Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 363*

128th General Assembly
(As Reported by S. Agriculture)

Reps. Okey and Newcomb, Evans, J. Adams, Harwood, Yuko, Amstutz, Bacon, Blessing, Bolon, Boose, Coley, Combs, Daniels, Derickson, Dyer, Garland, Grossman, Hackett, Heard, Letson, Luckie, McClain, Oelslager, Ruhl, Snitchler, Weddington, Zehringer

BILL SUMMARY

- Authorizes, rather than requires, the Director of Agriculture to adopt rules under the Concentrated Animal Feeding Facilities Law.
- Prohibits the ownership, as well as the operation as in existing law, of a concentrated animal feeding facility (CAFF) without a permit to operate.
- Requires an applicant for a permit to install or a permit to operate a CAFF who has not owned a CAFF in Ohio for at least two of the five years immediately preceding the submission of the application, in addition to an applicant who has not so operated a CAFF in Ohio, to submit specified information regarding ownership and operation of animal feeding facilities as well as the applicant's compliance history.
- Requires an owner or operator of a CAFF that has been issued an installation permit, permit to install, or permit to operate to submit to the Director notice of any proposed change in the persons identified by the applicant in the permit application as being in a position of control, and authorizes the Director to deny such a change if he finds that the person, in the operation of AFFs, has a history of substantial noncompliance with environmental protection laws.
- Requires the owner or operator of a CAFF who proposes to make a major operational change at the facility to submit an application for approval of the change

* 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.

to the Director, and authorizes the Director to adopt rules establishing procedures and requirements governing such a change.

- Expands the list of persons in control at a facility whose names and addresses must be included in an application for a permit to install or a permit to operate and submitted for a review compliance certificate, and defines "control" for that purpose.

- Provides that requirements governing the management and handling of manure, including the land application of manure, and requirements governing the keeping of records regarding the handling of manure must be established in rules, and authorizes the Director to adopt such rules.

- Specifies that the Director has the authority to enforce terms and conditions of national pollutant discharge elimination system (NPDES) permits for the discharging, transporting, or handling of pollutants, including manure, from concentrated animal feeding operations (CAFOs) rather than for the discharging, transporting, or handling of manure, and defines "pollutants."

- Prohibits a person from discharging pollutants from a CAFO, rather than manure from a point source, into waters of the state without a NPDES permit.

- Eliminates the requirement that the designation in rules of CAFOs that are subject to NPDES permit requirements must include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act.

- Revises the conflict of interest provisions governing the persons who decide whether to approve or disapprove an application for a NPDES permit.

- Expands the provisions governing the complaint procedures regarding CAFFs to allow anyone, rather than only a person who is aggrieved or adversely affected by an alleged nuisance, to submit any complaint regarding a CAFF or the discharge of a pollutant from an animal feeding operation, and defines "animal feeding operation" to have the same meaning as animal feeding facility.

- Makes several changes to the corrective action provisions governing the operation of CAFFs, including allowing the Director to take corrective actions or assess civil penalties against the owner or operator of a CAFF for the violation of specified rules adopted by the Director and allowing the Director to impose administrative penalties.

- Authorizes the Director to take corrective actions and assess civil penalties against the owner or operator of an animal feeding operation rather than the owner or operator of a point source.

- Allows the Director to require an animal feeding facility that is not a CAFF, rather than that is not a medium or small CAFO, to be required to apply for and receive a permit to operate when certain criteria are met.

- Makes other changes in the Concentrated Animal Feeding Facilities Law.

- Declares an emergency, and states that specified provisions of the bill do not become operative until the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture.

- Extends the temporary suspension of the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and previously enacted temporary provisions regarding that Law until July 1, 2010.

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CONTENT AND OPERATION

Background and introduction

Under the Concentrated Animal Feeding Facilities Law, the Director of Agriculture is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs). In general, a CAFF is an animal feeding facility (AFF) that has a total design capacity for a specified number of animals.[1] A CAFO is an animal feeding facility that has a total design capacity for a specified number of animals or that may be required to obtain a national pollutant discharge elimination system (NPDES) permit under certain circumstances.

