



# Ohio Legislative Service Commission

## Final Analysis

Jeff Grim

### **Am. Sub. S.B. 150** 130th General Assembly (As Passed by the General Assembly)

**Sens.** Hite and Peterson, Coley, Eklund, Hughes, Kearney, Lehner, Manning, Sawyer, Turner, Uecker

**Reps.** Cera, C. Hagan, Barborak, Buchy, Damschroder, Landis, O'Brien, Patterson, Ruhl, Scherer, Rosenberger, Hayes, McClain, Antonio, Anielski, Ashford, Baker, Beck, Blessing, Brown, Burkley, Carney, Derickson, Hall, Letson, Lynch, Maag, Milkovich, Pillich, Ramos, Redfern, Retherford, Rogers, Slaby, Sprague, Stinziano, Strahorn, Thompson, Winburn, Batchelder

**Effective date:** August 21, 2014

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## **ACT SUMMARY**

### **Operation and management plans addressing agricultural pollution**

- Revises the requirement that the Chief of the Division of Soil and Water Resources adopt rules establishing standards, and specifying pollution abatement practices eligible for state cost sharing, to abate soil erosion or degradation of state waters from farming by specifying that the standards and practices are to abate in part the degradation of state waters by residual farm products, manure, or soil sediment rather than by animal waste or soil sediment.
- Applies the provisions in continuing law and the act governing operation and management plans to operators of animal feeding operations (AFOs), rather than operators of concentrated animal feeding operations as in former law, and retains the application of those provisions to operators of agricultural land.
- Also applies other provisions in the Soil and Water Resources and Soil and Water Conservation Commission Laws to AFOs, including a requirement that the Chief adopt rules establishing procedures for the administration of grants to the owners or operators of agricultural land or AFOs for the implementation of those plans.

- Replaces the term "animal waste" with "residual farm products" and "manure" in the above Laws, generally applies the definition of "animal waste" in former law to "residual farm products," and defines "manure" to mean animal excreta.
- For purposes of the above Laws, defines "animal feeding operation" to mean the production area of an agricultural operation where agricultural animals are kept and raised in confined areas other than a facility that possesses a specified type of permit.
- Generally prohibits specified state and local government officials, including the Director of Natural Resources, from disclosing certain information provided by or regarding a person who operates under an operation and management plan.

### **Voluntary nutrient management plans**

- Authorizes a person who operates agricultural land to develop a voluntary nutrient management plan or have it developed by another person or the supervisors of the applicable soil and water conservation district on the person's behalf.
- Generally defines "voluntary nutrient management plan" to mean any of the following:
  - A nutrient management plan that is in the form of the Ohio Nutrient Management Workbook made available by the Ohio State University (OSU);
  - A comprehensive nutrient management plan developed by the Natural Resources Conservation Service in the U.S. Department of Agriculture or persons authorized by the Conservation Service to develop a plan; or
  - A document that is equivalent to either of the above documents and that contains specified information, including identification of all nutrients applied.
- Establishes requirements and procedures for the approval of certain voluntary nutrient management plans by the Director of Agriculture, the Director's designee, or the supervisors of the applicable soil and water conservation district.
- Generally prohibits specified state and local government officials, including the Director of Agriculture, from disclosing information used in the development or approval of or contained in a voluntary nutrient management plan.

### **Application of fertilizer for agricultural production**

- Prohibits a person, beginning September 30, 2017, from applying fertilizer for the purposes of agricultural production unless that person has been certified to do so by



the Director of Agriculture or is acting under the instructions and control of a person who is certified.

- Requires persons certified to apply fertilizer for purposes of agricultural production to comply with procedures and requirements established in rules.
- Requires the Director to adopt rules creating a fertilizer applicator certification program and rules establishing all of the following concerning the required certifications:
  - The amount of the required application fee, provided that the amount must not exceed the cost of a private pesticide applicator license as established in rule;
  - Information that must be included with an application for certification;
  - Procedures for the issuance, renewal, and denial of certification and grounds for denial;
  - Requirements and procedures governing training that must be successfully completed in order for a person to be certified; and
  - Requirements concerning the maintenance of records.
- Exempts a person who has been licensed as a commercial applicator or private applicator under the Pesticide Law from paying the application fee for fertilizer certification.
- Allows the Director, until rules regarding fertilizer applicator certification are adopted, to authorize applicants for commercial and private pesticide applicator licenses to obtain additional training and temporary certification in fertilizer application simultaneously with pesticide application training at no additional cost.
- Authorizes the Director to adopt rules that establish criteria in accordance with which a person may be exempt from any required training, specify any type of cultivation that is to be excluded as agricultural production for purposes of the Agricultural Additives, Lime, and Fertilizer Law, and define what constitutes "under the instructions and control" for purposes of fertilizer certification.
- States that it is an affirmative defense in a private civil action for claims involving or resulting from the application of fertilizer if certain conditions are met.



