



<b>Solid Waste (Fund 4K3) - Environmental Protection Agency</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities
<b>Construction and Demolition Debris Facility Oversight Fund (New Fund) - Environmental Protection Agency</b>			
Revenues	Temporary gain from \$2,000 permit-to-install application fees	Temporary gain from \$2,000 permit-to-install application fees	Temporary gain from \$2,000 permit-to-install application fees
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2006 is July 1, 2005 – June 30, 2006.

- The Attorney General's office may experience an increase in expenditures to bring actions for civil penalties for violations of the Construction and Demolition Debris Law and to conduct investigative reports of applicants. The Attorney General's costs may be offset from civil penalty payments or from other funds of the Ohio EPA or local health districts as well as investigative fees charged to applicants. Currently, an estimate of the number of cases that may be brought forth by the Attorney General is unknown.
- The Environmental Review Appeals Commission may experience additional administrative costs to hear appeals regarding the denial of exemptions from the Construction and Demolition Debris Law. Currently, the number of appeals that may be brought forth is unknown.
- Two funds administered by the Ohio EPA, the Construction and Demolition and Debris Fund (Fund 4U7) and the Solid Waste Fund (Fund 4K3), may experience a potential increase in operating expenses for the establishment and enforcement of new rules related to construction and demolition debris facilities (C&DD) and the implementation of the new permitting program. Additional operating expenses are likely to include additional staffing, development of various forms, development of a certification training program, maintenance of a new database, reviewing grandfathered applications, conducting background investigations, and related travel costs. Currently, the amount of these additional expenses is unknown and will depend on the number of C&DD facilities that apply for a permit to install or an operator's license.
- The Construction and Demolition Debris Facility Oversight Fund (New Fund) may experience a temporary revenue gain of \$2,000 each time an application is submitted to install a new C&DD facility. However, the bill requires the Ohio EPA, or local health district, to refund the application fee no later than six months after the facility that is issued the permit to install begins accepting construction and demolition debris for disposal. Therefore, this revenue is only a temporary gain, unless the application is denied, in which case the Ohio EPA may keep the \$2,000.
- The Environmental Protection Remediation Fund (Fund 541) may experience a gain in revenue from the payment of civil penalties from violators of the Construction and Demolition Debris Law. The maximum amount of payment for each day of violation is \$10,000. Currently, it is unknown how much penalty revenue may accrue to the fund. Fund 541 may also experience a draw on current revenues since the bill

requires money in the fund also to be used for remediation activities at C&DD facilities. The number of remediation activities and associated costs is currently unknown.

### *Local Fiscal Highlights*

<b>LOCAL GOVERNMENT</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FUTURE YEARS</b>
<b>Counties</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase to bring forth civil actions against C&DD facilities; potential increase for County Recorder filings	Potential increase to bring forth civil actions against C&DD facilities; potential increase for County Recorder filings	Potential increase to bring forth civil actions against C&DD facilities; potential increase for County Recorder filings
<b>Local Health Districts</b>			
Revenues	Gain from \$2,000 application fees; potential gain from civil penalties	Gain from \$2,000 application fees; potential gain from civil penalties	Gain from \$2,000 application fees; potential gain from civil penalties
Expenditures	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities	Potential increase to cover operating expenses for the establishment and enforcement of new rules related to C&DD facilities
<b>Municipalities</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal increase in costs to fire departments to review permitting plans; potential increase to bring forth civil actions against C&DD facilities; minimal increase to hold public meetings	Minimal increase in costs to fire departments to review permitting plans; potential increase to bring forth civil actions against C&DD facilities; minimal increase to hold public meetings	Minimal increase in costs to fire departments to review permitting plans; potential increase to bring forth civil actions against C&DD facilities; minimal increase to hold public meetings
<b>Townships</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal increase in costs to fire departments to review permitting plans; minimal increase to hold public meetings	Minimal increase in costs to fire departments to review permitting plans; minimal increase to hold public meetings	Minimal increase in costs to fire departments to review permitting plans; minimal increase to hold public meetings
<b>Courts</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase to order extension of post-closure period	Potential increase to order extension of post-closure period	Potential increase to order extension of post-closure period