In order to regulate CAFFs and CAFOs, the Director must establish a permitting system for the installation and operation of those facilities and operations. There are varying degrees of regulation depending on the size of the CAFF or CAFO. A person that wants to construct a new CAFF or modify an existing CAFF must obtain a permit to install. In addition, a person that wants to operate a CAFF must obtain a permit to operate or, if the CAFF was issued an installation permit by the Director of Environmental Protection prior to the date on which the Director of Agriculture has finalized the program for the issuance of permits for the construction or modification of CAFFs, a review compliance certificate.[2] The owner or operator of a CAFO also may need to obtain a NPDES permit for the discharge of manure from a point source into waters of the state, and the owner or operator of any AFF may need to obtain a NPDES permit for the discharge of storm water resulting from the AFF. Until the United States Environmental Protection Agency (USEPA) approves the transfer of authority to issue NPDES permits from the Director of Environmental Protection to the Director of Agriculture, the Director of Environmental Protection must issue the NPDES permits.

The bill revises several of the provisions in the Concentrated Animal Feeding Facilities Law, including the provisions governing the issuance of permits to install, permits to operate, NPDES permits, review compliance certificates, and livestock manager certifications as well as corrective actions that the Director of Agriculture may take under that Law.

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[1] Current law defines "animal feeding facility" as a lot, building, or structure where both of the following conditions are met: (1) agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, or (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure (R.C. 903.01(B)).

[2] Existing law defines "installation permit" as a permit for the installation or modification of a disposal system or any part of a disposal system issued by the Director of Environmental Protection under the NPDES program established in the Water Pollution Control Law (R.C. 903.01(L)).

Adoption of rules

Under existing law, the Director must adopt rules in accordance with the Administrative Procedure Act that establish numerous requirements and procedures for the purposes of the Concentrated Animal Feeding Facilities Law, including requirements and procedures governing the issuance and regulation of permits to install, permits to operate, and NPDES permits. Under the bill, the Director is authorized, rather than required, to adopt those rules. (See **COMMENT**.) (R.C. 903.10.)

Permits to install, permits to operate, and review compliance certificates

Permits to install

Current law requires an applicant for a permit to install to submit an application for the permit to the Director of Agriculture. The applicant must include with the permit application certain information. One item of information that must be included is 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. The bill also requires the application to include the name and address of all members if the applicant is a limited liability company. Under existing law, "control" is not defined. The bill defines "control" as the power, directly or indirectly, to direct the management and policies of the applicant through the ownership of voting securities, by contract, through a right of approval or disapproval, or otherwise unless the power is held by a chartered lending institution as a result of debt liability. (R.C. 903.02(C)(1).)

Permits to operate

Under existing law, except for a CAFF that is operating under an installation permit or a review compliance certificate (see above), no person can operate a CAFF without a permit to operate issued by the Director. The bill also prohibits anyone from owning a CAFF without a permit to operate. (R.C. 903.03(A)(2).)

Existing law requires an applicant for a permit to operate to submit an application to the Director. The applicant must include with the application certain information. One item of information that must be included is 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. Similar to the bill's changes regarding permits to install, the bill also requires the application to include the name and address of all members if the applicant is a limited liability company. Under existing law, "control" is

not defined. Under the bill, "control" has the same meaning as in the bill's provisions governing permits to install (see above). (R.C. 903.03(C)(1).)

Background information requirements for certain permit applicants

Under existing law, each application for a permit to install or permit to operate a CAFF that is submitted by an applicant who has not operated a CAFF 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:

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

(2) A listing of the AFFs that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the AFFs that the owner or operator has operated or is operating outside the United States; 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, the Safe Drinking Water Act, or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any AFF that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any AFF that the owner or operator has operated or is operating outside the United States.