## Additional fertilizer law changes

- Revises the levying of the fee paid by an applicant for a license to manufacture or distribute fertilizer by:
  - Requiring a fee for each location outside of Ohio from which fertilizer is distributed into Ohio rather than for each location outside of Ohio from which fertilizer was distributed in Ohio to nonlicensees; and
  - Adding that the fee applies for each Ohio location from which fertilizer is distributed in Ohio.
- Precludes a fertilizer distributor from being required to obtain a distribution license if the fertilizer is registered with the Director under the fertilizer provisions of the Agricultural Additives, Lime, and Fertilizer Law.
- Makes several changes to the provisions governing the tonnage report submitted to the Director by a fertilizer licensee or registrant and the payment of a 25¢ per-ton inspection fee on fertilizer that is distributed or applied.
- Adds certificates to apply fertilizer for agricultural production to continuing enforcement provisions governing the revocation, suspension, and refusal of fertilizer licenses or registration.
- Eliminates the requirement that the Director had to have substantial evidence of a violation before proceeding to revoke, suspend, or refuse fertilizer manufacturing licenses, distribution licenses, or registrations.
- Authorizes the Director to deny, suspend, revoke, refuse to renew, or modify a fertilizer applicator certificate prior to a hearing if the Director has substantial reason to believe that the certificate holder has recklessly applied fertilizer causing a health emergency, but requires the Director to afford an opportunity for a hearing after such an action.
- Specifies that the Director is not required to take certain actions related to the enforcement of the fertilizer provisions of that Law or rules adopted under those provisions when the Director believes that the public interest will be best served by a written warning.
- Makes changes in the criminal penalties for violations of the Agricultural Additives, Lime, and Fertilizer Law, including applying those penalties to any violation of that Law or rules adopted under it rather than to a violation of specified provisions of that Law as in prior law.



- Exempts persons who fail to comply with rules governing maintenance of fertilizer applicator certification records from civil and criminal penalties.
- For purposes of the Agricultural Additives, Lime, and Fertilizer Law, defines "agricultural production" to mean the cultivation, primarily for sale, of plants or any parts of plants on more than 50 acres, excluding the use of start-up fertilizer applied through a planter.
- Revises the list of materials that are not considered fertilizer for purposes of that Law, including adding residual farm products to that list.

## **Miscellaneous**

- Revises the membership of the Ohio Soil and Water Conservation Commission by doing all of the following:
  - Expanding the number of members appointed by the Governor from four to six and removing the Director of Agriculture and the Vice-President for Agricultural Administration of OSU as voting members;
  - Authorizing the Directors of Agriculture, Environmental Protection, and Natural Resources, the OSU Vice-President for Agricultural Administration, and an officer of the Ohio Federation of Soil and Water Conservation Districts or their designees to serve as ex officio members; and
  - Removing the requirement that two of the appointed members had to be farmers, requiring that four rather than all of the appointed members be persons having a knowledge of or interest in agricultural production as well as the natural resources of the state, and requiring one member to represent rural interests and one to represent urban interests.
- Replaces "animal waste" with "residual farm products" and "manure" in specified continuing exemptions from the Water Pollution Control Law.
- Requires money in the Conservation Reserve Management Program that is not retained by soil and water conservation districts for certain activities related to nutrient reduction in Lake Erie to be deposited in the Healthy Lake Erie Fund created by the act and used for activities related to open lake disposal of dredge material in the Lake.

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## CONTENT AND OPERATION

### Overview

The act revises and expands the application of requirements governing operation and management plans for the management and abatement of the degradation of the waters of the state by animal waste and other pollutants from agricultural operations. The requirements are generally administered and enforced by the Department of Natural Resources and soil and water conservation districts established under the Soil and Water Conservation Commission Law.