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Local health districts may experience a potential increase in operating expenses for the establishment and enforcement of new rules related to construction and demolition debris facilities (C&DD) and assistance in the implementation of the new permitting program. Additional operating expenses may include additional staffing, permitting assistance, reviewing permit applications, collection of application fees, requesting assistance from Ohio EPA, mailing costs, assistance with the development of a certification training program, reviewing grandfathered applications, conducting background investigations, and related travel costs. Currently, the amount of these additional expenses is unknown and will depend on the number of C&DD facilities that apply for a permit to install or an operator's license.
- Local health districts may also experience a temporary revenue gain of \$2,000 each time an application is submitted to install a new C&DD facility or modify an existing one. However, the bill requires the local health district, or Ohio EPA, to refund the application fee back to the applicant no later than six months after the facility that is issued the permit to install begins accepting construction and demolition debris for disposal. Therefore, this revenue is only a temporary gain, unless the application is denied, in which case the Ohio EPA may keep the \$2,000.
- County prosecutors and municipal law directors may experience an increase in expenditures to bring actions for civil penalties for violations of the Construction and Demolition Debris Law. Costs to counties and municipalities may be offset from civil penalty payments or from other funds of the Ohio EPA or local health districts. Currently, an estimate of the number of cases that may be brought forth by county prosecutors or municipal law directors is unknown.
- Municipalities and townships may experience minimal expenditure increases to have their fire departments review and file an application's plan for effective action in response to a fire, an explosion at the facility, or the release of noxious gases. Furthermore, municipalities and townships may experience minimal expenditure increases to provide a building for a public hearing to occur regarding where the proposed C&DD facility is to be located. Such additional costs are likely to be for utilities.
- County and/or municipal court systems may experience additional administrative costs to order the extension of a post-closure period of a C&DD facility if it is found that conditions at a facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required. Currently, it is unknown what costs would be involved in issuing such an order. Presumably, some, if not all, of the associated costs would be offset by court fees.
- Upon closure of a C&DD facility, county recorders may experience a minimal increase in administrative expenses to file a notice by an owner or operator of a C&DD facility that the property was used as a C&DD facility. Any additional expenses are likely to be offset by fees.

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## *Detailed Fiscal Analysis*

### *Introduction*

The bill makes several changes in the construction and demolition debris management program. The bill requires the issuance of a permit to install for a new construction and demolition debris facility in lieu of an initial license and requires an applicant for a permit to

install to submit background information about past violations of environmental laws and ownership of other waste disposal facilities together with 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, certification of materials from transfer facilities, and adds several other requirements to the Construction and Demolition Debris Law. The provisions that result in a fiscal impact to the state and local governments are discussed below. Please refer to the *LSC Bill Analysis* for additional information on all of the bill's provisions.

### **Background on Construction and Demolition Debris Facilities and the State Program**

The Construction and Demolition Debris (C&DD) program is governed by Chapter 3714. of the Revised Code and regulates the disposal of debris from construction and demolition activities into licensed C&DD landfills. Approved local boards of health perform the licensing, inspection, and enforcement of the majority of C&DD facilities. These boards receive a portion of C&DD disposal fees to fund their activities. Ohio EPA provides ongoing technical assistance to approved local health districts and performs annual surveys to ensure programs are in compliance. In cases where no approved local board of health has jurisdiction, Ohio EPA performs all licensing, inspection, and enforcement activities associated with the C&DD program.

There are currently 72 licensed C&DD facilities in Ohio. These facilities receive approximately 14 million cubic yards of debris annually. Of these 72 facilities, local boards of health regulate 68 of them and the Ohio EPA regulates 4 of them. Over the FY 2006-2007 biennium approximately \$730,000 in FY 2006 and \$781,000 in FY 2007 will be allocated to the Ohio EPA to administer this program.

The funding sources for the program include a \$1.00 per ton solid waste tipping fee and C&DD disposal fees. The tipping fee was increased in FY 2004 by \$0.25 per ton to the current \$1.00 per ton fee. With the fee increase, EPA saw revenues rise approximately 33%. As for the C&DD disposal fee, until recently C&DD license fees were \$3,000 annually for each C&DD landfill in Ohio; however, Am. Sub. H.B. 432, effective April 15, 2005, replaced the license fee with a 30-cent per cubic foot or 60-cent per ton disposal fee.