The bill makes several changes to those provisions. First, it extends the requirement to include applicants that have not owned a CAFF in this state for at least two of the five years preceding the submission of an application. Second, in each of the categories of information that is required to be submitted with an application as discussed in items (1), (2), and (3), above, it replaces references to the owner or operator of the proposed new or modified CAFF with references to the applicant or any person identified by the applicant in the permit application as required in existing law and the bill (see above). Third, it extends the requirement regarding the listing of AFFs to include those AFFs that an applicant or any person identified by the applicant in the permit application owns or has owned in or outside this state. (R.C. 903.05(A).) Finally, the bill makes conforming changes (R.C. 903.05(B)).

Under current law, a person who seeks to acquire a CAFF that has been issued an installation permit that has been transferred from the Director of Environmental Protection to the Director of Agriculture, a permit to install, or a permit to operate must submit to the Director specified information on current and past AFFs operated by the person and past compliance with laws pertaining to environmental protection (see above) prior to the transfer of the permit. The Director cannot allow the transfer of a permit if the Director finds that the person, in the operation of AFFs, has a history of substantial noncompliance with environmental laws that indicates that the person lacks sufficient reliability, expertise, and competence to operate the CAFF in substantial compliance with the Concentrated Animal Feeding Facilities Law and rules adopted under it. The bill extends this provision to include a person that seeks to operate a CAFF that has been issued an installation permit that has been transferred from the Director of Environmental Protection to the Director of Agriculture, a permit to install, or a permit to operate. (R.C. 903.05(C).)

The bill adds a requirement that an owner or operator of a CAFF that has been issued an installation permit that has been transferred from the Director of Environmental Protection to the Director of Agriculture, a permit to install, or a permit to operate must submit to the Director notice of any proposed change in the persons identified in the person's application for a permit to install or permit to operate as being in a position of control. The Director may deny approval of the proposed change if the Director finds from the information submitted under the bill as discussed in items (1), (2), and (3), above, pertinent information submitted to the Director, and other pertinent information obtained by the Director at the Director's discretion that the proposed person, in the operation of AFFs, has a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the person lacks sufficient reliability, expertise, and competence to operate the CAFF in substantial compliance with the Concentrated Animal Feeding Facilities Law and rules adopted under it. (R.C. 903.05(D).)

Major operational changes at concentrated animal feeding facilities

Under the bill, the owner or operator of a CAFF who proposes to make a major operational change at the facility must submit an application for approval of the change to the Director in accordance with rules (R.C. 903.02(H) and 903.03(I)). The Director may adopt rules that establish a description of what constitutes a major operational change and the information that must be included in, procedures for the approval or denial of, and grounds for the denial of an application for approval of a major operational change at a CAFF (R.C. 903.10(A)(2), (7), (10), and (12)).

Review compliance certificates

Existing law generally prohibits anyone, on and after the date that is two years after the date on which the Director of Agriculture has finalized the permit to operate program, from operating an existing concentrated animal feeding facility unless the person holds a review compliance certificate.[3] The bill also prohibits such a person from owning an existing CAFF without a review compliance certificate. (R.C. 903.04(D).)

Under current law, a person must submit specified information to the Director in order to obtain a certificate unless the information is included in the installation permit that was issued for the facility. One item of information that must be included is 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 facility or the selection of officers, directors, or managers of the facility. As with the bill's changes regarding permits to install and permits to operate, the bill also requires the information to include the name and address of all members if the owner or operator is a limited liability company. Under existing law, "control" is not defined. Under the bill, "control" has the same meaning as in the bill's provisions governing permits to install (see above). (R.C. 903.04(E).)

Livestock manager certifications

Current law requires persons who are responsible for the management and handling of manure, including the land application of manure or the removal of manure from a manure storage or treatment facility, at a major CAFF and persons who transport and land apply annually or buy, sell, or land apply annually a certain quantity of manure to obtain a livestock manager certification issued by the Director (R.C. 903.07). Current law does not establish specific requirements governing the management and handling of manure. The bill provides that requirements governing the management and handling of manure, including the land application of manure, and requirements governing the keeping of records regarding the handling of manure, including the land application of manure, must be established in rules and authorizes the Director to adopt such rules. (R.C. 903.07(C) and 903.10(E)(6) and (7).)