The act also authorizes a person who operates agricultural land to develop, or have developed on the person's behalf, a voluntary nutrient management plan that monitors certain conditions of and identifies nutrients applied on the agricultural land. It establishes requirements and procedures for the approval of those plans by the Director of Agriculture, the Director's designee, or the supervisors of applicable soil and water conservation districts.



In addition, the act revises provisions and establishes new requirements governing the application of fertilizers. Under the act, a person that applies fertilizer for the purposes of agricultural production must be certified to do so by the Director of Agriculture.

## **Operation and management plans addressing agricultural pollution**

### **Background**

Under law largely retained by the act, the Chief of the Division of Soil and Water Resources, subject to the approval of the Ohio Soil and Water Conservation Commission, must adopt rules that establish both of the following:

(1) Technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming or silvicultural operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by animal waste or by soil sediment, including substances attached to the sediment (hereafter, rules establishing abatement standards); and

(2) Criteria for determination of the acceptability of such management and conservation practices. The Chief may apply to the court of common pleas in the county where a violation of those standards causes pollution of the waters of the state for an order to compel the violator to cease the violation and to remove the agricultural pollutant or to comply with the standards, as appropriate.

A person that owns or operates agricultural land or a concentrated animal feeding operation (CAFO) may develop and operate under an operation and management plan that is approved by the Chief or the supervisors of the soil and water conservation district (hereafter, supervisors of a conservation district). Such a person that has not developed a plan and has caused agricultural pollution by failure to comply with the standards established in rules may be ordered by the Chief to operate under an operation and management plan developed by the Chief or the supervisors of a conservation district.<sup>1</sup>

Under law retained by the act, waters of the state (hereafter, water) are all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border on,

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<sup>1</sup> R.C. 1511.02(E)(1), (G), and (N), 1511.07(A)(3), and 1515.08(O) and (P).



Ohio or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.<sup>2</sup>

### **Adoption of agricultural pollution standards and practices**

The act revises the provision that requires the Chief to adopt rules establishing abatement standards and specifying pollution abatement practices that are eligible for state cost sharing by stating that the standards and practices, in addition to the abatement of wind or water erosion of the soil, are to abate the degradation of water by residual farm products (see below), manure, or soil sediment, including attached substances, rather than by animal waste or soil sediment, including attached substances, as in prior law.<sup>3</sup>

### **Application of plans to animal feeding operations**

The act applies the provisions in continuing law and the act governing operation and management plans to operators of animal feeding operations (AFOs) (see below), rather than operators of CAFOs as in former law, and retains the application of those provisions to operators of agricultural land. Former law did not define CAFO for the purposes of the Division of Soil and Water Resources Law. Thus, the effect of applying the provisions to AFOs rather than CAFOs is unclear.

The act also applies other provisions in the Soil and Water Resources and Soil and Water Conservation Commission Laws to AFOs. One provision is revised by the act to require the Chief to adopt rules establishing procedures for the administration of grants to the owners or operators of agricultural land or AFOs for the implementation of operation and management plans. Another provision is revised to state that the statutory duties and authority of the Chief, including those discussed above, do not apply to manure that is defecated on land outside an AFO or runoff from that land into water. The final revised provision states that, in a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under and in substantial compliance with an operation and management plan.<sup>4</sup>

### **Relevant terms**

The act revises several definitions and creates new definitions with regard to the provisions governing operation and management plans. Under the act, "agricultural

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<sup>2</sup> R.C. 1511.01(E).

<sup>3</sup> R.C. 1511.02(E)(1).

<sup>4</sup> R.C. 1511.02(E)(6) and (N) and 1511.021(C).





pollution" means failure to use management or conservation practices in farming or silvicultural operations to abate wind or water erosion of the soil or to abate the degradation of water by residual farm products, manure, or soil sediment, including attached substances. Former law instead referred to the degradation of water by animal waste or soil sediment, including attached substances.<sup>5</sup>

Consequently, the act eliminates the term "animal waste" and replaces it with "residual farm products" and "manure." "Residual farm products" is defined to mean bedding, wash waters, waste feed, and silage drainage. The act defines "manure" to mean animal excreta. Under prior law, "animal waste" meant animal excreta, discarded products, bedding, wash waters, waste feed, and silage drainage. "Residual farm products" as defined by the act also includes, and "animal waste" as defined in prior law also included, the compost products resulting from the composting of dead animals in operations subject to continuing law governing the composting of dead animals when either of the following applies:

(1) The composting is conducted by the person who raises the animals and the compost product is used in agricultural operations owned or operated by that person regardless of whether the person owns the animals; or

(2) The composting is conducted by the person who owns the animals, but does not raise them and the compost product is used in agricultural operations either by a person who raises the animals or by a person who raises grain that is used to feed them and that is supplied by the owner of the animals.<sup>6</sup>

The act revises the definition of "pollution abatement practice." Under the act, it means any erosion control, residual farm products, or manure pollution abatement facility, structure, or procedure and the operation and management associated with it as contained in operation and management plans developed or approved by the Chief or by supervisors of conservation districts.<sup>7</sup> Former law instead referred to animal waste rather than residual farm products or manure.

Finally, the act defines "animal feeding operation" to mean the production area, as defined in the Concentrated Animal Feeding Facilities Law, of an agricultural operation where agricultural animals are kept and raised in confined areas and specifies

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<sup>5</sup> R.C. 1511.01(D).

<sup>6</sup> R.C. 1511.01(G).

<sup>7</sup> R.C. 1511.01(C).

that it does not include a facility that possesses a permit issued under that Law or the Water Pollution Control Law.<sup>8</sup>

### **Disclosure of information**

Under the act, except as discussed below, the Director of Natural Resources, an employee of the Department of Natural Resources, the supervisors and employees of a conservation district, and a contractor of the Department or a conservation district must not disclose either of the following:

(1) Information, including data from geographic information systems and global positioning systems, provided by a person who owns or operates agricultural land or an AFO and operates under an operation and management plan; or

(2) Information gathered as a result of an inspection of agricultural land or an AFO to determine whether the person who owns or operates the land or operation is in compliance with an operation and management plan.<sup>9</sup>

However, the Director or the supervisors of a conservation district may release or disclose the information specified above to a person or a federal, state, or local agency working in cooperation with the Chief or the supervisors in the development of an operation and management plan or an inspection to determine compliance with such a plan if the Director or supervisors determine that the person or agency will not subsequently disclose the information to another person.<sup>10</sup>

### **Voluntary nutrient management plans**

The act provides for the development of voluntary nutrient management plans by or for persons who operate agricultural land. A voluntary nutrient management plan is any of the following:

(1) A nutrient management plan that is in the form of the Ohio Nutrient Management Workbook made available by the Ohio State University (OSU);

(2) A comprehensive nutrient management plan developed by the Natural Resources Conservation Service in the U.S. Department of Agriculture, a technical service provider certified by the Conservation Service, or a person authorized by the Conservation Service to develop a plan; or

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<sup>8</sup> R.C. 1511.01(J).

<sup>9</sup> R.C. 1511.023(A).

<sup>10</sup> R.C. 1511.023(B).



(3) A document that is equivalent to a plan specified in item (1) or (2) above, that is in a form approved by the Director of Agriculture or the Director's designee, and that contains at least all of the following information:

--Results of soil tests conducted on land subject to the plan that comply with the field office technical guide established by the Conservation Service and adopted by the Chief of the Division of Soil and Water Resources in applicable rules adopted by the Chief, including rules establishing wind and water erosion abatement standards and composting of dead animals plans, and that are not older than three years;

--Documentation of the method and seasonal time of utilization and application of nutrients;

--Identification of all nutrients applied, including manure, fertilizer, sewage sludge, and biodigester residue; and

--Field information regarding land subject to the plan, including the location, spreadable acreage, crops grown, and actual and projected yields.<sup>11</sup>

### **Development and approval**

Under the act, a person who owns or operates agricultural land may do any of the following:

(1) Develop a voluntary nutrient management plan;

(2) Request any person to develop a voluntary nutrient management plan on behalf of the person who owns or operates the agricultural land; or

(3) Request the supervisors of a conservation district to develop a voluntary nutrient management plan on the person's behalf.<sup>12</sup>

A person who owns or operates agricultural land and who has developed or has had developed a voluntary nutrient management plan without the assistance of the supervisors of the applicable conservation district may request those supervisors, the Director, or the Director's designee to approve the plan. The supervisors, Director, or Director's designee must approve or disapprove the plan.<sup>13</sup>

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<sup>11</sup> R.C. 905.31(DD) and 1515.01(O).