The disposal fee is collected by owners/operators of C&DD facilities or solid waste facilities and transmitted to local health districts or to the Ohio EPA, where appropriate, in order to fund oversight of C&DD facilities. If local boards of health relinquish regulatory and enforcement activities of C&DD facilities, the moneys paid to the local health districts remain in the Construction and Demolition Debris Fund (Fund 4U7), ultimately increasing the fund's balance, though minimally. The two line items that fund this C&DD program are 715-649, Solid Waste (Fund 4K3), and 715-660, Construction and Demolition Debris (Fund 4U7). Based on the LSC fiscal analysis of Am. Sub. H.B. 432, local boards of health receive approximately \$2,500,000 (assuming 65 health districts) in annual revenue from the disposal of construction and demolition debris, the Ohio EPA receives approximately \$541,000 in annual revenue, and

counties, municipalities, and townships each receive \$390,000, \$520,000, and \$520,000 in annual revenue, respectively.<sup>5</sup>

### **Construction and Demolition Debris Facility Study Committee**

Also, in Am. Sub. H.B. 66 (the main appropriations bill) a six-month moratorium on the licensing of new C&DD facilities was established. The bill authorized boards of county commissioners to request that pending applications for licenses be processed and specified that the moratorium does not apply to new facilities that are contiguous or adjacent to existing facilities or to expansions of or modifications to existing facilities. Furthermore, the bill created the Construction and Demolition Debris Facility Study Committee to study certain topics related to C&DD facilities and make recommendations<sup>6</sup> to the General Assembly by September 30, 2005 for changes regarding the laws governing those facilities. Finally, the bill required the General Assembly to enact legislation based on the Committee's recommendations as soon as is practicable. H.B. 397 is a product of the Study Committee's recommendations.

### **New Construction and Demolition Debris Program**

Under the bill, not later than 180 days from the bill's effective date and in accordance with rules adopted under section 3714.02 of the Revised Code, the Ohio EPA is required to establish a new program for the issuance of permits to install new construction and demolition debris facilities. The new rules that the Ohio EPA is required to adopt include the following:

- Procedures for the issuance of permits to install;
- Rules that establish standards and procedures governing the modification of C&DD operators' licenses;
- Rules that require that ground water monitoring be capable of determining impacts resulting from the operation of construction and demolition debris facilities, including ground water assessments;
- Requirements for the monitoring and sampling of leachate;
- Requirements that the owner or operator of a facility use best management practices;
- Financial assurance requirements for post-closure care of facilities;
- Requirements for the post-closure care of facilities for a minimum period of five years after the closure of a facility;
- Rules to extend the post-closure period for one or more additional five-year periods if conditions at a facility constitute a threat to the public health or safety or to the environment;
- Procedures and requirements governing the certification of construction and demolition debris by transfer facilities;
- Requirements governing the provision of notification by owners and operators of C&DD facilities of rejected shipments and by transporters of the final disposition of rejected shipments;

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<sup>5</sup> Access to the LSC Fiscal Analysis of Am. H.B. 432 of the 125th General Assembly may be found at the following link: <http://www.lbo.state.oh.us/fiscal/fiscalnotes/125ga/HB0432EN.HTM>.

<sup>6</sup> A copy of the final report of the Construction and Demolition Debris Facility Study Committee may be found at the following link: [http://www.theoec.org/pdfs/hottopics/hottopics\\_pr\\_cddfinal.pdf](http://www.theoec.org/pdfs/hottopics/hottopics_pr_cddfinal.pdf).

- Requirements regarding contingency plans related to fire, explosion, or the release of noxious gases at facilities; and
- Requirements governing the certification and training of operators of C&DD facilities.

The EPA may experience additional costs to establish this program and adopted rules establishing standards and procedures for the issuance of permits to install some of these costs are likely to include hiring additional staff and acquiring additional resources given the timeframe for program implementation. Depending on when, and if, the bill becomes effective, it is uncertain when the actual program may begin. Prior to implementation of the program, administrative rules will have to be promulgated. Some of these specific costs are discussed in more detail below.