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[3] Under current law, "existing concentrated animal feeding facility" or "existing facility" means a CAFF that was in existence prior to the date on which the Director of Agriculture has finalized the program for the issuance of permits to install for CAFFs and that has received an installation permit prior to that date (R.C. 903.04(A)).

NPDES permits

Background

The Federal Water Pollution Control Act and regulations adopted under it establish the NPDES program. The program generally requires a NPDES permit to be obtained for the discharge of sewage, industrial waste, or other wastes into the waters of the state. A NPDES permit is issued for each point source of discharge. A NPDES permit may be an individual permit or a general permit.

As previously discussed, currently the Director of Environmental Protection administers the NPDES program in Ohio (R.C. 6111.03). However, the Concentrated Animal Feeding Facilities Law authorizes the Director of Agriculture to participate in the NPDES program and requires that Director to prepare and submit to the USEPA a state program for the issuance of NPDES permits under that Law. On and after the date on which the USEPA approves the program, authority for that portion of the NPDES program is transferred from the Director of Environmental Protection to the Director of Agriculture. (R.C. 903.08.) At the time that the bill was introduced, the USEPA had not approved the program.

Permit requirements

Under existing law, on and after the date on which the USEPA approves the state program, the authority to enforce terms and conditions of NPDES permits previously issued by the Director of Environmental Protection for the discharging, transporting, or handling of storm water from an AFF or of manure is transferred from the Director of Environmental Protection to the Director of Agriculture. The bill retains the storm water provisions, but specifies that the Director of Agriculture has the authority on and after that date to enforce terms and conditions of NPDES permits for the discharging, transporting, or handling of pollutants from CAFOs rather than for the discharging, transporting, or handling of manure. (R.C. 903.08(A)(2).) The bill then makes necessary conforming changes (R.C. 903.08(B)(1) and (2), 903.09(K)(1), and 6111.03). It defines "pollutant" as dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials except those regulated under the Atomic Energy Act of 1954, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, including manure, discharged into water. "Pollutant" does not include sewage from vessels; it also excludes water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well that is used either to facilitate production or for disposal purposes is approved by the state and if the state determines

that the injection or disposal will not result in the degradation of ground or surface water resources. (R.C. 903.01(Y).)

Under current law, on and after the date on which the USEPA approves the NPDES program submitted by the Director of Agriculture, no person can discharge manure from a point source into waters of the state without first obtaining a NPDES permit issued by the Director. The bill instead prohibits anyone on and after that date from discharging pollutants from a CAFO into waters of the state. (R.C. 903.08(B)(1).)

Current law requires the Director to adopt rules establishing the designation of CAFOs that are subject to NPDES permit requirements under the Concentrated Animal Feeding Facilities Law. The designation must include only those point sources for which the issuance of NPDES permits is required under the Federal Water Pollution Control Act. The bill eliminates the requirement that the designation of CAFOs must include only those point sources for which the issuance of NPDES permits is required under federal law. (R.C. 903.10(F)(1).)

Conflict of interest

For purposes of the issuance of NPDES permits as discussed above, existing law prohibits a person from issuing a NPDES permit if the person receives or has received during the two years prior to the receipt of an application for a NPDES permit a significant portion of income from any NPDES permittee or any applicant for a NPDES permit.[4] The bill retains the prohibition with one change. It prohibits a person from approving all or portions of, rather than issuing, a NPDES permit if the person receives or received a significant portion of income from a permittee or an applicant for a NPDES permit.

Current law also prohibits a person who, pursuant to an appeal of an action regarding a NPDES permit, has the authority to require or to order the Director of Agriculture to vacate or modify a NPDES permit from requiring or ordering the Director to vacate or modify a NPDES permit if the person receives or has received during the two years prior to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. The bill instead prohibits a person from serving on a board or commission that approves all or portions

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[4] Current law defines: (1) "significant portion of income" as 10% or more of gross personal income in a calendar year or 50% or more of gross personal income in a calendar year if the recipient of the income is more than 60 years of age and is receiving that portion of income under retirement benefits, including a pension or similar arrangement, (2) "income" to include retirement benefits, consultant fees, and stock dividend, excluding mutual fund payments or other diversified investments for which the recipient does not know the identity of the primary sources of the income, and (3) "permittee" and "applicant for a NPDES permit" as not including any department or agency of the state (R.C. 903.081(B)).

of a NPDES permit, including taking such action pursuant to an appeal of a NPDES permit, if the person receives or has received during the two years prior to serving on the board or commission or to the filing of the appeal a significant portion of income from any NPDES permittee or any applicant for a NPDES permit. (R.C. 903.081(A).)

