in an amount equal to the estimated costs for closure as set forth in the facility's closure plan. Instead, the bill requires the Director to adopt rules that require the owner or operator of a facility, before being issued an initial license for the facility, to submit a surety bond, a letter of credit, or other acceptable financial assurance in an amount determined by the Director or the appropriate board of health, as applicable. The rules must allow the Director or board of health to adjust the amount of the surety bond, letter of credit, or other financial assurance in conjunction with the issuance of an annual license. However, the bill specifies that, under the rules, the amount of the surety bond, letter of credit, or other acceptable financial assurance for the closure of a facility must be not less than \$13,000 per acre of land that has been or is being used for the disposal of construction and demolition debris. The rules must require an explanation of the rationale for financial assurance amounts exceeding \$13,000 per acre. (Sec. 3714.02(I)(1).)

The bill also requires the Director to adopt rules establishing requirements for the post-closure care of construction and demolition debris facilities for a

period of five years after closure of a facility as well as rules governing financial assurance requirements for the post-closure care of facilities. The rules establishing post-closure care requirements must stipulate that if during the required five-year period, a board of health or the Director determines that conditions at a facility constitute a threat to the public health or safety or the environment, the board or Director may extend the post-closure care for an additional period of up to five years and may require additional extensions of post-closure care of up to five years after the initial extension (sec. 3714.02(K)).

With respect to the financial assurance requirements, the bill requires the rules to address the maintenance of a facility, continuation of any required monitoring systems, and performance and maintenance of any specific requirements established in rules relating to post-closure care or through a permit, license, or order of the Director. The rules also must allow the Director or board of health, as applicable, to determine the amount of a surety bond, a letter of credit, or other acceptable financial assurance for the post-closure care of a facility based on a required cost estimate for the post-closure care of the facility. The rules must require that the owner or operator of a facility provide post-closure financial assurance for a period of five years after the closure of a facility. However, the rules must stipulate that post-closure financial assurance may be extended beyond the five-year period if the extension of the post-closure care period is required. (Sec. 3714.02(I)(2).)

### **Pulverized debris**

Under the bill, a construction and demolition debris facility cannot accept pulverized debris (sec. 3714.081(A)). "Pulverized debris" is defined by the bill to mean debris that, after demolition has occurred, but prior to acceptance of the debris for disposal, has been shredded, crushed, ground, or otherwise rendered to such an extent that the debris is unidentifiable as construction and demolition debris (sec. 3714.01(I)).

Under the bill, the board of health of a health district in which a construction and demolition debris facility is located, the Director, or an authorized representative of either may request the removal of pulverized debris that has been brought to the construction and demolition debris facility. A board, the Director, or an authorized representative of either must make such a request when the pulverized debris is at the unloading zone of the facility designated under rules and not after the debris has been disposed of on the working face<sup>5</sup> of

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<sup>5</sup> Under current law, "working face" is defined to mean the portion of a construction and demolition debris facility where construction and demolition debris is placed for final disposal (sec. 3714.021).

the facility. Upon the receipt of such a request, the owner or operator of the facility must comply with the bill's provisions regarding rejected shipments (see "Rejected debris shipments," below) and do one of the following:

(1) Immediately cause the pulverized debris to be removed from the facility; or

(2) Store the pulverized debris at a location at the facility where construction and demolition debris is not disposed of for not more than ten days after the receipt of a request to remove the debris from the facility. Not later than the end of the ten-day period, the owner or operator must cause the pulverized debris to be removed from the facility. (Sec. 3714.081(B).)

### Transfer facility certifications

Under the bill, a construction and demolition debris facility may request a transfer facility to certify that material that is transferred from the transfer facility to the construction and demolition debris facility is not off-specification material, industrial waste, hazardous waste, solid wastes, or infectious wastes. As used in the bill, "hazardous waste," "solid wastes," and "infectious wastes" have the same meanings as in the Solid, Infectious, and Hazardous Waste Law. (Sec. 3714.082(A).) The bill defines "transfer facility" to mean a site, location, tract of land, installation, or building that is primarily used or intended to be used for the purpose of transferring construction and demolition debris that was generated off the premises of the facility from vehicles or containers into other vehicles or containers for transportation to a construction and demolition debris facility (sec. 3714.01(L)). It requires the Director to adopt rules establishing procedures and requirements governing certification of construction and demolition debris by transfer facilities (sec. 3714.02(M)).

With respect to material that is transferred to a construction and demolition debris facility by a railroad that is regulated under federal law, a construction and demolition debris facility may request the railroad to provide a bill of lading, or a copy of a bill of lading, from the shipper of the material or may request the railroad to provide written information indicating that the railroad did not process or add to the material (sec. 3714.082(B)).

### Rejected debris shipments

Under the bill, if the owner or operator of a construction and demolition debris facility rejects a shipment of debris that has been accepted at the unloading zone of the facility because the shipment is not eligible for disposal at the facility under the Construction and Demolition Debris Law and rules adopted under it, including requirements related to pulverized debris (see above), the owner or

operator must notify the Director or a board of health, as applicable, of the rejection of the shipment. The notification must be made in accordance with rules adopted under the bill (see below) and must include the date and time that the shipment was rejected, the license plate number of the vehicle transporting the rejected shipment as well as an indication of the state of origin of the vehicle, the name of the transporter of the shipment, if ascertainable, and the reason for rejecting the shipment. After rejecting a shipment, the owner or operator must give the transporter or shipper of the shipment, as applicable, instructions detailing procedures to be followed regarding the rejected shipment. The instructions must be on a form prescribed by the Director. (Sec. 3714.083(A).)