<sup>12</sup> R.C. 905.323(A)(1) and 1515.08(S).

<sup>13</sup> R.C. 905.323(A)(2) and 1515.08(S).

If a voluntary nutrient management plan is disapproved, the person who developed the plan or had it developed may request an adjudication hearing in accordance with the Administrative Procedure Act. A person whose plan is disapproved may appeal to the Franklin County Court of Common Pleas.<sup>14</sup>

After a voluntary nutrient management plan has been approved, the person who developed the plan or had it developed must submit the plan once every five years to the supervisors of the applicable conservation district or the Director for review. If after the review the supervisors or the Director determines that the plan needs to be modified, the supervisors or Director must notify the person who submitted the plan. The person then must provide for the modification of the plan. The procedures and requirements established in the act for the development of a plan apply to a modification of the plan.<sup>15</sup>

### **Disclosure of information in plans**

The act generally prohibits the Director, an employee of the Department of Agriculture, the supervisors of a conservation district, an employee of a district, and a contractor of the Department or a district from disclosing information, including data from geographic information systems and global positioning systems, used in the development or approval of or contained in a voluntary nutrient management plan. However, the Director or the supervisors of a conservation district may release or disclose such information to a person or a federal, state, or local agency working in cooperation with the Director or the supervisors in the development or approval of a plan if the Director or supervisors determine that the person or federal, state, or local agency will not subsequently disclose the information to another person who is not authorized by the person who owns or operates agricultural land to receive the information. The Director or the supervisors of a district may release or disclose information regarding a plan to the extent required by the federal Water Pollution Control Act.<sup>16</sup>

## **Application of fertilizer for agricultural production**

### **Certification**

The act prohibits a person, beginning September 30, 2017, from applying fertilizer for the purposes of agricultural production unless that person has been

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<sup>14</sup> R.C. 905.323(B) and (C).

<sup>15</sup> R.C. 905.323(D).

<sup>16</sup> R.C. 905.324.



certified to do so by the Director of Agriculture or is acting under the instructions and control of a person who is so certified (see below).<sup>17</sup> The Director may adopt rules defining "under the instructions and control" for that purpose.<sup>18</sup>

A person must be certified to apply fertilizer for purposes of agricultural production in accordance with the Director's rules. A person that has been so certified must comply with requirements and procedures established in those rules.<sup>19</sup>

Under the act, the Director must adopt rules that create a fertilizer applicator certification program that does all of the following:

(1) Educates an applicant for certification on the time, place, form, amount, handling, and application of fertilizer;

(2) Serves as a component of a comprehensive state nutrient reduction strategy addressing all sources of relevant nutrients; and

(3) Supports generally practical and economically feasible best management practices.<sup>20</sup>

Under the act, the Director also must adopt rules that establish all of the following concerning the required certifications:

(1) The amount of the fee that must be submitted with an application for certification, if applicable, provided that the fee cannot exceed the fee established in rules for a private pesticide applicator license;

(2) Information that must be included with an application for certification;

(3) Procedures for the issuance, renewal, and denial of certifications;

(4) Grounds for the denial of certifications;

(5) Requirements and procedures governing training that must be successfully completed in order for a person to be certified; and

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<sup>17</sup> R.C. 905.321(A).

<sup>18</sup> R.C. 905.322(B)(3).

<sup>19</sup> R.C. 905.321(B).

<sup>20</sup> R.C. 905.322(A)(1).

(6) Requirements for the maintenance of records by a person that is certified. The requirements established in the rules must include the date, place, and rate of application of fertilizer, an analysis of the fertilizer, and the name of the person applying the fertilizer. The rules must stipulate that the records must be maintained for not more than three years from the date of the fertilizer application and cannot be required to be submitted to the Director or the Director's designee, but must be made available for review upon request.<sup>21</sup>

The act exempts from the certification application fee a person that has been licensed as a commercial pesticide applicator or as a private pesticide applicator under the Pesticides Law and that is applying to be certified under the act.<sup>22</sup> The act allows the Director, until rules regarding fertilizer applicator certification are adopted, to authorize applicants for commercial and private pesticide applicator licenses to obtain additional training and temporary certification in fertilizer application simultaneously with pesticide application training at no additional cost.<sup>23</sup>

In addition to all of the rules discussed above, the Director may adopt rules that establish criteria in accordance with which a person may be exempt from any training that is required in order to become certified.<sup>24</sup> The Director must adopt all rules required or authorized by the act in accordance with the Administrative Procedure Act.