Enforcement

Filing of complaint against CAFF or animal feeding operation

Current law

Under existing law, a person who is aggrieved or adversely affected by an alleged nuisance related to a CAFF may submit an oral complaint or a signed and dated written complaint to the Director alleging that the nuisance exists (R.C. 903.15(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 CAFF is complying with a permit or review compliance certificate (R.C. 903.15(B)).

If, upon completion of the investigation, the Director determines that the owner or operator is in compliance with a permit or review compliance certificate, the Director must dismiss the complaint and notify the complainant and the owner or operator of the dismissal. If the Director determines that the owner or operator is not in compliance with a permit or review compliance certificate, the Director must proceed in accordance with the corrective actions established under current law regarding a permit to install or permit to operate or a NPDES permit, or both, as applicable (see "**Corrective actions regarding permits to install and permits to operate**" and "**Corrective actions regarding NPDES permits**," below). (R.C. 903.15(C).)

The bill

The bill expands the complaint procedures as follows. Under the bill, a person may submit an oral complaint or a signed and dated written complaint to the Director regarding a CAFF or the discharge of a pollutant from an animal feeding operation (AFO) (R.C. 903.15(A)). The bill defines "animal feeding operation" to have the same meaning as "animal feeding facility" (R.C. 903.01(C)). 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 CAFF is complying with the Concentrated Animal Feeding Facilities Law, rules adopted under it, or any terms and conditions of any permit issued under it or to determine if a discharge of a pollutant is occurring or has occurred at the AFO (R.C. 903.15(B)).

If, upon completion of the investigation, the Director determines that the owner or operator of the CAFF is in compliance with the Concentrated Animal Feeding Facilities Law, rules adopted under it, or any terms and conditions of any permit issued under it or determines that a discharge of a pollutant is not occurring or has not occurred at the AFO, the Director must dismiss the complaint and notify the complainant and the owner or operator of the CAFF or AFO, whichever is applicable, of the dismissal. If the Director determines that the owner or operator of the CAFF is not in compliance with that Law, rules adopted under it, or any terms and conditions of any permit issued under it or determines that a discharge of a pollutant is occurring or has occurred at the AFO, the Director must proceed in accordance with the corrective actions established under current law and the bill regarding a permit to install or permit to operate or a NPDES permit, or both, as applicable (see below). (R.C. 903.15(C).)

Corrective actions regarding permits to install and permits to operate

Under existing law, the Director may propose to require corrective actions and assess a civil penalty against an owner or operator of a CAFF if the Director or the Director's authorized representative (hereafter the Director) determines that the owner or operator is not in compliance with the provisions governing the issuance of a permit to install, permit to operate, or review compliance certificate, the terms and conditions of a permit to install, permit to operate, or review compliance certificate issued for the CAFF, including the requirements regarding insect and rodent control plans and livestock manager certifications established under existing law, or rules adopted governing those permits. The bill makes several changes to this provision. First, it allows the Director to take corrective actions and assess civil penalties against an owner or operator that is not in compliance with a livestock manager certification rather than allowing the Director to take corrective actions and assess civil penalties against an owner or operator that is not in compliance with the terms and conditions of a permit to operate regarding a livestock manager certification. Second, it permits the Director to take corrective actions or assess civil penalties for the enforcement of rules that are adopted by the Director governing review compliance certificates; best management practices governing land application of manure, insect and rodent control plans, livestock manager certifications, and minimization of water pollution, odors, insects, and rodents; and procedures and administrative penalties for additional inspections of noncompliant CAFFs (see "**Administrative penalties**," below). (R.C. 903.16(A).) It also makes necessary conforming changes (R.C. 903.16(B), (C), and (D)).