**Obtaining a permit to establish a C&DD facility.** As part of the new program, the bill requires that on or after the bill's effective date, no person shall establish a new C&DD facility without first obtaining a permit. The permits may be obtained from the nearest local health district, or from the Ohio EPA if the health district is not on the EPA Director's approved list pursuant to R.C. section 3714.08(A) or (B). There are currently 82 out of 137 local health districts (county and city) who are on the Director's approved list to administer the Solid and Infectious Waste Program and/or the Construction and Demolition Debris Program within their jurisdictions. A local health district that is approved to administer the C&DD program within its jurisdiction is responsible for assessing compliance with appropriate actions to resolve outstanding violations, including enforcement actions when necessary. An approved health district also has licensing authority for all operating facilities within its jurisdiction. If the local health district is not on the Director's approved list, the Ohio EPA performs all regulatory oversight within that jurisdiction.

The bill provides permissive authority for the EPA or a local health district to assist the applicant for a permit by providing guidance and technical assistance. Currently it is unknown if either the EPA or a local health district will actually provide such assistance, and to what extent.

The bill also lists several requirements that must be on an applicant's application for a permit to install a new C&DD facility. All applications must be developed by the EPA and submitted to a local board of health. The EPA may experience costs to develop the application and local health districts may experience costs to review them. These costs are likely to be minimal for both entities.

**Construction and Demolition Debris Facility Oversight Fund (New Fund)**

When an application is submitted to install a new C&DD facility or modify an existing one, the bill requires the applicant to pay a \$2,000 application fee. The bill requires the \$2,000 to be deposited into a special fund of the local health district then transmitted to the Construction and Demolition Debris Facility Oversight Fund, a new fund created in the bill. However, no later than six months after the facility that is issued the permit to install begins accepting construction and demolition debris for disposal, either the local health district or the EPA shall refund the \$2,000 application fee back to the applicant. This will result in merely a transfer of

funds with no revenue gain to either the local health districts or the EPA, unless the application is denied, in which case the local health districts or EPA would be able to keep the money.

The bill provides that throughout the whole permitting process the EPA Director or a board of health may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules. In denying the application a local health district or the EPA shall consider whether the applicant has had a history of noncompliance with state and federal laws that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the new or modified C&DD facility. Verifying this type of information may require additional staff time and resources of both the Ohio EPA and local health districts.

### **New Permitting Costs – Local Health Districts and Ohio EPA**

Also, as part of this program local health districts may incur additional minimal costs for extending the expiration date of a permit; notifying the EPA of receipt of an application; requesting the EPA to review the application for a permit and issue or deny the application when the board determines additional expertise is required for such a review; and once the permit is issued, the local health district may experience minimal costs to mail a copy of a permit and additional information to the EPA, as well as copies of the plans or plan updates for operation of the facility. In the end, if a local health district is unable or unwilling to administer the new permitting program, the health district may be removed from the Director's approved list. If this happens, the Ohio EPA staff assumes the responsibilities for that jurisdiction. If, as a result of the bill, more local health districts return their responsibilities back to the Ohio EPA, the Ohio EPA may not have sufficient staff to take on the increased workload.

The bill includes several requirements that must be accompanied with an application (see section 3714.052). The bill requires that not later than 60 days after the EPA or a board of health receives an application, the applicant must hold a public hearing in the township or municipal corporation in which the facility or proposed facility is to be located. If a public hearing is held in a public building in the township or municipal corporation, these entities may experience minimal utility expenditures to provide a facility for the hearings to occur.

### **Licensure Requirements**

Once permitted, the bill requires a person that wants to operate, continue to operate, or maintain a C&DD facility to obtain an annual C&DD facility operation license. The bill requires a permit to install and operators license be obtained prior to the operation of a new C&DD facility. Similar to the permitting process, the license must be obtained from a local board of health or the EPA. All licenses shall expire annually at the end of December. The application for a license shall be submitted to the board of health or the EPA, on or before the last day of September of the year preceding that for which the license is sought.