A transporter or shipper of a rejected shipment must notify the Director or board of the ultimate disposition of the shipment after the shipment's rejection. The notification must be made in accordance with rules (see below) and must include the date and time that the shipment was ultimately disposed of after its rejection, the location of the disposal, and the name of the owner or operator of the facility that accepted the shipment for disposal. (Sec. 3714.083(B).)

The Director is required to adopt rules governing the provision of notification by owners and operators of construction and demolition debris facilities and the provision of notification by transporters (sec. 3714.02(N)).

### **Exemptions by boards of health**

Under current law, the Director or the board of health having territorial jurisdiction generally may provide by order for exemptions from any provision of the Construction and Demolition Debris Law or rules adopted under it. The Director or board may provide an exemption to any person disposing of or proposing to dispose of construction and demolition debris in such quantities or under such circumstances that, in the determination of the Director or board, are unlikely to adversely affect the public health or safety or the environment or to create a fire hazard. Exemptions cannot be granted from certain provisions of the Law related to locating a facility within the boundaries of a 100-year flood plain or a sole source aquifer or to the disposal of asbestos or asbestos-containing materials or products. (Sec. 3714.04(A).)

The bill requires that before a board of health issues an order that exempts a person disposing of or proposing to dispose of construction and demolition debris, the board must provide written notice to the Director of the board's intention to grant an exemption. The notice must contain a description of the facts surrounding the proposed exemption and any other information that the Director may request. Not later than 30 days after receipt of the notice, the Director must approve or deny the proposed exemption. The Director must provide a copy of the Director's determination to the board of health that submitted the notice of the

proposed exemption. If the Director approves the proposed exemption, the board of health may issue the order granting the exemption. If the Director denies the proposed exemption, the board of health cannot issue the order. (Sec. 3714.04(B).) The Director's determination to deny an exemption is appealable to the Environmental Review Appeals Commission (sec. 3714.04(C)).

### **Operator certification and training**

Under the bill, the Director, in consultation with boards of health and a statewide association representing construction and demolition debris facilities, is required to establish a program for the certification of operators of construction and demolition debris facilities and must establish continuing education training requirements for those operators as part of the certification program (sec. 3714.062(A)). To establish the program, the Director must adopt rules governing the certification and training of operators of construction and demolition debris facilities (sec. 3714.02(O)).

The bill requires the program for the certification of operators, including the continuing education training requirements, to include instruction in and to emphasize, at a minimum, the laws and best management practices governing construction and demolition debris facilities and disposal of construction and demolition debris (sec. 3714.062(B)). An operator of a construction and demolition debris facility must successfully complete a minimum of ten hours of continuing education training each calendar year (sec. 3714.062(D)). The Director must approve persons who provide continuing education training for operators (sec. 3714.062(C)).

### **Information database**

The bill requires the Director to establish and maintain a database or databases composed of public information, including, but not limited to, the record made of the annual inspection of each construction and demolition debris facility required under current law, information from the annual survey of each health district made by the Director under current law, and ground water and leachate data collected in accordance with rules adopted under the bill (see above). The database or databases must be stored in such a manner that they are easily available for sharing with health districts and all other interested persons. (Sec. 3714.20.)

### **Use of Environmental Protection Remediation Fund**

Current law establishes the Environmental Protection Remediation Fund consisting of money set aside by the state for the cleanup and remediation of the Ashtabula River, moneys collected from settlements made by the Director of

Environmental Protection related to actions brought under the Solid, Infectious, and Hazardous Waste Law and the Water Pollution Control Law, and moneys received under the federal Comprehensive Environmental Response, Compensation, and Liability Act. Money in the Fund must be used only for the purpose of remediating conditions at a hazardous waste facility, a solid waste facility, or other locations at which the Director has reason to believe that there is a substantial threat to public health or safety or the environment. The bill allows money collected from settlements made by the Director under the Construction and Demolition Debris Law to be deposited in the Fund and allows money in the Fund to be used for remediation activities at a construction and demolition debris facility. (Sec. 3734.281.)

**Falsification**

Under the bill, falsification of any information that is required to be submitted to a board of health or the Director with respect to a permit to install or a license issued under the Construction and Demolition Debris Law or an application for such a permit or license, or falsification of any other information that is required to be submitted to a board or the Director under that Law and rules adopted under it, is grounds for the denial, suspension, or revocation of a permit to install or a license issued under that Law (sec. 3714.101).

**Declaration of emergency**

The bill declares an emergency and specifies that the reason for the emergency is that a moratorium on the siting of new construction and demolition debris facilities and expansions of existing facilities is due to expire on December 31, 2005, and additional statutory requirements related to such facilities are necessary to protect public health and the environment (Section 4).

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**HISTORY**

ACTION	DATE
Introduced	12-01-05

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