### **Affirmative defense**

Under the act, in a private civil action for claims involving or resulting from the application of fertilizer, it is an affirmative defense if all of the following apply:

(1) The person applying the fertilizer is certified or is applying fertilizer under the instruction and control of a person who is certified under the act and rules adopted by the Director under it;

(2) Records have been properly maintained for the application of fertilizer as required by rules adopted by the Director under the act; and

(3) The fertilizer has been applied according to and in substantial compliance with a voluntary nutrient management plan developed under the act, provided that the plan has been approved by the supervisors of the applicable conservation district, the

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<sup>21</sup> R.C. 905.322(A)(2).

<sup>22</sup> R.C. 905.321(C).

<sup>23</sup> Section 4.

<sup>24</sup> R.C. 905.322(B)(1).



Director, or the Director's designee or developed by the supervisors of the applicable conservation district under the act (see above).<sup>25</sup>

## **Additional fertilizer law changes**

### **Background**

Under the law governing fertilizer, a person that wants to manufacture or distribute fertilizer in Ohio must obtain a license to do so from the Department of Agriculture. In addition, a fertilizer manufacturer or distributor that wants to distribute certain fertilizer must register that fertilizer with the Department. Generally, a licensee or registrant must pay to the Director an inspection fee for all fertilizer distributed in Ohio and annually file with the Director a tonnage report that includes the amount of fertilizer distributed to nonlicensees or nonregistrants in Ohio.

### **Manufacturing and distribution license fee**

The act revises the levying of the \$5 license fee that must be paid by a person that applies for a license to manufacture or distribute fertilizer by doing both of the following:

(1) Requiring a fee for each location outside of Ohio from which fertilizer is distributed into Ohio rather than for each location outside of Ohio from which fertilizer was distributed in Ohio to nonlicensees as under former law; and

(2) Adding that the fee applies for each Ohio location from which fertilizer is distributed in Ohio.<sup>26</sup>

Under the act, a fertilizer distributor cannot be required to obtain a fertilizer distribution license if the fertilizer is registered with the Director under the fertilizer provisions of the Agricultural Additives, Lime, and Fertilizer Law. Former law instead precluded a distributor from being required to obtain a license if the manufacturer was licensed under that Law or if the manufacturer or distributor was registered under it.<sup>27</sup>

### **Tonnage report**

The act makes several changes to the provisions governing the tonnage report submitted to the Director by a fertilizer manufacturing licensee, fertilizer distribution

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<sup>25</sup> R.C. 905.325.

<sup>26</sup> R.C. 905.32(A)(3) and (4).

<sup>27</sup> R.C. 905.34.



licensee, and fertilizer registrant. The act requires a licensee or registrant to pay the Director an inspection fee of 25¢ per ton for all of the following, as applicable:

(1) All fertilizer that the licensee distributes in Ohio to a person that has not been issued a fertilizer manufacturing or distribution license;

(2) All fertilizer that the licensee applies in Ohio for purposes of agricultural production and all fertilizer applied in Ohio on behalf of the licensee by an employee or contractor who is certified to do so; and

(3) All fertilizer that the registrant distributes in Ohio.

However, the inspection fee does not apply to packaged fertilizers that are in containers of ten pounds or less.<sup>28</sup>

Prior law instead required a licensee or registrant, except registrants who packaged specialty fertilizers only in containers of ten pounds or less, to pay the Director for all fertilizers distributed in Ohio an inspection fee at the rate of 25¢ per ton or 28¢ per metric ton. Licensees and registrants had to specify on an invoice whether the per-ton inspection fee had been paid or whether payment of the fee was the responsibility of the purchaser of the fertilizer. The payment of the inspection fee by a licensee or registrant exempted all other persons from the payment of the fee.<sup>29</sup>

The act requires every licensee or registrant to file with the Director an annual report in accordance with rules adopted by the Director (see below). Under prior law, the report instead had to include the number of net tons or metric tons of fertilizer distributed to nonlicensees or nonregistrants in Ohio by grade; packaged; and bulk, dry, or liquid.<sup>30</sup>

Under the act, the report must be filed on or before the date specified in rules. Former law instead required the report to be filed on or before November 30 of each calendar year and to include data from the period beginning on November 1 of the year preceding the year in which the report was due through October 31 of the year in which it was due.<sup>31</sup>

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<sup>28</sup> R.C. 905.36(A).