**Submission of Background Information.** The bill requires that at the same time that an application for an annual operators license is submitted, an owner or operator of a C&DD facility that previously submitted background information, must submit to the EPA or a board of health all background information required to be submitted under the bill that has changed or been

added since the issuance of the most recent annual operators license for the facility. This same requirement applies to "key" employees of the C&DD facility, or those in a supervisory capacity. However, if there have been no changes during that license period the owner or operator or key employee must submit to the EPA or board of health an affidavit to that effect. If the EPA or a board of health finds that the updated information indicates any of the reasons specified in the bill for the denial of an initial application for a permit to install, a license may be revoked.

Also, if a person decides to transfer the permit to install or license for a C&DD facility to another person, the EPA or board of health may deny the transfer if it is found that the background information regarding the transferee or a transferee's key employee(s) indicates any of the reasons specified in the bill for the denial of an application for a permit to install.

Also, in lieu of these requirements, the bill allows an applicant for a permit to install or transfer of a permit to install, or a license for a C&DD facility to comply with Revised Code sections 3734.41 to 3734.47. Primarily, these requirements include filing a disclosure statement for a permit to install with the EPA and the Attorney General. After 180 days the Attorney General shall prepare an investigative report of the applicant and submit it to the EPA. To offset the Attorney General's costs for this investigation, current law allows applicants to be charged a fee for this investigation.

Overall, the EPA or a board of health may experience additional administrative costs to verify background information, review affidavits, and revoke licenses. Furthermore, the Attorney General may experience costs to prepare investigative reports of an applicant. Currently, the amount of such costs is unknown and will depend on the number of applicants.

**Action plan for response to a fire, explosion, or noxious gas release.** The bill requires that for the person submitting an application for a license, he or she shall submit plans with the application for operation of the facility, or any plan updates. Local boards of health must provide copies of the plans or plan updates for operation of the facility to the EPA. Providing copies and updates of these plans may result in minimal administrative costs to local boards of health.

One part of the plans must include a plan for effective action in response to a fire, an explosion at the facility, or a release of hydrogen sulfide or other gases created by the facility that pose a nuisance, cause an offensive odor, or pose a threat to public health or safety or to the environment. The person shall also submit a copy of the plan, and any plan updates, to the local fire department that would respond to a fire, an explosion, or noxious gas release at the facility. Local fire departments may experience costs to review initial plans and plan updates and keep a copy of the plans on file. Any additional administrative costs to township or municipal fire departments are likely to be minimal.

### **Program for the certification of C&DD operators – new state and local expenses**

The bill requires the Ohio EPA, in consultation with local health districts and a statewide association representing construction and demolition debris facilities to establish a program for the certification of C&DD operators. In addition, these entities shall also establish a continuing

education program for those operators as part of the certification program. The EPA is also required to approve persons to provide the continuing education. Each operator is required to complete a minimum of ten hours of continuing education training. Currently, it is unknown what costs may be incurred by the aforementioned entities involved in establishing the certification program. All training costs will likely come from the Construction and Demolition Debris Fund (Fund 4U7) and the Solid Waste Fund (Fund 4K3) and possibly funds from local health districts. An estimate of potential training costs is currently unknown.

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

Current law requires the Director of Ohio EPA 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 adds 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 local board of health, that has been prepared by a qualified ground water scientist. Finally, the bill requires the Director to adopt rules governing the monitoring and sampling of leachate. The Ohio EPA may experience additional administrative costs to establish and enforce these rules. Also, both the Ohio EPA and local boards of health may experience additional administrative costs to review the monitoring report submitted by the C&DD facility.

### **Acceptance of construction and demolition debris from a transfer facility**

The bill allows C&DD facilities to request a transfer facility to certify that material that is transferred from a transfer facility to the C&DD facility is not off-specification material, industrial waste, hazardous waste, solid wastes, infectious wastes, or low-level radioactive wastes. Furthermore, with respect to material that is transferred to a C&DD facility by a railroad under Title 49 of the United States Code, the C&DD facility may request the railroad 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. These provisions will not have a fiscal impact on local health districts or the EPA.