Under current law, the Attorney General, upon the written request of the Director, must bring an action for an injunction in any court of competent jurisdiction against any person violating or threatening to violate specified provisions of the Concentrated Animal Feeding Facilities Law pertaining to permits to install, permits to operate, or review compliance certificates; the terms and conditions of such permits or

certificates, including requirements regarding insect and rodent control plans and livestock manager certification; rules pertaining to permits to install and permits to operate; or an order issued by the Director requiring compliance with those provisions. The bill generally retains this requirement, but adds orders issued by the Director regarding livestock manager certifications to the list of provisions for which the Attorney General must bring an action for an injunction concerning a violation and makes a conforming change. (R.C. 903.16(C) and (D)(2).)

The bill also authorizes the Director, in addition to the civil penalties discussed above, to impose an administrative penalty against an owner or operator of a CAFF if the Director or the Director's authorized representative determines that the owner or operator is not in compliance with best management practices that are established in rules or in the permit to install, permit to operate, or review compliance certificate issued for the facility. The administrative penalty cannot exceed $5,000. The Director must afford the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, imposition of an administrative penalty, or both. The Director's determination and the imposition of the administrative penalty may be appealed in accordance with the Administrative Procedure Act. (R.C. 903.16(E).)

Corrective actions regarding NPDES permits

Under current law, the Director of Agriculture may propose to require corrective actions and assess a civil penalty against an owner or operator of a point source if the Director determines that the owner or operator is not in compliance with the statute governing NPDES permits, the terms and conditions of a NPDES permit, the NPDES provisions of a permit to operate, or rules adopted by the Director. The bill authorizes the Director to take such actions and assess such penalties against the owner or operator of an animal feeding operation instead of the owner or operator of a point source. (R.C. 903.17(A).)

The bill also authorizes the Director, in addition to the civil penalties discussed above, to impose an administrative penalty against an owner or operator of an animal feeding operation if the Director or the Director's authorized representative determines that the owner or operator has discharged pollutants into waters of the state in violation of current law or the terms and conditions of a NPDES permit or the NPDES provisions of the permit to operate issued for the operation. The administrative penalty cannot exceed $5,000. The Director must afford the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, imposition of an administrative penalty, or both. The Director's determination and the imposition of the administrative penalty may be appealed in accordance with the Administrative Procedure Act. (R.C. 903.17(E).)

Designation of animal feeding facilities as concentrated animal feeding facilities

Under existing law, the Director may determine that an AFF that is not a medium CAFO or small CAFO nevertheless must be required to be permitted as a medium or small CAFO when certain criteria are met. The bill revises that provision by allowing the Director to require an AFF that is not a CAFF, rather than a medium or small CAFO, to be required to apply for and receive a permit to operate when certain criteria are met. The bill also makes conforming changes, including elimination of the requirement that if an AFF is required to be permitted in accordance with current law, the owner or operator of the facility must apply to the Director for a permit to operate as a CAFO. (R.C. 903.082.)

Other provisions regarding CAFFs

Existing law requires the Director to adopt rules that establish best management practices governing the land application of manure that originated at a CAFF and governing manure management, disposal of dead livestock, and any other activity that the Director considers appropriate at a CAFF; the practices must minimize water pollution, odors, insects, and rodents. Best management practices established in rules cannot conflict with best management practices established in rules that have been adopted under any other Ohio statute and that are in effect on March 15, 2001. The bill removes the cut-off date of March 15, 2001. (R.C. 903.10(C).)

For purposes of the provisions in the Concentrated Animal Feeding Facilities Law that require the use of best management practices, current law defines "best management practices" to mean those practices established in rules. The bill eliminates the definition of "best management practices." (R.C. 903.01(C).)

The Concentrated Animal Feeding Facilities Law defines "person" to mean any legal entity defined as a person under the Revised Code's general definition of "person," which includes an individual, corporation, business trust, estate, trust, partnership, and association. That Law also defines "person" to mean 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. The bill clarifies the definition of "person" in the CAFF Law by stating that "person" has the same meaning as in the Revised Code's general definition of "person" and also includes the public entities specified above.