<sup>29</sup> R.C. 905.36(A) and 905.31(Z).

<sup>30</sup> R.C. 905.36(B) and 905.31(Z).

<sup>31</sup> R.C. 905.36(B).



Finally, the act requires the Director to adopt rules that establish requirements and procedures with which a licensee or registrant must comply when filing an annual tonnage report, including the date on which the report must be filed.<sup>32</sup>

## **Enforcement**

The act adds certificates to apply fertilizer for agricultural production to continuing enforcement provisions governing the revocation, suspension, and refusal of fertilizer manufacturing licenses, distribution licenses, and registrations. It eliminates the requirement that the Director had to have substantial evidence of a violation before proceeding to take such an action. In addition, it reorganizes the provisions.<sup>33</sup>

The act then authorizes the Director to deny, suspend, revoke, refuse to renew, or modify a fertilizer applicator certificate prior to a hearing if the Director has substantial reason to believe that the certificate holder has recklessly applied fertilizer in a manner that causes an emergency to exist that presents a clear and present danger to human or animal health. The Director must provide an opportunity for a hearing without delay after taking such an action.<sup>34</sup>

Under the act, whenever the Director has cause to believe that a person has violated, or is violating, the fertilizer provisions of the Agricultural Additives, Lime, and Fertilizer Law or rules adopted or an order issued under those provisions or rules, the Director may conduct a hearing in accordance with the Administrative Procedure Act to determine whether a violation has occurred. If the Director determines that a violation has occurred, the Director may require the violator to pay a civil penalty in accordance with the schedule of civil penalties established in rules. Each day of violation constitutes a separate violation. However, persons who fail to comply with rules adopted by the Director governing the maintenance of fertilizer applicator certification records are exempt from those provisions.<sup>35</sup>

The act states that nothing in the fertilizer provisions of the Agricultural Additives, Lime, and Fertilizer Law or rules adopted by the Director under those provisions can be construed to require the Director to report any findings to the appropriate prosecuting authority for proceedings in the prosecution of, or issue any order or institute any enforcement procedure for, a violation of those provisions or rules when the Director believes that the public interest will be best served by a suitable

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<sup>32</sup> R.C. 905.322(A)(3).

<sup>33</sup> R.C. 905.45(A).

<sup>34</sup> R.C. 905.45(B).

<sup>35</sup> R.C. 905.501.



written notice of warning. A person who receives a written notice of warning may respond in writing to the notice.<sup>36</sup>

The act also makes the following changes in the criminal penalties for violations of the Agricultural Additives, Lime, and Fertilizer Law:

(1) Applies the penalties to any violation of that Law or rules adopted under it rather than to a violation of specified provisions of that Law as in former law;

(2) Decreases the penalty for a first offense from a second degree misdemeanor to a third degree misdemeanor; and

(3) Revises the penalties for subsequent violations by:

--Decreasing the penalty for a second offense from a first degree misdemeanor to a second degree misdemeanor; and

--Specifying that the penalty for a third or subsequent offense is a first degree misdemeanor.

The act exempts persons who fail to comply with rules governing maintenance of fertilizer applicator certification records from the above criminal penalties.<sup>37</sup>

## Terms

For purposes of the Agricultural Additives, Lime, and Fertilizer Law, the act defines "agricultural production" as the cultivation, primarily for sale, of plants or any parts of plants on more than 50 acres. It does not include the use of start-up fertilizer applied through a planter.<sup>38</sup> The Director may specify any type of cultivation that is to be excluded from the term in rules adopted under the act.<sup>39</sup>

The act also revises the list of materials that are not considered fertilizer for purposes of that Law as follows:

(1) Adds residual farm products to the list of exceptions;

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<sup>36</sup> R.C. 905.502.

<sup>37</sup> R.C. 905.99.

<sup>38</sup> R.C. 905.31(Z).