Furthermore, if the owner or operator of C&DD facility rejects a shipment of debris because the shipment is not eligible for disposal at the facility, the owner or operator of the C&DD shall notify the EPA or a board of health of the rejected shipment. Also, after rejecting the shipment, the owner or operator shall give the transporter or shipper of the shipment, as applicable, instructions from a form prescribed by the EPA, regarding the ultimate disposition of the debris. The form will serve as notice to the EPA or board of health, of the shipment's ultimate disposition, and include the date and time the shipment was ultimately disposed of, the disposal location, and the name of the owner or operator of the C&DD facility that accepted the shipment for disposal. The review and filing of these notifications will result in minimal, if any, costs to the Ohio EPA or local boards of health.

### **Facility Closure Rules**

Current law requires the Director of Environmental Protection to adopt rules establishing requirements for the closure of C&DD facilities and requirements governing financial assurance for their closure.

#### **Rules related to closure**

The bill specifies that the rules must require that the post-closure care period may be extended by order of the applicable board of health, the EPA, or a court of competent jurisdiction. The extension may be ordered if conditions at a facility are impacting public health or safety or the environment or if ground water assessment and corrective measures are required under rules adopted under the bill. Extending the post-closure care period would likely be the result of evidence indicating an impact to the public health or safety or the environment. This evidence may be the result of findings of either the facility itself, the local board of health, or the EPA. Currently, it is unknown what methods will be used or the costs involved in arriving at these findings. Also it is unknown what costs, if any, will be involved in courts extending the post-closure care period. It is uncertain whether court costs would offset any costs involved.

Also, upon closure, the bill requires the owner or operator of a C&DD facility to file with the applicable county recorder's office a notice that the property was previously used as a C&DD facility. The notice shall include an engineering drawing attachment showing the physical locations of debris placement, an indication of the volume of debris, and an indication of the depth of the final cover material. A county recorder may experience minimal administrative costs to file the notices. Any additional expenses will likely be offset by filing fees.

#### **Rules related to financial assistance**

The bill requires the EPA to adopt rules that require the owner or operator of a facility, before being issued an initial license, to submit a surety bond, a letter of credit, or other acceptable financial assurance in an amount determined by the EPA or a board of health and which is no less than \$13,000 per acre. The EPA or board of health may adjust the amount of financial assurance in conjunction with the issuance of an annual license. The EPA or board of health must justify any financial assurance amounts exceeding \$13,000 per acre.

However, for a facility that no longer accepts C&DD debris in calendar year 2006, the financial assistance requirements do not apply, provided that the owner or operator of a facility gives written notice of the closure to the applicable board of health or the EPA. Also, the requirements do not apply if the owner or operator does not submit a subsequent application for a license renewal for the facility after that closure, and no order was issued by the applicable board of health, the EPA, or a court of competent jurisdiction governing the post-closure care of and post-closure financial assistance for that facility. The same provisions apply for closure of a facility in calendar year 2007; however, the required period of time for post-closure care and post-closure care financial assurance must be one after the closure of the facility. The EPA or local board of health may experience minimal costs to review and file the written notice submitted by the owner or operator of the closing facility.

### **Administrative remedies**

Under current law if a local board of health, where the C&DD violation has occurred or is occurring, or the Ohio EPA, determines any person has violated or is violating the provisions in Chapter 3714., the local health district or the Ohio EPA may request in writing that the Attorney General, county prosecuting attorney, or city law director bring action for civil penalties in any court of competent jurisdiction. The court may impose upon the person no more than \$10,000 for each day of violation of the provisions in Chapter 3714., or rule related to C&DD, or a term or condition of a C&DD license. Moneys resulting from these civil penalties imposed by an action brought at the request of the local health district is required to be credited to a special fund in the local health district. Moneys resulting from civil penalties imposed by an action brought at the request of the EPA shall be credited to the Hazardous Waste Clean-Up Fund (Fund 505). This same process applies to the new permitting provisions in the bill.