Current law establishes procedures that the Director must follow in issuing permits to install, permits to operate, and NPDES permits. One of those requirements is the holding of a public meeting regarding a draft permit if significant public interest has

been demonstrated. Another is the publication of a notice of the issuance of a final permit once in a newspaper of general circulation in the county in which the concentrated animal feeding facility or discharger is located. Current law states that failure of the Director to provide notice or a public meeting must invalidate a permit only if the failure is raised by, and was relied on to the detriment of, a person that is entitled to appeal the permit. The bill eliminates that statement. (R.C. 903.09(E).)

Finally, the bill makes several conforming and corrective changes (R.C. 903.01(F)(2), 903.02(C)(6), 903.03(A)(1) and (C)(2), 903.06(D), 903.09(F), 903.10(E), and 6111.03(J)(1)).

Stating that the bill's enactment is necessary in part to expedite the process of receiving USEPA approval for the Director of Agriculture to administer certain NPDES permits, the bill declares an emergency (Section 4). It then states that its provisions regarding permits to install, permits to operate, background information requirements for certain permit and review compliance certificate applicants, major operational changes at concentrated animal feeding facilities, review compliance certificates, livestock manager certifications, and corrective actions regarding permits to install, permits to operate, and NPDES permits become operative on the date on which the Administrator of the United States Environmental Protection Agency approves the National Pollutant Discharge Elimination System program submitted by the Director of Agriculture (Section 3).

Extension of moratorium regarding sewage treatment systems program

(Sections 4, 5, 6, 7, and 8)

Am. Sub. H.B. 119 of the 127th General Assembly suspended until July 1, 2009, the operation of most of the provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly. In addition, Am. Sub. H.B. 119 generally restored until July 1, 2009, the law related to household sewage disposal systems that existed prior to the enactment of Sub. H.B. 231. In order to effectuate the suspension of the Sub. H.B. 231 provisions and the restoration of the law that existed prior to its enactment, Am. Sub. H.B. 119 required the Director of Health, not later than July 2, 2007, to adopt rules related to household sewage disposal systems that were identical to those in effect prior to January 1, 2007, and to rescind the rules adopted pursuant to Sub. H.B. 231. Am. Sub. H.B. 119 also established additional requirements governing the duties of boards of health with respect to the approval or denial of the use of sewage treatment systems and with respect to the inspection of systems. Those requirements were required to be effective until the effective date of new rules to be adopted by the Public Health Council when the suspended provisions of the Household and Small Flow On-Site Sewage Treatment

Systems Law became operational again on July 1, 2009. Am. Sub. H.B. 119 prohibited the Director of Health and the Public Health Council from adopting new rules that modify or change the requirements established by Am. Sub. H.B. 119 prior to July 1, 2009. The provisions established by Am. Sub. H.B. 119 that govern household and small flow on-site sewage treatment systems will expire on the effective date of the new rules.

Because legislation was not enacted prior to July 1, 2009, some of the provisions from Am. Sub. H.B. 119 expired and the provisions of Sub. H.B. 231 that were suspended became operational. Am. Sub. H.B. 1 of the 128th General Assembly essentially reenacted the provisions of Am. Sub. H.B. 119 that temporarily suspended the operation of provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law. The effect of that reenactment was to extend the termination of the suspension and the temporary law from July 1, 2009, to January 1, 2010. That act also extended the date until which the Director of Health and the Public Health Council are prohibited from adopting rules that modify or change the requirements originally established by Am. Sub. H.B. 119 until January 1, 2010.

The bill extends the termination of statutes, temporary law, and prohibition against rule adoption until July 1, 2010.

COMMENT

The bill makes the adoption of rules by the Director of Agriculture under the Concentrated Animal Feeding Facilities Law discretionary rather than mandatory. However, the Law is not self-executing and requires the adoption of rules in order to be fully implemented.

HISTORY

ACTION	DATE
Introduced	11-10-09
Reported, H. Agriculture & Natural Resources	12-01-09
Passed House (92-6)	12-01-09
Reported, S. Agriculture	---

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