<sup>39</sup> R.C. 905.321(B)(2).



(2) States that animal and vegetable manures, rather than unmanipulated animal and vegetable manures, are not fertilizer; and

(3) Adds that all of the materials on the list of exceptions are considered fertilizer if they are distributed with a guaranteed analysis. Under ongoing law, guaranteed analysis is the minimum percentages of plant nutrients claimed in a specified order.<sup>40</sup>

## **Miscellaneous**

### **Ohio Soil and Water Conservation Commission**

The act revises the membership of the Ohio Soil and Water Conservation Commission by doing all of the following:

(1) Expanding the number of members of the Commission appointed by the Governor from four to six, and removing the Director of Agriculture and the Vice-President for Agricultural Administration of OSU as voting members;

(2) Authorizing the Directors of Agriculture, Environmental Protection, and Natural Resources, the OSU Vice-President for Agricultural Administration, and an officer of the Ohio Federation of Soil and Water Conservation Districts or their designees to serve as ex officio members; and

(3) Removing the requirement that two of the appointed members had to be farmers, requiring that four, rather than all as in former law, of the appointed members be persons having a knowledge of or interest in agricultural production as well as the natural resources of the state, and requiring one member to represent rural interests and one to represent urban interests.<sup>41</sup>

The act also eliminates the authority of the Commission to utilize the services of staff members in OSU's College of Agriculture as agreed upon by the Commission and the College.<sup>42</sup>

### **Water Pollution Control Law**

The act replaces the term "animal waste" with "residual farm products" and "manure," as discussed above, in specified continuing exemptions from the Water Pollution Control Law. The exemptions include:

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<sup>40</sup> R.C. 905.31(D) and (F).

<sup>41</sup> R.C. 1515.02 and Section 3.

<sup>42</sup> R.C. 1515.02.



(1) The exemption of specified types of disposal systems and related management and conservation practices that are subject to rules adopted by the Chief of the Division of Soil and Water Resources from the statute specifying the authority of the Director of Environmental Protection under that Law, including the authority to issue certain permits;

(2) The exemption of pollution that is caused, in part, by those substances resulting from farming, silvicultural, or earthmoving activities regulated by specified law governing counties or the Division of Soil and Water Resources Law from the statute generally prohibiting pollution of the waters of the state and discharging pollutants without a permit; and

(3) The exemption of specified types of treatment or disposal systems and related management and conservation practices that are subject to rules adopted by the Chief from the statutes requiring approval of plans for sewerage treatment works.<sup>43</sup>

### **Open lake disposal of dredge material in Lake Erie**

The act requires the Director of Natural Resources to identify unexpended funds previously appropriated to soil and water conservation districts that are related to the Conservation Reserve Enhancement Program. The Director must determine the amount of the funds necessary for programs, practices, and other activities, other than permitting, related to nutrient reduction in Lake Erie, including nutrients associated with open lake disposal of dredge material. The districts must retain the identified amounts for those purposes. On the act's effective date, districts must remit to the Director any amounts that are not so retained. Upon receipt, the Director must deposit the funds into the Healthy Lake Erie Fund created in the state treasury by the act. The act requires the funds to be used by the Director for activities related to open lake disposal of dredge material in the Lake.<sup>44</sup>

### **Technical and conforming changes**

The act makes technical and conforming changes, including renumbering a Revised Code section.<sup>45</sup>

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<sup>43</sup> R.C. 6111.03, 6111.04(F)(3), and 6111.44(B)(3).

<sup>44</sup> Section 5.

<sup>45</sup> R.C. 903.25; 905.31(A) and (T); 905.36(B) and (C); 905.39; 905.41(A) and (B); 905.46; 905.47; 905.48; 905.49; 905.50; 905.503; 907.111(D); 1511.02(A), (D), (G), (H), and (I)(2); 1511.021(C); 1515.08(O); and 3717.53(A)(2).

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## HISTORY

ACTION	DATE
Introduced	06-25-13
Reported, S. Agriculture	01-22-14
Passed Senate (32-0)	01-22-14
Reported, H. Agriculture & Natural Resources	03-25-14
Re-referred by H. Rules and Reference	04-02-14
Reported, H. Finance & Appropriations	04-02-14
Passed House (93-0)	04-09-14
Senate concurred in House amendments (33-0)	05-07-14

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