### **Databases**

The bill requires the Ohio EPA to establish and maintain a database or databases composed of public information of the record made of the annual inspection of each construction and demolition debris facility, information from the annual survey of each health district, and ground water and leachate data collected. The bill requires the information and data to be stored in such a manner that they are easily available for sharing with a local health district and other interested persons. Requiring the establishment and maintenance of this database may result in the need to hire an additional staff person to perform this task; however, since the bill does not require the databases be computerized, current staff may be able to perform this function. If this is not the case, additional computer equipment as well as the need to hire consultants to assist with the work may be necessary. Currently, an estimate of such additional personnel and or equipment costs, if any, is unknown.

### **Environmental Protection Remediation Fund**

The bill expands the use of the money in the Environmental Protection Remediation Fund (Fund 541) to include remediation activities at construction and demolition debris facilities. Currently, money in the fund comes from moneys set aside by the state for the clean-up and remediation of the Ashtabula River; any moneys collected from settlements; and moneys received under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980." The moneys are specifically designated for cleaning up a particular site, in many cases, as the result of an enforcement order.

Am. Sub. H.B. 66 (the main appropriations bill) appropriated \$33,000 in FY 2006 and \$34,650 in FY 2007 to this fund.

Requiring the EPA to use a portion of the proceeds of the Environmental Protection Remediation Fund (Fund 541) without additional appropriation authority will result in a decrease in current services provided with moneys from the fund. As the number of C&DD remediation projects is not known, so is an estimate of the additional appropriation needed to conduct these activities.

## Appeals

Under current law and under certain conditions, the EPA or a local board of health, as applicable, may exempt any person disposing of or proposing to dispose of construction and demolition debris under the Construction and Demolition Debris Law. Under the bill, prior to issuing an exemption, a board of health is required to provide written notice to the EPA of the board's intention to grant the exemption. The notice shall contain a description of the facts surrounding the proposed exemption and any additional information requested by the EPA. No later than 30 days after the receipt of the notice, the EPA shall provide written comment to the board regarding the proposed exemption. The written comment shall be considered by the board of health prior to the board's issuance of an order granting an exemption. The EPA's determination to deny an exemption is appealable to the Environmental Review Appeals Commission.

Local boards of health may experience minimal administrative costs to provide notice to the EPA regarding the proposed exemption. In turn, the EPA may experience similar costs to review exemption requests and provide notice of the determination.

Also, the Environmental Review Appeal Commission may experience additional administrative costs to hear appeals. Any costs will likely be absorbed within the Commission's current budget since the Commission is supported only by the General Revenue Fund. Currently, an estimate of the number of appeals that may be heard is unknown.

## Grandfather Provisions

**License applications submitted prior to July 1, 2005.** The bill specifies that an application for a license to establish or modify a C&DD facility submitted to a board of health or the EPA 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. However, no review is necessary unless the applicant has: (1) acquired an interest in the property on or before May 1, 2005, (2) began hydrogeologic investigation of the property, and (3) began the engineering plans for the facility. Also, the bill requires the EPA to determine whether the above provisions apply to an applicant within 45 days after receiving an applicant's request for determination.

**License applications submitted between July 1, 2005 and December 31, 2005.** The bill specifies that an application for a license to establish or modify a C&DD facility submitted to a board of health or the EPA 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. Furthermore, the bill provides that unless the application involves certain expansions to areas within previously defined property boundaries, a board of health or the EPA may apply any of the bill's new siting criteria to such an application and may deny the application if the facility that is subject of the application will not comply with that siting criteria.

**License application submitted after January 1, 2006.** For applications that are submitted after January 1, 2006 and until the effective date of the rules adopted under the bill, a

board of health or the EPA shall review and issue or deny the license in accordance with the provisions of the Construction and Demolition Debris Law as they existed on July 1, 2005. However, unless the application involves certain expansions to areas within previously defined property boundaries, a board of health or the EPA is required to apply all of the bill's new siting criteria to the application and shall require the applicant to submit background information required by the bill.

Overall, these grandfather provisions may result in additional staff needed to verify applicants have met the hydrogeologic investigation and engineering plan requirements for specific applications, review applications and verify compliance with the bill's siting requirements, and review background information. Currently, it is unknown how much additional staff time and resources, if any, will be needed for this review. The level of workload will depend on the number of applications submitted. Any additional costs are likely to be covered with current budgetary resources.

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